

REFINITIV

# DELTA REPORT

## 10-Q

RAIL - FREIGHTCAR AMERICA, INC.

10-Q - MARCH 31, 2024 COMPARED TO 10-Q - SEPTEMBER 30, 2023

The following comparison report has been automatically generated

TOTAL DELTAS	2920
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 CHANGES	217
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 DELETIONS	685
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 ADDITIONS	2018
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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549  
**FORM 10-Q**

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

For the Quarterly period ended September 30, March 31, 2023 2024  
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)

<b>Delaware</b> (State or other jurisdiction of incorporation or organization)	<b>25-1837219</b> (I.R.S. Employer Identification No.)
<b>125 South Wacker Drive, Suite 1500</b> <b>Chicago, Illinois</b> (Address of principal executive offices)	<b>60606</b> (Zip Code)
<b>(800) 458-2235</b> (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 November 2, 2023 May 1, 2024, there were 17,903,437 18,710,586 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)

	Sept ember r 30, 2023	Dece mber 31, 2022	March 31, 2024	December 31, 2023
<b>Assets</b>				
<b>Current assets</b>				
Cash, cash equivalents and restricted cash equivalents	\$ 15,379	\$ 37,912	\$ 13,977	\$ 40,560
Accounts receivable, net of allowance for doubtful accounts of \$41 and \$126 respectively	10,697	9,571		
Accounts receivable, net of allowance for doubtful accounts of \$82 and \$18 respectively			35,040	6,408
VAT receivable	2,141	4,682	3,959	2,926

Inventories, net	122,071	64,317	109,778	125,022
		3,6		
Assets held for sale	—	75	629	—
	1,17	3,2		
Related party asset	2	61	902	638
	6,23	5,4		
Prepaid expenses	9	70	6,533	4,867
		128		
	157,	,88		
Total current assets	699	8	170,818	180,421
	29,3	23,		
Property, plant and equipment, net	44	248	30,673	31,258
	7,00	11,		
Railcars available for lease, net	2	324	—	2,842
	2,92	1,5		
Right of use asset operating lease	6	96	2,724	2,826
	31,6	33,		
Right of use asset finance lease	94	093	39,676	40,277
		1,5		
Other long-term assets	644	89	4,778	1,835
		199		
	229,	,73		
Total assets	\$ 309	\$ 8	\$ 248,669	\$ 259,459
<b>Liabilities, Mezzanine Equity and Stockholders' Deficit</b>				
<b>Current liabilities</b>				
	51,6	48,		
Accounts and contractual payables	\$ 11	\$ 449	\$ 75,918	\$ 84,417
	1,56	3,3		
Related party accounts payable	9	93	2,394	2,478
	6,36	4,0		
Accrued payroll and other employee costs	0	81	4,975	5,738
	1,63	1,9		
Accrued warranty	8	40	1,468	1,602
	19,6			
Customer deposits	44	—		
		40,		
Current portion of long-term debt	—	742	30,002	29,415

	4,63	7,3		
Other current liabilities	5	80	7,309	13,711
		105		
	85,4	,98		
Total current liabilities	57	5	122,066	137,361
	31,0	51,		
Long-term debt, net of current portion	62	494		
	36,4	31,		
Warrant liability	41	028	52,454	36,801
		1,0		
Accrued pension costs	709	40	1,106	1,046
	3,28	1,7		
Lease liability operating lease, long-term	4	80	3,038	3,164
	32,7	33,		
Lease liability finance lease, long-term	49	245	41,084	41,273
		3,7		
Other long-term liabilities	562	50	2,278	2,562
		228		
	190,	,32		
Total liabilities	264	2	222,026	222,207
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 September 30, 2023 and December 31, 2022, respectively. Liquidation value \$90,947 and \$0 at September 30, 2023 and December 31, 2022, respectively.	83,3			
	14	—		
Series C Preferred stock, \$0.01 par value, 85,412 shares authorized, 85,412 shares issued and outstanding at each of March 31, 2024 and December 31, 2023, respectively. Liquidation value \$99,285 and \$95,048 at March 31, 2024 and December 31, 2023, respectively.			83,602	83,458
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 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		
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 March 31, 2024 and December 31, 2023)			—	—
Common stock, \$0.01 par value, 50,000,000 shares authorized, 18,345,488 and 17,903,437 shares issued and outstanding at March 31, 2024 and December 31, 2023, respectively			214	210

Additional paid-in capital	93,3	89,		
	51	104	94,783	94,067
Accumulated other comprehensive income	2,01	1,0		
	9	22	2,607	2,365
Accumulated deficit	(13	(11		
	9,84	8,9		
	9)	13)	(154,563)	(142,848)
Total stockholders' deficit	(44,	(28,		
	269)	584)	(56,959)	(46,206)
Total liabilities, mezzanine equity and stockholders' deficit		199		
	229,	,73		
	\$ 309	\$ 8	\$ 248,669	\$ 259,459

See Notes to Condensed Consolidated Financial Statements (Unaudited).

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

	Three Months Ended September 30,		Nine Months Ended September 30,		Three Months Ended March 31,	
	2023	2022	2023	2022	2024	2023
Revenues	61,89	85,74	231,4	235,7		
	\$ 4	\$ 3	\$ 89	\$ 65	\$ 161,058	\$ 80,999
Cost of sales	52,66	81,18	201,8	214,5		
	9	9	24	64	149,655	73,514
Gross profit			29,66	21,20		
	9,225	4,554	5	1	11,403	7,485
Selling, general and administrative expenses			19,75	21,87		
	7,511	7,112	0	8	7,493	6,388

Gain on sale of railcars available for lease	—	—	622	—		
Loss on pension settlement	313	8,105	313	8,105		
		(10,6	10,22	(8,78		
Operating income (loss)	1,401	63)	4	2)		
Operating income					3,910	1,097
	(2,03	(6,08	(12,9	(17,5		
Interest expense	7)	7)	88)	49)	(2,391)	(6,600)
Gain (loss) on change in fair market value of Warrant liability	4,273	(1,27	(1,86	(3,25		
		4)	9)	8)		
			(14,8			
Loss on extinguishment of debt	—	—	80)	—		
Other (expense) income	(228)	190	(333)	2,347		
Income (loss) before income taxes	3,409	(17,8	(19,8	(27,2		
		34)	46)	42)		
Income tax provision (benefit)	216	(28)	887	1,872		
		(17,8	(20,7	(29,1		
Net income (loss)	\$ 3,193	\$ 06)	\$ 33)	\$ 14)		
(Loss) gain on change in fair market value of Warrant liability					(15,653)	613
Other expense					(14)	(36)
Loss before income taxes					(14,148)	(4,926)
Income tax (benefit) provision					(2,577)	111
Net loss					\$ (11,571)	\$ (5,037)
Net loss per common share – basic	\$ (0.03)	\$ (0.69)	\$ (0.94)	\$ (1.19)	\$ (0.54)	\$ (0.19)
Net loss per common share – diluted	\$ (0.03)	\$ (0.69)	\$ (0.94)	\$ (1.19)	\$ (0.54)	\$ (0.19)
Weighted average common shares outstanding – basic	29,54	25,71	28,06	24,47	29,580,182	26,545,463
	3,963	8,414	4,410	0,659		
Weighted average common shares outstanding – diluted	29,54	25,71	28,06	24,47	29,580,182	26,545,463
	3,963	8,414	4,410	0,659		

See Notes to Condensed Consolidated Financial Statements (Unaudited).

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

	<b>Three Months Ended</b>		<b>Nine Months Ended</b>		<b>Three Months Ended</b>	
	<b>September 30,</b>		<b>September 30,</b>		<b>March 31,</b>	
	<b>2023</b>	<b>2022</b>	<b>2023</b>	<b>2022</b>	<b>2024</b>	<b>2023</b>
Net income (loss)	3,1	(17,8	(20,	(29,		
	<u>\$ 93</u>	<u>\$ 06)</u>	<u>\$ 733)</u>	<u>\$ 114)</u>		
Net loss					<u>\$ (11,571)</u>	<u>\$ (5,037)</u>
Other comprehensive income, net of tax:						
Loss on pension settlement	31	8,10		8,10		
	3	5	313	5		
Unrealized gain on foreign currency derivatives	34	—	34	—	207	—
Pension and postretirement liability adjustments, net of tax	57			(15		
	3	(323)	650	6)	35	41
Comprehensive income (loss)	4,1	(10,0	(19,	(21,		
	<u>\$ 13</u>	<u>\$ 24)</u>	<u>\$ 736)</u>	<u>\$ 165)</u>		
Comprehensive loss					<u>\$ (11,329)</u>	<u>\$ (4,996)</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									
		Accumulated															
		Additional															
		Mezzanine Equity															
		Series C Preferred Stock															
		Series C Preferred Stock															
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Balance, December 31, 2022										-	\$	-	17,223,306								\$	203	\$	89,104	\$	1,022	\$	(118,913)	\$	(28,584)
							(	(																						
							1	1																						
							7	7																						
							,	,																			(5,037)			
							8	8																						
							0	0																						
Net loss	-	-	-	-	-	-	6)	6)	-	-		-	-	-	-	-	-	(5,037)												
							7	7																						
							,	,																						
Other							7	7																				41		
comprehensive							8	8																						
income	-	-	-	-	-	2	-	2	-	-		-	-	-	-	41	-													
						2																								
						9																								
						,																					-			
						5																								
Restricted						0																								
stock awards	-	-	8	-	-	-	-	-	-	-	309,348	3	(3)	-	-															
						5																								
						,																								
						2																								
Stock options						9																								
exercised	-	-	2	-	-	-	-	-																						
Employee																														
stock																											(106)			
settlement									-	-	(31,888)	-	(106)	-	-															
Vesting of																														
restricted stock																											145			
units									-	-	42,815	-	145	-	-															
Stock-based																														
compensation																											492			
recognized									-	-	-	-	492	-	-															
Equity Fees									-	-	158,878	2	533	-	-												535			
Balance,																														
March 31,																														
2023									-	\$	-	17,702,459	\$	208	\$	90,165	\$	1,063	\$	(123,950)	\$						(32,514)			

Balance,									
December 31,									
2023	85,412	\$	83,458	17,903,437	\$	210	\$	94,067	\$
Net loss	-		-	-		-		-	
Other									
comprehensive				-		-		-	
income	-		-					242	
Issuance of									
Series C									
preferred				-		-		-	
shares, net of								(144)	
issuance costs	-		144						
Restricted									
stock awards	-		-	563,455		5		(5)	
				(					
				1					
				1					
				,					
Employee				7		(		(	
stock				2		4		4	
settlement	-	-	0)	-	4)	-	-	4)	-
				(					
				1					
				0					
				,					
Forfeiture of				0		(		(	
restricted stock				0		6		6	
awards	-	-	0)	-	2)	-	-	2)	-
Stock-based						4		4	
compensation						3		3	
recognized	-	-	-	-	3	-	-	3	-
				2					
				4					
				9				1	
				,				,	
				8		9		0	
				2		9		0	
Equity Fees	-	-	5	3	7	-	-	0	

			1					
			6					
			,			(		
			9			1	(	
			6	8		0	1	
			3	7	2	9	8	
			,	,	,	,	,	
Balance,			7	2	7	4	1	8
September 30,			5	0	0	2	8	4
2022	-	\$ -	5	\$ 1	\$ 4	\$ 7	\$ 0)	\$ 8)
			1					
			7					
			,			(		
			8			1	(	
	8	8	9	9		4	4	
	5	3	9	2	1	2	8	
	,	,	,	,	,	,	,	
	4	2	1	2	6	0	8	9
Balance, June	1	5	9	1	3	9	9	5
30, 2023	2	\$ 3	1	\$ 0	\$ 3	\$ 9	\$ 6)	\$ 4)
						3	3	
						,	,	
						1	1	
						9	9	
Net income	-	-	-	-	-	-	3	3
Other						9		9
comprehensive						2		2
income	-	-	-	-	-	0	-	0
Issuance of								
Series C						(	(	
preferred						1	1	
shares, net of	6					4	4	
issuance costs	-	1	-	-	-	-	6)	6)

				4					
Exercise of				,					
stock				2					
appreciation				4					
rights	-	-	6	-	3	-	-	3	
Stock-based					7			7	
compensation					1			1	
recognized	-	-	-	-	5	-	-	5	
				1					
				7					
				,			(		
				9			1	(	
	8	8	0		9		3	4	
	5	3	3		3	2	9	4	
	,	,	,		,	,	,	,	
Balance,	4	3	4	2	3	0	8	2	
September 30,	1	1	3	1	5	1	4	6	
2023	2	\$ 4	7	\$ 0	\$ 1	\$ 9	\$ 9	\$ 9	)
Balance,									
March 31,									
2024			85,412	\$	83,602	18,345,488	\$	214	\$
						94,783	\$	2,607	\$
								(154,563)	\$
									(56,959)

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
Accumulated

	Mezzanine Equity Series C Preferred Stock		Common Stock		Additional Paid-In Capital	Other Comprehensive Income (Loss)	Retained Deficit	Total Stockholders'
	Shares	Amount	Shares	Amount				
Balance, December 31, 2021	-	\$ -	15,947,228	\$ 190	\$ 83,742	\$ (5,522)	\$ (80,066)	\$ (1,656)
Net loss	-	-	-	-	-	-	(29,114)	(29,114)
Other comprehensive income	-	-	-	-	-	7,949	-	7,949
Restricted stock awards	-	-	386,908	4	(4)	-	-	-
Stock options exercised	-	-	5,292	-	-	-	-	-
Employee stock settlement	-	-	(15,158)	-	(57)	-	-	(57)
Forfeiture of restricted stock awards	-	-	(81,394)	(1)	(68)	-	-	(69)
Stock-based compensation recognized	-	-	-	-	1,099	-	-	1,099
Equity Fees	-	-	720,879	8	2,992	-	-	3,000
Balance, September 30, 2022	-	\$ -	16,963,755	\$ 201	\$ 87,704	\$ 2,427	\$ (109,180)	\$ (18,848)
Balance, December 31, 2022	-	\$ -	17,223,306	\$ 203	\$ 89,104	\$ 1,022	\$ (118,913)	\$ (28,584)
Net loss	-	-	-	-	-	-	(20,733)	(20,733)
Other comprehensive income	-	-	-	-	-	997	-	997
Issuance of Series C preferred shares, net of issuance costs	85,412	83,314	-	-	-	-	(203)	(203)
Restricted stock awards	-	-	453,258	4	(4)	-	-	-
Employee stock settlement	-	-	(31,888)	-	(106)	-	-	(106)
Exercise of stock appreciation rights	-	-	4,984	-	3	-	-	3
Stock appreciation rights classification modification	-	-	-	-	1,738	-	-	1,738
Vesting of restricted stock units	-	-	42,815	-	145	-	-	145
Stock-based compensation recognized	-	-	-	-	1,789	-	-	1,789
Equity Fees	-	-	210,962	3	682	-	-	685
Balance, September 30, 2023	85,412	\$ 83,314	17,903,437	\$ 210	\$ 93,351	\$ 2,019	\$ (139,849)	\$ (44,269)

See Notes to Condensed Consolidated Financial Statements (Unaudited).

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

	Nine Months Ended		Three Months Ended March 31,	
	September 30,			
	2023	2022	2024	2023
<b>Cash flows from operating activities</b>				
Net loss	\$ (20,733)	\$ (29,114)	\$ (11,571)	\$ (5,037)
Adjustments to reconcile net loss to net cash flows used in operating activities:				
Depreciation and amortization	3,189	3,110	1,396	1,072
Non-cash lease expense on right-of-use assets	1,873	944	703	731
Recognition of deferred income from state and local incentives	—	(2,507)		
Loss on change in fair market value for Warrant liability	1,869	3,258		
Loss on pension settlement	313	8,105		
Loss (gain) on change in fair market value for Warrant liability			15,653	(613)
Stock-based compensation recognized	524	2,307	760	(91)
Non-cash interest expense	8,980	11,309	1,539	4,264
Loss on extinguishment of debt	14,880	—		
Other non-cash items, net	(435)	(9)	207	(1)
Changes in operating assets and liabilities, net of acquisitions:				
Changes in operating assets and liabilities:				
Accounts receivable	(1,126)	(2,603)	(28,632)	904
VAT receivable	2,320	24,634	(999)	2,960
Inventories	(57,213)	(30,110)	16,963	(19,698)
Related party asset, net			(348)	(362)
Accounts and contractual payables	2,739	4,386	(7,884)	9,695
Income taxes payable, net			(3,937)	(517)
Lease liability	(2,779)	(1,439)	(1,057)	(1,191)
Customer deposits	19,644	(3,300)		
Other assets and liabilities	(455)	(2,556)	(8,115)	180
Net cash flows used in operating activities	(26,410)	(13,585)	(25,322)	(7,704)
<b>Cash flows from investing activities</b>				
Purchase of property, plant and equipment	(8,971)	(3,380)	(966)	(1,960)
Proceeds from sale of railcars available for lease, net of selling costs	8,356	—		
Net cash flows used in investing activities	(615)	(3,380)	(966)	(1,960)
<b>Cash flows from financing activities</b>				
Proceeds from issuance of preferred shares, net of issuance costs	13,254	—		
Deferred financing costs	(300)	—		
Borrowings on revolving line of credit	115,172	84,396	13,037	31,688

Repayments on revolving line of credit	(123,062)	(75,239)	(12,450)	(31,884)
Employee stock settlement	(106)	(57)	(40)	(106)
Payment for stock appreciation rights exercised	(6)	(4)		
Financing lease payments	(460)	—	(842)	(147)
Net cash flows provided by financing activities	4,492	9,096		
Net cash flows used in financing activities			(295)	(449)
Net decrease in cash and cash equivalents	(22,533)	(7,869)	(26,583)	(10,113)
Cash, cash equivalents and restricted cash equivalents at beginning of period	37,912	26,240	40,560	37,912
Cash, cash equivalents and restricted cash equivalents at end of period	\$ 15,379	\$ 18,371	\$ 13,977	\$ 27,799
<b>Supplemental cash flow information</b>				
Interest paid	\$ 3,961	\$ 6,240	\$ 852	\$ 2,340
Income taxes paid	\$ 1,857	\$ 1,110	\$ 403	\$ 151
<b>Non-cash transactions</b>				
Change in unpaid construction in process	\$ 51	\$ 2,168	\$ (155)	\$ 539
Accrued PIK interest paid through issuance of PIK Note	\$ 3,161	\$ 1,093	\$ —	\$ 1,658
Issuance of preferred shares in exchange of term loan	\$ 72,688	\$ —		
Issuance of warrants	\$ 3,014	\$ 8,560		
Issuance of equity fee	\$ 685	\$ 3,000	\$ —	\$ 535

See Notes to Condensed Consolidated Financial Statements (Unaudited).

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**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 operates primarily in North America through its direct and indirect subsidiaries, is and designs and manufactures a leading designer, producer and supplier wide range of railroad freight cars, completes railcar rebody services and railcar conversions that repurpose idled rail assets back into revenue service, supplies railcar parts, and services freight cars. The Company designs and builds high-quality railcars, including coal cars, bulk commodity cars, covered hopper cars, intermodal and non-intermodal flat cars, mill gondola cars, coil steel cars, coal 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 conversion of railcars for re-purposed use. The Company is headquartered in Chicago, Illinois with and has facilities in the following locations: 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 nine months ended September 30, 2023 March 31, 2024 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 2023 year-end balance sheet data was derived from the audited financial statements as of December 31, 2022 December 31, 2023. 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 December 31, 2023.

**Note 3 – Revenue Recognition**

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

	Three Months Ended September 30,		Nine Months Ended September 30,		Three Months Ended March 31,	
	2023	2022	2023	2022	2024	2023
Railcar sales	58,407	82,017	220,752	224,089	\$ 155,597	\$ 76,996
Parts sales	3,340	2,927	9,613	9,231	5,330	3,400



Revenues from contracts with customers	61,7	84,94	230,3	233,3		
	47	4	65	20	160,927	80,396
Leasing revenues	147	799	1,124	2,445	131	603
Total revenues	61,8	85,74	231,4	235,7		
	\$ 94	\$ 3	\$ 89	\$ 65	\$ 161,058	\$ 80,999

#### 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 September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023. 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 condensed consolidated balance sheet based on the timing of when the Company expects to recognize the related revenue. There was no deferred revenue or customer deposits as of March 31, 2024. 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 condensed consolidated balance sheet was \$19,644 and \$219 5,686 as of September 30, 2023 December 31, 2023 and December 31, 2022, respectively. was recognized as revenue during the three months ended March 31, 2024. The Company has also not experienced significant historical credit losses.

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#### Performance Obligations

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The Company is electing not to disclose the value of the remaining unsatisfied performance obligation obligations 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 September 30, 2023 March 31, 2024 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 repairs, complete railcar rebody services, railcar conversions for repurposed use, and rebuilds, servicing railcars. 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 September 30,		Nine Months Ended September 30,		Three Months Ended March 31,	
	2023	2022	2023	2022	2024	2023
<b>Revenues:</b>						
Manufacturing	58, \$ 554	82,8 \$ 17	221, \$ 877	226, \$ 548	\$ 155,728	\$ 77,599
Corporate and Other	3,3 40	2,92 6	9,61 2	9,21 7	5,330	3,400
<b>Consolidated revenues</b>	<u>61, \$ 894</u>	<u>85,7 \$ 43</u>	<u>231, \$ 489</u>	<u>235, \$ 765</u>	<u>\$ 161,058</u>	<u>\$ 80,999</u>
<b>Operating income (loss):</b>						
Manufacturing	7,3 \$ 78	3,05 \$ 4	24,7 \$ 75	16,4 \$ 70	\$ 8,279	\$ 5,628
Corporate and Other (1)	(5,9 77)	(13, 717)	(14, 551)	(25, 252)		
<b>Consolidated operating income (loss)</b>	<u>1,4 01</u>	<u>(10, 663)</u>	<u>10,2 24</u>	<u>(8,7 82)</u>		
Corporate and Other					(4,369)	(4,531)
<b>Consolidated operating income</b>					<u>3,910</u>	<u>1,097</u>
Consolidated interest expense	(2,0 37)	(6,0 87)	(12, 988)	(17, 549)	(2,391)	(6,600)
Gain (loss) on change in fair market value of Warrant liability	4,2 73	(1,2 74)	(1,8 69)	(3,2 58)		
Loss on extinguishment of debt	-	-	(14, 880)	-		
Consolidated other (expense) income	(22 8)			2,34 7		

<b>Consolidated income (loss) before income taxes</b>	3,4	(17,	(19,	(27,		
	\$ 09	\$ 834)	\$ 846)	\$ 242)		
(Loss) gain on change in fair market value of Warrant liability					(15,653)	613
Consolidated other expense					(14)	(36)
<b>Consolidated loss before income taxes</b>					<u>\$ (14,148)</u>	<u>\$ (4,926)</u>
<b>Depreciation and amortization:</b>						
			2,76	2,61		
Manufacturing	\$ 942	\$ 877	\$ 3	\$ 4	\$ 1,273	\$ 932
Corporate and Other	143	172	426	496	123	140
<b>Consolidated depreciation and amortization</b>	<u>1,0</u>	<u>1,04</u>	<u>3,18</u>	<u>3,11</u>	<u>\$ 1,396</u>	<u>\$ 1,072</u>
<b>Capital expenditures:</b>						
	3,9		8,81	2,98		
Manufacturing	\$ 89	\$ 540	\$ 5	\$ 2	\$ 921	\$ 1,879
Corporate and Other	28	32	156	398	45	81
<b>Consolidated capital expenditures</b>	<u>4,0</u>	<u>\$ 572</u>	<u>\$ 1</u>	<u>\$ 0</u>	<u>\$ 966</u>	<u>\$ 1,960</u>
					<b>March 31,</b>	<b>December 31,</b>
					<b>2024</b>	<b>2023</b>
<b>Assets:</b>						
Manufacturing					\$ 215,570	\$ 207,093
Corporate and Other					28,839	51,158
<b>Total operating assets</b>					<u>244,409</u>	<u>258,251</u>
Consolidated income taxes receivable					4,260	1,208
<b>Consolidated assets</b>					<u>\$ 248,669</u>	<u>\$ 259,459</u>

(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 \$8,105.9

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

### Geographic Information

### Geographic Information

	Revenues				Long Lived Assets(a)					
	Three Months Ended		Nine Months Ended				Revenues		Long Lived Assets(a)	
	Septem ber 30, 2023		Septem ber 30, 2022		Sep tem ber 30, 2023		March 31, 2024		March 31, 2024	
	2023		2022		2023		2023		2023	
United States	8	7	4	7	11	15				
Me	9	4	8	5	,7	,0				
xic	\$ 4	\$ 3	\$ 9	\$ 1	\$ 62	\$ 18	\$ 161,058	\$ 80,999	\$ 4,358	\$ 7,377
o	-	-	-	4	59	54				
				1	,2	,2				
	-	-	-	4	04	43	-	-	68,715	69,826
				2	2					
	6	8	3	3						
	1	5	1	5						
	,	,	,	,						
	8	7	4	7	70	69				
<b>Total</b>	9	4	8	6	,9	,2				
<b>al</b>	\$ 4	\$ 3	\$ 9	\$ 5	\$ 66	\$ 61	\$ 161,058	\$ 80,999	\$ 73,073	\$ 77,203

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

## Note 5 – Fair Value Measurements

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

Recurring Fair Value Measurements	As of September 30, 2023				As of March 31, 2024			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
<b>Liabilities:</b>								
Warrant liability	\$ -	\$ 36,441	\$ -	\$ 36,441	\$ -	\$ 52,454	\$ -	\$ 52,454
<b>Assets:</b>								
Foreign currency forward contracts asset	\$ -	\$ 34	\$ -	\$ 34				
Foreign currency derivative asset					\$ -	\$ 813	\$ -	\$ 813

Recurring Fair Value Measurements	As of December 31, 2022				As of December 31, 2023			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
<b>Liabilities:</b>								
Warrant liability	\$ -	\$ 31,028	\$ -	\$ 31,028	\$ -	\$ 36,801	\$ -	\$ 36,801
<b>Assets:</b>								
Foreign currency derivative asset					\$ -	\$ 606	\$ -	\$ 606

Non-recurring Fair Value Measurements		During the Three Months Ended March 31, 2024			
		Level 1	Level 2	Level 3	Total
<b>Assets:</b>					
Assets held for sale		\$ -	\$ -	\$ 629	\$ 629

Non-recurring Fair Value Measurements	During the Year Ended December 31, 2022				During the Year Ended December 31, 2023			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Assets:								
Railcars available for lease, net	\$ -	\$ 4,116	\$ -	\$ 4,116	\$ -	\$ -	\$ 2,842	\$ 2,842
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 September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, is a Level 2 measurement.

The fair value of the Company's foreign currency forward contracts derivative asset determined using exit prices obtained from each counterparty, which are based on currency spot and forward rates at September 30, 2023 March 31, 2024 and December 31, 2023 in an active market, is a Level 2 measurement. See Note 13 15 - Foreign Currency Forward Contracts. Derivatives.

The fair value of the Company's fleet of small cube covered triple hopper aggregate railcars determined using a cost plus market approach using the known selling prices for a portion of the cars, assets and a weighted average selling price market-based approach for the remaining cars in remainder of the asset group assets at December 31, 2022 December 31, 2023, is a Level 2 3 measurement. In the first quarter of 2024, the Company gained possession of these railcars. The portion of these assets railcars intended to be sold in their current condition were classified as assets held for sale, and while the remaining railcars intended to be converted into a new car type were no longer depreciated. These assets were sold during the nine months ended September 30, 2023 classified as inventory as of March 31, 2024.

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## 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:

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
Restricted cash from customer deposit	\$ 282	\$ 282	\$ 282	\$ 282
Restricted cash to collateralize standby letters of credit	103	103	103	103
Restricted cash equivalents to collateralize standby letters of credit	3,542	3,542		
Restricted cash equivalents - other	1,179	151		
Restricted cash to collateralize foreign currency derivatives			700	320
Total restricted cash and restricted cash equivalents	\$ 5,106	\$ 4,078	\$ 1,085	\$ 705

## Note 7 – Inventories

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

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
Raw materials	\$ 79,250	\$ 46,421	\$ 75,249	\$ 65,639
Work in process	26,339	4,527	21,703	31,138
Finished railcars	11,911	8,783	7,712	23,196
Parts inventory	4,571	4,586	5,114	5,049
Total inventories, net	\$ 122,071	\$ 64,317	\$ 109,778	\$ 125,022

Inventory on the Company's Condensed Consolidated Balance Sheets condensed consolidated balance sheets includes reserves of \$2,137 1,733 and \$1,672 1,594 relating to excess or slow-moving inventory for parts and work in process raw materials at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively.

## Note 8 – Debt Financing Product Warranties

Warranty terms are based on the negotiated railcar sale, rebody or conversion contract, as applicable. The Company generally warrants that new railcars produced by it will be free from defects in material and Revolving Credit Facilities workmanship under normal use and service identified for a period of up to five years from the time of sale. Changes in the warranty reserve for the three months ended March 31, 2024 and 2023 are as follows:

	March 31,	
	2024	2023
Balance at the beginning of the year	\$ 1,602	\$ 1,940
Current year provision	169	251

Reductions for payments, costs of repairs and other	(173)	(186)
Adjustments to prior warranties	(130)	(71)
Balance at the end of the year	<u>\$ 1,468</u>	<u>\$ 1,934</u>

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

**Long-term debt consists of the following as of September 30, 2023 and December 31, 2022: Note 9 – Revolving Credit Facility**

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

Total outstanding debt under the Company's revolving credit facility consists of \$30,002 as of March 31, 2024 and \$29,415 as of December 31, 2023.

As of March 31, 2024, a revolving line of credit maturing on October 31, 2024 exists in the maximum aggregate principal amount of up to \$45,000, secured by a standby letter of credit in the principal amount of \$25,000 and the Company's accounts receivable. In connection with the standby letter of credit, the Company has agreed to pay an affiliate of the lender a fee due and payable in cash of \$375 per quarter.

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The standby letter of credit bears interest at the prime rate of interest ("Prime") plus 1.5%, or 10% as of March 31, 2024. Advances secured by the Company's accounts receivable bear interest at Prime plus 2%, or 10.5% as of March 31, 2024.

The fair value of the remaining debt approximates its carrying value as of September 30, 2023, March 31, 2024 and December 31, 2022.

## Note 10 – Warrants

### 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 issued warrants to OC III LFE II LP (“OC III LFE”) and various affiliates of OC III LFE (collectively, the “Warrantholder”) 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.

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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”) previous years to purchase a number of shares of Common Stock equal to 23% (the “2020 Warrant”), 5% (the “2021 Warrant”), and 5% (the “2022 Warrant”) of the Company’s outstanding Common Stock (after giving effect to such issuance) on a fully-diluted basis at the time the warrants are exercised. The 2020 Warrant, 2021 Warrant, and 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 each have a per share exercise price of \$0.01 and a term of ten (10) years. As years from date of September 30, 2023 and December 31, 2022, the 2022 issuance.

The 2020 Warrant, issued in November 2020, was exercisable for an aggregate of 1,894,047 8,644,388 and 1,473,726 8,712,618 shares of Common Stock respectively with as of March 31, 2024 and December 31, 2023, respectively. The 2021 Warrant, issued in December 2021, was exercisable for an aggregate of 1,879,215 and 1,894,047 shares of Common Stock as of March 31, 2024 and December 31, 2023, respectively. The 2022 Warrant, issued in April 2022, was exercisable for an aggregate of 1,879,215 and 1,894,047 shares of Common Stock as of March 31, 2024 and December 31, 2023, respectively. The Company also issued a per share exercise price of \$0.01.

