

REFINITIV

DELTA REPORT

10-Q

RAIL - FREIGHTCAR AMERICA, INC.

10-Q - SEPTEMBER 30, 2023 COMPARED TO 10-Q - JUNE 30, 2023

The following comparison report has been automatically generated

TOTAL DELTAS 1859

| | | |
|---------------------------------------|-----------|------|
| █ | CHANGES | 272 |
| █ | DELETIONS | 1413 |
| █ | ADDITIONS | 174 |

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q**

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

For the Quarterly period ended June September 30, 2023

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 South Wacker Drive, Suite 1500

Chicago, Illinois

60606

(Address of principal executive offices)

(Zip Code)

(800) 458-2235

(Registrant's telephone number, including area code)

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|--|--------------------------|--|
| Common stock, par value \$0.01 per share | RAIL | The Nasdaq Global Market |

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T 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 | <input type="checkbox"/> | Accelerated filer | <input type="checkbox"/> |
| Non-accelerated filer | <input type="checkbox"/> | Smaller reporting company | <input type="checkbox"/> |
| | | Emerging growth company | <input type="checkbox"/> |

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

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.

As of **August 2, 2023** **November 2, 2023**, there were **17,902,660** **17,903,437** shares of the registrant's common stock outstanding.

FREIGHTCAR AMERICA, INC.

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PART I – FINANCIAL INFORMATION

Item 1. Financial Statements.

FreightCar America, Inc.
Condensed Consolidated Balance Sheets

(In thousands, except for share data)

(Unaudited)

| | Decemb | | Septem | Decemb |
|---|----------|--------|--------|--------|
| | June 30, | er 31, | | |
| | 2023 | 2022 | | |
| Assets | | | | |
| Current assets | | | | |
| Cash, cash equivalents and restricted cash equivalents | 11,9 | 37,91 | 15,37 | 37,91 |
| Accounts receivable, net of allowance for doubtful accounts of \$179 and \$126 respectively | \$ 99 | \$ 2 | \$ 9 | \$ 2 |
| Accounts receivable, net of allowance for doubtful accounts of \$41 and \$126 respectively | 21,4 | 93 | 9,571 | 9,571 |
| VAT receivable | 1,42 | 1 | 4,682 | 2,141 |
| Inventories, net | 88,7 | 64,31 | 122,0 | 64,31 |
| Assets held for sale | 69 | 7 | 71 | 7 |
| Related party asset | — | 3,675 | — | 3,675 |
| Prepaid expenses | 1,30 | 8 | 3,261 | 1,172 |
| Total current assets | 15,6 | 50 | 5,470 | 6,239 |
| Property, plant and equipment, net | 140, | 128,8 | 157,6 | 128,8 |
| Railcars available for lease, net | 640 | 88 | 99 | 88 |
| Right of use asset operating lease | 26,6 | 23,24 | 29,34 | 23,24 |
| Right of use asset finance lease | 24 | 8 | 4 | 8 |
| Other long-term assets | 7,07 | 11,32 | 7,002 | 11,32 |
| | 0 | 4 | 4 | 4 |
| | 1,22 | 1 | 1,596 | 2,926 |
| | 32,1 | 33,09 | 31,69 | 33,09 |
| | 60 | 3 | 4 | 3 |
| | 529 | 1,589 | 644 | 1,589 |

| | | | | |
|--|--------|-------|-------|-------|
| | 208, | 199,7 | 229,3 | 199,7 |
| Total assets | \$ 244 | \$ 38 | \$ 09 | \$ 38 |
| Liabilities, Mezzanine Equity and Stockholders' Deficit | | | | |
| Current liabilities | | | | |
| | 41,7 | 48,44 | 51,61 | 48,44 |
| Accounts and contractual payables | \$ 78 | \$ 9 | \$ 1 | \$ 9 |
| | 1,21 | | | |
| Related party accounts payable | 3 | 3,393 | 1,569 | 3,393 |
| | 3,64 | | | |
| Accrued payroll and other employee costs | 1 | 4,081 | 6,360 | 4,081 |
| | 1,63 | | | |
| Accrued warranty | 2 | 1,940 | 1,638 | 1,940 |
| | 19,6 | | 19,64 | |
| Customer deposits | 44 | — | 4 | — |
| | 22,2 | 40,74 | | 40,74 |
| Current portion of long-term debt | 93 | 2 | — | 2 |
| | 6,68 | | | |
| Other current liabilities | 4 | 7,380 | 4,635 | 7,380 |
| | 96,8 | 105,9 | 85,45 | 105,9 |
| Total current liabilities | 85 | 85 | 7 | 85 |
| | 51,49 | | 31,06 | 51,49 |
| Long-term debt, net of current portion | — | 4 | 2 | 4 |
| | 40,7 | 31,02 | 36,44 | 31,02 |
| Warrant liability | 14 | 8 | 1 | 8 |
| | 1,17 | | | |
| Accrued pension costs | 6 | 1,040 | 709 | 1,040 |
| | 1,69 | | | |
| Lease liability operating lease, long-term | 4 | 1,780 | 3,284 | 1,780 |
| | 32,9 | 33,24 | 32,74 | 33,24 |
| Lease liability finance lease, long-term | 13 | 5 | 9 | 5 |
| Other long-term liabilities | 563 | 3,750 | 562 | 3,750 |
| | 173, | 228,3 | 190,2 | 228,3 |
| Total liabilities | 945 | 22 | 64 | 22 |
| Commitments and contingencies | | | | |

| | | | | |
|---|-------|-------|-------|-------|
| Mezzanine equity | | | | |
| Series C Preferred stock, \$0.01 par value, 85,412 shares authorized, 85,412 and 0 shares issued and outstanding at June 30, 2023 and December 31, 2022, respectively. Liquidation value \$87,023,723 and \$0 at June 30, 2023 and December 31, 2022, respectively. | 83,2 | 53 | — | |
| Series C Preferred stock, \$0.01 par value, 85,412 shares authorized, 85,412 and 0 shares issued and outstanding at September 30, 2023 and December 31, 2022, respectively. Liquidation value \$90,947 and \$0 at September 30, 2023 and December 31, 2022, respectively. | 83,31 | 4 | — | |
| 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 June 30, 2023 and December 31, 2022) | — | — | — | |
| Common stock, \$0.01 par value, 50,000,000 shares authorized, 17,899,191 and 17,223,306 shares issued and outstanding at June 30, 2023 and December 31, 2022, respectively | 210 | 203 | — | |
| 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 September 30, 2023 and December 31, 2022) | — | — | — | |
| Common stock, \$0.01 par value, 50,000,000 shares authorized, 17,903,437 and 17,223,306 shares issued and outstanding at September 30, 2023 and December 31, 2022, respectively | 210 | 203 | — | |
| Additional paid-in capital | 92,6 | 89,10 | 93,35 | 89,10 |
| | 33 | 4 | 1 | 4 |
| Accumulated other comprehensive income | 1,09 | 9 | 1,022 | 2,019 |
| | 9 | 1,022 | 2,019 | 1,022 |
| Accumulated deficit | (142 | (118, | (139, | (118, |
| | ,896) | 913) | 849) | 913) |

| | | | | |
|---|---------------------------|---------------------------|---------------------------|---------------------------|
| Total stockholders' deficit | (48, 954) | (28,5 84) | (44,2 69) | (28,5 84) |
| Total liabilities, mezzanine equity and stockholders' deficit | 208, \$ 244 | 199,7 \$ 38 | 229,3 \$ 09 | 199,7 \$ 38 |
| | <u> </u> | <u> </u> | <u> </u> | <u> </u> |

See Notes to Condensed Consolidated Financial Statements (Unaudited).

3

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

| | Three Months | | | | Three Months | | Nine Months | |
|--|------------------|---------------|------------------|----------------|---------------|---------------|----------------|----------------|
| | Ended | | Six Months Ended | | Ended | September 30, | Ended | September 30, |
| | June 30, 2023 | 2022 | June 30, 2023 | 2022 | 2023 | 2022 | 2023 | 2022 |
| Revenues | 88,5 \$ 96 | 56,7 \$ 86 | 169, \$ 595 | 150, \$ 022 | 61,8 \$ 94 | 85,7 \$ 43 | 231, \$ 489 | 235, \$ 765 |
| Cost of sales | 75,6 41 | 50,1 97 | 149, 155 | 133, 375 | 52,6 69 | 81,1 89 | 201, 824 | 214, 564 |
| Gross profit | 12,9 55 | 6,58 9 | 20,4 40 | 16,6 47 | 9,22 5 | 4,55 4 | 29,6 65 | 21,2 01 |
| Selling, general and administrative expenses | 5,85 1 | 4,05 3 | 12,2 39 | 14,7 66 | 7,51 1 | 7,11 2 | 19,7 50 | 21,8 78 |
| Gain on sale of railcars available for lease | 622 7,72 | — 2,53 | 622 8,82 | — 1,88 | — 313 | — 5 | 622 313 | — 5 |
| Operating income | 6 | 6 | 3 | 1 | | | | |
| Loss on pension settlement | | | | | 8,10 | | 8,10 | |
| | | | | | | | | |

| | | | | | | | |
|-------------------------|-----------|---------|-----------|-----------|-----------|---------|---------|
| Operating income | | | | 1,40 | (10,6 | 10,2 | (8,7 |
| (loss) | | | | 1 | 63) | 24 | 82) |
| Interest expense | (4,35 | (5,75 | (10,9 | (11,4 | (2,03 | (6,08 | (12, |
| | 1) | 7) | 51) | 62) | 7) | 7) | (17, |
| (Loss) gain on change | | | | | | | |
| in fair market value of | (6,75 | 18,7 | (6,14 | (1,98 | | | |
| Warrant liability | 5) | 46 | 2) | 4) | | | |
| Gain (loss) on change | | | | | | | |
| in fair market value of | | | | | 4,27 | (1,27 | (1,8 |
| Warrant liability | | | | | 3 | 4) | 69) |
| Loss on | | | | | | | |
| extinguishment of | (14,8 | | (14,8 | | | | (14, |
| debt | 80) | — | 80) | — | — | — | 880) |
| Other (expense) | | | | 2,15 | | | |
| income | (69) | 661 | (105) | 7 | (228) | 190 | (333) |
| (Loss) income before | (18,3 | 16,1 | (23,2 | (9,40 | | | |
| income taxes | 29) | 86 | 55) | 8) | | | |
| | | 1,64 | | 1,90 | | | |
| Income tax provision | 560 | 7 | 671 | 0 | | | |
| | (18,8 | 14,5 | (23,9 | (11,3 | | | |
| Net (loss) income | \$ 89) | \$ 39 | \$ 26) | \$ 08) | | | |
| Net (loss) income per | | | | | | | |
| common share – | | | | | | | |
| basic | \$ (0.73) | \$ 0.58 | \$ (0.93) | \$ (0.47) | | | |
| Net (loss) income per | | | | | | | |
| common share – | | | | | | | |
| diluted | \$ (0.73) | \$ 0.58 | \$ (0.93) | \$ (0.47) | | | |
| Income (loss) before | | | | 3,40 | (17,8 | (19, | (27, |
| income taxes | | | | 9 | 34) | 846) | 242) |
| Income tax provision | | | | | | | 1,87 |
| (benefit) | | | | 216 | (28) | 887 | 2 |
| | | | | 3,19 | (17,8 | (20, | (29, |
| Net income (loss) | | | | \$ 3 | \$ 06) | \$ 733) | \$ 114) |
| Net loss per common | | | | | | | |
| share – basic | | | | \$ (0.03) | \$ (0.69) | \$ 4) | \$ 9) |

| | | | | | | | | |
|--|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Net loss per common share – diluted | | | | | | | (0.9) | (1.1) |
| Weighted average common shares outstanding – basic | 28,1 | 24,4 | 27,5 | 23,9 | \$ (0.03) | \$ (0.69) | \$ 4) | \$ 9) |
| Weighted average common shares outstanding – diluted | 13,8 | 99,7 | 52,2 | 94,3 | 29,5 | 25,7 | 28,0 | 24,4 |
| | <u>25</u> | <u>84</u> | <u>97</u> | <u>27</u> | <u>63</u> | <u>14</u> | <u>10</u> | <u>59</u> |
| Weighted average common shares outstanding – basic | 28,1 | 24,4 | 27,5 | 23,9 | 29,5 | 25,7 | 28,0 | 24,4 |
| Weighted average common shares outstanding – diluted | 13,8 | 99,7 | 52,2 | 94,3 | 43,9 | 18,4 | 64,4 | 70,6 |
| | <u>25</u> | <u>84</u> | <u>97</u> | <u>27</u> | <u>63</u> | <u>14</u> | <u>10</u> | <u>59</u> |

See Notes to Condensed Consolidated Financial Statements (Unaudited).

4

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

| | Three Months Ended | | | | Three Months Ended | | Nine Months Ended | |
|---|--------------------|--------|----------|----------|--------------------|---------------|-------------------|---------------|
| | June 30, | | June 30, | | September 30, | September 30, | September 30, | September 30, |
| | 2023 | 2022 | 2023 | 2022 | 2023 | 2022 | 2023 | 2022 |
| Net (loss) income | (18,889) | 14,539 | (23,926) | (11,308) | 3,1 | (17,806) | (20,733) | (29,114) |
| Net income (loss) | | | | | \$ 93 | \$ 806) | \$ 733) | \$ 114) |
| Other comprehensive income, net of tax: | | | | | | | | |
| Loss on pension settlement | | | | | 31 | 8,10 | | 8,105 |
| Unrealized gain on foreign currency derivatives | | | | | 3 | 5 | 313 | 05 |
| | | | | | 34 | — | 34 | — |

| | | | | | | | | |
|--|----------------|---------------|----------------|----------------|----|-------|-----|-----|
| Pension and postretirement liability adjustments, net of tax | 36 | 83 | 77 | 167 | 57 | (323) | 650 | (6) |
| Comprehensive (loss) income | (18, | 14, | (23, | (11, | | | | |
| | <u>\$ 853)</u> | <u>\$ 622</u> | <u>\$ 849)</u> | <u>\$ 141)</u> | | | | |

| | | | | | | | | |
|-----------------------------|--|--|--|--|--------------|----------------|----------------|----------------|
| Comprehensive income (loss) | | | | | 4,1 | (10, | (19, | (21, |
| | | | | | <u>\$ 13</u> | <u>\$ 024)</u> | <u>\$ 736)</u> | <u>\$ 165)</u> |

See Notes to Condensed Consolidated Financial Statements (Unaudited).

FreightCar America, Inc.
Condensed Consolidated Statements of Mezzanine Equity and Stockholders' Deficit
(In thousands, except for share data)
(Unaudited)

| FreightCar America Stockholders | | | | | | | | | FreightCar America Stockholders | | | | | | | | |
|---------------------------------|--------------|---------------------|-------------------|----------------------|-----------------|------------------|---------------|----------------------|---------------------------------|---------------------|----------------------|--------------|---------------|----------------------|--------------|---------------|----------------------|
| Mezzanine Equity | | Accumulated Deficit | | | | Mezzanine Equity | | | | Accumulated Deficit | | | | Mezzanine Equity | | | |
| | | Additional | Other | Total | Preferred | Common | Other | Total | Common | Other | Total | Common | Other | Total | Common | Other | Total |
| Series C Preferred Stock | Common Stock | Participating | Retained Earnings | Stockholders' Equity | Preferred Stock | Common Stock | Participating | Stockholders' Equity | Common Stock | Participating | Stockholders' Equity | Common Stock | Participating | Stockholders' Equity | Common Stock | Participating | Stockholders' Equity |
| Shares | Amount | Shares | Amount | Amount | Shares | Amount | Shares | Amount | Shares | Amount | Amount | Shares | Amount | Amount | Shares | Amount | Amount |
| Preferred Stock | | | | | | | | | | | | | | | | | |
| Common Stock | | | | | | | | | | | | | | | | | |
| Retained Earnings | | | | | | | | | | | | | | | | | |
| Capital Deficit | | | | | | | | | | | | | | | | | |
| (Loss) Ficit | | | | | | | | | | | | | | | | | |
| Total Deficit | | | | | | | | | | | | | | | | | |

| | | | | | | | | |
|----------------|----|------|-------|-------|--------|-------|-------|-------|
| Balanc | 16 | | | | | | | |
| e, | ,5 | | | | | | | |
| March | 25 | 85 | (5, | 05 | 6, | | | |
| 31, | ,2 | 19 | ,1 | 43 | ,9 | 02 | | |
| 2022 | - | \$ 6 | \$ 27 | \$ 8) | \$ 13) | \$ 8) | | |
| | | | | | | | 14 | 14 |
| Net | | | | | | | ,5 | ,5 |
| income | - | - | - | - | - | 39 | 39 | |
| | | | | | | | 1 | |
| | | | | | | | 6, | |
| | | | | | | | 7 | |
| | | | | | | | 0 | 8 |
| | | | | | | | (9 | (1 |
| Balanc | | | | | | | 0, | 1, |
| e, June | | | | | | | 6, | 0, |
| 30, | | | | | | | 8 | 1 |
| 2022 | | | | | | - | \$ 8 | \$ 1) |
| | | | | | | | \$ 0 | \$ 5) |
| | | | | | | | \$ 4) | \$ 1) |
| | | | | | | | | (1 |
| | | | | | | | 7, | 7, |
| | | | | | | | 8 | 8 |
| Net | | | | | | | | 0 |
| loss | | | | | | - | - | 0 |
| Other | | | | | | | | 6) |
| compr | | | | | | | | 6) |
| ehensi | | | | | | | | |
| ve | | | | | | | | |
| income | - | - | - | - | 83 | - | 83 | - |
| | | | | | | | | 2 |
| | | | | | | | | 2 |
| Restrict | | | | | | | | |
| ed | | | | | | | | |
| stock | | | | | | | | |
| awards | - | - | 43 | 1 | (1) | - | - | - |
| Stock | | | | | | | | |
| options | | | | | | | | |
| exercis | | | | | | | | |
| ed | | | | | | | | |

| | | | | | | | | |
|--|------------------------|------------------------|----------|----------------------|---------------|----|-------------------|--------------------------|
| Issue of Series C preferred shares, net of issuance costs | 8 5, 4 1 2 | 8 3, 2 5 3 | | (5 (5 7) 7) | | 61 | | (1 (1 4 4 6) |
| Other compre- hensi- ve income | - | - | - | 36 | - | 36 | | |
| Restrict- ed stock awards | | 14 3, 91 0 | 1 (1) | - | - | - | | |
| Exercis- e of stock apprec- iation rights | | | 73 8 | - | - | - | 4, 2 4 6 | - 3 - 3 |
| Stock apprec- iation rights classific- ation modifica- tion | | | | 1, 73 8 | 1, 73 8 | | | |

| | | | | | | | | | | | | | |
|-------------------------------------|--------------|--------------|--------------|---------------|---------------|---------------|----------------|-----------------|----------------|--------------|--------------|----------------|--------------|
| Stock-based compensation recognized | - | - | - | - | 58 | - | - | 58 | - | - | - | 7 | 7 |
| | | | | | 2 | - | - | 2 | - | - | - | 1 | 1 |
| | | | | | 52 | | | | | | | 5 | 5 |
| Equity fees | - | - | - | - | ,0 | 14 | | | 15 | | | | |
| | | | | | 84 | 1 | 9 | - | - | - | - | 0 | |
| | | | | | 8 | 8 | 17 | | | | | | |
| Balanc e, June 30, 2023 | 5,411 | 3,255 | ,899 | 92,211 | 1,609 | 42,895 | (1,216) | (96,098) | (4,894) | 1,739 | 7,901 | (1,014) | 1,342 |
| | | | | | | | | | | | | | |
| Balanc e, September 30, 2023 | 2,207 | \$ 0 | \$ 33 | \$ 9 | \$ 96) | \$ 4) | | | | 1,739 | 7,901 | (1,014) | 1,342 |
| | | | | | | | | | | | | | |

See Notes to Condensed Consolidated Financial Statements (Unaudited).

