

## Section 1: 10-K (10-K)

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

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**FORM 10-K**

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

For the fiscal year ended December 31, 2019

or

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

Commission file number: 000-51237

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**FREIGHTCAR AMERICA, INC.**

(Exact name of registrant as specified in its charter)

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Delaware  
(State or other jurisdiction of  
incorporation or organization)  
125 S. Wacker Drive, Suite 1500, Chicago, Illinois  
(Address of principal executive offices)

25-1837219  
(I.R.S. Employer  
Identification No.)  
60606  
(Zip Code)

(800) 458-2235

(Registrant's telephone number, including area code)

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

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

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

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES  NO

Indicate by check mark whether the registrant has submitted electronically, every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such

files). YES  NO

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant as of June 30, 2019 was \$71.8 million, based on the closing price of \$5.87 per share on the Nasdaq Global Market.

As of February 12, 2020, there were 13,270,992 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Documents	Part of Form 10-K
<b>Portions of the registrant's definitive Proxy Statement for the 2020 annual meeting of stockholders to be filed pursuant to Regulation 14A within 120 days of the end of the registrant's fiscal year ended December 31</b>	<b>Part III</b>

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### PART I

#### Item 1. Business.

##### OVERVIEW

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

Our railcar manufacturing facilities are located in Cherokee, Alabama (“Shoals”) and Roanoke, Virginia. Our Shoals facility is an important part of our long-term growth strategy as we continue to expand our railcar product and service offerings. On February 28, 2018, we acquired substantially all of the operating assets at the Shoals facility of Navistar, Inc. (“Navistar”) and its subsidiary, International Truck and Engine Investments Corporation, including their railcar business, and assumed the lease for the facility (the “Acquisition”).

On July 22, 2019, the Company announced its intention to close its Roanoke, Virginia manufacturing facility as part of its “Back to Basics” strategy. The Company ceased operations at the facility as of November 29, 2019. The total cost of the restructuring plan is expected to range between \$3.5 million and \$4.5 million, excluding the lease termination gain of \$2.4 million disclosed in Note 3, Leases to the Consolidated Financial Statements included in this Report, and will be incurred by the first half of 2020 (including costs already incurred in 2019). Annual cost savings of approximately \$5.0 million are expected upon completion of the restructuring plan.

On September 19, 2019, the Company announced the formation of a joint venture with Fabricaciones y Servicios de México, S.A. de C.V. (“Fasemex”), a Mexican company with operations in both Mexico and the United States. The joint venture will lease a manufacturing facility in Castanos, Mexico in which it will manufacture railcars. Production of railcars at the facility is expected to begin in mid-2020.

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

Our primary customers are financial institutions, railroads and shippers, which represented 55%, 23% and 18%, respectively, of our total sales attributable to each type of customer for the year ended December 31, 2019. In the year ended December 31, 2019, we delivered 2,276 railcars, including 1,728 new railcars and 548 rebuilt railcars, compared to 4,214 railcars delivered in the year ended December 31, 2018, including 2,584 new railcars, 1,205 rebuilt railcars and 425 leased railcars. Our total backlog of firm orders for railcars decreased from 1,699 railcars as of December 31, 2018 to 1,650 railcars as of December 31, 2019. Our backlog as of December 31, 2019 includes a variety of railcar types. The estimated sales value of our backlog is \$206 million as of December 31, 2019.

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

##### OUR PRODUCTS AND SERVICES

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

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In the last six years, we have added 37 new or redesigned products to our portfolio, including various covered hopper car products with cubic capacities from 3,282 cubic foot to 6,250 cubic foot; 52' and 66' mill gondolas; coil gondolas; triple hoppers and hybrid aluminum/stainless steel railcars; ore hopper and gondola railcars; ballast hopper cars; aggregate hopper cars (with manual, independent or fully automatic transverse or longitudinal door systems); intermodal flats (including the 3-unit, 53-foot well cars) and non-intermodal flat cars (including slab, hot slab and bulkhead flats). Focused product development activity continues in areas where we can leverage our technical knowledge base and capabilities to realize market opportunities.

The types of railcars listed below include the major types of railcars that we are capable of manufacturing; however, some of the types of railcars listed below have not been ordered by any of our customers or manufactured by us in a number of years. We rebuild and convert railcars and sell forged, cast and fabricated parts for all of the railcars we produce, as well as those manufactured by others. Many of our railcars are produced using a patented one-piece center sill, the main longitudinal structural component of the railcar. The one-piece center sill provides a higher carrying capacity, but weighs significantly less than traditional multiple-piece center sills. In addition to railcars designed for use in North America, we have manufactured railcars for export to Latin America and the Middle East. Railroads outside of North America are constructed with a variety of track gauges that are sized differently than in North America, which requires us, in some cases, to alter our manufacturing specifications accordingly.

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

- *VersaFlood Hopper Cars.* The VersaFlood™ product series offers versatile design options for transportation of aggregates, sand or minerals. Our VersaFlood™ series open-top hopper railcars include steel, stainless steel or hybrid steel and aluminum-bodied designs equipped with three-pocket (transverse gate) or two-pocket (longitudinal gate) discharge door systems with manual, independent or fully automatic door operation.
- *Covered Hopper Cars.* Our covered hopper railcar product offerings encompass a wide range of cubic foot (cf) capacity designs for shipping dry bulk commodities of varying densities including: 3,282 cf covered hopper cars for cement, sand and roofing granules; 4,300 cf covered hopper cars for potash or similar commodities; 5,200 cf, 5,400 cf and 5700 cf covered hopper cars for grain and other agricultural products; and 5,800 cf and 6,250 cf covered hopper cars for plastic pellets.
- *DynaStack Series.* Our intermodal doublestack railcar product offerings include a stand-alone 40 foot well car, the DynaStack® articulated, 5-unit, 40 foot and the DynaStack® articulated 3-unit, 53 foot well cars for transportation of international and domestic containers.
- *Steel Products Cars.* Our portfolio of railcar types also includes 52' and 66' mill gondola railcars used to transport steel products and scrap; slab, hot slab and coil steel railcars designed specifically for transportation of steel slabs and coil steel products, respectively.
- *Boxcars.* Our high capacity boxcar railcar product offerings, featuring inside length of 50', single plug door and 60'9", double plug doors, galvanized steel roof panels and nailable steel floors, primarily designed for transporting paper products, paper rolls, lumber and wood products and foodstuffs.
- *Aluminum Coal Cars.* The BethGon® is the leader in the aluminum-bodied coal gondola railcar segment. Since we introduced the steel BethGon railcar in the late 1970s and the aluminum BethGon railcar in 1986, the BethGon railcar has become the most widely used coal car in North America. Our current BethGon II features lighter weight, higher capacity and increased durability suitable for long-haul coal carrying railcar service. We have received several patents on the features of the BethGon II and continue to explore ways to increase the BethGon II's capacity and reliability.

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

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- *Stainless Steel and Hybrid Stainless Steel/Aluminum Coal Cars.* We manufacture a series of stainless steel and hybrid stainless steel and aluminum AutoFlood and BethGon coal cars designed to serve the Eastern railroads. These coal cars are designed to withstand the rigors of Eastern coal transportation service. They offer a unique balance of maximized payload, light weight, efficient unloading and long service life. Our coal car product offerings include aluminum-bodied flat-bottom gondola railcars and steel or stainless steel-bodied triple hopper railcars for coal, metallurgical coke and petroleum coke service.
- *Other Railcar Types.* Our other railcar types include non-intermodal flat railcars and bulkhead flat railcars designed to transport a variety of products, including machinery and equipment, steel and structural steel components (including pipe), wood and forest products and other bulk industrial products; woodchip hopper and gondola railcars designed to haul woodchips and municipal waste or other low-density commodities; and a variety of non-coal carrying open top hopper railcars designed to carry ballast, iron ore, taconite pellets and other bulk commodities; the AVC™ Aluminum Vehicle Carrier design used to transport commercial and light vehicles (automobiles and trucks) from assembly plants and ports to rail distribution centers; and the articulated bulk container railcar designed to carry dense bulk products such as waste products in 20 foot containers.

## **MANUFACTURING**

Our railcar production facility in Cherokee, Alabama is certified or approved for certification by the Association of American Railroads (the “AAR”), which sets railcar manufacturing industry standards for quality control. Our Shoals manufacturing facility delivered its first railcars during the fourth quarter of 2013 and provides a solid platform from which to pursue a broad range of non-coal car business including intermodal well cars, non-intermodal flat cars and various open-top hopper, covered hopper and gondola cars. During 2015, we expanded our Shoals facility to add additional production capacity to meet demand for our new types of railcars. On February 28, 2018, we acquired substantially all of the operating assets of Navistar, Inc. and its subsidiary, International Truck and Engine Investments Corporation, at the Shoals facility, including their railcar business. Our Roanoke, Virginia facility was closed for railcar production effective November 29, 2019 and the Company has notified the lessor of its intent to terminate its leases for the facility effective as of March 31, 2020.

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

## **CUSTOMERS**

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

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

In 2019, revenue from three customers, Mitsui Rail Capital, LLC, BNSF Railway and PNC Rail Finance, LLC, accounted for approximately 15%, 12% and 12%, respectively, of total revenue. In 2019, sales to our top five customers accounted for approximately 59% of total revenue. In 2018, revenue from three customers, BNSF Railway, Wells Fargo Rail Corporation and Transtar, Inc., accounted for approximately 26%, 19% and 10%, respectively, of total revenue. In 2018, sales to our top five customers accounted for approximately 71% of total revenue. Our railcar sales to customers outside the United States were \$6.7 million and \$12.9 million in 2019 and 2018, respectively. Many of our customers do not purchase railcars every year since railcar fleets are not

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necessarily replenished or augmented every year. The size and frequency of railcar orders often results in a small number of customers representing a significant portion of our sales in a given year. Although we have long-standing relationships with many of our major customers, the loss of any significant portion of our sales to any major customer, the loss of a single major customer or a material adverse change in the financial condition of any one of our major customers could have a material adverse effect on our business, financial condition and results of operations.

### **SALES AND MARKETING**

Our direct sales group is organized geographically and consists of regional sales managers and contract administrators, a manager of customer service and support staff. The regional sales managers are responsible for managing customer relationships. Our contract administrators are responsible for preparing proposals and other inside sales activities. Our manager of customer service is responsible for after-sale follow-up and in-field product performance reviews.

### **RESEARCH AND DEVELOPMENT**

We utilize the latest engineering methods, tools and processes to ensure that new products and processes meet our customers' requirements and are delivered in a timely manner. We develop and introduce new railcar designs as a result of a combination of customer feedback and close observation of developing market trends. We work closely with our customers to understand their expectations and design railcars that meet their needs. New product designs are tested and validated for compliance with AAR standards prior to introduction. This comprehensive approach provides the criteria and direction that ensure we are developing products that our customers desire and perform as expected. Costs associated with research and development are expensed as incurred and totaled \$1.0 million and \$42,000 for the years ended December 31, 2019 and 2018, respectively.

### **BACKLOG**

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

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

	<u>Year Ended December 31,</u>	
	<u>2019</u>	<u>2018</u>
Railcar backlog at start of period	1,699	2,392
Railcars delivered	(2,276)	(4,214)
Net railcar orders received (canceled)	<u>2,227</u>	<u>3,521</u>
Railcar backlog at end of period (1)	<u>1,650</u>	<u>1,699</u>
Estimated revenue from backlog at end of period (in thousands) (2)	\$ 206,044	\$ 160,157

(1) Railcar backlog includes 0 rebuilt railcars as of each of December 31, 2019 and 2018.

(2) Estimated revenue from backlog reflects the total revenue attributable to the backlog reported at the end of the period as if such backlog were converted to actual sales. Estimated revenue from backlog as of December 31, 2019 includes \$104.1 million that is not expected to be converted to sales within one year. Estimated revenue from backlog does not reflect potential price increases and decreases under customer contracts that provide for variable pricing based on changes in the cost of raw materials. Although we continually look for opportunities to package our leased assets for sale to our leasing company partners, these leased assets may not be converted to sales.

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

### **SUPPLIERS AND MATERIALS**

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

Our primary aluminum suppliers are Mandel Metals and Champagne Metals. Aluminum prices generally are not fixed at the time a railcar order is accepted due to our infrequent usage and subsequent low volume purchases of aluminum. Our primary carbon steel and fabrication suppliers are Steel Warehouse, O'Neal Steel and Jemison. We also utilize our Shoals, AL fabrication shop. We do have fixed pricing, based on futures, established on some raw sheet steel for dedicated tonnage when it makes financial sense to do so.

Our primary component suppliers include Wabtec, New York Air Brake, SKF, and Amsted, Inc., who supplies us with truck components, brake components, couplers and bearings. Also, Standard Steel supplies us with axles and wheels. Roll Form Group is the sole supplier of our roll-formed center sills, which were used in 37% and 87% of our new railcars produced in 2019 and 2018, respectively. A center sill is the primary longitudinal structural component of a railcar, which helps the railcar withstand the weight of the cargo and the force of being pulled during transport. Our center sill is formed into its final shape without heating by passing steel plate through a series of rollers.

In addition, through the date of the Acquisition, International Truck and Engine Investments Corporation, an affiliate of Navistar, Inc., supplied us with various fabricated parts, components and subassemblies and provided truck and wheel and axle assembly services and blast and paint finishing services primarily for our Shoals facility. Other suppliers provide brake systems, castings, bearings, fabrications and various other components. The railcar industry is periodically subject to supply constraints for some of the key railcar components.

Except as described above, there are usually at least two suppliers for each of our raw materials and specialty components. No single supplier accounted for more than 7% and 12% of our total purchases in 2019 and 2018, respectively. Our top ten suppliers accounted for 37% and 48% of our total purchases in 2019 and 2018, respectively.

### **COMPETITION**

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

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

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

### **INTELLECTUAL PROPERTY**

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



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### **EMPLOYEES**

As of December 31, 2019, we had 496 employees, of whom 137 were salaried and 359 were hourly wage earners, and approximately 2% of our employees were members of unions. As of December 31, 2018, we had 1,077 employees, of whom 183 were salaried and 894 were hourly wage earners, and approximately 5%, of our employees were members of unions.

### **REGULATION**

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

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

### **ENVIRONMENTAL MATTERS**

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

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

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

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

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

None.

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

The following table presents information on our primary leased and owned operating properties as of December 31, 2019:

<u>Use</u>	<u>Location</u>	<u>Size</u>	<u>Leased or Owned</u>	<u>Lease Expiration Date</u>
Corporate headquarters (1)	Chicago, Illinois	15,540 square feet	Leased	January 31, 2020
Railcar assembly and component manufacturing	Roanoke, Virginia	383,709 square feet on 15.5 acres of land	Leased	March 31, 2020
Railcar assembly and component manufacturing	Cherokee, Alabama	2,150,000 square feet	Leased	December 31, 2026
Administrative and parts warehouse	Johnstown, Pennsylvania	86,000 square feet	Leased	December 31, 2023

- (1) On February 1, 2020, we moved our Corporate headquarters to another location in Chicago, Illinois where we are leasing 8,800 square feet of office space.

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

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

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

Not applicable

## **PART II**

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

Our common stock has been quoted on the Nasdaq Global Market under the symbol "RAIL" since April 6, 2005. As of February 11, 2020, there were approximately 86 holders of record of our common stock, which does not include persons whose shares of common stock are held by a bank, brokerage house or clearing agency.

### **Dividend Policy**

On November 1, 2017, we announced that our board of directors had approved the suspension of our quarterly dividend to our shareholders. The declaration and payment of future dividends will be at the discretion of our board of directors and will depend on, among other things, general economic and business conditions, our strategic plans, our financial results, contractual and legal restrictions on the payment of dividends by us and our subsidiaries and such other factors as our board of directors considers to be relevant. The ability of our board of directors to declare a dividend on our common stock is limited by Delaware law.

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

#### **OVERVIEW**

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

We are a diversified manufacturer of railcars and railcar components. We design and manufacture a broad variety of railcar types for transportation of bulk commodities and containerized freight products primarily in North America. We rebuild and convert railcars and sell forged, cast and fabricated parts for all of the railcars we produce, as well as those manufactured by others. We also lease freight cars. Our primary customers are financial institutions, railroads and shippers.

On July 22, 2019, the Company announced its intention to close its Roanoke, Virginia manufacturing facility as part of its "Back to Basics" strategy. The Company ceased operations at the facility as of November 29, 2019. Restructuring and impairment charges related to the plant closure for the year ended December 31, 2019 included employee severance and other employment termination costs of \$1.3 million, other charges of \$0.6 million and non-cash impairment charges of \$1.4 million for property, plant and equipment. The plant closure also resulted in a lease termination gain of \$2.4 million which partially offset restructuring and impairment charges for the year ended December 31, 2019. During the Company's annual goodwill impairment analysis as of August 1, 2019, the Company determined that the carrying value of its Manufacturing reporting unit exceeded its fair value by an amount that exceeded the Manufacturing reporting unit goodwill. As a result, the Company recorded a goodwill impairment charge equal to the total goodwill balance of the Manufacturing reporting unit of \$21.5 million during the year ended December 31, 2019.

On September 19, 2019, the Company announced the formation of a joint venture with Fabricaciones y Servicios de México, S.A. de C.V. ("Fasemex"), a Mexican company with operations in both Mexico and the United States, to manufacture railcars in Castanos, Mexico, in exchange for a 50% non-controlling interest in the operation. Production of railcars at the facility is expected to begin in mid-2020. The Company's initial obligations under the joint venture include capital contributions of \$25 million over several years through a combination of assets and cash. The Company expects to contribute between \$5 million and \$9 million to the joint venture during 2020.

Railcar deliveries totaled 2,276 units, consisting of 1,728 new railcars and 548 rebuilt railcars, for the year ended December 31, 2019, compared to 4,214 units, consisting of 2,584 new railcars, 1,205 rebuilt railcars and 425 leased railcars, for the year ended December 31, 2018. Our total backlog of firm orders for railcars decreased from 1,699 railcars as of December 31, 2018 to 1,650 railcars as of December 31, 2019.

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

#### **FINANCIAL STATEMENT PRESENTATION**

##### **Revenues**

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

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

### **Cost of sales**

Our cost of sales includes the cost of raw materials such as aluminum and steel, as well as the cost of finished railcar components, such as castings, wheels, truck components and couplers, and other specialty components. Our cost of sales also includes labor, utilities, freight, manufacturing depreciation and other operating costs. As we diversified, although we strove to reduce manufacturing costs at our manufacturing facilities, our cost of sales has been negatively impacted by production inefficiencies and idle capacity as we entered into new railcar markets and invested in diversifying our product portfolio. A portion of the contracts covering our backlog at December 31, 2019 are fixed-rate contracts. Therefore, if material costs were to increase, we will likely not be able to pass on these increased costs to our customers. We manage material price increases by locking in prices where possible.

### **Operating loss**

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

## **RESULTS OF OPERATIONS**

### **Year Ended December 31, 2019 compared to Year Ended December 31, 2018**

#### **Revenues**

Our consolidated revenues for the year ended December 31, 2019 were \$230.0 million compared to \$316.5 million for the year ended December 31, 2018. Manufacturing segment revenues for the year ended December 31, 2019 were \$219.1 million compared to \$302.2 million for the year ended December 31, 2018. The decrease in Manufacturing segment revenues for 2019 compared to 2018 period reflects a decrease in the number of railcars delivered which was partially offset by a higher average selling price for new railcars and a higher number of new versus rebuilt railcars. Corporate and Other revenues for the year ended December 31, 2019 were \$10.9 million compared to \$14.4 million for the year ended December 31, 2018 reflecting lower parts sales.

#### **Gross Profit**

Our consolidated gross profit margin was (6.2)% for the year ended December 31, 2019 compared to (1.2)% for the year ended December 31, 2018. Our consolidated gross loss for the year ended December 31, 2019 was \$14.3 million compared to \$3.6 million for the year ended December 31, 2018. Manufacturing segment gross loss for the year ended December 31, 2019 was \$16.9 million compared to \$7.1 million for the year ended December 31, 2018. The decline in railcar deliveries contributed a \$5.8 million decrease in gross profit in our Manufacturing segment for 2019 compared to 2018. The unfavorable operating leverage due to lower production volumes accounted for the remaining decline in margin in 2019.

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### **Selling, General and Administrative Expenses**

Consolidated selling, general and administrative expenses for the year ended December 31, 2019 were \$38.3 million compared to \$29.1 million for the year ended December 31, 2018. Manufacturing segment selling, general and administrative expenses for the year ended December 31, 2019 were \$7.0 million compared to \$8.0 million for the year ended December 31, 2018 primarily due to lower allocated costs of \$0.3 million, decreases in salaries and wages of \$0.1 million, decreases in employee severance of \$0.1 million and decreases in third-party sales commissions of \$0.2 million. Corporate and Other selling, general and administrative expenses were \$31.3 million for the year ended December 31, 2019 compared to \$21.0 million for the year ended December 31, 2018. The increase in Corporate and Other selling, general and administrative expenses for the year ended December 31, 2019 was primarily due to \$7.5 million recorded as part of a settlement agreement reached with one of our customers to settle all claims related to a prior year's commercial dispute. Corporate and Other selling, general and administrative expenses for the year ended December 31, 2019 also reflected increases in incentive compensation of \$2.1 million, research and development costs of \$0.9 million and legal fees of \$0.7 million, partially offset by a \$2.0 million decrease in stock-based compensation compared to the year ended December 31, 2018.

### **Loss on Sale of Railcars Available for Lease**

Loss on sale of railcars available for lease for the year ended December 31, 2019 was \$7.3 million and represented the loss on sale of leased railcars with a net book value of \$24.5 million. We did not sell any railcars available for lease during the year ended December 31, 2018.

### **Gain on Termination of Postretirement Benefit Plan**

On October 15, 2019, the Company notified retirees and affected active employees that it would terminate medical benefits offered to retirees of the Company and their dependents effective January 1, 2020. The retiree benefits that were terminated include medical insurance and vision insurance that were offered under the FreightCar America, Inc. Health and Welfare Plan. The benefit termination resulted in a gain of \$6.6 million.

### **Restructuring and Impairment Charges**

On July 22, 2019, the Company announced its intention to close its Roanoke, Virginia manufacturing facility as part of its "Back to Basics" strategy. The Company ceased operations at the facility as of November 29, 2019. Restructuring and impairment charges related to the plant closure for the year ended December 31, 2019 included employee severance and other employment termination costs of \$1.3 million, other charges of \$0.6 million and non-cash impairment charges of \$1.4 million for property, plant and equipment. The plant closure also resulted in a lease termination gain of \$2.4 million which partially offset restructuring and impairment charges for the year ended December 31, 2019. During the Company's annual goodwill impairment analysis as of August 1, 2019, the Company determined that the carrying value of its Manufacturing reporting unit exceeded its fair value by an amount that exceeded the Manufacturing reporting unit goodwill. As a result, the Company recorded a goodwill impairment charge equal to the total goodwill balance of the Manufacturing reporting unit of \$21.5 million during the year ended December 31, 2019. There were no restructuring and impairment charges for the year ended December 31, 2018.

### **Operating Loss**

Our consolidated operating loss for the year ended December 31, 2019 was \$75.6 million compared to \$32.1 million for the year ended December 31, 2018. Operating loss for the Manufacturing segment was \$53.5 million for the year ended December 31, 2019 compared to \$14.6 million for the year ended December 31, 2018 reflecting the decrease in Manufacturing segment gross profit described above, the loss on sale of railcars available for lease and restructuring and impairment charges for the year ended December 31, 2019. Corporate and Other operating loss was \$22.1 million for the year ended December 31, 2019 compared to \$17.5 million for the year ended December 31, 2018 reflecting lower parts sales, increases in Corporate and Other selling, general and administrative expenses and the gain on termination of postretirement benefit plan described above.

### **Income Taxes**

Our income tax benefit was \$0.1 million for the year ended December 31, 2019 compared to an income tax provision of \$10.2 million for the year ended December 31, 2018. The year ended December 31, 2018 included income tax expense of \$18.2 million related to recognition of additional valuation allowance against our deferred tax assets. We concluded that, based on evaluation of the positive and negative evidence, primarily our history of operating losses, it is not more likely than not that we will realize the benefit of our deferred tax assets. Our effective tax rate for the year ended December 31, 2019 was 0.2% compared to (33.4)% for the year ended December 31, 2018. The change in our effective tax rate was primarily due to the impact of the valuation allowance recorded in 2018.

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### **Net Loss**

As a result of the foregoing, our net loss was \$75.2 million for the year ended December 31, 2019, compared to a net loss of \$40.6 million for the year ended December 31, 2018. For the year ended December 31, 2019 our diluted net loss per share was \$5.95 compared to diluted net loss per share of \$3.26 for the year ended December 31, 2018.

### **LIQUIDITY AND CAPITAL RESOURCES**

Our primary sources of liquidity are our cash and cash equivalent balances on hand.

On April 12, 2019, our credit agreement with Bank of America N.A. was terminated and replaced by a new Credit and Security Agreement (the “BMO Credit Agreement”) with BMO Harris Bank N.A. (“BMO”). As of December 31, 2019, we had no borrowings under the BMO credit facility and \$4.0 million in outstanding letters of credit under the BMO credit facility. As of December 31, 2018, we had no borrowings under our prior revolving credit facility and \$4.8 million in outstanding letters of credit under such facility.

On April 16, 2019, FreightCar America Leasing 1, LLC, an indirect wholly-owned subsidiary of the Company, entered into a credit agreement (the “M&T Credit Agreement”) with M&T Bank N.A. As of December 31, 2019, FreightCar America Leasing 1, LLC had \$10.2 million in outstanding debt under the M&T Credit Agreement, which was collateralized by leased railcars with a carrying value of \$16.5 million. See Note 12, Revolving Credit Facilities to our Consolidated Financial Statements included in this Report.

Our restricted certificates of deposit and restricted cash equivalents balance was \$4.2 million and \$5.0 million as of December 31, 2019 and 2018, respectively, and consisted of certificates of deposit used to collateralize standby letters of credit with respect to performance guarantees and to support our workers’ compensation insurance claims. The standby letters of credit outstanding as of December 31, 2019 are scheduled to expire at various dates through January 17, 2021.

We adopted ASU 2016-02, the new lease accounting standard, effective January 1, 2019 and also entered into an amendment of the lease of our Shoals, Alabama facility to extend the term. On October 1, 2019, we exercised the termination provisions of the lease for our Roanoke manufacturing facility by notifying the lessor of our intent to terminate our lease as of March 31, 2020. See Note 3, Leases to our Consolidated Financial Statements included in this Report for additional information and discussion.