Pursuant warrant to the Second Amendment, the Company was required Warrantholder in May 2023 to among other things, i) obtain a term sheet for additional financing purchase an aggregate 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.

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

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

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 September 30, 2023 and December 31, 2022, the 2020 Warrant was exercisable for an aggregate of 8,712,618 and 6,799,139 shares, respectively, of Common Stock with a per share exercise price of \$0.013.57. 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 September 30, 2023 and December 31, 2022, the 2021 Warrant was exercisable for an aggregate of 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 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 are collectively referred to herein as the “Warrant”. The following schedule shows As of March 31, 2024, the change in Warrants is classified as a liability and subject to fair value remeasurement at each balance sheet date. The fair value of the Warrant as of September 30, 2023, at March 31, 2024 and December 31, 2023 was \$52,454

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	\$	36,441

36,801, respectively. The change in fair value of the Warrant is reported on a separate line in the condensed consolidated statement statements 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 September 30, 2023, the interest rate on outstanding debt under the Amended and Restated Loan and Security Agreement was 10% and under the First Amendment to Amended and Restated Loan and Security Agreement was 10.5%.

As of September 30, 2023, the Company had \$31,062 in outstanding debt under the Siena Loan Agreement and remaining borrowing availability of \$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, \$1,037 in additional deferred financing costs related to the Amended and Restated Loan and Security Agreement during the third quarter of 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, 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 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.

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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 9.11 – Mezzanine Equity and 2023 Warrant

On March 23, 2023, In May 2023, the Company entered into a Securities Purchase Agreement (the “Purchase Agreement”) by and among the Company and issued to 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 non-convertible 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 \$2,591 of total issuance costs, of which \$2,301 were allocated against the Series C Preferred Shares.

#### Preferred Stock

During the nine months ended 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 with an initial stated and fair

value of \$85,412 or \$1,000 per share (the "Preferred Stock"). The Series C As of March 31, 2024, 85,412 shares of the Preferred Stock was initially stated at fair value net of \$2,591 issuance costs, remain issued and outstanding. The Company determined classifies the Series C Preferred Stock should be classified as Mezzanine Equity 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 ranks 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 initial stated value of the Preferred Stock. Accrued Dividends (each defined in the Certificate of Designation), dividends, whether or not declared, and shall be are cumulative. The Series C Preferred Stock OC III LFE will not participate in any dividends paid to the holders of shares of Common Stock.

The Company may redeem the outstanding Series C shares of Preferred Stock at any time by payment of the Stated Value initial stated value plus all accrued dividends (the "Redemption Price"). dividends. If the Company has not redeemed all of the Series C outstanding shares of Preferred Stock on or prior to the fourth anniversary of issuance, the Closing, the Dividend Rate dividend rate will increase by 0.5% for every quarter thereafter until the Series C Preferred Stock is redeemed in full. The Purchaser full (the "Dividend Rate Increase"). OC III LFE has the right to request the Company redeem all of the Series C outstanding shares of Preferred Stock at any time after the sixth anniversary of the Closing, issuance. If the Company does not redeem all of the Series C outstanding shares of 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 OC III LFE will be entitled to certain limited voting rights as described in the Certificate of Designation. rights.

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 all of the Series C outstanding shares of the Preferred Stock before the increasing occurrence of a Dividend Rate occurs, Increase, the discount on Series C outstanding shares of Preferred Stock is considered an unstated dividend cost that is amortized over the period preceding commencement of the increasing Dividend Rate Increase 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 outstanding shares of Preferred Stock by a corresponding amount. Accordingly, the discount is amortized over four years using the effective yield method. Issuance costs of \$2,301 were allocated against the outstanding shares of the Preferred Stock upon issuance. The Company recognized discount amortization of \$203,144 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 March 31, 2024. The 2023 Warrant had a fair value of \$ Company did 3,544 no upon issuance, calculated using t recognize any discount amortization during the Black-Scholes option valuation model. As of September 30, 2023, the 2023 Warrant had a fair value of \$3,189 three months ended March 31, 2023.

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**Note 1012 – Accumulated Other Comprehensive Income**

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

	<u>Pre-Tax</u>	<u>Tax</u>	<u>After-Tax</u>			
<b>Three months ended September 30, 2023</b>						
<b>Three months ended March 31, 2024</b>				<u>Pre-Tax</u>	<u>Tax</u>	<u>After-Tax</u>
Pension liability activity:						
Loss on pension settlement	\$ 313	\$ -	\$ 313			
Reclassification adjustment for amortization of net loss (pre-tax other income)	573	-	573	\$ 35	\$ -	\$ 35
	<u>\$ 886</u>	<u>\$ -</u>	<u>\$ 886</u>			
Foreign currency derivative asset activity:						
Unrealized gain on foreign currency derivatives	\$ 34	\$ -	\$ 34	\$ 207	\$ -	\$ 207
	<u>\$ 920</u>	<u>\$ -</u>	<u>\$ 920</u>	<u>\$ 242</u>	<u>\$ -</u>	<u>\$ 242</u>
<b>Three months ended September 30, 2022</b>						
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>\$ 7,782</u>	<u>\$ -</u>	<u>\$ 7,782</u>			
<b>Nine months ended September 30, 2023</b>						
Pension liability activity:						
Loss on pension settlement	\$ 313	\$ -	\$ 313			
Reclassification adjustment for amortization of net loss (pre-tax other income)	650	-	650			
	<u>\$ 963</u>	<u>\$ -</u>	<u>\$ 963</u>			
Foreign currency derivative asset activity:						
Unrealized gain on foreign currency derivatives	\$ 34	\$ -	\$ 34			
	<u>\$ 997</u>	<u>\$ -</u>	<u>\$ 997</u>			
<b>Nine months ended September 30, 2022</b>						
Pension liability activity:						
Loss on pension settlement	\$ 8,105	\$ -	\$ 8,105			
Reclassification adjustment for amortization of net loss (pre-tax other income)	(156)	-	(156)			
	<u>\$ 7,949</u>	<u>\$ -</u>	<u>\$ 7,949</u>			



**Three months ended March 31, 2023**

## Pension liability activity:

Reclassification adjustment for amortization of net loss (pre-tax other income)	\$ 41	\$ -	41
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The components of accumulated other comprehensive income consist of the following:

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

  

	March 31, 2024	December 31, 2023
Unrecognized pension income, net of tax of \$6,282 and \$6,282, respectively	\$ 1,794	\$ 1,759
Unrealized gain on foreign currency derivatives	813	606
	\$ 2,607	\$ 2,365

**Note 11 13 – Stock-Based Compensation**

Total stock-based compensation was \$715 760 and \$(817 91) for the three months ended September 30, 2023 March 31, 2024 and 2022, respectively and \$524 and \$2,307 for the nine months ended September 30, 2023 and 2022, 2023, respectively. As of September 30, 2023 March 31, 2024, there was \$1,509 2,129 of unearned compensation expense related to restricted stock awards, which will be recognized over the remaining weighted average requisite service period of 20 27 months. As of September 30, 2023 March 31, 2024, there was \$1,471 2,057 of unearned compensation expense related to time-vested stock options, which will be recognized over the remaining requisite service period of 23 27 months. As of September 30, 2023 March 31, 2024, there was \$85 no of unearned compensation expense related to the cash settled stock appreciation rights, which will be recognized over the remaining requisite service period of 4 months. rights.

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. Total stock-based As of March 31, 2024, there was \$286 of unrecognized compensation expense related to the Inducement Options, was \$ which will be recognized over the remaining requisite service period of 8127 for the three and nine months ended September 30, 2023, months.

**Note 12 14 – Employee Benefit Plans**

The Company has a qualified, defined benefit pension plan (the “Plan”) that was established to provide benefits to certain employees. The Plan is frozen and participants are no longer accruing benefits. Generally, contributions to the Plan 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 nine months ended September 30, 2023 March 31, 2024 and 2022, 2023, are as follows:

	Three Months Ended September 30, 202		Nine Months Ended September 30, 202		Three Months Ended March 31, 2024		Three Months Ended March 31, 2023	
	3	2022	3	2022	2024		2023	
<b>Pension Benefits</b>								
Interest cost	15		45					
	\$ 1	\$ 157	\$ 3	\$ 709	\$	135	\$	151
	(8		(2	(1,4				
Expected return on plan assets	3)	(208)	50)	42)		(75)		(81)
Amortization of unrecognized net income (loss)	38	40	5	207				
Reclassification adjustment for amortization of net income (loss)	-	(36)	-	(36)				
	31	8,10	31	8,10				
Loss on pension settlement	3	5	3	5				
Amortization of unrecognized net income						35		41
	41	8,05	63	7,54				
	\$ 9	\$ 8	\$ 1	\$ 3	\$	95	\$	111

The Company made no contributions to the Company's its defined benefit pension plan for the three and nine months ended September 30, 2023 March 31, 2024 and 2022, 2023. 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. plan in 2024.

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 13.15 – Foreign Currency Forward Contracts Derivatives

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 currently 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 volatility in foreign currency exchange rates between the Mexican Peso and the U.S. Dollar.

During the second 2023 and third quarters of 2023, 2024, the Company entered 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 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 assesses the assumed effectiveness 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 condensed consolidated statement statements of operations on the same line as the items being hedged when the hedged item impacts earnings or upon determination that the contract is no longer assumed to be effective.

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

Notional Amount	September 30,	December 31,	March 31,	December 31,
	2023	2022	2024	2023
Derivative instruments designated as hedges:				
Foreign currency derivatives	\$ 9,143	\$ -	\$ 10,815	\$ 11,562

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

Fair Value	September 30,	December 31,	March 31,	December 31,
	2023	2022	2024	2023
Prepaid expenses				
Prepaid expenses:				
Foreign currency derivatives	\$ 34	\$ -	\$ 813	\$ 606

The pre-tax realized gain on foreign currency derivatives is recognized in the Condensed Consolidated Statements condensed consolidated statements of Operations operations as follows:



## Note 14.16 – Earnings (Loss) Per Share

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

	Three Months Ended September 30,		Nine Months Ended September 30,		Three Months Ended March 31,	
	2023	2022	2023	2022	2024	2023
<b>Numerator:</b>						
Net income (loss)	3,193	(17,806)	(20,733)	(29,114)		
Net loss					\$ (11,571)	\$ (5,037)
Accretion of financing fees	(146)	-	(203)	-	(144)	-
Accrued dividends on Series C Preferred Stock	(3,923)	-	(5,535)	-	(4,237)	-
Net loss available to common stockholders - basic	(876)	(17,806)	(26,471)	(29,114)	\$ (15,952)	\$ (5,037)
Net loss available to common stockholders - diluted	(876)	(17,806)	(26,471)	(29,114)	\$ (15,952)	\$ (5,037)
<b>Denominator:</b>						
Weighted average common shares outstanding	17,044,251	16,158,516	16,937,968	15,920,458	17,128,417	16,792,292
Issuance of Warrants	12,499,712	9,559,898	11,126,442	8,550,201	12,451,765	9,753,171
Weighted average common shares outstanding - basic	29,543,963	25,718,414	28,064,410	24,470,659	29,580,182	26,545,463
Weighted average common shares outstanding - diluted	29,543,963	25,718,414	28,064,410	24,470,659	29,580,182	26,545,463

The Company computes earnings per share using the two-class method, which is an earnings allocation formula that determines earnings per share for common stock and participating securities. The Company's participating securities are its grants of restricted stock which contain non-forfeitable rights to dividends. The Company allocates earnings between both classes; however, in periods of undistributed losses, they are only allocated to common shares as the unvested restricted stockholders do not contractually participate in losses of the Company. The Company computes basic earnings per share by dividing net income allocated to common 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 the 2023 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 September 30, 2023, March 31, 2024 and 2022, 6,222,085, 4,781,274 and 1,578,118, 2,086,898 shares, respectively, were not included in the weighted average common shares outstanding calculation as they were anti-dilutive. For the nine months ended September 30, 2023 and 2022, 5,996,646 and 1,687,216 shares, respectively, were not included in the weighted average common shares outstanding calculation as they were antidilutive.

## Note 1517 – Related Parties

The following persons are owners of Fabricaciones y Servicios de México, S.A. de C.V. ("Fasemex"): Jesus Jesús Gil, VP Operations and a director of the Company; Company and former VP, Operations; and Alejandro Gil and Salvador Gil, siblings of Jesus Jesús Gil. Fasemex owns approximately 10.8 10.6% of the outstanding shares of Common Stock as of September 30, 2023, March 31, 2024 and provides steel fabrication services to the Company. The lessors of the Company's leased facility in Castaños Facility are Jesus Jesús Gil, Alejandro Gil, and Salvador Gil. The Company paid \$2,172 and \$8,766 during the three and nine months ended September 30, 2023, respectively, and \$7,121 and \$23,777 during the three and nine months ended 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 \$1,252 and \$3,049 during the three and nine months ended September 30, 2023, respectively, and \$524 and \$1,596 during the three and nine months ended September 30, 2022, respectively, to DI related to provides material and safety supplies. supplies to the Company. Maquinaria y Equipo equipo de Transporte transporte Jova S.A. de C.V. ("METJ") is owned by Jorge Gil, another a sibling of Jesus Gil. Jesús Gil, and provides trucking services to the Company. Fasemex, DI, METJ, Jesús Gil, Alejandro Gil, Salvador Gil, and Jorge Gil are collectively referred to as the "Gil Family".

The Company paid \$485 7,647 and \$1,860 5,636 to the Gil Family during the three and nine months ended September 30, 2023, March 31, 2024 and 2023, respectively, related to steel fabrication services, rent and security deposit payments for the Castaños Facility, material and safety supplies, trucking services and royalty payments.

Commercial Specialty Truck Holdings, LLC ("CSTH") is minority owned by James R. Meyer, a member of our Board, our former CEO, and beneficial owner of over 5% of our Common Stock. The Company sold specialty parts supplies in an amount equal to \$475 208 and \$1,887 to CSTH during the three and nine months ended September 30, 2022, respectively, March 31, 2024. The Company sold no specialty parts supplies to METJ related to trucking services. CSTH during the three months ended March 31, 2023.

Related party asset on the condensed consolidated balance sheet of \$1,172 902 as of September 30, 2023, March 31, 2024 includes prepaid inventory of \$639 and other receivables of \$533 188 from Fasemex. CSTH and other assets of \$714 from the Gil Family. Related party accounts payable on the condensed consolidated balance sheet of \$1,569 2,394 as of September 30, 2023 includes \$668 March 31, 2024 is payable to Fasemex, \$654 payable to DI and \$247 payable to METJ, the Gil Family. Related party asset on the condensed consolidated balance sheet of \$3,261 638 as of December 31, 2022, December 31, 2023 includes prepaid inventory of \$2,014 and other receivables of \$1,247 517 from Fasemex, the Gil Family and \$121 from CSTH. Related party accounts payable on the condensed consolidated balance sheet of \$3,393 2,478 as of December 31, 2022 includes \$2,475 December 31, 2023 is payable to Fasemex, \$572 payable to DI and \$346 payable to METJ, the Gil Family.

The Warrantholder beneficially owns approximately 47.4% of the outstanding shares of Common Stock (as disclosed by the Warrantholder in its Schedule 13D/A No. 6 filed with the SEC on July 14, 2023). The Company did not pay interest to the Warrantholder during the three months ended September 30, 2023. The Company paid \$4,776 to the Warrantholder during the nine months ended 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 September 30, 2023 and paid \$535 in equity fees and \$866 in cash fees during the nine months ended September 30, 2023 to the Warrantholder related to the standby letter of credit described in Note 8 – Debt Financing and Revolving Credit Facilities.

#### Note 16 18 – Income Taxes

The Company's reported effective income tax rate was 6.3% and 0.2% for the three 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 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 18.2)% and (6.9 2.3)% for the nine three months ended September 30, 2023 March 31, 2024 and 2022, 2023, respectively. The effective tax rate of 18.2% for the three months ended March 31, 2024 was higher than the effective tax rate for the three months ended March 31, 2023 primarily due to an increase in the mix of forecasted earnings and permanent items. The effective tax rate for the third first quarter of 2023 2024 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 third first quarter of 2022 2023 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..

## 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 potential risks and uncertainties that could cause actual results to differ materially from those projected in the forward-looking statements. These potential risks and uncertainties relate to, among other things, the cyclical nature of our business, business; adverse economic and market conditions, including inflation; material disruption in the movement of rail traffic for deliveries; fluctuating costs of raw materials, including steel and aluminum; delays in the delivery of raw materials; our ability to maintain relationships with our suppliers of railcar components; successfully onboarding our new chief executive officer; the highly competitive nature of our industry, industry; our reliance upon a small number of customers that represent a large percentage of our sales, sales; the variable purchase patterns of our customers and the timing of completion, completion; delivery and customer acceptance of orders, fluctuating costs of raw materials, including steel and aluminum, delays in the delivery of raw materials, orders; the risk of lack of acceptance of our new railcar offerings, offerings; 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 also provide railcar rebody services and convert railcars railcar conversions that repurpose idled rail assets back into revenue service, supply railcar parts, and sell forged, cast and fabricated parts for all of the railcars we produce, as well as those manufactured by others. We also lease service freight cars. Our primary customers are financial institutions, railroads and shippers. We have been manufacturing railcars since 1901.

Total new orders received for railcars for the nine three months ended September 30, 2023 March 31, 2024 were 3,356 384 units, consisting of 3,166 275 new railcars and 109 rebuilt railcars, compared to orders for 1,960 units, consisting of 1,770 new railcars and 190 rebuilt railcars compared to orders for 2,240 units, consisting of 1,817 new railcars and 423 rebuilt railcars for the nine three months ended September 30, 2022 March 31, 2023. Total backlog of unfilled orders was 3,800 2,075 units at September 30,



2023 March 31, 2024, compared to 2,445 2,914 railcars as of December 31, 2022 December 31, 2023. The estimated sales value of the backlog was \$452 million \$238 million and \$288 million \$348 million, respectively, as of September 30, 2023 March 31, 2024 and December 31, 2022, respectively. December 31, 2023. The increase decrease in the number of orders for new railcars for the nine three months ended September 30, 2023 March 31, 2024 compared to the prior year period is a reflection of improvement mixed levels of confidence in the railcar equipment market. economic outlook.

## RESULTS OF OPERATIONS

Three Months Ended September 30, 2023 March 31, 2024 compared to Three Months Ended September 30, 2022 March 31, 2023

### Revenues

Our consolidated revenues for the three months ended September 30, 2023 March 31, 2024 were \$61.9 million \$161.1 million compared to \$85.7 million \$81.0 million for the three months ended September 30, 2022 March 31, 2023. Manufacturing segment revenues for the three months ended September 30, 2023 March 31, 2024 were \$58.6 million \$155.7 million compared to \$82.8 million \$77.6 million for the corresponding prior year period. The \$24.2 million decrease \$78.1 million increase in Manufacturing segment revenues was primarily driven by a decrease an increase in the volume of railcar units delivered. delivered during the quarter, which includes the railcars impacted by the closure of the U.S.-Mexico border in December 2023. Railcar deliveries in the three months ended September 30, 2023 March 31, 2024 totaled 503 1,223 units, consisting entirely of 382 new railcars and 121 rebuilt railcars, compared to 783 738 units in the same period of 2022, 2023, consisting of 483 639 new railcars and 300 99 rebuilt railcars. Corporate and Other revenues were \$3.3 million \$5.3 million for the three months ended September 30, 2023 March 31, 2024 compared to \$2.9 million \$3.4 million for the three months ended September 30, 2022 March 31, 2023.

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### Gross Profit

Our consolidated gross profit was \$9.2 million \$11.4 million for the three months ended September 30, 2023 March 31, 2024 compared to \$4.6 million \$7.5 million for the three months ended September 30, 2022 March 31, 2023. Manufacturing segment gross profit was \$7.9 million \$8.7 million for the three months ended September 30, 2023 March 31, 2024 compared to \$3.8 million \$6.4 million for the three months ended September 30, 2022 March 31, 2023. The \$4.6 million \$3.9 million increase in consolidated gross profit and \$4.1 million \$2.3 million increase in Manufacturing segment gross profit reflect reflects a favorable price mix variance. volume variance partially offset by an unfavorable product mix.

### Selling, General and Administrative Expenses

Consolidated selling, general and administrative expenses for the three months ended September 30, 2023 March 31, 2024 were \$7.5 million compared to \$7.1 million \$6.4 million for the three months ended September 30, 2022 March 31, 2023. The \$0.4 million \$1.1 million increase in consolidated selling, general and administrative expenses for the three months ended September 30, 2023 March 31, 2024 was primarily due to an a \$0.9 million increase in recruiting and employee benefit stock-based compensation expenses. Manufacturing segment selling, general and administrative expenses were \$0.6 million \$0.5 million for the three months ended September 30, 2023 and \$0.7 million March 31, 2024 compared to \$0.8 million for the three months ended September 30, 2022 March 31, 2023. The \$0.3 million decrease in Manufacturing selling, general and administrative expenses for the three months ended March 31, 2024 was primarily due to a \$0.2 million decrease in consulting expenses. Manufacturing segment selling, general and administrative expenses for the three months ended September 30, 2023 March 31, 2024 were 1.0% 0.3% of revenue, compared to 0.8% 1.0% of revenue for the three months ended September 30, 2022 March 31, 2023. Corporate and Other selling, general and administrative expenses were \$6.9 million \$7.0 million for the three months ended September 30, 2023 March 31, 2024 compared to \$6.4 million \$5.6 million for the three months ended September 30, 2022 March 31, 2023. The \$0.5 million \$1.4 million increase in Corporate and Other selling, general and administrative expenses is primarily a result of the previously mentioned increase in employee procurement and benefit stock-based compensation 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 March 31, 2024 was \$1.4 million \$3.9 million compared to a \$10.7 million \$1.1 million consolidated operating loss income for the three months ended September 30, 2022 March 31, 2023 driven primarily by the previously mentioned favorable price mix variance, decrease in pension settlement loss, gross profit, partially offset by an the previously mentioned increase in selling, general and administrative expenses. Operating income for the Manufacturing segment was \$7.4 million \$8.3 million for the three months ended September 30, 2023 March 31, 2024 compared to an operating income of \$3.1 million \$5.6 million for the three months ended September 30, 2022 March 31, 2023, also reflecting the favorable price mix variance increase in railcars delivered during the three months ended September 30, 2023 March 31, 2024 compared to the 2022 2023 period. Corporate and Other operating loss was \$6.0 million \$4.4 million for the three months ended September 30, 2023 March 31, 2024 compared to \$13.7 million \$4.5 million for the three months ended September 30, 2022 March 31, 2023. The \$7.7 million \$0.1 million decrease in operating loss is primarily a result of the previously mentioned decrease in pension settlement loss, partially Corporate and Other gross profit, offset by the previously mentioned increase in selling, general and administrative stock-based compensation expenses.

#### Income Taxes

Our income tax provision benefit was \$0.2 million \$2.6 million for the three months ended September 30, 2023 March 31, 2024 compared to \$0.0 million our income tax provision of \$0.1 million for the three months ended September 30, 2022 March 31, 2023 primarily due to an increase in the mix of forecasted earnings and permanent items.

#### Net Income (Loss) Loss

As a result of the changes and results discussed above, as well as the change in fair value of the warrant liability, net income loss was \$3.2 million \$11.6 million for the three months ended September 30, 2023 March 31, 2024 compared to net loss of \$17.8 million \$5.0 million for the three months ended September 30, 2022 March 31, 2023. For the three months ended September 30, 2023 March 31, 2024, basic and diluted net loss per share was \$0.03 \$0.54 compared to net loss per share of \$0.69 \$0.19 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 nine months ended 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 nine months ended 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 nine months ended September 30, 2023 was \$10.2 million compared to \$8.8 million operating loss for the nine months ended September 30, 2022 driven primarily by the previously mentioned decrease in pension settlement loss and favorable price mix variance, as well as the decrease in selling, general and administrative expenses. Operating income for the Manufacturing segment was \$24.8 million for the nine months ended September 30, 2023 compared to an operating income of \$16.5 million for the nine months ended September 30, 2022, reflecting the favorable price mix variance and decrease in selling, general and administrative expenses during the nine months ended September 30, 2023 compared to the 2022 period. Corporate and Other operating loss was \$14.6 million for the nine months ended September 30, 2023 compared to \$25.3 million for the nine months ended September 30, 2022. The \$10.7 million decrease in operating loss is primarily a result of the previously mentioned decreases in pension settlement loss and selling, general and administrative expenses.

### **Loss on Extinguishment of Debt**

Loss on extinguishment of debt for the nine months ended 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 nine months ended September 30, 2022.

### **Income Taxes**

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

### **Net Loss**

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As a result of the changes and results discussed above, net loss was \$20.7 million for the nine months ended September 30, 2023 compared to \$29.1 million for the nine months ended September 30, 2022. For the nine months ended September 30, 2023, basic and diluted net loss per share was \$0.94 compared to \$1.19 for the nine months ended September 30, 2022 March 31, 2023.

## **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.

### **Preferred Share Issuance**

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.

### **Revolving Credit Facility**

Upon  
Total outstanding debt under the Closing, Company's revolving credit facility consists of \$30,002 as of March 31, 2024 and \$29,415 as of December 31, 2023.

As of March 31, 2024, a revolving line of credit maturing on October 31, 2024 existed in the Company settled \$60,178 in-full all maximum aggregate principal amount of up to \$45,000, secured by a standby letter of credit in the principal amount of \$25,000 and 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. Company's accounts receivable. In

#### Reimbursement Agreement 18

The connection with the standby letter of credit, the Company shall has agreed to pay to the Agent, for the account an affiliate of the Lender or lender 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.

**Warrants** The standby letter of credit bears interest at the prime rate of interest ("Prime") plus 1.5%, or 10% as of March 31, 2024. Advances secured by the Company's accounts receivable bear interest at Prime plus 2%, or 10.5% as of March 31, 2024.

#### Warrant

The Company issued warrants to OC III LFE II LP ("OC III LFE") and various affiliates of OC III LFE (collectively, the "Warrantholder") in previous years. In connection with the Credit Agreement, May 2023, the Company issued a warrant to an affiliate OC III LFE to purchase 1,636,313 shares 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 Company's 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 (the "2023 Warrant"), exercisable for a term of ten (10) years from the date of the issuance of the 2020 Warrant. As of September 30, 2023 and December 31, 2022, the 2020 Warrant was exercisable for an aggregate of 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. \$3.57.

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 September 30, 2023 and December 31, 2022, the 2021 Warrant was exercisable for an aggregate of 1,894,047 and 1,473,726 shares of Common Stock, respectively with a per share exercise price of \$0.01.

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 September 30, 2023.

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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	\$	36,441

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 Preferred Shares

In October 2020, May 2023, the Company entered into a Loan issued to OC III LFE 85,412 shares of non-convertible Series C Preferred Stock, \$0.01 par value per share with an initial stated and Security Agreement fair value of \$85,412 or \$1,000 per share (the "Siena Loan Agreement" "Preferred Stock") by and among the Company, as guarantor, and certain. As of its subsidiaries, as borrowers (together with the Company, the "Revolving Loan Parties") March 31, 2024, 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 85,412 shares of the Siena Loan Agreement, including, among other things, an increase Preferred Stock remain issued and outstanding. The Company classifies the Preferred Stock as mezzanine equity (temporary equity outside of \$25,000 to permanent equity) since a deemed liquidation event following a change of control may require redemption of the Maximum Revolving Facility Amount. Preferred Stock that is not solely within the control of the Company.

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 Preferred Stock ranks senior to the provisions Common Stock with respect to payment of the Amended dividends and Restated Loan distribution of assets upon liquidation, dissolution 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, winding up. Dividends accrue at a rate of 2% 17.5% per annum on the initial stated value. Accrued dividends, whether or not declared, are cumulative. The Preferred Stock will not participate 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 any dividends paid to



the provisions holders of the First Amendment to Amended and Restated Loan and Security Agreement, at a rate shares 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. Common Stock.

The Third Amendment to Amended and Restated Loan and Security Agreement, among other things, (i) extended Company may redeem the scheduled maturity date outstanding Preferred Stock at any time by payment of the Siena Loan Agreement from October 8, 2023 to October 31, 2024, and (ii) increased initial stated value plus accrued dividends. If 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 Company has not redeemed on or prior to the Loan Parties, (A) fourth anniversary of issuance, the outstanding balance dividend rate will increase by 0.5% for every quarter thereafter until redeemed in full. OC III LFE has the right to request the Company redeem at any time after the sixth anniversary of all Revolving Loans and issuance. If the Letter Company does not redeem within six months after receipt 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 a redemption request, OC III LFE will be exceeded.

The outstanding debt under the Third Amendment entitled 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 September 30, 2023, the interest rate on outstanding debt under the Amended and Restated Loan and Security Agreement was 10% and under the First Amendment to Amended and Restated Loan and Security Agreement was 10.5%.

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As of September 30, 2023, the Company had \$31,062 in outstanding debt under the Siena Loan Agreement and remaining borrowing availability of \$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, \$1,037 in additional deferred financing costs related to the Amended and Restated Loan and Security Agreement during the third quarter of 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. certain limited voting rights.

#### Additional Liquidity Factors

Our restricted cash, restricted cash equivalents and restricted certificates of deposit balances were \$5.1 million \$1.1 million and \$4.1 million \$0.7 million as of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively. Restricted deposits of \$0.3 million as of each of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 relate to a customer deposit for the purchase of railcars. Restricted deposits of \$3.6 million \$0.1 million as of each of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 are used to collateralize standby letters of credit with respect to performance guarantees. The standby letters of credit outstanding as of September 30, 2023 March 31, 2024 are a requirement as long as the performance guarantees are in place. Restricted deposits of \$1.2 million \$0.7 million and \$0.3 million as of September 30, 2023 March

31, 2024 and \$0.2 million as of December 31, 2022 relate December 31, 2023, respectively, are used to an employee savings fund paid biannually in Mexico. collateralize foreign currency derivatives.

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.

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## Cash Flows

The following table summarizes our cash flow activities for the nine three months ended September 30, 2023 March 31, 2024 and 2022: 2023:

	2023		2022		2024		2023	
	(In thousands)		(In thousands)		(In thousands)		(In thousands)	
Net cash (used in) provided by:								
Net cash used in:								
Operating activities	\$	(26,410)	\$	(13,585)	\$	(25,322)	\$	(7,704)
Investing activities		(615)		(3,380)		(966)		(1,960)
Financing activities		4,492		9,096		(295)		(449)
Total	\$	(22,533)	\$	(7,869)	\$	(26,583)	\$	(10,113)

*Operating Activities.* Our net cash used in operating activities reflects net loss adjusted for non-cash charges and changes in operating assets and liabilities. Cash flows from operating activities are affected by several factors, including fluctuations in business volume, contract terms for billings and collections, the timing of collections on our contract receivables, processing of bi-weekly payroll and associated taxes, payments to our suppliers and other operating activities. As some of our customers accept delivery of new railcars in train-set quantities, variations in our sales lead to significant fluctuations in our operating profits and cash from operating activities.



Our net cash used in operating activities for the nine three months ended September 30, 2023 March 31, 2024 was \$26.4 million \$25.3 million compared to net cash used in operating activities of \$13.6 million \$7.7 million for the nine three months ended September 30, 2022 March 31, 2023. Our net cash used in operating activities for the nine three months ended September 30, 2023 March 31, 2024 reflects changes in working capital, primarily an increase including increases in accounts receivable of \$28.6 million, offset by decreases in inventory of \$57.2 million related \$17.0 million and in accounts payable of \$7.9 million. The increase in accounts receivable relates to the timing of collections with current railcar builds based on contractual payment terms. Decreases in accounts payable and inventory relate to inventory to be on hand at December 31, 2023 used in production of railcars to be delivered during in the fourth first quarter of 2023, offset by an increase of \$19.6 million customer deposits during the nine months ended September 30, 2023. 2024. Our net cash used in operating activities for the nine three months ended September 30, 2022 March 31, 2023 reflects changes in working capital, including an increase increases in inventory of \$19.7 million offset by decreases in VAT receivable of \$3.0 million and increases in accounts payable of \$4.4 million and a decrease in VAT receivable of \$24.6 million, all of which were partially offset by increases in both accounts receivable of \$2.6 million and inventory of \$30.1 million \$9.7 million.