FreightCar America, Inc.
Condensed Consolidated Statements of Mezzanine Equity and Stockholders' Deficit
(In thousands, except for share data)
(Unaudited)

| FreightCar America Stockholders | | | | | | | | | | FreightCar America Stockholders | | | | | | | | | |
|---------------------------------|--|------------------|--|------|-------------------------|------|------|-------|--------------------------------|---------------------------------|------------------|-------|-----|-----|-------------------------|--------------------------------|------------|--|--|
| | | | | | Acc um ula ted | | | | | | | | | | Acc um ula ted | | | | |
| Mezzanine Equity | | Ad diti on | | Oth | | | Tot | | Mezzanine Equity | | Ad diti on | | Oth | | | Tot | | | |
| | | | | al | er | | al | | | | | | Co | mp | Sto | Series C Preferred Stock | | | |
| Series C Preferred Stock | | Common Stock | | Pai | reh | Ret | ckh | | Series C Preferred Stock | | Common Stock | | Pai | reh | Ret | ckh | | | |
| | | Stock | | In | ive | ed | ers' | | | | Stock | | In | ive | ed | ers' | (Lo ss) | | |
| Sh Am | | Sh Am | | Ca | e | De | De | | Sh Am | | Sh Am | | Ca | Inc | De | De | | | |
| ar oun | | ar ou | | pit | (Lo | fici | fici | | ar ou | | ar ou | | pit | om | fici | fici | | | |
| es at | | es nt | | al | ss) | t | t | | es nt | | es nt | | al | e | t | t | | | |
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| | | 5, | | | | | | | | 5, | | | | | | | | | |
| | | 9 | | | | | | | | 9 | | | | | | | | | |
| Balanc | | 4 | | 8 | | (8 | | | | 4 | | 8 | | (8 | | | | | |
| e, | | 7, | | 3, | | 0, | | (1 | | 7, | | 3, | | 0, | | (1 | | | |
| Decem | | 2 1 | | 7 | | (5, | | 0 | | 2 1 | | 7 | | (5, | | 0 | | | |
| ber 31, | | 2 9 | | 4 | | 52 | | 6 | | 2 9 | | 4 | | 52 | | 6 | | | |
| 2021 | | - | | \$ 0 | | \$ 2 | | \$ 2) | | \$ 6) | | \$ 6) | | - | | \$ 6) | | | |
| | | | | | | | | | | | | | | | | | | | |
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|---------------------------------------|---|---|----|-----|-----|---|---|---|---|----|-----|-----|---|----|
| Restricted stock awards | - | - | 0 | 4 | (4) | - | - | - | - | 8 | 4 | (4) | - | - |
| Stock options exercised | | | | | | | | | | 5, | 2 | 9 | 2 | - |
| Employee stock settlement | - | - | (3 | 4 | (1 | - | - | - | - | (| 1 | 5, | 1 | (5 |
| Forfeiture of restricted stock awards | - | - | 8) | - | 3) | - | - | - | - | 8) | - | 7) | - | 7) |
| Stock-based compensation recognized | - | - | 4) | (1) | (6) | - | - | - | - | 4) | (1) | 8) | - | - |
| Equity Fees | - | - | 4 | 5 | 5 | - | - | - | - | 7 | 2 | 3, | 0 | 0 |
| | | | 1, | 1, | 1, | 0 | 0 | 0 | 0 | 0, | 2, | 2, | 0 | 0 |
| | | | 0 | 9 | 0 | 0 | 0 | 0 | 0 | 8 | 9 | 9 | 0 | 0 |
| | | | 5 | 9 | 0 | 0 | 0 | 0 | 0 | 7 | 9 | 9 | 0 | 0 |
| | | | 4 | 5 | 5 | - | - | - | - | 9 | 8 | 2 | - | - |

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|----------------|----------|------|----|------|------|-------|-------|
| | 1 | | | | | | |
| | 6, | | | | | | |
| Balanc | 7 | | | | | | |
| e, June | 0 | 8 | (9 | (1 | | | |
| 30, | 0, | 6, | 1, | 0, | | | |
| 2022 | 8 | 1 | 3 | (5, | 3 | 1 | |
| | 5 | 9 | 8 | 35 | 7 | 5 | |
| | - | \$ - | 0 | \$ 8 | \$ 0 | \$ 5) | \$ 4) |
| | | | | | | | \$ 1) |
| | <u>1</u> | | | | | | |
| | 6, | | | | | | |
| Balanc | 9 | | | | | | |
| e, | 9 | | | | | | (1 |
| Septe | 6 | | | | | | 0 |
| mber | 3, | | | | | | (1 |
| 30, | 7 | 2 | | | 7 | 2, | 1 |
| 2022 | 5 | 0 | | | 0 | 42 | 8 |
| | - | \$ - | 5 | \$ 1 | \$ 4 | \$ 7 | \$ 0) |
| | | | | | | | \$ 8) |
| | <u>1</u> | | | | | | |
| | 7, | | | | | | |
| Balanc | 2 | | | | | | |
| e, | 2 | | | | | | (1 |
| Decem | 2 | 8 | 1 | (1 | 1 | (2 | |
| ber 31, | 3, | 9, | 1, | 8, | 8, | | |
| 2022 | 3 | 2 | 1 | 9 | 5 | | |
| | 0 | 0 | 0 | 02 | 1 | 8 | |
| | - | \$ - | 6 | \$ 3 | \$ 4 | \$ 2 | \$ 4) |
| | | | | | | | \$ 3) |
| | | | | | | | \$ 4) |
| | | | | | | | (2) |
| | | | | | | | (2) |
| Net | | | | | | | |
| loss | | | | | | | |
| Other | | | | | | | |
| compr | | | | | | | |
| ehensi | | | | | | | |
| ve | | | | | | | |
| income | | | | | | | |

| | | | | | | | | | | | | | | |
|--|---------|-------|-------|-------|------|------|-------|-------|----|---|-------|-------|---------|---------|
| Issuance of Series C preferred shares, net of issuance costs | 8,541 | 8,325 | - | - | (57) | (57) | 8,541 | 8,325 | - | - | - | - | (200) | (200) |
| Restructured stock awards | - | - | 8,488 | 4,404 | (4) | - | - | - | - | - | 8,488 | 4,404 | (4) | - |
| Employee stock settlement | (3,888) | 1,888 | - | - | - | - | - | - | - | - | - | - | (1,888) | (1,888) |
| Exercise of stock appreciation rights | - | - | 8,733 | - | - | 6) | - | - | 6) | - | 8,733 | - | 6) | - |
| Stock appreciation rights classification modification | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| | | | | | | | | | | | | | | |

| | | | | | | | |
|-------------------------------------|--------------|-------------|---------------|-------------|-------------|--------------|--------------|
| Stock-based compensation recognized | 2,077 | 1,707 | 1,707 | 1,707 | 1,707 | 1,707 | 1,707 |
| Equity Fees | 2,322 | 2,222 | 2,222 | 2,222 | 2,222 | 2,222 | 2,222 |
| Balanc e, June 30, 2023 | 2,222 | \$ 3 | 1 \$ 0 | \$ 3 | \$ 9 | \$ 6) | \$ 4) |
| Balanc e, September 30, 2023 | 1,707 | | | | | | |

See Notes to Condensed Consolidated Financial Statements (Unaudited).

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

| | Six Months Ended June 30, | | Nine Months Ended | |
|---|---------------------------|---------|-------------------|-------------|
| | 2023 | | September 30, | |
| | 2023 | 2022 | 2023 | 2022 |
| Cash flows from operating activities | | | | |
| Net loss | | (11,30 | | |
| | \$ (23,926) | \$ 8) | \$ (20,733) | \$ (29,114) |
| Adjustments to reconcile net loss to net cash flows used in operating activities: | | | | |
| Depreciation and amortization | 2,105 | 2,060 | 3,189 | 3,110 |
| Non-cash lease expense on right-of-use assets | 1,307 | 636 | 1,873 | 944 |
| Recognition of deferred income from state and local incentives | — | (2,507) | — | (2,507) |
| Loss on change in fair market value for Warrant liability | 6,142 | 1,984 | 1,869 | 3,258 |
| Loss on pension settlement | | | 313 | 8,105 |
| Stock-based compensation recognized | (191) | 1,490 | 524 | 2,307 |
| Non-cash interest expense | 7,593 | 7,472 | 8,980 | 11,309 |
| Loss on extinguishment of debt | 14,880 | — | 14,880 | — |
| Other non-cash items, net | (472) | — | (435) | (9) |
| Changes in operating assets and liabilities, net of acquisitions: | | (13,91 | | |
| Accounts receivable | (11,922) | 7) | (1,126) | (2,603) |
| VAT receivable | 2,963 | 16,940 | 2,320 | 24,634 |
| Inventories | (25,110) | 6) | (57,213) | (30,110) |
| Accounts and contractual payables | (6,050) | 3,525 | 2,739 | 4,386 |

| | | | | |
|--|-----------|------------|-----------|-----------|
| Lease liability | (1,991) | (954) | (2,779) | (1,439) |
| Customer deposits | 19,644 | 15,406 | 19,644 | (3,300) |
| Other assets and liabilities | (10,548) | (6,297) | (455) | (2,556) |
| Net cash flows used in operating activities | (25,576) | (2,396) | (26,410) | (13,585) |
| Cash flows from investing activities | | | | |
| Purchase of property, plant and equipment | (4,954) | (2,808) | (8,971) | (3,380) |
| Proceeds from sale of property, plant and equipment and railcars available for lease, net of selling costs | 8,356 | — | 8,356 | — |
| Net cash flows provided by (used in) investing activities | 3,402 | (2,808) | (615) | (3,380) |
| Proceeds from sale of railcars available for lease, net of selling costs | 8,356 | — | 8,356 | — |
| Net cash flows used in investing activities | — | — | — | — |
| Cash flows from financing activities | | | | |
| Proceeds from issuance of preferred shares, net of issuance costs | 13,339 | — | 13,254 | — |
| Deferred financing costs | — | — | (300) | — |
| Borrowings on revolving line of credit | 89,223 | 49,282 | 115,172 | 84,396 |
| (105,88) | (48,77) | (123,062) | (75,239) | |
| Repayments on revolving line of credit | 2) | 0) | (106) | (57) |
| Employee stock settlement | (106) | (13) | (6) | (4) |
| Payment for stock appreciation rights exercised | (6) | (4) | (460) | — |
| Financing lease payments | (307) | — | — | — |
| Net cash flows (used in) provided by financing activities | (3,739) | 495 | 4,492 | 9,096 |
| Net cash flows provided by financing activities | — | — | — | — |
| Net decrease in cash and cash equivalents | (25,913) | (4,709) | (22,533) | (7,869) |
| Cash, cash equivalents and restricted cash equivalents at beginning of period | 37,912 | 26,240 | 37,912 | 26,240 |
| Cash, cash equivalents and restricted cash equivalents at end of period | \$ 11,999 | \$ 21,531 | \$ 15,379 | \$ 18,371 |
| Supplemental cash flow information | | | | |
| Interest paid | \$ 3,319 | \$ 3,990 | \$ 3,961 | \$ 6,240 |

| | | | | |
|---|-----------|----------|-----------|----------|
| Income taxes paid | \$ 1,516 | \$ 839 | \$ 1,857 | \$ 1,110 |
| Non-cash transactions | | | | |
| Change in unpaid construction in process | \$ 332 | \$ (8) | \$ 51 | \$ 2,168 |
| Accrued PIK interest paid through issuance of PIK | | | | |
| Note | \$ 3,161 | \$ 722 | \$ 3,161 | \$ 1,093 |
| Issuance of preferred shares in exchange of term loan | \$ 72,607 | \$ — | \$ 72,688 | \$ — |
| Issuance of warrants | \$ 3,010 | \$ 8,560 | \$ 3,014 | \$ 8,560 |
| Issuance of equity fee | \$ 685 | \$ 2,000 | \$ 685 | \$ 3,000 |

See Notes to Condensed Consolidated Financial Statements (Unaudited).

FreightCar America, Inc.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

(In thousands, except for share and per share data and unless otherwise noted)

Note 1 – Description of the Business

FreightCar America, Inc. (“FreightCar” or the “Company”), operating primarily in North America through its direct and indirect subsidiaries, is a leading designer, producer and supplier of railroad freight cars including coal cars, bulk commodity cars, covered hopper cars, intermodal and non-intermodal flat cars, mill gondola cars, coil steel cars and boxcars, as well as railcar parts and components. The Company also specializes in railcar repairs, complete railcar rebody services and railcar conversions that repurpose idled rail assets back into revenue service. The Company is headquartered in Chicago, Illinois, with facilities in Johnstown, Pennsylvania; Shanghai, People’s Republic of China; and Castaños, Coahuila, Mexico (the “Castaños Facility”).

Note 2 – Basis of Presentation

The accompanying condensed consolidated financial statements include the accounts of FreightCar America, Inc. and its subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation. The foregoing financial information has been prepared in accordance with the accounting principles generally accepted in the United States of America (“GAAP”) and rules and regulations of the U.S. Securities and Exchange Commission (the “SEC”) for interim

financial reporting. The preparation of the financial statements in accordance with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from these estimates. The results of operations for the three and **six** **nine** months ended **June** **30, 2023** **September 30, 2023** are not necessarily indicative of the results to be expected for the full year. The accompanying interim financial information is unaudited; however, the Company believes the financial information reflects all adjustments (consisting of items of a normal recurring nature) necessary for a fair presentation of financial position, results of operations and cash flows in conformity with GAAP. The 2022 year-end balance sheet data was derived from the audited financial statements as of December 31, 2022. Certain information and note disclosures normally included in the Company's annual financial statements prepared in accordance with GAAP have been condensed or omitted. Certain prior year amounts have been reclassified, where necessary, to conform to the current year presentation. These interim financial statements should be read in conjunction with the audited financial statements contained in the Company's Annual Report on Form 10-K for the year ended December 31, 2022.

Note 3 – Revenue Recognition

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

| | Three Months | | | | Three Months | | | |
|--|--------------|-------|------------------|--------|---------------|-------|-------------------|--------|
| | Ended | | Six Months Ended | | Ended | | Nine Months Ended | |
| | June 30, | | June 30, | | September 30, | | September 30, | |
| | 2023 | 2022 | 2023 | 2022 | 2023 | 2022 | 2023 | 2022 |
| Railcar sales | 85,3 | 52,7 | 162, | 142, | 58,4 | 82,0 | 220, | 224, |
| | \$ 49 | \$ 64 | \$ 345 | \$ 072 | \$ 07 | \$ 17 | \$ 752 | \$ 089 |
| Parts sales | 2,87 | 3,19 | 6,27 | 6,30 | 3,34 | 2,92 | 9,61 | 9,23 |
| | 3 | 3 | 3 | 4 | 0 | 7 | 3 | 1 |
| Revenues from contracts with customers | 88,2 | 55,9 | 168, | 148, | 61,7 | 84,9 | 230, | 233, |
| | 22 | 57 | 618 | 376 | 47 | 44 | 365 | 320 |
| Leasing revenues | | | | 1,64 | | | 1,12 | 2,44 |
| | 374 | 829 | 977 | 6 | 147 | 799 | 4 | 5 |
| Total revenues | 88,5 | 56,7 | 169, | 150, | 61,8 | 85,7 | 231, | 235, |
| | \$ 96 | \$ 86 | \$ 595 | \$ 022 | \$ 94 | \$ 43 | \$ 489 | \$ 765 |

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 **June 30, 2023** **September 30, 2023** and December 31, 2022. 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 **Condensed** Consolidated Balance Sheet based on the timing of when the Company expects to recognize the related revenue. Deferred revenue and customer deposits are included in customer deposits, other current liabilities and other long-term liabilities in the Company's Condensed Consolidated Balance Sheet and were **\$22,048** **19,644** and \$219 as of **June 30, 2023** **September 30, 2023** and December 31, 2022, 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 ASU 2014-09, *Revenue from Contracts with Customers*. The Company had remaining unsatisfied performance obligations as of **June 30, 2023** **September 30, 2023** with expected duration of greater than one year of \$14,850.