Based on our current level of operations and known changes in planned volume based on our backlog, we believe that our cash balances and operating cash flows together with amounts available under our revolving credit facilities, will be sufficient to meet our expected liquidity needs. Our long-term liquidity is contingent upon future operating performance and our ability to continue to meet financial covenants under our revolving credit facilities and any other indebtedness. 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 common stock and through long-term borrowings. There can be no assurance that long-term debt, if needed, will be available on terms attractive to us, or at all. Furthermore, any additional equity financing may be dilutive to stockholders and debt financing, if available, may involve restrictive covenants. Our failure to raise capital if and when needed could have a material adverse effect on our results of operations and financial condition.

We historically provided pension and retiree welfare benefits to certain salaried and hourly employees upon their retirement. On October 15, 2019, we notified retirees and affected active employees that we would terminate medical benefits offered to retirees and their dependents effective January 1, 2020. See Note 14, Employee Benefit Plans to our Consolidated Financial Statements included in this Report for additional information. Benefits under our pension plan are now frozen and will not be impacted by increases due to future service and compensation

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increases. The most significant assumptions used in determining our net periodic benefit costs are the discount rate used on our pension obligations and expected return on pension plan assets. As of December 31, 2019, our benefit obligation under our defined benefit pension plan was \$53.3 million, which exceeded the fair value of plan assets by \$6.5 million. We made no contributions to our defined benefit pension plan during 2019 and are not required to make any contributions to our defined benefit pension plan in 2020. Funding levels will be affected by future contributions, investment returns on plan assets, growth in plan liabilities and interest rates.

### Cash Flows

The following table summarizes our net cash provided by or used in operating activities, investing activities and financing activities for the years ended December 31, 2019 and 2018:

	<u>2019</u>	<u>2018</u>
	<i>(In thousands)</i>	
Net cash provided by (used in):		
Operating activities	\$(18,979)	\$(31,644)
Investing activities	30,954	(10,946)
Financing activities	9,212	(128)
Total	<u>\$ 21,187</u>	<u>\$(42,718)</u>

*Operating Activities.* Our net cash used in operating activities reflects net income or 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, and payments to our suppliers. As some of our customers accept delivery of new railcars in train-set quantities, variations in our sales lead to significant fluctuations in our operating profits and cash from operating activities. We do not usually experience business credit issues, although a payment may be delayed pending completion of closing documentation.

Our net cash used in operating activities for the year ended December 31, 2019 was \$19.0 million compared to \$31.6 million for the year ended December 31, 2018. Our net cash used in operating activities for the year ended December 31, 2019 reflects changes in working capital, including decreases in inventory and accounts receivable due to the timing of deliveries of railcars and the related cash receipts. Our net cash used in operating activities for the year ended December 31, 2019 includes non-cash goodwill impairment charges of \$21.5 million and loss from the sale of railcars available for lease of \$7.3 million. Our net cash used in operating activities for the year ended December 31, 2018 reflects our net loss of \$40.6 million, increases in accounts receivable of \$10.6 million, increases in inventories of \$16.3 million to meet current production needs which were partially offset by increases in accounts and contractual payables of \$10.7 million, non-cash depreciation and amortization of \$12.1 million and the net \$10.0 million decrease in deferred tax assets as a result of our valuation allowance.

*Investing Activities.* Net cash provided by investing activities for the year ended December 31, 2019 was \$31.0 million and represented the \$18.0 million maturity of U.S. Treasury securities and certificates of deposit (net of purchases), \$17.3 million proceeds from sale of railcars available for lease and the \$1.3 million maturity of restricted certificates of deposit (net of purchases) which were partially offset by capital expenditures of \$5.6 million. Net cash used in investing activities for the year ended December 31, 2018 was \$10.9 million and primarily represented the \$37.3 million cost of railcars available for lease which was partially offset by the \$25.4 million maturity of U.S. Treasury securities and certificates of deposit (net of purchases) and the \$0.8 million maturity of restricted certificates of deposit (net of purchases).

*Financing Activities.* Net cash provided by financing activities was \$9.2 million for the year ended December 31, 2019, compared to net cash used in financing activities of \$0.1 million for the year ended December 31, 2018. Net cash provided by financing activities for the year ended December 31, 2019 primarily represented \$10.2 million of proceeds from our line of credit borrowings (collateralized by leased railcars) which were partially offset by \$0.9 million of deferred financing costs related to our new credit facilities.

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### **Capital Expenditures**

Our capital expenditures were \$5.6 million for the year ended December 31, 2019 compared to \$2.2 million for the year ended December 31, 2018. During the year ended December 31, 2018, we also acquired \$17.2 million of equipment as part of the net settlement of our acquisition of Navistar's business at our Shoals facility. We anticipate capital expenditures during 2020 to be in the range of \$10 million to \$12 million. Our total obligations under our Mexico joint venture agreement is up to \$25 million over several years through a combination of assets and cash.

### **CRITICAL ACCOUNTING POLICIES**

We prepare our consolidated financial statements in accordance with accounting principles generally accepted in the United States. The preparation of our financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of sales and expenses during the reporting period. Significant estimates include long-lived assets, goodwill, pension and postretirement benefit assumptions, the valuation reserve on net deferred tax assets, warranty accrual and contingencies and litigation. Actual results could differ from those estimates.

Our critical accounting policies include the following:

#### **Long-lived assets**

We evaluate long-lived assets, including property, plant and equipment, under the provisions of ASC 360, *Property, Plant and Equipment*, which addresses financial accounting and reporting for the impairment of long-lived assets and for long-lived assets to be disposed of. For assets to be held or used, we group a long-lived asset or assets with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. An impairment loss for an asset group reduces only the carrying amounts of a long-lived asset or assets of the group being evaluated. Our estimates of future cash flows used to test the recoverability of a long-lived asset group include only the future cash flows that are directly associated with and that are expected to arise as a direct result of the use and eventual disposition of the asset group. Our future cash flow estimates exclude interest charges.

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

Due to the closure of our Roanoke, Virginia manufacturing facility, we tested the long-lived assets at our Roanoke facility for impairment during the second quarter of 2019. The carrying values of property, plant and equipment at our Roanoke facility were reduced to their estimated fair market values, resulting in a pre-tax impairment charge of \$1.4 million for the year ended December 31, 2019. Fair market value was estimated using the market approach using market data such as recent sales of comparable assets in active markets and estimated salvage values.

Our history of operating losses and a significant drop in our stock price resulted in us performing an impairment analysis of long-lived assets in 2019 by comparing the carrying value of the asset group to total undiscounted future cash flows of the asset group and concluded the carrying value is recoverable.

#### **Impairment of goodwill**

We assess the carrying value of goodwill for impairment annually or more frequently whenever events occur and circumstances change indicating potential impairment. On August 1, 2019, we performed our annual assessment of our Manufacturing reporting unit, the only reporting unit carrying goodwill. The outlook for new railcar demand and usage accelerated its decline in the second half of 2019. In addition, the sustained decline in our stock price as well as a change in our business model and market share decline have resulted in downward revisions of our forecasts of



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current and future projected earnings and cash flows for the Manufacturing reporting unit. Management determined the fair value of the Manufacturing reporting unit using the income approach, utilizing the discounted cash flow method. Fair value calculations using the income approach contain significant judgments and estimates with respect to a variety of factors that will significantly impact the future performance of the business, including: future railcar volume projections based on expected railcar demand; estimated margins on railcar sales; estimated growth rate for selling, general and administrative costs; future effective tax rate for the Company; and weighted-average cost of capital (“WACC”). Management estimated a WACC of 16% for our August 1, 2019 goodwill impairment valuation analysis. Based on this analysis, we determined that the carrying value of our Manufacturing reporting unit exceeded its fair value by an amount that exceeded the Manufacturing reporting unit goodwill. As a result, we recorded a goodwill impairment charge equal to the total goodwill balance of the Manufacturing reporting unit of \$21.5 million during the year ended December 31, 2019. The new railcar market and the operating environment for our Manufacturing reporting unit continue to be challenging.

We performed our annual goodwill impairment assessment for 2018 on August 1, 2018. In addition, we tested goodwill for impairment as of December 31, 2018 due to a significant drop in the Company’s stock price. During each of our 2018 goodwill impairment assessments we estimated the fair value of our Manufacturing reporting unit, the only reporting unit with associated goodwill, and concluded that the estimated fair value of the Manufacturing reporting unit exceeded the carrying value and therefore no impairment charges were recorded. For our annual 2018 impairment testing we determined the fair value of the Manufacturing reporting unit using a combination of the income approach, utilizing the discounted cash flow method, and the market approach, utilizing the guideline public company method. The discounted cash flow method indicates the fair value of a business based on the present value of the cash flows that the business can be expected to generate in the future, and the guideline company method seeks to determine the multiple of revenue or earnings at which shares of similar companies are exchanged to estimate the fair value of a company’s equity. For our interim 2018 impairment testing we determined the fair value of the Manufacturing reporting unit using the discounted cash flow method with updated assumptions including the risk of achieving projected future cash flows to incorporate the view of a market participant. During our impairment test as of December 31, 2018 we noted that the fair value of the Manufacturing reporting unit exceeded its carrying value by \$12 million, or 6.4% of the carrying value.

The discounted cash flow method involves management making estimates with respect to a variety of factors that will significantly impact the future performance of the business, including:

- future railcar volume projections;
- estimated margins on railcar sales;
- estimated growth rate for selling, general and administrative costs;
- future effective tax rate for our Company; and
- weighted-average cost of capital (“WACC”) used to discount future performance of our Company.

Because these estimates form a basis for the determination of whether or not an impairment charge should be recorded, these estimates are considered to be critical accounting estimates.

We use our knowledge of the railcar market and history of railcar sales to estimate volume projections in our discounted cash flow method. We believe that this data is the best indicator of expected future performance assuming that we maintain a consistent market share over time, which management believes is supportable based on historical performance. Our estimated gross margins used in the discounted cash flow method are based primarily on historical gross margins achieved over the duration of a business cycle. Management estimated WACC of 16%, and 13% for our December 31, 2018 and August 1, 2018 goodwill impairment valuation analyses for our Manufacturing reporting unit.

During our interim goodwill impairment assessment as of December 31, 2018 and our annual goodwill impairment assessment as of August 1, 2018, in addition to estimating the fair value of our Manufacturing reporting unit using the discounted cash flow method in the base case scenario, we also estimated the fair value of our Manufacturing reporting unit using the discounted cash flow method for alternate scenarios. From a sensitivity perspective, the estimated fair value of our Manufacturing reporting unit as of December 31, 2018 exceeded the carrying value even if the terminal growth rate was decreased by one hundred basis points or WACC used in the discounted cash flow model was increased by one hundred basis points. As of December 31, 2018, the total goodwill balance of the Manufacturing reporting unit was \$21.5 million.

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The guideline company method values a business by comparing the subject company to similar publicly traded companies. The application of the guideline company method consists of several steps including:

- identifying the most similar publicly traded companies to the reporting unit;
- reviewing financial and supplemental data, such as market prices and business descriptions for the selected companies;
- calculating valuation multiples for the selected publicly traded guideline companies;
- performing comparative analyses to select valuation multiples and then applying them to the financial data of the reporting unit to arrive at a preliminary indication of the value of the reporting unit's invested capital on a marketable, minority basis;
- applying a control premium to the indicated equity values on a marketable, minority basis to arrive at the indicated value of the common equity attributable to the reporting unit on a marketable, controlling basis; and
- where appropriate, making adjustments to add the appropriate balances related to cash and short-term investments, excess working capital and the benefits of net operating loss carryforwards.

During our December 31, 2018 interim testing the guideline company method was not used due to the high level of volatility exhibited by the stock which indicates that the market approach is likely not a reliable indicator of value at the valuation date.

### **Pensions and postretirement benefits**

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

In 2019, we assumed that the expected long-term rate of return on pension plan assets would be 5.40%. As permitted under ASC 715, the assumed long-term rate of return on assets is applied to a calculated value of plan assets, which recognizes changes in the fair value of plan assets in a systematic manner over five years. This produces the expected return on plan assets that is included in our net periodic benefit cost. The difference between this expected return and the actual return on plan assets is deferred. The net deferral of past asset gains (losses) affects the calculated value of plan assets and, ultimately, future net periodic benefit cost. We review the expected return on plan assets annually and would revise it if conditions should warrant. A change of one hundred basis points in the expected long-term rate of return on plan assets would have the following effect for the year ended December 31, 2019:

	<u>1% Increase</u>	<u>1% Decrease</u>
	<u>(in thousands)</u>	
Effect on net periodic benefit cost	\$ (411)	\$ 411

At the end of each year, we determine the discount rate to be used to calculate the present value of our pension plan liability. The discount rate is an estimate of the current interest rate at which our pension liabilities could be effectively settled at the end of the year. In estimating this rate, we look to rates of return on high-quality, fixed-income investments that receive one of the two highest ratings given by a recognized ratings agency. At December 31, 2019, we determined this rate on our pension plan to be 3.22% a decrease of 1.13% from the 4.35% rate used at December 31, 2018. A change of one hundred basis points in the discount rate would have the following effect:

	<u>1% Increase</u>	<u>1% Decrease</u>
	<u>(in thousands)</u>	
Effect on net periodic benefit cost	\$ 39	\$ (63)

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In October 2019, the Society of Actuaries issued base mortality table Pri-2012 which is split by retiree and contingent survivor tables and includes mortality improvement assumptions for U.S. plans, scale (MP-2019), which reflects additional data that the Social Security Administration has released since prior assumptions (MP-2018) were developed. We have historically utilized the Society of Actuaries' published mortality data in our plan assumptions. Accordingly, we adopted Pri-2012 with MP-2019 for purposes of measuring our pension obligations at December 31, 2019.

For the years ended December 31, 2019 and 2018, we recognized consolidated pre-tax pension benefit cost (income) of \$0.2 million and \$(0.7) million, respectively. We are not required to make any contributions to our pension plan during 2019. However, we may elect to adjust the level of contributions based on a number of factors, including performance of pension investments and changes in interest rates. The Pension Protection Act of 2006 provided for changes to the method of valuing pension plan assets and liabilities for funding purposes as well as requiring minimum funding levels. Our defined benefit pension plan is in compliance with minimum funding levels established in the Pension Protection Act. Funding levels will be affected by future contributions, investment returns on plan assets, growth in plan liabilities and interest rates. Once the plan is Fully Funded as that term is defined within the Pension Protection Act, we will be required to fund the ongoing growth in plan liabilities on an annual basis. We anticipate funding pension contributions with cash from operations.

On October 15, 2019, the Company notified retirees and affected active employees that it would terminate medical benefits offered to retirees of the Company and their dependents effective January 1, 2020. The retiree benefits that were terminated include medical insurance and vision insurance that were offered under the FreightCar America, Inc. Health and Welfare Plan. The benefit termination resulted in a gain of \$6.6 million. For the years ended December 31, 2019 and 2018, we recognized a consolidated pre-tax postretirement benefit cost of \$(0.2) million and \$0.0 million, respectively, excluding the termination gain recorded for the year ended December 31, 2019.

### **Income taxes**

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

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

As of December 31, 2019 and 2018, we concluded that, based on evaluation of the positive and negative evidence, primarily our history of operating losses, it is not more likely than not that we will realize the benefit of our deferred tax assets. Our income tax provision for the year ended December 31, 2018 includes income tax expense of \$18.2 million related to recognition of additional valuation allowance, bringing our total valuation allowance as of December 31, 2018 to \$24.5 million. Net of the valuation allowance, we had total net deferred tax liabilities of \$0.4 million as of December 31, 2018. As of December 31, 2019 our total valuation allowance was \$39.6 million and we had total net deferred tax liabilities of \$0.0 million.

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### **Product warranties**

Warranty terms are based on the negotiated railcar sales contracts. We generally warrant that new railcars produced by us will be free from defects in material and workmanship under normal use and service identified for a period of up to seven years from the time of sale. We also provide limited warranties with respect to certain rebuilt railcars. With respect to parts and materials manufactured by others and incorporated by us in our products, such parts and materials may be covered by the warranty provided by the original manufacturer. We establish a warranty reserve at the time of sale to account for future warranty charges. The warranty reserve consists of two categories: assigned claims and unassigned claims. The unassigned warranty reserve is calculated based on historical warranty costs adjusted for estimated material price changes and other factors. Once a warranty claim is filed for railcars under warranty, the estimated cost to correct the defect is moved from the unassigned reserve to the assigned reserve and tracked separately.

### **Revenue recognition**

We generally recognize revenue at a point in time, as we satisfy a performance obligation, by transferring control over a product or service to a customer. Revenue is measured at the transaction price, which is based on the amount of consideration that we expect to receive in exchange for transferring the promised goods or services to the customer. Performance obligations are typically completed and revenue is recognized for the sale of new and rebuilt railcars when a certificate of acceptance has been issued by the customer and title and risk of loss are transferred to the customer. At that time, the customer directs the use of, and obtains substantially all of the remaining benefits from, the asset. In certain sales contracts, our performance obligation includes transfer of the finished railcar to a specified railroad connection point. In these instances, we recognize revenue from the sale when the railcar reaches the specified railroad connection point. When a railcar sales contract contains multiple performance obligations, we allocate the transaction price to the performance obligations based on the relative stand-alone selling price of the performance obligation determined at the inception of the contract based on an observable market price, expected cost plus margin or market price of similar items. We generally do not provide discounts or rebates in the normal course of business. As a practical expedient, we recognize the incremental costs of obtaining contracts, such as sales commissions, as an expense when incurred since the amortization period of the asset that we otherwise would have recognized is one year or less. Performance obligations are satisfied and we recognize revenue from most parts sales when the parts are shipped to customers. We recognize operating lease revenue on Inventory on Lease on a contractual basis and recognize operating lease revenue on Railcars Available for Lease on a straight-line basis over the contract term. We recognize revenue from the sale of Inventory on Lease on a gross basis in manufacturing sales and cost of sales if the sales process is completed within 12 months of the manufacture of the leased railcars. We recognize revenue from the sale of Railcars Available for Lease on a net basis as Gain (Loss) on Sale of Railcars Available for Lease since the sale represents the disposal of a long-term operating asset.

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

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

### **FORWARD-LOOKING STATEMENTS**

This Annual Report on Form 10-K contains certain forward-looking statements including, in particular, statements about our plans, strategies and prospects. We have used the words “may,” “will,” “expect,” “anticipate,” “believe,” “estimate,” “plan” and similar expressions in this Annual Report on Form 10-K to identify forward-looking statements. We have based these forward-looking statements on our current views with respect to future events and financial performance. However, forward-looking statements inherently involve risks and uncertainties that could cause actual results to differ materially from those projected in the forward-looking statements. These risks and uncertainties relate to, among other things, the cyclical nature of our business, the competitive nature of our industry, our reliance upon a small number of customers that represent a large percentage of our sales, the variable purchase patterns of our customers and the timing of completion, delivery and customer acceptance of orders, fluctuating costs of raw materials, including steel and aluminum, and delays in the delivery of raw materials, the risk of lack of acceptance of our new railcar offerings by our customers, risks relating to our relationship with our

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unionized employees and their unions and other competitive factors. The factors listed above are not exhaustive. Other sections of this Form 10-K include additional factors that could materially and adversely affect our business, financial condition and results of operations. New factors emerge from time to time and it is not possible for management to predict the impact of all of these factors on our business, financial condition or results of operations or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Given these risks and uncertainties, investors should not rely on forward-looking statements as a prediction of actual results. We expressly disclaim any duty to provide updates to forward-looking statements, and the estimates and assumptions associated with them, in order to reflect changes in circumstances or expectations or the occurrence of unanticipated events except to the extent required by applicable securities laws.

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

#### **REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

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

#### **Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheets of FreightCar America, Inc and subsidiaries (the “Company”) as of December 31, 2019 and 2018, the related consolidated statements of operations, comprehensive income (loss), stockholders’ equity, and cash flows, for each of the two years in the period ended December 31, 2019, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2019, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company’s internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 4, 2020 expressed an unqualified opinion on the Company’s internal control over financial reporting.

#### **Change in Accounting Principle**

As discussed in Note 2 to the financial statements, the Company adopted ASC 2016-02, as amended, *Leases*, using the modified retrospective method on January 1, 2019.

#### **Basis for Opinion**

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

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

Chicago, Illinois  
March 4, 2020

We have served as the Company’s auditor since 1999.

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### **REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

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

#### **Opinion on Internal Control over Financial Reporting**

We have audited the internal control over financial reporting of FreightCar America, Inc and subsidiaries (the “Company”) as of December 31, 2019, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 31, 2019, of the Company and our report dated March 4, 2020, expressed an unqualified opinion on those financial statements, and includes an explanatory paragraph related to the Company’s change in method of accounting for leases in the year ended December 31, 2019, due to the adoption of Accounting Standard Update No. 2016-02, as amended.

#### **Basis for Opinion**

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

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

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

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

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

Chicago, Illinois  
March 4, 2020



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### FreightCar America, Inc. and Subsidiaries

#### CONSOLIDATED BALANCE SHEETS

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

	<u>December 31, 2019</u>	<u>December 31, 2018</u>
<b>Assets</b>		
Current assets		
Cash, cash equivalents and restricted cash equivalents	\$ 66,257	\$ 45,070
Restricted certificates of deposit	3,769	4,952
Marketable securities	—	18,019
Accounts receivable, net of allowance for doubtful accounts of \$91 and \$91, respectively	6,991	18,218
Inventories, net	25,092	64,562
Other current assets	7,570	5,012
Total current assets	109,679	155,833
Property, plant and equipment, net	38,564	45,317
Railcars available for lease, net	38,900	64,755
Right of use asset	56,507	—
Goodwill	—	21,521
Other long-term assets	1,552	2,311
Total assets	<u>\$ 245,202</u>	<u>\$ 289,737</u>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities		
Accounts and contractual payables	\$ 11,713	\$ 34,749
Accrued payroll and other employee costs	1,389	1,639
Reserve for workers' compensation	3,210	3,344
Accrued warranty	8,388	9,309
Customer deposits	5,123	3,000
Deferred income state and local incentives, current	2,219	2,219
Deferred rent, current	—	6,466
Lease liability, current	14,960	—
Other current liabilities	2,428	1,324
Total current liabilities	49,430	62,050
Long-term debt	10,200	—
Accrued pension costs	6,510	5,841
Accrued postretirement benefits, less current portion	420	4,975
Deferred income state and local incentives, long-term	4,722	6,941
Deferred rent, long-term	—	15,519
Lease liability, long-term	53,766	—
Other long-term liabilities	3,000	801
Total liabilities	<u>128,048</u>	<u>96,127</u>
Stockholders' equity		
Preferred stock, \$0.01 par value, 2,500,000 shares authorized (100,000 shares each designated as Series A voting and Series B non-voting, 0 shares issued and outstanding at December 31, 2019 and December 31, 2018)	—	—
Common stock, \$0.01 par value, 50,000,000 shares authorized, 12,731,678 shares issued at December 31, 2019 and December 31, 2018	127	127
Additional paid in capital	83,027	90,593
Treasury stock, at cost, 44,855 and 272,030 shares at December 31, 2019 and December 31, 2018, respectively	(989)	(9,721)
Accumulated other comprehensive loss	(10,780)	(8,188)
Retained earnings	45,824	120,799
Total FreightCar America stockholders' equity	117,209	193,610
Noncontrolling interest in JV	(55)	—
Total stockholders' equity	<u>117,154</u>	<u>193,610</u>
Total liabilities and stockholders' equity	<u>\$ 245,202</u>	<u>\$ 289,737</u>

See notes to consolidated financial statements

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**FreightCar America, Inc. and Subsidiaries**

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**CONSOLIDATED STATEMENTS OF OPERATIONS**

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

	<b>Year Ended December 31,</b>	
	<b>2019</b>	<b>2018</b>
Revenues	\$ 229,958	\$ 316,519
Cost of sales	244,258	320,146
Gross loss	(14,300)	(3,627)
Selling, general and administrative expenses	38,302	29,051
Loss on sale of railcars available for lease	7,266	—
Gain on sale of facility	—	(573)
Gain on termination of postretirement benefit plan	(6,637)	—
Restructuring and impairment charges	22,371	—
Operating loss	(75,602)	(32,105)
Interest expense and deferred financing costs	(609)	(155)
Other income	858	1,848
Loss before income taxes	(75,353)	(30,412)
Income tax (benefit) provision	(115)	10,169
Net loss	(75,238)	(40,581)
Less Net loss attributable to noncontrolling interest in JV	(55)	—
Net loss attributable to FreightCar America	\$ (75,183)	\$ (40,581)
Net loss per common share attributable to FreightCar America- basic	\$ (5.95)	\$ (3.26)
Net loss per common share attributable to FreightCar America- diluted	\$ (5.95)	\$ (3.26)
Weighted average common shares outstanding - basic	12,352,142	12,318,861
Weighted average common shares outstanding - diluted	12,352,142	12,318,861
Dividends declared per common share	\$ —	\$ —

See notes to the consolidated financial statements

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**FreightCar America, Inc. and Subsidiaries**

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**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**

(in thousands)

	<b>Year Ended December 31,</b>	
	<b>2019</b>	<b>2018</b>
Net loss	\$ (75,238)	\$ (40,581)
Other comprehensive (loss) income net of tax:		
Pension liability adjustments, net of tax	(476)	(597)
Postretirement liability adjustments, net of tax	(2,116)	(24)
Other comprehensive (loss) income	(2,592)	(621)
Comprehensive loss	\$ (77,830)	\$ (41,202)

**See notes to the consolidated financial statements**

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**FreightCar America, Inc. and Subsidiaries**

**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**

(in thousands, except for share data)