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*Investing Activities.* Net cash used in investing activities for the nine three months ended September 30, 2023 March 31, 2024 was \$0.6 million \$1.0 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 \$9.0 million related to the expansion of the Castaños Facility. Net cash used in investing activities for the nine three months ended September 30, 2022 March 31, 2023 was \$3.4 million \$2.0 million and consisted of capital expenditures related to the expansion of construction in progress for the Castaños Facility. Facility operations.

*Financing Activities.* Net cash provided by used in financing activities for the nine three months ended September 30, 2023 March 31, 2024 was \$4.5 million \$0.3 million which primarily included \$13.3 million proceeds from the issuance of Series C Preferred Stock, net of issuance costs, partially offset by net repayments borrowings on revolving line of credit of \$7.9 million \$0.6 million and principal payments on the finance lease of \$0.8 million. Net cash provided by used in financing activities for the nine three months ended September 30, 2022 March 31, 2023 was \$9.1 million \$0.4 million which consisted of \$84.4 million of included net borrowings on our revolving line of credit offset by \$75.2 million of repayments \$0.2 million, principal payments on our revolving line the finance lease of credit. \$0.1 million and employee stock settlements of \$0.1 million.

## Capital Expenditures

Our capital expenditures were \$9.0 million \$1.0 million in the nine three months ended September 30, 2023 March 31, 2024, compared to \$3.4 million \$2.0 million in the nine three months ended September 30, 2022 March 31, 2023. We anticipate capital expenditures during 2023 2024 to be in the range of \$12.0 million \$5.0 million to \$13.0 million \$7.0 million, primarily related to the expansion maintenance of current production lines at 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 September 30, 2023 March 31, 2024. Based on their evaluation, the Company's management concluded that the Company's disclosure controls and procedures were effective as of September 30, 2023 March 31, 2024.

##### **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 September 30, 2023 March 31, 2024 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:

- 10.1 [Third Amendment No. 6 to Amended and Restated the Term Loan and Security Credit Agreement dated as of September 21, 2023 January 30, 2023 \(incorporated by reference to Exhibit 10.22.6 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022 filed with the Commission on March 27, 2023\).](#)
- 10.2 [Amendment No. 7 to the Term Loan Credit Agreement dated as of February 27, 2023 \(incorporated by reference to Exhibit 10.22.7 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022 filed with the Commission on March 27, 2023\).](#)
- 10.3 [Royalty Agreement, dated January 23, 2024, by and between the Company and Alejandro Gil Benavides.](#)
- 10.4 [Royalty Agreement, dated January 23, 2024, by and between the Company and Jesús Salvador Gil Benavides.](#)
- 10.5 [Royalty Agreement, dated January 23, 2024, by and between the Company and Salvador Gil Benavides.](#)
- 10.6 [Termination Agreement dated January 23, 2024, by and among the Company, Fabricaciones y Servicios de México, S.A. de C.V., Agben de Mexico, S.A. de C.V., Industrial Mexicana Fasemex, S.A. de C.V., Proveedora Industrial para el Manejo de Materiales, S.A. de C.V. and certain of its subsidiaries and Siena Lending Group LLC \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on September 26, 2023\), Fasemex, Inc.](#)
- 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 104 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: November 6, 2023 May 8, 2024 By: /s/ JAMES R. MEYER NICHOLAS J. RANDALL

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

Date: November 6, 2023 May 8, 2024 By: /s/ MICHAEL A. RIORDAN

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

Date: November 6, 2023 May 8, 2024 By: /s/ JUAN CARLOS FUENTES SIERRA

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

**ROYALTY AGREEMENT**

THIS ROYALTY AGREEMENT (the "Agreement") is made as of January 23, 2024 (the "Effective Date") by and among FreightCar America, Inc., a Delaware corporation with offices at 125 S. Wacker Drive, Suite 1500, Chicago, Illinois 60606 ("FCA"), and Alejandro Gil Benavides, a Mexican individual, with domicile at Barranquilla 404, col. Guadalupe, Monclova, Coahuila México, C.P. 25750 (The "Royalty Payee"), and FCA and Royalty Payee are collectively referred to herein as the "Parties".

**RECITALS**

A. Whereas Royalty Payee has industrial, commercial and technical knowledge and information (the "Knowledge") consisting of:

- (i) Knowledge related to the way of doing business in Mexico by domestic and foreign investors,
- (ii) Knowledge as to of how to do business in the metal-mechanic, casting, smelting and manufacturing of metallic materials such as steel,
- (iii) Knowledge of the industrial process to manufacture Railcars and Tank Cars (as defined below),
- (iv) Knowledge related to the design and construction of industrial facilities for the Railcars and Tank Cars (as defined below) manufacturing industry, as well as the negotiation and contracting of suppliers in different segments of the services related to the construction of industrial facilities,
- (v) Knowledge of the supplier and supply-chain market related to the businesses and industries mentioned in the preceding paragraphs,
- (vi) Knowledge of the labor market, both related to human resources matters and union

**CONTRATO DE REGALÍAS**

ESTE CONTRATO DE REGALÍAS (el "Contrato") de fecha 23 de enero de 2024 (la "Fecha de Inicio") celebrado por y entre Freightcar America, Inc. una sociedad de Delaware con oficinas en 25 S. Wacker Drive, Suite 1500, Chicago, Illinois 60606 ("FCA"), y Alejandro Gil Benavides, una persona física mexicana, con domicilio en Barranquilla 404, col. Guadalupe, Monclova, Coahuila México, C.P. 25750 (el "Acreeedor"). y FCA y el Acreeedor conjuntamente referidos como las "Partes".

**ANTECEDENTES**

A. Considerando que el Acreeedor posee conocimientos e información industrial, comercial y técnica (los "Conocimientos") consistentes en:

- (i) Conocimientos sobre la manera de realizar negocios en México por parte de empresas nacionales e inversionistas extranjeros,
- (ii) Conocimientos sobre la manera de realizar negocios en el mercado metalmecánico, de la fundición, fusión y manufactura de materiales metálicos como el acero,
- (iii) Conocimientos sobre el proceso industrial de manufactura de Vagones y Vagones Cisterna (como se definen más adelante),
- (iv) Conocimientos en materia de diseño y construcción de naves industriales para la industria de manufactura de Vagones y Vagones Cisterna (como se definen más adelante), así como de la negociación y contratación de proveedores en distintos segmentos de la prestación de servicios de construcción de naves industriales,
- (v) Conocimientos del mercado de proveedores y la cadena de suministro relacionados con los negocios y la industria mencionada en los incisos anteriores,
- (vi) Conocimientos del mercado laboral, tanto en lo que respecta a asuntos de recursos humanos

matters in Monclova, Coahuila and the region, and in Mexico, in general,

(vii) Knowledge of the logistics systems, customs matters and foreign trade operations, in general, and in particular for Railcars and Tank Cars (as defined below),

(viii) Knowledge on the creation, implementation and administration of businesses of the nature of those mentioned in the preceding paragraphs in the market of Monclova, Coahuila, and

(ix) Knowledge of the local customs and practices of the Monclova market, the Mexican market and the export market to the United States in the aforementioned businesses.

B. Whereas, Royalty Payee, based on his Knowledge, has created, together with Mr. Jesus Salvador Gil Benavides, and Mr. Salvador Gil Benavides (the “Gils”), a business plan and model for the performance of all the activities necessary to carry out the manufacture and repair of Railcars and Tank Cars (as defined below) in the Mexican market and, in particular, in the city of Monclova, Coahuila, as well as for its export to the United States (the “Business Plan and Model”).

C. Considering that Royalty Payee has delivered by different means, especially orally, his Knowledge and the Business Plan and Model to FCA, including its subsidiary, FCA-Fasemex, S. de R.L. de C.V., so that they are able to operate a certain industrial facility located in the city of Monclova, Coahuila, for the manufacture and repair of Railcars and Tank Cars (as defined below).

#### AGREEMENT

Now, therefore, in consideration of the mutual promises and covenants herein contained, the Parties hereto agrees as follows:

#### 1. ROYALTY.

como a asuntos sindicales en Monclova, Coahuila y la región, y en México, en general,

(vii) Conocimientos en materia de operaciones logísticas, aduaneras y de comercio exterior, en general, y en particular para Vagones y Vagones Cisterna (como se define más adelante)

(viii) Conocimientos sobre la realización, implementación y administración de negocios de la naturaleza de los mencionados en los puntos anteriores en el mercado de Monclova, Coahuila, y

(ix) Conocimientos sobre los usos y costumbres del mercado de Monclova, el mercado mexicano y del mercado de exportación a los Estados Unidos en los negocios anteriormente señalados.

B. Considerando que, el Acreedor, con base a sus Conocimientos, ha elaborado, en conjunto con los señores Jesús Salvador Gil Benavides y Salvador Gil Benavides (los “Señores Gil”), un plan y modelo de negocios para la realización de la totalidad de las actividades necesarias para llevar a cabo la manufactura y reparación de Vagones y Vagones Cisterna (como se define más adelante) en el mercado mexicano y, en particular, en la ciudad de Monclova, Coahuila, así como para su exportación a los Estados Unidos (el “Plan y Modelo de Negocios”).

C. Considerando que el Acreedor ha entregado por distintos medios, especialmente oral, sus Conocimientos y el Plan y Modelo de Negocios a FCA, incluyendo su subsidiaria, FCA-Fasemex, S. de R.L. de C.V., para que estén en posibilidad de operar cierta nave industrial ubicada en la ciudad de Monclova, Coahuila, para la manufactura y reparación de Vagones y Vagones Cisterna (como se define más adelante)

#### CONTRATO

Ahora, por lo tanto, en consideración de las promesas y obligaciones mutuas aquí contenidas, las Partes acuerdan lo siguiente:

(a) During each applicable Production Line Period (as defined below), FCA will pay to Royalty Payee (i) 0.52632% of FCA's Railcar

to siguiente:

#### 1. REGALÍAS.

(b) Durante cada Periodo de Línea de Producción (como se define más adelante)

Sales Net Revenue (as defined below) and (ii) 0.65790% of FCA's Tank Car Sales Net Revenue (as defined below); the payment specified in this clause (ii) and clause (i) of this sentence, collectively, the "Royalty") on and subject to the terms and conditions of this Agreement. The Royalty shall be paid to the account specified on Exhibit I attached hereto (the "Account"). FCA's obligations with respect to any such payment shall be complete when paid to the Account.

(c) During each applicable Production Line Period (as defined below), a Royalty obligation shall accrue, with respect to each Railcar or Tank Car (as such terms are defined below), upon the sale of (i) such new railcar or converted, modified, refurbished or repaired railcar, other than tank cars, to third parties or to FCA for its own leasing fleet (the "Railcars"), or (ii) such new tank car or converted, modified, refurbished or repaired tank car, to third parties or to FCA for its own leasing fleet (the "Tank Cars") (the Railcars and the Tank Cars, collectively, the "Products"). A Product shall be considered "sold" when such Product is shipped and FCA is paid in full for such Product, when sold to third parties or when shipped to FCA when it will use them for its own leasing fleet and "repaired" shall mean programmed repair work, excluding under warranty repair works and normal course field repairs.

(d) With respect to (i) the first and second production lines that have been constructed to produce Railcars or Tank Cars at the Castaños facility in Castaños, Mexico (the "Castaños Facility"), a Royalty shall only accrue for a period terminating on August 31, 2037; (ii) the third and fourth production lines that are being constructed to produce Railcars or Tank Cars at the Castaños Facility, a

aplicable, FCA pagará al Acreedor (i) el 0.52632% de los Ingresos Netos por Ventas de Vagones (como se define más adelante) de FCA y (ii) el 0.65790% de los Ingresos Netos por Ventas de Vagones Cisterna (como se define más adelante) de FCA; el pago especificado en esta cláusula (ii) y en la fracción (i) de esta oración, colectivamente, la "Regalía") en los términos y condiciones del presente Contrato. La Regalía se abonará a la cuenta especificada en el Anexo I adjunto al presente (la "Cuenta"). Las obligaciones de FCA con respecto a cualquier pago de este tipo se completarán cuando se abone en la Cuenta.

(b) Durante cada Periodo de Línea de Producción (como se define más adelante) aplicable, se devengará una obligación de Regalía, con respecto a cada Vagón o Vagón Cisterna (tal y como se definen dichos términos más adelante), por la venta de (i) cada vagón de ferrocarril nuevo o convertido, modificado, reformado o reparado, distinto de los vagones cisterna, a terceros o a FCA para su propia flota de renta (los "Vagones"), o (ii) cada vagón cisterna nuevo o vagón cisterna convertido, modificado, reformado o reparado, a terceros o a FCA para su propia flota de renta (los "Vagones Cisterna") (los Vagones y los Vagones Cisterna, conjuntamente, los "Productos"). Un Producto se considerará "vendido" cuando dicho Producto se envíe y se pague íntegramente a FCA por dicho Producto, cuando se venda a terceros o cuando se envíe a FCA cuando los vaya a utilizar para su propia flota de renta y "reparado" significará el trabajo de reparación



Royalty shall only accrue for a period of seventeen (17) years, commencing on the first day of the month during which production commences on the third or fourth lines, whichever line is earlier between these two; and (iii) any other production lines constructed by FCA at the Castaños Facility or elsewhere within Mexico, a Royalty shall only accrue for a

programado, excluyendo los trabajos de reparación en garantía y las reparaciones de campo en curso normal.

(c) En relación a (i) la primera y segunda líneas de producción que se han construido para producir Vagones o Vagones Cisterna en la nave de Castaños en Castaños, México (la "Nave de Castaños"), sólo se devengará una Regalía durante un periodo que finalizará el 31 de agosto de 2037; (ii) la tercera y cuarta líneas de producción que se están construyendo para producir Vagones o Vagones Cisterna en la Nave de Castaños, sólo se devengará una Regalía durante un periodo de diecisiete (17) años, a partir del primer día del mes en que comience la producción en la tercera o cuarta línea, la que sea anterior entre estas dos; y (iii) cualquier otra línea de producción construida por FCA en la Nave de

period of years, commencing on the first day of the month during which production commences on such additional line(s) and ending on the same date that the Royalty obligation for the first and second production lines ended ((i), (ii), and (iii) together, the "Production Line Periods").

(e) The Royalty shall be calculated in accordance with Sections 1(a) and 1(b) on a calendar quarter basis (the "Royalty Period") by FCA and shall be payable by FCA no later than thirty (30) calendar days after the end of the preceding full quarterly period. For purposes of clarity, the Royalty calculated for any given Royalty Period will include any deemed sales (pursuant to Section 1(b)), during such Royalty Period.

(f) For each Royalty Period, within fifteen (15) business days of the end of such period, FCA shall provide Royalty Payee with a written royalty statement. Such royalty statement shall be certified as accurate by a duly authorized officer of FCA reciting (i) the number and types of Railcars or Tank Cars sold (or deemed sold pursuant to

Castaños o en cualquier otro lugar dentro de México, sólo se devengará una Regalía por un periodo de años, que comenzará el primer día del mes en que comience la producción en dicha(s) línea(s) adicional(es) y terminará en la misma fecha en que termine la obligación de Regalía para la primera y segunda líneas de producción ((i), (ii) y (iii) en conjunto, los "Periodos de Línea de Producción").

(d) FCA calculará la Regalía de acuerdo con las Cláusulas 1(a) y 1(b) por trimestres naturales (el "Periodo de Regalía") y la pagará a más tardar treinta (30) días naturales después del final del periodo trimestral completo anterior. Para propósitos de claridad, la Regalía calculada para cualquier Periodo de Regalía incluirá cualquier venta considerada (de conformidad con la Cláusula 1(b)), durante dicho Periodo de Regalía.

(e) Para cada Periodo de Regalía, dentro de los quince (15) días hábiles siguientes a la finalización de dicho



Section 1(b)) during the applicable Royalty Period, (ii) the applicable end customers gross invoice, and (iii) the costs of freight, insurance and/or custom duties and fees excluded from Railcar Sales Net Revenue (as defined below) or Tank Car Sales Net Revenue (as defined below) for each shipment.

(g) "Railcar Sales Net Revenue" shall mean the gross selling price or other consideration received by FCA from the sale of newly manufactured or converted, modified, refurbished or repaired Railcars, other than tank cars, sold to third parties or to FCA for its own leasing fleet. Railcar Sales Net Revenue shall not include out-of-pocket costs of freight, insurance and/or custom duties and fees.

(h) "Tank Car Sales Net Revenue" shall mean the gross selling price or other consideration received by FCA from the sale of newly manufactured or converted, modified, refurbished or repaired Tank Cars sold to third

periodo, FCA proporcionará al Acreedor una declaración de regalías por escrito. Dicha declaración de regalías deberá ser certificada como exacta por un funcionario debidamente autorizado de FCA, y deberá contener (i) el número y los tipos de Vagones y Vagones Cisterna vendidos (o considerados vendidos de conformidad con la Cláusula 1(b)) durante el Periodo de Regalía aplicable, (ii) la factura bruta de los clientes finales aplicables, y (iii) los costes de flete, seguro y/o derechos y tasas de aduana excluidos de los Ingresos Netos por Ventas de Vagones (como se define más adelante) o de los Ingresos Netos por Ventas de Vagones Cisterna (como se define más adelante) para cada envío.

(f) "Ingresos Netos por Ventas de Vagones" significará el precio de venta bruto u otra contraprestación recibida por FCA por la venta de Vagones de nueva fabricación o convertidos, modificados, renovados o reparados, distintos de los vagones cisterna, vendidos a terceros o a FCA para su propia flota de renta. Los Ingresos Netos por Ventas de Vagones no incluirán los costes de flete, seguro y/o derechos y tarifas de aduana.

(g) "Ingresos Netos por Ventas de Vagones Cisterna" significará el precio de venta bruto u otra contraprestación recibida por FCA por la venta de Vagones Cisterna de nueva fabricación

parties or to FCA for its own leasing fleet. Tank Car Sales Net Revenue shall not include out-of-pocket costs of freight, insurance and/or custom duties and fees.

(i) All payments due to Royalty Payee shall be made in United States currency by wire transfer to the Account, unless otherwise specified by them to FCA.

## 2. TERM

o convertidos, modificados, restaurados o reparados vendidos a terceros o a FCA para su propia flota de renta. Los Ingresos Netos por Ventas de Vagones Cisterna no incluirán los costes de flete, seguro y/o derechos y tarifas de aduana.

(h) Todos los pagos debidos al Acreedor se realizarán en moneda de curso legal de los Estados Unidos mediante transferencia bancaria a la Cuenta, a menos que éste

(a) The term of this Agreement (the “Term”) shall commence on the Effective Date and end upon the termination of the last applicable Production Line Period, unless terminated earlier pursuant to this Agreement.

(b) FCA shall have the right to immediately terminate this Agreement upon written notice to Royalty Payee in the event that:

i. Royalty Payee commits a material breach of any of its obligations under this Agreement, and such breach is not cured within ninety (90) days after written notice to such Party of such breach; or

ii. any Gil commits a material breach of any of their obligations under that certain lease agreements and its respective amendment agreements, by and between the Gils as lessors and FCA-Fasemex, S. de R.L. de C.V. as lessee, and such breach is not cured within ninety (90) days after written notice to the Gils of such breach; provided, however, that this Agreement shall not terminate in the event that such lease agreement and its respective amendment agreements, are terminated by mutual agreement of the parties thereto, for any reason whatsoever, prior to its expiration date.

especifique lo contrario a FCA.

## **2. VIGENCIA**

(a) La vigencia de este Contrato (la “Vigencia”) comenzará en la Fecha de Inicio y deberá terminar en la terminación del último Periodo de Línea de Producción aplicable, salvo que termine anticipadamente en virtud del presente Contrato.

(b) FCA tendrá derecho a rescindir inmediatamente el presente Contrato previa notificación por escrito al Acreedor en caso de que:

i. El Acreedor cometa un incumplimiento grave de cualquiera de sus obligaciones en virtud del presente Contrato, y dicho incumplimiento no se subsane en un plazo de noventa (90) días tras la notificación por escrito de dicho incumplimiento a dicha Parte; o

ii. cualquier de los Señores Gil cometa un incumplimiento sustancial de cualquiera de sus obligaciones conforme a ciertos contratos de arrendamiento y sus respectivos convenios modificatorios, celebrados entre los Señores Gil como arrendadores y FCA-Fasemex, S. de R.L. de C.V. como arrendatario, y dicho incumplimiento no sea subsanado dentro de los noventa (90) días siguientes a la notificación por escrito a los Señores Gil de dicho incumplimiento; en el entendido, sin embargo, que el presente Contrato no terminará en caso de que dicho contrato de arrendamiento y sus respectivos convenios modificatorios, sean terminados por mutuo acuerdo de las partes del mismo, por cualquier motivo, antes de su fecha de vencimiento.

## **3. REPRESENTATIONS AND WARRANTIES**

(a) FCA represents and warrants that (i) it is a corporation duly organized, validly existing, and in good standing

## **3. DECLARACIONES Y GARANTÍAS**

(a) FCA declara y garantiza que (i) es una sociedad mercantil debidamente constituida, con existencia válida y

under the laws of the State of Delaware, and (ii) has full power and authority to enter into this Agreement and perform its obligations hereunder.

(b) Royalty Payee represents and warrants that he is an individual, of Mexican nationality, of legal age, married, with full authority to exercise their own rights and with sufficient and enough legal capacity to be bound by the terms of this Agreement.

#### **4. RECORD INSPECTION AND AUDIT**

(a) Royalty Payee shall have the right, upon reasonable notice, to inspect FCA's books, records, accounts, and all other documents and material in FCA's possession or control with respect to the subject matter of this Agreement, subject to appropriate confidentiality restrictions, including all information leading to, derived from or related to the Royalties, the Railcar Sales Net Revenue and the Tank Cars Sales Net Revenue. FCA shall maintain proper books, records and accounts with entries that are full, true and correct in all material respects and in conformity with GAAP consistently applied regarding the Royalties, the Railcar Sales Net Revenue and the Tank Cars Sales Net Revenue. FCA shall permit any representatives or advisors of Royalty Payee, upon reasonable prior notice, to inspect, examine and make extracts from its books, records, accounts, and all other documents and material in FCA's possession or control with respect to the subject matter of this Agreement, and to discuss its calculations, entries and records with its officers and independent accountants, all at such reasonable times and as often as reasonably requested, in each case at Royalty Payee's expense; provided that, Royalty Payee shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an event of default by FCA, in which case the inspection and works related thereto can take place at any reasonable time and shall be at FCA's expense.

en pleno goce de sus derechos conforme a las leyes del Estado de Delaware, y (ii) cuenta con las facultades para celebrar el presente Contrato y cumplir con las obligaciones a su cargo.

(b) El Acreedor declara y garantiza que es una persona física, de nacionalidad mexicana, mayor de edad, casado, con plena capacidad para ejercer sus propios derechos y con capacidad legal suficiente y bastante para obligarse en los términos del presente Contrato.

#### **4. INSPECCIÓN Y AUDITORÍA DE REGISTROS**

(a) El Acreedor tendrá derecho, previo aviso razonable, a inspeccionar los libros, registros, cuentas y todos los demás documentos y materiales en posesión o control de FCA con respecto al objeto de este Contrato, sujeto a las restricciones de confidencialidad apropiadas, incluida toda la información que conduzca, derive o esté relacionada con las Regalías, los Ingresos Netos por Ventas de Vagones y los Ingresos Netos por Ventas de Vagones Cisterna. FCA mantendrá libros, registros y cuentas adecuados con entradas que sean completas, verdaderas y correctas en todos los aspectos materiales y de conformidad con los PCGA aplicados de forma coherente en relación con las Regalías, los Ingresos Netos por Ventas de Vagones y los Ingresos Netos por Ventas de Vagones Cisterna. FCA permitirá a cualquier representante o asesor del Acreedor, previo aviso razonable, inspeccionar, examinar y extraer extractos de sus libros, registros, cuentas y cualquier otro documento y material en posesión o control de FCA en relación con el objeto de este Contrato, así como discutir sus cálculos, entradas y registros con sus directivos y contadores independientes, todo ello en momentos razonables y con la frecuencia que se solicite razonablemente, en cada caso a expensas del Acreedor; siempre y cuando, el Acreedor no ejerza tales derechos más de dos (2) veces durante cualquier año natural, salvo que exista un

(b) All books and records relative to FCA's obligations hereunder shall be maintained and made accessible to Royalty Payee for inspection at a location in the United States for at least two (2) years after termination or expiration of this Agreement.

## 5. CONFIDENTIALITY

(a) All disclosures of trade secrets, know-how, financial information, or other information of a type that is known to be, or that a reasonable person would recognize it to be, confidential made by FCA or any of its affiliates (as applicable, the "Discloser") under or in connection with this Agreement, as well as the terms of this Agreement (collectively, the "Confidential Information"), shall be received and maintained in confidence by the recipient (the "Recipient") and each Recipient shall treat all such Confidential Information as the confidential property of the Discloser and keep it confidential and secure and protect it from unauthorized use or disclosure by using at least the same degree of care as Recipient employs to avoid unauthorized use or disclosure of its own Confidential Information of similar nature, but in no event less than reasonable care. Notwithstanding the foregoing, a Recipient shall be permitted to disclose any Confidential Information if required by applicable law, provided the Recipient provides the Discloser reasonable prior opportunity to comment upon such disclosure to the extent permitted by law and agree to cooperate to take reasonable steps to minimize the extent of any such required disclosure.

(b) The term "Confidential Information" does not include information that (i) was in the public domain prior to the time it was furnished to Recipient or is at the time of the alleged breach (through no willful or improper action or inaction by such Recipient) generally available to the public, (ii) was or becomes available to a Recipient on a non-confidential basis from a source other than FCA or its affiliates, provided

caso de incumplimiento por parte de FCA, en cuyo caso la inspección y los trabajos relacionados con la misma podrán tener lugar en cualquier momento razonable y correrán a cargo de FCA.

(b) Todos los libros y registros relativos a las obligaciones de FCA en virtud del presente Contrato se mantendrán y serán accesibles al Acreedor para su inspección en una ubicación en los Estados Unidos de América durante al menos dos (2) años tras la terminación o expiración del presente Contrato.

## 5. CONFIDENCIALIDAD

(a) Todas las divulgaciones de secretos comerciales, conocimientos técnicos, información financiera u otra información de un tipo que se sabe que es confidencial, o que una persona razonable reconocería que es confidencial, realizadas por FCA o cualquiera de sus subsidiarias (según corresponda, el "Revelador") en virtud o en relación con este Contrato, así como los términos de este Contrato (colectivamente, la "Información Confidencial"), será recibida y mantenida de forma confidencial por el receptor (el "Receptor") y cada Receptor tratará toda Información Confidencial como propiedad confidencial del Revelador y la mantendrá confidencial y segura y la protegerá del uso o divulgación no autorizados utilizando al menos el mismo grado de cuidado que el Receptor emplea para evitar el uso o divulgación no autorizados de su propia Información Confidencial de naturaleza similar, pero en ningún caso inferior al cuidado razonable. Sin perjuicio de lo anterior, el Receptor podrá divulgar cualquier Información Confidencial si así lo exige la legislación aplicable, siempre y cuando el Receptor proporcione al Revelador una oportunidad previa razonable para comentar dicha divulgación en la medida en que lo permita la ley y acepte cooperar para tomar medidas razonables con el fin de minimizar el alcance de cualquier divulgación exigida.

(b) El término "Información confidencial" no incluye información que (i) fuera de dominio público antes del momento en que se proporcionó al Receptor o que en el

	momento del supuesto incumplimiento (sin acción o inacción voluntaria o indebida por parte de dicho Receptor) esté generalmente a disposición del público, (ii) haya
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<p>such other source is not be known by the Recipient to be bound by a confidentiality obligation, (iii) is lawfully known to a Recipient prior to disclosure of the Confidential Information by FCA or its affiliates, or (iv) is independently developed by a Recipient without any use of any Confidential Information.</p> <p>(c)Each Recipient's obligations with respect to the Confidential Information shall continue for a term of three (3) years following the termination of this Agreement.</p> <p><b>6. COMPLIANCE WITH LAWS</b></p> <p>Notwithstanding anything to the contrary, the obligations of the Parties hereto shall be subject to all laws, present and future (including export control laws and regulations) of any government having jurisdiction over the Parties hereto, and to orders, regulations, directions, or requests of any such government. Each Party shall undertake to comply with and be solely responsible for complying with such laws applicable to such Party.</p> <p><b>7. TAXES</b></p> <p>Each Party shall otherwise remain responsible for all taxes applicable to such Party and its operations in connection with this Agreement.</p> <p><b>8. NOTICE AND PAYMENT</b></p> <p>Any notice or communication required or permitted to be given be any provisions of this Agreement, including any consents, shall be in writing and shall be deemed to have been given and received by the person to whom directed, if properly addressed: (1) when delivered personally to such person or to an officer of the person to which</p>	<p>estado o pase a estar a disposición del Receptor de forma no confidencial por parte de una fuente distinta a FCA o sus subsidiarias, siempre y cuando el Receptor no sepa que dicha fuente está sujeta a una obligación de confidencialidad, (iii) el Receptor la conozca legalmente antes de la divulgación de la Información Confidencial por parte de FCA o sus subsidiarias, o (iv) el Receptor la desarrolle de forma independiente sin utilizar alguna Información Confidencial.</p> <p>(c) Las obligaciones de cada Receptor con respecto a la Información Confidencial continuarán durante un plazo de tres (3) años contados a partir de la terminación del presente Contrato.</p> <p><b>6. CUMPLIMIENTO CON LA LEY.</b></p> <p>No obstante cualquier disposición en contrario, las obligaciones de las Partes del presente Contrato estarán sujetas a todas las leyes, presentes y futuras (incluidas las leyes y reglamentos de control de las exportaciones) de cualquier gobierno que tenga jurisdicción sobre las Partes del presente Contrato, y a las órdenes, regulaciones, instrucciones o solicitudes de cualquiera de dichos gobiernos. Cada una de las Partes se comprometerá a cumplir y será la única responsable del cumplimiento de dichas leyes aplicables a dicha Parte.</p> <p><b>7. IMPUESTOS</b></p> <p>Cada Parte seguirá siendo responsable de todos los impuestos aplicables a dicha Parte y a sus operaciones en relación con el presente Contrato.</p> <p><b>8. NOTIFICACIONES Y PAGO</b></p>
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directed, (2) upon confirmation of receipt of transmission by email, or (3) two days after being deposited with an internationally recognized overnight courier, delivery charges prepaid for delivery the following day. The addresses for notice are as follows:

Cualquier notificación o comunicación requerida o permitida en virtud de cualquiera de las disposiciones del presente Contrato, incluido cualquier otorgamiento de consentimiento, se realizará por escrito y se considerará entregada y recibida por la persona a la que se dirige, si está debidamente dirigida: (1) cuando se entrega personalmente a dicha persona o a un funcionario de la persona a la que se dirige, (2) tras la confirmación de la recepción de la transmisión por correo electrónico, o (3) dos días después de ser depositada en un servicio de mensajería nocturno reconocido internacionalmente, con los gastos de envío pagados por adelantado para su

FCA:  
FreightCar America, Inc.  
125 S. Wacker Drive, Suite 1500  
Chicago, IL 60606  
Attn: Celia Perez  
Email: cperez@freightcar.net  
With a copy to (which shall not constitute notice):  
Kelley Drye & Warren LLP  
333 W. Wacker Dr., 26<sup>th</sup> Floor  
Chicago, IL 60606  
Attn: Andrew Pillsbury  
APillsbury@kelleydrye.com  
Royalty Payee:  
Alejandro Gil Benavides  
Barranquilla 404 Col. Guadalupe, Monclova, Coahuila  
25750 México  
Email: agil@fasemex.com.mx  
Attn: Alejandro Gil Benavides  
Email: agil@fasemex.com.mx  
With a copy to (which shall not constitute notice):

entrega al día siguiente. Las direcciones de notificación son las siguientes:  
FCA:  
FreightCar America, Inc.  
125 S. Wacker Drive, Suite 1500  
Chicago, IL 60606  
Attn: Celia Perez  
Email: cperez@freightcar.net  
Con copia a (la cual no constituirá notificación):  
Kelley Drye & Warren LLP  
333 W. Wacker Dr., 26<sup>o</sup> Piso  
Chicago, IL 60606  
Attn: Andrew Pillsbury  
APillsbury@kelleydrye.com  
El Acreedor:  
Alejandro Gil Benavides  
Barranquilla 404 Col. Guadalupe, Monclova, Coahuila  
25750 México  
Email: agil@fasemex.com.mx  
Attn: Alejandro Gil Benavides



Romero, Ramos, Quintanilla y Bortoni S.C.  
Lazaro Cardenas 435 Despacho 410  
Colonia Loma Larga, 66266  
San Pedro Garza Garcia, Nuevo Leon, Mexico.  
Attn: Francisco Romero  
Email: fromero@rrqb.mx

Any Party may change its address, email or individual for receiving notice for the purpose of this Section by notice to the other given in the manner set forth above.