Note 4 – 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, railcar leasing and major railcar conversions and 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 internal 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 and

restricted cash and restricted 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.

| | Three Months Ended | | Six Months Ended | |
|---|--------------------|------------------|--------------------|-------------------|
| | June 30, | | June 30, | |
| | 2023 | 2022 | 2023 | 2022 |
| Revenues: | | | | |
| Manufacturing | \$ 85,724 | \$ 53,606 | \$ 163,323 | \$ 143,731 |
| Corporate and Other | 2,872 | 3,180 | 6,272 | 6,291 |
| Consolidated revenues | \$ 88,596 | \$ 56,786 | \$ 169,595 | \$ 150,022 |
| Operating income: | | | | |
| Manufacturing | \$ 11,769 | \$ 4,900 | \$ 17,397 | \$ 13,416 |
| Corporate and Other | (4,043) | (2,364) | (8,574) | (11,535) |
| Consolidated operating income | 7,726 | 2,536 | 8,823 | 1,881 |
| Consolidated interest expense | (4,351) | (5,757) | (10,951) | (11,462) |
| Gain (loss) on change in fair market value of Warrant liability | (6,755) | 18,746 | (6,142) | (1,984) |
| Loss on extinguishment of debt | (14,880) | - | (14,880) | - |
| Consolidated other (expense) income | (69) | 661 | (105) | 2,157 |
| Consolidated loss (income) before income taxes | \$ (18,329) | \$ 16,186 | \$ (23,255) | \$ (9,408) |
| Depreciation and amortization: | | | | |
| Manufacturing | \$ 891 | \$ 869 | \$ 1,823 | \$ 1,736 |
| Corporate and Other | 142 | 167 | 282 | 324 |
| Consolidated depreciation and amortization | \$ 1,033 | \$ 1,036 | \$ 2,105 | \$ 2,060 |
| Capital expenditures: | | | | |
| Manufacturing | \$ 2,947 | \$ 1,482 | \$ 4,826 | \$ 2,442 |
| Corporate and Other | 47 | 366 | 128 | 366 |
| Consolidated capital expenditures | \$ 2,994 | \$ 1,848 | \$ 4,954 | \$ 2,808 |
| | | | | |
| | | June 30, | December 31, | |
| | | | 2023 | 2022 |
| Assets: | | | | |
| Manufacturing | | \$ 184,389 | \$ 149,014 | |

| | | |
|--------------------------------------|-------------------|-------------------|
| Corporate and Other | 23,772 | 50,631 |
| Total operating assets | 208,161 | 199,645 |
| Consolidated income taxes receivable | 83 | 93 |
| Consolidated assets | \$ 208,244 | \$ 199,738 |

| | Three Months Ended | | Nine Months Ended | |
|---|--------------------|--------------------|--------------------|--------------------|
| | September 30, | | September 30, | |
| | 2023 | 2022 | 2023 | 2022 |
| Revenues: | | | | |
| Manufacturing | \$ 58,554 | \$ 82,817 | \$ 221,877 | \$ 226,548 |
| Corporate and Other | 3,340 | 2,926 | 9,612 | 9,217 |
| Consolidated revenues | \$ 61,894 | \$ 85,743 | \$ 231,489 | \$ 235,765 |
| Operating income (loss): | | | | |
| Manufacturing | \$ 7,378 | \$ 3,054 | \$ 24,775 | \$ 16,470 |
| Corporate and Other (1) | (5,977) | (13,717) | (14,551) | (25,252) |
| Consolidated operating income (loss) | 1,401 | (10,663) | 10,224 | (8,782) |
| Consolidated interest expense | (2,037) | (6,087) | (12,988) | (17,549) |
| Gain (loss) on change in fair market value of Warrant liability | 4,273 | (1,274) | (1,869) | (3,258) |
| Loss on extinguishment of debt | - | - | (14,880) | - |
| Consolidated other (expense) income | (228) | 190 | (333) | 2,347 |
| Consolidated income (loss) before income taxes | \$ 3,409 | \$ (17,834) | \$ (19,846) | \$ (27,242) |
| Depreciation and amortization: | | | | |
| Manufacturing | \$ 942 | \$ 877 | \$ 2,763 | \$ 2,614 |
| Corporate and Other | 143 | 172 | 426 | 496 |
| Consolidated depreciation and amortization | \$ 1,085 | \$ 1,049 | \$ 3,189 | \$ 3,110 |
| Capital expenditures: | | | | |
| Manufacturing | \$ 3,989 | \$ 540 | \$ 8,815 | \$ 2,982 |
| Corporate and Other | 28 | 32 | 156 | 398 |
| Consolidated capital expenditures | \$ 4,017 | \$ 572 | \$ 8,971 | \$ 3,380 |

(1) Results for the three and nine months ended September 30, 2023 include a pension settlement loss of \$313. Results from the three and nine months ended September 30, 2022 include a pension settlement loss of \$8,105.

| | September 30, 2023 | December 31, 2022 |
|--------------------------------------|-------------------------------|------------------------------|
| Assets: | | |
| Manufacturing | \$ 200,484 | \$ 149,014 |
| Corporate and Other | 28,737 | 50,631 |
| Total operating assets | 229,221 | 199,645 |
| Consolidated income taxes receivable | 88 | 93 |
| Consolidated assets | \$ 229,309 | \$ 199,738 |

| Geo gra phi c Info rm atio n | Geographic Information | | | | | | Geographic Information | | | | | |
|---|--------------------------|---------------------|--|-------------------------|-------------|--|--------------------------|-------------------------|--|-------------------------|------------------|--|
| | Revenues | | | Long Lived Assets(a) | | | Revenues | | | Long Lived Assets(a) | | |
| | Three Months Ended | Six Months Ended | | | | | Three Months Ended | Nine Months Ended | | | | |
| | | | | Dec Jun e | emb er | | | | | Sept emb er | Dec emb er | |
| | June 30, 2023 | June 30, 2022 | | 30, 2023 | 31, 2022 | | 30, 2023 | 30, 2022 | | 30, 2023 | 31, 2022 | |
| | | | | | | | | | | | | |
| | 2023 | 2022 | | 2023 | 2022 | | 2023 | 2022 | | 2023 | 2022 | |

| | 1 | | | | | | 2 | | | | | |
|------|------|-------|------|------|------|-------|------|------|------|------|-------|-------|
| Unit | 8 | 6 | 1 | 0 | 15 | 1 | 6 | 8 | 3 | 1, | 5, | 1, |
| ed | 8, | 9, | 15 | 0, | 5 | 0, | 1, | 5, | 23 | 2 | 1, | 23 |
| Stat | 5 | 56 | 5 | 0, | 2 | 15 | 8 | 7 | 4 | 5, | 11 | 15 |
| es | 9 | ,7 | 9 | 00 | 00 | ,0 | 9 | 4 | 8 | 75 | ,7 | ,0 |
| | \$ 6 | \$ 72 | \$ 5 | \$ 8 | \$ 0 | \$ 18 | \$ 4 | \$ 3 | \$ 9 | \$ 1 | \$ 62 | \$ 18 |
| | | | | | | | | | | | | |
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|--|------|-------|------|-------|
| Foreign currency forward contracts asset | \$ - | \$ 34 | \$ - | \$ 34 |
|--|------|-------|------|-------|

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 |

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, par value \$0.01 per share (the "Common Stock"), in an active market, exercise prices of \$0.01 per share and \$3.57 per share, and number of shares for which warrants are exercisable at June 30, 2023 September 30, 2023 and December 31, 2022, is a Level 2 measurement.

The fair value of the Company's foreign currency forward contracts determined using exit prices obtained from each counterparty, which are based on currency spot and forward rates at September 30, 2023 in an active market, is a Level 2 measurement. See Note 13 - Foreign Currency Forward Contracts.

The fair value of the Company's fleet of small cube covered hopper railcars determined using a market approach, using the known selling prices for a portion of the cars, and a weighted average selling price for the remaining cars in the asset group at December 31, 2022, is a Level 2 measurement. The portion of these assets intended to be sold were classified as assets held for sale and were no longer depreciated. These assets were sold during the three nine months ended June 30, 2023 September 30, 2023.

Note 6 – Restricted Cash

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

The Company's restricted cash balances are as follows:

| | June 30, 2023 | December 31, 2022 |
|--|------------------|----------------------|
| Restricted cash from customer deposit | \$ 282 | \$ 282 |
| Restricted cash to collateralize standby letters of credit | 103 | 103 |
| Restricted cash equivalents to collateralize standby letters of credit | 3,542 | 3,542 |
| Restricted cash equivalents - other | 266 | 151 |
| Total restricted cash and restricted cash equivalents | \$ 4,193 | \$ 4,078 |

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| | September 30, 2023 | December 31, 2022 |
|--|-----------------------|----------------------|
| Restricted cash from customer deposit | \$ 282 | \$ 282 |
| Restricted cash to collateralize standby letters of credit | 103 | 103 |
| Restricted cash equivalents to collateralize standby letters of credit | 3,542 | 3,542 |
| Restricted cash equivalents - other | 1,179 | 151 |
| Total restricted cash and restricted cash equivalents | \$ 5,106 | \$ 4,078 |

Note 7 – Inventories

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

| | June 30, | | December 31, | | September 30, | | December 31, | |
|-------------------------------|------------------|--|------------------|--|-------------------|--|------------------|--|
| | 2023 | | 2022 | | 2023 | | 2022 | |
| Raw materials | \$ 75,371 | | \$ 46,421 | | \$ 79,250 | | \$ 46,421 | |
| Work in process | 4,209 | | 4,527 | | 26,339 | | 4,527 | |
| Finished railcars | 4,517 | | 8,783 | | 11,911 | | 8,783 | |
| Parts inventory | 4,672 | | 4,586 | | 4,571 | | 4,586 | |
| Total inventories, net | \$ 88,769 | | \$ 64,317 | | \$ 122,071 | | \$ 64,317 | |

Inventory on the Company's Condensed Consolidated Balance Sheets includes reserves of \$1,995 \$2,137 and \$1,672 relating to excess or slow-moving inventory for parts and work in process at June 30, 2023 September 30, 2023 and December 31, 2022, respectively.

Note 8 – Debt Financing and Revolving Credit Facilities

Long-term debt consists of the following as of June 30, 2023 September 30, 2023 and December 31, 2022:

| | December | | September | | December | |
|--|----------|-----------|-----------|-----------|----------|------|
| | June 30, | | 30, | | 31, | |
| | 2023 | 2022 | 2023 | 2022 | 2023 | 2022 |
| M&T Credit Agreement outstanding | \$ - | \$ 6,917 | \$ - | \$ 6,917 | | |
| Siena Loan Agreement outstanding | 22,293 | 33,825 | 31,062 | 33,825 | | |
| Credit Agreement outstanding | - | 58,745 | - | 58,745 | | |
| Total debt | 22,293 | 99,487 | 31,062 | 99,487 | | |
| Less Credit Agreement discount | - | (5,262) | - | (5,262) | | |
| Less Credit Agreement deferred financing costs | - | (1,989) | - | (1,989) | | |
| Total debt, net of discount and deferred financing costs | 22,293 | 92,236 | 31,062 | 92,236 | | |
| | (22,29 | | | | | |
| Less amounts due within one year | 3) | (40,742) | - | (40,742) | | |
| Long-term debt, net of current portion | \$ - | \$ 51,494 | \$ 31,062 | \$ 51,494 | | |

The fair value of the remaining debt approximates its carrying value as of June 30, 2023 September 30, 2023 and December 31, 2022.

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 the Company, as guarantor, FreightCar North America, LLC ("Borrower" and together with the Company and certain other subsidiary guarantors, collectively, the "Loan Parties"), CO Finance LVS VI LLC, as lender (the "Lender"), and U.S. Bank National Association, as disbursing agent and collateral agent ("Agent"). The \$40,000 term loan under the Credit Agreement closed and was funded on November 24, 2020 (the "Closing Date"). 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.

In May 2021, the Loan Parties entered into an 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.

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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 June 30, 2023 September 30, 2023 and December 31, 2022, the 2022 Warrant was exercisable for an aggregate of 1,893,744 1,894,047 and 1,473,726 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 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 an 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 an 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 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 the Credit Agreement. The Sixth Amendment amends the 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.

In February 2023, the Loan Parties entered into Amendment No. 7 to Credit Agreement (the "Seventh Amendment"), with respect to the Credit Agreement. The Seventh Amendment amends the 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 ("Delayed Draw Extension Deadline"). The Delayed Draw Loan expired as the Company did not draw on the Delayed Draw Loan by April 3, 2023.

In March 2023 prior to the Delayed Draw Extension Deadline, 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 issued 85,412 shares upon Closing of new non-convertible Series C Preferred Stock of the Company, par value \$0.01 (the "Series C Preferred Stock") at an initial stated value of \$1,000 per share. Upon closing of the transactions contemplated by the Purchase Agreement on May 22, 2023 (the "Closing"), the Purchaser received a detached warrant to purchase 1,636,313 shares of Common Stock of the Company, for an exercise price equal to \$3.57 (the "2023 Warrant"). See Note 9 - Mezzanine Equity and 2023 Warrant.

In March 2023, contemporaneous with the execution of the Purchase Agreement and the First Amendment to Amended and Restated Reimbursement Agreement (as defined below), 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 Credit Agreement. The Eighth Amendment amends the 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.

Upon the Closing, the Company settled \$60,178 in-full all of the principal amount of the outstanding Term Loan Credit Agreement, together with all \$1,727 accrued unpaid interest, fees, penalties, and other obligations under the Term Loan Credit Agreement through

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the issuance of the Series C Preferred Stock, resulting in a loss on extinguishment of \$17,772. Any excess proceeds are to be used for general corporate purposes.

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.

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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. 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 eliminate the Letter of Credit Fee paid by the Company.

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.

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"). By March 2023, the Company had paid the Maximum Equity.

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. In connection with the Closing, the Purchaser has agreed to reduce the Cash Fee paid by the Company to \$375 per quarter.

Amendment to Reimbursement Agreement

In March 2023, the Company, the Purchaser, the Agent, and the designated calculation agent entered into Amendment No. 1 to Amended and Restated Reimbursement Agreement ("First Amendment 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. Upon Closing, the Company paid \$280 in accordance with the First Amendment to Amended and Restated Reimbursement Agreement.

Amendment No. 2 to Amended and Restated Reimbursement Agreement

In connection with the closing of the transactions contemplated by the Purchase Agreement, the Company entered into Amendment No. 2 to Amended and Restated Reimbursement Agreement ("Amendment No. 2") with the Loan Parties (as defined therein), CO Finance LVS VI LLC (the "LC Provider"), and U.S. Bank, National Association, as disbursing agent and collateral agent. Amendment No. 2 amends and sets forth the terms of the Company's continuing obligations to the LC Provider in connection with its outstanding standby letter of credit issued by Wells Fargo Bank, N.A., in the principal amount of \$25.0 million for the account of the Company and for the benefit of Siena Lending Group LLC.

Warrants

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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 **June 30, 2023** **September 30, 2023** and December 31, 2022, the 2020 Warrant was exercisable for an aggregate of **8,711,224** **8,712,618** and 6,799,139 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 **June 30, 2023** **September 30, 2023** and December 31, 2022, the 2021 Warrant was exercisable for an aggregate of **1,893,744** **1,894,047** and 1,473,726 shares of Common Stock, respectively with a per share exercise price of \$0.01.

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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. The **3%** Additional Warrant was never issued as the Delayed Draw Loan expired undrawn on April 3, 2023.

The 2020 Warrant, 2021 Warrant, 2022 Warrant, and 2023 Warrant collectively are referred to herein as the "Warrant". The following schedule shows the change in fair value of the Warrant as of **June 30, 2023** **September 30, 2023**.

| | | |
|--|------------------|------------------|
| Warrant liability as of December 31, 2022 | \$ 31,028 | \$ 31,028 |
| Warrant issued | \$ 3,544 | \$ 3,544 |
| Change in fair value | 6,142 | 1,869 |
| Warrant liability as of June 30, 2023 | <u>\$ 40,714</u> | |
| Warrant liability as of September 30, 2023 | | <u>\$ 36,441</u> |

The change in fair value of the Warrant is reported on a separate line in the **condensed** consolidated statement of operations.

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"), 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).

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).

In September 2023, the Revolving Loan Parties entered into a Third Amendment to Amended and Restated Loan and Security Agreement, which amends the Amended and Restated Loan and Security Agreement, dated July 30, 2021, as amended by the First Amendment to Amended and Restated Loan and Security Agreement, dated February 23, 2022, and by the Second Amendment to Amended and Restated Loan and Security Agreement, dated May 22, 2023, by and among the Revolving Loan Parties.