	<b>FreightCar America Shareholders</b>									
	<b>Common Stock</b>		<b>Additional</b>	<b>Treasury Stock</b>		<b>Accumulated</b>		<b>Retained</b>	<b>Noncontrolling</b>	<b>Total</b>
	<b>Shares</b>	<b>Amount</b>	<b>Paid In</b>	<b>Shares</b>	<b>Amount</b>	<b>Comprehensive</b>	<b>Loss</b>			
			<b>Capital</b>							<b>Equity</b>
<b>Balance, January 1, 2018</b>	12,731,678	\$ 127	\$ 90,347	(336,982)	\$ (12,555)	\$ (7,567)	\$ 161,380	\$ —	\$ 231,732	
Net loss	—	—	—	—	—	—	(40,581)	—	(40,581)	
Other comprehensive loss	—	—	—	—	—	(621)	—	—	(621)	
Restricted stock awards	—	—	(3,141)	85,182	3,141	—	—	—	—	
Employee stock settlement	—	—	—	(7,089)	(118)	—	—	—	(118)	
Forfeiture of restricted stock awards	—	—	189	(13,141)	(189)	—	—	—	—	
Stock-based compensation recognized	—	—	3,198	—	—	—	—	—	3,198	
<b>Balance, December 31, 2018</b>	12,731,678	\$ 127	\$ 90,593	(272,030)	\$ (9,721)	\$ (8,188)	\$ 120,799	\$ —	\$ 193,610	
Cumulative effective of adoption of ASC 842	—	—	—	—	—	—	208	—	208	
Net loss	—	—	—	—	—	—	(75,183)	(55)	(75,238)	
Other comprehensive loss	—	—	—	—	—	(2,592)	—	—	(2,592)	
Restricted stock awards	—	—	(9,170)	293,309	9,170	—	—	—	—	
Employee stock settlement	—	—	—	(7,404)	(59)	—	—	—	(59)	
Forfeiture of restricted stock awards	—	—	379	(58,730)	(379)	—	—	—	—	
Stock-based compensation recognized	—	—	1,225	—	—	—	—	—	1,225	
<b>Balance, December 31, 2019</b>	<u>12,731,678</u>	<u>\$ 127</u>	<u>\$ 83,027</u>	<u>(44,855)</u>	<u>\$ (989)</u>	<u>\$ (10,780)</u>	<u>\$ 45,824</u>	<u>\$ (55)</u>	<u>\$ 117,154</u>	

See notes to the consolidated financial statements

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### FreightCar America, Inc. and Subsidiaries

#### CONSOLIDATED STATEMENTS OF CASH FLOWS (in thousands)

	Year Ended December 31,	
	2019	2018
<b>Cash flows from operating activities</b>		
Net loss	\$ (75,238)	\$ (40,581)
Adjustments to reconcile net loss to net cash flows used in operating activities:		
Restructuring and impairment charges	22,371	—
Net proceeds from Shoals transaction	—	2,655
Depreciation and amortization	12,438	12,017
Amortization expense - right-of-use leased assets	10,485	—
Recognition of deferred income from state and local incentives	(2,219)	(2,220)
Loss on sale of railcars available for lease	7,197	—
Gain on termination of postretirement benefit plan	(6,637)	—
Deferred income taxes	176	9,969
Stock-based compensation recognized	1,225	3,198
Other non-cash items, net	(975)	(304)
Changes in operating assets and liabilities, net of acquisitions:		
Accounts receivable	11,227	(10,637)
Inventories	40,649	(16,311)
Other assets	(2,127)	1,728
Accounts and contractual payables	(23,961)	10,693
Accrued payroll and employee benefits	(1,368)	(165)
Income taxes receivable/payable	155	657
Accrued warranty	(921)	1,247
Lease liability	(17,602)	—
Other liabilities	6,201	(2,461)
Accrued pension costs and accrued postretirement benefits	(55)	(1,129)
Net cash flows used in operating activities	(18,979)	(31,644)
<b>Cash flows from investing activities</b>		
Purchase of restricted certificates of deposit	(4,981)	(8,312)
Maturity of restricted certificates of deposit	6,164	9,080
Purchase of securities held to maturity	(1,986)	(111,356)
Proceeds from maturity of securities	20,025	136,716
Cost of railcars available for lease	—	(37,347)
Purchase of property, plant and equipment	(5,573)	(2,185)
Proceeds from sale of property, plant and equipment and railcars available for lease	17,305	2,458
Net cash flows provided by (used in) investing activities	30,954	(10,946)
<b>Cash flows from financing activities</b>		
Proceeds from line of credit borrowings	10,200	—
Employee stock settlement	(59)	(118)
Deferred financing costs	(929)	(10)
Net cash flows provided by (used in) financing activities	9,212	(128)
Net increase (decrease) in cash and cash equivalents	21,187	(42,718)
Cash, cash equivalents and restricted cash equivalents at beginning of year	45,070	87,788
Cash, cash equivalents and restricted cash equivalents at end of year	\$ 66,257	\$ 45,070
<b>Supplemental cash flow information</b>		
Interest paid	\$ 196	\$ 68
Income tax refunds received	\$ 1,057	\$ 599
Income tax paid	\$ 79	\$ 5

See notes to the consolidated financial statements

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### **FreightCar America, Inc. and Subsidiaries**

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#### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

##### **For the Years Ended December 31, 2019 and 2018**

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

#### **Note 1 – Description of the Business**

FreightCar America, Inc. (“FreightCar”) operates primarily in North America through its direct and indirect subsidiaries, JAC Operations, Inc., Johnstown America, LLC, Freight Car Services, Inc., JAIX Leasing Company (“JAIX”), FreightCar America Leasing, LLC, FreightCar America Leasing 1, LLC, FreightCar Roanoke, LLC, FreightCar Mauritius Ltd. (“Mauritius”), FreightCar Rail Services, LLC (“FCRS”), FreightCar Short Line, Inc. (“FCSL”), FreightCar Alabama, LLC and FreightCar (Shanghai) Trading Co., Ltd (herein collectively referred to as the “Company”), and manufactures a wide range of railroad freight cars, supplies railcar parts and leases freight cars. The Company designs and builds high-quality railcars, including coal cars, bulk commodity cars, covered hopper cars, intermodal and non-intermodal flat cars, mill gondola cars, coil steel cars and boxcars. The Company is headquartered in Chicago, Illinois and has facilities in the following locations: Cherokee, Alabama; Grand Island, Nebraska; Johnstown, Pennsylvania; Roanoke, Virginia; and Shanghai, People’s Republic of China.

The Company and its direct and indirect subsidiaries are all Delaware corporations or Delaware limited liability companies except Mauritius, which is incorporated in Mauritius, and FreightCar (Shanghai) Trading Co., Ltd., which is organized in the People’s Republic of China. The Company’s direct and indirect subsidiaries are all wholly owned.

On September 19, 2019, the Company announced the formation of a joint venture with Fabricaciones y Servicios de México, S.A. de C.V. (“Fasemex”), a Mexican company with operations in both Mexico and the United States. The joint venture will lease a manufacturing facility in Castanos, Mexico in which it will manufacture railcars. Production of railcars at the facility is expected to begin in mid-2020.

On October 1, 2019, Johnstown America, LLC notified the lessor of its Roanoke, Virginia manufacturing facility of its intention to cease operations at the facility as of November 29, 2019.

#### **Note 2 – Summary of Significant Accounting Policies**

##### **Principles of Consolidation**

The accompanying consolidated financial statements include the accounts of FreightCar America, Inc. and all of its direct and indirect subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation. During 2019 the Company entered into a joint venture arrangement with Fasemex to manufacture railcars in Castanos, Mexico, in exchange for a 50% non-controlling interest in the operation. Under the terms of the joint venture, the Company has the right to appoint the majority of the members of the board and management for the joint venture. The Company’s initial obligations under the joint venture include capital contributions of \$25,000 over several years through a combination of assets and cash.

##### **Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States (“GAAP”) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates include the valuation of used railcars received in sale transactions, useful lives of long-lived assets, warranty accruals, workers’ compensation accruals, pension and postretirement benefit assumptions, stock compensation, evaluation of goodwill, other intangibles and property, plant and equipment for impairment and the valuation of deferred taxes. Actual results could differ from those estimates.

##### **Cash and Cash Equivalents**

On a daily basis, cash in excess of current operating requirements is invested in various highly liquid investments. The Company considers all unrestricted short-term investments with maturities of three months or less when acquired to be cash equivalents. The amortized cost of cash equivalents approximate fair value because of the short maturity of these instruments.

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### **FreightCar America, Inc. and Subsidiaries**

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#### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

##### **For the Years Ended December 31, 2019 and 2018**

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

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

#### **Restricted Cash and Restricted Certificates of Deposit**

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

#### **Financial Instruments**

Management estimates that all financial instruments (including cash equivalents, restricted cash and restricted certificates of deposit, marketable securities, accounts receivable, accounts payable and long-term debt) as of December 31, 2019 and 2018, have fair values that approximate their carrying values.

Upon purchase, the Company categorizes debt securities as *securities held to maturity*, *securities available for sale* or *trading securities*. Debt securities that the Company has the positive intent and ability to hold to maturity are classified as *securities held to maturity* and are reported at amortized cost adjusted for amortization of premium and accretion of discount on a level yield basis. Debt securities that are bought and held principally for the purpose of selling them in the near term are classified as *trading securities* and reported at fair value, with unrealized gains and losses included in earnings. Debt securities not classified as either held-to-maturity or trading securities are classified as *securities available for sale* and are reported at fair value, with unrealized gains and losses excluded from earnings and reported as a component of other comprehensive income, which is included in stockholders' equity, net of deferred taxes.

#### **Fair Value Measurements**

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

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

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

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

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

#### **Inventories**

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

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### FreightCar America, Inc. and Subsidiaries

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#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

##### For the Years Ended December 31, 2019 and 2018

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

#### Leased Railcars

The Company offers railcar leases to its customers at market rates with terms and conditions that have been negotiated with the customers. If, as of the date of the initial lease, management determines that the sale of the leased railcars is probable, and transfer of the leased railcars is expected to qualify for recognition as a completed sale within one year, then the leased railcars are classified as current assets on the balance sheet (Inventory on Lease). In determining whether it is probable that the leased railcars will be sold within one year, management considers general market conditions for similar railcars and considers whether market conditions are indicative of a potential sales price that will be acceptable to the Company to sell the cars within one year. Inventory on Lease is carried at the lower of cost or market value and is not depreciated. At the one-year anniversary of the initial lease or such earlier date when management no longer believes the leased railcars will be sold within one year of the initial lease, the leased railcars are reclassified from current assets (Inventory on Lease) to long-term assets (Railcars Available for Lease). Railcars Available for Lease are depreciated over 40 years from the date the railcars are placed in service under the initial lease and evaluated for impairment on a quarterly basis.

#### Property, Plant and Equipment

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

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

Maintenance and repairs are charged to expense as incurred, while major refurbishments and improvements are capitalized. The cost and accumulated depreciation of items sold or retired are removed from the property accounts and any gain or loss is recorded in the consolidated statement of operations upon disposal or retirement.

#### Long-Lived Assets

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

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



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### **FreightCar America, Inc. and Subsidiaries**

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#### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

##### **For the Years Ended December 31, 2019 and 2018**

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

#### **Research and Development**

Costs associated with research and development are expensed as incurred and totaled approximately \$955 and \$42 for the years ended December 31, 2019 and 2018, respectively. Such costs are reported within selling, general and administrative expenses in the consolidated statements of operations.

#### **Goodwill and Intangible Assets**

The Company assesses the carrying value of goodwill for impairment annually or more frequently whenever events occur and circumstances change indicating potential impairment. On August 1, 2019, the Company performed its annual assessment of its Manufacturing reporting unit, the only reporting unit carrying goodwill. The new railcar market and the operating environment for the Company's Manufacturing reporting unit continue to be challenging. The outlook for new railcar demand and usage accelerated its decline in the second half of 2019. In addition, the sustained decline in the Company's stock price as well as a change in the Company's business model and market share decline have resulted in downward revisions of the Company's forecasts of current and future projected earnings and cash flows for the Manufacturing reporting unit. Management determined the fair value of the Manufacturing reporting unit using the income approach, utilizing the discounted cash flow method. Fair value calculations using the income approach contain significant judgments and estimates with respect to a variety of factors that will significantly impact the future performance of the business, including: future railcar volume projections based on expected railcar demand; estimated margins on railcar sales; estimated growth rate for selling, general and administrative costs; future effective tax rate for the Company; and weighted-average cost of capital ("WACC"). Management estimated a WACC of 16% for the Company's August 1, 2019 goodwill impairment valuation analysis. Based on this analysis, the Company determined that the carrying value of its Manufacturing reporting unit exceeded its fair value by an amount that exceeded the Manufacturing reporting unit goodwill. As a result, the Company recorded a goodwill impairment charge equal to the total goodwill balance of the Manufacturing reporting unit of \$21,521 during the year ended December 31, 2019.

#### **Income Taxes**

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

Management evaluates net deferred tax assets and provides a valuation allowance when it believes that it is more likely than not that some portion of these assets will not be realized. In making this determination, management evaluates both positive evidence, such as cumulative pre-tax income for previous years, the projection of future taxable income, the reversals of existing taxable temporary differences and tax planning strategies, and negative evidence, such as any recent history of losses and any projected losses. Management also considers the expiration dates of net operating loss carryforwards in the evaluation of net deferred tax assets. Management evaluates the realizability of the Company's net deferred tax assets and assesses the valuation allowance on a quarterly basis, adjusting the amount of such allowance as necessary. The year ended December 31, 2018 included income tax expense of \$18,187 related to recognition of additional valuation allowance against our deferred tax assets. (See Note 15, Income Taxes)

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

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### **FreightCar America, Inc. and Subsidiaries**

#### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

##### **For the Years Ended December 31, 2019 and 2018**

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

#### **Product Warranties**

Warranty terms are based on the negotiated railcar sales contracts. The Company generally warrants that new railcars will be free from defects in material and workmanship under normal use and service identified for a period of up to seven years from the time of sale. The Company also provides limited warranties with respect to certain rebuilt railcars. With respect to parts and materials manufactured by others and incorporated by the Company in its products, such parts and materials may be covered by the warranty provided by the original manufacturer. The Company establishes a warranty reserve at the time of sale to account for future warranty charges. The warranty reserve consists of two categories: assigned claims and unassigned claims. The unassigned warranty reserve is calculated based on historical warranty costs adjusted for estimated material price changes and other factors. Once a warranty claim is filed for railcars under warranty, the estimated cost to correct the defect is moved from the unassigned reserve to the assigned reserve and tracked separately. The Company does not provide its customers the option to purchase additional warranties and, therefore, the Company's warranties are not considered a separate service or performance obligation.

#### **State and Local Incentives**

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

#### **Revenue Recognition**

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

	Year ended	
	December 31,	
	2019	2018
Railcar sales	\$212,716	\$296,394
Parts sales	10,699	14,180
Other sales	91	59
Revenues from contracts with customers	223,506	310,633
Leasing revenues	6,452	5,886
Total revenues	<u>\$229,958</u>	<u>\$316,519</u>

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

#### **Railcar Sales**

Performance obligations are typically completed and revenue is recognized for the sale of new and rebuilt railcars when a certificate of acceptance has been issued by the customer and title and risk of loss are transferred to the customer. At that time, the customer directs the use of, and obtains substantially all of the remaining benefits from, the asset. In certain sales contracts, the Company's performance obligation includes transfer of the finished railcar to a specified railroad connection point. In these instances, the Company recognizes revenue from the sale when the railcar reaches the specified railroad connection point. When a railcar sales contract contains multiple performance obligations, the Company allocates the transaction price to the performance obligations based on the relative stand-alone selling price of the performance obligation determined at the inception of the contract based on an observable market price, expected cost plus margin or market price of similar items. The Company does not provide discounts or rebates in the normal course of business.

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### **FreightCar America, Inc. and Subsidiaries**

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#### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

#### **For the Years Ended December 31, 2019 and 2018**

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

#### Parts Sales

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

#### Leasing Revenue

The Company recognizes operating lease revenue on Inventory on Lease on a contractual basis and recognizes operating lease revenue on Railcars Available for Lease on a straight-line basis over the contract term. The Company recognizes revenue from the sale of Inventory on Lease on a gross basis in manufacturing sales and cost of sales if the sales process is completed within 12 months of the manufacture of the leased railcars. The Company recognizes revenue from the sale of Railcars Available for Lease on a net basis as Gain (Loss) on Sale of Railcars Available for Lease since the sale represents the disposal of a long-term operating asset.

#### Contract Balances and Accounts Receivable

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

Contract assets represent the Company's rights to consideration for performance obligations that have been satisfied but for which the terms of the contract do not permit billing at the reporting date. The Company has no contract assets as of December 31, 2019. The Company may receive cash payments from customers in advance of the Company satisfying performance obligations under its sales contracts resulting in deferred revenue or customer deposits, which are considered contract liabilities. Deferred revenue and customer deposits are classified as either current or long-term in the Consolidated Balance Sheet based on the timing of when the Company expects to recognize the related revenue. Deferred revenue and customer deposits included in customer deposits, other current liabilities and other long-term liabilities in the Company's Consolidated Balance Sheet as of December 31, 2019 were \$5,607.

#### Performance Obligations

The Company is electing not to disclose the value of the remaining unsatisfied performance obligation with a duration of one year or less as permitted by the practical expedient in ASU 2014-09, *Revenue from Contracts with Customers*. The Company had remaining unsatisfied performance obligations as of December 31, 2019 with expected duration of greater than one year of \$104,100.

#### **Earnings (Loss) Per Share**

The Company computes earnings (loss) per share using the two-class method, which is an earnings (loss) allocation formula that determines earnings (loss) per share for common stock and participating securities. The Company's participating securities are its grants of restricted stock which contain non-forfeitable rights to dividends. Basic earnings (loss) per share attributable to common shareholders is computed by dividing net income (loss) attributable to common shareholders by the weighted average common shares outstanding. The calculation of diluted earnings per share includes the effect of any dilutive equity incentive instruments. The Company uses the treasury stock method to calculate the effect of outstanding dilutive equity incentive instruments, which requires the Company to

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### **FreightCar America, Inc. and Subsidiaries**

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#### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

##### **For the Years Ended December 31, 2019 and 2018**

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compute total proceeds as the sum of (1) the amount the employee must pay upon exercise of the award and (2) the amount of unearned stock-based compensation costs attributed to future services. Equity incentive instruments for which the total employee proceeds from exercise exceed the average fair value of the same equity incentive instrument over the period have an anti-dilutive effect on earnings per share during periods with net income from continuing operations, and accordingly, the Company excludes them from the calculation.

#### **Recent Accounting Pronouncements**

In August 2018, the Financial Accounting Standards Board (the “FASB”) issued Accounting Standards Update (“ASU”) 2018-15, *Intangibles – Goodwill and Other – Internal-Use Software*, which requires capitalization of certain implementation costs incurred in a cloud computing arrangement that is a service contract. ASU 2018-15 is effective for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. Early adoption is permitted. The Company does not expect the adoption of this standard to have a material impact on its consolidated financial statements.

In August 2018, the FASB issued ASU 2018-14, *Compensation – Retirement Benefits – Defined Benefit Plans – General*, which modifies the disclosure requirements for defined benefit and other postretirement plans. ASU 2018-14 eliminates certain disclosures related to accumulated other comprehensive income, plan assets, related parties and the effects of interest rate basis point changes on assumed health care costs, and adds disclosures to address significant gains and losses related to changes in benefit obligations. ASU 2018-14 also clarifies disclosure requirements for projected benefit and accumulated benefit obligations. ASU 2018-14 is effective for fiscal years ending after December 15, 2020, and interim periods within those fiscal years. Early adoption is permitted. Adoption on a retrospective basis for all periods presented is required. The Company is currently assessing the impact of this standard on its consolidated financial statements and related disclosures.

In February 2018, the FASB issued ASU 2018-02, *Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income*, which permits entities to reclassify tax effects stranded in accumulated other comprehensive income as a result of the recent U.S. tax reform to retained earnings. Companies that elect to reclassify these amounts must reclassify stranded tax effects for all items accounted for in accumulated other comprehensive income. ASU 2018-02 is effective for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years. The Company did not elect to reclassify tax effects stranded in accumulated other comprehensive income as a result of the Tax Cuts and Jobs Act to retained earnings.

In January 2017, the FASB issued ASU 2017-04, *Intangibles – Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment*. Topic 350 currently requires an entity to perform a two-step test to determine the amount, if any, of goodwill impairment. The amendment in ASU 2017-04 removes the second step of the test. An entity will apply a one-step quantitative test and record the amount of goodwill impairment as the excess of a reporting unit’s carrying amount over its fair value, not to exceed the total amount of goodwill allocated to the reporting unit. This standard is effective for annual or interim goodwill impairment tests in fiscal years beginning after December 15, 2019 and early adoption is permitted. The Company early adopted ASU 2017-04 and accounting for goodwill impairment recognized in 2019 is in accordance with the guidance under ASU 2017-04.

In February 2016, the FASB issued ASU 2016-02, as amended, *Leases (Topic 842)*, which requires a lessee to record a right-of-use asset and a lease liability for all leases with a term greater than twelve months regardless of whether the lease is classified as an operating lease or a financing lease. The Company adopted ASU 2016-02 effective January 1, 2019. See Note 3, Leases for the impact on the consolidated financial statements and related disclosures from the adoption of this standard.

#### **Note 3 – Leases**

Effective January 1, 2019, the Company adopted ASU 2016-02, as amended, *Leases (Topic 842)* using the modified retrospective method of applying the new standard at the adoption date. In addition, the Company has elected the package of practical expedients permitted under the transition guidance within the new standard, which, among other things, does not require reassessment of prior conclusions related to contracts containing a lease, lease

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### FreightCar America, Inc. and Subsidiaries

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#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

##### For the Years Ended December 31, 2019 and 2018

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classification, and initial direct lease costs. Adoption of this standard resulted in the recording of net operating lease right-of-use (ROU) assets of \$45,727 and corresponding operating lease liabilities of \$67,508 as of January 1, 2019. The consolidated balance sheets for reporting periods beginning on or after January 1, 2019 are presented under the new guidance, while prior period amounts are not adjusted and continue to be reported in accordance with ASC Topic 840, Leases.

The Company determines if an arrangement is a lease at inception of a contract. Substantially all of the Company's leases are operating leases. A significant portion of the Company's operating lease portfolio includes manufacturing sites, component warehouses and corporate offices. The remaining lease terms on the majority of the Company's leases are between 2.5 and 8 years, some of which include options to extend the lease terms. Leases with initial term of 12 months or less are not recorded on the consolidated balance sheet. Operating lease ROU assets are presented within long term assets, the current portion of operating lease liabilities are presented within current liabilities and the non-current portion of operating lease liabilities are presented within long term liabilities on the consolidated balance sheet.

ROU assets represent the Company's right to use an underlying asset during the lease term and the lease liabilities represent the Company's obligation to make the lease payments arising during the lease. ROU assets and liabilities are recognized at commencement date based on the net present value of fixed lease payments over the lease term. The Company's ROU assets have been reduced by the remaining unamortized lease incentive that the Company received on February 28, 2018 from Navistar, Inc. in exchange for the Company assuming all of the remaining contractual lease obligations for the Shoals facility. The Company's lease term includes options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. As most of the Company's operating leases do not provide an implicit rate, the Company uses its incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. Operating lease expense is recognized on a straight-line basis over the lease term. The components of the lease costs were as follows:

	<b>Year Ended</b>
	<b>December 31, 2019</b>
Operating lease costs:	
Fixed	\$ 13,662
Variable	—
Short-term	\$ 1,032
<b>Total lease cost</b>	<b>\$ 14,694</b>

Supplemental balance sheet information related to leases were as follows:

	<b>December 31, 2019</b>
Operating leases:	
Right of use assets	\$ 56,507
Lease liabilities:	
Lease liability, current	\$ 14,960
Lease liability, long-term	53,766
<b>Total operating lease liabilities</b>	<b>\$ 68,726</b>

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**FreightCar America, Inc. and Subsidiaries**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

**For the Years Ended December 31, 2019 and 2018**

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

Supplemental cash flow information is as follows:

	<b>Year Ended December 31, 2019</b>
Cash paid for amounts included in the measurement of lease liabilities:	
Operating cash flows from operating leases	\$ 20,778
<b>Total</b>	<b>\$ 20,778</b>
Right of use assets obtained in exchange for new lease obligations:	
Operating leases	\$ 32,079
<b>Total</b>	<b>\$ 32,079</b>

The aggregate future lease payments for operating leases as of December 31, 2019 are as follows:

	<b>Operating leases</b>
2020	17,743
2021	17,200
2022	9,969
2023	8,832
2024	8,082
Thereafter	16,164
Total lease payments	77,990
Less: interest	(9,263)
<b>Total</b>	<b>\$ 68,726</b>

The aggregate future lease payments for operating leases as of December 31, 2018 were as follows:

	<b>Operating leases</b>
2019	\$ 20,295
2020	20,595
2021	20,424
2022	4,873
2023	3,820
Thereafter	3,024
<b>Total</b>	<b>\$ 73,031</b>

Weighted-average remaining lease term (years)	
Operating leases	7.5
Weighted-average discount rate	
Operating leases	4.5%

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### FreightCar America, Inc. and Subsidiaries

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

##### For the Years Ended December 31, 2019 and 2018

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On February 26, 2019, the Company entered into an amendment to its lease of the Shoals, Alabama manufacturing facility to extend the initial term thereof from December 31, 2021 to December 31, 2026, with two five-year extension terms thereafter through December 31, 2031 and December 31, 2036, at the Company's option. In addition, the Company will vacate up to 40% of the manufacturing facility on or before December 31, 2021 with the base rent payable to the landlord reduced on proportional basis.

The Company has accounted for the amendment as a modification of the lease, resulting in a non-cash increase to lease liability and right of use asset of \$32,079. The Company concluded that the initial term through December 31, 2026 would be included in the measurement of lease liabilities as of the modification date. The Company has concluded that the options for extensions beyond that date are not reasonably certain of exercise, and have been excluded from the measurement of lease liabilities.

In October 2019, the Company recorded a \$2,445 gain as a result of the remeasurement of the lease liability following its notice of termination of the Company's Roanoke lease.

During 2019, the Company entered into a lease agreement for new office space for which the company took possession on February 1, 2020. The new lease arrangement requires total minimum lease payments of approximately \$3,000 over 11.5 years.