## 9. GOVERNING LAW

This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws of the State of Illinois applicable to contracts made in that state, without giving effect to any choice of law or conflict of law provision or rule that would cause the application

Email: agil@tasemex.com.mx  
Con copia a (la cual no constituirá notificación):  
Romero, Ramos, Quintanilla y Bortoni S.C.  
Lazaro Cardenas 435 Despacho 410  
Colonia Loma Larga, 66266  
San Pedro Garza Garcia, Nuevo Leon, Mexico.

Attn: Francisco Romero  
Email: fromero@rrqb.mx

Cualquiera de las Partes podrá cambiar su dirección, correo electrónico o persona para recibir notificaciones a los efectos de la presente Cláusula mediante notificación a la otra Parte realizada en la forma establecida anteriormente.

## 9. LEGISLACIÓN APLICABLE

El presente Contrato se regirá y se someterá en cuanto a su validez, ejecución, interpretación, construcción, efecto y en todos los demás aspectos por las leyes internas del Estado de Illinois aplicables a los contratos celebrados en dicho estado, sin dar efecto a ninguna elección de

of the laws of any jurisdiction other than the State of Illinois.

## 10. CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL PROCEEDINGS (IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, ANY RELATIONSHIPS BETWEEN THE PARTIES HEREUNDER AND ANY DISPUTES WITH RESPECT TO ANY OF THE FOREGOING SHALL BE COMMENCED AND PROSECUTED EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS LOCATED IN THE CITY OF CHICAGO, COUNTY OF COOK, AND ANY

ley o conflicto de disposiciones o normas legales que provoquen la aplicación de las leyes de cualquier jurisdicción distinta del Estado de Illinois.

## 10. CONSENTIMIENTO A LA JURISDICCIÓN; RENUNCIA AL JUICIO CON JURADO.

(a) CADA UNA DE LAS PARTES ACEPTA DE FORMA IRREVOCABLE E INCONDICIONAL QUE TODOS LOS PROCEDIMIENTOS (CONTRACTUALES, EXTRA CONTRACTUALES O DE OTRO TIPO) DERIVADOS O RELACIONADOS CON EL PRESENTE CONTRATO, LAS TRANSACCIONES CONTEMPLADAS EN EL MISMO, CUALQUIER RELACIÓN ENTRE LAS PARTES EN VIRTUD DEL PRESENTE Y CUALQUIER DISPUTA CON RESPECTO A CUALQUIERA DE LOS

APPELLATE COURT THEREFROM OR THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS AND ANY APPELLATE COURT THEREFROM (COLLECTIVELY, THE "Illinois Courts"). EACH PARTY HERE-BY IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND SUBMITS, FOR IT-SELF AND ITS ASSETS, TO THE EXCLUSIVE JURISDICTION OF ANY OF THE ILLINOIS COURTS IN RESPECT OF ANY SUCH PROCEEDING. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 8. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(b)EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW

ANTERIORES SE INICIARÁ Y PROCESARÁ EXCLUSIVAMENTE EN LOS TRIBUNALES DEL ESTADO DE ILLINOIS UBICADOS EN LA CIUDAD DE CHICAGO, COUNTY OF COOK, Y CUALQUIER TRIBUNAL DE APELACIÓN DEL MISMO O LOS ESTADOS UNIDOS PARA EL DISTRITO NORTE DE ILLINOIS Y CUALQUIER TRIBUNAL DE APELACIÓN DEL MISMO (COLECTIVAMENTE, LOS "Tribunales de Illinois"). CADA UNA DE LAS PARTES CONSIENTE Y SE SOMETE IRREVOCABLE E INCONDICIONALMENTE, POR SÍ MISMA Y POR SUS BIENES, A LA JURISDICCIÓN EXCLUSIVA DE CUALQUIERA DE LOS TRIBUNALES DE ILLINOIS CON RESPECTO A CUALQUIERA DE DICHOS PROCEDIMIENTOS. POR LA PRESENTE, CADA UNA DE LAS PARTES CONSIENTE DE FORMA IRREVOCABLE E INCONDICIONAL A LA NOTIFICACIÓN DE PROCESOS EN LA FORMA PREVISTA PARA LAS NOTIFICACIONES EN LA CLAÚSULA 8. NADA DE LO DISPUESTO EN EL PRESENTE CONTRATO AFECTARÁ AL DERECHO DE CUALQUIERA DE LAS PARTES A NOTIFICAR PROCESOS DE CUALQUIER OTRA FORMA PERMITIDA POR LA LEY.

(b) POR EL PRESENTE CONTRATO, CADA UNA DE LAS PARTES RENUNCIA DE FORMA IRREVOCABLE E

OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, ANY RELATIONSHIPS BETWEEN THE PARTIES HEREUNDER AND ANY DISPUTES WITH RESPECT TO ANY OF THE FOREGOING IN ANY OF THE ILLINOIS COURTS. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO

INCONDICIONAL, EN LA MEDIDA EN QUE PUEDA HACERLO DE FORMA LEGAL Y EFECTIVA, A CUALQUIER OBJECCIÓN QUE PUEDA TENER AHORA O EN EL FUTURO AL ESTABLECIMIENTO DE LA JURISDICCIÓN DE CUALQUIER PROCEDIMIENTO DERIVADO O RELACIONADO CON EL PRESENTE CONTRATO, LAS TRANSACCIONES CONTEMPLADAS EN EL PRESENTE DOCUMENTO CUALQUIER



THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH PROCEEDING IN ANY OF THE ILLINOIS COURTS. EACH OF THE PARTIES AGREES THAT A FINAL JUDGMENT IN ANY SUCH PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

(c) EACH PARTY AGREES THAT ANY PROCEEDING (IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, ANY RELATIONSHIPS BETWEEN THE PARTIES HEREUNDER AND ANY DISPUTES WITH RESPECT TO ANY OF THE FOREGOING WILL INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUCH PROCEEDING.

(d) EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY PROCEEDING ARISING UNDER OR RELATING TO THIS AGREEMENT, SEEK TO ENFORCE THE FOREGOING WAIVERS,

EN EL PRESENTE DOCUMENTO, CUALQUIER RELACIÓN ENTRE LAS PARTES EN VIRTUD DEL PRESENTE DOCUMENTO Y CUALQUIER DISPUTA CON RESPECTO A CUALQUIERA DE LOS ANTERIORES EN CUALQUIERA DE LOS TRIBUNALES DE ILLINOIS. CADA UNA DE LAS PARTES ACUERDA QUE UNA SENTENCIA DEFINITIVA EN CUALQUIERA DE DICHOS PROCEDIMIENTOS SERÁ CONCLUYENTE Y PODRÁ EJECUTARSE EN OTRAS JURISDICCIONES MEDIANTE UNA DEMANDA BASADA EN LA SENTENCIA O DE CUALQUIER OTRA FORMA PREVISTA POR LA LEY.

(c) CADA UNA DE LAS PARTES ACEPTA QUE CUALQUIER PROCEDIMIENTO (CONTRACTUAL, EXTRACONTRACTUAL O DE OTRO TIPO) DERIVADO O RELACIONADO CON EL PRESENTE CONTRATO, LAS TRANSACCIONES CONTEMPLADAS EN EL MISMO, CUALQUIER RELACIÓN ENTRE LAS PARTES EN VIRTUD DEL PRESENTE Y CUALQUIER DISPUTA CON RESPECTO A CUALQUIERA DE LOS ANTERIORES IMPLICARÁ CUESTIONES COMPLICADAS Y DIFÍCILES, Y POR LO TANTO CADA UNA DE LAS PARTES RENUNCIA IRREVOCABLE E INCONDICIONALMENTE A CUALQUIER DERECHO QUE PUEDA TENER A UN JUICIO CON JURADO CON RESPECTO A CUALQUIERA DE DICHOS PROCEDIMIENTOS.

(d) CADA PARTE CERTIFICA Y RECONOCE QUE (i) NINGÚN REPRESENTANTE, AGENTE O ABOGADO DE OTRA PARTE HA DECLARADO, DE FORMA EXPRESA O DE OTRO TIPO, QUE DICHA OTRA PARTE NO INTENTARÁ, EN CASO DE PROCEDIMIENTO EN VIRTUD DEL PRESENTE CONTRATO O EN RELACIÓN

(ii) SUCH PARTY UNDERSTANDS AND HAS

CON EL MISMO, EJECUTAR LAS RENUNCIAS

CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (iii) SUCH PARTY MAKES SUCH WAIVERS VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATION IN THIS SECTION 10(d).

(e) EACH OF THE PARTIES HERETO WAIVES THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY LAWSUIT, ACTION OR PROCEEDING SEEKING ENFORCEMENT OF SUCH PARTY'S RIGHTS UNDER THIS AGREEMENT.

#### **11.SURVIVAL**

If this Agreement terminates or expires, the provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement shall survive, including Sections 1, 4, 5, and 7 through 21.

#### **12.FURTHER ASSURANCES**

In connection with this Agreement and the transactions contemplated hereby, each Party shall execute and deliver such further documents, and perform such further acts, as may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions contemplated hereunder, as reasonably requested by another Party.

#### **13.ENTIRE AGREEMENT**

This Agreement, contains all agreements among the Parties relating to its subject matter and supersedes and cancels any and all previous contracts or agreements among the Parties with respect thereto. Any other understanding about this Agreement, including additional terms or provisions contained in invoices, shipping papers, or other documents, will be of no force or effect. Any amendment to this Agreement must be in writing and will not be effective until it is executed and approved by an authorized representative of each Party.

ANTERIORES, (ii) DICHA PARTE ENTIENDE Y HA CONSIDERADO LAS IMPLICACIONES DE DICHAS RENUNCIAS, (iii) DICHA PARTE REALIZA DICHAS RENUNCIAS VOLUNTARIAMENTE, Y (iv) DICHA PARTE HA SIDO INDUCIDA A ENTRAR EN ESTE CONTRATO POR, ENTRE OTRAS COSAS, LAS RENUNCIAS MUTUAS Y LA CERTIFICACIÓN EN ESTA CLÁUSULA 10(d).

(e) CADA UNA DE LAS PARTES RENUNCIA AL DERECHO A UN JUICIO CON JURADO EN RELACIÓN CON CUALQUIER DEMANDA, ACCIÓN O PROCEDIMIENTO QUE PRETENDA HACER VALER LOS DERECHOS DE DICHA PARTE EN VIRTUD DEL PRESENTE CONTRATO.

#### **11. PERMANENCIA**

En caso de resolución o expiración del presente Contrato, subsistirán las disposiciones del mismo que por su naturaleza se extiendan más allá de la expiración o resolución del presente Contrato, incluidas las Cláusulas 1, 4, 5 y 7 a 21.

#### **12. GARANTÍAS ADICIONALES**

En relación con el presente Contrato y las transacciones contempladas en el mismo, cada una de las Partes suscribirá y entregará los documentos adicionales y realizará los actos adicionales que sean necesarios o apropiados para efectuar y cumplir las disposiciones del presente Contrato y las transacciones contempladas en el mismo, según lo solicite razonablemente la otra Parte.

#### **13. UNIDAD DE CONVENIO**

El presente Contrato contiene todos los acuerdos entre las Partes relativos a su objeto y sustituye y anula todos y cada uno de los contratos o acuerdos anteriores entre las Partes con respecto al mismo. Cualquier otro acuerdo sobre el presente Contrato, incluidos los términos o disposiciones adicionales contenidos en facturas, documentos de envío u otros documentos, no tendrá fuerza ni efecto alguno. Cualquier modificación del presente Contrato deberá realizarse por escrito y no surtirá efecto hasta que

#### **14.SEVERABILITY**

If any provision of this Agreement is determined by any legislature, court, or administrative agency to be invalid or unenforceable, every other provision will remain in full force and effect, unless the purposes of this Agreement cannot be achieved. The Parties will use commercially reasonable efforts to substitute a valid, legal, and enforceable provision, which insofar as practical implements the purposes of any provision held invalid, illegal, or unenforceable.

#### **15.WAIVERS**

No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

#### **16.ASSIGNMENT**

This Agreement is deemed to be of a personal nature and no party may assign, convey, or transfer this Agreement or any right or interest in this Agreement, or delegate or subcontract performance of any obligations hereunder, in whole or in part, to any third party, without the prior written consent of FCA. Any attempt to do so shall be void *ab initio*.

Notwithstanding the foregoing, the Parties agree that (1) the initial Royalty Payee shall have the one-time right to totally or partially assign and/or

haya sido ejecutada y aprobada por un representante autorizado de cada una de las Partes.

#### **14. ILEGALIDAD DE DISPOSICIONES**

Si cualquier disposición del presente Contrato es declarada inválida o inaplicable por cualquier legislatura, tribunal u organismo administrativo, todas las demás disposiciones seguirán en pleno vigor y efecto, a menos que no puedan alcanzarse los fines del presente Contrato. Las Partes harán todos los esfuerzos comercialmente razonables para sustituir una disposición válida, legal y aplicable que, en la medida de lo posible, cumpla los fines de cualquier disposición declarada inválida, ilegal o inaplicable.

#### **15. RENUNCIAS**

Ninguna renuncia de cualquiera de las Partes a cualquiera de las disposiciones del presente documento será efectiva a menos que se establezca explícitamente por escrito y esté firmada por la Parte que renuncia. Ninguna renuncia por cualquiera de las Partes se interpretará como una renuncia con respecto a cualquier falta, incumplimiento o violación no identificado expresamente por dicha renuncia por escrito, ya sea de carácter similar o diferente, y ya sea que ocurra antes o después de dicha renuncia. El no ejercicio o el retraso en el ejercicio de cualquier derecho, recurso, facultad o privilegio derivado del presente Contrato no se interpretará como una renuncia al mismo; ni el ejercicio único o parcial de cualquier derecho, recurso, facultad o privilegio en virtud del presente Contrato impedirá cualquier otro ejercicio posterior del mismo o el ejercicio de cualquier otro derecho, recurso, facultad o privilegio.

#### **16. CESIÓN**

El presente Contrato se considera de naturaleza personal y ninguna de las partes podrá ceder, transmitir o transferir el presente Contrato o cualquier derecho o interés en el mismo, ni delegar o subcontratar el cumplimiento de

	cualquiera de sus obligaciones, en su totalidad o en parte, a terceros, sin el consentimiento previo por escrito de FCA. Cualquier intento de hacerlo será nulo <i>ab initio</i> .
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<p>transfer its rights under this Agreement, without the prior written consent of FCA, (a) by any means (i) to any individual that is a member of the initial Royalty Payee’s family and that is a blood relative, a spouse and/or with whom the initial Royalty Payee has an adoption relationship, and/or (ii) to any legal entity in which Royalty Payee is a controlling equity holder (for so long as Royalty Payee or its successors remain the controlling equity holder), (b) by means of a contribution to a trust set up by the initial Royalty Payee that (i) is controlled by, or, for the benefit of, the initial Royalty Payee, or (ii) is for the benefit of the beneficiaries of such trust or any individual that is a member of the initial Royalty Payee’s family and that is a blood relative, a spouse and/or with whom the initial Royalty Payee has an adoption relationship, and/or (2) the initial Royalty Payee and its successors, if any, shall have the right to totally or partially assign and/or transfer its rights under this Agreement, without the prior written consent of FCA, by cause of death to their heirs and/or legatees, appointed by will or by law if the initial Royalty Payee or its successors die intestate. In the cases referred to in (1) above, Royalty Payee or its legal representative, as the case may be, shall give written notice to FCA 30 (thirty) calendar days prior to the corresponding event. In the cases referred to in (2) above, the executor shall give written notice to FCA 30 (thirty) calendar days after to the corresponding event.</p> <p><b>17.NO THIRD-PARTY BENEFICIARIES</b></p>	<p>No obstante lo anterior, las Partes acuerdan que (1) el Acreedor inicial tendrá el derecho, por una sola vez, a ceder y/o transferir total o parcialmente sus derechos en virtud del presente Contrato, sin el consentimiento previo por escrito de FCA, (a) por cualquier medio (i) a cualquier persona física que sea miembro de la familia del Acreedor inicial y que sea pariente consanguíneo, cónyuge y/o con quien el Acreedor inicial tenga una relación de adopción, y/o (ii) a cualquier entidad jurídica en la que el Acreedor sea un accionista mayoritario (mientras el Acreedor o sus herederos siga siendo el accionista mayoritario), (b) mediante aportación a un fideicomiso constituido por el Acreedor inicial que (i) sea controlador por, o, para el beneficio de, el Acreedor inicial, o (ii) sea para el beneficio de los fideicomisarios de dicho fideicomiso o para cualquier persona física que sea miembro de la familia del Acreedor inicial y que sea pariente consanguíneo, cónyuge y/o con quien el Acreedor inicial tenga una relación de adopción, y/o (2) el Acreedor inicial y sus herederos, si los hubiere, tendrán derecho a ceder y/o transferir total o parcialmente sus derechos en virtud del presente Contrato, sin el consentimiento previo por escrito de FCA, por causa de muerte a sus herederos y/o legatarios, designados por testamento o por ley si el Acreedor inicial o sus herederos fallecen intestados. En los casos anteriormente referidos en el punto (1), el Acreedor o su representante legal, según sea el caso, deberán notificar por escrito a FCA 30 (treinta) días naturales antes de ocurrido el evento correspondiente. En los casos anteriormente referidos en el punto (2), el</p>
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This Agreement is solely for the benefit of the Parties and their respective permitted successors and assigns, without prejudice to the provisions of Section 16 hereof. There are no other third-party beneficiaries to this Agreement.

#### **18. RELATIONSHIP OF THE PARTIES**

The relationship between and among the Parties is solely that of independent contractors. Nothing in this Agreement creates a partnership, joint venture, or principal-agent relationship. Royalty Payee shall not have any authority to create or

albacea deberá notificar por escrito a FCA 30 (treinta) días naturales después de ocurrido el evento correspondiente.

#### **17. EFECTO VINCULATORIO; BENEFICIO**

El presente Contrato beneficia exclusivamente a las Partes y a sus respectivos causahabientes y cesionarios autorizados, sin perjuicio de lo dispuesto en la Cláusula 16 del mismo. No existen terceros beneficiarios del presente Contrato.

#### **18. RELACIÓN ENTRE LAS PARTES**

assume in FCA's name or on its behalf any obligation, expressed or implied, or to act or purport to act as FCA's agent or legally empowered representative for any purpose whatsoever. No Party shall be liable to any third party in any way for any engagement, obligation, commitment, contract, representation, transaction, or act or omission to act of another other Party, except as expressly provided herein.

#### **19. TERMINOLOGY AND CONSTRUCTION**

All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of Articles, Sections, Exhibits, and Schedules are for convenience only, and neither limit nor amplify the provisions of this Agreement. Except as specifically provided, references to Articles, Sections, Exhibits, and Schedules in this Agreement refer to Articles, Sections, Exhibits, and Schedules to, this Agreement. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting

La relación entre las Partes es exclusivamente la de contratistas independientes. Nada en este Contrato crea una sociedad en participación, *joint venture* o una relación principal-agente. El Acreedor no tendrá autoridad alguna para crear o asumir en nombre de FCA o en su representación ninguna obligación, expresa o implícita, ni para actuar o pretender actuar como agente o representante legalmente facultado de FCA para ningún fin. Ninguna de las Partes será responsable ante terceros de ninguna manera por cualquier compromiso, obligación, compromiso, contrato, representación, transacción, o acto u omisión de actuar de la otra Parte, salvo lo expresamente dispuesto en el presente Contrato.

#### **19. TERMINOLOGÍA Y ESTRUCTURA**

Todos los pronombres personales utilizados en el presente Contrato, ya sea en género masculino, femenino o neutro, incluirán todos los demás géneros; y el singular incluirá el plural y viceversa. Los títulos de los Artículos, Cláusulas, Anexos y Listas se utilizan únicamente por comodidad y no limitan ni amplían las disposiciones del presente Contrato. Salvo que se disponga específicamente lo contrario, las referencias a los Artículos, Cláusulas, Anexos y Anexos de este Contrato se refieren a los

language (such as “without limitation,” or “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter. The word “or” shall mean “and/or” unless the context requires otherwise. The words “day,” “month,” and “year” mean, respectively, calendar day, calendar month and calendar year. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between them and that this Agreement shall be construed in favor of or against either Party by reason of the extent to which such Party of its professional advisors participated in the preparation of such agreements.

Artículos, Cláusulas, Anexos y Anexos de este Contrato. El uso en el presente documento de la palabra “incluyendo”, cuando siga a cualquier declaración, término o asunto general, no se interpretará en el sentido de limitar dicha declaración, término o asunto a los elementos o asuntos específicos establecidos inmediatamente después de dicha palabra o a elementos o asuntos similares, independientemente de que se utilice o no un lenguaje no limitativo (como “sin limitación” o “pero sin limitarse a”, o palabras de significado similar) con referencia a los mismos, sino que se considerará que se refiere a todos los demás elementos o asuntos que pudieran razonablemente incluirse en el ámbito más amplio posible de dicha declaración, término o asunto general. La palabra “o” significará “y/o” a menos que el contexto requiera lo contrario. Las palabras “día”, “mes” y “año” significan, respectivamente, día natural, mes natural y año natural. Las Partes acuerdan que los términos y condiciones de este Contrato son el resultado de negociaciones entre ellas y que este Contrato se interpretará a favor o en contra de cualquiera de

**20.LIMITATIONS OF LIABILITY**

No Party to this Agreement shall be entitled to recover from the other any special, incidental, consequential or punitive damages.

**21.COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which together shall constitute a single instrument.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the Effective Date.

[Signature Pages Follow]

las Partes en razón de la medida en que dicha Parte o sus asesores profesionales hayan participado en la preparación de dichos acuerdos.

**20.LIMITACIONES DE RESPONSABILIDAD**

Ninguna de las Partes de este Contrato tendrá derecho a reclamar a la otra ningún daño especial, incidental, consecuente o punitivo.

**21.EJEMPLARES**

El presente Contrato podrá ejecutarse en dos o más ejemplares, cada uno de los cuales constituirá un original y todos ellos juntos constituirán un único instrumento.

**EN FE DE LO CUAL**, las Partes firman el presente



	Contrato en la Fecha de Inicio. [Siguen las Páginas de Firma]
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**FCA:**  
**FREIGHTCAR AMERICA, INC.**  
By: /s/ Michael Riordan  
Name: Michael Riordan  
Title: CFO

**ROYALTY PAYEE/ACREEDOR:**  
**ALEJANDRO GIL BENAVIDES**  
/s/ Alejandro Gil Benavides

Exhibit 10.4

ROYALTY AGREEMENT	CONTRATO DE REGALÍAS
THIS ROYALTY AGREEMENT (the “ <u>Agreement</u> ”) is made as of January 23, 2024 (the “ <u>Effective Date</u> ”) by and among FreightCar America, Inc., a Delaware corporation with offices at 125 S. Wacker Drive, Suite 1500, Chicago, Illinois 60606 (“ <u>FCA</u> ”), and Jesús Salvador Gil Benavides, a Mexican individual, with domicile at Guadalajara 604 Col. Guadalupe, Monclova, Coahuila 25750 México (The “ <u>Royalty Payee</u> ”), and FCA and Royalty Payee are collectively referred to herein as the “ <u>Parties</u> ”.	ESTE CONTRATO DE REGALÍAS (el “ <u>Contrato</u> ”) de fecha 23 de enero de 2024 (la “ <u>Fecha de Inicio</u> ”) celebrado por y entre Freightcar America, Inc. una sociedad de Delaware con oficinas en 25 S. Wacker Drive, Suite 1500, Chicago, Illinois 60606 (“ <u>FCA</u> ”), y Jesús Salvador Gil Benavides, una persona física mexicana, con domicilio en Guadalajara 604 Col. Guadalupe, Monclova, Coahuila 25750 México (el “ <u>Acreedor</u> ”). y FCA y el Acreedor conjuntamente referidos como las “ <u>Partes</u> ”.
<b>RECITALS</b>	<b>ANTECEDENTES</b>
A. Whereas Royalty Payee has industrial, commercial and technical knowledge and information (the “ <u>Knowledge</u> ”) consisting of: (i) Knowledge related to the way of doing business in Mexico by domestic and foreign investors,	A. Considerando que el Acreedor posee conocimientos e información industrial, comercial y técnica (los “ <u>Conocimientos</u> ”) consistentes en: (i) Conocimientos sobre la manera de realizar negocios en México por parte de empresas nacionales e inversionistas

<p>(ii) Knowledge as to of how to do business in the metal-mechanic, casting, smelting and manufacturing of metallic materials such as steel,</p> <p>(iii) Knowledge of the industrial process to manufacture Railcars and Tank Cars (as defined below),</p> <p>(iv) Knowledge related to the design and construction of industrial facilities for the Railcars and Tank Cars (as defined below) manufacturing industry, as well as the negotiation and contracting of suppliers in different segments of the services related to the construction of industrial facilities,</p> <p>(v) Knowledge of the supplier and supply-chain market related to the businesses and industries mentioned in the preceding paragraphs,</p> <p>(vi) Knowledge of the labor market, both related to human resources matters and union matters in Monclova, Coahuila and the region, and in Mexico, in general,</p>	<p>extranjeros,</p> <p>(ii) Conocimientos sobre la manera de realizar negocios en el mercado metalmecánico, de la fundición, fusión y manufactura de materiales metálicos como el acero,</p> <p>(iii) Conocimientos sobre el proceso industrial de manufactura de Vagones y Vagones Cisterna (como se definen más adelante),</p> <p>(iv) Conocimientos en materia de diseño y construcción de naves industriales para la industria de manufactura de Vagones y Vagones Cisterna (como se definen más adelante), así como de la negociación y contratación de proveedores en distintos segmentos de la prestación de servicios de construcción de naves industriales,</p> <p>(v) Conocimientos del mercado de proveedores y la cadena de suministro relacionados con los negocios y la industria mencionada en los incisos anteriores,</p> <p>(vi) Conocimientos del mercado laboral, tanto en lo que respecta a asuntos de recursos humanos como a asuntos sindicales en Monclova, Coahuila y la región, y en México, en general,</p>
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<p>(vii) Knowledge of the logistics systems, customs matters and foreign trade operations, in general, and in particular for Railcars and Tank Cars (as defined below),</p> <p>(viii) Knowledge on the creation, implementation and administration of businesses of the nature of those mentioned in the preceding paragraphs in the market of Monclova, Coahuila, and</p> <p>(ix) Knowledge of the local customs and practices of the Monclova market, the Mexican market and the export market to the United States in the aforementioned businesses.</p>	<p>(vii) Conocimientos en materia de operaciones logísticas, aduaneras y de comercio exterior, en general, y en particular para Vagones y Vagones Cisterna (como se define más adelante)</p> <p>(viii) Conocimientos sobre la realización, implementación y administración de negocios de la naturaleza de los mencionados en los puntos anteriores en el mercado de Monclova, Coahuila, y</p> <p>(ix) Conocimientos sobre los usos y costumbres del mercado de Monclova, el mercado mexicano y del mercado de exportación a los Estados Unidos en los negocios anteriormente señalados.</p> <p>B. Considerando que, el Acreedor, con base a sus</p>
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B. Whereas, Royalty Payee, based on his Knowledge, has created, together with Mr. Alejandro Gil Benavides, and Mr. Salvador Gil Benavides (the “Gils”), a business plan and model for the performance of all the activities necessary to carry out the manufacture and repair of Railcars and Tank Cars (as defined below) in the Mexican market and, in particular, in the city of Monclova, Coahuila, as well as for its export to the United States (the “Business Plan and Model”).

C. Considering that Royalty Payee has delivered by different means, especially orally, his Knowledge and the Business Plan and Model to FCA, including its subsidiary, FCA-Fasemex, S. de R.L. de C.V., so that they are able to operate a certain industrial facility located in the city of Monclova, Coahuila, for the manufacture and repair of Railcars and Tank Cars (as defined below).

**AGREEMENT**

Now, therefore, in consideration of the mutual promises and covenants herein contained, the Parties hereto agrees as follows:

**1. ROYALTY.**

(a) During each applicable Production Line Period (as defined below), FCA will pay to Royalty Payee (i) 0.48168% of FCA's Railcar Sales Net Revenue (as defined below) and (ii) 0.60210% of FCA's Tank Car Sales Net Revenue (as defined below); the payment specified in this clause (ii) and clause (i) of this sentence,

Conocimientos, ha elaborado, en conjunto con los señores Alejandro Gil Benavides y Salvador Gil Benavides (los “Señores Gil”), un plan y modelo de negocios para la realización de la totalidad de las actividades necesarias para llevar a cabo la manufactura y reparación de Vagones y Vagones Cisterna (como se define más adelante) en el mercado mexicano y, en particular, en la ciudad de Monclova, Coahuila, así como para su exportación a los Estados Unidos (el “Plan y Modelo de Negocios”).

C. Considerando que el Acreedor ha entregado por distintos medios, especialmente oral, sus Conocimientos y el Plan y Modelo de Negocios a FCA, incluyendo su subsidiaria, FCA-Fasemex, S. de R.L. de C.V., para que estén en posibilidad de operar cierta nave industrial ubicada en la ciudad de Monclova, Coahuila, para la manufactura y reparación de Vagones y Vagones Cisterna (como se define más adelante).