The Third Amendment to Amended and Restated Loan and Security Agreement, among other things, (i) extended the scheduled maturity date of the Siena Loan Agreement from October 8, 2023 to October 31, 2024, and (ii) increased the Maximum Revolving Facility Amount by \$10.0 million to a total of \$45.0 million, provided, however, that after giving effect to each Revolving Loan and each letter of credit made available to the Loan Parties, (A) the outstanding balance of all Revolving Loans and the Letter of Credit Balance (which is defined in the Siena Loan Agreement as the sum of (a) the aggregate undrawn face amount of all outstanding Letters of Credit and (b) all interest, fees and costs due or, in Lender's estimation, likely to become due in connection therewith) will not exceed the lesser of (x) the Maximum Revolving Facility Amount and (y) the Borrowing Base (as defined in the Siena Loan Agreement, as amended by the Third Amendment to Amended and Restated Loan and Security Agreement), and (B) none of the other Loan Limits (as defined in the Siena Loan Agreement) for Revolving Loans will be exceeded.

The outstanding debt under the Third Amendment to Amended and Restated Loan and Security Agreement bears the same interest under the First Amendment to Amended and Restated Loan and Security Agreement as described above. As of **June 30, 2023** **September 30, 2023**, the interest rate on outstanding debt under the Amended and Restated Loan and Security Agreement was **11.25** **10** % and under the First Amendment to Amended and Restated Loan and Security Agreement was **9.75** **10.5** %.

As of **June 30, 2023** **September 30, 2023**, the Company had **\$22,293** **\$31,062** in outstanding debt under the Siena Loan Agreement and remaining borrowing availability of **\$11,760** **\$1,467**. As of December 31, 2022, the Company had \$33,825 in outstanding debt under the Siena Loan Agreement and remaining borrowing availability of zero. 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** **2021**, and \$352 in additional deferred financing costs related to the Third Amendment to the Amended and Restated Loan and Security Agreement. The deferred financing costs are presented as an asset and amortized to interest expense on a straight-line basis over the term of the Siena Loan Agreement.

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.

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.

On June 30, 2023, FreightCar Leasing Borrower paid an aggregate of \$4,480 under the M&T Credit Agreement and with respect to the Forbearance Agreement. The payment consisted of proceeds from the sale to a third party of certain railcars and related leases, in lieu of turning over such railcars to M&T as contemplated by the Forbearance Agreement. As part of the payment terms, it was a condition that certain lease payments be made by the current lessees of the railcars to M&T in accordance with the Forbearance Agreement, which payments were timely made. Accordingly, FreightCar Leasing Borrower's obligations under the M&T Credit Agreement are deemed satisfied in full and the M&T Credit Agreement and all other Credit Documents (as defined in the M&T Credit Agreement), as well as the Forbearance Agreement, are terminated, resulting in a gain on extinguishment of \$2,892.

As of December 31, 2022, FreightCar Leasing Borrower had \$6,917 in outstanding debt under the M&T Credit Agreement, which was collateralized by leased railcars with a carrying value of \$4,116.

Note 9 – Mezzanine Equity and 2023 Warrant

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"). On May 22, 2023, the transactions contemplated by the Purchase Agreement were consummated (the "Closing"), pursuant to which the Company issued 85,412 shares of Series C Preferred Stock, \$0.01 par value per share (the "Series C Preferred Stock"), at an initial stated value of \$1,000 per share, and the 2023 Warrant to purchase up to 1,636,313 shares of the Company's outstanding Common Stock at an exercise price of \$3.57. This transaction resulted in \$2,506 2,591 of total issuance costs, of which \$2,216 2,301 were allocated against the Series C Preferred Shares.

Preferred Stock

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During the three and six nine months ended June 30, 2023 September 30, 2023, the Company settled its Term Loan Credit Agreement through the issuance of 85,412 of its authorized Series C Preferred Stock to the Purchaser pursuant to the Purchase Agreement at an initial stated and fair value of \$85,412. The Series C Preferred Stock was initially stated at fair value net of \$2,506 2,591 issuance costs. The Company determined the Series C Preferred Stock should be classified as

Mezzanine Equity (temporary equity outside of permanent equity) since a deemed liquidation event following a change of control may require redemption of the Series C Preferred Stock that is not solely within the control of the Company.

Pursuant to the Purchase Agreement, a certificate of designation was filed with the Delaware Secretary of State in connection with the Closing (the "Certificate of Designation") and contained rights, terms and provisions applicable to the Series C Preferred Stock. The Certificate of Designation provided, among other things, that the Series C Preferred Stock will rank senior to the Common Stock with respect to the payment of dividends and distribution of assets upon liquidation, dissolution and winding up. Dividends will accrue on the Series C Preferred Stock at a rate of 17.5% per annum (the "Dividend Rate") on the Stated Value and Accrued Dividends (each defined in the Certificate of Designation), whether or not declared, and shall be cumulative. The Series C Preferred Stock will not participate in any dividends paid to the holders of shares of Common Stock.

The Company may redeem the outstanding Series C 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 Series C Preferred Stock on or prior to the fourth anniversary of the Closing, the Dividend Rate will increase by 0.5% for every quarter thereafter until the Series C Preferred Stock is redeemed in full. The Purchaser has the right to request the Company redeem the Series C Preferred Stock at any time after the sixth anniversary of the Closing. If the Company does not redeem the Series C Preferred Stock within six months after receipt of a

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redemption request from the Purchaser, the holders of the Series C Preferred Stock will be entitled to certain limited voting rights as described in the Certificate of Designation.

The Series C Preferred Stock has similar characteristics of an "Increasing Rate Security" as described by SEC Staff Accounting Bulletin Topic 5Q, Increasing Rate Preferred Stock. As a result, and as the Company has the ability to redeem the Series C Preferred Stock before the increasing Dividend Rate occurs, the discount on Series C Preferred Stock is considered an unstated dividend cost that is amortized over the period preceding commencement of the increasing Dividend Rate using the effective interest method, by charging imputed dividend cost against retained earnings, or additional paid in capital in the absence of retained earnings, and increasing the carrying amount of the Series C Preferred Stock by a corresponding amount. Accordingly, the discount is amortized over four years using the effective yield method. The Company recognized discount amortization of \$203 during the three and nine months ended September 30, 2023.

2023 Warrant

At the Closing, the Company issued a liability-classified warrant to purchase an aggregate of 1,636,313 shares of the Company's Common Stock, exercisable for a term of ten years from the date of issuance with an exercise price of \$3.57.

The 2023 Warrant had a fair value of \$3,544 upon issuance, calculated using the Black-Scholes option valuation model. As of September 30, 2023, the 2023 Warrant had a fair value of \$3,189.

Note 10 – Accumulated Other Comprehensive Income

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

| | Pre-Tax | Tax | After-Tax | Pre-Tax | Tax | After-Tax |
|---|-----------------|-------------|-----------------|---------------|-------------|---------------|
| <u>Three months ended June 30, 2023</u> | | | | | | |
| <u>Three months ended September 30, 2023</u> | | | | | | |
| Pension liability activity: | | | | | | |
| Loss on pension settlement | | | | \$ 313 | \$ - | \$ 313 |
| Reclassification adjustment for amortization of net loss (pre-tax other income) | \$ 36 | \$ - | \$ 36 | 573 | \$ - | 573 |
| | <u>\$ 36</u> | <u>\$ -</u> | <u>\$ 36</u> | <u>573</u> | <u>\$ -</u> | <u>573</u> |
| | | | | \$ 886 | \$ - | \$ 886 |
| Foreign currency derivative asset activity: | | | | | | |
| Unrealized gain on foreign currency derivatives | | | | \$ 34 | \$ - | \$ 34 |
| | <u>\$ 34</u> | <u>\$ -</u> | <u>\$ 34</u> | <u>\$ 920</u> | <u>\$ -</u> | <u>\$ 920</u> |
| | | | | | | |
| | Pre-Tax | Tax | After-Tax | | | |
| | Pre-Tax | Tax | After-Tax | | | |
| <u>Three months ended June 30, 2022</u> | | | | | | |
| Pension liability activity: | | | | | | |
| Reclassification adjustment for amortization of net loss (pre-tax other income) | \$ 83 | \$ - | \$ 83 | | | |
| | <u>\$ 83</u> | <u>\$ -</u> | <u>\$ 83</u> | | | |
| <u>Three months ended September 30, 2022</u> | | | | | | |
| Pension liability activity: | | | | | | |
| Loss on pension settlement | | | | \$ 8,105 | \$ - | \$ 8,105 |
| Reclassification adjustment for amortization of net loss (pre-tax other income) | | | | (323) | | (323) |
| | <u>\$ 8,105</u> | <u>\$ -</u> | <u>\$ 8,105</u> | <u>(323)</u> | <u></u> | <u>(323)</u> |
| | | | | \$ 7,782 | \$ - | \$ 7,782 |
| | <u>\$ 7,782</u> | <u>\$ -</u> | <u>\$ 7,782</u> | | | |
| <u>Nine months ended September 30, 2023</u> | | | | | | |
| Pension liability activity: | | | | | | |
| | | | | | | |

| | | | |
|---|----------|------|----------|
| Loss on pension settlement | \$ 313 | \$ - | \$ 313 |
| Reclassification adjustment for amortization of net loss (pre-tax other income) | 650 | - | 650 |
| | \$ 963 | \$ - | \$ 963 |
| Foreign currency derivative asset activity: | | | |
| Unrealized gain on foreign currency derivatives | \$ 34 | \$ - | \$ 34 |
| | \$ 997 | \$ - | \$ 997 |
| <u>Nine months ended September 30, 2022</u> | | | |
| Pension liability activity: | | | |
| Loss on pension settlement | \$ 8,105 | \$ - | \$ 8,105 |
| Reclassification adjustment for amortization of net loss (pre-tax other income) | (156) | - | (156) |
| | \$ 7,949 | \$ - | \$ 7,949 |

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| | Pre-Tax | Tax | After-Tax |
|---|---------|------|-----------|
| <u>Six months ended June 30, 2023</u> | | | |
| Pension liability activity: | | | |
| Reclassification adjustment for amortization of net loss (pre-tax other income) | \$ 77 | \$ - | \$ 77 |
| | Pre-Tax | Tax | After-Tax |
| <u>Six months ended June 30, 2022</u> | | | |
| Pension liability activity: | | | |
| Reclassification adjustment for amortization of net loss (pre-tax other income) | \$ 167 | \$ - | \$ 167 |

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

| | June 30, | December 31, |
|--|----------|--------------|
| | | |

| | 2023 | 2022 |
|--|----------|----------|
| Unrecognized pension income, net of tax of \$6,282 and \$6,282, respectively | \$ 1,099 | \$ 1,022 |

| | September 30, 2023 | December 31, 2022 |
|--|--------------------------|----------------------|
| Unrecognized pension income, net of tax of \$6,282 and \$6,282, respectively | \$ 1,985 | \$ 1,022 |

Note 11 – Stock-Based Compensation

Total stock-based compensation was \$(\$100,715) and \$(\$2,754,817) for the three months ended June 30, 2023 September 30, 2023 and 2022, respectively and \$(\$191,524) and \$1,490,2307 for the six nine months ended June 30, 2023 September 30, 2023 and 2022, respectively. As of June 30, 2023 September 30, 2023, there was \$1,822,1,509 of unearned compensation expense related to restricted stock awards, which will be recognized over the remaining weighted average requisite service period of 22 20 months. As of June 30, 2023 September 30, 2023, there was \$1,664,1,471 of unearned compensation related to time-vested stock options, which will be recognized over the remaining requisite service period of 25 23 months.

2020 and 2021 Grants of Stock Appreciation Rights

During 2020 and 2021, the Company granted 1,164,464 and 1,735,500 cash settled stock appreciation rights, respectively, 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. Cash settled stock appreciation rights are classified as liabilities. The 2020 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 was contingent upon the achievement of a thirty-day trailing average fair market value of a share of Common Stock of 133.3% (\$3.17) or more of the exercise price per share of \$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. During the first quarter of 2021, the market condition for the 2021 cash settled stock appreciation rights was met. The 2021 cash settled stock appreciation rights vest ratably over three years and have a contractual life of 10 years. 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.

Effective May 11, 2023, the outstanding cash settled stock appreciation rights were amended to provide for such awards to be settled in shares of the Company's Common Stock rather than in cash as they were initially structured, resulting in a modification of the classification of these awards from liability to equity. The estimated fair value of the cash settled stock appreciation rights immediately preceding the modification was \$1,738, estimated using the Black-Scholes option valuation model with the following assumptions:

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| Grant Year | Grant Date | Expected Life | Expected | Dividend | Risk Free | Fair Value |
|------------|------------|---------------|------------|----------|---------------|------------|
| | | | Volatility | Yield | Interest Rate | Per Award |
| 2020 | 1/24/2020 | 3.4 years | 94.06% | 0.00% | 3.66% | \$ 2.00 |
| 2020 | 11/30/2020 | 4.1 years | 89.29% | 0.00% | 3.54% | \$ 1.85 |
| 2021 | 1/5/2021 | 4.2 years | 88.36% | 0.00% | 3.52% | \$ 1.89 |

The estimated fair value of the cash settled stock appreciation rights was \$3,212 as of June 30, 2022. Stock-based compensation for cash settled stock appreciation rights was \$(636) and \$(2,951) for the three months ended June 30, 2023 and 2022, respectively, and \$(1,219) and \$808 for the six months ended June 30, 2023 and 2022, respectively.

As of **June 30, 2023** **September 30, 2023**, there was **\$167** **85** of unearned compensation related to the cash settled stock appreciation rights, which will be recognized over the remaining requisite service period of **64** months.

Inducement Options

On June 26, 2023 (the "Grant Date"), **In June 2023**, the Company issued 300,000 inducement stock options (the "Inducement Options") outside of The FreightCar America, Inc. 2022 Long Term Incentive Plan to one individual. The Inducement Options were issued at an exercise price of \$2.73 and have a contractual life of 10 years. Vesting of **Total stock-based compensation related to the Inducement Options** is contingent on the achievement of the later of (i) the first date the closing price of one share of the Company's Common Stock is equal to or greater than 125% of the exercise price; and (ii) the vesting of one-third of the options per year for three consecutive years after, and on each anniversary of, the Grant Date.

The Company measured the fair value of the Inducement Options as of the Grant Date using a Monte Carlo Simulation Model considering the following assumptions: trading stock price as of the Grant Date of **\$2.74** **81**, risk-free rate of 3.65%, volatility rate of 69.81%, and a term of 10 years. As the likelihood of achieving the market condition is factored into the Monte Carlo model, the stock-based compensation for the Inducement Options will be recognized ratably over the three-year service period. **three and nine months ended September 30, 2023.**

Note 12 – 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 were 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 components of net periodic benefit cost (benefit) for the three and **six** **nine** months ended **June 30, 2023** **September 30, 2023** and 2022, are as follows:

| Pension Benefits | Three Months | | | | Three Months | | Nine Months | |
|---|---------------|-----------------|------------------|--------------|---------------|-------------|---------------|-------------|
| | Ended | | Six Months Ended | | Ended | | Ended | |
| | June 30, | | June 30, | | September 30, | | September 30, | |
| | 2023 | 2022 | 2023 | 2022 | 2023 | 2022 | 2023 | 2022 |
| Interest cost | \$ 151 | \$ 276 | \$ 2 | \$ 552 | \$ 1 | \$ 157 | \$ 3 | \$ 709 |
| Expected return on plan assets | (86) | (617) | (16) | (1,2 | (83) | (208) | (25 | (1,4 |
| Amortization of unrecognized net income (loss) | 36 | 83 | 77 | 167 | 38 | 40 | 5 | 207 |
| Reclassification adjustment for amortization of net income (loss) | | | | | - | (36) | - | (36) |
| Loss on pension settlement | | | | | 31 | 8,10 | 31 | 8,10 |
| | | | | | 3 | 5 | 3 | 5 |
| | | | 21 | (51) | 41 | 8,05 | 63 | 7,54 |
| | <u>\$ 101</u> | <u>\$ (258)</u> | <u>\$ 2</u> | <u>\$ 5)</u> | <u>\$ 9</u> | <u>\$ 8</u> | <u>\$ 1</u> | <u>\$ 3</u> |

The Company made no contributions to the Company's defined benefit pension plan for the three and **six** **nine** months ended **June 30, 2023** **September 30, 2023** and 2022. The Company expects to make no further contributions to its pension plan.

During the three and nine months ended September 30, 2023, the Company offered a one-time, lump sum pay-out option to its terminated vested participants under the Plan. The lump sum pay-out was funded by the assets of the Plan. As a result of the lump sum pay-out, the Company reduced its gross Plan liabilities by \$536 and recognized a non-cash pre-tax pension settlement loss of \$313 during the three and nine months ended September 30, 2023.

The Company also maintains qualified defined contribution plans, which provide benefits to employees based on employee contributions and employee earnings with discretionary contributions allowed.

Note 13 – Foreign Currency Forward Contracts

The Company's operations and expenditures in its normal course of business are subject to opportunities and risks related to foreign currency fluctuations. The Company utilizes foreign currency forward contracts to protect against downward currency exposure by

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hedging Mexican Peso denominated expenses against the risk of variability in foreign currency exchange rates between the Mexican Peso and the U.S. Dollar.

During the **three** **second** and **six months ended June 30, 2023**, **third quarters of 2023**, the Company entered **for the first time** into forward contracts to hedge the Company's anticipated and probable Mexican Peso denominated expenses against the foreign currency rate exposure. The contracts have terms between one and 12 months and require the Company to exchange currencies at agreed-upon rates at each settlement date. The counterparties to the contracts consist of a limited number of major domestic and international financial institutions. The Company classifies these contracts as cash flow hedges in accordance with ASC 815, *Derivatives and Hedging*. **The Company does not have any non-designated derivatives.**

The Company will assess the assumed effectiveness **and fair value** of the contracts at each reporting period. **The foreign currency derivatives are recorded on the balance sheet at fair value.** The Company records unrealized gains or losses related to changes in the fair value of the forward contracts in other comprehensive income as long as the contracts are assumed to be effective. Amounts accumulated in other comprehensive income (loss) are reclassified to the consolidated statement of operations when the hedged item impacts earnings or upon determination that the contract is no longer assumed to be effective.