#### Note 4 – Fair Value Measurements

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

Recurring Fair Value Measurements	As of December 31, 2019			
	Level 1	Level 2	Level 3	Total
<b>ASSETS:</b>				
Cash equivalents	\$ 4,580	\$ —	\$ —	\$4,580
Restricted certificates of deposit	\$ 3,769	\$ —	\$ —	\$3,769
Escrow receivable	\$ —	\$ —	\$ 930	\$ 930

  

Recurring Fair Value Measurements	As of December 31, 2018			
	Level 1	Level 2	Level 3	Total
<b>ASSETS:</b>				
Cash equivalents	\$17,012	\$ —	\$ —	\$17,012
Restricted certificates of deposit	\$ 4,952	\$ —	\$ —	\$ 4,952
Escrow receivable	\$ —	\$ —	\$ 930	\$ 930

The sale of the Company's railcar repair and maintenance services business on September 30, 2015 resulted in \$1,960 of the aggregate purchase price being placed into escrow in order to secure the indemnification obligations of FCRS and FCSL. The fair market value of the remaining escrow receivable above represents the escrow balance of \$980 as of each of December 31, 2019 and 2018, net of the fair value of the indemnification obligations, which was estimated using the discounted probability-weighted cash flow method.

#### Note 5 – Marketable Securities

The Company's current investment policy is to invest in cash, certificates of deposit, U.S. treasury securities, U.S. government agency obligations and money market funds invested in U.S. government securities. Marketable securities of \$18,019 as of December 31, 2018 consisted of U.S. treasury securities held to maturity and certificates of deposit with original maturities of greater than 90 days and up to one year. The Company had no marketable securities as of December 31, 2019. Due to the short-term nature of these securities and their low interest rates, there is no material difference between their fair market values and amortized costs.

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### FreightCar America, Inc. and Subsidiaries

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#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

##### For the Years Ended December 31, 2019 and 2018

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

#### Note 6 – Inventories

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

	December 31,	
	2019	2018
Work in process	\$19,742	\$60,112
Parts inventory	5,350	4,450
Total inventories, net	<u>\$25,092</u>	<u>\$64,562</u>

Inventory on the Company's consolidated balance sheets includes reserves of \$5,633 and \$6,812 relating to excess or slow-moving inventory for parts and work in process at December 31, 2019 and 2018, respectively.

#### Note 7 – Leased Railcars

Railcars available for lease at December 31, 2019 was \$38,900 (cost of \$43,045 and accumulated depreciation of \$4,145) and at December 31, 2018 was \$64,755 (cost of \$70,850 and accumulated depreciation of \$6,095). Depreciation expense on railcars available for lease was \$1,365 and \$1,458 for the years ended December 31, 2019 and 2018, respectively.

Leased railcars at December 31, 2019 are subject to lease agreements with external customers with remaining terms of up to five and a half years and are accounted for as operating leases.

Future minimum rental revenues on leases at December 31, 2019 are as follows:

Year ending December 31, 2020	\$ 5,461
Year ending December 31, 2021	4,598
Year ending December 31, 2022	4,205
Year ending December 31, 2023	2,333
Year ending December 31, 2024	1,545
Thereafter	515
	<u>\$18,657</u>

#### Note 8 – Restructuring and Impairment Charges

##### Restructuring and Impairment Related to Plant Closure

On July 22, 2019, the Company announced its intention to close its Roanoke, Virginia manufacturing facility as part of its "Back to Basics" strategy and ceased operations at the facility as of November 29, 2019. On January 30, 2020, the Company notified the lessor of its intent to terminate its leases for the facility effective as of March 31, 2020. The cost of the restructuring plan is expected to range between \$3,500 and \$4,500, excluding the lease termination gain disclosed in Note 3 Leases, and will be incurred by the first half of 2020 (including costs already incurred in 2019). Restructuring and impairment charges related to the plant closure primarily include non-cash impairment charges for property, plant and equipment at the Roanoke facility and employee severance and retention charges. Restructuring and impairment charges have been partially offset by the lease termination gain described in Note 3, Leases.



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### FreightCar America, Inc. and Subsidiaries

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

##### For the Years Ended December 31, 2019 and 2018

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

#### Goodwill Impairment

As disclosed in Note 2, Summary of Significant Accounting Policies the Company recorded a goodwill impairment charge equal to the total goodwill balance of the Manufacturing reporting unit of \$21,521 during 2019.

Restructuring and impairment charges are reported as a separate line item on the Company's consolidated statements of operations for the year ended December 31, 2019 and are detailed below:

	<b>Year ended December 31, 2019</b>
Impairment charges for leasehold improvements and equipment	\$ 1,381
Employee severance and retention	1,332
Other charges related to facility closure	582
Lease termination gain	(2,445)
Goodwill impairment	21,521
Total restructuring and impairment costs	<u>\$ 22,371</u>

There were no restructuring and impairment charges during the year ended December 31, 2018.

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

	Accrued as of December 31, 2018	Cash Charges	Non-cash charges	Cash payments	Accrued as of December 31, 2019
Impairment charges for leasehold improvements and equipment	\$ —	\$ —	\$ 1,381	\$ —	\$ —
Employee severance and retention	—	1,332	—	(685)	647
Other charges related to facility closure	—	560	22	(201)	359
Lease termination gain	—	—	(2,445)	—	—
Goodwill impairment	—	—	21,521	—	—
Total restructuring and impairment costs	<u>\$ —</u>	<u>\$ 1,892</u>	<u>\$ 20,479</u>	<u>\$ (886)</u>	<u>\$ 1,006</u>

#### Note 9 – Property, Plant and Equipment

Property, plant and equipment consists of the following:

	<b>December 31,</b>	
	<b>2019</b>	<b>2018</b>
Land	\$ —	\$ —
Buildings and improvements	229	229
Leasehold improvements	8,590	14,988
Machinery and equipment	81,478	86,542
Software	9,663	9,011
Construction in process	2,439	465
Total cost	<u>102,399</u>	<u>111,235</u>
Less: Accumulated depreciation and amortization	<u>(63,835)</u>	<u>(65,918)</u>
Total property, plant and equipment, net	<u>\$ 38,564</u>	<u>\$ 45,317</u>

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#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

##### For the Years Ended December 31, 2019 and 2018

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

Depreciation expense for the years ended December 31, 2019 and 2018, was \$11,073 and \$10,559, respectively. The table above reflects the impairment charges of \$1,381 to property, plant and equipment for the year ended December 31, 2019 described in Note 8, Restructuring and Impairment Charges.

#### Note 10 – Product Warranties

Warranty terms are based on the negotiated railcar sales contracts. The Company generally warrants that new railcars produced by it will be free from defects in material and workmanship under normal use and service identified for a period of up to seven years from the time of sale. The changes in the warranty reserve for the years ended December 31, 2019 and 2018, are as follows:

	December 31,	
	2019	2018
Balance at the beginning of the year	\$ 9,309	\$8,062
Current year provision	1,416	1,324
Reductions for payments, costs of repairs and other	(363)	(526)
Adjustments to prior warranties	(1,974)	449
Balance at the end of the year	<u>\$ 8,388</u>	<u>\$9,309</u>

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

#### Note 11 – State and Local Incentives

During the year ended December 31, 2015, the Company received cash payments of \$15,733 for Alabama state and local incentives related to the Company's capital investment and employment levels at its Cherokee, Alabama ("Shoals") facility. Under the incentive agreements, a certain portion of the incentives may be repayable by the Company if targeted levels of employment are not maintained for a period of six years from the date of the incentive. In the event that employment levels drop below the minimum targeted levels of employment and any portion of the incentives is required to be paid back, the amount is unlikely to exceed the deferred liability balance at December 31, 2019.

In December 2016, the Company also qualified for an additional \$1,410 in incentives at the Shoals facility. This amount was received in January 2017.

The changes in deferred income from these incentives for the years ended December 31, 2019 and 2018, are as follows:

	December 31,	
	2019	2018
Balance at the beginning of the year	\$ 9,160	\$ 11,380
State and local incentives received during the year	—	—
Recognition of state and local incentives as a reduction of cost of sales	(2,219)	(2,220)
Balance at the end of the year, including current portion	<u>\$ 6,941</u>	<u>\$ 9,160</u>

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### **FreightCar America, Inc. and Subsidiaries**

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#### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

##### **For the Years Ended December 31, 2019 and 2018**

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

#### **Note 12 – Revolving Credit Facilities**

##### BMO Credit Agreement

On April 12, 2019, the Company entered into a Credit and Security Agreement (the “BMO Credit Agreement”) by and among the Company and certain of its subsidiaries, as borrowers and guarantors (together with the Company, the “Borrowers”), and BMO Harris Bank N.A., as lender (“BMO”). Pursuant to the BMO Credit Agreement, BMO extended an asset-backed credit facility in the maximum aggregate principal amount of up to \$50,000, consisting of revolving loans and a sub-facility for letters of credit not to exceed the lesser of \$10,000 and the amount of the revolving credit facility.

The BMO Credit Agreement replaced the Company’s prior revolving credit facility pursuant to a Credit Agreement dated as of July 26, 2013, among the Company and certain of its subsidiaries, as borrowers and guarantors, Bank of America, N.A., as administrative agent, swingline lender and letter of credit issuer, and the lenders party thereto, as amended from time to time, which was terminated effective April 12, 2019 and otherwise would have matured on July 26, 2019. As of December 31, 2018, the Company had no borrowings under its prior revolving credit facility and \$4,789 in outstanding letters of credit under such facility.

The BMO Credit Agreement has a term ending on April 12, 2024. Revolving loans outstanding thereunder will bear interest, at the Borrowers’ option and subject to the provisions of the BMO Credit Agreement, at Base Rate (as defined in the BMO Credit Agreement) or LIBOR Rate (as defined in the BMO Credit Agreement) plus the Applicable Margin for each such interest rate set forth in the BMO Credit Agreement.

The BMO Credit Agreement provides for a revolving credit facility with maximum availability of \$42,500, subject to borrowing base requirements set forth in the BMO Credit Agreement. The maximum availability under the BMO Credit Agreement is determined by a formula and may fluctuate depending on the value of the borrowing base included in such formula at the time of determination.

The BMO Credit Agreement has both affirmative and negative covenants, including, without limitation, limitations on indebtedness, liens and investments. The BMO Credit Agreement also provides for customary events of default. Borrowings under the BMO Credit Agreement are collateralized by substantially all of the Borrowers’ assets. As of December 31, 2019, the Company had no borrowings under the BMO credit facility.

##### M&T Credit Agreement

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

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

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

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

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**FreightCar America, Inc. and Subsidiaries**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

**For the Years Ended December 31, 2019 and 2018**

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

The M&T Credit Agreement has a term ending on April 16, 2021. Loans outstanding thereunder will bear interest, accrued daily, at the Adjusted LIBOR Rate (as defined in the M&T Credit Agreement) or the Adjusted Base Rate (as defined in the M&T Credit Agreement).

The M&T Credit Agreement has both affirmative and negative covenants, including, without limitation, maintaining an Interest Coverage Ratio (as defined in the M&T Credit Agreement) of not less than 1.25:1.00, measured quarterly, and limitations on indebtedness, loans, liens and investments. The M&T Credit Agreement also provides for customary events of default. As of December 31, 2019, FreightCar Leasing Borrower had \$10,200 in outstanding debt under the M&T Credit Agreement which was collateralized by leased railcars with a carrying value of \$16,450. As of December 31, 2019, the interest rate on outstanding debt under the M&T Credit Agreement was 3.96% representing the 90 day LIBOR plus 2.05%.

**Note 13 – Accumulated Other Comprehensive Income (Loss)**

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

	<u>Pre-Tax</u>	<u>Tax</u>	<u>After-Tax</u>
<b><u>Year ended December 31, 2019</u></b>			
Pension liability activity:	\$ (1,025)	\$ —	\$ (1,025)
Actuarial loss			
Reclassification adjustment for amortization of net loss (pre-tax other income (expense))	549	—	549
Postretirement liability activity:			
Actuarial gain	—	—	—
Termination gain	4,369	—	4,369
Reclassification adjustment for termination gain (pre-tax gain on termination of postretirement benefit plan)	(6,637)	(527)	(6,110)
Reclassification adjustment for amortization of net gain (pre-tax other income (expense))	(389)	—	(389)
Reclassification adjustment for amortization of prior service cost (pre-tax other income (expense))	14	—	14
	<u>\$ (3,119)</u>	<u>\$ (527)</u>	<u>\$ (2,592)</u>
	<u>Pre-Tax</u>	<u>Tax</u>	<u>After-Tax</u>
<b><u>Year ended December 31, 2018</u></b>			
Pension liability activity:			
Actuarial gain	\$ (1,210)	\$(258)	\$ (952)
Reclassification adjustment for amortization of net loss (pre-tax other income (expense))	451	96	355
Postretirement liability activity:			
Actuarial gain	237	50	187
Reclassification adjustment for amortization of net gain (pre-tax other income (expense))	(282)	(60)	(222)
Reclassification adjustment for amortization of prior service cost (pre-tax other income (expense))	14	3	11
	<u>\$ (790)</u>	<u>\$ (169)</u>	<u>\$ (621)</u>

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**FreightCar America, Inc. and Subsidiaries**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

**For the Years Ended December 31, 2019 and 2018**

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

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

	<b>December 31, 2019</b>	<b>December 31, 2018</b>
Unrecognized pension cost, net of tax of \$6,282 and \$6,282	\$ (10,780)	\$ (10,304)
Unrecognized postretirement income, net of tax of \$0 and \$527	—	2,116
	<u>\$ (10,780)</u>	<u>\$ (8,188)</u>

**Note 14 – Employee Benefit Plans**

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

The Company also provided certain postretirement health care benefits for certain of its salaried retired employees. Generally, employees became eligible for health care benefits if they retired after attaining specified age and service requirements. These benefits were subject to deductibles, co-payment provisions and other limitations. On October 15, 2019 the Company notified retirees and affected active employees that it would terminate medical benefits offered to retirees of the Company and their dependents effective January 1, 2020. The retiree benefits that were terminated include medical insurance and vision insurance that were offered under the FreightCar America, Inc. Health and Welfare Plan. The benefit termination resulted in a gain of \$6,637.

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

The changes in benefit obligation, change in plan assets and funded status as of December 31, 2019 and 2018, are as follows:

	<b>Pension Benefits</b>		<b>Postretirement Benefits</b>	
	<b>2019</b>	<b>2018</b>	<b>2019</b>	<b>2018</b>
<b>Change in benefit obligation</b>				
Benefit obligation – Beginning of year	\$48,590	\$54,319	\$ 5,370	\$ 5,956
Service cost	—	—	18	33
Interest cost	1,863	1,712	183	186
Actuarial loss (gain)	6,157	(4,037)	—	(237)
Benefits paid	(3,316)	(3,404)	(601)	(568)
Liability gain due to termination	—	—	(4,369)	—
Benefit obligation – End of year	<u>53,294</u>	<u>48,590</u>	<u>601</u>	<u>5,370</u>
<b>Change in plan assets</b>				
Plan assets – Beginning of year	42,749	48,556	—	—
Return on plan assets	7,351	(2,403)	—	—
Employer contributions	—	—	601	568
Benefits paid	(3,316)	(3,404)	(601)	(568)
Plan assets at fair value – End of year	<u>46,784</u>	<u>42,749</u>	<u>—</u>	<u>—</u>
Funded status of plans – End of year	<u>\$ (6,510)</u>	<u>\$ (5,841)</u>	<u>\$ (601)</u>	<u>\$ (5,370)</u>

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**FreightCar America, Inc. and Subsidiaries**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

**For the Years Ended December 31, 2019 and 2018**

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

	<u>Pension Benefits</u>		<u>Postretirement Benefits</u>	
	<u>2019</u>	<u>2018</u>	<u>2019</u>	<u>2018</u>
<b>Amounts recognized in the Consolidated Balance Sheets</b>				
Current liabilities	\$ —	\$ —	\$ (181)	\$ (395)
Noncurrent liabilities	(6,510)	(5,841)	(420)	(4,975)
Net amount recognized at December 31	<u>\$(6,510)</u>	<u>\$(5,841)</u>	<u>\$ (601)</u>	<u>\$ (5,370)</u>

Amounts recognized in accumulated other comprehensive loss but not yet recognized in earnings at December 31, 2019 and 2018, are as follows:

	<u>Pension Benefits</u>		<u>Postretirement Benefits</u>	
	<u>2019</u>	<u>2018</u>	<u>2019</u>	<u>2018</u>
Net actuarial loss (gain)	\$17,062	\$16,586	\$ —	\$ (2,801)
Prior service cost	—	—	—	158
	<u>\$17,062</u>	<u>\$16,586</u>	<u>\$ —</u>	<u>\$ (2,643)</u>

The estimated net loss for the defined benefit pension plan that will be amortized from accumulated other comprehensive loss into net periodic benefit cost in 2020 is \$551.

Components of net periodic benefit cost for the years ended December 31, 2019 and 2018, are as follows:

	<u>Pension Benefits</u>		<u>Postretirement Benefits</u>	
	<u>2019</u>	<u>2018</u>	<u>2019</u>	<u>2018</u>
<b>Components of net periodic benefit cost</b>				
Service cost	\$ —	\$ —	\$ 18	\$ 33
Interest cost	1,863	1,712	183	186
Expected return on plan assets	(2,218)	(2,845)	—	—
Amortization of unrecognized prior service cost	—	—	14	14
Amortization of unrecognized net loss (gain)	549	451	(389)	(282)
Termination gain	—	—	(6,637)	—
Contractual benefit charge	—	—	—	—
Total net periodic benefit cost	<u>\$ 194</u>	<u>\$ (682)</u>	<u>\$ (6,811)</u>	<u>\$ (49)</u>

The increase (decrease) in accumulated other comprehensive loss (pre-tax) for the years ended December 31, 2019 and 2018, are as follows:

	<u>2019</u>		<u>2018</u>	
	<u>Pension Benefits</u>	<u>Postretirement Benefits</u>	<u>Pension Benefits</u>	<u>Postretirement Benefits</u>
Net actuarial loss (gain)	\$ 1,025	\$ —	\$ 1,210	\$ (237)
Liability gain due to termination	—	(4,369)	—	—
Termination gain	—	6,637	—	—
Amortization of net actuarial loss (gain)	(549)	389	(451)	282
Amortization of prior service cost	—	(14)	—	(14)
Total recognized in accumulated other comprehensive loss (gain)	<u>\$ 476</u>	<u>\$ 2,643</u>	<u>\$ 759</u>	<u>\$ 31</u>

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### FreightCar America, Inc. and Subsidiaries

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#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

##### For the Years Ended December 31, 2019 and 2018

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

The following benefit payments, which reflect expected future service, as appropriate, are expected to be paid as of December 31, 2020:

	<u>Pension Benefits</u>
2020	\$ 3,338
2021	3,304
2022	3,294
2023	3,278
2024	3,245
2025 through 2029	15,633

The Company is not required to make any contributions to its pension plan in 2019 to meet its minimum funding requirements.

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

	<u>Pension Benefits</u>		<u>Postretirement Benefits</u>	
	<u>2019</u>	<u>2018</u>	<u>2019</u>	<u>2018</u>
Discount rates	3.22%	4.35%	N/A	4.32%

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

In October 2019, the Society of Actuaries issued base mortality table Pri-2012 which is split by retiree and contingent survivor tables and includes mortality improvement assumptions for U.S. plans, scale (MP-2019), which reflects additional data that the Social Security Administration has released since prior assumptions (MP-2018) were developed. The Company has historically utilized the Society of Actuaries' published mortality data in its plan assumptions. Accordingly, the Company adopted Pri-2012 with MP-2019 for purposes of measuring its pension obligations at December 31, 2019.

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

	<u>Pension Benefits</u>		<u>Postretirement Benefits</u>	
	<u>2019</u>	<u>2018</u>	<u>2019</u>	<u>2018</u>
Discount rate for benefit obligations	4.36%	3.68%	4.34%	3.65%
Expected return on plan assets	5.40%	6.07%	N/A	N/A
Rate for interest on benefit obligations	3.96%	3.28%	3.94%	3.24%
Discount rate for service cost	N/A	N/A	4.60%	3.89%

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### FreightCar America, Inc. and Subsidiaries

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

##### For the Years Ended December 31, 2019 and 2018

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

The Company's pension plan's weighted average asset allocations at December 31, 2019 and 2018, and target allocations for 2019, by asset category, are as follows:

Asset Category	Plan Assets at December 31,		Target Allocation
	2019	2018	2019
Cash and cash equivalents	1%	1%	0% - 5%
Equity securities	54%	51%	45% - 65%
Fixed income securities	40%	43%	30% - 50%
Real estate	5%	5%	4%-6%
	<u>100%</u>	<u>100%</u>	<u>100%</u>

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

The Company's pension plan assets are invested in one mutual fund for each fund classification. The following table presents the fair value of pension plan assets classified under the appropriate level of the ASC 820 fair value hierarchy (see Note 2, Summary of Significant Accounting Policies for a description of the fair value hierarchy) as of December 31, 2019 and 2018:

Pension Plan Assets	As of December 31, 2019			
	Level 1	Level 2	Level 3	Total
Mutual funds:				
Fixed income funds	\$18,720	—	—	\$18,720
Large cap funds	15,546	—	—	15,546
Small cap funds	3,567	—	—	3,567
International funds	6,369	—	—	6,369
Real estate funds	2,339	—	—	2,339
Cash and equivalents	243	—	—	243
Total	<u>\$46,784</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$46,784</u>



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**FreightCar America, Inc. and Subsidiaries**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

**For the Years Ended December 31, 2019 and 2018**

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Pension Plan Assets	As of December 31, 2018			
	Level 1	Level 2	Level 3	Total
<b>Mutual funds:</b>				
Fixed income funds	\$ 18,210	—	—	\$ 18,210
Large cap funds	12,671	—	—	12,671
Small cap funds	3,562	—	—	3,562
International funds	5,799	—	—	5,799
Real estate funds	2,195	—	—	2,195
Cash and equivalents	312	—	—	312
<b>Total</b>	<b>\$ 42,749</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 42,749</b>

The Company also maintains qualified defined contribution plans, which provide benefits to their employees based on employee contributions and employee earnings, with discretionary contributions allowed. Expenses related to these plans were \$1,372 and \$1,603 for the years ended December 31, 2019 and 2018, respectively. Effective January 1, 2020, the Company suspended the employer contribution to its defined contribution plans.

**Note 15 - Income Taxes**

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

	Year Ended December 31,	
	2019	2018
<b>Current taxes</b>		
Federal	\$ (12)	\$ (3)
State	42	156
	<u>30</u>	<u>153</u>
<b>Deferred taxes</b>		
Federal	386	5,784
State	(210)	4,185
	<u>176</u>	<u>9,969</u>
Tax (benefit) expense related to a (decrease) increase in unrecognized tax benefits	(221)	—
Interest expense, gross of related tax effects	(100)	47
<b>Total (benefit) provision</b>	<b>\$ (115)</b>	<b>\$ 10,169</b>

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

	Year Ended December 31,	
	2019	2018
Statutory U.S. federal income tax rate	21.0%	21.0%
State income taxes, net of federal tax benefit	2.9%	5.0%
Valuation allowance	(20.1)%	(59.7)%
State rate and other changes in deferred taxes	(1.1)%	1.0%
Federal and state credits	0.1%	0.1%
Uncertain tax positions	1.7%	(0.3)%
Nondeductible expenses and other	(4.3)%	(0.5)%
<b>Effective income tax rate</b>	<b>0.2%</b>	<b>(33.4)%</b>

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### FreightCar America, Inc. and Subsidiaries

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

##### For the Years Ended December 31, 2019 and 2018

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

Deferred income taxes result from temporary differences in the financial and tax basis of assets and liabilities.

Components of deferred tax assets (liabilities) consisted of the following:

Description	December 31, 2019		December 31, 2018	
	Assets	Liabilities	Assets	Liabilities
Accrued postretirement and pension benefits	\$ 1,541	\$ —	\$ 2,424	\$ —
Intangible assets	—	(13)	—	(1,653)
Accrued expenses	3,370	—	9,210	—
Deferred state and local incentive revenue	1,780	—	2,349	—
Inventory valuation	2,071	—	2,338	—
Property, plant and equipment and railcars on operating leases	—	(6,295)	—	(20,975)
Net operating loss and tax credit carryforwards	34,078	—	28,165	—
Stock-based compensation expense	1,152	—	1,168	—
Right of use asset	—	(14,193)	—	—
Lease liability	17,326	—	—	—
Other	—	(1,028)	1,320	(251)
	61,318	(21,529)	46,974	(22,879)
Valuation allowance	(39,792)	—	(24,450)	—
Deferred tax assets (liabilities)	<u>\$ 21,526</u>	<u>\$ (21,529)</u>	<u>\$ 22,524</u>	<u>\$ (22,879)</u>
Increase (decrease) in valuation allowance	<u>\$ 15,342</u>		<u>\$ 18,187</u>	

A valuation allowance is provided when it is more likely than not that some portion or all of the deferred tax assets will not be realized. Management has concluded that, based on evaluation of the positive and negative evidence, primarily the history of operating losses, we will not more likely than not realize the benefit of the deferred tax assets. The Company has certain pretax state net operating loss carryforwards of \$160,489 which will expire between 2020 and 2039, for which a full valuation allowance has been recorded. The Company also has federal net operating loss carryforwards and federal tax credit carryforwards of \$100,431 and \$2,016, respectively, which will begin to expire in 2030, for which a full valuation allowance also has been recorded.

A reconciliation of the beginning and ending gross amounts of unrecognized tax benefits for the years ended December 31, 2019 and 2018, were as follows:

	2019	2018
Beginning of year balance	\$ 1,310	\$ 1,383
Decreases in prior period tax positions	—	(73)
Decreases related to settlements	(1,310)	—
End of year balance	<u>\$ —</u>	<u>\$ 1,310</u>

The total estimated unrecognized tax benefit that, if recognized, would affect the Company's effective tax rate was \$0 as of each of December 31, 2019 and 2018. Due to the nature of the Company's unrecognized tax benefits, the Company does not expect changes in its unrecognized tax benefit reserve in the next twelve months to have a material impact on its financial statements. The Company's income tax provision included \$0 of expenses (net of federal tax benefits of \$0) and \$94 of expenses (net of federal tax benefits of \$11) related to interest and penalties for the years ended December 31, 2019 and 2018, respectively. The Company records interest and penalties as a component of income tax expense. Such expenses brought the balance of accrued interest and penalties to \$0 and \$200 at December 31, 2019 and 2018, respectively.