**CONTRATO**

Ahora, por lo tanto, en consideración de las promesas y obligaciones mutuas aquí contenidas, las Partes acuerdan lo siguiente:

**1. REGALÍAS.**

(b) Durante cada Periodo de Línea de Producción (como se define más adelante) aplicable, FCA pagará al Acreedor (i) el 0.48168% de los Ingresos Netos por Ventas de Vagones (como se define más adelante) de FCA y (ii) el 0.60210% de los Ingresos Netos por Ventas de Vagones Cisterna (como se define más

collectively, the “Royalty”) on and subject to the terms and conditions of this Agreement. The Royalty shall be paid to the account specified on Exhibit I attached hereto (the “Account”). FCA's obligations with respect to any such payment shall be complete when paid to the Account.

adelante) de FCA; el pago especificado en esta cláusula (ii) y en la fracción (i) de esta oración, colectivamente, la “Regalía”) en los términos y condiciones del presente Contrato. La Regalía se abonará a la cuenta especificada en el Anexo I adjunto al presente (la “Cuenta”). Las

(c) During each applicable Production Line Period (as defined below), a Royalty obligation shall accrue, with respect to each Railcar or Tank Car (as such terms are defined below), upon the sale of (i) such new railcar or converted, modified, refurbished or repaired railcar, other than tank cars, to third parties or to FCA for its own leasing fleet (the "Railcars"), or (ii) such new tank car or converted, modified, refurbished or repaired tank car, to third parties or to FCA for its own leasing fleet (the "Tank Cars") (the Railcars and the Tank Cars, collectively, the "Products"). A Product shall be considered "sold" when such Product is shipped and FCA is paid in full for such Product, when sold to third parties or when shipped to FCA when it will use them for its own leasing fleet and "repaired" shall mean programmed repair work, excluding under warranty repair works and normal course field repairs.

(d) With respect to (i) the first and second production lines that have been constructed to produce Railcars or Tank Cars at the Castaños facility in Castaños, Mexico (the "Castaños Facility"), a Royalty shall only accrue for a period terminating on August 31, 2037; (ii) the third and fourth production lines that are being constructed to produce Railcars or Tank Cars at the Castaños Facility, a Royalty shall only accrue for a period of seventeen (17) years, commencing on the first day of the month during which production commences on the third or fourth lines, whichever line is earlier between these two; and (iii) any other production lines constructed by FCA at the Castaños Facility or elsewhere within Mexico, a Royalty shall only accrue for a period of years, commencing on the first day of the month during which production commences on such additional line(s) and ending on the same date that the Royalty obligation for the first and

obligaciones de FCA con respecto a cualquier pago de este tipo se completarán cuando se abone en la Cuenta.

(b) Durante cada Periodo de Línea de Producción (como se define más adelante) aplicable, se devengará una obligación de Regalía, con respecto a cada Vagón o Vagón Cisterna (tal y como se definen dichos términos más adelante), por la venta de (i) cada vagón de ferrocarril nuevo o convertido, modificado, reformado o reparado, distinto de los vagones cisterna, a terceros o a FCA para su propia flota de renta (los "Vagones"), o (ii) cada vagón cisterna nuevo o vagón cisterna convertido, modificado, reformado o reparado, a terceros o a FCA para su propia flota de renta (los "Vagones Cisterna") (los Vagones y los Vagones Cisterna, conjuntamente, los "Productos"). Un Producto se considerará "vendido" cuando dicho Producto se envíe y se pague íntegramente a FCA por dicho Producto, cuando se venda a terceros o cuando se envíe a FCA cuando los vaya a utilizar para su propia flota de renta y "reparado" significará el trabajo de reparación programado, excluyendo los trabajos de reparación en garantía y las reparaciones de campo en curso normal.

(c) En relación a (i) la primera y segunda líneas de producción que se han construido para producir Vagones o Vagones Cisterna en la nave de Castaños en Castaños, México (la "Nave de Castaños"), sólo se devengará una Regalía durante un periodo que finalizará el 31 de agosto de 2037; (ii) la tercera y cuarta líneas de producción que se están construyendo para producir Vagones o Vagones Cisterna en la Nave de Castaños, sólo se devengará una Regalía durante un periodo de diecisiete (17) años, a partir del primer día del mes en que comience la producción en la tercera o cuarta línea, la que sea anterior entre estas dos; y (iii) cualquier otra línea de producción construida por FCA en la Nave de Castaños o en cualquier otro lugar dentro de México, sólo se devengará una Regalía por un periodo de años, que comenzará el primer día del mes en que comience la producción en dicha(s) línea(s) adicional(es) y terminará en la misma

second production lines ended ((i), (ii), and (iii) together, the “Production Line Periods”).

(e) The Royalty shall be calculated in accordance with Sections 1(a) and 1(b) on a calendar quarter basis (the “Royalty Period”) by FCA and shall be payable by FCA no later than thirty (30) calendar days after the end of the preceding full quarterly period. For purposes of clarity, the Royalty calculated for any given Royalty Period will include any deemed sales (pursuant to Section 1(b)), during such Royalty Period.

(f) For each Royalty Period, within fifteen (15) business days of the end of such period, FCA shall provide Royalty Payee with a written royalty statement. Such royalty statement shall be certified as accurate by a duly authorized officer of FCA reciting (i) the number and types of Railcars or Tank Cars sold (or deemed sold pursuant to Section 1(b)) during the applicable Royalty Period, (ii) the applicable end customers gross invoice, and (iii) the costs of freight, insurance and/or custom duties and fees excluded from Railcar Sales Net Revenue (as defined below) or Tank Car Sales Net Revenue (as defined below) for each shipment.

(g) “Railcar Sales Net Revenue” shall mean the gross selling price or other consideration received by FCA from the sale of newly manufactured or converted, modified, refurbished or repaired Railcars, other than tank cars, sold to third parties or to FCA for its own leasing fleet. Railcar Sales Net Revenue shall not include out-of-pocket costs of freight, insurance and/or custom duties and fees.

(h) “Tank Car Sales Net Revenue” shall mean the gross selling price or other consideration received by FCA from the sale of newly manufactured or converted, modified, refurbished or repaired Tank Cars sold to third parties or to FCA for its own leasing fleet. Tank Car Sales Net Revenue shall not include out-of-pocket costs of freight, insurance and/or custom duties and fees.

fecha en que termine la obligación de Regalía para la primera y segunda líneas de producción ((i), (ii) y (iii) en conjunto, los “Periodos de Línea de Producción”).

(d) FCA calculará la Regalía de acuerdo con las Cláusulas 1(a) y 1(b) por trimestres naturales (el “Periodo de Regalía”) y la pagará a más tardar treinta (30) días naturales después del final del periodo trimestral completo anterior. Para propósitos de claridad, la Regalía calculada para cualquier Periodo de Regalía incluirá cualquier venta considerada (de conformidad con la Cláusula 1(b)), durante dicho Periodo de Regalía.

(e) Para cada Periodo de Regalía, dentro de los quince (15) días hábiles siguientes a la finalización de dicho periodo, FCA proporcionará al Acreedor una declaración de regalías por escrito. Dicha declaración de regalías deberá ser certificada como exacta por un funcionario debidamente autorizado de FCA, y deberá contener (i) el número y los tipos de Vagones y Vagones Cisterna vendidos (o considerados vendidos de conformidad con la Cláusula 1(b)) durante el Periodo de Regalía aplicable, (ii) la factura bruta de los clientes finales aplicables, y (iii) los costes de flete, seguro y/o derechos y tasas de aduana excluidos de los Ingresos Netos por Ventas de Vagones (como se define más adelante) o de los Ingresos Netos por Ventas de Vagones Cisterna (como se define más adelante) para cada envío.

(f) “Ingresos Netos por Ventas de Vagones” significará el precio de venta bruto u otra contraprestación recibida por FCA por la venta de Vagones de nueva fabricación o convertidos, modificados, renovados o reparados, distintos de los vagones cisterna, vendidos a terceros o a FCA para su propia flota de renta. Los Ingresos Netos por Ventas de Vagones no incluirán los costes de flete, seguro y/o derechos y tarifas de aduana.

(g) “Ingresos Netos por Ventas de Vagones Cisterna” significará el precio de venta bruto u otra contraprestación recibida por FCA por la venta de Vagones Cisterna de nueva fabricación o convertidos, modificados, renovados o reparados.

	nueva fabricación o convertidos, modificados, restaurados o reparados vendidos a terceros o a FCA para su propia flota de renta. Los Ingresos Netos por Ventas de Vagones Cisterna no incluirán los
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<p>(i) All payments due to Royalty Payee shall be made in United States currency by wire transfer to the Account, unless otherwise specified by them to FCA.</p> <p><b>2. TERM</b></p> <p>(a)The term of this Agreement (the “Term”) shall commence on the Effective Date and end upon the termination of the last applicable Production Line Period, unless terminated earlier pursuant to this Agreement.</p> <p>(b)FCA shall have the right to immediately terminate this Agreement upon written notice to Royalty Payee in the event that:</p> <p>i. Royalty Payee commits a material breach of any of its obligations under this Agreement, and such breach is not cured within ninety (90) days after written notice to such Party of such breach; or</p> <p>ii.any Gil commits a material breach of any of their obligations under that certain lease agreements and its respective amendment agreements, by and between the Gils as lessors and FCA-Fasemex, S. de R.L. de C.V. as lessee, and such breach is not cured within ninety (90) days after written notice to the Gils of such breach; provided, however, that this Agreement shall not terminate in the event that such lease agreement and its respective amendment agreements, are terminated by mutual agreement of the parties thereto, for any reason whatsoever, prior to its expiration date.</p> <p><b>3. REPRESENTATIONS AND WARRANTIES</b></p> <p>(a)FCA represents and warrants that (i) it is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, and (ii) has full</p>	<p>costes de flete, seguro y/o derechos y tarifas de aduana.</p> <p>(h) Todos los pagos debidos al Acreedor se realizarán en moneda de curso legal de los Estados Unidos mediante transferencia bancaria a la Cuenta, a menos que éste especifique lo contrario a FCA.</p> <p><b>2. VIGENCIA</b></p> <p>(a) La vigencia de este Contrato (la “Vigencia”) comenzará en la Fecha de Inicio y deberá terminar en la terminación del último Periodo de Línea de Producción aplicable, salvo que termine anticipadamente en virtud del presente Contrato.</p> <p>(b) FCA tendrá derecho a rescindir inmediatamente el presente Contrato previa notificación por escrito al Acreedor en caso de que:</p> <p>i. El Acreedor cometa un incumplimiento grave de cualquiera de sus obligaciones en virtud del presente Contrato, y dicho incumplimiento no se subsane en un plazo de noventa (90) días tras la notificación por escrito de dicho incumplimiento a dicha Parte; o</p> <p>ii. cualquier de los Señores Gil cometa un incumplimiento sustancial de cualquiera de sus obligaciones conforme a ciertos contratos de arrendamiento y sus respectivos convenios modificatorios, celebrados entre los Señores Gil como arrendadores y FCA-Fasemex, S. de R.L. de C.V. como arrendatario, y dicho incumplimiento no sea subsanado dentro de los noventa (90) días siguientes a la notificación por escrito a los Señores Gil de dicho incumplimiento; en el entendido, sin embargo, que el presente Contrato no terminará en caso de que dicho</p>
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power and authority to enter into this Agreement and perform its obligations hereunder.

contrato de arrendamiento y sus respectivos convenios modificatorios, sean terminados por mutuo acuerdo de las partes del mismo, por cualquier motivo, antes de su fecha de vencimiento.

### 3. DECLARACIONES Y GARANTÍAS

(a) FCA declara y garantiza que (i) es una sociedad mercantil debidamente constituida, con existencia válida y en pleno goce de sus derechos conforme a las leyes del Estado de Delaware, y

(b) Royalty Payee represents and warrants that he is an individual, of Mexican nationality, of legal age, married, with full authority to exercise their own rights and with sufficient and enough legal capacity to be bound by the terms of this Agreement.

### 4. RECORD INSPECTION AND AUDIT

(a) Royalty Payee shall have the right, upon reasonable notice, to inspect FCA's books, records, accounts, and all other documents and material in FCA's possession or control with respect to the subject matter of this Agreement, subject to appropriate confidentiality restrictions, including all information leading to, derived from or related to the Royalties, the Railcar Sales Net Revenue and the Tank Cars Sales Net Revenue. FCA shall maintain proper books, records and accounts with entries that are full, true and correct in all material respects and in conformity with GAAP consistently applied regarding the Royalties, the Railcar Sales Net Revenue and the Tank Cars Sales Net Revenue. FCA shall permit any representatives or advisors of Royalty Payee, upon reasonable prior notice, to inspect, examine and make extracts from its books, records, accounts, and all other documents and material in FCA's possession or control with respect to the subject matter of this Agreement, and to discuss its calculations, entries and records with its

(ii) cuenta con las facultades para celebrar el presente Contrato y cumplir con las obligaciones a su cargo.

(b) El Acreedor declara y garantiza que es una persona física, de nacionalidad mexicana, mayor de edad, casado, con plena capacidad para ejercer sus propios derechos y con capacidad legal suficiente y bastante para obligarse en los términos del presente Contrato.

### 4. INSPECCIÓN Y AUDITORÍA DE REGISTROS

(a) El Acreedor tendrá derecho, previo aviso razonable, a inspeccionar los libros, registros, cuentas y todos los demás documentos y materiales en posesión o control de FCA con respecto al objeto de este Contrato, sujeto a las restricciones de confidencialidad apropiadas, incluida toda la información que conduzca, derive o esté relacionada con las Regalías, los Ingresos Netos por Ventas de Vagones y los Ingresos Netos por Ventas de Vagones Cisterna. FCA mantendrá libros, registros y cuentas adecuados con entradas que sean completas, verdaderas y correctas en todos los aspectos materiales y de conformidad con los PCGA aplicados de forma coherente en relación con las Regalías, los Ingresos Netos por Ventas de Vagones y los Ingresos Netos por Ventas de Vagones Cisterna. FCA permitirá a cualquier representante o asesor del Acreedor, previo aviso



officers and independent accountants, all at such reasonable times and as often as reasonably requested, in each case at Royalty Payee' expense; provided that, Royalty Payee shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an event of default by FCA, in which case the inspection and works related thereto can take place at any reasonable time and shall be at FCA's expense.

(b) All books and records relative to FCA's obligations hereunder shall be maintained and made accessible to Royalty Payee for inspection at a location in the United States for at least two (2) years after termination or expiration of this Agreement.

representante o asesor del Acreeador, previo aviso razonable, inspeccionar, examinar y extraer extractos de sus libros, registros, cuentas y cualquier otro documento y material en posesión o control de FCA en relación con el objeto de este Contrato, así como discutir sus cálculos, entradas y registros con sus directivos y contadores independientes, todo ello en momentos razonables y con la frecuencia que se solicite razonablemente, en cada caso a expensas del Acreeador; siempre y cuando, el Acreeador no ejerza tales derechos más de dos (2) veces durante cualquier año natural, salvo que exista un caso de incumplimiento por parte de FCA, en cuyo caso la inspección y los trabajos relacionados con la misma podrán tener lugar en cualquier momento razonable y correrán a cargo de FCA.

(b) Todos los libros y registros relativos a las obligaciones de FCA en virtud del presente Contrato se mantendrán y serán accesibles al

## 5. CONFIDENTIALITY

(a) All disclosures of trade secrets, know-how, financial information, or other information of a type that is known to be, or that a reasonable person would recognize it to be, confidential made by FCA or any of its affiliates (as applicable, the "Discloser") under or in connection with this Agreement, as well as the terms of this Agreement (collectively, the "Confidential Information"), shall be received and maintained in confidence by the recipient (the "Recipient") and each Recipient shall treat all such Confidential Information as the confidential property of the Discloser and keep it confidential and secure and protect it from unauthorized use or disclosure by using at least the same degree of care as Recipient employs to avoid unauthorized use or disclosure of its own Confidential Information of similar nature, but in no event less than

Acreeador para su inspección en una ubicación en los Estados Unidos de América durante al menos dos (2) años tras la terminación o expiración del presente Contrato.

## 5. CONFIDENCIALIDAD

(a) Todas las divulgaciones de secretos comerciales, conocimientos técnicos, información financiera u otra información de un tipo que se sabe que es confidencial, o que una persona razonable reconocería que es confidencial, realizadas por FCA o cualquiera de sus subsidiarias (según corresponda, el "Revelador") en virtud o en relación con este Contrato, así como los términos de este Contrato (colectivamente, la "Información Confidencial"), será recibida y mantenida de forma confidencial por el receptor (el "Receptor") y cada

reasonable care. Notwithstanding the foregoing, a Recipient shall be permitted to disclose any Confidential Information if required by applicable law, provided the Recipient provides the Discloser reasonable prior opportunity to comment upon such disclosure to the extent permitted by law and agree to cooperate to take reasonable steps to minimize the extent of any such required disclosure.

(b) The term "Confidential Information" does not include information that (i) was in the public domain prior to the time it was furnished to Recipient or is at the time of the alleged breach (through no willful or improper action or inaction by such Recipient) generally available to the public, (ii) was or becomes available to a Recipient on a non-confidential basis from a source other than FCA or its affiliates, provided such other source is not known by the Recipient to be bound by a confidentiality obligation, (iii) is lawfully known to a Recipient prior to disclosure of the Confidential Information by FCA or its affiliates, or (iv) is independently developed by a Recipient without any use of any Confidential Information.

Receptor tratará toda Información Confidencial como propiedad confidencial del Revelador y la mantendrá confidencial y segura y la protegerá del uso o divulgación no autorizados utilizando al menos el mismo grado de cuidado que el Receptor emplea para evitar el uso o divulgación no autorizados de su propia Información Confidencial de naturaleza similar, pero en ningún caso inferior al cuidado razonable. Sin perjuicio de lo anterior, el Receptor podrá divulgar cualquier Información Confidencial si así lo exige la legislación aplicable, siempre y cuando el Receptor proporcione al Revelador una oportunidad previa razonable para comentar dicha divulgación en la medida en que lo permita la ley y acepte cooperar para tomar medidas razonables con el fin de minimizar el alcance de cualquier divulgación exigida.

(b) El término "Información confidencial" no incluye información que (i) fuera de dominio público antes del momento en que se proporcionó al Receptor o que en el momento del supuesto incumplimiento (sin acción o inacción voluntaria o indebida por parte de dicho Receptor) esté generalmente a disposición del público, (ii) haya estado o pase a estar a disposición del Receptor de forma no confidencial por parte de una fuente distinta a FCA o sus subsidiarias, siempre y cuando el Receptor no sepa que dicha fuente está sujeta a una obligación de confidencialidad, (iii) el Receptor la conozca legalmente antes de la divulgación de la Información Confidencial por parte de FCA o sus subsidiarias, o (iv) el

(c) Each Recipient's obligations with respect to the Confidential Information shall continue for a term of three (3) years following the termination of this Agreement.

## 6. COMPLIANCE WITH LAWS

Receptor la desarrolle de forma independiente sin utilizar alguna Información Confidencial.

(c) Las obligaciones de cada Receptor con respecto a la Información Confidencial continuarán durante un plazo de tres (3) años contados a partir de la terminación del

Notwithstanding anything to the contrary, the obligations of the Parties hereto shall be subject to all laws, present and future (including export control laws and regulations) of any government having jurisdiction over the Parties hereto, and to orders, regulations, directions, or requests of any such government. Each Party shall undertake to comply with and be solely responsible for complying with such laws applicable to such Party.

**7. TAXES**

Each Party shall otherwise remain responsible for all taxes applicable to such Party and its operations in connection with this Agreement.

**8. NOTICE AND PAYMENT**

Any notice or communication required or permitted to be given by any provisions of this Agreement, including any consents, shall be in writing and shall be deemed to have been given and received by the person to whom directed, if properly addressed: (1) when delivered personally to such person or to an officer of the person to which directed, (2) upon confirmation of receipt of transmission by email, or (3) two days after being deposited with an internationally recognized overnight courier, delivery charges prepaid for delivery the following day. The addresses for notice are as follows:

FCA:

presente Contrato.

**6. CUMPLIMIENTO CON LA LEY.**

No obstante cualquier disposición en contrario, las obligaciones de las Partes del presente Contrato estarán sujetas a todas las leyes, presentes y futuras (incluidas las leyes y reglamentos de control de las exportaciones) de cualquier gobierno que tenga jurisdicción sobre las Partes del presente Contrato, y a las órdenes, regulaciones, instrucciones o solicitudes de cualquiera de dichos gobiernos. Cada una de las Partes se comprometerá a cumplir y será la única responsable del cumplimiento de dichas leyes aplicables a dicha Parte.

**7. IMPUESTOS**

Cada Parte seguirá siendo responsable de todos los impuestos aplicables a dicha Parte y a sus operaciones en relación con el presente Contrato.

**8. NOTIFICACIONES Y PAGO**

Cualquier notificación o comunicación requerida o permitida en virtud de cualquiera de las disposiciones del presente Contrato, incluido cualquier otorgamiento de consentimiento, se realizará por escrito y se considerará entregada y recibida por la persona a la que se dirige, si está debidamente dirigida: (1) cuando se entrega personalmente a dicha persona o a un funcionario de la persona a la que se dirige, (2) tras la confirmación de la recepción de la transmisión por correo electrónico, o (3) dos días después de ser depositada en un servicio de mensajería nocturno reconocido internacionalmente, con los gastos de envío pagados por adelantado para su entrega al día siguiente. Las direcciones de notificación son las siguientes:

FreightCar America, Inc.

FCA:



125 S. Wacker Drive, Suite 1500

Chicago, IL 60606

Attn: Celia Perez

Email: cperez@freightcar.net

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

Kelley Drye & Warren LLP

333 W. Wacker Dr., 26<sup>th</sup> Floor

Chicago, IL 60606

Attn: Andrew Pillsbury

APillsbury@kelleydrye.com

Royalty Payee:

Jesus Salvador Gil Benavides

Guadalajara 604, Col. Guadalupe

Monclova, Coahuila 25750 México

Attn: Jesus Salvador Gil Benavides

Email: jgil@fasemex.com.mx

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

Romero, Ramos, Quintanilla y Bortoni S.C.

Lazaro Cardenas 435 Despacho 410

Colonia Loma Larga, 66266

San Pedro Garza Garcia, Nuevo Leon, Mexico.

Attn: Francisco Romero

Email: fromero@rrqb.mx

Any Party may change its address, email or individual for receiving notice for the purpose of this Section by notice to the other given in the manner set forth above.

## 9. GOVERNING LAW

This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws of the State of Illinois applicable to contracts made in that state, without giving effect to any choice of law or conflict of law provision or rule that would cause the application

FreightCar America, Inc.

125 S. Wacker Drive, Suite 1500

Chicago, IL 60606

Attn: Celia Perez

Email: cperez@freightcar.net

Con copia a (la cual no constituirá notificación):

Kelley Drye & Warren LLP

333 W. Wacker Dr., 26<sup>o</sup> Piso

Chicago, IL 60606

Attn: Andrew Pillsbury

APillsbury@kelleydrye.com

El Acreedor:

Jesús Salvador Gil Benavides

Guadalajara 604, Col. Guadalupe

Monclova, Coahuila 25750 México

Attn: Jesús Salvador Gil Benavides

Email: jgil@fasemex.com.mx

Con copia a (la cual no constituirá notificación):

Romero, Ramos, Quintanilla y Bortoni S.C.

Lazaro Cardenas 435 Despacho 410

Colonia Loma Larga, 66266

San Pedro Garza Garcia, Nuevo Leon, Mexico.

Attn: Francisco Romero

Email: fromero@rrqb.mx

Cualquiera de las Partes podrá cambiar su dirección, correo electrónico o persona para recibir notificaciones a los efectos de la presente Cláusula mediante notificación a la otra Parte realizada en la forma establecida anteriormente.

## 9. LEGISLACIÓN APLICABLE

El presente Contrato se regirá y se someterá en cuanto a su validez, ejecución, interpretación, construcción, efecto y en todos los demás aspectos por las leyes internas del Estado de Illinois aplicables a los contratos celebrados en dicho estado, sin dar efecto a ninguna elección de ley o conflicto de disposiciones o normas legales

<p>of the laws of any jurisdiction other than the State of Illinois.</p> <p><b>10. CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL.</b></p> <p>(a) EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL PROCEEDINGS (IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, ANY RELATIONSHIPS BETWEEN THE PARTIES HEREUNDER AND ANY DISPUTES WITH RESPECT TO ANY OF THE FOREGOING SHALL BE COMMENCED AND PROSECUTED EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS LOCATED IN THE CITY OF CHICAGO, COUNTY OF COOK, AND ANY APPELLATE COURT THEREFROM OR THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS AND ANY APPELLATE COURT THEREFROM (COLLECTIVELY, THE "Illinois Courts"). EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND SUBMITS, FOR IT-SELF AND ITS ASSETS, TO THE EXCLUSIVE JURISDICTION OF ANY OF THE ILLINOIS COURTS IN RESPECT OF ANY SUCH PROCEEDING. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN <u>SECTION 8</u>. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.</p> <p>(b) EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW</p>	<p>que provoquen la aplicación de las leyes de cualquier jurisdicción distinta del Estado de Illinois.</p> <p><b>10. CONSENTIMIENTO A LA JURISDICCIÓN; RENUNCIA AL JUICIO CON JURADO.</b></p> <p>(a) CADA UNA DE LAS PARTES ACEPTA DE FORMA IRREVOCABLE E INCONDICIONAL QUE TODOS LOS PROCEDIMIENTOS (CONTRACTUALES, EXTRA CONTRACTUALES O DE OTRO TIPO) DERIVADOS O RELACIONADOS CON EL PRESENTE CONTRATO, LAS TRANSACCIONES CONTEMPLADAS EN EL MISMO, CUALQUIER RELACIÓN ENTRE LAS PARTES EN VIRTUD DEL PRESENTE Y CUALQUIER DISPUTA CON RESPECTO A CUALQUIERA DE LOS ANTERIORES SE INICIARÁ Y PROCESARÁ EXCLUSIVAMENTE EN LOS TRIBUNALES DEL ESTADO DE ILLINOIS UBICADOS EN LA CIUDAD DE CHICAGO, COUNTY OF COOK, Y CUALQUIER TRIBUNAL DE APELACIÓN DEL MISMO O LOS ESTADOS UNIDOS PARA EL DISTRITO NORTE DE ILLINOIS Y CUALQUIER TRIBUNAL DE APELACIÓN DEL MISMO (COLECTIVAMENTE, LOS "Tribunales de Illinois"). CADA UNA DE LAS PARTES CONSIENTE Y SE SOMETE IRREVOCABLE E INCONDICIONALMENTE, POR SÍ MISMA Y POR SUS BIENES, A LA JURISDICCIÓN EXCLUSIVA DE CUALQUIERA DE LOS TRIBUNALES DE ILLINOIS CON RESPECTO A CUALQUIERA DE DICHOS PROCEDIMIENTOS. POR LA PRESENTE, CADA UNA DE LAS PARTES CONSIENTE DE FORMA IRREVOCABLE E INCONDICIONAL A LA NOTIFICACIÓN DE PROCESOS EN LA FORMA PREVISTA PARA LAS NOTIFICACIONES EN LA <u>CLAÚSULA 8</u>. NADA DE LO DISPUESTO EN EL PRESENTE CONTRATO AFECTARÁ AL DERECHO DE CUALQUIERA DE LAS PARTES A NOTIFICAR PROCESOS DE CUALQUIER OTRA FORMA PERMITIDA POR LA LEY.</p> <p>(b) POR EL PRESENTE CONTRATO, CADA UNA DE LAS PARTES RENUNCIA DE</p>
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OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, ANY RELATIONSHIPS BETWEEN THE PARTIES HEREUNDER AND ANY DISPUTES WITH RESPECT TO ANY OF THE FOREGOING IN ANY OF THE ILLINOIS COURTS. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH PROCEEDING IN ANY OF THE ILLINOIS COURTS. EACH OF THE PARTIES AGREES THAT A FINAL JUDGMENT IN ANY SUCH PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

(c) EACH PARTY AGREES THAT ANY PROCEEDING (IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, ANY RELATIONSHIPS BETWEEN THE PARTIES HEREUNDER AND ANY DISPUTES WITH RESPECT TO ANY OF THE FOREGOING WILL INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUCH PROCEEDING.

(d) EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY PROCEEDING ARISING UNDER OR RELATING TO THIS AGREEMENT, SEEK TO ENFORCE THE FOREGOING WAIVERS,

FORMA IRREVOCABLE E INCONDICIONAL, EN LA MEDIDA EN QUE PUEDA HACERLO DE FORMA LEGAL Y EFECTIVA, A CUALQUIER OBJECCIÓN QUE PUEDA TENER AHORA O EN EL FUTURO AL ESTABLECIMIENTO DE LA JURISDICCIÓN DE CUALQUIER PROCEDIMIENTO DERIVADO O RELACIONADO CON EL PRESENTE CONTRATO, LAS TRANSACCIONES CONTEMPLADAS EN EL PRESENTE DOCUMENTO, CUALQUIER RELACIÓN ENTRE LAS PARTES EN VIRTUD DEL PRESENTE DOCUMENTO Y CUALQUIER DISPUTA CON RESPECTO A CUALQUIERA DE LOS ANTERIORES EN CUALQUIERA DE LOS TRIBUNALES DE ILLINOIS. CADA UNA DE LAS PARTES ACUERDA QUE UNA SENTENCIA DEFINITIVA EN CUALQUIERA DE DICHOS PROCEDIMIENTOS SERÁ CONCLUYENTE Y PODRÁ EJECUTARSE EN OTRAS JURISDICCIONES MEDIANTE UNA DEMANDA BASADA EN LA SENTENCIA O DE CUALQUIER OTRA FORMA PREVISTA POR LA LEY.

(c) CADA UNA DE LAS PARTES ACEPTA QUE CUALQUIER PROCEDIMIENTO (CONTRACTUAL, EXTRACONTRACTUAL O DE OTRO TIPO) DERIVADO O RELACIONADO CON EL PRESENTE CONTRATO, LAS TRANSACCIONES CONTEMPLADAS EN EL MISMO, CUALQUIER RELACIÓN ENTRE LAS PARTES EN VIRTUD DEL PRESENTE Y CUALQUIER DISPUTA CON RESPECTO A CUALQUIERA DE LOS ANTERIORES IMPLICARÁ CUESTIONES COMPLICADAS Y DIFÍCILES, Y POR LO TANTO CADA UNA DE LAS PARTES RENUNCIA IRREVOCABLE E INCONDICIONALMENTE A CUALQUIER DERECHO QUE PUEDA TENER A UN JUICIO CON JURADO CON RESPECTO A CUALQUIERA DE DICHOS PROCEDIMIENTOS.