The **notional amounts accumulated** of outstanding foreign currency derivatives are as follows:

| Notional Amount | September 30, | | December 31, | |
|--|----------------------|-------------|---------------------|-------------|
| | 2023 | 2022 | 2023 | 2022 |
| Derivative instruments designated as hedges: | | | | |
| Foreign currency derivatives | \$ 9,143 | \$ - | | |

The fair value of outstanding foreign currency derivatives designated as hedges are as follows:

| Fair Value | September 30, | | December 31, | |
|-------------------|----------------------|-------------|---------------------|-------------|
| | 2023 | 2022 | 2023 | 2022 |
| Prepaid expenses | | | | |

| | | | | |
|------------------------------|----|----|----|---|
| Foreign currency derivatives | \$ | 34 | \$ | - |
|------------------------------|----|----|----|---|

The pre-tax realized gain on foreign currency derivatives is recognized in other comprehensive income were minimal during the three and six months ended June 30, 2023. The Company has Condensed Consolidated Statements of Operations as follows:

| Location of Realized (Gain)/Loss Recognized in the Condensed Consolidated Statements of Operations | Amount of (Gain)/Loss Recognized | | Amount of (Gain)/Loss Recognized | |
|---|--|------|--|------|
| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
| | 2023 | 2022 | 2023 | 2022 |
| Derivative instruments designated as cash flow hedges: | | | | |
| Foreign currency derivatives | \$ (8) | \$ - | \$ (8) | \$ - |

It recorded any realized gains or losses in earnings related to the forward contracts during the three and six months ended June 30, 2023. The Company did not enter into forward contracts in 2022.

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Note 14 – Earnings Per Share

The net income (loss) income available to common stockholders and weighted-average common shares outstanding are as follows:

| Numerator: | Three Months Ended June 30, | | | | Three Months Ended September 30, | | | | Nine Months Ended September 30, | | | |
|-------------------|-----------------------------------|--------------|------|--------------|--|-----------|--------------|--------------|---------------------------------------|--|------|--|
| | 2023 | | 2022 | | 2023 | | 2022 | | 2023 | | 2022 | |
| | Net (loss) income | (18,8 89) | 14,5 | (23,9 26) | (11,3 08) | 3,19 3 | (17,8 06) | (20,7 33) | (29,1 14) | | | |
| Net income (loss) | | | | | | | | | | | | |

| | | | | | | | | |
|--|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Accretion of financing fees | (57) | - | (57) | - | (146) | - | (203) | - |
| Accrued dividends on Series C Preferred Stock | (1,61 2) | - | (1,61 2) | - | (3,92 3) | - | (5,53 5) | - |
| Net (loss) income available to common stockholders - basic | (20,5 58) | 14,5 39 | (25,5 95) | (11,3 08) | | | | |
| Net (loss) income available to common stockholders - diluted | (20,5 58) | 14,5 39 | (25,5 95) | (11,3 08) | | | | |
| Net loss available to common stockholders - basic | | | | | (17,8 (876)) | (26,4 06) | (29,1 71) | (29,1 14) |
| Net loss available to common stockholders - diluted | | | | | (17,8 (876)) | (26,4 06) | (29,1 71) | (29,1 14) |
| Denominator: | | | | | | | | |
| Weighted average common shares outstanding | 16,9 74,5 93 | 15,9 19,4 36 | 16,8 83,9 46 | 15,7 99,4 56 | 17,0 44,2 51 | 16,1 58,5 16 | 16,9 37,9 68 | 15,9 20,4 58 |
| Issuance of Warrants | 11,1 39,2 32 | 8,58 0,34 8 | 10,6 68,3 51 | 8,19 4,87 1 | 12,4 99,7 12 | 9,55 9,89 8 | 11,1 26,4 42 | 8,55 0,20 1 |
| Weighted average common shares outstanding - basic | 28,1 13,8 25 | 24,4 99,7 84 | 27,5 52,2 97 | 23,9 94,3 27 | 29,5 43,9 63 | 25,7 18,4 14 | 28,0 64,4 10 | 24,4 70,6 59 |
| Weighted average common shares outstanding - diluted | 28,1 13,8 25 | 24,4 99,7 84 | 27,5 52,2 97 | 23,9 94,3 27 | 29,5 43,9 63 | 25,7 18,4 14 | 28,0 64,4 10 | 24,4 70,6 59 |

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 stock holders 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 stockholders by the weighted average number of shares outstanding during the period. 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 2023 Warrant was issued out-of-the money and the Company will apply the treasury stock method to this warrant when computing earnings per share. Diluted earnings per share is calculated to give effect to all potentially dilutive common shares that were outstanding during the period. 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 three months ended June 30, 2023 September 30, 2023 and 2022, 5,893,935 6,222,085 and 1,759,997 1,578,118 shares, respectively, were not included in the weighted average common shares outstanding calculation as they were anti-dilutive. For the six nine months ended June 30, 2023 September 30, 2023 and 2022, 5,865,863 5,996,646 and 1,727,421 1,687,216 shares, respectively, were not included in the weighted average common shares outstanding calculation as they were antidilutive.

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Note 15 – 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 10.8% of the outstanding shares of Common Stock as of June 30, 2023 September 30, 2023 and provides steel fabrication services to the Company. The lessors of the Company's leased facility in Castaños are Jesus Gil, Alejandro Gil, and Salvador Gil. The Company paid \$2,506 2,172 and \$6,594 8,766 during the three and six nine months ended June 30, 2023 September 30, 2023, respectively, and \$4,447 7,121 and \$16,656 23,777 during the three and six nine months ended June 30, 2022 September 30, 2022, 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 \$847 1,252 and \$1,797 3,049 during the three and six nine months ended June 30, 2023 September 30, 2023, respectively, and \$563 524 and \$1,072 1,596 during the three and six nine months ended June 30, 2022 September 30, 2022, 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, another sibling of Jesus Gil. The Company paid \$777 485 and \$1,375 1,860 during the three and six nine months ended June 30, 2023 September 30, 2023, respectively, and \$812 475 and \$1,412 1,887 during the three and six nine months ended June 30, 2022 September 30, 2022, respectively, to METJ related to trucking services.

Related party asset on the condensed consolidated balance sheet of \$1,308 1,172 as of June 30, 2023 September 30, 2023 includes prepaid inventory of \$768 639 and other receivables of \$540 533 from Fasemex. Related party accounts payable on the condensed consolidated balance sheet of \$1,213 1,569 as of June 30, 2023 September 30, 2023 includes \$35 668 payable to Fasemex, \$657 654 payable to DI and \$521 247 payable to METJ. Related party asset on the condensed

consolidated 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 consolidated 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.

The Warranholder beneficially owns approximately 47.4% of the outstanding shares of Common Stock (as disclosed by the Warranholder in its Schedule 13D/A No. 6 filed with the SEC on July 14, 2023). The Company did not pay interest to the Warranholder during the three months ended September 30, 2023. The Company paid \$1,503 and \$4,776 to the Warranholder during the three and six nine months ended June 30, 2023, respectively, September 30, 2023 for term loan interest, of which \$1,615 was paid in cash and \$3,161 was payment in kind. Additionally, the Company did not pay equity or cash fees during the three months ended June 30, 2023 September 30, 2023 and paid \$535 in equity fees and \$866 in cash fees during the six nine months ended June 30, 2023 September 30, 2023 to the Warranholder related to the standby letter of credit described in Note 8 – Debt Financing and Revolving Credit Facilities.

Note 16 – Income Taxes

The Company's reported effective income tax rate was (3.1 6.3)% and 10.2 0.2% for the three months ended June 30, 2023 September 30, 2023 and 2022, respectively. The effective tax rate for the second third quarter of 2023 varies from the U.S. statutory tax rate of 21% primarily due to earnings from international jurisdictions and permanent differences, predominantly in Mexico, taxed at higher tax rates and a full valuation allowance in the U.S. The effective tax rate for the third quarter of 2022 was lower than the 21% U.S. statutory tax rate primarily due to earnings from international jurisdictions and permanent differences, predominantly in Mexico, taxed at higher tax rates and a full valuation allowance in the U.S.

The Company's tax provision for interim periods is determined using an estimate of its annual effective tax rate, adjusted for discrete items. The Company's reported effective income tax rate was (4.5)% and (6.9)% for the nine months ended September 30, 2023 and 2022, respectively. The effective tax rate for the third quarter of 2023 varies from the U.S. statutory tax rate of 21% primarily due to earnings from international jurisdictions and permanent differences, predominantly Mexico, taxed at higher tax rates and a full valuation allowance in the U.S. The effective tax rate for the second third quarter of 2022 was lower than the 21% U.S. statutory tax rate primarily due to earnings from international jurisdictions and permanent differences and discrete events, predominantly Mexico, taxed at higher tax rates and a full valuation allowance in the U.S. U.S

The Company's tax provision for interim periods is determined using an estimate of its annual effective tax rate, adjusted for discrete items. The Company's reported effective income tax rate was (2.9)% and (20.2)% for the six months ended June 30, 2023 and 2022, respectively. The effective tax rate for the second quarter of 2023 varies from the U.S. statutory tax rate of 21% primarily due to earnings from international jurisdictions and permanent differences, predominantly Mexico, taxed at higher tax rates and a full valuation allowance in the U.S. The effective tax rate for the second quarter of 2022 was lower than the 21% U.S. statutory tax rate primarily due to earnings from international jurisdictions and

permanent differences and discrete events, predominantly Mexico, taxed at higher tax rates and a full valuation allowance in the U.S..

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Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q 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 report 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 Quarterly Report on Form 10-Q 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.

OVERVIEW

You should read the following discussion in conjunction with our condensed consolidated financial statements and related notes included elsewhere in this Quarterly Report on Form 10-Q. 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 "Cautionary Statement Regarding 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 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. We also lease freight cars. Our primary customers are financial institutions, railroads and shippers.

Total new orders received for railcars for the **six** **nine** months ended **June 30, 2023** **September 30, 2023** were **2,341** **3,356** units, consisting of **2,151** **3,166** new railcars and 190 rebuilt railcars, compared to orders for **1,900** **2,240** units, consisting of **1,602** **1,817** new railcars and **298** **423** rebuilt railcars for the **six** **nine** months ended **June 30, 2022** **September 30, 2022**. Total backlog of unfilled orders was **3,288** **3,800** units at **June 30, 2023** **September 30, 2023**, compared to 2,445 railcars as of December 31, 2022. The estimated sales value of the backlog was **\$382 million** **\$452 million** and **\$288 million**, respectively, as of **June 30, 2023** **September 30, 2023** and December 31, 2022, respectively. The increase in the number of orders for new railcars for the **six** **nine** months ended **June 30, 2023** **September 30, 2023** compared to the prior year period is a reflection of improvement in the railcar equipment market.

RESULTS OF OPERATIONS

Three Months Ended June 30, 2023 **September 30, 2023** compared to **Three Months Ended June 30, 2022** **September 30, 2022**

Revenues

Our consolidated revenues for the three months ended **June 30, 2023** **September 30, 2023** were **\$88.6 million** **\$61.9 million** compared to **\$56.8 million** **\$85.7 million** for the three months ended **June 30, 2022** **September 30, 2022**. Manufacturing segment revenues for the three months ended **June 30, 2023** **September 30, 2023** were **\$85.7 million** **\$58.6 million** compared to **\$53.6 million** **\$82.8 million** for the corresponding prior year period. The **\$32.1 million** increase **\$24.2 million** decrease in Manufacturing segment revenues was driven by **an increase** **a decrease** in the volume of railcar units delivered, as well as a favorable price mix. Railcar deliveries in the three months ended **June 30, 2023** **September 30, 2023** totaled **760** **503** units, consisting of **665** **382** new railcars and **95** **121** rebuilt railcars, compared to **468** **783** units in the same period of 2022, consisting of **411** **483** new railcars and **57** **300** rebuilt railcars. Corporate and Other revenues were **\$3.3 million** for the three months ended **September 30, 2023** compared to **\$2.9 million** for the three months ended **June 30, 2023** compared to **\$3.2 million** for the three months ended **June 30, 2022** **September 30, 2022**.

Gross Profit

Our consolidated gross profit was \$13.0 million \$9.2 million for the three months ended June 30, 2023 September 30, 2023 compared to \$6.6 million \$4.6 million for the three months ended June 30, 2022 September 30, 2022. Manufacturing segment gross profit was \$11.7 million \$7.9 million for the three months ended June 30, 2023 September 30, 2023 compared to \$5.5 million \$3.8 million for the three months ended June 30, 2022 September 30, 2022. The \$6.4 million \$4.6 million increase in consolidated gross profit and \$6.2 million \$4.1 million increase in Manufacturing segment gross profit reflect a favorable volume variance and price mix variance.

Selling, General and Administrative Expenses

Consolidated selling, general and administrative expenses for the three months ended June 30, 2023 September 30, 2023 were \$5.9 million \$7.5 million compared to \$4.1 million \$7.1 million for the three months ended June 30, 2022 September 30, 2022. The \$1.8 million \$0.4 million increase in consolidated selling, general and administrative expenses for the three months ended June 30, 2023 September 30, 2023 was primarily due to a \$2.7 million an increase in stock-based compensation expenses, largely driven by fair value adjustments for cash-settled stock appreciation rights, offset by a \$0.7 million decrease in legal recruiting and employee benefit expenses. Manufacturing segment selling, general and administrative expenses were \$0.5 million for the three months ended June 30, 2023 and \$0.6 million for the three months ended June 30, 2022 September 30, 2023 and \$0.7 million for the three months ended September 30, 2022. Manufacturing segment selling, general and administrative expenses for the three months ended June 30, 2023 September 30, 2023 were 0.6% 1.0% of revenue, compared to 1.1% 0.8% of revenue for the three months ended June 30, 2022 September 30, 2022. Corporate and Other selling, general and administrative expenses were \$5.3 million \$6.9 million for the three months ended June 30, 2023 September 30, 2023 compared to \$3.5 million \$6.4 million for the three months ended June 30, 2022 September 30, 2022. The \$1.8 million \$0.5 million increase in Corporate and Other selling, general and administrative expenses is primarily a result of the previously mentioned increase in stock-based compensation expenses employee procurement and decrease in legal benefit expenses in the current year.

Loss on Pension Settlement

Loss on pension settlement for the three months ended September 30, 2023 was \$0.3 million related to a one-time, lump sum pay-out. Loss on pension settlement for the three months ended September 30, 2022 was \$8.1 million related to an annuity purchase agreement.

Operating Income (Loss)

Our consolidated operating income for the three months ended September 30, 2023 was \$1.4 million compared to a \$10.7 million operating loss for the three months ended September 30, 2022 driven primarily by the previously mentioned favorable price mix variance, decrease in pension settlement loss, partially offset by an increase in selling, general and administrative expenses. Operating income for the Manufacturing segment was \$7.4 million for the three months ended September 30, 2023 compared to an operating income of \$3.1 million for the three months ended

September 30, 2022, also reflecting the favorable price mix variance during the three months ended September 30, 2023 compared to the 2022 period. Corporate and Other operating loss was \$6.0 million for the three months ended September 30, 2023 compared to \$13.7 million for the three months ended September 30, 2022. The \$7.7 million decrease in operating loss is primarily a result of the previously mentioned decrease in pension settlement loss, partially offset by the increase in selling, general and administrative expenses.

Income Taxes

Our income tax provision was \$0.2 million for the three months ended September 30, 2023 compared to \$0.0 million for the three months ended September 30, 2022.

Net Income (Loss)

As a result of the changes and results discussed above, net income was \$3.2 million for the three months ended September 30, 2023 compared to net loss of \$17.8 million for the three months ended September 30, 2022. For the three months ended September 30, 2023, basic and diluted net loss per share was \$0.03 compared to net loss per share of \$0.69 for the three months ended September 30, 2022.

Nine Months Ended September 30, 2023 compared to Nine Months Ended September 30, 2022

Revenues

Our consolidated revenues for the nine months ended September 30, 2023 were \$231.5 million compared to \$235.8 million for the nine months ended September 30, 2022. Manufacturing segment revenues for the nine months ended September 30, 2023 were \$221.9 million compared to \$226.5 million for the corresponding prior year period. The \$4.6 million decrease in Manufacturing segment revenues was driven by a decrease in the volume of railcar units delivered. Railcar deliveries in the nine months ended September 30, 2023 totaled 2,001 units, consisting of 1,686 new railcars and 315 rebuilt railcars, compared to 2,034 units in the same

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period of 2022, consisting of 1,331 new railcars and 703 rebuilt railcars. Corporate and Other revenues were \$9.6 million for the nine months ended September 30, 2023 and \$9.2 for the nine months ended September 30, 2022.

Gross Profit

Our consolidated gross profit was \$29.7 million for the nine months ended September 30, 2023 compared to \$21.2 million for the nine months ended September 30, 2022. Manufacturing segment gross profit was \$26.0 million for the nine months ended September 30, 2023 compared to \$18.6 million for the nine months ended September 30, 2022. The \$8.5 million increase in consolidated gross profit and \$7.4 million increase in Manufacturing segment gross profit reflect a favorable price mix variance.