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### **FreightCar America, Inc. and Subsidiaries**

#### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

##### **For the Years Ended December 31, 2019 and 2018**

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

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

Jurisdiction	Earliest Year Open to Examination
U.S. Federal	2017
States:	
Pennsylvania	2000
Texas	2018
Illinois	2010
Virginia	2016
Colorado	2010
Indiana	2010
Nebraska	2016
Alabama	2016
Foreign:	
China	2016

#### **Note 16 - Stock-Based Compensation**

The Company's incentive compensation plans, titled "The 2005 Long Term Incentive Plan" (as restated to incorporate all amendments, the "2005 Plan") and "The FreightCar America, Inc. 2018 Long Term Incentive Plan (the "2018 Plan" and, collectively, the "Incentive Plans"), were approved by the Company's board of directors and ratified by the stockholders. The Incentive Plans provide for the grant to eligible persons of stock options, share appreciation rights, or SARs, restricted shares, restricted share units, or RSUs, performance shares, performance units, dividend equivalents and other share-based awards, referred to collectively as the awards. Time-vested stock option awards generally vest based on one to three years of service and have 10 year contractual terms. Share awards generally vest over one to three years. Certain option and share awards provide for accelerated vesting if there is a change in control (as defined in the Incentive Plans). The 2005 Plan will terminate as to future awards on May 17, 2023 and the 2018 Plan will terminate as to future awards on May 10, 2028. Under the 2005 Plan, 2,459,616 shares of common stock have been reserved for issuance (from either authorized but unissued shares or treasury shares), of which 210,138 were available for issuance at December 31, 2019. Under the 2018 Plan, 1,250,000 shares of common stock have been reserved for issuance (from either authorized but unissued shares or treasury shares), of which 958,200 were available for issuance at December 31, 2019.

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

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### FreightCar America, Inc. and Subsidiaries

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

##### For the Years Ended December 31, 2019 and 2018

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

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

<u>Grant Year</u>	<u>Grant Date</u>	<u>Expected Life</u>	<u>Expected Volatility</u>	<u>Expected Dividend Yield</u>	<u>Risk Free Interest Rate</u>	<u>Grant Date Fair Value Per Award</u>
2019	4/23/2019	6 years	44.87%	0.00%	2.40%	\$ 3.50
2019	1/14/2019	6 years	44.87%	0.00%	2.57%	\$ 3.43
2018	1/12/2018	6 years	44.25%	0.00%	2.42%	\$ 7.57

On January 12, 2018, the Company granted non-qualified stock options to purchase 146,590 shares of our common stock to executives of the Company of which 102,378 options were forfeited during 2019 and 44,212 options remain outstanding as of December 31, 2019. The award features a performance earning vesting schedule whereby the stock options will vest if the average closing price per share of the Company's stock over the previous 90 calendar days (the "Threshold Stock Price") exceeds the closing price per share of the Company's stock on January 12, 2018 (the "Reference Stock Price") as follows: 34% of the stock options will vest if the Threshold Stock Price exceeds the Reference Stock Price by \$5.00; another 33% of the stock options will vest if the Threshold Stock Price exceeds the Reference Stock Price by \$10.00; and the remaining 33% of the stock options will vest if the Threshold Stock Price exceeds the Reference Stock Price by \$15.00. Such stock price appreciation goals can be achieved at any point during the options' ten-year contractual term.

On July 31, 2017, the Company granted non-qualified stock options to purchase 350,000 shares of our common stock to an executive of the Company. The award features a performance earning vesting schedule whereby the stock options will vest if the average closing price per share of the Company's stock over the previous 90 calendar days (the "Threshold Stock Price") exceeds the closing price per share of the Company's stock on July 31, 2017 (the "Reference Stock Price") as follows: 34% of the stock options will vest if the Threshold Stock Price exceeds the Reference Stock Price by \$5.00; another 33% of the stock options will vest if the Threshold Stock Price exceeds the Reference Stock Price by \$10.00; and the remaining 33% of the stock options will vest if the Threshold Stock Price exceeds the Reference Stock Price by \$15.00. Such stock price appreciation goals can be achieved at any point during the options' ten-year contractual term.

When vesting of an award of stock-based compensation is dependent upon the attainment of a target stock price, the award is considered to be subject to a market condition. The Company recognizes stock-based compensation cost for stock options with market conditions over the derived service period of the stock options. The estimated fair value and derived service period for the stock options with market conditions were calculated using a Monte Carlo simulation. Assumptions used in valuing stock options with market conditions include the expected stock option life, expected volatility, expected dividend yield and risk-free rate. The stock options with market conditions were assumed to have an expected life equal to the midpoint of (a) the date the performance goal is attained and (b) the date the stock options expire. The expected volatility assumption was based on the Company's historical stock price volatility over the ten-year period ended on the grant date. The expected dividend yield was based on the latest annualized dividend rate and the current market price of the underlying common stock on the date of the grant. The risk-free rate assumption was based on the yields on U.S. Treasury STRIPS with a remaining term that approximates the life assumed at the date of the grant.

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### **FreightCar America, Inc. and Subsidiaries**

#### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

#### **For the Years Ended December 31, 2019 and 2018**

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

Grant date fair values of stock option awards with market conditions were estimated using a Monte Carlo simulation model with the following assumptions:

Grant Year	Grant Date	Expected Volatility	Expected Dividend Yield	Risk Free Interest Rate	Grant Date Fair Value Per Award	Derived Service Period
2018	1/12/2018	49.33%	0.00%	2.55%	\$ 8.51 to \$9.12	1.0 to 2.43 years
2017	7/31/2017	49.22%	2.19%	2.30%	\$ 6.88 to \$7.25	0.98 to 2.39 years

As of December 31, 2019, there was \$25 of total unrecognized compensation expense related to stock options with market conditions, which will be recognized over the average remaining requisite service period of 6 months.

A summary of the Company's time-vested stock options activity and related information at December 31, 2019 and 2018, and changes during the years then ended, is presented below:

	December 31, 2019		December 31, 2018	
	Options Outstanding	Weighted-Average Exercise Price (per share)	Options Outstanding	Weighted-Average Exercise Price (per share)
Outstanding at the beginning of the year	208,426	\$ 21.47	175,620	\$ 25.13
Granted	255,009	7.43	89,445	16.66
Exercised	—	—	—	—
Forfeited or expired	(150,118)	15.93	(56,639)	23.30
Outstanding at the end of the year	<u>313,317</u>	<u>\$ 12.70</u>	<u>208,426</u>	<u>\$ 21.47</u>
Exercisable at the end of the year	<u>82,964</u>	<u>\$ 23.01</u>	<u>121,755</u>	<u>\$ 24.90</u>

A summary of the Company's time vested stock options outstanding as of December 31, 2019 is presented below:

	Options Outstanding	Weighted-Average Remaining Contractual Term (in years)	Weighted-Average Exercise Price (per share)	Aggregate Intrinsic Value
Options outstanding	313,317	7.7	\$ 12.70	\$ —
Vested or expected to vest	313,317	7.7	\$ 12.70	\$ —
Options exercisable	82,964	4.1	\$ 23.01	\$ —

There were no time-vested stock options exercised during 2019 or 2018. As of December 31, 2019, there was \$612 of total unrecognized compensation expense related to time-vested stock options, which will be recognized over the average remaining requisite service period of 22 months.

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### FreightCar America, Inc. and Subsidiaries

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

##### For the Years Ended December 31, 2019 and 2018

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

A summary of the Company's nonvested restricted shares as of December 31, 2019 and 2018, and changes during the years then ended is presented below:

	December 31,		2018	
	2019	Weighted-Average Grant Date Fair Value	2018	Weighted-Average Grant Date Fair Value
	Shares	(per share)	Shares	(per share)
Nonvested at the beginning of the year	133,462	\$ 16.12	99,864	\$ 17.75
Granted	293,309	6.75	85,182	16.16
Vested	(40,696)	16.89	(38,443)	20.50
Forfeited	(58,730)	11.27	(13,141)	15.96
Nonvested at the end of the year	<u>327,345</u>	<u>\$ 8.49</u>	<u>133,462</u>	<u>\$ 16.12</u>
Expected to vest	<u>327,345</u>	<u>\$ 8.49</u>	<u>133,462</u>	<u>\$ 16.12</u>

The fair value of stock awards vested during the years ended December 31, 2019 and 2018, was \$293 and \$622, respectively, based on the value at vesting date. As of December 31, 2019, there was \$1,445 of unrecognized compensation expense related to nonvested restricted stock awards, which will be recognized over the average remaining requisite service period of 22 months.

Stock-based compensation expense of \$1,225 and \$3,198 is included within selling, general and administrative expense for the years ended December 31, 2019 and 2018, respectively. The total income tax benefit recognized in the consolidated statements of operations for share-based compensation arrangements was \$261 and \$681 for the years ended December 31, 2019 and 2018, respectively.

#### Note 17 - Risks and Contingencies

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

As part of a settlement agreement reached with one of its customers, the Company agreed to pay \$7,500 to settle all claims related to a prior year's commercial dispute. During the year ended December 31, 2019, the Company paid \$3,500 of the settlement amount and the remaining \$4,000 will be paid over a period of three years, or on an accelerated basis in the event both parties agree to accelerate delivery of railcars currently in the backlog.

In addition to the foregoing, the Company is involved in certain other pending and threatened legal proceedings, including commercial disputes and workers' compensation and employee matters arising out of the conduct of its business. While the ultimate outcome of these other legal proceedings cannot be determined at this time, it is the opinion of management that the resolution of these other actions will not have a material adverse effect on the Company's financial condition, results of operations or cash flows.

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### FreightCar America, Inc. and Subsidiaries

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

##### For the Years Ended December 31, 2019 and 2018

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

#### Note 18 - Other Commitments

The Company is party to certain non-cancelable fixed price agreements to purchase fixed amounts of materials used in the manufacturing process. At December 31, 2019, the Company had purchase commitments under these agreements as follows:

Year ending December 31, 2020	\$ 2,137
Year ending December 31, 2021	496
Year ending December 31, 2022	—
Year ending December 31, 2023	—
Year ending December 31, 2024	—
Thereafter	—
	<u>\$ 2,633</u>

Purchases related to these agreements were approximately \$1,623 for the year ended December 31, 2019.

#### Note 19 – Earnings Per Share

The weighted average common shares outstanding are as follows:

	<u>Year Ended December 31,</u>	
	<u>2019</u>	<u>2018</u>
Weighted average common shares outstanding	12,352,142	12,318,861
Dilutive effect of employee stock options and nonvested share awards	—	—
Weighted average diluted common shares outstanding	<u>12,352,142</u>	<u>12,318,861</u>

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 computes basic earnings per share by dividing net income allocated to common shareholders by the weighted average number of shares outstanding during the year. Diluted earnings per share is calculated to give effect to all potentially dilutive common shares that were outstanding during the year. Weighted average diluted common shares outstanding include the incremental shares that would be issued upon the assumed exercise of stock options and the assumed vesting of nonvested share awards. For the years ended December 31, 2019 and 2018, 659,678 and 349,132 shares, respectively, were not included in the weighted average common shares outstanding calculation as they were anti-dilutive.

#### Note 20 – Revenue Sources and Concentration of Sales

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

	<u>Year ended</u> <u>December 31,</u>	
	<u>2019</u>	<u>2018</u>
Railcar sales	\$ 212,716	\$ 296,394
Parts sales	10,699	14,180
Leasing revenues	6,452	5,886
Other sales	91	59
	<u>\$ 229,958</u>	<u>\$ 316,519</u>

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### FreightCar America, Inc. and Subsidiaries

#### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)

##### For the Years Ended December 31, 2019 and 2018

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

Due to the nature of its operations, the Company is subject to significant concentration of risks related to business with a few customers. Sales to the Company's top three customers accounted for 15%, 12% and 12%, respectively, of revenues for the year ended December 31, 2019. Sales to the Company's top three customers accounted for 26%, 19% and 10%, respectively, of revenues for the year ended December 31, 2018. The Company's sales to customers outside the United States were \$6,693 and \$12,943 in 2019 and 2018, respectively.

#### Note 21 – Segment Information

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

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

	Year Ended December 31,	
	2019	2018
<b>Revenues:</b>		
Manufacturing	\$ 219,064	\$ 302,154
Corporate and Other	10,894	14,365
<b>Consolidated Revenues</b>	<b>\$ 229,958</b>	<b>\$ 316,519</b>
<b>Operating (Loss) Income:</b>		
Manufacturing (1)	\$ (53,501)	\$ (14,556)
Corporate and Other	(22,101)	(17,549)
<b>Consolidated Operating (Loss) Income</b>	<b>(75,602)</b>	<b>(32,105)</b>
Consolidated interest expense and deferred financing costs	(609)	(155)
Consolidated other income	858	1,848
<b>Consolidated (Loss) Income Before Income Taxes</b>	<b>\$ (75,353)</b>	<b>\$ (30,412)</b>
<b>Depreciation and Amortization:</b>		
Manufacturing	\$ 11,622	\$ 11,269
Corporate and Other	778	748
<b>Consolidated Depreciation and Amortization</b>	<b>\$ 12,400</b>	<b>\$ 12,017</b>
<b>Capital Expenditures:</b>		
Manufacturing (2)	\$ 5,261	\$ 1,851
Corporate and Other	312	334
<b>Consolidated Capital Expenditures</b>	<b>\$ 5,573</b>	<b>\$ 2,185</b>

(1) Results for the year ended December 31, 2019 include restructuring and impairment charges of \$22,371.

(2) Excluding assets of \$17,169 acquired as part of a business acquisition on February 28, 2018.



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**FreightCar America, Inc. and Subsidiaries**

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**

**For the Years Ended December 31, 2019 and 2018**

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

	<b>December 31, 2019</b>	<b>December 31, 2018</b>
<b>Assets:</b>		
Manufacturing	\$ 156,859	\$ 208,663
Corporate and Other	87,329	79,028
<b>Total Operating Assets</b>	244,188	287,691
Consolidated income taxes receivable	1,014	2,046
Consolidated deferred income taxes, long-term	—	—
<b>Consolidated Assets</b>	<u>\$ 245,202</u>	<u>\$ 289,737</u>

**Note 22 – Subsequent Event**

On February 21, 2020, the Company, certain of its subsidiaries, as borrowers and guarantors, and BMO Harris Bank N.A., as lender, amended the BMO Credit Agreement, to, among other things, increase the borrowing base during the period commencing February 21, 2020 until May 15, 2020 by the lesser of (i) 100% of qualified unrestricted cash and (ii) \$4,000.

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

None.

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

#### **Evaluation of Disclosure Controls and Procedures**

Under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, management evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), as of the end of the period covered by our annual report on Form 10-K for the fiscal year ended December 31, 2019 (the "Evaluation Date"). Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that, as of the Evaluation Date, our disclosure controls and procedures were effective to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's rules and forms.

#### **MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

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

- Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;
- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP;
- Provide reasonable assurance that receipts and expenditures of the Company are being made only in accordance with appropriate authorization of management and the board of directors; and
- Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on the financial statements.

As of the end of the Company's 2019 fiscal year, management conducted an evaluation of the effectiveness of the Company's internal control over financial reporting based on the framework established in *Internal Control-Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's system of internal control over financial reporting is designed to provide reasonable assurance to the Company's management and board of directors regarding the reliability of financial records used in preparation of the Company's published financial statements. As all internal control systems have inherent limitations, even systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Based on its assessment, management has concluded that the Company's internal control over financial reporting was effective as of December 31, 2019.

The effectiveness of the Company's internal control over financial reporting as of December 31, 2019 has been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein.

#### **CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING**

There has been no change in our internal control over financial reporting during the last fiscal quarter of 2019 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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### **Item 9B. Other Information.**

None.

## **PART III**

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

Information required to be disclosed by this item is hereby incorporated by reference to the information under the captions “Governance of the Company,” “Stock Ownership,” “Section 16(a) Beneficial Ownership Reporting Compliance,” “Executive Officers,” “Compensation Overview” and “Executive Compensation” in our definitive Proxy Statement to be filed pursuant to Regulation 14A, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after the end of our fiscal year ended December 31, 2019.

### **Item 11. Executive Compensation.**

Information required to be disclosed by this item is hereby incorporated by reference to the information under the captions “Executive Compensation,” “Board of Directors,” “Compensation Overview and “Director Compensation” in our definitive Proxy Statement to be filed pursuant to Regulation 14A, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after the end of our fiscal year ended December 31, 2019.

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

Information required to be disclosed by this item is hereby incorporated by reference to the information under the captions “Stock Ownership” and “Equity Compensation Plan Information” in our definitive Proxy Statement to be filed pursuant to Regulation 14A, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after the end of our fiscal year ended December 31, 2019.

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

Information required to be disclosed by this item is hereby incorporated by reference to the information under the captions “Certain Transactions” and “Board of Directors” in our definitive Proxy Statement to be filed pursuant to Regulation 14A, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after the end of our fiscal year ended December 31, 2019.

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

Information required to be disclosed by this item is hereby incorporated by reference to the information under the caption “Fees of Independent Registered Public Accounting Firm and Audit Committee Report” in our definitive Proxy Statement to be filed pursuant to Regulation 14A, which Proxy Statement is anticipated to be filed with the Securities and Exchange Commission within 120 days after the end of our fiscal year ended December 31, 2019.

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**PART IV**

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

**Exhibits**

(a) Documents filed as part of this report:

The following financial statements are included in this Form 10-K:

1. Consolidated Financial Statements of FreightCar America, Inc. and Subsidiaries

Reports of Independent Registered Public Accounting Firm.

Consolidated Balance Sheets as of December 31, 2019 and 2018.

Consolidated Statements of Operations for the years ended December 31, 2019 and 2018.

Consolidated Statements of Comprehensive Income (Loss) for the years ended December 31, 2019 and 2018.

Consolidated Statements of Stockholders' Equity for the years ended December 31, 2019 and 2018.

Consolidated Statements of Cash Flows for the years ended December 31, 2019 and 2018.

Notes to Consolidated Financial Statements.

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

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

(c) Additional Financial Statement Schedules

None.

**Item 16. Form 10-K Summary.**

None.

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**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**FREIGHTCAR AMERICA, INC.**

Date: March 4, 2020

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

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ JAMES R. MEYER</u> <b>James R. Meyer</b>	President and Chief Executive Officer (principal executive officer) and Director	March 4, 2020
<u>/s/ CHRISTOPHER J. EPEL</u> <b>Christopher J. Eppel</b>	Vice President, Finance, Chief Financial Officer and Treasurer (principal financial officer)	March 4, 2020
<u>/s/ JOSEPH J. MALIEKEL</u> <b>Joseph J. Maliekel</b>	Vice President and Corporate Controller (principal accounting officer)	March 4, 2020
<u>/s/ WILLIAM D. GEHL</u> <b>William D. Gehl</b>	Chairman of the Board and Director	March 4, 2020
<u>/s/ ELIZABETH K. ARNOLD</u> <b>Elizabeth K. Arnold</b>	Director	March 4, 2020
<u>/s/ JAMES D. CIRAR</u> <b>James D. Cirar</b>	Director	March 4, 2020
<u>/s/ THOMAS A. MADDEN</u> <b>Thomas A. Madden</b>	Director	March 4, 2020
<u>/s/ MALCOLM F. MOORE</u> <b>Malcolm F. Moore</b>	Director	March 4, 2020
<u>/s/ ANDREW B. SCHMITT</u> <b>Andrew B. Schmitt</b>	Director	March 4, 2020

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### EXHIBIT INDEX

- 2.1 Asset Purchase Agreement, dated September 30, 2015, by and among FreightCar Rail Services, LLC, FreightCar Short Line, Inc. and ARS Nebraska, LLC. (incorporated by reference to Exhibit 2.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2015 filed with the Commission on November 3, 2015).
- 2.2 Asset Purchase Agreement dated February 26, 2018, by and among Navistar, Inc, International Truck and Engine Investments Corporation and FreightCar Alabama, LLC (incorporated by reference to Exhibit 2.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2018 filed with the Commission on May 3, 2018).
- 3.1 Certificate of Ownership and Merger of FreightCar America, Inc. into FCA Acquisition Corp., as amended (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Commission on September 7, 2006).
- 3.2 Third Amended and Restated By-laws of FreightCar America, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report filed on Form 8-K filed with the Commission on September 28, 2007).
- 4.1 Form of Registration Rights Agreement, by and among FreightCar America, Inc., Hancock Mezzanine Partners, L.P., John Hancock Life Insurance Company, Caravelle Investment Fund, L.L.C., Trimaran Investments II, L.L.C., Camillo M. Santomero, III, and the investors listed on Exhibit A attached thereto (incorporated by reference to Exhibit 4.3 to Registration Statement Nos. 333-123384 and 333-123875 filed with the Commission on April 4, 2005).
- 4.2 Description of the Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934. †
- 10.1 Letter agreement regarding Terms of Employment dated August 27, 2010 by and between FreightCar America, Inc. and Joseph E. McNeely (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on August 27, 2010).
- 10.2 Letter agreement regarding Terms of Employment dated April 30, 2013 by and between FreightCar America, Inc. and Joseph E. McNeely (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on May 2, 2013).
- 10.3 Letter agreement regarding Terms of Employment dated October 4, 2013 by and between FreightCar America, Inc. and Joseph E. McNeely (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on October 4, 2013).
- 10.4 Separation Agreement and General Release dated July 17, 2017 by and between FreightCar America, Inc. and Joseph E. McNeely (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Commission on July 19, 2017).
- 10.5 Letter agreement regarding Terms of Employment dated July 17, 2017, by and between FreightCar America, Inc. and James R. Meyer (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on July 19, 2017).
- 10.6 Letter agreement regarding Terms of Employment dated November 17, 2015 by and between FreightCar America, Inc. and Georgia L. Vlamis (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on December 2, 2015).
- 10.7 Letter agreement regarding Terms of Employment dated June 1, 2017 by and between FreightCar America, Inc. and Georgia L. Vlamis (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on June 5, 2017).

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- 10.8 [Letter agreement regarding Terms of Employment dated April 9, 2019 by and between FreightCar America, Inc. and Christopher J. Eppel \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on May 5, 2019\).](#)
- 10.9 [FreightCar America, Inc. 2005 Long Term Incentive Plan \(Restated to incorporate all Amendments\) \(incorporated by reference to Appendix I to the Company's Proxy Statement for the annual meeting of stockholders held on May 17, 2013 filed with the Commission on April 12, 2013\).](#)
- 10.10 [FreightCar America, Inc. 2018 Long Term Incentive Plan \(incorporated by reference to Appendix I to the Company's Proxy Statement for the annual meeting of stockholders held on May 10, 2018 filed with the Commission on March 30, 2018\).](#)
- 10.11 [Form of Restricted Share Award Agreement for the Company's independent directors \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 27, 2006\).](#)
- 10.12 [Form of Restricted Share Award Agreement for the Company's employees \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 15, 2008\).](#)
- 10.13 [Form of Stock Option Award Agreement for the Company's employees \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 15, 2008\).](#)
- 10.14 [Form of Performance Share Award Agreement for the Company's employees \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on January 16, 2015\).](#)
- 10.15 [Retention Payment and Success Bonus Agreement by and between FreightCar America, Inc. and James R. Meyer, dated November 20, 2019. †](#)
- 10.16 [Retention Payment and Success Bonus Agreement by and between FreightCar America, Inc. and Christopher J. Eppel, dated November 20, 2019. †](#)
- 10.17 [Retention Payment and Success Bonus Agreement by and between FreightCar America, Inc. and Georgia L. Vlamis, dated November 20, 2019. †](#)
- 10.18 [FreightCar America, Inc. Successful Transaction Severance Plan, dated November 20, 2019. †](#)
- 10.19 [Lease Agreement, dated as of December 20, 2004, by and between Norfolk Southern Railway Company and Johnstown America Corporation \(the "Lease Agreement"\) \(incorporated by reference to Exhibit 10.27 to Registration Statement Nos. 333-123384 and 333-123875 filed with the Commission on April 4, 2005\).\\*](#)
- 10.20 [Amendment to the Lease Agreement, dated as of December 1, 2005 \(incorporated by reference to Exhibit 10.11 to the Company's Annual Report on Form 10-K for the year ended December 31, 2005\).\\*](#)
- 10.21 [Second Amendment to the Lease Agreement, dated as of February 1, 2008, by and between Norfolk Southern Railway Company and Johnstown America Corporation \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2008 filed with the Commission on May 12, 2008\).](#)
- 10.22 [Amendment to Lease, dated as of October 12, 2012, by and between Norfolk Southern Railway Company and Johnstown America Corporation \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2012 filed with the Commission on November 9, 2012\).\\*](#)
- 10.23 [Amendment to Lease Agreement, dated as of November 23, 2015, by and between Norfolk Southern Railway Company and Johnstown America Corporation \(incorporated by reference to Exhibit 10.20 to the Company's Annual Report on Form 10-K for the year ended December 31, 2015\).\\*](#)

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- 10.24 [Fifth Amendment to Lease Agreement dated March 1, 2018 by and between Norfolk Southern Railway Company and Johnstown America Corporation. \(incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2018 filed with the Commission on May 3, 2018\).](#)
- 10.25 [Sublease, dated as of February 19, 2013, by and between Navistar, Inc. and FreightCar Alabama, LLC \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2013 filed with the Commission on May 10, 2013\).\\*](#)
- 10.26 [Amendment to Sublease, dated as of March 11, 2013, by and among Teachers' Retirement Systems of Alabama, Employees' Retirement System of Alabama, Navistar, Inc. and FreightCar Alabama, LLC \(incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2013 filed with the Commission on May 10, 2013\).\\*](#)
- 10.27 [Second Amendment to Sublease and Consent to Sublease, dated October 27, 2014, by and among Teachers' Retirement Systems of Alabama, Employees' Retirement System of Alabama, Navistar, Inc. and FreightCar Alabama, LLC \(incorporated by reference to Exhibit 10.23 to the Company's Annual Report on Form 10-K for the year ended December 31, 2015\).\\*](#)
- 10.28 [Third Amendment to Sublease and Consent to Sublease, dated as of February 1, 2016, by and among Teachers' Retirement Systems of Alabama, Employees' Retirement System of Alabama, Navistar, Inc. and FreightCar Alabama, LLC. \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2016 filed with the Commission on May 3, 2016\).\\*](#)
- 10.29 [Assignment and Assumption of Lease, dated as of February 28, 2018, by and between Navistar, Inc. and FreightCar Alabama, LLC \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2018 filed with the Commission on May 3, 2018\).](#)
- 10.30 [Industrial Facility Lease dated as of September 29, 2011, by and between Teachers' Retirement Systems of Alabama and Employees' Retirement System of Alabama and Navistar, Inc. \(incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2018 filed with the Commission on May 3, 2018\).\\*](#)
- 10.31 [Amendment to Industrial Facility Lease and Consent to Sublease, dated as of February 19, 2013, by and among Teachers' Retirement Systems of Alabama, Employees' Retirement System of Alabama, Navistar, Inc. and FreightCar Alabama, LLC \(incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2018 filed with the Commission on May 3, 2018\).](#)
- 10.32 [Second Amendment to Industrial Facility Lease, dated as of February 26, 2019, by and among Teachers' Retirement Systems of Alabama, Employees' Retirement System of Alabama and FreightCar America, Inc. \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2019 filed with the Commission on May 2, 2019\).](#)
- 10.33 [Credit and Security Agreement, dated as of April 12, 2019, by and among FreightCar America, Inc. and certain subsidiaries and BMO Harris Bank N.A. \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2019 filed with the Commission on August 1, 2019\).](#)
- 10.34 [Limited Waiver and First Amendment to Credit and Security Agreement, dated as of October 28, 2019, by and among FreightCar America, Inc. and certain subsidiaries and BMO Harris Bank N.A. †](#)
- 10.35 [Credit Agreement, dated as of April 16, 2019, by and between FreightCar America Leasing 1, LLC and M & T Bank \(incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2019 filed with the Commission on August 1, 2019\).](#)



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10.36	<a href="#"><u>FreightCar America, Inc. Executive Severance Plan (As Amended and Restated Effective December 1, 2016) (and Summary Plan Description) incorporated by reference to Exhibit 10.27 to the Company's Annual Report on Form 10-K for the year ended December 31, 2016).</u></a>
10.37	<a href="#"><u>Form of Letter of Resignation (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on December 19, 2006).</u></a>
10.38	<a href="#"><u>Form of Letter of Resignation (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on December 20, 2009).</u></a>
10.39	<a href="#"><u>Form of Indemnification Agreement between FreightCar America, Inc. and each of its current directors (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Commission on March 24, 2010).</u></a>
21	<a href="#"><u>Subsidiaries of FreightCar America, Inc.</u></a>
23	<a href="#"><u>Consent of Independent Registered Public Accounting Firm.</u></a>
31.1	<a href="#"><u>Certification of Chief Executive Officer pursuant to Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u></a>
31.2	<a href="#"><u>Certification of Chief Financial Officer pursuant to Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u></a>
32	<a href="#"><u>Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u></a>
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101PRE	XBRL Taxonomy Extension Presentation Linkbase Document

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

† Filed herewith

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## **Section 2: EX-4.2 (EX-4.2)**

**Exhibit 4.2**

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

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

Under our charter, our authorized capital stock consists of 50,000,000 shares of common stock, \$0.01 par value per share, and 2,500,000 shares of preferred stock, \$0.01 par value per share. As of February 12, 2020, there were 13,270,992 shares of FreightCar common stock outstanding. All outstanding shares of FreightCar common stock are duly authorized, validly issued, fully paid and non-assessable. We have no shares of preferred stock issued or outstanding.