(d) CADA PARTE CERTIFICA Y RECONOCE QUE (i)

	NINGÚN REPRESENTANTE, AGENTE O ABOGADO DE OTRA PARTE HA DECLARADO, DE FORMA EXPRESA O DE OTRO TIPO, QUE DICHA OTRA PARTE NO INTENTARÁ, EN CASO DE PROCEDIMIENTO EN VIRTUD DEL
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<p>(ii) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (iii) SUCH PARTY MAKES SUCH WAIVERS VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATION IN THIS <u>SECTION 10(d)</u>.</p> <p>(e) EACH OF THE PARTIES HERETO WAIVES THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY LAWSUIT, ACTION OR PROCEEDING SEEKING ENFORCEMENT OF SUCH PARTY'S RIGHTS UNDER THIS AGREEMENT.</p> <p><b>11.SURVIVAL</b></p> <p>If this Agreement terminates or expires, the provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement shall survive, including <u>Sections 1, 4, 5, and 7 through 21</u>.</p> <p><b>12.FURTHER ASSURANCES</b></p> <p>In connection with this Agreement and the transactions contemplated hereby, each Party shall execute and deliver such further documents, and perform such further acts, as may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions contemplated hereunder, as reasonably requested by another Party.</p> <p><b>13.ENTIRE AGREEMENT</b></p> <p>This Agreement, contains all agreements among the Parties relating to its subject matter and supersedes and</p>	<p>PRESENTE CONTRATO O EN RELACIÓN CON EL MISMO, EJECUTAR LAS RENUNCIAS ANTERIORES, (ii) DICHA PARTE ENTIENDE Y HA CONSIDERADO LAS IMPLICACIONES DE DICHAS RENUNCIAS, (iii) DICHA PARTE REALIZA DICHAS RENUNCIAS VOLUNTARIAMENTE, Y (iv) DICHA PARTE HA SIDO INDUCIDA A ENTRAR EN ESTE CONTRATO POR, ENTRE OTRAS COSAS, LAS RENUNCIAS MUTUAS Y LA CERTIFICACIÓN EN ESTA <u>CLÁUSULA 10(d)</u>.</p> <p>(e) CADA UNA DE LAS PARTES RENUNCIA AL DERECHO A UN JUICIO CON JURADO EN RELACIÓN CON CUALQUIER DEMANDA, ACCIÓN O PROCEDIMIENTO QUE PRETENDA HACER VALER LOS DERECHOS DE DICHA PARTE EN VIRTUD DEL PRESENTE CONTRATO.</p> <p><b>11. PERMANENCIA</b></p> <p>En caso de resolución o expiración del presente Contrato, subsistirán las disposiciones del mismo que por su naturaleza se extiendan más allá de la expiración o resolución del presente Contrato, incluidas las <u>Cláusulas 1, 4, 5 y 7 a 21</u>.</p> <p><b>12. GARANTÍAS ADICIONALES</b></p> <p>En relación con el presente Contrato y las transacciones contempladas en el mismo, cada una de las Partes suscribirá y entregará los documentos adicionales y realizará los actos adicionales que sean necesarios o apropiados para efectuar y cumplir las disposiciones del presente Contrato y las transacciones contempladas en el</p>
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cancels any and all previous contracts or agreements among the Parties with respect thereto. Any other understanding about this Agreement, including additional terms or provisions contained in invoices, shipping papers, or other documents, will be of no force or effect. Any amendment to this Agreement must be in writing and will not be effective until it is executed and approved by an authorized representative of each Party.

presente Contrato y las transacciones contempladas en el mismo, según lo solicite razonablemente la otra Parte.

### **13. UNIDAD DE CONVENIO**

El presente Contrato contiene todos los acuerdos entre las Partes relativos a su objeto y sustituye y anula todos y cada uno de los contratos o acuerdos anteriores entre las Partes con respecto al mismo. Cualquier otro acuerdo sobre el presente Contrato, incluidos los términos o disposiciones adicionales contenidos en facturas, documentos de envío u otros documentos, no tendrá fuerza ni efecto alguno. Cualquier modificación del presente Contrato deberá

### **14. SEVERABILITY**

If any provision of this Agreement is determined by any legislature, court, or administrative agency to be invalid or unenforceable, every other provision will remain in full force and effect, unless the purposes of this Agreement cannot be achieved. The Parties will use commercially reasonable efforts to substitute a valid, legal, and enforceable provision, which insofar as practical implements the purposes of any provision held invalid, illegal, or unenforceable.

### **15. WAIVERS**

No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall

realizarse por escrito y no surtirá efecto hasta que haya sido ejecutada y aprobada por un representante autorizado de cada una de las Partes.

### **14. ILEGALIDAD DE DISPOSICIONES**

Si cualquier disposición del presente Contrato es declarada inválida o inaplicable por cualquier legislatura, tribunal u organismo administrativo, todas las demás disposiciones seguirán en pleno vigor y efecto, a menos que no puedan alcanzarse los fines del presente Contrato. Las Partes harán todos los esfuerzos comercialmente razonables para sustituir una disposición válida, legal y aplicable que, en la medida de lo posible, cumpla los fines de cualquier disposición declarada inválida, ilegal o inaplicable.

### **15. RENUNCIAS**

Ninguna renuncia de cualquiera de las Partes a cualquiera de las disposiciones del presente documento será efectiva a menos que se establezca explícitamente por escrito y esté firmada por la Parte que renuncia. Ninguna renuncia por cualquiera de las Partes se interpretará como una renuncia con respecto a cualquier falta, incumplimiento o

any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

#### 16.ASSIGNMENT

This Agreement is deemed to be of a personal nature and no party may assign, convey, or transfer this Agreement or any right or interest in this Agreement, or delegate or subcontract performance of any obligations hereunder, in whole or in part, to any third party, without the prior written consent of FCA. Any attempt to do so shall be void *ab initio*.

Notwithstanding the foregoing, the Parties agree that (1) the initial Royalty Payee shall have the one-time right to totally or partially assign and/or

violación no identificado expresamente por dicha renuncia por escrito, ya sea de carácter similar o diferente, y ya sea que ocurra antes o después de dicha renuncia. El no ejercicio o el retraso en el ejercicio de cualquier derecho, recurso, facultad o privilegio derivado del presente Contrato no se interpretará como una renuncia al mismo; ni el ejercicio único o parcial de cualquier derecho, recurso, facultad o privilegio en virtud del presente Contrato impedirá cualquier otro ejercicio posterior del mismo o el ejercicio de cualquier otro derecho, recurso, facultad o privilegio.

#### 16. CESIÓN

El presente Contrato se considera de naturaleza personal y ninguna de las partes podrá ceder, transmitir o transferir el presente Contrato o cualquier derecho o interés en el mismo, ni delegar o subcontratar el cumplimiento de cualquiera de sus obligaciones, en su totalidad o en parte, a terceros, sin el consentimiento previo por escrito de FCA. Cualquier intento de hacerlo será nulo *ab initio*.

transfer its rights under this Agreement, without the prior written consent of FCA, (a) by any means (i) to any individual that is a member of the initial Royalty Payee's family and that is a blood relative, a spouse and/or with whom the initial Royalty Payee has an adoption relationship, and/or (ii) to any legal entity in which Royalty Payee is a controlling equity holder (for so long as Royalty Payee or its successors remain the controlling equity holder), (b) by means of a contribution to a trust set up by the initial Royalty Payee that (i) is controlled by, or, for the benefit of, the initial Royalty Payee, or (ii) is for the benefit of the beneficiaries of such trust or any individual that is a member of the initial Royalty Payee family and that is a

No obstante lo anterior, las Partes acuerdan que (1) el Acreedor inicial tendrá el derecho, por una sola vez, a ceder y/o transferir total o parcialmente sus derechos en virtud del presente Contrato, sin el consentimiento previo por escrito de FCA, (a) por cualquier medio (i) a cualquier persona física que sea miembro de la familia del Acreedor inicial y que sea pariente consanguíneo, cónyuge y/o con quien el Acreedor inicial tenga una relación de adopción, y/o (ii) a cualquier entidad jurídica en la que el Acreedor sea un accionista mayoritario (mientras el Acreedor o sus herederos siga siendo el accionista mayoritario), (b) mediante aportación a un fideicomiso constituido por el Acreedor inicial que (i) sea controlado por, o, para el beneficio de, el Acreedor inicial. o (ii) sea para el beneficio



blood relative, a spouse and/or with whom the initial Royalty Payee has an adoption relationship, and/or (2) the initial Royalty Payee and its successors, if any, shall have the right to totally or partially assign and/or transfer its rights under this Agreement, without the prior written consent of FCA, by cause of death to their heirs and/or legatees, appointed by will or by law if the initial Royalty Payee or its successors die intestate. In the cases referred to in (1) above, Royalty Payee or its legal representative, as the case may be, shall give written notice to FCA 30 (thirty) calendar days prior to the corresponding event. In the cases referred to in (2) above, the executor shall give written notice to FCA 30 (thirty) calendar days after the corresponding event.

**17.NO THIRD-PARTY BENEFICIARIES**

This Agreement is solely for the benefit of the Parties and their respective permitted successors and assigns, without prejudice to the provisions of Section 16 hereof. There are no other third-party beneficiaries to this Agreement.

**18.RELATIONSHIP OF THE PARTIES**

The relationship between and among the Parties is solely that of independent contractors. Nothing in this Agreement creates a partnership, joint venture, or principal-agent relationship. Royalty Payee shall not have any authority to create or

beneficiario de, el Acreedor inicial, o que sea para el beneficio de los fideicomisarios de dicho fideicomiso o para cualquier persona física que sea miembro de la familia del Acreedor inicial y que sea pariente consanguíneo, cónyuge y/o con quien el Acreedor inicial tenga una relación de adopción y/o (2) el Acreedor inicial y sus herederos, si los hubiere, tendrán derecho a ceder y/o transferir total o parcialmente sus derechos en virtud del presente Contrato, sin el consentimiento previo por escrito de FCA, por causa de muerte a sus herederos y/o legatarios, designados por testamento o por ley si el Acreedor inicial o sus herederos fallecen intestados. En los casos anteriormente referidos en el punto (1), el Acreedor o su representante legal, según sea el caso, deberán notificar por escrito a FCA 30 (treinta) días naturales antes de ocurrido el evento correspondiente. En los casos anteriormente referidos en el punto (2), el albacea deberá notificar por escrito a FCA 30 (treinta) días naturales después de ocurrido el evento correspondiente.

**17. EFECTO VINCULATORIO; BENEFICIO**

El presente Contrato beneficia exclusivamente a las Partes y a sus respectivos causahabientes y cesionarios autorizados, sin perjuicio de lo dispuesto en la Cláusula 16 del mismo. No existen terceros beneficiarios del presente Contrato.

**18. RELACIÓN ENTRE LAS PARTES**

assume in FCA's name or on its behalf any obligation, expressed or implied, or to act or purport to act as FCA's agent or legally empowered representative for any purpose whatsoever. No Party shall be liable to any third party in any way for any engagement, obligation, commitment, contract, representation, transaction, or act

La relación entre las Partes es exclusivamente la de contratistas independientes. Nada en este Contrato crea una sociedad en participación, *joint venture* o una relación principal-agente. El Acreedor no tendrá autoridad alguna para crear o asumir en nombre de FCA o en su representación ninguna obligación, expresa o implícita, ni para actuar o pretender actuar como agente o

or omission to act of another other Party, except as expressly provided herein.

#### **19. TERMINOLOGY AND CONSTRUCTION**

All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of Articles, Sections, Exhibits, and Schedules are for convenience only, and neither limit nor amplify the provisions of this Agreement. Except as specifically provided, references to Articles, Sections, Exhibits, and Schedules in this Agreement refer to Articles, Sections, Exhibits, and Schedules to, this Agreement. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter. The word "or" shall mean "and/or" unless the context requires otherwise. The words "day," "month," and "year" mean, respectively, calendar day, calendar month and calendar year. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between them and that this Agreement shall be construed in favor of or against either Party by reason of the extent to which such Party of its professional advisors participated in the preparation of such agreements.

representante legalmente facultado de FCA para ningún fin. Ninguna de las Partes será responsable ante terceros de ninguna manera por cualquier compromiso, obligación, compromiso, contrato, representación, transacción, o acto u omisión de actuar de la otra Parte, salvo lo expresamente dispuesto en el presente Contrato.

#### **19. TERMINOLOGÍA Y ESTRUCTURA**

Todos los pronombres personales utilizados en el presente Contrato, ya sea en género masculino, femenino o neutro, incluirán todos los demás géneros; y el singular incluirá el plural y viceversa. Los títulos de los Artículos, Cláusulas, Anexos y Listas se utilizan únicamente por comodidad y no limitan ni amplían las disposiciones del presente Contrato. Salvo que se disponga específicamente lo contrario, las referencias a los Artículos, Cláusulas, Anexos y Anexos de este Contrato se refieren a los Artículos, Cláusulas, Anexos y Anexos de este Contrato. El uso en el presente documento de la palabra "incluyendo", cuando siga a cualquier declaración, término o asunto general, no se interpretará en el sentido de limitar dicha declaración, término o asunto a los elementos o asuntos específicos establecidos inmediatamente después de dicha palabra o a elementos o asuntos similares, independientemente de que se utilice o no un lenguaje no limitativo (como "sin limitación" o "pero sin limitarse a", o palabras de significado similar) con referencia a los mismos, sino que se considerará que se refiere a todos los demás elementos o asuntos que pudieran razonablemente incluirse en el ámbito más amplio posible de dicha declaración, término o asunto general. La palabra "o" significará "y/o" a menos que el contexto requiera lo contrario. Las palabras "día", "mes" y "año" significan, respectivamente, día natural, mes natural y año natural. Las Partes acuerdan que los términos y condiciones de este Contrato son el resultado de negociaciones entre ellas y que este Contrato se interpretará a favor o en contra de cualquiera de



<p><b>20.LIMITATIONS OF LIABILITY</b></p> <p>No Party to this Agreement shall be entitled to recover from the other any special, incidental, consequential or punitive damages.</p> <p><b>21.COUNTERPARTS</b></p> <p>This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which together shall constitute a single instrument.</p> <p><b>IN WITNESS WHEREOF</b>, the Parties hereto have executed this Agreement as of the Effective Date.</p> <p>[Signature Pages Follow]</p>	<p>las Partes en razón de la medida en que dicha Parte o sus asesores profesionales hayan participado en la preparación de dichos acuerdos.</p> <p><b>20.LIMITACIONES DE RESPONSABILIDAD</b></p> <p>Ninguna de las Partes de este Contrato tendrá derecho a reclamar a la otra ningún daño especial, incidental, consecuente o punitivo.</p> <p><b>21.EJEMPLARES</b></p> <p>El presente Contrato podrá ejecutarse en dos o más ejemplares, cada uno de los cuales constituirá un original y todos ellos juntos constituirán un único instrumento.</p> <p><b>EN FE DE LO CUAL</b>, las Partes firman el presente Contrato en la Fecha de Inicio.</p> <p>[Siguen las Páginas de Firma]</p>
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**FCA:**  
**FREIGHTCAR AMERICA, INC.**  
By: /s/ Michael Riordan  
Name: Michael Riordan  
Title: CFO

**ROYALTY PAYEE/ACREEDOR:**  
**JESÚS SALVADOR GIL BENAVIDES**  
/s/ Jesús Salvador Gil Benavides

**Exhibit 10.5**

## ROYALTY AGREEMENT

THIS ROYALTY AGREEMENT (the "Agreement") is made as of January 23, 2024 (the "Effective Date") by and among FreightCar America, Inc., a Delaware corporation with offices at 125 S. Wacker Drive, Suite 1500, Chicago, Illinois 60606 ("FCA"), and Salvador Gil Benavides, a Mexican individual, with domicile at Rio Nazas 1001 Copl. Jardines de la Salle, Monclova, Coahuila 25720 México (The "Royalty Payee"), and FCA and Royalty Payee are collectively referred to herein as the "Parties".

### RECITALS

A. Whereas Royalty Payee has industrial, commercial and technical knowledge and information (the "Knowledge") consisting of:

- (i) Knowledge related to the way of doing business in Mexico by domestic and foreign investors,
- (ii) Knowledge as to of how to do business in the metal-mechanic, casting, smelting and manufacturing of metallic materials such as steel,
- (iii) Knowledge of the industrial process to manufacture Railcars and Tank Cars (as defined below),
- (iv) Knowledge related to the design and construction of industrial facilities for the Railcars and Tank Cars (as defined below) manufacturing industry, as well as the negotiation and contracting of suppliers in different segments of the services related to the construction of industrial facilities,
- (v) Knowledge of the supplier and supply-chain market related to the businesses and industries mentioned in the preceding paragraphs,
- (vi) Knowledge of the labor market, both related to human resources matters and union matters in Monclova, Coahuila and the region, and in Mexico, in general,

## CONTRATO DE REGALÍAS

ESTE CONTRATO DE REGALÍAS (el "Contrato") de fecha 23 de enero de 2024 (la "Fecha de Inicio") celebrado por y entre Freightcar America, Inc. una sociedad de Delaware con oficinas en 25 S. Wacker Drive, Suite 1500, Chicago, Illinois 60606 ("FCA"), y Salvador Gil Benavides, una persona física mexicana, con domicilio en Rio Nazas 1001 Copl. Jardines de la Salle, Monclova, Coahuila 25720 México (el "Acreedor"). y FCA y el Acreedor conjuntamente referidos como las "Partes".

### ANTECEDENTES

A. Considerando que el Acreedor posee conocimientos e información industrial, comercial y técnica (los "Conocimientos") consistentes en:

- (i) Conocimientos sobre la manera de realizar negocios en México por parte de empresas nacionales e inversionistas extranjeros,
- (ii) Conocimientos sobre la manera de realizar negocios en el mercado metalmecánico, de la fundición, fusión y manufactura de materiales metálicos como el acero,
- (iii) Conocimientos sobre el proceso industrial de manufactura de Vagones y Vagones Cisterna (como se definen más adelante),
- (iv) Conocimientos en materia de diseño y construcción de naves industriales para la industria de manufactura de Vagones y Vagones Cisterna (como se definen más adelante), así como de la negociación y contratación de proveedores en distintos segmentos de la prestación de servicios de construcción de naves industriales,
- (v) Conocimientos del mercado de proveedores y la cadena de suministro relacionados con los negocios y la industria mencionada en los incisos anteriores,
- (vi) Conocimientos del mercado laboral, tanto en lo que respecta a asuntos de recursos humanos como a asuntos sindicales en Monclova, Coahuila y la región, y en México, en general,

(vii) Knowledge of the logistics systems, customs matters and foreign trade operations, in general, and in particular for Railcars and Tank Cars (as defined below),

(viii) Knowledge on the creation, implementation and administration of businesses of the nature of those mentioned in the preceding paragraphs in the market of Monclova, Coahuila, and

(ix) Knowledge of the local customs and practices of the Monclova market, the Mexican market and the export market to the United States in the aforementioned businesses.

B. Whereas, Royalty Payee, based on his Knowledge, has created, together with Mr. Alejandro Gil Benavides, and Mr. Jesús Salvador Gil Benavides (the “Gils”), a business plan and model for the performance of all the activities necessary to carry out the manufacture and repair of Railcars and Tank Cars (as defined below) in the Mexican market and, in particular, in the city of Monclova, Coahuila, as well as for its export to the United States (the “Business Plan and Model”).

C. Considering that Royalty Payee has delivered by different means, especially orally, his Knowledge and the Business Plan and Model to FCA, including its subsidiary, FCA-Fasemex, S. de R.L. de C.V., so that they are able to operate a certain industrial facility located in the city of Monclova, Coahuila, for the manufacture and repair of Railcars and Tank Cars (as defined below).

#### AGREEMENT

Now, therefore, in consideration of the mutual promises and covenants herein contained, the Parties hereto agrees as follows:

##### 1. ROYALTY.

(a) During each applicable Production Line Period (as defined below), FCA will pay to Royalty Payee (i) 0.19200% of FCA's Railcar Sales Net Revenue (as defined below) and (ii)

(vii) Conocimientos en materia de operaciones logísticas, aduaneras y de comercio exterior, en general, y en particular para Vagones y Vagones Cisterna (como se define más adelante)

(viii) Conocimientos sobre la realización, implementación y administración de negocios de la naturaleza de los mencionados en los puntos anteriores en el mercado de Monclova, Coahuila, y

(ix) Conocimientos sobre los usos y costumbres del mercado de Monclova, el mercado mexicano y del mercado de exportación a los Estados Unidos en los negocios anteriormente señalados.

B. Considerando que, el Acreedor, con base a sus Conocimientos, ha elaborado, en conjunto con los señores Alejandro Gil Benavides y Jesús Salvador Gil Benavides (los “Señores Gil”), un plan y modelo de negocios para la realización de la totalidad de las actividades necesarias para llevar a cabo la manufactura y reparación de Vagones y Vagones Cisterna (como se define más adelante) en el mercado mexicano y, en particular, en la ciudad de Monclova, Coahuila, así como para su exportación a los Estados Unidos (el “Plan y Modelo de Negocios”).

C. Considerando que el Acreedor ha entregado por distintos medios, especialmente oral, sus Conocimientos y el Plan y Modelo de Negocios a FCA, incluyendo su subsidiaria, FCA-Fasemex, S. de R.L. de C.V., para que estén en posibilidad de operar cierta nave industrial ubicada en la ciudad de Monclova, Coahuila, para la manufactura y reparación de Vagones y Vagones Cisterna (como se define más adelante)

#### CONTRATO

Ahora, por lo tanto, en consideración de las promesas y obligaciones mutuas aquí contenidas, las Partes acuerdan lo siguiente:

##### 1. REGALÍAS.

(b) Durante cada Periodo de Línea de Producción (como se define más adelante) aplicable, FCA pagará al Acreedor (i) el 0.19200% de los Ingresos Netos por Ventas de Vagones (como se define más adelante) de FCA

0.24000% of FCA's Tank Car Sales Net Revenue (as defined below); the payment specified in this clause (ii) and clause (i) of this sentence, collectively, the "Royalty") on and subject to the terms and conditions of this Agreement. The Royalty shall be paid to the account specified on Exhibit I attached hereto (the "Account"). FCA's obligations with respect to any such payment shall be complete when paid to the Account.

(c) During each applicable Production Line Period (as defined below), a Royalty obligation shall accrue, with respect to each Railcar or Tank Car (as such terms are defined below), upon the sale of (i) such new railcar or converted, modified, refurbished or repaired railcar, other than tank cars, to third parties or to FCA for its own leasing fleet (the "Railcars"), or (ii) such new tank car or converted, modified, refurbished or repaired tank car, to third parties or to FCA for its own leasing fleet (the "Tank Cars") (the Railcars and the Tank Cars, collectively, the "Products"). A Product shall be considered "sold" when such Product is shipped and FCA is paid in full for such Product, when sold to third parties or when shipped to FCA when it will use them for its own leasing fleet and "repaired" shall mean programmed repair work, excluding under warranty repair works and normal course field repairs.

(d) With respect to (i) the first and second production lines that have been constructed to produce Railcars or Tank Cars at the Castaños facility in Castaños, Mexico (the "Castaños Facility"), a Royalty shall only accrue for a period terminating on August 31, 2037; (ii) the third and fourth production lines that are being constructed to produce Railcars or Tank Cars at the Castaños Facility, a Royalty shall only accrue for a period of seventeen (17) years, commencing on the first day of the month during which production commences on the third or fourth lines, whichever line is earlier between these two; and (iii) any other production lines constructed by FCA at the Castaños

y (ii) el 0.24000% de los Ingresos Netos por Ventas de Vagones Cisterna (como se define más adelante) de FCA; el pago especificado en esta cláusula (ii) y en la fracción (i) de esta oración, colectivamente, la "Regalía") en los términos y condiciones del presente Contrato. La Regalía se abonará a la cuenta especificada en el Anexo I adjunto al presente (la "Cuenta"). Las obligaciones de FCA con respecto a cualquier pago de este tipo se completarán cuando se abone en la Cuenta.

(b) Durante cada Periodo de Línea de Producción (como se define más adelante) aplicable, se devengará una obligación de Regalía, con respecto a cada Vagón o Vagón Cisterna (tal y como se definen dichos términos más adelante), por la venta de (i) cada vagón de ferrocarril nuevo o convertido, modificado, reformado o reparado, distinto de los vagones cisterna, a terceros o a FCA para su propia flota de renta (los "Vagones"), o (ii) cada vagón cisterna nuevo o vagón cisterna convertido, modificado, reformado o reparado, a terceros o a FCA para su propia flota de renta (los "Vagones Cisterna") (los Vagones y los Vagones Cisterna, conjuntamente, los "Productos"). Un Producto se considerará "vendido" cuando dicho Producto se envíe y se pague íntegramente a FCA por dicho Producto, cuando se venda a terceros o cuando se envíe a FCA cuando los vaya a utilizar para su propia flota de renta y "reparado" significará el trabajo de reparación programado, excluyendo los trabajos de reparación en garantía y las reparaciones de campo en curso normal.

(c) En relación a (i) la primera y segunda líneas de producción que se han construido para producir Vagones o Vagones Cisterna en la nave de Castaños en Castaños, México (la "Nave de Castaños"), sólo se devengará una Regalía durante un periodo que finalizará el 31 de agosto

Facility or elsewhere within Mexico, a Royalty shall only accrue for a period of years, commencing on the first day of the month during which production commences

de 2037; (ii) la tercera y cuarta líneas de producción que se están construyendo para producir Vagones o Vagones Cisterna en la Nave de Castaños, sólo se devengará una Regalía durante un periodo de diecisiete (17) años, a partir del primer día del mes en que comience la producción en la tercera o cuarta línea, la que sea anterior entre estas dos; y (iii) cualquier otra línea de producción construida por FCA en la Nave de Castaños o en cualquier otro lugar dentro de México, sólo se devengará una Regalía por un periodo de años, que comenzará el primer día del

on such additional line(s) and ending on the same date that the Royalty obligation for the first and second production lines ended ((i), (ii), and (iii) together, the “Production Line Periods”).

(e) The Royalty shall be calculated in accordance with Sections 1(a) and 1(b) on a calendar quarter basis (the “Royalty Period”) by FCA and shall be payable by FCA no later than thirty (30) calendar days after the end of the preceding full quarterly period. For purposes of clarity, the Royalty calculated for any given Royalty Period will include any deemed sales (pursuant to Section 1(b)), during such Royalty Period.

(f) For each Royalty Period, within fifteen (15) business days of the end of such period, FCA shall provide Royalty Payee with a written royalty statement. Such royalty statement shall be certified as accurate by a duly authorized officer of FCA reciting (i) the number and types of Railcars or Tank Cars sold (or deemed sold pursuant to Section 1(b)) during the applicable Royalty Period, (ii) the applicable end customers gross invoice, and (iii) the costs of freight, insurance and/or custom duties and fees excluded from Railcar Sales Net Revenue (as defined below) or Tank Car Sales Net Revenue (as defined below) for each shipment.

mes en que comience la producción en dicha(s) línea(s) adicional(es) y terminará en la misma fecha en que termine la obligación de Regalía para la primera y segunda líneas de producción ((i), (ii) y (iii) en conjunto, los “Periodos de Línea de Producción”).

(d) FCA calculará la Regalía de acuerdo con las Cláusulas 1(a) y 1(b) por trimestres naturales (el “Periodo de Regalía”) y la pagará a más tardar treinta (30) días naturales después del final del periodo trimestral completo anterior. Para propósitos de claridad, la Regalía calculada para cualquier Periodo de Regalía incluirá cualquier venta considerada (de conformidad con la Cláusula 1(b)), durante dicho Periodo de Regalía.

(e) Para cada Periodo de Regalía, dentro de los quince (15) días hábiles siguientes a la finalización de dicho periodo, FCA proporcionará al Acreedor una declaración de regalías por escrito. Dicha declaración de regalías deberá ser certificada como exacta por un funcionario debidamente autorizado de FCA, y deberá contener (i) el número y los tipos de Vagones y Vagones Cisterna vendidos (o considerados vendidos de conformidad con la Cláusula 1(b)) durante el Periodo de Regalía aplicable, (ii) la factura bruta de los clientes finales aplicables. v (iii) los

(g) "Railcar Sales Net Revenue" shall mean the gross selling price or other consideration received by FCA from the sale of newly manufactured or converted, modified, refurbished or repaired Railcars, other than tank cars, sold to third parties or to FCA for its own leasing fleet. Railcar Sales Net Revenue shall not include out-of-pocket costs of freight, insurance and/or custom duties and fees.

(h) "Tank Car Sales Net Revenue" shall mean the gross selling price or other consideration received by FCA from the sale of newly manufactured or converted, modified, refurbished or repaired Tank Cars sold to third parties or to FCA for its own leasing fleet. Tank

costes de flete, seguro y/o derechos y tasas de aduana excluidos de los Ingresos Netos por Ventas de Vagones (como se define más adelante) o de los Ingresos Netos por Ventas de Vagones Cisterna (como se define más adelante) para cada envío.

(f) "Ingresos Netos por Ventas de Vagones" significará el precio de venta bruto u otra contraprestación recibida por FCA por la venta de Vagones de nueva fabricación o convertidos, modificados, renovados o reparados, distintos de los vagones cisterna, vendidos a terceros o a FCA para su propia flota de renta. Los Ingresos Netos por Ventas de Vagones no incluirán los costes de flete, seguro y/o derechos y tarifas de aduana.

(g) "Ingresos Netos por Ventas de Vagones Cisterna" significará el precio de venta bruto u otra contraprestación recibida por FCA por la venta de Vagones Cisterna de nueva fabricación o convertidos, modificados, restaurados o reparados vendidos a terceros o a FCA para su

Car Sales Net Revenue shall not include out-of-pocket costs of freight, insurance and/or custom duties and fees.

(i) All payments due to Royalty Payee shall be made in United States currency by wire transfer to the Account, unless otherwise specified by them to FCA.

## 2. TERM

(a) The term of this Agreement (the "Term") shall commence on the Effective Date and end upon the termination of the last applicable Production Line Period, unless terminated earlier pursuant to this Agreement.

(b) FCA shall have the right to immediately terminate this Agreement upon written notice to Royalty Payee in the event that:

i. Royalty Payee commits a material breach of any of its obligations under this Agreement, and such breach is not

propia flota de renta. Los Ingresos Netos por Ventas de Vagones Cisterna no incluirán los costes de flete, seguro y/o derechos y tarifas de aduana.

(h) Todos los pagos debidos al Acreedor se realizarán en moneda de curso legal de los Estados Unidos mediante transferencia bancaria a la Cuenta, a menos que éste especifique lo contrario a FCA.

## 2. VIGENCIA

(a) La vigencia de este Contrato (la "Vigencia") comenzará en la Fecha de Inicio y deberá terminar en la terminación del último Periodo de Línea de Producción aplicable, salvo que termine anticipadamente en virtud del presente Contrato.

(b) FCA tendrá derecho a rescindir inmediatamente el



cured within ninety (90) days after written notice to such Party of such breach; or

ii.any Gil commits a material breach of any of their obligations under that certain lease agreements and its respective amendment agreements, by and between the Gils as lessors and FCA-Fasemex, S. de R.L. de C.V. as lessee, and such breach is not cured within ninety (90) days after written notice to the Gils of such breach; provided, however, that this Agreement shall not terminate in the event that such lease agreement and its respective amendment agreements, are terminated by mutual agreement of the parties thereto, for any reason whatsoever, prior to its expiration date.

### 3. REPRESENTATIONS AND WARRANTIES

(a)FCA represents and warrants that (i) it is a corporation duly organized, validly existing, and in good standing under the laws of the State

presente Contrato previa notificación por escrito al Acreedor en caso de que:

i. El Acreedor cometa un incumplimiento grave de cualquiera de sus obligaciones en virtud del presente Contrato, y dicho incumplimiento no se subsane en un plazo de noventa (90) días tras la notificación por escrito de dicho incumplimiento a dicha Parte; o

ii. cualquier de los Señores Gil cometa un incumplimiento sustancial de cualquiera de sus obligaciones conforme a ciertos contratos de arrendamiento y sus respectivos convenios modificatorios, celebrados entre los Señores Gil como arrendadores y FCA-Fasemex, S. de R.L. de C.V. como arrendatario, y dicho incumplimiento no sea subsanado dentro de los noventa (90) días siguientes a la notificación por escrito a los Señores Gil de dicho incumplimiento; en el entendido, sin embargo, que el presente Contrato no terminará en caso de que dicho contrato de arrendamiento y sus respectivos convenios modificatorios, sean terminados por mutuo acuerdo de las partes del mismo, por cualquier motivo, antes de su fecha de vencimiento.

### 3. DECLARACIONES Y GARANTÍAS

(a) FCA declara y garantiza que (i) es una sociedad mercantil debidamente constituida, con

of Delaware, and (ii) has full power and authority to enter into this Agreement and perform its obligations hereunder.

(b)Royalty Payee represents and warrants that he is an individual, of Mexican nationality, of legal age, married, with full authority to exercise their own rights and with sufficient and enough legal capacity to be bound by the terms of this Agreement.

### 4. RECORD INSPECTION AND AUDIT

existencia válida y en pleno goce de sus derechos conforme a las leyes del Estado de Delaware, y (ii) cuenta con las facultades para celebrar el presente Contrato y cumplir con las obligaciones a su cargo.