Selling, General and Administrative Expenses

Consolidated selling, general and administrative expenses for the nine months ended September 30, 2023 were \$19.8 million compared to \$21.9 million for the nine months ended September 30, 2022. The \$2.2 million decrease in consolidated selling, general and administrative expenses for the nine months ended September 30, 2023 was primarily due to \$1.8 million decrease in stock-based compensation expenses and \$1.4 million decrease in legal expenses, partially offset by \$0.7 million increase in consulting expenses and \$0.2 million increase in Corporate related payroll expenses. Manufacturing segment selling, general and administrative expenses were \$1.9 million for the nine months ended

September 30, 2023 and \$2.1 million the nine months ended September 30, 2022. Manufacturing segment selling, general and administrative expenses were 0.9% of revenue for each of the nine months ended September 30, 2023 and 2022. Corporate and Other selling, general and administrative expenses were \$17.9 million for the nine months ended September 30, 2023 compared to \$19.8 million for the nine months ended September 30, 2022. The \$1.9 million decrease in Corporate and Other selling, general and administrative expenses is primarily a result of the previously mentioned decreases in stock-based compensation expenses and legal expenses, offset by increases in consulting and Corporate payroll expenses.

Gain on Sale of Railcars Available for Lease

Gain on sale of railcars available for lease for the three nine months ended June 30, 2023 September 30, 2023 was \$0.6 million and represented the gain on sale of 424 leased railcars with a net book value of \$7.7 million. We did not sell any railcars available for lease during the three nine months ended June 30, 2022 September 30, 2022.

Loss on Pension Settlement

Loss on pension settlement for the nine months ended September 30, 2023 was \$0.3 million related to a one-time, lump sum pay-out. Loss on pension settlement for the nine months ended September 30, 2022 was \$8.1 million related to an annuity purchase agreement.

Operating Income (Loss)

Our consolidated operating income for the three nine months ended June 30, 2023 September 30, 2023 was \$7.7 million \$10.2 million compared to a \$2.5 million \$8.8 million operating income loss for the three nine months ended June 30, 2022 September 30, 2022 driven primarily by the previously mentioned decrease in pension settlement loss and favorable volume variance and price mix partially offset by variance, as well as the previously mentioned increase decrease in selling, general and administrative expenses. Operating income for the Manufacturing segment was \$11.7 million \$24.8 million for the three nine months ended June 30, 2023 September 30, 2023 compared to an operating income of \$4.9 million \$16.5 million for the three nine months ended June 30, 2022 September 30, 2022, also reflecting the increase in railcars delivered and favorable price mix variance and decrease in selling, general and administrative expenses during the three nine months ended June 30, 2023 September 30, 2023 compared to the 2022 period. Corporate and Other operating loss was \$4.0 million \$14.6 million for the three nine months ended June 30, 2023 September 30, 2023 compared to \$2.4 million \$25.3 million for the three nine months ended June 30, 2022 September 30, 2022. The \$1.6 million increase \$10.7 million decrease in operating loss is primarily a result of the previously mentioned increase decreases in stock-based compensation expenses, offset by the decrease in legal pension settlement loss and selling, general and administrative expenses.

Loss on Extinguishment of Debt

Loss on extinguishment of debt for the three nine months ended June 30, 2023 September 30, 2023 was \$14.9 million due to the settlement of the Term Loan Credit Agreement through the issuance of Series C Preferred Stock and the termination of the M&T Credit Agreement and Forbearance Agreement. There was no loss on extinguishment of debt for the three nine months ended June 30, 2022 September 30, 2022.

Income Taxes

Our income tax provision was \$0.6 million \$0.9 million for the three nine months ended June 30, 2023 September 30, 2023 compared to \$1.6 million \$1.9 million for the three nine months ended June 30, 2022 September 30, 2022.

Net (Loss) Income Loss

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As a result of the changes and results discussed above, net loss was \$18.9 million \$20.7 million for the three nine months ended June 30, 2023 September 30, 2023 compared to net income of \$14.5 million \$29.1 million for the three nine months ended June 30, 2022 September 30, 2022. For the three nine months ended June 30, 2023 September 30, 2023, basic and diluted net loss per share was \$0.73 \$0.94 compared to net income per share of \$0.58 \$1.19 for the three nine months ended June 30, 2022.

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Six Months Ended June 30, 2023 compared to Six Months Ended June 30, 2022

Revenues

Our consolidated revenues for the six months ended June 30, 2023 were \$169.6 million compared to \$150.0 million for the six months ended June 30, 2022. Manufacturing segment revenues for the six months ended June 30, 2023 were \$163.3 million compared to \$143.7 million for the corresponding prior year period. The \$19.6 million increase in Manufacturing segment revenues was driven by an increase in the volume of railcar units delivered, as well as a favorable price mix. Railcar deliveries in the six months ended June 30, 2023 totaled 1,498 units, consisting of 1,304 new railcars and 194 rebuilt railcars, compared to 1,251 units in the same period of 2022, consisting of 848 new railcars and 403 rebuilt railcars. Corporate and Other revenues were \$6.3 million for each of the six months ended June 30, 2023 and 2022.

Gross Profit

Our consolidated gross profit was \$20.4 million for the six months ended June 30, 2023 compared to \$16.6 million for the six months ended June 30, 2022. Manufacturing segment gross profit was \$18.1 million for the six months ended June 30, 2023 compared to \$14.8 million for the six months ended June 30, 2022. The \$3.8 million increase in consolidated gross profit and \$3.3 million increase in Manufacturing segment gross profit reflect a favorable volume variance and price mix.

Selling, General and Administrative Expenses

Consolidated selling, general and administrative expenses for the six months ended June 30, 2023 were \$12.2 million compared to \$14.8 million for the six months ended June 30, 2022. The \$2.6 million decrease in consolidated selling,

general and administrative expenses for the six months ended June 30, 2023 was primarily due to \$1.7 million decrease in stock-based compensation expenses and \$1.2 million decrease in legal expenses, partially offset by \$0.3 million increase in Corporate related payroll expenses. Manufacturing segment selling, general and administrative expenses were \$1.3 million for the six months ended June 30, 2023 and \$1.4 million the six months ended June 30, 2022. Manufacturing segment selling, general and administrative expenses for the six months ended June 30, 2023 were 0.8% of revenue, compared to 1.0% of revenue for the six months ended June 30, 2022. Corporate and Other selling, general and administrative expenses were \$10.9 million for the six months ended June 30, 2023 compared to \$13.4 million for the six months ended June 30, 2022. The \$2.5 million decrease in Corporate and Other selling, general and administrative expenses is primarily a result of the previously mentioned decreases in stock-based compensation expenses and legal expenses.

Gain on Sale of Railcars Available for Lease

Gain on sale of railcars available for lease for the six months ended June 30, 2023 was \$0.6 million and represented the gain on sale of 424 leased railcars with a net book value of \$7.7 million. We did not sell any railcars available for lease during the six months ended June 30, 2022.

Operating Income

Our consolidated operating income for the six months ended June 30, 2023 was \$8.8 million compared to \$1.9 million operating income for the six months ended June 30, 2022 driven primarily by the previously mentioned favorable volume variance and price mix, as well as the decrease in selling, general and administrative expenses. Operating income for the Manufacturing segment was \$17.4 million for the six months ended June 30, 2023 compared to an operating income of \$13.4 million for the six months ended June 30, 2022, reflecting the increase in railcars delivered and favorable price mix during the six months ended June 30, 2023 compared to the 2022 period. Corporate and Other operating loss was \$8.6 million for the six months ended June 30, 2023 compared to \$11.5 million for the six months ended June 30, 2022. The \$2.9 million decrease in operating loss is primarily a result of the previously mentioned decrease in stock-based compensation expenses and legal expenses.

Loss on Extinguishment of Debt

Loss on extinguishment of debt for the six months ended June 30, 2023 was \$14.9 million due to the settlement of the Term Loan Credit Agreement through the issuance of Series C Preferred Stock and the termination of the M&T Credit Agreement and Forbearance Agreement. There was no loss on extinguishment for the six months ended June 30, 2022.

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Income Taxes

Our income tax provision was \$0.7 million for the six months ended June 30, 2023 compared to \$1.9 million for the six months ended June 30, 2022.

Net Loss

As a result of the changes and results discussed above, net loss was \$23.9 million for the six months ended June 30, 2023 compared to \$11.3 million for the six months ended June 30, 2022. For the six months ended June 30, 2023, basic and diluted net loss per share was \$0.93 compared to \$0.47 for the six months ended June 30, 2022 September 30, 2022.

LIQUIDITY AND CAPITAL RESOURCES

(In thousands, except for share and per share data and unless otherwise noted)

Our primary sources of liquidity are our cash and cash equivalent balances on hand and our credit and debt facilities outlined below. See Note 8 - Debt Financing and Revolving Credit Facilities for defined terms.

Credit Agreement Preferred Share Issuance

In October 2020, the Company entered into a \$40,000 Credit Agreement (as amended from time to time, the "Credit Agreement") by and among the Company, as guarantor, FreightCar North America, LLC ("Borrower" and together with the Company and certain other subsidiary guarantors, collectively, the "Loan Parties"), CO Finance LVS VI LLC, as lender (the "Lender"), and U.S. Bank National Association, as disbursing agent and collateral agent ("Agent"). The \$40,000 term loan under the Credit Agreement closed and was funded on November 24, 2020 (the "Closing Date"). 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.

In May 2021, the Loan Parties entered into an 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.

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 June 30, 2023 and December 31, 2022, the 2022 Warrant was exercisable for an aggregate of 1,893,744 and 1,473,726 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 an 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 an 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.

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In January 2023, 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 the Credit Agreement. The Sixth Amendment amends the 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.

In February 2023, the Loan Parties entered into Amendment No. 7 to Credit Agreement (the "Seventh Amendment"), with respect to the Credit Agreement. The Seventh Amendment amends the 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 ("Delayed Draw Extension Deadline"). The Delayed Draw Loan expired as the Company did not draw on the Delayed Draw Loan by April 3, 2023.

In March 2023 prior to the Delayed Draw Extension Deadline, 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 issued 85,412 shares upon Closing of new non-convertible Series C Preferred Stock of the Company, par value \$0.01 (the "Series C Preferred Stock") at an initial stated value of \$1,000 per share. Upon closing of the transactions contemplated by the Purchase Agreement on May 22, 2023 (the "Closing"), the Purchaser received a detached warrant to purchase 1,636,313 shares of Common Stock of the Company, for an exercise price equal to \$3.57 (the "2023 Warrant"). See Note 9 - Mezzanine Equity and 2023 Warrant.

In March 2023, contemporaneous with Upon the execution of the Purchase Agreement and the First Amendment to Amended and Restated Reimbursement Agreement (as defined below), 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 Credit Agreement. The Eighth Amendment amends the 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.

Upon Closing, the Company settled \$60,178 in-full all of the principal amount of the outstanding Term Loan Credit Agreement, together with all \$1,727 accrued unpaid interest, fees, penalties, and other obligations under the Term Loan Credit Agreement through the issuance of the Series C Preferred Stock, resulting in a loss on extinguishment of \$17,772. Any excess proceeds are to be used for general corporate purposes.

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. 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 eliminate the Letter of Credit Fee paid by the Company.

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.

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"). By March 2023, the Company had paid the Maximum Equity.

Cash Fee

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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. In connection with the Closing, the Purchaser has agreed to reduce the Cash Fee paid by the Company to \$375 per quarter.

Amendment to Reimbursement Agreement

In March 2023, the Company, the Purchaser, the Agent, and the designated calculation agent entered into Amendment No. 1 to Amended and Restated Reimbursement Agreement ("First Amendment 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. Upon Closing, the Company paid \$280 in accordance with the First Amendment to Amended and Restated Reimbursement Agreement.

Warrants

In connection with the Credit Agreement, the Company issued to an affiliate of the Lender (the "Warranholder") 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 **June 30, 2023** **September 30, 2023** and December 31, 2022, the 2020 Warrant was exercisable for an aggregate of **8,711,224** **8,712,618** and 6,799,139 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 **June 30, 2023** **September 30, 2023** and December 31, 2021, the 2021 Warrant was exercisable for an aggregate of **1,893,744** **1,894,047** and 1,473,726 shares of Common Stock, respectively with a per share exercise price of \$0.01.

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. The Additional Warrant was never issued as the Delayed Draw Loan expired undrawn on April 3, 2023.

The 2020 Warrant, 2021 Warrant, 2022 Warrant, and 2023 Warrant collectively are referred to herein as the "Warrant". The following schedule shows the change in fair value of the Warrant as of **June 30, 2023** **September 30, 2023**.

| | | |
|---|----|--------|
| Warrant liability as of December 31, 2022 | \$ | 31,028 |
| Warrant issued | \$ | 3,544 |
| Change in fair value | | 6,142 |
| Warrant liability as of June 30, 2023 | \$ | 40,714 |

| | | |
|--|----|---------------|
| Warrant liability as of December 31, 2022 | \$ | 31,028 |
| Warrant issued | \$ | 3,544 |
| Change in fair value | | 1,869 |
| Warrant liability as of September 30, 2023 | \$ | <u>36,441</u> |

The change in fair value of the Warrant is reported on a separate line in the **condensed** consolidated statement of operations.

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"), subject to certain borrowing base requirements set forth in the Siena Loan Agreement.

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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).

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).

In September 2023, the Revolving Loan Parties entered into a Third Amendment to Amended and Restated Loan and Security Agreement, which amends the Amended and Restated Loan and Security Agreement, dated July 30, 2021, as amended by the First Amendment to Amended and Restated Loan and Security Agreement, dated February 23, 2022, and by the Second Amendment to Amended and Restated Loan and Security Agreement, dated May 22, 2023, by and among the Revolving Loan Parties.

The Third Amendment to Amended and Restated Loan and Security Agreement, among other things, (i) extended the scheduled maturity date of the Siena Loan Agreement from October 8, 2023 to October 31, 2024, and (ii) increased the Maximum Revolving Facility Amount by \$10.0 million to a total of \$45.0 million, provided, however, that after giving effect to each Revolving Loan and each letter of credit made available to the Loan Parties, (A) the outstanding balance of all Revolving Loans and the Letter of Credit Balance (which is defined in the Siena Loan Agreement as the sum of (a) the aggregate undrawn face amount of all outstanding Letters of Credit and (b) all interest, fees and costs due or, in Lender's estimation, likely to become due in connection therewith) will not exceed the lesser of (x) the Maximum Revolving Facility Amount and (y) the Borrowing Base (as defined in the Siena Loan Agreement, as amended by the Third Amendment to Amended and Restated Loan and Security Agreement), and (B) none of the other Loan Limits (as defined in the Siena Loan Agreement) for Revolving Loans will be exceeded.

The outstanding debt under the Third Amendment to Amended and Restated Loan and Security Agreement bears the same interest under the First Amendment to Amended and Restated Loan and Security Agreement as described above. As of ~~June 30, 2023~~ September 30, 2023, the interest rate on outstanding debt under the Amended and Restated Loan and Security Agreement was ~~11.25%~~ ~~10%~~ and under the First Amendment to Amended and Restated Loan and Security Agreement was ~~9.75%~~ ~~10.5%~~.

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As of ~~June 30, 2023~~ September 30, 2023, the Company had ~~\$22,293~~ ~~\$31,062~~ in outstanding debt under the Siena Loan Agreement and remaining borrowing availability of ~~\$11,760~~ ~~\$1,467~~. As of December 31, 2022, the Company had \$33,825 in outstanding debt under the Siena Loan Agreement and remaining borrowing availability of zero. 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~~ 2021, and \$352 in additional deferred financing costs related to the Third Amendment to the Amended and Restated Loan and Security Agreement. The deferred financing costs are presented as an asset and amortized to interest expense on a straight-line basis over the term of the Siena Loan Agreement.

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.

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.

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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.

On June 30, 2023, FreightCar Leasing Borrower paid an aggregate of \$4,480 under the M&T Credit Agreement and with respect to the Forbearance Agreement. The payment consisted of proceeds from the sale to a third party of certain railcars and related leases, in lieu of turning over such railcars to M&T as contemplated by the Forbearance Agreement. As

part of the payment terms, it was a condition that certain lease payments be made by the current lessees of the railcars to M&T in accordance with the Forbearance Agreement, which payments were timely made. Accordingly, FreightCar Leasing Borrower's obligations under the M&T Credit Agreement are deemed satisfied in full and the M&T Credit Agreement and all other Credit Documents (as defined in the M&T Credit Agreement), as well as the Forbearance Agreement, are terminated, resulting in a gain on extinguishment of \$2,892.

As of December 31, 2022, FreightCar Leasing Borrower had \$6,917 in outstanding debt under the M&T Credit Agreement, which was collateralized by leased railcars with a carrying value of \$4,116.

Additional Liquidity Factors

Our restricted cash, restricted cash equivalents and restricted certificates of deposit balances were \$4.2 million \$5.1 million and \$4.1 million as of June 30, 2023 September 30, 2023 and December 31, 2022, respectively. Restricted deposits of \$0.3 million as of each of June 30, 2023 September 30, 2023 and December 31, 2022 relate to a customer deposit for the purchase of railcars. Restricted deposits of \$3.6 million as of each of June 30, 2023 September 30, 2023 and December 31, 2022 are used to collateralize standby letters of credit with respect to performance guarantees. The standby letters of credit outstanding as of June 30, 2023 September 30, 2023 are a requirement as long as the performance guarantees are in place. Restricted deposits of \$0.3 million \$1.2 million as of June 30, 2023 September 30, 2023 and \$0.2 million as of December 31, 2022 relate to an employee savings fund paid biannually in Mexico.

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 such offerings or 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.