Our common stock is listed on the Nasdaq Global Market under the symbol "RAIL."

**Voting Rights.** The holders of our common stock vote together with any holders of voting preferred stock as a class on all matters submitted to a vote of stockholders, with each share having one vote, except for those matters exclusively affecting the preferred stock. Holders of our common stock have voting rights in the election of directors.

**Dividend Rights.** Holders of our common stock are entitled to receive dividends as may be lawfully declared from time to time by our board of directors.

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

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

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

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

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

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

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

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

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

*Authorized but Unissued Capital Stock.* Delaware law does not require stockholder approval for any issuance of authorized shares. However, the listing requirements of the Nasdaq Global Market, which would apply so long as our common stock is listed on the Nasdaq Global Market, require stockholder approval of certain issuances equal to or in excess of 20% of the voting power or the number of shares of common stock. These additional shares may be used for a variety of corporate purposes, including future public offerings, to raise additional capital or to facilitate acquisitions.

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

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

#### **Elimination of Liability in Certain Circumstances**

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

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

#### **Transfer Agent and Registrar**

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

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## **Section 3: EX-10.15 (EX-10.15)**

**Exhibit 10.15**

November 20, 2019

James R. Meyer  
3019 River Lane  
New Bern, North Carolina 28562



Two North Riverside Plaza  
Suite 1300  
Chicago, Illinois 60606

**312.928.0850**

#### **Retention Payment and Success Bonus Agreement**

Dear James:

This letter agreement (this "Agreement"), will be effective November 20, 2019 (the "Effective Date"), and sets forth the terms of the retention payment ("Retention Payment") and transaction success bonus (the "Success Bonus") payments that you may be eligible to receive from FreightCar America, Inc. (the "Company").

**1. Retention Payment.** Contingent on your execution and return of this Agreement to the undersigned, and subject to Section 3 below, the Company will make a Retention Payment to you in an amount of \$750,000, less all applicable withholding taxes, within seven (7) business days of your return of a fully executed copy of this Agreement (the "Retention Payment Date").

**2. Success Bonus.** Subject to your continuous service with the Company through the closing date of a Successful Transaction (the "Closing"), your execution and nonrevocation of a general release of claims in a form provided by the Company, and your compliance with the Restrictive Covenants, you shall be entitled to receive a Success Bonus from the Company in an amount equal to two times your annual base salary in effect immediately prior to the Closing, less all applicable taxes and withholdings, payable within seven (7) calendar days of the Closing.

**3. Forfeiture of Retention Payment.** In the event that your employment with the Company is terminated by the Company for Cause or by you other than for Good Reason, before the earlier of (a) the consummation of a Successful Transaction or (b) the 12-month anniversary of the Effective Date, you shall forfeit and become obligated to repay to the Company the full Retention Payment. In the event you forfeit the Retention Payment, you must repay the full amount of the Retention Payment to the Company within thirty (30) calendar days of your termination date. You acknowledge that the Company shall have the right to recapture and seek repayment of the Retention Payment made under this Agreement.

**4. Definitions.** For purposes of this Agreement:

(a) "Cause" shall have the meaning given to such term in the FreightCar America, Inc. 2018 Long Term Incentive Plan, as amended from time to time.

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(b) “Good Reason” shall mean, without your written consent, the occurrence of any of the following conditions, unless such condition is fully corrected within sixty (60) calendar days after written notice thereof:

(i) The Company permanently and materially diminishes your authority, duties, or responsibilities, including without limitation reporting responsibilities;

(ii) The Company materially reduces your overall compensation, including base salary, bonus opportunity and equity award participation;

(iii) The Company requires you to relocate your principal business office to a location not within 50 miles of the Company’s principal business office located in the Chicago, Illinois metropolitan area; or

(iv) The Company materially breaches the terms of this Agreement.

Notwithstanding anything in this Agreement to the contrary, a termination of employment due to Good Reason must occur, if at all, within one hundred twenty (120) calendar days after the Company receives written notice of any one or more of the conditions set forth in this Section 4(b). You must provide the Company with written notice of any one or more of the conditions set forth in this section within ninety (90) calendar days of the initial existence of the condition in order for such condition to constitute Good Reason under this Agreement.

(c) “Incremental Available Financing” shall mean the actual availability on the Closing of any such financing of new equity or new debt financing or a combination of new equity and new debt financing (including in the case of equity an issuance such as a PIPE) secured after the Effective Date minus (i) the amount of any actual availability on any previously in place credit facilities cancelled as part of the transaction and (ii) all transaction fees and bonuses required to be paid in connection with such financings.

(d) “Successful Transaction” shall mean (i) a “take-private” transaction in which (A) a third party or group of third parties assumes voting and investment control of more than fifty percent (50%) of the voting securities of the Company and (B) the Company ceases to be subject to the periodic disclosure requirements under the Securities Exchange Act of 1934, as amended, or (ii) the Company secures “Incremental Available Financing” of at least \$30 million.

(e) Restrictive Covenants. If you receive a Success Bonus from the Company, you will forfeit the Success Bonus and be required to repay it to the Company if, within the period of 12 consecutive months after the termination of your employment with the Company or its successor for any reason, you directly or indirectly:

(i) Contact, solicit, interfere with, or divert, or induce or attempt to contact, solicit, interfere with or divert, any of the Company’s customers;

(ii) Participate or engage in (as an owner, partner, employee, officer, director, independent contractor, consultant, advisor or in any other capacity calling for the rendition of services, advice, or acts of management, operation or control) any business engaged in the manufacture of railcars in North America; or

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(iii) Solicit or induce or attempt to solicit or induce, by or for yourself, or as the agent of another, or through others as an agent in any way, any person who is employed by the Company for the purpose of encouraging that employee to join you as a partner, agent, employee or otherwise in any business activity involving the manufacture of railcars in North America.

Notwithstanding anything to the contrary herein, nothing in this Agreement shall prohibit or restrict you from providing legal advice and counseling, or other advice and counseling incidental thereto, as an officer, employee, consultant, independent contractor or otherwise, to any business activity involving the manufacture of railcars in North America.

**5. Excess Parachute Payments.** In the event that any amount or benefits made or provided to you this Agreement and under all other plans and programs of the Company (the "Covered Payments") is determined to constitute a Parachute Payment, as such term is defined in Section 280G(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code"), the Company shall pay to you either (i) the full amount of such Covered Payments or (ii) such lesser amount (beginning with those amounts that are exempt from Section 409A and then from amounts that are subject to Section 409A, beginning with such amounts scheduled to be paid furthest from the first date of payments) as would result in no portion of the Covered Payments being subject to the excise tax under Code Section 4999 ("Excise Tax"), whichever of the foregoing amounts, taking into account the applicable federal, state and local employment taxes, income taxes and the Excise Tax, results in your receipt, on an after-tax basis, of the greater amount of the Covered Payments, notwithstanding that all or some portion of the Covered Payments may be subject to the Excise Tax. The Procedure for Determinations, Internal Revenue Service Claims, and Refunds provisions of Article 5 of the Successful Transaction Severance Plan shall apply to any determinations required to be made under this Section 5.

## **6. Miscellaneous.**

(a) **No Right to Continued Employment Conferred by this Agreement.** Nothing in this Agreement shall confer upon you any right to continued employment with the Company (or its affiliates or respective successors) or to interfere in any way with the right of the Company (or its affiliates or respective successors) to terminate your employment at any time.

(b) **Governing Law.** This Agreement will be governed by and construed in accordance with the law of the State of Illinois and not its choice of law rules, applicable to contracts made and to be performed entirely within that State. You agree that the jurisdiction and venue for any disputes arising under, or any action brought to enforce, or otherwise relating to, this Agreement shall be exclusively in the courts in the State of Illinois, County of Cook including the Federal Courts located therein (should Federal jurisdiction exist), and you hereby submit and consent to said jurisdiction and venue.

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(c) **Counterparts; Construction.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. When used herein, the words “includes” and “including” and their syntactical variations shall be deemed followed by the words “without limitation.”

(d) **Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to the subject matter hereof. This Agreement may be amended or modified only by written agreement signed by each of the parties.

(e) **Binding Effect; Benefits.** This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns; nothing in this Agreement, express or implied, is intended to confer on any person or entity other than the parties and their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. The Company shall require any successor (whether direct or indirect, by purchase, merger, reorganization, consolidation, acquisition of property or stock, liquidation, or otherwise) of all or a significant portion of the assets of the Company by agreement, in form and substance satisfactory to the Executive, to expressly assume and agree to maintain this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. Regardless of whether such agreement is executed, this Agreement shall be binding upon any successor in accordance with the operation of law and such successor shall be deemed the “Company” for purposes of the Agreement.

(f) **Section 409A.** The provisions regarding all payments to be made under this Agreement shall be interpreted in such a manner that all such payments either comply with Code Section 409A (“Section 409A”) or are exempt from the requirements of Section 409A as “short-term deferrals,” as described in Section 409A. Notwithstanding the foregoing, if at the time of your separation from service you are determined by the Company (or a successor) to be a “specified employee” within the meaning of Section 409A, and if any payment that you become entitled to under this Agreement upon your separation from service is determined by the Company (or a successor) to be deferred compensation within the meaning of Section 409A, then no such payment shall be payable prior to the date that is the earlier of (a) six months after your separation from service and (b) your death. Each payment and benefit to be paid or provided under this Agreement is intended to constitute a series of separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

(g) **Counterparts.** The parties may execute this Agreement in one or more counterparts, all of which together shall constitute but one Agreement.

*[Signature Page Follows]*

Please sign and date one copy of this letter in the space provided below to indicate your agreement to and acknowledgement of the terms of this Agreement and return the same to me for the Company's records.

Sincerely,

**FreightCar America, Inc.**

By: /s/ Georgia L. Vlamis

Its: /s/ Vice President, General Counsel, Corporate Secretary and Human Resources

**Agreed to and Acknowledged By:**

/s/ James R. Meyer

James R. Meyer

Dated: November 20, 2019

*[Signature page to Retention and Success Bonus Agreement]*

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## Section 4: EX-10.16 (EX-10.16)

Exhibit 10.16



November 20, 2019

Christopher J. Eppel  
56 Hamilton St,  
Douglas, MI 49406

Two North Riverside Plaza  
Suite 1300  
Chicago, Illinois 60606

**312.928.0850**

### Retention Payment and Success Bonus Agreement

Dear Chris:

This letter agreement (this "Agreement"), will be effective November 20, 2019 (the "Effective Date"), and sets forth the terms of the retention payment ("Retention Payment") and transaction success bonus (the "Success Bonus") payments that you may be eligible to receive from FreightCar America, Inc. (the "Company").

**1. Retention Payment.** Contingent on your execution and return of this Agreement to the undersigned, and subject to Section 3 below, the Company will make a Retention Payment to you in an amount of \$525,000, less all applicable withholding taxes, within seven (7) business days of your return of a fully executed copy of this Agreement (the "Retention Payment Date").

**2. Success Bonus.** Subject to your continuous service with the Company through the closing date of a Successful Transaction (the "Closing"), your execution and nonrevocation of a general release of claims in a form provided by the Company, and your compliance with the Restrictive Covenants, you shall be entitled to receive a Success Bonus from the Company in an amount equal to two times your annual base salary in effect immediately prior to the Closing, less all applicable taxes and withholdings, payable within seven (7) calendar days of the Closing.

**3. Forfeiture of Retention Payment.** In the event that your employment with the Company is terminated by the Company for Cause or by you other than for Good Reason, before the earlier of (a) the consummation of a Successful Transaction or (b) the 12-month anniversary of the Effective Date, you shall forfeit and become obligated to repay to the Company the full Retention Payment. In the event you forfeit the Retention Payment, you must repay the full amount of the Retention Payment to the Company within thirty (30) calendar days of your termination date. You acknowledge that the Company shall have the right to recapture and seek repayment of the Retention Payment made under this Agreement.

**4. Definitions.** For purposes of this Agreement:

(a) "Cause" shall have the meaning given to such term in the FreightCar America, Inc. 2018 Long Term Incentive Plan, as amended from time to time.



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(b) “Good Reason” shall mean, without your written consent, the occurrence of any of the following conditions, unless such condition is fully corrected within sixty (60) calendar days after written notice thereof:

(i) The Company permanently and materially diminishes your authority, duties, or responsibilities, including without limitation reporting responsibilities;

(ii) The Company materially reduces your overall compensation, including base salary, bonus opportunity and equity award participation;

(iii) The Company requires you to relocate your principal business office to a location not within 50 miles of the Company’s principal business office located in the Chicago, Illinois metropolitan area; or

(iv) The Company materially breaches the terms of this Agreement.

Notwithstanding anything in this Agreement to the contrary, a termination of employment due to Good Reason must occur, if at all, within one hundred twenty (120) calendar days after the Company receives written notice of any one or more of the conditions set forth in this Section 4(b). You must provide the Company with written notice of any one or more of the conditions set forth in this section within ninety (90) calendar days of the initial existence of the condition in order for such condition to constitute Good Reason under this Agreement.

(c) “Incremental Available Financing” shall mean the actual availability on the Closing of any such financing of new equity or new debt financing or a combination of new equity and new debt financing (including in the case of equity an issuance such as a PIPE) secured after the Effective Date minus (i) the amount of any actual availability on any previously in place credit facilities cancelled as part of the transaction and (ii) all transaction fees and bonuses required to be paid in connection with such financings.

(d) “Successful Transaction” shall mean (i) a “take-private” transaction in which (A) a third party or group of third parties assumes voting and investment control of more than fifty percent (50%) of the voting securities of the Company and (B) the Company ceases to be subject to the periodic disclosure requirements under the Securities Exchange Act of 1934, as amended, or (ii) the Company secures “Incremental Available Financing” of at least \$30 million.

(e) Restrictive Covenants. If you receive a Success Bonus from the Company, you will forfeit the Success Bonus and be required to repay it to the Company if, within the period of 12 consecutive months after the termination of your employment with the Company or its successor for any reason, you directly or indirectly:

(i) Contact, solicit, interfere with, or divert, or induce or attempt to contact, solicit, interfere with or divert, any of the Company’s customers;

(ii) Participate or engage in (as an owner, partner, employee, officer, director, independent contractor, consultant, advisor or in any other capacity calling for the rendition of services, advice, or acts of management, operation or control) any business engaged in the manufacture of railcars in North America; or

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(iii) Solicit or induce or attempt to solicit or induce, by or for yourself, or as the agent of another, or through others as an agent in any way, any person who is employed by the Company for the purpose of encouraging that employee to join you as a partner, agent, employee or otherwise in any business activity involving the manufacture of railcars in North America.

Notwithstanding anything to the contrary herein, nothing in this Agreement shall prohibit or restrict you from providing legal advice and counseling, or other advice and counseling incidental thereto, as an officer, employee, consultant, independent contractor or otherwise, to any business activity involving the manufacture of railcars in North America.

**5. Excess Parachute Payments.** In the event that any amount or benefits made or provided to you this Agreement and under all other plans and programs of the Company (the "Covered Payments") is determined to constitute a Parachute Payment, as such term is defined in Section 280G(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code"), the Company shall pay to you either (i) the full amount of such Covered Payments or (ii) such lesser amount (beginning with those amounts that are exempt from Section 409A and then from amounts that are subject to Section 409A, beginning with such amounts scheduled to be paid furthest from the first date of payments) as would result in no portion of the Covered Payments being subject to the excise tax under Code Section 4999 ("Excise Tax"), whichever of the foregoing amounts, taking into account the applicable federal, state and local employment taxes, income taxes and the Excise Tax, results in your receipt, on an after-tax basis, of the greater amount of the Covered Payments, notwithstanding that all or some portion of the Covered Payments may be subject to the Excise Tax. The Procedure for Determinations, Internal Revenue Service Claims, and Refunds provisions of Article 5 of the Successful Transaction Severance Plan shall apply to any determinations required to be made under this Section 5.

## **6. Miscellaneous.**

(a) **No Right to Continued Employment Conferred by this Agreement.** Nothing in this Agreement shall confer upon you any right to continued employment with the Company (or its affiliates or respective successors) or to interfere in any way with the right of the Company (or its affiliates or respective successors) to terminate your employment at any time.

(b) **Governing Law.** This Agreement will be governed by and construed in accordance with the law of the State of Illinois and not its choice of law rules, applicable to contracts made and to be performed entirely within that State. You agree that the jurisdiction and venue for any disputes arising under, or any action brought to enforce, or otherwise relating to, this Agreement shall be exclusively in the courts in the State of Illinois, County of Cook including the Federal Courts located therein (should Federal jurisdiction exist), and you hereby submit and consent to said jurisdiction and venue.

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(c) **Counterparts; Construction.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. When used herein, the words “includes” and “including” and their syntactical variations shall be deemed followed by the words “without limitation.”

(d) **Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to the subject matter hereof. This Agreement may be amended or modified only by written agreement signed by each of the parties.

(e) **Binding Effect; Benefits.** This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns; nothing in this Agreement, express or implied, is intended to confer on any person or entity other than the parties and their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. The Company shall require any successor (whether direct or indirect, by purchase, merger, reorganization, consolidation, acquisition of property or stock, liquidation, or otherwise) of all or a significant portion of the assets of the Company by agreement, in form and substance satisfactory to the Executive, to expressly assume and agree to maintain this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. Regardless of whether such agreement is executed, this Agreement shall be binding upon any successor in accordance with the operation of law and such successor shall be deemed the “Company” for purposes of the Agreement.

(f) **Section 409A.** The provisions regarding all payments to be made under this Agreement shall be interpreted in such a manner that all such payments either comply with Code Section 409A (“Section 409A”) or are exempt from the requirements of Section 409A as “short-term deferrals,” as described in Section 409A. Notwithstanding the foregoing, if at the time of your separation from service you are determined by the Company (or a successor) to be a “specified employee” within the meaning of Section 409A, and if any payment that you become entitled to under this Agreement upon your separation from service is determined by the Company (or a successor) to be deferred compensation within the meaning of Section 409A, then no such payment shall be payable prior to the date that is the earlier of (a) six months after your separation from service and (b) your death. Each payment and benefit to be paid or provided under this Agreement is intended to constitute a series of separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

(g) **Counterparts.** The parties may execute this Agreement in one or more counterparts, all of which together shall constitute but one Agreement.

*[Signature Page Follows]*

Please sign and date one copy of this letter in the space provided below to indicate your agreement to and acknowledgement of the terms of this Agreement and return the same to me for the Company's records.

Sincerely,

**FreightCar America, Inc.**

By: /s/ Georgia L. Vlamis

Its: /s/ Vice President, General Counsel, Corporate Secretary and Human Resources

Agreed to and Acknowledged By:

/s/ Christopher J. Eppel

Christopher J. Eppel

Dated: November 20, 2019

*[Signature page to Retention and Success Bonus Agreement]*

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## Section 5: EX-10.17 (EX-10.17)

Exhibit 10.17



November 20, 2019

Georgia L. Vlamis  
700 Spruce Street  
Glenview, IL 60025

Two North Riverside Plaza  
Suite 1300  
Chicago, Illinois 60606

**312.928.0850**

### Retention Payment and Success Bonus Agreement

Dear Georgia:

This letter agreement (this "Agreement"), will be effective November 20, 2019 (the "Effective Date"), and sets forth the terms of the retention payment ("Retention Payment") and transaction success bonus (the "Success Bonus") payments that you may be eligible to receive from FreightCar America, Inc. (the "Company").

**1. Retention Payment.** Contingent on your execution and return of this Agreement to the undersigned, and subject to Section 3 below, the Company will make a Retention Payment to you in an amount of \$450,000, less all applicable withholding taxes, within seven (7) business days of your return of a fully executed copy of this Agreement (the "Retention Payment Date").

**2. Success Bonus.** Subject to your continuous service with the Company through the closing date of a Successful Transaction (the "Closing"), your execution and nonrevocation of a general release of claims in a form provided by the Company, and your compliance with the Restrictive Covenants, you shall be entitled to receive a Success Bonus from the Company in an amount equal to two times your annual base salary in effect immediately prior to the Closing, less all applicable taxes and withholdings, payable within seven (7) calendar days of the Closing.

**3. Forfeiture of Retention Payment.** In the event that your employment with the Company is terminated by the Company for Cause or by you other than for Good Reason, before the earlier of (a) the consummation of a Successful Transaction or (b) the 12-month anniversary of the Effective Date, you shall forfeit and become obligated to repay to the Company the full Retention Payment. In the event you forfeit the Retention Payment, you must repay the full amount of the Retention Payment to the Company within thirty (30) calendar days of your termination date. You acknowledge that the Company shall have the right to recapture and seek repayment of the Retention Payment made under this Agreement.

**4. Definitions.** For purposes of this Agreement:

(a) "Cause" shall have the meaning given to such term in the FreightCar America, Inc. 2018 Long Term Incentive Plan, as amended from time to time.

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(b) “Good Reason” shall mean, without your written consent, the occurrence of any of the following conditions, unless such condition is fully corrected within sixty (60) calendar days after written notice thereof:

(i) The Company permanently and materially diminishes your authority, duties, or responsibilities, including without limitation reporting responsibilities;

(ii) The Company materially reduces your overall compensation, including base salary, bonus opportunity and equity award participation;

(iii) The Company requires you to relocate your principal business office to a location not within 50 miles of the Company’s principal business office located in the Chicago, Illinois metropolitan area; or

(iv) The Company materially breaches the terms of this Agreement.

Notwithstanding anything in this Agreement to the contrary, a termination of employment due to Good Reason must occur, if at all, within one hundred twenty (120) calendar days after the Company receives written notice of any one or more of the conditions set forth in this Section 4(b). You must provide the Company with written notice of any one or more of the conditions set forth in this section within ninety (90) calendar days of the initial existence of the condition in order for such condition to constitute Good Reason under this Agreement.

(c) “Incremental Available Financing” shall mean the actual availability on the Closing of any such financing of new equity or new debt financing or a combination of new equity and new debt financing (including in the case of equity an issuance such as a PIPE) secured after the Effective Date minus (i) the amount of any actual availability on any previously in place credit facilities cancelled as part of the transaction and (ii) all transaction fees and bonuses required to be paid in connection with such financings.

(d) “Successful Transaction” shall mean (i) a “take-private” transaction in which (A) a third party or group of third parties assumes voting and investment control of more than fifty percent (50%) of the voting securities of the Company and (B) the Company ceases to be subject to the periodic disclosure requirements under the Securities Exchange Act of 1934, as amended, or (ii) the Company secures “Incremental Available Financing” of at least \$30 million.

(e) Restrictive Covenants. If you receive a Success Bonus from the Company, you will forfeit the Success Bonus and be required to repay it to the Company if, within the period of 12 consecutive months after the termination of your employment with the Company or its successor for any reason, you directly or indirectly:

(i) Contact, solicit, interfere with, or divert, or induce or attempt to contact, solicit, interfere with or divert, any of the Company’s customers;

(ii) Participate or engage in (as an owner, partner, employee, officer, director, independent contractor, consultant, advisor or in any other capacity calling for the rendition of services, advice, or acts of management, operation or control) any business engaged in the manufacture of railcars in North America; or

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(iii) Solicit or induce or attempt to solicit or induce, by or for yourself, or as the agent of another, or through others as an agent in any way, any person who is employed by the Company for the purpose of encouraging that employee to join you as a partner, agent, employee or otherwise in any business activity involving the manufacture of railcars in North America.

Notwithstanding anything to the contrary herein, nothing in this Agreement shall prohibit or restrict you from providing legal advice and counseling, or other advice and counseling incidental thereto, as an officer, employee, consultant, independent contractor or otherwise, to any business activity involving the manufacture of railcars in North America.