(b) El Acreedor declara y garantiza que es una persona física, de nacionalidad mexicana, mayor de edad, casado, con plena capacidad para ejercer sus propios derechos y

(a) Royalty Payee shall have the right, upon reasonable notice, to inspect FCA's books, records, accounts, and all other documents and material in FCA's possession or control with respect to the subject matter of this Agreement, subject to appropriate confidentiality restrictions, including all information leading to, derived from or related to the Royalties, the Railcar Sales Net Revenue and the Tank Cars Sales Net Revenue. FCA shall maintain proper books, records and accounts with entries that are full, true and correct in all material respects and in conformity with GAAP consistently applied regarding the Royalties, the Railcar Sales Net Revenue and the Tank Cars Sales Net Revenue. FCA shall permit any representatives or advisors of Royalty Payee, upon reasonable prior notice, to inspect, examine and make extracts from its books, records, accounts, and all other documents and material in FCA's possession or control with respect to the subject matter of this Agreement, and to discuss its calculations, entries and records with its officers and independent accountants, all at such reasonable times and as often as reasonably requested, in each case at Royalty Payee's expense; provided that, Royalty Payee shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an event of default by FCA, in which case the inspection and works related thereto can take place at any reasonable time and shall be at FCA's expense.

(b) All books and records relative to FCA's obligations hereunder shall be maintained and made accessible to Royalty Payee for inspection

con capacidad legal suficiente y bastante para obligarse en los términos del presente Contrato.

#### 4. INSPECCIÓN Y AUDITORÍA DE REGISTROS

(a) El Acreedor tendrá derecho, previo aviso razonable, a inspeccionar los libros, registros, cuentas y todos los demás documentos y materiales en posesión o control de FCA con respecto al objeto de este Contrato, sujeto a las restricciones de confidencialidad apropiadas, incluida toda la información que conduzca, derive o esté relacionada con las Regalías, los Ingresos Netos por Ventas de Vagones y los Ingresos Netos por Ventas de Vagones Cisterna. FCA mantendrá libros, registros y cuentas adecuados con entradas que sean completas, verdaderas y correctas en todos los aspectos materiales y de conformidad con los PCGA aplicados de forma coherente en relación con las Regalías, los Ingresos Netos por Ventas de Vagones y los Ingresos Netos por Ventas de Vagones Cisterna. FCA permitirá a cualquier representante o asesor del Acreedor, previo aviso razonable, inspeccionar, examinar y extraer extractos de sus libros, registros, cuentas y cualquier otro documento y material en posesión o control de FCA en relación con el objeto de este Contrato, así como discutir sus cálculos, entradas y registros con sus directivos y contadores independientes, todo ello en momentos razonables y con la frecuencia que se solicite razonablemente, en cada caso a expensas del Acreedor; siempre y cuando, el Acreedor no ejerza tales derechos más de dos (2) veces durante cualquier año natural, salvo que exista un caso de incumplimiento por parte de FCA, en cuyo caso la inspección y los trabajos relacionados con la misma podrán tener lugar en cualquier momento razonable y correrán a cargo de FCA.



at a location in the United States for at least two (2) years after termination or expiration of this Agreement.

## 5. CONFIDENTIALITY

(a) All disclosures of trade secrets, know-how, financial information, or other information of a type that is known to be, or that a reasonable person would recognize it to be, confidential made by FCA or any of its affiliates (as applicable, the "Discloser") under or in connection with this Agreement, as well as the terms of this Agreement (collectively, the "Confidential Information"), shall be received and maintained in confidence by the recipient (the "Recipient") and each Recipient shall treat all such Confidential Information as the confidential property of the Discloser and keep it confidential and secure and protect it from unauthorized use or disclosure by using at least the same degree of care as Recipient employs to avoid unauthorized use or disclosure of its own Confidential Information of similar nature, but in no event less than reasonable care. Notwithstanding the foregoing, a Recipient shall be permitted to disclose any Confidential Information if required by applicable law, provided the Recipient provides the Discloser reasonable prior opportunity to comment upon such disclosure to the extent permitted by law and agree to cooperate to take reasonable steps to minimize the extent of any such required disclosure.

(b) The term "Confidential Information" does not include information that (i) was in the public domain prior to the time it was furnished to Recipient or is at the time of the alleged breach (through no willful or improper action or inaction by such Recipient) generally available to the public, (ii) was or becomes available to a Recipient on a non-confidential basis from a source other than FCA or its affiliates, provided such other source is not be known by the Recipient to be bound by a confidentiality obligation, (iii) is lawfully known to a Recipient prior to disclosure of the Confidential Information by FCA or its affiliates, or (iv) is independently developed by a Recipient without any use of any Confidential Information.

(b) Todos los libros y registros relativos a las obligaciones de FCA en virtud del presente Contrato se mantendrán y serán accesibles al Acreedor para su inspección en una ubicación en los Estados Unidos de América durante al menos dos (2) años tras la terminación o expiración del presente Contrato.

## 5. CONFIDENCIALIDAD

(a) Todas las divulgaciones de secretos comerciales, conocimientos técnicos, información financiera u otra información de un tipo que se sabe que es confidencial, o que una persona razonable reconocería que es confidencial, realizadas por FCA o cualquiera de sus subsidiarias (según corresponda, el "Revelador") en virtud o en relación con este Contrato, así como los términos de este Contrato (colectivamente, la "Información Confidencial"), será recibida y mantenida de forma confidencial por el receptor (el "Receptor") y cada Receptor tratará toda Información Confidencial como propiedad confidencial del Revelador y la mantendrá confidencial y segura y la protegerá del uso o divulgación no autorizados utilizando al menos el mismo grado de cuidado que el Receptor emplea para evitar el uso o divulgación no autorizados de su propia Información Confidencial de naturaleza similar, pero en ningún caso inferior al cuidado razonable. Sin perjuicio de lo anterior, el Receptor podrá divulgar cualquier Información Confidencial si así lo exige la legislación aplicable, siempre y cuando el Receptor proporcione al Revelador una oportunidad previa razonable para comentar dicha divulgación en la medida en que lo permita la ley y acepte cooperar para tomar medidas razonables con el fin de minimizar el alcance de cualquier divulgación exigida.

(b) El término "Información confidencial" no incluye información que (i) fuera de dominio público antes del momento en que se proporcionó al Receptor o que en el momento del supuesto incumplimiento (sin acción o inacción voluntaria o indebida por parte de dicho Receptor) esté generalmente a disposición del público, (ii) haya estado o pase a estar a disposición del Receptor de forma no confidencial por parte de una fuente distinta a FCA o sus subsidiarias, siempre y cuando el Receptor no

	sepa que dicha fuente está sujeta a una obligación de confidencialidad, (iii)
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<p>(c)Each Recipient's obligations with respect to the Confidential Information shall continue for a term of three (3) years following the termination of this Agreement.</p> <p><b>6. COMPLIANCE WITH LAWS</b></p> <p>Notwithstanding anything to the contrary, the obligations of the Parties hereto shall be subject to all laws, present and future (including export control laws and regulations) of any government having jurisdiction over the Parties hereto, and to orders, regulations, directions, or requests of any such government. Each Party shall undertake to comply with and be solely responsible for complying with such laws applicable to such Party.</p> <p><b>7. TAXES</b></p> <p>Each Party shall otherwise remain responsible for all taxes applicable to such Party and its operations in connection with this Agreement.</p> <p><b>8. NOTICE AND PAYMENT</b></p> <p>Any notice or communication required or permitted to be given be any provisions of this Agreement, including any consents, shall be in writing and shall be deemed to have been given and received by the person to whom directed, if properly addressed: (1) when delivered personally to such person or to an officer of the person to which directed, (2) upon confirmation of receipt of transmission by email, or (3) two days after being deposited with an internationally recognized overnight courier, delivery charges prepaid for delivery the following day. The addresses for notice are as follows:</p> <p>FCA:</p>	<p>el Receptor la conozca legalmente antes de la divulgación de la Información Confidencial por parte de FCA o sus subsidiarias, o (iv) el Receptor la desarrolle de forma independiente sin utilizar alguna Información Confidencial.</p> <p>(c) Las obligaciones de cada Receptor con respecto a la Información Confidencial continuarán durante un plazo de tres (3) años contados a partir de la terminación del presente Contrato.</p> <p><b>6. CUMPLIMIENTO CON LA LEY.</b></p> <p>No obstante cualquier disposición en contrario, las obligaciones de las Partes del presente Contrato estarán sujetas a todas las leyes, presentes y futuras (incluidas las leyes y reglamentos de control de las exportaciones) de cualquier gobierno que tenga jurisdicción sobre las Partes del presente Contrato, y a las órdenes, regulaciones, instrucciones o solicitudes de cualquiera de dichos gobiernos. Cada una de las Partes se comprometerá a cumplir y será la única responsable del cumplimiento de dichas leyes aplicables a dicha Parte.</p> <p><b>7. IMPUESTOS</b></p> <p>Cada Parte seguirá siendo responsable de todos los impuestos aplicables a dicha Parte y a sus operaciones en relación con el presente Contrato.</p> <p><b>8. NOTIFICACIONES Y PAGO</b></p> <p>Cualquier notificación o comunicación requerida o permitida en virtud de cualquiera de las disposiciones del presente Contrato, incluido cualquier otorgamiento de consentimiento, se realizará por escrito y se considerará entregada y recibida por la persona a la que se dirige, si está debidamente dirigida: (1) cuando se entrega personalmente a dicha persona o a un funcionario de la</p>
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persona a la que se dirige, (2) tras la confirmación de la recepción de la transmisión por correo electrónico, o (3) dos días después de ser depositada en un servicio de mensajería nocturno reconocido internacionalmente, con los gastos de envío pagados por adelantado para su entrega al día siguiente. Las direcciones de notificación son las siguientes:

FreightCar America, Inc.  
125 S. Wacker Drive, Suite 1500  
Chicago, IL 60606  
Attn: Celia Perez  
Email: cperez@freightcar.net

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

Kelley Drye & Warren LLP  
333 W. Wacker Dr., 26<sup>th</sup> Floor  
Chicago, IL 60606  
Attn: Andrew Pillsbury  
APillsbury@kelleydrye.com

Royalty Payee:

Salvador Gil Benavides  
Rio Nazas 1001 Col. Jardines de la Salle, Monclova,  
Coahuila 25720 México  
Attn: Salvador Gil Benavides  
Email: sgil@fasemex.com.mx

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

Romero, Ramos, Quintanilla y Bortoni S.C.  
Lazaro Cardenas 435 Despacho 410  
Colonia Loma Larga, 66266  
San Pedro Garza Garcia, Nuevo Leon, Mexico.  
Attn: Francisco Romero  
Email: fromero@rrqb.mx

FCA:

FreightCar America, Inc.  
125 S. Wacker Drive, Suite 1500  
Chicago, IL 60606  
Attn: Celia Perez  
Email: cperez@freightcar.net

Con copia a (la cual no constituirá notificación):

Kelley Drye & Warren LLP  
333 W. Wacker Dr., 26<sup>o</sup> Piso  
Chicago, IL 60606  
Attn: Andrew Pillsbury  
APillsbury@kelleydrye.com

El Acreedor:

Salvador Gil Benavides  
Rio Nazas 1001 Col. Jardines de la Salle, Monclova,  
Coahuila 25720 México  
Attn: Salvador Gil Benavides  
Email: sgil@fasemex.com.mx

Con copia a (la cual no constituirá notificación):

Romero, Ramos, Quintanilla y Bortoni S.C.  
Lazaro Cardenas 435 Despacho 410  
Colonia Loma Larga, 66266  
San Pedro Garza Garcia, Nuevo Leon, Mexico.  
Attn: Francisco Romero  
Email: fromero@rrqb.mx

Any Party may change its address, email or individual for receiving notice for the purpose of this Section by notice to the other given in the manner set forth above.

#### 9. GOVERNING LAW

This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws of the State of Illinois applicable to contracts made in that state, without giving effect to any choice of law or conflict of law provision or rule that would cause the application

Cualquiera de las Partes podrá cambiar su dirección, correo electrónico o persona para recibir notificaciones a los efectos de la presente Cláusula mediante notificación a la otra Parte realizada en la forma establecida anteriormente.

#### 9. LEGISLACIÓN APLICABLE

El presente Contrato se regirá y se someterá en cuanto a su validez, ejecución, interpretación, construcción, efecto y en todos los demás aspectos por las leyes internas del Estado de Illinois aplicables a los contratos celebrados en dicho estado, sin dar efecto a ninguna elección de

of the laws of any jurisdiction other than the State of Illinois.

#### 10. CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL PROCEEDINGS (IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, ANY RELATIONSHIPS BETWEEN THE PARTIES HEREUNDER AND ANY DISPUTES WITH RESPECT TO ANY OF THE FOREGOING SHALL BE COMMENCED AND PROSECUTED EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS LOCATED IN THE CITY OF CHICAGO, COUNTY OF COOK, AND ANY APPELLATE COURT THEREFROM OR THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS AND ANY APPELLATE COURT THEREFROM (COLLECTIVELY, THE "Illinois Courts"). EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND SUBMITS, FOR IT-SELF AND ITS ASSETS, TO THE EXCLUSIVE JURISDICTION OF ANY OF THE ILLINOIS COURTS IN RESPECT OF ANY SUCH

ley o conflicto de disposiciones o normas legales que provoquen la aplicación de las leyes de cualquier jurisdicción distinta del Estado de Illinois.

#### 10. CONSENTIMIENTO A LA JURISDICCIÓN; RENUNCIA AL JUICIO CON JURADO.

(a) CADA UNA DE LAS PARTES ACEPTA DE FORMA IRREVOCABLE E INCONDICIONAL QUE TODOS LOS PROCEDIMIENTOS CONTRACTUALES, EXTRA CONTRACTUALES O DE OTRO TIPO) DERIVADOS O RELACIONADOS CON EL PRESENTE CONTRATO, LAS TRANSACCIONES CONTEMPLADAS EN EL MISMO, CUALQUIER RELACIÓN ENTRE LAS PARTES EN VIRTUD DEL PRESENTE Y CUALQUIER DISPUTA CON RESPECTO A CUALQUIERA DE LOS ANTERIORES SE INICIARÁ Y PROCESARÁ EXCLUSIVAMENTE EN LOS TRIBUNALES DEL ESTADO DE ILLINOIS UBICADOS EN LA CIUDAD DE CHICAGO, COUNTY OF COOK, Y CUALQUIER TRIBUNAL DE APELACIÓN DEL MISMO O LOS ESTADOS UNIDOS PARA EL DISTRITO NORTE DE ILLINOIS Y CUALQUIER TRIBUNAL DE APELACIÓN DEL MISMO (COLECTIVAMENTE, LOS "Tribunales de Illinois"). CADA

PROCEEDING. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 8. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(b) EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW

UNA DE LAS PARTES CONSIENTE Y SE SOMETE IRREVOCABLE E INCONDICIONALMENTE, POR SÍ MISMA Y POR SUS BIENES, A LA JURISDICCIÓN EXCLUSIVA DE CUALQUIERA DE LOS TRIBUNALES DE ILLINOIS CON RESPECTO A CUALQUIERA DE DICHOS PROCEDIMIENTOS. POR LA PRESENTE, CADA UNA DE LAS PARTES CONSIENTE DE FORMA IRREVOCABLE E INCONDICIONAL A LA NOTIFICACIÓN DE PROCESOS EN LA FORMA PREVISTA PARA LAS NOTIFICACIONES EN LA CLAÚSULA 8. NADA DE LO DISPUESTO EN EL PRESENTE CONTRATO AFECTARÁ AL DERECHO DE CUALQUIERA DE LAS PARTES A NOTIFICAR PROCESOS DE CUALQUIER OTRA FORMA PERMITIDA POR LA LEY.

(b) POR EL PRESENTE CONTRATO, CADA UNA DE LAS PARTES RENUNCIA DE FORMA IRREVOCABLE E

OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, ANY RELATIONSHIPS BETWEEN THE PARTIES HEREUNDER AND ANY DISPUTES WITH RESPECT TO ANY OF THE FOREGOING IN ANY OF THE ILLINOIS COURTS. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH PROCEEDING IN ANY OF THE ILLINOIS COURTS. EACH OF THE PARTIES AGREES THAT A FINAL JUDGMENT IN ANY SUCH PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON

INCONDICIONAL, EN LA MEDIDA EN QUE PUEDA HACERLO DE FORMA LEGAL Y EFECTIVA, A CUALQUIER OBJECCIÓN QUE PUEDA TENER AHORA O EN EL FUTURO AL ESTABLECIMIENTO DE LA JURISDICCIÓN DE CUALQUIER PROCEDIMIENTO DERIVADO O RELACIONADO CON EL PRESENTE CONTRATO, LAS TRANSACCIONES CONTEMPLADAS EN EL PRESENTE DOCUMENTO, CUALQUIER RELACIÓN ENTRE LAS PARTES EN VIRTUD DEL PRESENTE DOCUMENTO Y CUALQUIER DISPUTA CON RESPECTO A CUALQUIERA DE LOS ANTERIORES EN CUALQUIERA DE LOS TRIBUNALES DE ILLINOIS. CADA UNA DE LAS PARTES ACUERDA QUE UNA SENTENCIA DEFINITIVA EN CUALQUIERA DE DICHOS PROCEDIMIENTOS SERÁ CONCLUYENTE Y PODRÁ EJECUTARSE EN OTRAS JURISDICCIONES

THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

(c) EACH PARTY AGREES THAT ANY PROCEEDING (IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, ANY RELATIONSHIPS BETWEEN THE PARTIES HEREUNDER AND ANY DISPUTES WITH RESPECT TO ANY OF THE FOREGOING WILL INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUCH PROCEEDING.

(d) EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY PROCEEDING ARISING UNDER OR RELATING TO THIS AGREEMENT, SEEK TO ENFORCE THE FOREGOING WAIVERS,

Y PODRÁ EJECUTARSE EN OTRAS JURISDICCIONES MEDIANTE UNA DEMANDA BASADA EN LA SENTENCIA O DE CUALQUIER OTRA FORMA PREVISTA POR LA LEY.

(c) CADA UNA DE LAS PARTES ACEPTA QUE CUALQUIER PROCEDIMIENTO (CONTRACTUAL, EXTRA CONTRACTUAL O DE OTRO TIPO) DERIVADO O RELACIONADO CON EL PRESENTE CONTRATO, LAS TRANSACCIONES CONTEMPLADAS EN EL MISMO, CUALQUIER RELACIÓN ENTRE LAS PARTES EN VIRTUD DEL PRESENTE Y CUALQUIER DISPUTA CON RESPECTO A CUALQUIERA DE LOS ANTERIORES IMPLICARÁ CUESTIONES COMPLICADAS Y DIFÍCILES, Y POR LO TANTO CADA UNA DE LAS PARTES RENUNCIA IRREVOCABLE E INCONDICIONALMENTE A CUALQUIER DERECHO QUE PUEDA TENER A UN JUICIO CON JURADO CON RESPECTO A CUALQUIERA DE DICHOS PROCEDIMIENTOS.

(d) CADA PARTE CERTIFICA Y RECONOCE QUE (i) NINGÚN REPRESENTANTE, AGENTE O ABOGADO DE OTRA PARTE HA DECLARADO, DE FORMA EXPRESA O DE OTRO TIPO, QUE DICHA OTRA PARTE NO INTENTARÁ, EN CASO DE PROCEDIMIENTO EN VIRTUD DEL PRESENTE CONTRATO O EN RELACIÓN

(ii) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (iii) SUCH PARTY MAKES SUCH WAIVERS VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATION IN THIS SECTION 10(d).

(e) EACH OF THE PARTIES HERETO WAIVES THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY

CON EL MISMO, EJECUTAR LAS RENUNCIAS ANTERIORES, (ii) DICHA PARTE ENTIENDE Y HA CONSIDERADO LAS IMPLICACIONES DE DICHAS RENUNCIAS, (iii) DICHA PARTE REALIZA DICHAS RENUNCIAS VOLUNTARIAMENTE, Y (iv) DICHA PARTE HA SIDO INDUCIDA A ENTRAR EN ESTE CONTRATO POR, ENTRE OTRAS COSAS, LAS RENUNCIAS MUTUAS Y LA CERTIFICACIÓN EN ESTA CLÁUSULA 10(d).



LAWSUIT, ACTION OR PROCEEDING SEEKING ENFORCEMENT OF SUCH PARTY'S RIGHTS UNDER THIS AGREEMENT.

#### **11.SURVIVAL**

If this Agreement terminates or expires, the provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement shall survive, including Sections 1, 4, 5, and 7 through 21.

#### **12.FURTHER ASSURANCES**

In connection with this Agreement and the transactions contemplated hereby, each Party shall execute and deliver such further documents, and perform such further acts, as may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions contemplated hereunder, as reasonably requested by another Party.

#### **13.ENTIRE AGREEMENT**

This Agreement, contains all agreements among the Parties relating to its subject matter and supersedes and cancels any and all previous contracts or agreements among the Parties with respect thereto. Any other understanding about this Agreement, including additional terms or provisions contained in invoices, shipping papers, or other documents, will be of no force or effect. Any amendment to this Agreement must be in writing and will not be effective until it is executed and approved by an authorized representative of each Party.

(e) CADA UNA DE LAS PARTES RENUNCIA AL DERECHO A UN JUICIO CON JURADO EN RELACIÓN CON CUALQUIER DEMANDA, ACCIÓN O PROCEDIMIENTO QUE PRETENDA HACER VALER LOS DERECHOS DE DICHA PARTE EN VIRTUD DEL PRESENTE CONTRATO.

#### **11. PERMANENCIA**

En caso de resolución o expiración del presente Contrato, subsistirán las disposiciones del mismo que por su naturaleza se extiendan más allá de la expiración o resolución del presente Contrato, incluidas las Cláusulas 1, 4, 5 y 7 a 21.

#### **12. GARANTÍAS ADICIONALES**

En relación con el presente Contrato y las transacciones contempladas en el mismo, cada una de las Partes suscribirá y entregará los documentos adicionales y realizará los actos adicionales que sean necesarios o apropiados para efectuar y cumplir las disposiciones del presente Contrato y las transacciones contempladas en el mismo, según lo solicite razonablemente la otra Parte.

#### **13. UNIDAD DE CONVENIO**

El presente Contrato contiene todos los acuerdos entre las Partes relativos a su objeto y sustituye y anula todos y cada uno de los contratos o acuerdos anteriores entre las Partes con respecto al mismo. Cualquier otro acuerdo sobre el presente Contrato, incluidos los términos o disposiciones adicionales contenidos en facturas, documentos de envío u otros documentos, no tendrá fuerza ni efecto alguno. Cualquier modificación del presente Contrato deberá realizarse por escrito y no surtirá efecto hasta que

#### **14.SEVERABILITY**

haya sido ejecutada y aprobada por un representante autorizado de cada una de las Partes.

If any provision of this Agreement is determined by any legislature, court, or administrative agency to be invalid or unenforceable, every other provision will remain in full force and effect, unless the purposes of this Agreement cannot be achieved. The Parties will use commercially reasonable efforts to substitute a valid, legal, and enforceable provision, which insofar as practical implements the purposes of any provision held invalid, illegal, or unenforceable.

#### **15. WAIVERS**

No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

#### **16. ASSIGNMENT**

This Agreement is deemed to be of a personal nature and no party may assign, convey, or transfer this Agreement or any right or interest in this Agreement, or delegate or subcontract performance of any obligations hereunder, in whole or in part, to any third party, without the prior written consent of FCA. Any attempt to do so shall be void *ab initio*.

Notwithstanding the foregoing, the Parties agree that (1) the initial Royalty Payee shall have the one-time right to totally or partially assign and/or

#### **14. ILEGALIDAD DE DISPOSICIONES**

Si cualquier disposición del presente Contrato es declarada inválida o inaplicable por cualquier legislatura, tribunal u organismo administrativo, todas las demás disposiciones seguirán en pleno vigor y efecto, a menos que no puedan alcanzarse los fines del presente Contrato. Las Partes harán todos los esfuerzos comercialmente razonables para sustituir una disposición válida, legal y aplicable que, en la medida de lo posible, cumpla los fines de cualquier disposición declarada inválida, ilegal o inaplicable.

#### **15. RENUNCIAS**

Ninguna renuncia de cualquiera de las Partes a cualquiera de las disposiciones del presente documento será efectiva a menos que se establezca explícitamente por escrito y esté firmada por la Parte que renuncia. Ninguna renuncia por cualquiera de las Partes se interpretará como una renuncia con respecto a cualquier falta, incumplimiento o violación no identificado expresamente por dicha renuncia por escrito, ya sea de carácter similar o diferente, y ya sea que ocurra antes o después de dicha renuncia. El no ejercicio o el retraso en el ejercicio de cualquier derecho, recurso, facultad o privilegio derivado del presente Contrato no se interpretará como una renuncia al mismo; ni el ejercicio único o parcial de cualquier derecho, recurso, facultad o privilegio en virtud del presente Contrato impedirá cualquier otro ejercicio posterior del mismo o el ejercicio de cualquier otro derecho, recurso, facultad o privilegio.

#### **16. CESIÓN**

El presente Contrato se considera de naturaleza personal y ninguna de las partes podrá ceder, transmitir o transferir el presente Contrato o cualquier derecho o interés en el mismo, ni delegar o subcontratar el cumplimiento de cualquiera de sus obligaciones, en su totalidad o en parte, a terceros, sin el consentimiento previo por escrito de FCA. Cualquier intento de hacerlo será nulo *ab initio*.



transfer its rights under this Agreement, without the prior written consent of FCA, (a) by any means (i) to any individual that is a member of the initial Royalty Payee's family and that is a blood relative, a spouse and/or with whom the initial Royalty Payee has an adoption relationship, and/or (ii) to any legal entity in which Royalty Payee is a controlling equity holder (for so long as Royalty Payee or its successors remain the controlling equity holder), (b) by means of a contribution to a trust set up by the initial Royalty Payee that (i) is controlled by, or, for the benefit of, the initial Royalty Payee, or (ii) is for the benefit of the beneficiaries of such trust or any individual that is a member of the initial Royalty Payee's family and that is a blood relative, a spouse and/or with whom the initial Royalty Payee has an adoption relationship, and/or (2) the initial Royalty Payee and its successors, if any, shall have the right to totally or partially assign and/or transfer its rights under this Agreement, without the prior written consent of FCA, by cause of death to their heirs and/or legatees, appointed by will or by law if the initial Royalty Payee or its successors die intestate. In the cases referred to in (1) above, Royalty Payee or its legal representative, as the case may be, shall give written notice to FCA 30 (thirty) calendar days prior to the corresponding event. In the cases referred to in (2) above, the executor shall give written notice to FCA 30 (thirty) calendar days after the corresponding event.

#### **17.NO THIRD-PARTY BENEFICIARIES**

This Agreement is solely for the benefit of the Parties and their respective permitted successors and assigns, without prejudice to the provisions of Section 16 hereof. There are no other third-party beneficiaries to this Agreement.

#### **18.RELATIONSHIP OF THE PARTIES**

The relationship between and among the Parties is solely that of independent contractors. Nothing in this Agreement creates a partnership, joint venture, or principal-agent relationship. Royalty Payee shall not have any authority to create or

No obstante lo anterior, las Partes acuerdan que (1) el Acreedor inicial tendrá el derecho, por una sola vez, a ceder y/o transferir total o parcialmente sus derechos en virtud del presente Contrato, sin el consentimiento previo por escrito de FCA, (a) por cualquier medio (i) a cualquier persona física que sea miembro de la familia del Acreedor inicial y que sea pariente consanguíneo, cónyuge y/o con quien el Acreedor inicial tenga una relación de adopción, y/o (ii) a cualquier entidad jurídica en la que el Acreedor sea un accionista mayoritario (mientras el Acreedor o sus herederos siga siendo el accionista mayoritario), (b) mediante aportación a un fideicomiso constituido por el Acreedor inicial, que (i) sea controlado por, o, para el beneficio de, el Acreedor inicial, o (ii) sea para el beneficio de los fideicomisarios de dicho fideicomiso o para cualquier persona física que sea miembro de la familia del Acreedor inicial y que sea pariente consanguíneo, cónyuge y/o con quien el Acreedor Inicial tenga una relación de adopción, y/o (2) el Acreedor inicial y sus herederos, si los hubiere, tendrán derecho a ceder y/o transferir total o parcialmente sus derechos en virtud del presente Contrato, sin el consentimiento previo por escrito de FCA, por causa de muerte a sus herederos y/o legatarios, designados por testamento o por ley si el Acreedor inicial o sus herederos fallecen intestados. En los casos anteriormente referidos en el punto (1), el Acreedor o su representante legal, según sea el caso, deberán notificar por escrito a FCA 30 (treinta) días naturales antes de ocurrido el evento correspondiente. En los casos anteriormente referidos en el punto (2), el albacea deberá notificar por escrito a FCA 30 (treinta) días naturales después de ocurrido el evento correspondiente.

#### **17. EFECTO VINCULATORIO; BENEFICIO**

El presente Contrato beneficia exclusivamente a las Partes y a sus respectivos causahabientes y cesionarios autorizados, sin perjuicio de lo dispuesto en la Cláusula 16 del mismo. No existen terceros beneficiarios del presente Contrato.

assume in FCA's name or on its behalf any obligation, expressed or implied, or to act or purport to act as FCA's agent or legally empowered representative for any purpose whatsoever. No Party shall be liable to any third party in any way for any engagement, obligation, commitment, contract, representation, transaction, or act or omission to act of another other Party, except as expressly provided herein.

#### 19. TERMINOLOGY AND CONSTRUCTION

All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of Articles, Sections, Exhibits, and Schedules are for convenience only, and neither limit nor amplify the provisions of this Agreement. Except as specifically provided, references to Articles, Sections, Exhibits, and Schedules in this Agreement refer to Articles, Sections, Exhibits, and Schedules to, this Agreement. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter. The word "or" shall mean "and/or" unless the context requires otherwise. The words "day," "month," and "year" mean, respectively, calendar day, calendar month

La relación entre las Partes es exclusivamente la de contratistas independientes. Nada en este Contrato crea una sociedad en participación, *joint venture* o una relación principal-agente. El Acreedor no tendrá autoridad alguna para crear o asumir en nombre de FCA o en su representación ninguna obligación, expresa o implícita, ni para actuar o pretender actuar como agente o representante legalmente facultado de FCA para ningún fin. Ninguna de las Partes será responsable ante terceros de ninguna manera por cualquier compromiso, obligación, compromiso, contrato, representación, transacción, o acto u omisión de actuar de la otra Parte, salvo lo expresamente dispuesto en el presente Contrato.

#### 19. TERMINOLOGÍA Y ESTRUCTURA

Todos los pronombres personales utilizados en el presente Contrato, ya sea en género masculino, femenino o neutro, incluirán todos los demás géneros; y el singular incluirá el plural y viceversa. Los títulos de los Artículos, Cláusulas, Anexos y Listas se utilizan únicamente por comodidad y no limitan ni amplían las disposiciones del presente Contrato. Salvo que se disponga específicamente lo contrario, las referencias a los Artículos, Cláusulas, Anexos y Anexos de este Contrato se refieren a los Artículos, Cláusulas, Anexos y Anexos de este Contrato. El uso en el presente documento de la palabra "incluyendo", cuando siga a cualquier declaración, término o asunto general, no se interpretará en el sentido de limitar dicha declaración, término o asunto a los elementos o asuntos específicos establecidos inmediatamente después de dicha palabra o a elementos o asuntos similares, independientemente de que se utilice o no un lenguaje no

and calendar year. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between them and that this Agreement shall be construed in favor of or against either Party by reason of the extent to which such Party of its professional advisors participated in the preparation of such agreements.

limitativo (como "sin limitación" o "pero sin limitarse a", o palabras de significado similar) con referencia a los mismos, sino que se considerará que se refiere a todos los demás elementos o asuntos que pudieran razonablemente incluirse en el ámbito más amplio posible de dicha declaración, término o asunto general. La palabra "o" significará "y/o" a menos que el contexto requiera lo contrario. Las palabras "día", "mes" y "año" significan, respectivamente, día natural, mes natural y año natural. Las Partes acuerdan que los términos y condiciones de este Contrato son el resultado de negociaciones entre ellas y que este Contrato se interpretará a favor o en contra de cualquiera de

## **20.LIMITATIONS OF LIABILITY**

No Party to this Agreement shall be entitled to recover from the other any special, incidental, consequential or punitive damages.