Cash Flows

The following table summarizes our cash flow activities for the six nine months ended June 30, 2023 September 30, 2023 and 2022:

| 2023 | 2022 | 2023 | 2022 |
|----------------|------|----------------|------|
| (In thousands) | | (In thousands) | |

| Net cash (used in) provided by: | | | | | |
|---------------------------------|--------------------|-------------------|--------------------|-------------------|--|
| Operating activities | \$ (25,576) | \$ (2,396) | \$ (26,410) | \$ (13,585) | |
| Investing activities | 3,402 | (2,808) | (615) | (3,380) | |
| Financing activities | (3,739) | 495 | 4,492 | 9,096 | |
| Total | <u>\$ (25,913)</u> | <u>\$ (4,709)</u> | <u>\$ (22,533)</u> | <u>\$ (7,869)</u> | |

Operating Activities. Our net cash (used in) provided by 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

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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.

Our net cash used in operating activities for the six nine months ended June 30, 2023 September 30, 2023 was \$25.6 million \$26.4 million compared to net cash used in operating activities of \$2.4 million \$13.6 million for the six nine months ended June 30, 2022 September 30, 2022. Our net cash used in operating activities for the six nine months ended June 30, 2023 September 30, 2023 reflects changes in working capital, primarily an increase in inventory of \$25.1 million \$57.2 million related to inventory to be used in production of railcars to be delivered during the second half fourth quarter of 2023. VAT receivable decreased \$3.0 million as a result 2023, offset by an increase of recovering VAT refunds \$19.6 million customer deposits during the six nine months ended June 30, 2023 September 30, 2023. Our net cash used in operating activities for the six nine months ended June 30, 2022 September 30, 2022 reflects changes in working capital, including an increase in customer deposits accounts payable of \$15.4 million \$4.4 million and a decrease in VAT receivable of \$16.9 million \$24.6 million, all of which were partially offset by increases in both accounts receivable of \$13.9 million \$2.6 million and inventory of \$16.9 million \$30.1 million.

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Investing Activities. Net cash provided by used in investing activities for the six nine months ended June 30, 2023 September 30, 2023 was \$3.4 million \$0.6 million and consisted of \$8.4 million proceeds from the sale of railcars available for lease, net of selling costs, offset by capital expenditures of \$5.0 million \$9.0 million related to the expansion of the Castaños Facility. Net cash used in investing activities for the six nine months ended June 30, 2022 September 30, 2022 was \$2.8 million \$3.4 million and consisted of capital expenditures related to the construction in progress for expansion of the Castaños Facility operations. Facility.

Financing Activities. Net cash used in provided by financing activities for the six nine months ended June 30, 2023 September 30, 2023 was \$3.7 million \$4.5 million which primarily included net repayments on revolving line of credit of \$16.7 million and \$13.3 million proceeds from the issuance of Series C Preferred Stock, net of issuance costs, partially offset by net repayments on revolving line of credit of \$7.9 million. Net cash provided by financing activities for the six nine months ended June 30, 2022 September 30, 2022 was \$0.5 million related to net \$9.1 million which consisted of \$84.4 million of borrowings on our revolving line of credit, offset by \$75.2 million of repayments on our revolving line of credit.

Capital Expenditures

Our capital expenditures were \$5.0 million \$9.0 million in the six nine months ended June 30, 2023 September 30, 2023, compared to \$2.8 million \$3.4 million in the six nine months ended June 30, 2022 September 30, 2022. We anticipate capital expenditures during 2023 to be in the range of \$12.0 million to \$13.0 million, primarily related to the expansion of the Castaños Facility.

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Item 4. Controls and Procedures.

Management's Report on Internal Control over Financial Reporting

The Company's management evaluated, with the participation of the Company's principal executive officer and principal financial officer, the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), as of June 30, 2023 September 30, 2023. Based on their evaluation, the Company's management concluded that the Company's disclosure controls and procedures were effective as of June 30, 2023 September 30, 2023.

Changes in Internal Control Over Financial Reporting

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

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PART II – OTHER INFORMATION

Item 1. Legal Proceedings.

From time to time, the Company is involved in certain pending and threatened legal proceedings in the normal course of business. In the opinion of management, the Company is not aware of any such proceedings that are expected to be material to the Company's consolidated financial condition, results of operations, or cash flows.

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

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

None.

Item 6. Exhibits.

(a) Exhibits filed as part of this Form 10-Q:

3.1 [Certificate of Ownership and Merger of FreightCar America, Inc. into FCA Acquisition Corp., as amended.](#)

10.1 [Warrant issued by the Company Third Amendment to OC III LFE II LP, Amended and Restated Loan and Security Agreement, dated as of May 22, 2023 September 21, 2023, by and among the Company and certain of its subsidiaries and Siena Lending Group LLC \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on May 24, 2023\).](#)

10.2 [Amendment No. 2 to the Amended and Restated Reimbursement Agreement, dated May 22, 2023, by and among the Loan Parties, CO Finance LCS IV LLC, and U.S. Bank National Association \(incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Commission on May 24, 2023\).](#)

10.3 [Employment Letter Agreement dated May 12, 2023 by and between FreightCar America, Inc. and Nicholas J. Randall \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on May 18, 2023\).](#)

10.4 [Amendment No. 2 to the FreightCar America, Inc. 2022 Long Term Incentive Plan \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on May 15, 2023\). September 26, 2023.](#)

31.1 [Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)

31.2 [Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.](#)

32 [Certification of Principal Executive Officer and Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)

101.INS Inline XBRL Instance Document

101.SCH Inline XBRL Taxonomy Extension Schema Document

101.CAL Inline XBRL Taxonomy Extension Calculation Linkbase Document

101.DEF Inline XBRL Taxonomy Extension Definition Linkbase Document

101.LAB Inline XBRL Taxonomy Extension Label Linkbase Document

101PRE Inline XBRL Taxonomy Extension Presentation Linkbase Document

Exhibit Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101).

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

FREIGHTCAR AMERICA, INC.

Date: August 7,
2023 November 6, 2023

By: /s/ JAMES R. MEYER

James R. Meyer, President and Chief Executive Officer
(Principal Executive Officer)

Date: August 7,
2023 November 6, 2023

By: /s/ MICHAEL A. RIORDAN

Michael A. Riordan, Vice President, Finance, Chief Financial Officer and Treasurer
(Principal Financial Officer)

Date: August 7,
2023 November 6, 2023

By: /s/ JUAN CARLOS FUENTES SIERRA

Juan Carlos Fuentes Sierra, Corporate Controller and Chief Accounting Officer
(Principal Accounting Officer)

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Exhibit 3.1

**CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION OF
FREIGHTCAR AMERICA, INC.**

FreightCar America, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY:

1. The name of the Corporation is FreightCar America, Inc.
2. The following amendments have been unanimously approved by the board of directors and the holders of majority of the issued and outstanding shares of each class and series of capital stock of the Corporation entitled to vote thereon for the purpose of amending the Corporation's Certificate of Incorporation. The amendments are as follows:

Paragraph 2 of Article 5 of the Certificate of Incorporation of the Corporation is amended to read in its entirety as follows:

"5.2 Number, Term of Office and Election.

(a) The number of the members of the Board of Directors shall be fixed from time to time solely pursuant to a resolution adopted by the Board of Directors, but must consist of not fewer than five or more than fifteen directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term expires. No director shall be required to be a resident of the State of Delaware or a stockholder of the Corporation.

(b) The Board of Directors shall be divided into three (3) classes with respect to the period during which the directors shall hold office: Class I, Class II and Class III. The initial directors of each class shall hold office as follows: (i) the initial Class I directors shall hold office until the annual meeting of stockholders in 2006; (ii) the initial Class II directors shall hold office until the annual meeting of stockholders in 2007; and (iii) the initial Class III directors shall hold office until the annual meeting of stockholders in 2008; and, in the case of each of clauses (i), (ii) and (iii) above, until their respective successors are duly elected and qualified, subject to their earlier resignation, death or removal. At each annual meeting of stockholders, each person elected to succeed a director whose term has expired shall be identified as being of the same class as the director he or she succeeds and, except as provided in the following sentence, shall be elected to hold office until the third annual meeting of stockholders after his or her election and until his or her successor shall be duly elected and qualified, subject to his or her earlier resignation, death or removal. Notwithstanding the foregoing, each person elected at the

annual meeting of stockholders to succeed a director previously elected by the Board of Directors pursuant to Section 5.4 shall be identified as being of the same class as the director he or she succeeds and shall be elected to hold office until the earlier of (i) the third annual meeting of stockholders after his or her election or (ii)(A) if the vacancy filled pursuant to Section 5.4 resulted from a director's resignation, death or removal, the next annual meeting of stockholders at which the term of the director whose resignation, death or removal resulted in the vacancy had been scheduled to expire or (B) if the vacancy filled pursuant to Section 5.4 resulted from an increase in the number of directors, the next annual meeting of stockholders at which the terms of the other directors of that class are or would be scheduled to expire, in each case until his or her successor shall have been duly elected and qualified, subject to his or her earlier resignation, death or removal. Any new positions created as a result of an increase in the number of directors shall be allocated to make the classes of directors as nearly equal as possible.

(c) Except as otherwise provided in Section 5.4, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the annual meeting of the stockholders. Elections of directors need not be by written ballot except and to the extent provided in the By-Laws of the Corporation."

Paragraph 3 of Article 5 of the Certificate of Incorporation of the Corporation is amended to read in its entirety as follows:

"5.3 Removal and Resignation. A director may be removed only for cause and at a meeting of stockholders called expressly for that purpose, upon the affirmative vote of holders of a majority of the voting power of all the then outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class. Except as otherwise provided by the DGCL or this Certificate of Incorporation, stockholders may not remove any director without cause. Cause for removal shall be deemed to exist only if the director whose removal is proposed has engaged in criminal conduct or has engaged in fraudulent or dishonest conduct or

gross abuse of authority or discretion with respect to the Corporation. Any director may resign at any time upon written notice to the Corporation."

Paragraph 4 of Article 5 of the Certificate of Incorporation of the Corporation is amended to read in its entirety as follows:

"**5.4 Vacancies.** Vacancies in the Board of Directors, including vacancies resulting from the resignation, death or removal of a director and vacancies resulting from an increase in the number of directors, shall be filled by a majority of the remaining members of the Board of Directors though less than a quorum. Each person elected by the Board of Directors to succeed a director who has died, resigned or been removed shall be identified as being of the same

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class as the director he or she succeeds and shall hold office until the next annual meeting of stockholders, and until his or her successor shall have been duly elected and qualified, subject to his or her earlier resignation, death or removal. Each person elected by the Board of Directors to fill a vacancy resulting from an increase in the number of directors shall be identified as a director of the class to which the vacancy has been allocated pursuant to Section 5.2(b) and shall be elected to hold office until the next annual meeting of stockholders, and until his or her successor shall be duly elected and qualified, subject to his or her earlier resignation, death or removal."

3. The amendment of the Certificate of Incorporation of the Corporation herein certified was duly adopted pursuant to the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, FREIGHTCAR AMERICA, INC. has caused this certificate to be duly executed by Kevin P. Bagby, its Secretary, this 6th day of September, 2006.

FREIGHTCAR AMERICA, INC.

By: /s/ Kevin P. Bagby

Kevin P. Bagby

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

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**CERTIFICATE OF CORRECTION TO
THE CERTIFICATE OF OWNERSHIP AND MERGER OF
FREIGHTCAR AMERICA, INC. INTO FCA ACQUISITION CORP.**

Pursuant to Section 103(f) of the Delaware General Corporation Law (the "DGCL"), FreightCar America, Inc., a Delaware corporation (the "Corporation"), hereby certifies as follows:

FIRST: The name of the Corporation is FreightCar America, Inc.

SECOND: The date on which the Certificate of Ownership and Merger of FreightCar America, Inc. (the Corporation's predecessor company) into FCA Acquisition Corp. (the name of which was thereupon changed to FreightCar America, Inc.) was originally filed with the Secretary of State of the State of Delaware is April 1, 2005.

THIRD: The inaccuracy or defect of said Certificate of Ownership and Merger to be corrected is that the third sentence of Section 5.2(b) of the Certificate of Incorporation attached as Exhibit A to said Certificate of Ownership and Merger incorrectly states that the term of office of directors expires at the first meeting of stockholders following their respective election to the Corporation's Board of Directors, when it should have provided that such term expires at the third annual meeting of stockholders following their election to the Board of Directors.

FOURTH: The third sentence in Section 5.2(b) of Article V of the Certificate of Incorporation attached as Exhibit A to the Certificate of Ownership and Merger is hereby corrected to read as follows:

"At each annual meeting of stockholders the directors elected to succeed those whose terms have expired shall be identified as being of the same class as the directors they succeed and shall be elected to hold office for a term to expire at the third annual meeting of stockholders after their election, or until his or her earlier death, resignation, retirement or removal and until their respective successor shall be duly elected and qualified."

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IN WITNESS WHEREOF, the Corporation has caused this Certificate of Correction to be executed by its duly authorized officer this 23rd day of March, 2006.

FREIGHTCAR AMERICA, INC.

By: /s/ Kevin P. Bagby

Kevin P. Bagby

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

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CERTIFICATE OF OWNERSHIP AND MERGER OF
FREIGHTCAR AMERICA, INC.
(A Delaware
corporation) INTO
FCA ACQUISITION CORP.
(A Delaware corporation)

FreightCar America, Inc., a corporation organized and existing under the laws of Delaware (the "Corporation"), does hereby certify:

FIRST: That the Corporation is incorporated pursuant to the General Corporation Law of the State of Delaware (the "DGCL").

SECOND: That this Corporation owns all of the outstanding shares of capital stock of FCA Acquisition Corp. (the "Surviving Corporation"), a corporation incorporated pursuant to the DGCL.

THIRD: That, in accordance with Sections 141(f) and 253 of the DGCL, the Board of Directors of the Corporation determined to merge the Corporation with and into the Surviving Corporation (the "Merger") pursuant to the following resolutions duly adopted by unanimous written consent of its members as of March 31, 2005:

RESOLVED, that the Corporation be merged with and into the Subsidiary upon the terms and conditions set forth below, and the appropriate officers of the Corporation be, and each of them hereby is, authorized and directed to execute and deliver a certificate of ownership and merger (the "Certificate of Ownership and Merger"), in the name and on behalf of the Corporation; and be it further

RESOLVED, that the Merger become effective upon the filing of the Certificate of Ownership and Merger with the Secretary of State of Delaware (the "Effective Time"), and that from and after the Effective Time, all of the property, rights, privileges and other assets of the Corporation be transferred to, and all of its obligations be assumed by, the Surviving Corporation; and be it further

RESOLVED, that the Certificate of Incorporation of the Surviving Corporation in effect immediately prior to the Effective Time be amended in its entirety as attached hereto as Exhibit A (the "Certificate of Incorporation"), and as so amended shall be the Certificate of Incorporation of the Surviving Corporation until the same shall be changed or amended as provided by the DGCL; and be it further

RESOLVED, that the By-laws of the Surviving Corporation as they shall exist at the Effective Time shall be and remain the By-laws of the Surviving Corporation until the same shall be altered, amended or repealed as therein provided; and be it further

RESOLVED, that at the Effective Time, by virtue of the Merger and without the necessity of presenting certificates formerly representing shares of the Corporation's capital stock for exchange or any other further action by the holder thereof:

(a) Each share of Class A voting common stock, par value \$0.01 per share, of the Corporation which shall be outstanding immediately prior to the Effective Time and all rights in respect thereof shall forthwith be changed and converted into 550 shares of fully paid and non-assessable common stock, par value \$0.01 per share, of the Surviving Corporation;

(b) Each share of Class B non-voting common stock, par value \$0.01 per share, of the Corporation which shall be outstanding immediately prior to the Effective Time and all rights in respect thereof shall forthwith be changed and converted into 550 shares of fully paid and non-assessable common stock, par value \$0.01 per share, of the Surviving Corporation;

(c) Each share of Series A voting preferred stock, par value \$500 per share, of the Corporation which shall be outstanding immediately prior to the Effective Time and all rights in respect thereof shall forthwith be changed and converted into one (1) share of fully paid and non-assessable Series A voting preferred stock, par value \$0.01 per share, of the Surviving Corporation; and

(d) Each share of Series B non-voting preferred stock, par value \$500 per share, of the Corporation which shall be outstanding immediately prior to the Effective Time and all rights in respect thereof shall forthwith be changed and converted into one (1) share of fully paid and non-assessable Series B non-voting preferred stock, par value \$0.01 per share, of the Surviving Corporation; and be it further

RESOLVED, that upon the Effective Time, the directors of the Corporation shall serve as directors of the Surviving Corporation until their successors shall have been duly elected and qualified as provided in the Certificate of Incorporation and By-laws of the Surviving Corporation and the DGCL; and be it further

RESOLVED, that the officers of the Corporation shall serve as officers having the same titles and capacity of the Surviving Corporation until their successors shall have been duly elected and qualified as provided in the Certificate of Incorporation and By-laws of the Surviving Corporation and the DGCL; and be it further

RESOLVED, that the name of the Surviving Corporation shall be changed to "FreightCar America, Inc." upon the effectiveness of the Merger; and be it further

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RESOLVED, that the officers of the Corporation be, and each of them hereby is, severally authorized, empowered and directed to perform or to cause to be performed, in the name and on behalf of the Corporation or otherwise, such other acts as such officers or officer shall deem necessary, appropriate or desirable in order to fully effectuate the intent of the foregoing resolutions; and be it further

RESOLVED, that any acts of any officer of the Corporation which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, be, and each such act hereby is, severally ratified, confirmed, approved and adopted as an act in the name and on behalf of the Corporation; and be it further

RESOLVED, that a copy of this written consent be filed with the minutes of proceedings of the Corporation. FOURTH: That the Surviving Corporation shall be the surviving corporation of the Merger. FIFTH: That the name of the Surviving Corporation shall be changed to "FreightCar America, Inc." upon the effectiveness of the Merger.