**5. Excess Parachute Payments.** In the event that any amount or benefits made or provided to you this Agreement and under all other plans and programs of the Company (the "Covered Payments") is determined to constitute a Parachute Payment, as such term is defined in Section 280G(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code"), the Company shall pay to you either (i) the full amount of such Covered Payments or (ii) such lesser amount (beginning with those amounts that are exempt from Section 409A and then from amounts that are subject to Section 409A, beginning with such amounts scheduled to be paid furthest from the first date of payments) as would result in no portion of the Covered Payments being subject to the excise tax under Code Section 4999 ("Excise Tax"), whichever of the foregoing amounts, taking into account the applicable federal, state and local employment taxes, income taxes and the Excise Tax, results in your receipt, on an after-tax basis, of the greater amount of the Covered Payments, notwithstanding that all or some portion of the Covered Payments may be subject to the Excise Tax. The Procedure for Determinations, Internal Revenue Service Claims, and Refunds provisions of Article 5 of the Successful Transaction Severance Plan shall apply to any determinations required to be made under this Section 5.

## **6. Miscellaneous.**

(a) **No Right to Continued Employment Conferred by this Agreement.** Nothing in this Agreement shall confer upon you any right to continued employment with the Company (or its affiliates or respective successors) or to interfere in any way with the right of the Company (or its affiliates or respective successors) to terminate your employment at any time.

(b) **Governing Law.** This Agreement will be governed by and construed in accordance with the law of the State of Illinois and not its choice of law rules, applicable to contracts made and to be performed entirely within that State. You agree that the jurisdiction and venue for any disputes arising under, or any action brought to enforce, or otherwise relating to, this Agreement shall be exclusively in the courts in the State of Illinois, County of Cook including the Federal Courts located therein (should Federal jurisdiction exist), and you hereby submit and consent to said jurisdiction and venue.

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(c) **Counterparts; Construction.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. When used herein, the words “includes” and “including” and their syntactical variations shall be deemed followed by the words “without limitation.”

(d) **Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to the subject matter hereof. This Agreement may be amended or modified only by written agreement signed by each of the parties.

(e) **Binding Effect; Benefits.** This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns; nothing in this Agreement, express or implied, is intended to confer on any person or entity other than the parties and their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. The Company shall require any successor (whether direct or indirect, by purchase, merger, reorganization, consolidation, acquisition of property or stock, liquidation, or otherwise) of all or a significant portion of the assets of the Company by agreement, in form and substance satisfactory to the Executive, to expressly assume and agree to maintain this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. Regardless of whether such agreement is executed, this Agreement shall be binding upon any successor in accordance with the operation of law and such successor shall be deemed the “Company” for purposes of the Agreement.

(f) **Section 409A.** The provisions regarding all payments to be made under this Agreement shall be interpreted in such a manner that all such payments either comply with Code Section 409A (“Section 409A”) or are exempt from the requirements of Section 409A as “short-term deferrals,” as described in Section 409A. Notwithstanding the foregoing, if at the time of your separation from service you are determined by the Company (or a successor) to be a “specified employee” within the meaning of Section 409A, and if any payment that you become entitled to under this Agreement upon your separation from service is determined by the Company (or a successor) to be deferred compensation within the meaning of Section 409A, then no such payment shall be payable prior to the date that is the earlier of (a) six months after your separation from service and (b) your death. Each payment and benefit to be paid or provided under this Agreement is intended to constitute a series of separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

(g) **Counterparts.** The parties may execute this Agreement in one or more counterparts, all of which together shall constitute but one Agreement.

*[Signature Page Follows]*

Please sign and date one copy of this letter in the space provided below to indicate your agreement to and acknowledgement of the terms of this Agreement and return the same to me for the Company's records.

Sincerely,

**FreightCar America, Inc.**

By: James R. Meyer

Its: President and Chief Executive Officer

**Agreed to and Acknowledged By:**

/s/ Georgia L. Vlamis

Georgia L. Vlamis

Dated: November 20, 2019

*[Signature page to Retention and Success Bonus Agreement]*

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## **Section 6: EX-10.18 (EX-10.18)**

**Exhibit 10.18**

**EXECUTION COPY**

**FREIGHTCAR AMERICA, INC.**  
**SUCCESSFUL TRANSACTION SEVERANCE PLAN**  
(And Summary Plan Description)

### **ARTICLE 1. Establishment and Term of the Plan**

1.1 **Establishment of the Plan.** The Company has established this FreightCar America, Inc. Successful Transaction Severance Plan (the "Plan"). The purposes of the Plan are to retain incentivize certain eligible executives of the Company as designated from time to time by the Plan Administrator and set forth on Appendix A hereto (the "Executives"), to negotiate and consummate a strategic transaction in favor of the Company, to retain the Executives during this time of uncertainty, and to provide Successful Transaction Severance in the event an Executive is terminated in connection with a Successful Transaction, subject to the terms and conditions of the Plan. No individuals other than the Executives shall be eligible to receive any severance or benefits under the Plan. Any Successful Transaction Severance for the Executives will be determined exclusively under the Plan.

The Plan, as set forth herein, is an employee welfare benefit plan within the meaning of ERISA Section 3(1), and the Company intends that the Plan be administered in accordance with the applicable requirements of ERISA and the regulations under ERISA. This Plan document, including the information provided in Appendix B hereto, is also the summary plan description of the Plan.

1.2 **Plan Term.** The Plan became effective on November 20, 2019 (the "Effective Date") and shall continue in effect until twenty-four months following the consummation of a Successful Transaction; provided that the terms of the Plan shall continue to apply to the Company (or its successor) and any Executive who experiences a Qualifying Termination during the Term.

1.3 **Administration.** The Plan Administrator is the named fiduciary of the Plan. The Plan Administrator may, as it deems necessary or advisable, appoint an individual or committee to act as its representative in matters affecting the Plan. The Plan Administrator may adopt rules and regulations it deems consistent with the terms of the Plan and necessary or advisable to administer the Plan properly and efficiently. In administering the Plan and providing Successful Transaction Severance, the Plan Administrator has full discretionary authority to construe and interpret the Plan's terms and to make factual determinations under it, including the authority to determine an individual's eligibility for Successful Transaction Severance, the reason for employment termination, and the amount of Successful Transaction Severance payable. Successful Transaction Severance will be provided only if the Plan Administrator decides in its sole discretion that the person seeking such benefits is entitled to them under the terms of the Plan. Any interpretation of the Plan made in good faith by the Plan Administrator, and any decision made in good faith on any matter within the discretion of the Plan Administrator under the Plan, will be binding on all persons. Notwithstanding anything in this Section 1.3 to the contrary, following a Successful Transaction, the Plan Administrator shall administer the Plan in a manner consistent with the administration of the Plan prior to such Successful Transaction.



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## ARTICLE 2. DEFINITIONS

Wherever used in the Plan, the following terms shall have the meanings set forth below and, when the meaning is intended, the initial letter of the word is capitalized:

“**Average Annual Bonus**” means one half of the sum of the full amount of the Bonuses, if any, paid to the Executive for the two full years immediately preceding (i) the consummation of a Successful Transaction or (ii) the year of the Executive’s Qualifying Termination, whichever produces a greater Average Annual Bonus figure for the Executive (regardless of whether the Executive was employed by the Company for two full years prior to the consummation of a Successful Transaction or Executive’s Qualifying Termination).

“**Base Salary**” means, at any time, the then regular annual base rate of pay that the Executive is receiving as annual salary.

“**Beneficial Owner**” shall have the meaning ascribed to such term in Rule 13d-3 of the General Rules and Regulations under the Exchange Act.

“**Board**” means the Board of Directors of the Company.

“**Bonus**” means an annual cash incentive bonus paid to an Executive, in accordance with the provisions of the Company’s annual incentive program, as the same may be in effect from time to time. A retention payment or other, similar type of additional payment or bonus is not included.

“**Cause**” means the occurrence of any one or more of the following:

(a) The Executive’s willful and continued failure substantially to perform the Executive’s material duties with the Company (other than due to Disability), or the Executive’s commission of any activities constituting a material violation or material breach of any Federal, state or foreign law, statute, regulation, or the like applicable to the activities of the Company, in each case, after notice thereof from the Board to the Executive and (where possible) a reasonable opportunity for the Executive to cease and cure such failure, breach or violation in all respects;

(b) Fraud, breach of fiduciary duty, dishonesty, misappropriation or other act or omission by the Executive that causes material damage to the Company’s property or business;

(c) The Executive’s admission or conviction of, or plea of *nolo contendere* to, any crime that, in the reasonable judgment of the Board, adversely affects the Company’s reputation or the Executive’s ability to carry out the obligations of the Executive’s employment;

(d) The Executive’s failure to reasonably cooperate with the Company in any internal investigation or administrative, regulatory or judicial proceeding, after notice thereof from the Board to the Executive and a reasonable opportunity for the Executive to cure such non-cooperation; or

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(e) Any willful act or omission by the Executive in violation or disregard of the Company's policies, including but not limited to the harassment and discrimination policies and standards of conduct of the Company then in effect, in such a manner as to cause significant loss, damage or injury to the property, reputation or employees of the Company.

In addition, the Executive's employment shall be deemed to have terminated for Cause if, after the Executive's employment has terminated, facts and circumstances are discovered that would have justified a termination for Cause. For purposes of the Plan, no act or failure to act on the Executive's part shall be considered "willful" unless it is done, or omitted to be done, by the Executive in bad faith or without reasonable belief that such action or omission was in the best interests of the Company. Any act or failure to act based upon authority given pursuant to a resolution duly adopted by the Board or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, in good faith and in the best interests of the Company.

**"COBRA"** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended from time to time.

**"Code"** means the U.S. Internal Revenue Code of 1986 and the regulations thereunder, as amended from time to time.

**"Company"** means FreightCar America, Inc., a Delaware corporation, and any successor thereto as provided in Article 8 herein.

**"Company Materials"** shall have the meaning given to such term in Section 4.1 herein.

**"Confidential Information"** shall have the meaning given to such term in Section 4.1 herein.

**"Disability"** means, in the written opinion of a qualified physician selected by the Company, the Executive is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, (a) unable to engage in any substantial gainful activity, or (b) receiving income replacement benefits for a period of not less than three months under the Company's disability plan.

**"ERISA"** means the Employee Retirement Income Security Act of 1974 and the regulations thereunder, as amended from time to time.

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

**"Executive"** means an eligible employee of the Company designated from time to time by the Company and set forth on Appendix A hereto. No individuals other than those set forth on Appendix A hereto shall be eligible to receive Successful Transaction Severance under the Plan.

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**“Good Reason”** means, without the Executive’s written consent, the first to occur of any of the following conditions, unless such condition is fully corrected within sixty (60) calendar days after written notice thereof:

(a) The Company permanently and materially diminishes the Executive’s authority, duties, or responsibilities, including without limitation title or reporting responsibilities; provided that, an Executive’s duties and responsibilities shall not be deemed to be diminished solely on account of a “take-private” transaction (as described below) or other transaction in which the Company ceases to be publicly traded so that the Executive ceases to have the ordinary duties and responsibilities of a named executive officer of a publicly traded company,

(b) The Company materially reduces the Executive’s overall compensation, including Base Salary, Bonus opportunity and equity award participation,

(c) The Company requires the Executive to relocate the Executive’s principal business office to a location not within 50 miles of the Executive’s current principal business office, or

(d) The Company materially breaches the terms of the Plan.

Notwithstanding anything in the Plan to the contrary, a termination of employment due to Good Reason must occur, if at all, within one hundred twenty (120) calendar days after the Company receives written notice from the Executive of any one or more of the conditions set forth in this Section. The Executive must provide the Company with written notice of any one or more of the conditions set forth in this Section within ninety (90) calendar days of the initial existence of the condition in order for such condition to constitute Good Reason under the Plan.

**“Incremental Available Financing”** shall mean the actual availability on the closing of any financing of new equity or new debt financing or a combination of new equity and new debt financing (including in the case of equity an issuance such as a PIPE) secured after the Effective Date minus (i) the amount of any actual availability on any previously in place credit facilities cancelled as part of the transaction and (ii) all transaction fees and bonuses required to be paid in connection with such financings, as determined by the Board.

**“Inventions”** shall have the meaning given to such term in Section 4.6 herein.

**“Notice of Termination”** means a written notice that shall indicate the specific termination provision in the Plan relied upon, and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive’s employment under the provision so indicated.

**“Ordinary Severance Plan”** means the FreightCar America, Inc. Executive Severance Plan maintained by the Company.

**“Plan”** means this FreightCar America, Inc. Successful Transaction Severance Plan.

**“Plan Administrator”** means the administrator of the Plan as designated by the Board.

**“Qualifying Termination”** shall have the meaning given to such term in Section 3.2 herein.

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**“Successful Transaction”** means the consummation of (i) a “take-private” transaction in which (A) a third party or group of third parties assumes voting and investment control of more than fifty percent (50%) of the voting securities of the Company and (B) the Company ceases to be subject to the periodic disclosure requirements under the Exchange Act, or (ii) the Company secures “Incremental Available Financing” of at least \$30 million, as determined by the Board.

**“Successful Transaction Severance”** shall have the meaning given to such term in Section 4.3 herein.

**“Successful Transaction Severance Multiple”** means the figure set forth for each Executive in Appendix A, which is used to determine the Executive’s Successful Transaction Severance.

### **ARTICLE 3. SUCCESSFUL TRANSACTION SEVERANCE**

**3.1 Eligibility for Successful Transaction Severance.** Subject to the conditions and limitations of the Plan, an Executive who experiences a Qualifying Termination shall be entitled to receive Successful Transaction Severance. Notwithstanding the preceding sentence, eligibility for the receipt of Successful Transaction Severance under the Plan is expressly conditioned upon the execution by the Executive of a comprehensive release agreement and waiver of claims against the Company in a form to be determined in the sole discretion of the Company, as well as compliance with the restrictive covenants of Article 4. An Executive who does not execute a release agreement within the period specified, who revokes it, or who does not comply with the restrictive covenants of Article 4, will not be entitled to Successful Transaction Severance under the Plan.

**3.2 Qualifying Termination.** The occurrence of either or both of the following events in the twenty-four (24) months following a Successful Transaction (a “Qualifying Termination”) shall entitle the Executive to receive Successful Transaction Severance:

- (a) The Company’s termination of the Executive’s employment without Cause; or
- (b) The Executive’s termination of employment with the Company for Good Reason.

If an Executive’s employment is terminated by the Company without Cause or terminated by the Executive for Good Reason, in either case within three (3) months prior to the date on which the Successful Transaction occurs, and it is reasonably demonstrated by the Executive that such termination of employment or event constituting Good Reason was (i) at the request of a third party that had taken steps reasonably calculated to effect a Successful Transaction or (y) otherwise arose in connection with or in anticipation of a Successful Transaction, then the Executive’s termination shall be deemed to be a Qualifying Termination upon consummation of the Successful Transaction and the Executive shall be entitled to receive Successful Transaction Severance, subject to Section 3.6, in accordance with the terms of the Plan.

For purposes of the Plan, an Executive’s employment with the Company shall be deemed to be terminated when the Executive has a “separation from service” within the meaning of Code Section 409A, and references to termination of employment shall be deemed to refer to such a separation from service.

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**3.3 Description of Successful Transaction Severance.** In the event that the Executive experiences a Qualifying Termination, the Company shall pay to the Executive (or the Executive's representative) and provide the Executive (or the Executive's representative) with the following Successful Transaction Severance, subject to Section 3.6:

(a) A lump sum payment equal to the sum of Executive's Base Salary and Executive's Average Annual Bonus (each without regard to any reduction in Base Salary or Bonus since the Effective Date) multiplied by the Executive's Successful Transaction Severance Multiple, payable within thirty (30) days of the Executive's Qualifying Termination; and

(b) Up to 12 months continued participation in the Company's group health plan for the Executive, and such members of the Executive's family who participated in such group health plan at the time of the Executive's termination, at the same costs and coverage levels and under the same general terms and provisions of such plan as apply to active employees after the Executive's termination; provided that, the continuation period required by this Section 3.3(b) shall not, when combined with any similar continuation period actually provided to the Executive under Section 3.3(d) of the Ordinary Severance Plan, exceed 18 months, except as expressly provided in an Executive's Terms of Employment Letter Agreement. The continuation period required by this Section 3.3(b) shall be concurrent with the continued group health plan coverage required by COBRA.

**3.4 Relationship to Ordinary Severance Plan.** Except as provided in Section 3.3(b), the payment of any Successful Transaction Severance to an Executive under the Plan:

(a) shall have no effect on any amounts payable under the Ordinary Severance Plan, and

(b) shall be determined without regard the terms of, and any amounts payable under, the Ordinary Severance Plan, and potentially shall be in addition to any amounts payable under the Ordinary Severance Plan.

**3.5 No Mitigation or Set-Off.** No Successful Transaction Severance provided to the Executive hereunder shall be reduced by any amount the Executive may earn or receive from employment with another employer or from any other source (including the Ordinary Severance Plan) following the Executive's termination of employment with the Company and during the period Successful Transaction Severance are being provided.

**3.6 Release.** Notwithstanding anything in this Plan to the contrary, Successful Transaction Severance under the Plan is contingent upon the Executive executing and delivering to the Company (and not revoking during the revocation period) a release and waiver of claims acceptable to the Company (the "Release") by the Release Deadline. For purposes of the Plan, the "Release Deadline" means the date that is sixty (60) calendar days after the Executive's separation from service. Payment of any Successful Transaction Severance payments that are not exempt from Code Section 409A shall be delayed until the Release Deadline, irrespective of when the Executive executes the Release; provided, however, that where the Executive's separation from service and the Release Deadline occur within the same calendar year, the payment may be made up to thirty (30) calendar days prior to the Release Deadline, and provided further that where the

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Executive's separation from service and the Release Deadline occur in two separate calendar years, payment may not be made before the later of January 1 of the second year or the date that is thirty (30) calendar days prior to the Release Deadline. If an Executive fails to comply with the terms and conditions of the Release with the restrictive covenants of Article 4, as determined by the Plan Administrator, while receiving Successful Transaction Severance under the Plan, the Company will cease payment of Successful Transaction Severance to the Executive.

3.7 **Death or Disability.** If the Executive's employment is terminated due to the Executive's death or Disability after Qualifying Termination but before the Successful Transaction Severance has been paid or provided, the Company will pay or provide the Successful Transaction Severance to the Executive's surviving spouse (or, if none, the Executive's representative), and the Company shall have no further obligations to the Executive (or the Executive's representative) under the Plan.

3.8 **Notice of Termination.** Any termination of the Executive's employment by the Company for Cause or by the Executive for Good Reason shall be communicated by Notice of Termination to the other party.

#### **ARTICLE 4. RESTRICTIVE COVENANTS**

Successful Transaction Severance under the Plan is expressly conditioned on the Executive's compliance with each of the restrictive covenants of this Article 4.

4.1 **Confidential Information and Company Materials.** The Company possesses and will possess Confidential Information that is important to its business. The Company devotes significant financial, human and other resources to the development of its products, its customer base and the general goodwill associated with its business and the Company diligently maintains the secrecy and confidentiality of its Confidential Information. For purposes of the Plan, "Confidential Information" is information that was or will be developed, created, or discovered by or on behalf of the Company, or that became or will become known by, or was or is conveyed to the Company, that has commercial value in the Company's business. Confidential Information is sufficiently secret to derive economic value from its not being generally known to other persons. Confidential Information also includes any and all financial, technical, commercial or other information concerning the business and affairs of the Company that is confidential and proprietary to the Company, including without limitation, (a) information relating to the Company's past and existing customers and vendors and development of prospective customers and vendors, including without limitation specific customer product requirements, pricing arrangements, payment terms, customer lists and other similar information; (b) inventions, designs, methods, discoveries, works of authorship, creations, improvements or ideas developed or otherwise produced, acquired or used by the Company; (c) the Company's proprietary programs, processes or software, consisting of but not limited to, computer programs in source or object code and all related documentation and training materials, including all upgrades, updates, improvements, derivatives and modifications thereof and including programs and documentation in incomplete stages of design or research and development; (d) the subject matter of the Company's patents, design patents, copyrights, trade secrets, trademarks, service marks, trade names, trade dress, manuals, operating instructions, training materials, and other industrial property, including such information in incomplete stages of design or research and development; and (e) other confidential and proprietary information or documents relating to the Company's products, business and marketing plans and techniques, sales and distribution networks and any other information or documents that the Company reasonably regards as being confidential.

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The Company possesses or will possess “Company Materials” that are important to its business. For purposes of the Plan, “Company Materials” are documents or other media or tangible items that contain or embody Confidential Information or any other information concerning the business, operations or future/strategic plans of the Company, whether such documents have been prepared by the Executive or by others.

(a) All Confidential Information and trade secret rights, and other intellectual property and rights in connection therewith will remain the sole property of the Company. At all times after termination of the Executive’s employment for any reason, the Executive will keep in confidence and trust and will not use or disclose any Confidential Information or anything relating to it without the prior written consent of a then current officer of the Company, except as provided in Section 4.5 below.

(b) All Company Materials will be and remain the sole property of the Company. Immediately upon the termination of the Executive’s employment for any reason, the Executive will return all Company Materials, apparatus, equipment and other physical property, or any reproduction of such property.

**4.2 Noncompetition and Nonsolicitation.** For a period of 12 consecutive months after termination of the Executive’s employment for any reason, the Executive will not, directly or indirectly:

(a) Contact, solicit, interfere with, or divert, or induce or attempt to contact, solicit, interfere with or divert, any of the Company’s customers;

(b) Participate or engage in (as an owner, partner, employee, officer, director, independent contractor, consultant, advisor or in any other capacity calling for the rendition of services, advice, or acts of management, operation or control) any business engaged in the manufacture of railcars in North America; or

(c) Solicit or induce or attempt to solicit or induce, by or for himself, or as the agent of another, or through others as an agent in any way, any person who is employed by the Company for the purpose of encouraging that employee to join the Executive as a partner, agent, employee or otherwise in any business engaged in the manufacture of railcars in North America.

Notwithstanding anything to the contrary herein, nothing in this Plan shall prohibit or restrict an Executive who is licensed to practice law from providing legal advice and counseling, or other advice and counseling incidental thereto, as an officer, employee, consultant, independent contractor or otherwise, to any business engaged in the manufacture of railcars in North America.

**4.3 Non-Disparagement.** For a period of 12 consecutive months after termination of the Executive’s employment for any reason, the Executive will not, directly or indirectly, except as provided in Section 4.5 below, make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the Company, its employees, directors, or

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officers. The Executive acknowledges and agrees that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to the news media, investors, potential investors, any board of directors, industry analysts, competitors, strategic partners, vendors, employees (past and present), and customers.

**4.4 Forfeitures.** To the maximum extent permitted by applicable law, the Executive shall forfeit all of the Successful Transaction Severance, and the Company shall have the right to recapture and seek repayment of any such Successful Transaction Severance in the event that:

(a) The Executive breaches any of the restrictions or covenants in this Article 4; or

(b) The Company's financial results are significantly restated and the Board determines that fraud, intentional misconduct, or negligence by the Executive caused or contributed to the need for the restatement.

**4.5 Whistleblower Claims and Other Government Investigations.** Nothing in this Article 4 or elsewhere in the Plan shall limit or impede the Executive's right (with or without prior notice to the Company) to (i) raise in good faith or participate in an investigation regarding any potential violation of law or regulation with any governmental or regulatory agency, including the Securities and Exchange Commission ("SEC"), or (ii) make any disclosure protected by law under the whistleblower provisions of any state or federal statutes or regulations. Any disclosure of Confidential Information (as defined above) made to any governmental or regulatory agency will be limited to Confidential Information that is reasonably related to the alleged violation and/or specifically requested by the investigating agency. The Executive will make any such disclosure(s) only to such parties authorized to investigate the potential violation.

**4.6 Intellectual Property.** "Inventions" includes all improvements, inventions, designs, formulas, works of authorship, trade secrets, technology, computer programs, compositions, ideas, processes, techniques, know-how and data, whether or not patentable, made or conceived or reduced to practice or developed by the Executive, either alone or jointly with others, during the term of the Executive's employment, including during any period prior to the date of the Plan. Except as defined in the Plan, all Inventions that the Executive makes, conceives, reduces to practice or develops (in whole or in part, either alone or jointly with others) during the Executive's employment will be the sole property of the Company to the maximum extent permitted by law.

**4.7 Remedies.** Monetary damages will not be an adequate remedy for the Company in the event of a breach or threatened breach of any provision of this Article 4 and it would be impossible for the Company to measure damages in the event of such a breach or threatened breach. Therefore, in addition to other rights and remedies that the Company may have, the Company shall be entitled to an injunction preventing the Executive from any breach or threatened breach of any provision of this Article 4, and the Executive shall waive any requirement that the Company post any bond in connection with any such injunction. The existence of any claim by an Executive against the Company, except for a claim that an Executive was terminated without Cause, shall not constitute a defense to the enforcement by the Company of any provision of this Article 4.



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4.8 **Blue Pencil.** If any court determines that the covenants contained in this Article 4, or any part hereof, are unenforceable because of the duration or geographic scope of such provision, such court shall have the power to reduce the duration or scope of such provision, as the case may be, to as close to the terms hereof as shall be enforceable and, in its reduced form, such provision shall then be enforceable.

#### **ARTICLE 5. CODE SECTIONS 280G AND 4999**

5.1 **Excess Parachute Payments.** In the event that any amount or benefits made or provided to the Executive this Plan and under all other plans and programs of the Company (the "Covered Payments") is determined to constitute a Parachute Payment, as such term is defined in Code Section 280G(b)(2), the Company shall pay to the Executive either (i) the full amount of such Covered Payments or (ii) such lesser amount (beginning with those amounts that are exempt from Section 409A and then from amounts that are subject to Section 409A, beginning with such amounts scheduled to be paid furthest from the first date of payments) as would result in no portion of the Covered Payments being subject to the excise tax under Code Section 4999 ("Excise Tax"), whichever of the foregoing amounts, taking into account the applicable federal, state and local employment taxes, income taxes and the Excise Tax, results in the Executive's receipt, on an after-tax basis, of the greater amount of the Covered Payments, notwithstanding that all or some portion of the Covered Payments may be subject to the Excise Tax.