## **21.COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which together shall constitute a single instrument.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the Effective Date.

[Signature Page Follows]

las Partes en razón de la medida en que dicha Parte o sus asesores profesionales hayan participado en la preparación de dichos acuerdos.

## **20.LIMITACIONES DE RESPONSABILIDAD**

Ninguna de las Partes de este Contrato tendrá derecho a reclamar a la otra ningún daño especial, incidental, consecuente o punitivo.

## **21.EJEMPLARES**

El presente Contrato podrá ejecutarse en dos o más ejemplares, cada uno de los cuales constituirá un original y todos ellos juntos constituirán un único instrumento.

[Siguen las Páginas de Firma]

**EN FE DE LO CUAL**, las Partes firman el presente Contrato en la Fecha de Inicio.

[Sigue Hoja de Firmas]

**FCA:**  
**FREIGHTCAR AMERICA, INC.**  
By: /s/ Michael Riordan  
Name: Michael Riordan  
Title: CFO

**ROYALTY PAYEE/ACREEDOR:**  
**SALVADOR GIL BENAVIDES**  
/s/ Salvador Gil Benavides

**Exhibit 10.6**

TERMINATION AGREEMENT	CONVENIO DE TERMINACIÓN
THIS TERMINATION AGREEMENT (this “ <u>Agreement</u> ”) is made as of January 23, 2024 (the “ <u>Effective Date</u> ”) by and among FreightCar America, Inc., a Delaware corporation with offices at 125 S. Wacker Drive, Suite 1500, Chicago, Illinois 60606 (“ <u>FCA</u> ”), Fabricaciones y Servicios de México, S.A. de C.V., an entity formed under the laws of Mexico, with offices at Carretera 57 Km 178, Castaños Coahuila, 25780, Mexico (“ <u>Fasemex MX</u> ”), Agben de Mexico, S.A. de C.V., an entity organized under the laws of Mexico, with offices at Carretera 57 Km 178, Castaños Coahuila, 25780, Mexico (“ <u>Agben</u> ”), Industrial Mexicana Fasemex, S.A. de C.V., an entity formed under the laws of Mexico, with offices at Carretera 57 Km 178, Castaños Coahuila, 25780, Mexico (“ <u>IM Fasemex</u> ”), Proveedora Industrial para el Manejo de Materiales, S.A. de C.V., an entity formed under the laws of Mexico, with offices at Carretera 57 Km 178, Castaños Coahuila, 25780, Mexico (“ <u>Proveedora</u> ”), and Fasemex, Inc., a Texas corporation with offices at Carretera 57 Km 178, Castaños Coahuila, 25780, Mexico (“ <u>Fasemex US</u> ”).	ESTE CONVENIO DE TERMINACIÓN (el “ <u>Convenio</u> ”) de fecha 23 de enero de 2024 (la “ <u>Fecha Efectiva</u> ”) por y entre FreightCar America, Inc. una corporación de Delaware con oficinas en 125 S. Wacker Drive, Suite 1500, Chicago, Illinois 60606 (“ <u>FCA</u> ”), Fabricaciones y Servicios de México, S.A. de C.V., una sociedad constituida bajo las leyes de México, con oficinas en Carretera 57 Km 178, Castaños Coahuila, 25780, México (“ <u>Fasemex MX</u> ”), Agben de México, S.A. de C.V., una sociedad constituida bajo las leyes de México, con oficinas en Carretera 57 Km 178, Castaños Coahuila, 25780, México (“ <u>Agben</u> ”), Industrial Mexicana Fasemex, S.A. de C.V., una sociedad constituida conforme a las leyes de México, con oficinas en Carretera 57 Km 178, Castaños Coahuila, 25780, México (“ <u>IM Fasemex</u> ”), Proveedora Industrial para el Manejo de Materiales, S.A. de C.V., una sociedad constituida bajo las leyes de México, con oficinas en Carretera 57 Km 178, Castaños Coahuila, 25780, México (“ <u>Proveedora</u> ”), y Fasemex, Inc. una sociedad de Texas con oficinas en Carretera 57 Km 178, Castaños

Fasemex MX, Agben, and Fasemex US are collectively referred to herein as the “Strategic Partners”, and collectively with FCA, IM Fasemex and Proveedora, the “Parties”.

#### RECITALS

**FIRST.** The Parties entered previously into a certain royalty agreement executed on October 16, 2020 (as amended or supplemented from time to time) (the “Royalty Agreement”).

**SECOND.** Pursuant to the terms of the Royalty Agreement, FCA agreed to pay IM Fasemex, Agben and Proveedora (“Royalty Payees”), during each applicable Production

Coahuila, 25780, México (“Fasemex US”). Fasemex MX, Agben y Fasemex US se denominan colectivamente en el presente como los “Socios Estratégicos”, y colectivamente con FCA, IM Fasemex y Proveedora, las “Partes”.

#### ANTECEDENTES

**PRIMERO.** Las Partes celebraron previamente cierto contrato de regalías el 16 de octubre de 2020 (modificado o complementado de vez en cuando) (el “Contrato de Regalías”).

**SEGUNDO.** De conformidad con los términos y condiciones del Contrato de Regalías, FCA acordó pagar a IM Fasemex, Agben y Proveedora (los “Acreedores”),

Line Period (as defined in the Royalty Agreement), (i) 1.2% of FCA’s Railcar Sales Net Revenue (as defined in the Royalty Agreement) and (ii) 1.5% of FCA’s Tank Car Sales Net Revenue (as defined in the Royalty Agreement), subject to the terms and conditions set forth in the Royalty Agreement (the “Royalty”).

**THIRD.** The Parties are willing to terminate the Royalty Agreement and to grant to each other certain releases with respect to the obligations under the Royalty Agreement.

#### AGREEMENT

Now, therefore, in consideration of the mutual promises and covenants herein contained, the Parties hereto agrees as follows:

##### 1.TERMINATION.

Effective as of the date hereof, the Parties agree on the termination of Royalty Agreement. Neither of the Parties shall have any further rights or obligations

durante cada período de Línea de Producción Aplicable (según se define en el Contrato de Regalías), (i) 1.2% de los Ingresos Netos por Ventas de Vagones de FCA (según se define en el Contrato de Regalías) y (ii) 1.5% de los Ingresos Netos por Ventas de Vagones Cisterna de FCA (según se define en el Contrato de Regalías), sujeto a los términos y condiciones establecidos en el Contrato de Regalías (la “Regalía”).

**TERCERO.** Las Partes desean dar por terminado el Contrato de Regalías y otorgarse mutuante ciertas liberaciones respecto de las obligaciones derivadas del Contrato de Regalías.

#### CLÁUSULAS

Ahora, por lo tanto, en consideración de las promesas y obligaciones mutuas aquí contenidas, las Partes acuerdan lo siguiente:

##### 1.TERMINACIÓN.

Con efecto a partir de la fecha del presente Convenio.

with respect to each other under the Royalty Agreement.

Any obligation under the Royalty Agreement that, by its nature or its terms, is intended to extend beyond the term of the Royalty Agreement shall survive the termination of such Royalty Agreement hereunder.

## **2.RELEASE BY THE PARTIES.**

Each of the Parties on behalf of itself and each of its representatives, affiliates, partners, subsidiaries, successors and assigns hereby releases and forever discharges the other Parties and each of its representatives, affiliates, partners, subsidiaries, successors

las Partes acuerdan terminar del Contrato de Regalías. Ninguna de las Partes tendrá algún derecho u obligación con respecto a las otras en virtud del Contrato de Regalías.

Cualquier obligación en virtud del Contrato de Regalías que, por su naturaleza o sus términos, esté destinada a extenderse más allá de la vigencia del Contrato de Regalías sobrevivirá a la terminación de dicho Contrato de Regalías en virtud del presente.

## **2.LIBERACIÓN DE LAS PARTES.**

Cada una de las Partes, en su propio nombre, así como en nombre de sus representantes, afiliadas, socios, subsidiarias y cesionarios por medio del presente libera y otorga a las otras Partes y cada uno de sus representantes, afiliadas, socios, subsidiarias y cesionarios la

and assignees from any and all claims, suits, proceedings, causes of action, orders, obligations, contracts, agreements, debts and liabilities whatsoever, which any of such Parties now has, has ever had or may hereafter have against the other Party under the Royalty Agreement.

## **3. REPRESENTATIONS AND WARRANTIES.**

(a) Each Party has carefully read and reviewed this Agreement and understands it fully, and each party has reviewed the terms of this Agreement with the attorney(s) of the Party's choice prior to executing this Agreement; and

(b) Each Party specifically does not rely upon any statement, representation, legal opinion, or promise of any other party or any person representing it, in

liberación definitiva respecto a cualesquier y todas las reclamaciones, demandas, procedimientos, acciones, órdenes, obligaciones, acuerdos, contratos, deudas y responsabilidades de cualquier naturaleza, que cualquiera de dichas Partes tenga en la actualidad, haya tenido en cualquier momento o pueda adquirir en lo sucesivo frente a la otra Parte bajo el Contrato de Regalías.

## **3. DECLARACIONES Y GARANTÍAS.**

(a) Cada una de las Partes ha leído y revisado detenidamente el presente Convenio y lo comprende en su totalidad, y cada una de las Partes ha revisado los términos del presente Convenio con el(los) abogado(s) de su elección antes de firmarlo; y

(b) Cada una de las Partes no se basa específicamente en ninguna afirmación, declaración, opinión legal o promesa de cualquier otra Parte o de



executing this Agreement, except as expressly stated in this Agreement; and

(c) There have been and are no other agreements or understandings between the Parties relating to the matters herein, except as stated in this Agreement; and

(d) Each Party has made such investigation of the law and facts pertaining to this Agreement, and of all the matters pertaining thereto, as such Party has deemed necessary. This Agreement has been read by, the contents hereof are known and understood by, and is signed freely by, each person executing this Agreement; and

(e) This Agreement is the result of arms' length negotiations between the Parties, each of whom was represented by experienced and competent attorneys freely chosen by each party to provide independent advice and counsel regarding this Agreement; and

opinion legal o promesa de cualquier otra Parte o de cualquier persona que la represente, en la ejecución del presente Convenio, salvo que se indique expresamente en el presente Convenio; y

(c) No han existido ni existen otros acuerdos o entendimientos entre las Partes en relación con los asuntos aquí tratados, salvo lo establecido en el presente Convenio; y

(d) Cada una de las Partes ha revisado la ley y los hechos relativos a este Convenio, así como todos los asuntos relacionados con el mismo, según ha considerado necesario. El presente Convenio ha sido leído, su contenido es conocido y comprendido por cada una de las personas que lo suscriben, y ha sido firmado libremente por ellas; y

(e) El presente Convenio es el resultado de negociaciones en condiciones de igualdad entre las Partes, cada una de las cuales estuvo representada por abogados experimentados y competentes elegidos libremente por cada una de las partes para proporcionar

(f) Each person executing this Agreement warrants that he/she/it has the authority to execute this Agreement on behalf of the Party on whose behalf said person is purporting to execute it; and

(g) This Agreement is intended to be final and binding between and among, and to inure to the benefit of, the Parties hereto, including their heirs, executors, personal representatives, attorneys, predecessors, successors and assigns, and is further intended to be effective as a full and final accord and satisfaction between and among the Parties hereto as to the matters herein regardless of any claims of fraud,

asesoramiento y consejo independientes en relación con el presente Convenio; y

(f) Toda persona que ejecute el presente Convenio garantiza que está autorizada a ejecutarlo en nombre de la Parte en cuyo nombre dicha persona pretende ejecutarlo; y

(g) Se pretende que el presente Convenio sea definitivo y vinculante entre las Partes del mismo, incluidos sus herederos, albaceas, representantes personales, abogados, predecesores, sucesores y cesionarios, y que redunde en su beneficio, y se pretende además que sea efectivo como un acuerdo

misrepresentation, concealment of fact, mistake of fact or law, breach of fiduciary duty, or any other claims and circumstances which have accrued as of the execution of this Agreement. Each Party relies on the finality of this Agreement as a material factor inducing that Party's execution of this Agreement.

#### **4. ENTIRE AGREEMENT.**

This Agreement, contains all agreements among the Parties relating to its subject matter and supersedes and cancels any and all previous contracts or agreements among the Parties with respect thereto. Any other understanding about this Agreement, including additional terms or provisions contained in invoices, shipping papers, or other documents, will be of no force or effect. Any amendment to this Agreement must be in writing and will not be effective until it is executed and approved by an authorized representative of each Party.

y satisfacción pleno y definitivo entre las Partes en lo que respecta a los asuntos aquí tratados, independientemente de cualquier reclamación por fraude, tergiversación, ocultación de hechos, error de hecho o de derecho, incumplimiento del deber fiduciario, o cualquier otra reclamación o circunstancia que se haya acumulado a partir de la ejecución del presente Convenio. Cada una de las Partes confía en la definitividad de este Convenio como un motivo determinante de la voluntad que induce a dicha Parte a firmar este Convenio.

#### **4. UNIDAD DE CONVENIO.**

El presente Convenio contiene todos los acuerdos entre las Partes relativos a su objeto y sustituye y cancela todos y cada uno de los contratos o acuerdos anteriores entre las Partes con respecto al mismo. Cualquier otro acuerdo sobre el presente Convenio, incluidos los términos o disposiciones adicionales contenidos en facturas, documentos de envío u otros documentos, no tendrá fuerza ni efecto alguno. Cualquier modificación del presente Convenio deberá realizarse por escrito y no surtirá efecto hasta que haya sido ejecutada y aprobada por un representante autorizado de cada una de las Partes.

#### **5. JOINTLY DRAFTED AGREEMENT**

This Agreement has been jointly negotiated and drafted by all the Parties, directly and through their respective attorneys of record. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party, and it is agreed that no provision hereof shall

#### **5. CONVENIO REDACTADO CONJUNTAMENTE**

El presente Convenio ha sido negociado y redactado conjuntamente por todas las Partes, directamente y a través de sus respectivos abogados. El lenguaje del presente Convenio se interpretará en su conjunto de acuerdo con su justo significado y no estrictamente a favor o en contra de ninguna de las Partes, y se acuerda que ninguna disposición del mismo se interpretará en contra de ninguna de las Partes del



be construed against any Party hereto by virtue of the activities of that Party or such Party's attorneys.

#### **6. SEVERABILITY**

If any provision of this Agreement is determined by any legislature, court, or administrative agency to be invalid or unenforceable, every other provision will remain in full force and effect, unless the purposes of this Agreement cannot be achieved. The Parties will use commercially reasonable efforts to substitute a valid, legal, and enforceable provision, which insofar as practical implements the purposes of any provision held invalid, illegal, or unenforceable.

#### **7. SUCCESSORS AND ASSIGNEES**

The provisions of this Agreement shall be binding upon, and shall inure to the benefit of the Parties and each of the Parties' respective successors and assignees, and upon all creditors and parties in interest.

#### **8. NOTICES.**

Any notice or communication required or permitted to be given by any provisions of this Agreement, including but not limited to any consents, shall be in writing and shall be deemed to have been given and received by the person to whom directed, if properly addressed: (a) when delivered personally to

interpretada en contra de ninguna de las Partes del presente Convenio en virtud de las actividades de dicha Parte o de sus abogados.

#### **6. ILEGALIDAD DE DISPOSICIONES**

Si cualquier disposición del presente Convenio es declarada inválida o inaplicable por cualquier legislatura, tribunal u organismo administrativo, todas las demás disposiciones seguirán en pleno vigor y efecto, a menos que no puedan alcanzarse los fines del presente Convenio. Las Partes harán todos los esfuerzos comercialmente razonables para sustituir una disposición válida, legal y aplicable que, en la medida de lo posible, cumpla los fines de cualquier disposición declarada inválida, ilegal o inaplicable.

#### **7. CAUSAHABIENTES Y CESIONARIOS**

Las disposiciones del presente Convenio serán vinculantes y redundarán en beneficio de las Partes y de cada uno de sus respectivos sucesores y cesionarios, así como de todos los acreedores y partes interesadas.

#### **8. NOTIFICACIONES.**

Cualquier notificación o comunicación requerida o permitida en virtud de cualquiera de las disposiciones del presente Convenio, incluidos, entre otros, los consentimientos, se realizará por escrito y se considerará entregada y recibida por la persona a la que

such person or to an officer or partner of the person to which directed, (b) upon confirmation of receipt of transmission by email, or (c) two (2) days after being deposited with an internationally recognized overnight courier, delivery charges prepaid for delivery the

se dirija, si está debidamente dirigida: (a) cuando se entregue personalmente a dicha persona o a un directivo o socio de la persona a la que se dirija, (b) cuando se confirme la recepción de la transmisión por correo electrónico, o (c) dos (2) días después de ser depositada en un servicio de mensajería urgente

following day. The addresses for notice are as follows:

If to FCA:

FreightCar America, Inc.

125 S. Wacker Drive, Suite 1500

Chicago, IL 60606

Attn: Celia Perez

Email: cperez@freightcar.net

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

Kelley Drye & Warren LLP

333 W. Wacker Dr., 26<sup>th</sup> Floor

Chicago, IL 60606

Attn: Andrew Pillsbury

APillsbury@kelleydrye.com

If to Strategic Partners and Royalty Payees:

Fabricaciones y Servicios de Mexico SA de CV.

Carretera 57 Km 178

Castaños Coahuila, 25780 Mexico

Email: jgil@fasemex.com.mx

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

Romero, Ramos, Quintanilla y Bortoni S.C.

Lazaro Cardenas 435 Despacho 410

Colonia Loma Larga, 66266

San Pedro Garza Garcia, Nuevo Leon, Mexico.

Attn: Francisco Romero

Email: fromero@rrqb.mx

reconocido internacionalmente, con los gastos de envío prepagados para su entrega al día siguiente.

Las direcciones de notificación son las siguientes

A FCA:

FreightCar America, Inc.

125 S. Wacker Drive, Suite 1500

Chicago, IL 60606

Attn: Celia Perez

Email: cperez@freightcar.net

Con copia para (lo cual no constituirá notificación):

Kelley Drye & Warren LLP

333 W. Wacker Dr., 26<sup>th</sup> Floor

Chicago, IL 60606

Attn: Andrew Pillsbury

APillsbury@kelleydrye.com

Si es a los Socios Estratégicos o a los Acreedores:

Fabricaciones y Servicios de Mexico SA de CV.

Carretera 57 Km 178

Castaños Coahuila, 25780 Mexico

Email: jgil@fasemex.com.mx

Con copia para (lo cual no constituirá notificación):

Romero, Ramos, Quintanilla y Bortoni S.C.

Lazaro Cardenas 435 Despacho 410

Colonia Loma Larga, 66266

San Pedro Garza Garcia, Nuevo Leon, Mexico.

Attn: Francisco Romero

Email: fromero@rrqb.mx

Any Party may change its address, email, or individual for receiving notice for the purpose of this Section 8, by notice to the other Parties given in the manner set forth above.

## 9. GOVERNING LAW.

Cualquiera de las Partes podrá cambiar su domicilio, correo electrónico o persona física para recibir notificaciones a los efectos de la presente Cláusula 8, mediante notificación a las demás Partes efectuada en la forma indicada anteriormente.

## 9. LEGISLACIÓN APLICABLE.

This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws of the State of Illinois applicable to contracts made in that state, without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Illinois.

**10. CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL.**

(a) EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL PROCEEDINGS (IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, ANY RELATIONSHIPS BETWEEN THE PARTIES HEREUNDER AND ANY DISPUTES WITH RESPECT TO ANY OF THE FOREGOING SHALL BE COMMENCED AND PROSECUTED EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS LOCATED IN THE CITY OF CHICAGO, COUNTY OF COOK, AND ANY APPELLATE COURT THEREFROM OR THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS AND ANY APPELLATE COURT THEREFROM (COLLECTIVELY, THE "Illinois Courts"). EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND

El presente Convenio se regirá y controlará en cuanto a su validez, ejecución, interpretación, construcción, efecto y en todos los demás aspectos por las leyes internas del Estado de Illinois aplicables a los contratos celebrados en dicho estado, sin dar efecto a ninguna elección de ley o conflicto de disposiciones o normas legales que provoquen la aplicación de las leyes de cualquier jurisdicción distinta del Estado de Illinois.

**10. CONSENTIMIENTO A LA JURISDICCIÓN; RENUNCIA AL JUICIO CON JURADO.**

(a) CADA UNA DE LAS PARTES ACEPTA DE FORMA IRREVOCABLE E INCONDICIONAL QUE TODOS LOS PROCEDIMIENTOS (CONTRACTUALES, EXTRA CONTRACTUALES O DE OTRO TIPO) DERIVADOS O RELACIONADOS CON EL PRESENTE CONVENIO, LAS TRANSACCIONES CONTEMPLADAS EN EL MISMO, CUALQUIER RELACIÓN ENTRE LAS PARTES EN VIRTUD DEL PRESENTE Y CUALQUIER DISPUTA CON RESPECTO A CUALQUIERA DE LOS ANTERIORES SE INICIARÁ Y PROCESARÁ EXCLUSIVAMENTE EN LOS TRIBUNALES DEL ESTADO DE ILLINOIS UBICADOS EN LA CIUDAD DE CHICAGO, COUNTY OF COOK, Y CUALQUIER TRIBUNAL DE APELACIÓN DEL MISMO O LOS ESTADOS UNIDOS PARA EL DISTRITO NORTE DE ILLINOIS Y CUALQUIER TRIBUNAL DE APELACIÓN DEL

SUBMITS, FOR IT-SELF AND ITS ASSETS, TO THE EXCLUSIVE JURISDICTION OF ANY OF THE ILLINOIS COURTS IN RESPECT OF ANY SUCH

MISMO (COLECTIVAMENTE, LOS "Tribunales de Illinois"). CADA UNA DE LAS PARTES CONSIENTE Y SE SOMETE IRREVOCABLE E

PROCEEDING. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 8. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(b) EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, ANY RELATIONSHIPS BETWEEN THE PARTIES HEREUNDER AND ANY DISPUTES WITH RESPECT TO ANY OF THE FOREGOING IN ANY OF THE ILLINOIS COURTS. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH PROCEEDING IN ANY OF THE ILLINOIS COURTS. EACH OF THE PARTIES AGREES THAT A FINAL JUDGMENT IN ANY SUCH PROCEEDING SHALL BE CONCLUSIVE

INCONDICIONALMENTE, POR SI MISMA Y POR SUS BIENES, A LA JURISDICCIÓN EXCLUSIVA DE CUALQUIERA DE LOS TRIBUNALES DE ILLINOIS CON RESPECTO A CUALQUIERA DE DICHOS PROCEDIMIENTOS. POR LA PRESENTE, CADA UNA DE LAS PARTES CONSIENTE DE FORMA IRREVOCABLE E INCONDICIONAL A LA NOTIFICACIÓN DE PROCESOS EN LA FORMA PREVISTA PARA LAS NOTIFICACIONES EN LA CLAÚSULA 8. NADA DE LO DISPUESTO EN EL PRESENTE CONVENIO AFECTARÁ AL DERECHO DE CUALQUIERA DE LAS PARTES A NOTIFICAR PROCESOS DE CUALQUIER OTRA FORMA PERMITIDA POR LA LEY.

(b) POR EL PRESENTE CONVENIO, CADA UNA DE LAS PARTES RENUNCIA DE FORMA IRREVOCABLE E INCONDICIONAL, EN LA MEDIDA EN QUE PUEDA HACERLO DE FORMA LEGAL Y EFECTIVA, A CUALQUIER OBJECCIÓN QUE PUEDA TENER AHORA O EN EL FUTURO AL ESTABLECIMIENTO DE LA JURISDICCIÓN DE CUALQUIER PROCEDIMIENTO DERIVADO O RELACIONADO CON EL PRESENTE CONVENIO, LAS TRANSACCIONES CONTEMPLADAS EN EL PRESENTE DOCUMENTO, CUALQUIER RELACIÓN ENTRE LAS PARTES EN VIRTUD DEL PRESENTE DOCUMENTO Y CUALQUIER DISPUTA CON RESPECTO A CUALQUIERA DE LOS ANTERIORES EN CUALQUIERA DE LOS TRIBUNALES DE ILLINOIS. CADA UNA DE LAS PARTES RENUNCIA IRREVOCABLEMENTE, EN LA MÁXIMA MEDIDA PERMITIDA POR LA LEY, A LA DEFENSA DE FORO

AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

(c) EACH PARTY AGREES THAT ANY PROCEEDING (IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, ANY RELATIONSHIPS BETWEEN THE PARTIES HEREUNDER AND ANY DISPUTES WITH RESPECT TO ANY OF THE FOREGOING WILL INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUCH PROCEEDING.

(d) EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY PROCEEDING ARISING UNDER OR RELATING TO THIS AGREEMENT, SEEK TO ENFORCE THE FOREGOING WAIVERS, (ii) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF

INCONVENIENTE PARA EL MANTENIMIENTO DE DICHO PROCEDIMIENTO EN CUALQUIERA DE LOS TRIBUNALES DE ILLINOIS. CADA UNA DE LAS PARTES ACUERDA QUE UNA SENTENCIA DEFINITIVA EN CUALQUIERA DE DICHOS PROCEDIMIENTOS SERÁ CONCLUYENTE Y PODRÁ EJECUTARSE EN OTRAS JURISDICCIONES MEDIANTE UNA DEMANDA BASADA EN LA SENTENCIA O DE CUALQUIER OTRA FORMA PREVISTA POR LA LEY.

(c) CADA UNA DE LAS PARTES ACEPTA QUE CUALQUIER PROCEDIMIENTO (CONTRACTUAL, EXTRACONTRACTUAL O DE OTRO TIPO) DERIVADO O RELACIONADO CON EL PRESENTE CONVENIO, LAS TRANSACCIONES CONTEMPLADAS EN EL MISMO, CUALQUIER RELACIÓN ENTRE LAS PARTES EN VIRTUD DEL PRESENTE Y CUALQUIER DISPUTA CON RESPECTO A CUALQUIERA DE LOS ANTERIORES IMPLICARÁ CUESTIONES COMPLICADAS Y DIFÍCILES, Y POR LO TANTO CADA UNA DE LAS PARTES RENUNCIA IRREVOCABLE E INCONDICIONALMENTE A CUALQUIER DERECHO QUE PUEDA TENER A UN JUICIO CON JURADO CON RESPECTO A CUALQUIERA DE DICHOS PROCEDIMIENTOS.

(d) CADA PARTE CERTIFICA Y RECONOCE QUE (i) NINGÚN REPRESENTANTE, AGENTE O ABOGADO DE OTRA PARTE HA DECLARADO, DE FORMA EXPRESA O DE OTRO TIPO, QUE DICHA OTRA PARTE NO INTENTARÁ, EN CASO DE PROCEDIMIENTO EN VIRTUD DEL PRESENTE CONVENIO O EN RELACIÓN CON EL MISMO, EJECUTAR LAS RENUNCIAS ANTERIORES, (ii) DICHA PARTE ENTIENDE Y HA

<p>SUCH WAIVERS, (iii) SUCH PARTY MAKES SUCH WAIVERS VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATION IN THIS SECTION 10(d).</p> <p>(d) EACH OF THE PARTIES HERETO WAIVES THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY LAWSUIT, ACTION OR PROCEEDING SEEKING ENFORCEMENT OF SUCH PARTY'S RIGHTS UNDER THIS AGREEMENT.</p> <p><b>11. COUNTERPARTS.</b></p> <p>This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which together shall constitute a single instrument.</p> <p><b>12 LANGUAGE.</b></p> <p>This Agreement is executed in both the English and the Spanish language. In the event there is a conflict of interpretation between one language and the other, the Spanish language version shall prevail in all instances.</p> <p>[Signature page follows]</p>	<p>CONSIDERADO LAS IMPLICACIONES DE DICHAS RENUNCIAS, (iii) DICHA PARTE REALIZA DICHAS RENUNCIAS VOLUNTARIAMENTE, Y (iv) DICHA PARTE HA SIDO INDUCIDA A ENTRAR EN ESTE CONVENIO POR, ENTRE OTRAS COSAS, LAS RENUNCIAS MUTUAS Y LA CERTIFICACIÓN EN ESTA CLÁUSULA 10(d).</p> <p>(e) CADA UNA DE LAS PARTES RENUNCIA AL DERECHO A UN JUICIO CON JURADO EN RELACIÓN CON CUALQUIER DEMANDA, ACCIÓN O PROCEDIMIENTO QUE PRETENDA HACER VALER LOS DERECHOS DE DICHA PARTE EN VIRTUD DEL PRESENTE CONVENIO.</p> <p><b>11. EJEMPLARES.</b></p> <p>El presente Convenio podrá ejecutarse en dos o más ejemplares, cada uno de los cuales constituirá un original y todos ellos juntos constituirán un único instrumento.</p> <p><b>12. IDIOMA</b></p> <p>El presente Convenio se firma en idiomas inglés y español. En caso de que se presente un conflicto de interpretación entre un idioma y el otro, la versión en idioma español prevalecerá en todas las instancias.</p> <p>[Sigue página de firmas]</p>
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**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the Effective Date. / **EN VITUD DE LO CUAL**, las Partes suscriben el presente Convenio en la Fecha Efectiva.

**FCA:**

**FREIGHTCAR AMERICA, INC.**

/s/ Michael A. Riordan

Name/Nombre: Michael A. Riordan

Title/Título: Chief Financial Officer

**STRATEGIC PARTNERS AND ROYALTY PAYEES:**

**FABRICACIONES Y SERVICIOS DE MÉXICO, S.A. DE C.V.**

/s/ Alejandro Gil

Name/Nombre:

Title/Título:

**AGBEN DE MEXICO, S.A. DE C.V.**

/s/ Jesus Gil

Name/Nombre:

Title/Título:

**INDUSTRIAL MEXICANA FASEMEX, S.A. DE C.V.**

/s/ Alejandro Gil

Name/Nombre:

Title/Título:

**PROVEEDORA INDUSTRIAL PARA EL MANEJO DE MATERIALES, S.A. DE C.V.**

/s/ Salvador Gil

Name/Nombre:

Title/Título:

**FASEMEX, INC.**

/s/ Jesus Gil

Name/Nombre:

Title/Título:

Exhibit 31.1

**Certification of Principal Executive Officer**

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



I, James R. Meyer, Nicholas J. Randall, 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: November 6, 2023 May  
8, 2024

By: /s/ JAMES R. MEYER NICHOLAS J. RANDALL

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James R. Meyer Nicholas J. Randall

**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 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 a reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 6, 2023 May  
8, 2024

By: /s/ MICHAEL A. RIORDAN

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

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**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 September 30, 2023 March 31, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, James R. Meyer, Nicholas J. Randall, 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 the Company.

Date: November 6,  
2023 May 8, 2024

By: /s/ JAMES R. MEYER NICHOLAS J.  
RANDALL

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James R. Meyer Nicholas J. Randall  
President and Chief Executive Officer  
(Principal Executive Officer)

Date: November 6,  
2023 May 8, 2024

By: /s/ MICHAEL A. RIORDAN

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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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