SIXTH: The Certificate of Incorporation of the Surviving Corporation shall be amended in its entirety upon the effectiveness of the Merger to read as set forth in Exhibit A hereto and as so amended shall be the Certificate of Incorporation of the Surviving Corporation.

SEVENTH: That the Merger has been approved by the holders of at least a majority of the outstanding shares of capital stock of the Corporation in accordance with Sections 228 and 253 of the DGCL as of March 31, 2005.

[Signature Page Follows]

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IN WITNESS WHEREOF, the Corporation has caused this Certificate of Ownership and Merger to be executed by its duly authorized officers this 1st day of April, 2005.

FREIGHTCAR AMERICA, INC.

By: /s/ John E. Carroll, Jr.

Name: John E. Carroll, Jr.

Title: President and Chief Executive Officer

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EXHIBIT A

CERTIFICATE OF INCORPORATION OF FCA ACQUISITION CORP.

FCA ACQUISITION CORP., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

ARTICLE I

NAME

The name of the corporation is FreightCar America, Inc. (the "Corporation").

ARTICLE II

REGISTERED AGENT

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, DE 19801, County of New Castle. The name of the registered agent at such address is The Corporation Trust Company.

ARTICLE III

PURPOSE

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as from time to time amended (the "DGCL"). In general, the Corporation shall possess and may exercise all of the powers and privileges granted by the DGCL, any other law of the State of Delaware or this Certificate of Incorporation, together with any powers incidental thereto, insofar as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes of the Corporation.

ARTICLE IV

AUTHORIZED CAPITAL STOCK

The aggregate number of shares that the Corporation shall have authority to issue is 50,000,000 shares of Common Stock, par value \$0.01 per share (the "Common Stock"), and 2,500,000 shares of Preferred Stock, par value \$0.01 per

share (the "Preferred Stock"). Of the 2,500,000 shares of authorized Preferred Stock, 100,000 shares will be designated Series A Voting Preferred Stock (the "Voting Preferred Stock") and 100,000 shares of Series B Non-Voting Preferred Stock (the "Non-Voting Preferred Stock").

The remaining 2,300,000 shares of Preferred Stock are undesignated Preferred Stock. The Board of Directors of the Corporation is hereby expressly authorized to establish from the undesignated shares of Preferred Stock, by resolution adopted and filed in the manner provided by law, one or more classes or series of Preferred Stock, to designate each such class or series and to fix the relative rights and preferences of each such class or series.

Except as otherwise restricted by this Certificate of Incorporation, the Corporation is authorized to issue, from time to time, all or any portion of the capital stock of the Corporation which may have been authorized but not

issued, to such person or persons and for such lawful consideration as it may deem appropriate, and generally in its absolute discretion to determine the terms and manner of any disposition of such authorized but unissued capital stock.

Any and all such shares issued for which the full consideration has been paid or delivered shall be deemed fully paid shares of capital stock, and the holder of such shares shall not be liable for any further call or assessment or any other payment thereon.

The statement of the designations, relative rights, preferences and limitations of the shares of each class is as follows:

4.1 Dividends. The holders of both the Voting Preferred Stock and the Non-Voting Preferred Stock, on a *pari passu* basis, shall be entitled to an annual dividend at the rate of seventeen percent (17%) per share, payable out of the funds legally available for such purposes before any dividends are declared upon the Voting Common Stock or the Non-Voting Common Stock or any other shares of capital stock of the Corporation ranking in liquidation junior to the Voting Preferred Stock and the Non-Voting Preferred Stock, which right to receive dividends shall be cumulative, and the holders of the Voting Preferred Stock and the Non-Voting Preferred Stock shall be entitled to No further dividends or distributions. Dividends on shares of the Voting Preferred Stock shall accrue and be deemed to have accrued from the applicable original issuance date of the shares of the Series A Voting Preferred Stock, par value \$500 per share, of FreightCar America, Inc. ("Parent") that were converted, on a one-for-one basis, for shares of the Voting Preferred Stock in the merger of Parent with and into the Corporation (previously named "FCA Acquisition Corp.") (the "Merger"). Dividends on shares of the Non-Voting Preferred Stock shall accrue and be deemed to have accrued from the applicable original issuance date of the shares of the Series B Non-Voting Preferred Stock, par value \$500 per share, of Parent that were converted, on a one-for-one basis, for shares of the Non-Voting Preferred Stock in the Merger. Such dividends shall accrue and shall be deemed to have accrued day to day whether or not declared and shall be cumulative, but No interest shall accrue on accrued but unpaid dividends. Payment of accrued dividends shall be in the discretion of the Board of Directors of the Corporation (the "Board of Directors").

As long as any shares of the Voting Preferred Stock or the Non-Voting Preferred Stock are outstanding, the Corporation will not declare, pay or set aside for payment any dividends on the Voting Common Stock or the Non-Voting Common Stock or any other class of preferred capital stock, nor declare or make any other distribution upon

the Voting Common Stock or the Non-Voting Common Stock, nor redeem, purchase or otherwise acquire for consideration the Voting Common Stock or the Non-Voting Common Stock if (a) the Corporation has not declared and paid all the accumulated accrued but unpaid dividends on the Voting Preferred Stock and the Non-Voting Preferred Stock, and (b) the net assets of the Corporation remaining after the transaction are less than the aggregate amount of the preferences of the outstanding shares of the Voting Preferred Stock and the Non-Voting Preferred Stock in the assets of the Corporation upon liquidation.

4.2 Liquidation Rights. In the event of any dissolution, liquidation or winding-up of the Corporation, the holders of the Voting Preferred Stock and the Non-Voting Preferred Stock shall be entitled to receive, sharing *pari passu*, out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, an amount equal to \$500 per share plus accumulated accrued but unpaid dividends thereon before any distribution of the assets shall be made to the holders of the Voting Common Stock, the Non-Voting Common Stock or any other capital stock of the Corporation. Upon payment of such amounts, the holders of the Voting Preferred Stock and the Non-Voting Preferred Stock shall be entitled to No further distribution. If, upon any such dissolution, liquidation or winding-up of the Corporation, the assets distributable among the holders of the Voting Preferred Stock and the Non-Voting Preferred Stock, sharing *pari passu*, shall be insufficient to permit payment in full to the holders of the Voting Preferred Stock and the Non-Voting Preferred Stock, sharing *pari passu*, payable in such event, the entire assets shall be distributed among the holders of the Voting Preferred Stock and the Non-Voting Preferred Stock ratably according to the amount of the full liquidation preference of the respective number of shares of the Voting Preferred Stock and the Non-Voting Preferred Stock held by them. No consolidation or merger of the Corporation with one or more corporations or other entities, nor any sale or transfer of all or any part of the assets of the Corporation, shall be deemed to be a dissolution, liquidation or winding-up of the Corporation.

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4.3 Redemption. The Voting Preferred Stock and the Non-Voting Preferred Stock shall be redeemable at any time at the option of the Corporation at a price of \$500 per share plus accumulated accrued but unpaid dividends thereon. The Corporation may, at the option of the Board of Directors, redeem all or any part of the outstanding Voting Preferred Stock and/or the Non-Voting Preferred Stock. If less than all of the outstanding shares of the Voting Preferred Stock and the Non-Voting Preferred Stock are to be redeemed at one time, the shares to be redeemed shall be selected on a pro rata basis, among the holders of the Voting Preferred Stock and the Non-Voting Preferred Stock as a group, in proportion to their holdings on the date of redemption. Notice of redemption shall be mailed at least ten (10) days and not more than sixty (60) days prior to such redemption to the holders of record of the Voting Preferred Stock and the Non-Voting Preferred Stock.

4.4 Voting Rights. Except as expressly provided in this Article IV and as otherwise required by law, voting rights shall be vested exclusively in the Voting Common Stock and in the Voting Preferred Stock, which shall vote together as a class on all matters submitted to a vote of stockholders (except that holders of the Voting Preferred Stock shall have the right to vote together as a class on matters exclusively affecting the Preferred Stock), and shall have one vote per share, but which shall not have any cumulative voting rights in the election of directors. Holders of the Non-Voting Common Stock and the Non-Voting Preferred Stock shall have No voting rights.

4.5 Issuance of Shares. All or a portion of the authorized shares of the Voting Preferred Stock, the Non-Voting Preferred Stock, the Voting Common Stock or the Non-Voting Common Stock may be issued by the Corporation from time to time and for such consideration as may be determined fixed by the Board of Directors, in accordance with applicable law; provided, however, that the Voting Preferred Stock and the Non-Voting Preferred Stock shall be issued only at par value.

ARTICLE V

THE BOARD OF DIRECTORS

5.1 General Powers. Except as may be otherwise specifically provided by the DGCL, this Certificate of Incorporation or the By-Laws of the Corporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities expressly conferred upon it under by the DGCL, this Certificate of Incorporation or the By-Laws of the Corporation, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things that are not directed or required to be exercised or done by the stockholders by applicable law, all powers of management, direction and control of the Corporation shall be, and hereby are, vested in the Board of Directors.

5.2 Number, Term of Office and Election.

(a) The number of the members of the Board of Directors shall be fixed from time to time solely pursuant to a resolution adopted by the Board of Directors, but must consist of not fewer than five or more than fifteen directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term expires. No director shall be required to be a resident of the State of Delaware or a stockholder of the Corporation. Subject to the provisions of Section 5.2(b), each director shall be elected by the stockholders at the annual meeting of stockholders of the Corporation, and each director shall be elected for the term of one year, until his or her successor is duly elected and qualified.

(b) Immediately upon the closing of an underwritten public offering of shares of Common Stock pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "IPO"), the Board of Directors shall be divided into three

(3) classes with respect to the period during which the directors shall hold office: Class I, Class II and Class III. The Class I directors shall be elected to hold office for a term to expire at the first annual meeting of stockholders to occur after the closing of the IPO; the Class II directors shall be elected to hold office for a term to expire at the second annual meeting of stockholders to occur after the closing of the IPO; and the Class III directors shall be elected to hold office for a term to expire at the third annual meeting of stockholders to occur after

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the closing of the IPO; in each case, until their respective successors are duly elected and qualified. At each annual meeting of stockholders the directors elected to succeed those whose terms have expired shall be identified as being of the same class as the directors they succeed and shall be elected to hold office for a term to expire at the first annual meeting of stockholders after their election, or until his or her earlier death, resignation, retirement or removal and until their respective successor shall be duly elected and qualified. Any new positions created as a result of the increase in the number of directors shall be allocated to make the classes of directors as nearly equal as possible.

(c) The directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the annual meeting of the stockholders. Elections of directors need not be by written ballot except and to the extent provided in the By-Laws of the Corporation.

5.3 Removal and Resignation. A director may be removed only for cause and at a meeting of stockholders called expressly for that purpose, upon the affirmative vote of holders of a majority of the voting power of all the then outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class. Except as otherwise provided by the DGCL or this Certificate of Incorporation, stockholders may not remove any director without cause. Cause for removal shall be deemed to exist only if the director whose removal is proposed has engaged in criminal conduct or has engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the Corporation. Any vacancy created by removal of a director shall be filled by a majority of the remaining members of the Board of Directors though less than a quorum. Any director may resign at any time upon written notice to the Corporation.

5.4 Vacancies. Vacancies in the Board of Directors, including vacancies resulting from an increase in the number of directors, shall be filled by a majority of the remaining members of the Board of Directors though less than a quorum, and each person so elected by the Board of Directors shall be a director until his or her successor is elected by the stockholders at the next annual meeting of the stockholders or at any special meeting duly called for that purpose and held prior thereto.

ARTICLE VI MEETINGS OF STOCKHOLDERS

6.1 Meetings of Stockholders. Meetings of the stockholders of the Corporation for any purpose or purposes may be held within or without the State of Delaware, as the By-Laws of the Corporation may provide.

6.2 No Action by Stockholders Without a Meeting. Unless otherwise provided in the Certificate of Incorporation, No action may be taken by the stockholders of the Corporation pursuant to a written consent in lieu of an annual or special meeting of the stockholders of the Corporation.

6.3 Special Meetings. Special meetings of stockholders may be called at any time by the Board of Directors or the Chairman of the Board of Directors. Except as otherwise provided by the DGCL or this Certificate of Incorporation, stockholders of the Corporation may not call a special meeting of stockholders or require that the Board of Directors call a special meeting of stockholders.

ARTICLE VII PERSONAL LIABILITY OF DIRECTORS

No person who is or was a director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for, and only to the extent of, liability (i) for any breach of such director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions of such director not in good faith or which involve intentional misconduct or a knowing violation of law,

(iii) under Section 174 of the DGCL, or (iv) for any transaction from which such director derived any improper personal benefit. No amendment to or repeal or adoption of any provision of this Certificate of Incorporation inconsistent with this Article VII shall adversely affect the rights and protection afforded to a director of the Corporation under this Article VII for acts or omissions occurring prior to such amendment to or repeal or adoption of an inconsistent provision. If the DGCL hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended DGCL.

ARTICLE VIII

INDEMNIFICATION

8.1 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), against all reasonable expense, liability and loss (including, without limitation, reasonable attorneys' fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred or suffered by such indemnitee in connection therewith, and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in Section 8.3 below with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors.

8.2 Right to Advancement of Expenses. The right to indemnification conferred in this Article VIII shall be a contract right and shall include the right to be paid by the Corporation the expenses (including attorneys' fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Article VIII or otherwise.

8.3 Right of Indemnitee to Bring Suit. If a claim under Section 8.1 or 8.2 above is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be thirty (30) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any

such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (a) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (b) any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board of Directors, independent counsel or its stockholders) that the indemnitee has not

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met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

8.4 Non-Exclusivity of Rights under this Article. The rights to indemnification and to the advancement of expenses conferred in this Article VIII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, By-Laws of the Corporation, agreement, vote of stockholders or disinterested directors or otherwise.

8.5 Insurance. The Corporation may purchase and maintain insurance on its own behalf or on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise against any expense, liability or loss asserted against him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

8.6 Indemnification of Employees and Agents. The Corporation may, to the extent authorized at any time or from time to time by the Board of Directors, grant rights to indemnification and the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

8.7 Merger or Consolidation. For purposes of this Article VIII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer,

employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article VIII with respect to the resulting or surviving Corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

8.8 Other Indemnification. The Corporation's obligation, if any, to indemnify or to advance expenses to any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise shall be reduced by any amount such person may collect as indemnification or advancement of expenses from such other corporation, partnership, limited liability company, joint venture, trust or other enterprise.

8.9 Amendment. Any repeal or modification of this Article VIII shall not change the rights of any person to indemnification with respect to any action or omission occurring prior to such repeal or modification.

ARTICLE IX

BY-LAWS

9.1 By-Laws. The By-Laws of the Corporation shall govern the management and affairs of the Corporation, the rights and powers of the directors, officers, employees and stockholders of the Corporation in accordance with its terms and shall govern the rights of all persons concerned relating in any way to the Corporation, except that if any provision in the By-Laws of the Corporation shall be irreconcilably inconsistent with any provision in this Certificate of Incorporation, the provision in this Certificate of Incorporation shall control.

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9.2 Amendment of By-Laws. The Board of Directors shall have the power to amend, alter or replace the By-Laws of the Corporation by the vote of a majority of the whole Board of Directors, without a vote of the stockholders, in any manner not inconsistent with the DGCL or this Certificate of Incorporation. The fact that the power to adopt, amend, alter, or repeal the By-Laws of the Corporation has been conferred upon the board of directors shall not divest the stockholders of the same powers.

ARTICLE X

AMENDMENT

Subject to the terms hereof, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

End of Document

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**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 May 19, 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 85,412 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 85,412. 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.

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

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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.

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“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 May 22, 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

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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 June 30, 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 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 depository 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

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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,

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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 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,

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ureaformaldehyde insulation, 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 Section15(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

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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, distress 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).

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"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

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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

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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 property 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.

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"Warrant" means the warrant issued pursuant to that Warrant to Purchase Common Stock, by and between the Company and OC III LFE II LP, dated May 22, 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.

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(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

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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 (6th) 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.

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(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 (5th) 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*.

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(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

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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;

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(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.

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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.

(d) 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.

(e) 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.

(f) 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.

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(g) 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;

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(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;

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(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

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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

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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

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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;

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(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:

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(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

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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,

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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.

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[Signature Page Follows]

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IN WITNESS WHEREOF, the undersigned has executed this Certificate of Designation this 19th day of May, 2023.

By: /s/ Michael Riordan

Name: Michael

Riordan Title:

Authorized Person

[Signature Page to Certificate of Designation]

Exhibit 31.1

Certification of Principal Executive Officer

Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, James R. Meyer, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q 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 in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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: August 7,

2023 November 6, 2023

By:

/s/ JAMES R. MEYER

James R. Meyer

President and Chief Executive Officer

Exhibit 31.2

Certification of Principal Financial Officer

Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Michael A. Riordan, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q 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 in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated

subsidiaries, is made known to us by others within those entities, particularly during the period in which this report 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: **August 7,**
2023 November 6, 2023

By: **/s/ MICHAEL A. RIORDAN**

Michael A. Riordan
Vice President, Finance,
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 Quarterly Report of FreightCar America, Inc. (the "Company") on Form 10-Q for the period ending **June 30, 2023** **September 30, 2023** 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, Finance, 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: **August 7,**
2023 **November 6, 2023**

By: **/s/ JAMES R. MEYER**

James R. Meyer

President and Chief Executive Officer
(Principal Executive Officer)

Date: **August 7,**
2023 **November 6, 2023**

By: **/s/ MICHAEL A. RIORDAN**

Michael A. Riordan

Vice President, Finance,
Chief Financial Officer and Treasurer
(Principal Financial Officer)

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.

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