5.2 **Procedure for Determinations.** All determinations required to be made under this Article 5 and the assumptions to be utilized in arriving at such determinations, shall be made by the independent public accountants then regularly retained by the Company (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and the Executive within fifteen (15) business days of the receipt of notice from the Company or the Executive that there have been Covered Payments, or such earlier time as is requested by the Company. All fees and expenses of the Accounting Firm and such counsel shall be borne solely by the Company.

5.3 **Internal Revenue Service Claims.** In the event that upon any audit by the Internal Revenue Service, or by a state or local taxing authority, of the Covered Payments, a change is formally determined to be required in the amount of taxes paid by the Executive, appropriate adjustments will be made under this Agreement such that the net amount that is payable to the Executive after taking into account the provisions of Code Section 4999 will reflect the intent of the parties as expressed in this Section. The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require payment of an Excise Tax or an additional Excise Tax on the Covered Payments (a "Claim"). Such notification shall be given as soon as practicable but no later than ten (10) business days after the Executive is informed in writing of such Claim and shall apprise the Company of the nature of such Claim and the date on which such Claim is requested to be paid. The Executive shall not pay such Claim prior to the expiration of the thirty (30)-day period following the date on which she gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such Claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that it desires to contest such Claim, the Executive shall (a) give the Company any information reasonably requested by the Company relating to such Claim, (b) take such action in connection with contesting such Claim as the Company shall reasonably request in writing from

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time to time, including, without limitation, accepting legal representation with respect to such Claim by an attorney reasonably selected by the Company, (c) cooperate with the Company in good faith in order effectively to contest such Claim, and (d) permit the Company to participate in any proceedings relating to such Claim; provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax, additional Excise Tax, or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 5.3, the Company, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such Claim and may, at its sole option, either direct the Executive to pay the tax claimed and sue for a refund or contest the Claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one (1) or more appellate courts, as the Company shall determine, provided, however, that if the Company directs the Executive to pay such Claim and sue for a refund, the Company shall advance the amount of such payment to the Executive on an interest-free basis or, if such an advance is not permissible thereunder, pay the amount of such payment to the Executive as additional compensation, and shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax, additional Excise Tax, or income tax (including interest or penalties with respect thereto) imposed with respect to such advance or additional compensation; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. The Company shall reimburse any fees and expenses provided for under this Section 5.3 on or before the last day of the Executive's taxable year following the taxable year in which the fee or expense was incurred, and in accordance with the other requirements of Code Section 409A and Treasury Regulation §1.409A-3(i)(1)(v) (or any similar or successor provisions).

**5.4 Refund.** If, after the receipt by the Executive of an amount advanced or paid by the Company pursuant to Section 5.3, the Executive becomes entitled to receive any refund with respect to such Claim, the Executive shall (subject to the Company's complying with the requirements of Section 5.3) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 5.3, a determination is made that the Executive shall not be entitled to any refund with respect to such Claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of thirty (30) calendar days after such determination, then such advance shall be forgiven and shall not be required to be repaid.

#### **ARTICLE 6. CODE SECTION 409A**

6.1 The Plan is intended to comply with Code Section 409A and the interpretative guidance thereunder, including the exceptions for short-term deferrals, separation pay arrangements, reimbursements, and in-kind distributions, and shall be administered accordingly. The Plan shall be construed and interpreted with such intent.

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6.2 Each payment under the Plan or any Company benefit plan is intended to be treated as one of a series of separate payments for purposes of Code Section 409A. To the extent any reimbursements or in-kind benefit payments under the Plan are subject to Code Section 409A, such reimbursements and in-kind benefit payments will be made in accordance with Treasury Regulation §1.409A-3(i)(1)(iv) (or any similar or successor provisions).

6.3 Notwithstanding anything in the Plan to the contrary, to the extent the Executive is considered a “specified employee” (as defined in Code Section 409A) and would be entitled to a payment during the six-month period beginning on the Executive’s date of termination that is not otherwise excluded under Code Section 409A under the exception for short-term deferrals, separation pay arrangements, reimbursements, in-kind distributions, or any otherwise applicable exemption, the payment will not be made to the Executive until the earlier of the six-month anniversary of the Executive’s date of termination or the Executive’s death and will be accumulated and paid on the first day of the seventh month following the date of termination.

6.4 The Company may amend the Plan to the minimum extent necessary to satisfy the applicable provisions of Code Section 409A.

6.5 The Company cannot guarantee that any Successful Transaction Severance provided pursuant to the Plan will satisfy all applicable provisions of Code Section 409A.

#### **ARTICLE 7. CLAIMS PROCEDURE**

7.1 **Claims Procedure.** Any Successful Transaction Severance shall be paid without the necessity of formal claims. If any person believes he or she is being denied any rights or benefits under the Plan or receives an adverse benefit determination, such person (or the person’s duly authorized representative) may file a claim in writing with the Plan Administrator within one year following the applicable Executive’s date of termination. An adverse benefit determination is a denial, reduction, or termination of, rescission, or a failure to provide or make payment (in whole or in part) for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant’s or beneficiary’s eligibility to participate in the Plan. If any such claim is wholly or partially denied, the Plan Administrator will notify the claimant of its decision in writing. The notification will set forth, in a manner calculated to be understood by the claimant, the following: (a) the specific reason or reasons for the adverse determination, (b) reference to the specific Plan provisions on which the determination is based, (c) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary, and (d) a description of the Plan’s review procedures and the time limits applicable to such procedures, including a statement of the claimant’s right to bring a civil action under ERISA Section 502(a) following the final benefit determination on appeal. Such notification will be given within ninety (90) calendar days after the claim is received by the Plan Administrator, or within one hundred eighty (180) calendar days, if the Plan Administrator determines that special circumstances require an extension of time for processing the claim. If the Plan Administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial ninety (90)-calendar day period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan Administrator expects to render a benefit determination.

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**7.2 Appeals.** Within sixty (60) calendar days after the receipt of notification of an adverse benefit determination, a claimant (or the claimant's duly authorized representative) may file a written request with the Plan Administrator for a review of the claimant's adverse benefit determination and submit written comments, documents, records, and other information relating to the claim for benefits. A request for review shall be deemed filed as of the date of receipt of such written request by the Plan Administrator. A claimant shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. The Plan Administrator will take into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. The Plan Administrator will notify the claimant of its decision on review in writing. Such notification will be written in a manner calculated to be understood by the claimant and will contain the following: (a) the specific reason or reasons for the adverse determination, (b) reference to the specific Plan provisions on which the benefit determination is based, (c) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits, and (d) a statement of the claimant's right to bring a civil action under ERISA Section 502(a) following the final benefit determination on appeal. The decision on review will be made within sixty (60) calendar days after the request for review is received by the Plan Administrator, or within one hundred twenty (120) calendar days if the Plan Administrator determines that special circumstances require an extension of time for processing the claim. If the Plan Administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial sixty (60) calendar day period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the determination on review. The Plan Administrator's decision on review shall be final and binding on the claimant.

**7.3 Legal Actions.** The claims and review procedures described in this Article 7 must be exhausted before a legal action may be brought against the Board, the Company, the Plan Administrator, or the Plan. Any legal action must be filed within one (1) year of receiving final notice of a denied claim.

## **ARTICLE 8. SUCCESSORS**

**8.1 Successors to the Company.** The Company shall require any successor (whether direct or indirect, by purchase, merger, reorganization, consolidation, acquisition of property or stock, liquidation, or otherwise) of all or a significant portion of the assets of the Company by agreement, in form and substance satisfactory to the Executive, to expressly assume and agree to maintain the Plan in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place, subject to Section 10.1 hereof. Regardless of whether such agreement is executed, the Plan shall be binding upon any successor in accordance with the operation of law and such successor shall be deemed the "Company" for purposes of the Plan.

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**8.2 Assignment by the Executive.** The Plan shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, and legatees. If the Executive dies while any Successful Transaction Severance would still be owed to the Executive hereunder had the Executive continued to live, all such Successful Transaction Severance, unless otherwise provided herein, shall be paid in accordance with the terms of the Plan to the Executive's devisee, legatee, or other designee, or if there is no such designee, to the Executive's estate.

#### **ARTICLE 9. MISCELLANEOUS**

**9.1 Employment Status.** The Plan is not a contract of employment, and participation in the Plan does not give an Executive the right to be rehired or retained in the employ of the Company on a full-time, part-time or any other basis, or to receive any benefit under any other plan of the Company. Participation in the Plan does not give any Executive any right or claim or legal entitlement to any benefit under the Plan, unless that right or claim has specifically accrued under the terms of the Plan.

**9.2 Effect of Receiving Successful Transaction Severance.** Receipt of any Successful Transaction Severance does not constitute any sort of extension or perpetuation of employment beyond the Executive's actual date of employment termination.

**9.3 Interests Not Transferable.** The interests of persons entitled to any Successful Transaction Severance are not subject to their debts or other obligations and, except as may be required by the tax withholding provisions of the Code or any state's income tax act, or pursuant to an agreement between an Executive and the Company, may not be voluntarily sold, transferred, alienated, assigned, or encumbered.

**9.4 Entire Plan.** The Plan contains the entire understanding of the Company and the Executive with respect to the subject matter hereof. Other than amounts payable pursuant to the Ordinary Severance Plan, the Successful Transaction Severance under this Plan shall be in lieu of and reduced by any severance pay or the like that may be payable under any plan or practice of the Company, or that may be payable by any Federal, state or foreign law, statute, regulation, or the like (including the WARN Act or any similar state or foreign law)

**9.5 Conflicting Plans.** Payments or benefits provided to an Executive under the Ordinary Severance Plan or any other Company stock, deferred compensation, savings, retirement, or other employee benefit plan are governed solely by the terms of that plan. Any obligations or duties of an Executive pursuant to any non-competition or other agreement with the Company will be governed solely by the terms of that agreement, and will not be affected by the terms of the Plan, except to the extent that agreement expressly provides otherwise. The Successful Transaction Severance paid under the Plan shall not be taken into account for purposes of contributions or benefits under any other employee benefit plans. Further, the period of coverage under any employee benefit plan is not extended due to the payment of Successful Transaction Severance under the Plan.

**9.6 Notices.** All notices, requests, demands, and other communications hereunder shall be sufficient if in writing and shall be deemed to have been duly given if delivered by hand or if sent by registered or certified mail to the Executive at the last address the Executive has filed in writing with the Company or, in the case of the Company, at its principal offices.

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**9.7 Tax Withholding.** The Company shall withhold from any Successful Transaction Severance payable under the Plan all Federal, state, city, or other taxes as legally required to be withheld, as well as any other amounts authorized or required by policy, including, but not limited to, withholding for garnishments and judgments or other court orders. Any Severance Benefit payable under the Plan will be offset against any severance, notice or termination pay required to be paid by the Company pursuant to foreign, Federal, state, or local law or ordinance.

**9.8 Severability.** In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included. Further, the captions of the Plan are not part of the provisions hereof and shall have no force and effect. Notwithstanding anything in the Plan to the contrary, the Company shall have no obligation to provide any Successful Transaction Severance to the Executive hereunder to the extent, but only to the extent, that such provision is prohibited by the terms of any final order of a Federal, state, or local court or regulatory agency of competent jurisdiction, provided that such an order shall not affect, impair, or invalidate any provision of the Plan not expressly subject to such order.

**9.9 Gender and Number.** Except where otherwise indicated by the context, any masculine term used herein shall include the feminine; the plural shall include the singular and the singular shall include the plural.

**9.10 Applicable Law.** To the extent not preempted by the laws of the United States, the laws of the State of Illinois shall be the controlling law in all matters relating to the Plan without giving effect to principles of conflicts of laws. The jurisdiction and venue for any disputes arising under, or any action brought to enforce, or otherwise relating to, the Plan shall be exclusively in the courts in State of Illinois, Cook County, including the Federal Courts located therein (should Federal jurisdiction exist).

**9.11 Action by Company.** Any action required of or permitted to be taken by the Company under the Plan will be by resolution of the Board, by resolution of a duly authorized committee of the Board, by a person or persons authorized by resolutions of the Board, or a by duly authorized committee.

**9.12 Plan Funding.** The Company will pay any Successful Transaction Severance due and owing under the Plan directly out of its general assets. To the extent that an Executive acquires a right to receive any Successful Transaction Severance under the Plan, such right shall be no greater than the right of an unsecured general creditor of the Company. Nothing herein contained shall require or be deemed to require, or prohibit or be deemed to prohibit, the Company to segregate, earmark, or otherwise set aside any funds or other assets, in trust or otherwise, to provide for any Successful Transaction Severance hereunder.

**9.13 Indemnification.** Each person who is or has been a member of the Board, and any individual or individuals to whom the Company has delegated authority under Section 1.3 of the Plan, shall be indemnified and held harmless by the Company from and against any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or as a result of any claim, action, suit or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken, or failure to act, under the Plan. Each such person will also be indemnified and held harmless by the Company from and against any and all amounts paid by him or her in a settlement approved by the Company, or paid by him or her in satisfaction of any judgment, of or in a claim, action, suit or proceeding against him or

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her and described in the previous sentence, so long as he or she gives the Company an opportunity, at its own expense, to handle and defend the claim, action, suit or proceeding before he or she undertakes to handle and defend it. The foregoing right of indemnification will not be exclusive of any other rights of indemnification to which a person may be entitled under the Company's Articles of Incorporation or By-Laws, as a matter of law, or otherwise, or any power that the Company may have to indemnify him or her or hold him or her harmless.

9.14 **Cooperation.** An Executive must reasonably cooperate with the Company and the Plan Administrator by furnishing any and all information reasonably requested by the Company or the Plan Administrator, in order to facilitate the payment of benefits hereunder, and taking such other actions as may be requested by the Company. If an Executive refuses to cooperate, the Company shall have no further obligation to such Executive under the Plan.

**ARTICLE 10. AMENDMENT AND TERMINATION**

10.1 **Amendment and Termination.** The Company reserves the right, on a case-by-case basis or on a general basis, to amend the Plan at any time and to thereby alter, reduce or eliminate any benefit under the Plan, in whole or in part, at any time. Notwithstanding the foregoing, any amendment or termination of the Plan will not reduce the amount of benefits payable (if any) to any Executive. Further notwithstanding the foregoing, during the two-year period following the consummation of a Successful Transaction, any amendment or termination of the Plan will not reduce the amount of benefits payable (if any) to any Executive or the rights of any Executive under the Plan, or cause any individual who is an Executive at the time of the Successful Transaction to cease being an Executive, without the express written consent of such Executive.

10.2 **Notice of Amendment or Termination.** Executives covered by the Plan will be notified of any material amendment or termination of the Plan within a reasonable time.

IN WITNESS WHEREOF, the Company has caused the Plan to be executed by the undersigned duly authorized officer this 20th day of November 2019.

**FREIGHTCAR AMERICA, INC.**

BY: \_\_\_\_\_  
Its: \_\_\_\_\_

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**Appendix A**

**EXECUTIVES ELIGIBLE TO PARTICIPATE IN THE  
FREIGHTCAR AMERICA, INC. SUCCESSFUL TRANSACTION SEVERANCE PLAN**

	<b><u>Successful Transaction Severance Multiple</u></b>
Chief Executive Officer	One-Half (0.5)
Chief Financial Officer	One (1.0)
General Counsel	One (1.0)

Appendix A



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## **Appendix B**

### **ADDITIONAL INFORMATION FOR SUMMARY PLAN DESCRIPTION**

This Appendix B, together with the Plan document, constitutes the summary plan description of the Plan. References in this Appendix B to “you” or “your” are references to the Executive. Any term capitalized but not defined in this Appendix B will have the meaning set forth in the Plan.

#### **YOUR RIGHTS UNDER ERISA**

As a participant in the Plan, you are entitled to certain rights and protections under ERISA. ERISA provides that all Plan participants will be entitled to:

- Receive information about the Plan and benefits offered under the Plan.
- Examine, without charge, at the Company’s office and at other specified locations, all documents governing the Plan, and a copy of the latest annual report filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefit Security Administration.
- Obtain, upon written request to the Company, copies of documents governing the operation of the Plan, and copies of the latest annual report and updated summary plan description. The Company may make a reasonable charge for the copies.
- Obtain a statement telling you whether you have a right to receive a benefit and, if so, what your benefit would be if you stop working under the Plan now. If you do not have a right to a benefit, the statement will tell you how many more years you have to work to get a right to a benefit. This statement must be requested in writing and is not required to be given more than once every 12 months. The Plan must provide the statement free of charge.

#### **PRUDENT ACTION BY PLAN FIDUCIARIES**

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate your Plan, called fiduciaries of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including the Company, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from exercising your rights under ERISA.

#### **ENFORCE YOUR RIGHTS**

If your claim for a benefit is denied in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan and do not receive them within 30 calendar days, you may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator. If you have a claim for benefits that is denied or ignored, in whole or in part, you may file suit in a state or Federal court. If you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

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**ASSISTANCE WITH YOUR QUESTIONS**

If you have any questions about the Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You also may obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

**GENERAL PLAN INFORMATION**

<b>Plan Sponsor</b>	FreightCar America, Inc. Two North Riverside Plaza, Suite 1250 Chicago, Illinois 60606
<b>Plan Name</b>	FreightCar America, Inc. Successful Transaction Severance Plan
<b>Type of Plan</b>	Welfare plan
<b>Source of Funds</b>	The Company will pay all benefits due and owing under the Plan directly out of its general assets. To the extent that an Executive acquires a right to receive benefits under the Plan, such right shall be no greater than the right of an unsecured general creditor of the Company.
<b>Company's Employer Identification Number</b>	25-1837219
<b>Plan Administrator</b>	FreightCar America, Inc. Two North Riverside Plaza, Suite 1250 Chicago, Illinois 60606 (312) 928-0850
<b>Agent for Service of Legal Process</b>	Plan Administrator
<b>Plan Year</b>	Calendar Year (January 1 – December 31)
<b>Controlling Law</b>	Illinois, to the extent not preempted by Federal law

FREIGHTCAR AMEIRCA, INC. SUCCESSFUL TRANSACTION SEVERANCE PLAN

ACKNOWLEDGMENT AND ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE PLAN

FreightCar America, Inc. (the "Company") has established the FreightCar America, Inc. Successful Transaction Severance Plan (the "Plan"). The Plan provides Successful Transaction Severance to certain eligible executives in the event of employment termination by the Company without "cause," or termination by the executive for "good reason" (each as defined in the Plan). You are eligible to participate in the Plan.

By the signatures below of the representative of the Company and the Executive named herein, the Company and the Executive agree that the Company hereby designates the Executive as eligible to participate in the Plan, and the Executive hereby acknowledges and accepts such participation, subject to the terms and conditions of the Plan, and agrees to the terms of the Plan, which is attached hereto and made a part hereof.

Name of Executive: «FirstName» «LastName»
Date of Eligibility and Participation: «Date»

At Will Employment. Nothing in this Acknowledgement and Acceptance or in the Plan shall confer upon the Executive any right to continue in employment for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company or of the Executive, which rights are hereby expressly reserved by each, to terminate the Executive's employment at any time for any reason.

The Company reserves the right to amend or terminate the Plan at any time prior to a Successful Transaction, including an amendment that would alter, reduce or eliminate benefits under the Plan, except that no amendment or termination of the Plan would reduce the amount of benefits payable (if any) to any Executive who terminates employment before the effective date of the amendment or termination.

EXECUTIVE: FREIGHTCAR AMERICA, INC.
By:
Title:

Attachment:
FreightCar America, Inc. Successful Transaction Severance Plan
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Section 7: EX-10.34 (EX-10.34)

Exhibit 10.34

EXECUTION VERSION

LIMITED WAIVER AND FIRST AMENDMENT TO CREDIT AND SECURITY AGREEMENT

THIS LIMITED WAIVER AND FIRST AMENDMENT TO CREDIT AND SECURITY AGREEMENT, dated as of October 28, 2019 (this "Agreement"), is entered into among FREIGHTCAR AMERICA, INC., a Delaware corporation (the "Company"), JAC OPERATIONS, INC., a Delaware corporation ("JAC"), FREIGHT CAR SERVICES, INC., a Delaware corporation ("FCS"), JOHNSTOWN AMERICA, LLC, a Delaware limited liability company ("Johnstown"), FREIGHTCAR RAIL SERVICES, LLC, a Delaware limited liability company ("FCRS"), FREIGHTCAR ROANOKE, LLC, a Delaware limited liability company ("Roanoke"), FREIGHTCAR ALABAMA, LLC, a Delaware limited liability company ("Alabama") (each of the Company, JAC, FCS, Johnstown, FCRS, Roanoke, and Alabama, may be referred to herein individually, as a "Borrower" and collectively, as the "Borrowers"), FREIGHTCAR SHORT LINE, INC., a Delaware corporation ("FCSL") and FCAI HOLDINGS, LLC, a Delaware limited liability company ("FCAI" and with FCSL, the "Guarantors") (collectively, together with the Borrowers, the "Loan Parties") and BMO HARRIS BANK N.A., as Lender (in such capacity, together with its successors and assigns in such capacity, the "Lender").

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement (as defined below).

RECITALS

WHEREAS, the Loan Parties and the Lender are parties to that certain Credit and Security Agreement, dated as of April 12, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement");

WHEREAS, a Dominion Trigger Period is currently in effect pursuant to the definition thereof in Section 1.01 of the Credit Agreement pursuant to clause (ii) of such definition;

WHEREAS, pursuant to the terms of the Credit Agreement, such Dominion Trigger Period shall continue until the date that (i) no Event of Default has occurred and is continuing and not waived, (ii) Adjusted Excess Availability has been greater than or equal \$25,000,000 for thirty (30) consecutive days (the "Availability Condition") and (iii) the Outstanding Amount of Revolving Loans has been less than or equal to \$10,000,000 for thirty

(30) consecutive days;

WHEREAS, the Loan Parties have requested and, subject to the terms and conditions set forth herein, the Lender has agreed to (i) waive the Availability Condition with respect to the Dominion Trigger Period in effect on the date hereof and (ii) amend the Credit Agreement as set forth herein;

NOW, THEREFORE, in consideration of the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### AGREEMENT

1. Limited Waiver. Subject to satisfaction of the conditions precedent set forth in Section 3 hereof and solely with respect to the Dominion Trigger Period in effect as of the date hereof, the Lender hereby waives the Availability Condition and any obligations of the Loan Parties or any of their Subsidiaries that resulted solely from such Dominion Trigger Period. The waiver set forth in this Section 1 is effective solely for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (w) waive, release, modify or limit any Loan Party's obligations to otherwise comply with any other terms and conditions of the Credit Agreement and the other Loan Documents, (x) except as

expressly provided herein, be a consent to any amendment, waiver or modification of any term or condition of the Credit Agreement or of any other Loan Document, (y) waive any future Event of Default or (z) prejudice any right or rights that the Lender may have or may have in the future under or in connection with the Credit Agreement or any other Loan Document, except as expressly provided herein. For the avoidance of doubt, as a result of the foregoing waiver of the Availability Condition, no Dominion Trigger Period shall be deemed to be in effect as of the First Amendment Effective Date.

## 2. Amendments to Credit Agreement.

(a) Section 1.01 of the Credit Agreement is hereby amended by adding the following new defined terms to Section 1.01 of the Credit Agreement in the appropriate alphabetical order:

“First Amendment Effective Date” means October 28, 2019.

“JV Payment Conditions” means, with respect to any Investment pursuant to Section 8.03(l), the satisfaction of the following conditions:

(a) as of the date of any such Investment and immediately after giving effect thereto, no Default or Event of Default has occurred and is continuing;

(b) Adjusted Excess Availability (after giving Pro Forma Effect to such Investment) during the thirty (30) consecutive day period ending on and including the date of such Investment shall be not less than \$30,000,000; and

(c) the Lender shall have received a certificate of a Responsible Officer of the Borrower Agent certifying as to compliance with the preceding clauses and demonstrating (in reasonable detail) the calculations required thereby.

(b) Section 1.01 of the Credit Agreement is hereby amended by deleting the definition of “Adjusted Excess Availability” in its entirety and replacing it with the following:

“Adjusted Excess Availability” means, at any time of calculation, the sum of (a) Excess Availability plus (b) (x) for the period commencing on the First Amendment Effective Date and continuing until the earlier of (1) January 31, 2020 and (2) the date of the first Borrowing following the First Amendment Effective Date, Qualified Unrestricted Cash, and thereafter (y) the lesser of (1) Qualified Unrestricted Cash of the Borrowers and (2) \$12,500,000.

(c) Sections 2.06(b)(i), 2.06(b)(iii), 2.06(b)(iv) and 8.13 of the Credit Agreement are hereby amended to replace the term “Designated Joint Venture Entities” with the term “Designated Entities”.

(d) Section 8.03 of the Credit Agreement is hereby amended:

(i) by deleting Section 8.03(j) in its entirety and replacing it with the following:

“(j) Investments in Designated Entities in an amount not to exceed \$25,000,000 in the aggregate during the term of this Agreement less any amounts utilized pursuant to Section 8.03(l), so long as the Payment Conditions are satisfied with respect thereto; provided that to the extent Average Excess Availability (after giving Pro Forma Effect to such Investment) during the thirty (30) consecutive day period ending on and

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including the date of such Investment is greater than the greater of (x) 25.0% of the Revolving Credit Facility and (y) \$12,500,000, at the time of any such Investment, then only clauses (a) and (d) of the definition of Payment Conditions shall be required to be satisfied at the time of such Investment.”;

(ii) by deleting “. ” at the end of Section 8.03(k) and replacing it with “; and”; and

(iii) by inserting a new clause (l) to read as follows:

“(l) Investments in Designated Entities in an amount not to exceed \$6,000,000 in the aggregate to the extent made on or prior to January 31, 2020, so long as the JV Payment Conditions are satisfied with respect thereto.”

3. Effectiveness; Conditions Precedent. This Agreement shall be effective upon the satisfaction of the following conditions precedent (such date, the “*First Amendment Effective Date*”):

(a) Receipt by the Lender of the executed counterparts of this Agreement executed by Loan Parties and the Lender.

(b) The representations and warranties contained in Article VI of the Credit Agreement and each other Loan Document, shall be true and correct in all material respects, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, (ii) to the extent that such representations and warranties are qualified by materiality or Material Adverse Effect, in which case they shall be true and correct in all respects, and (iii) the representations and warranties contained in subsections (a) and (b) of Section 6.05 of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 7.01 of the Credit Agreement.

(c) Borrowers shall have paid all fees, charges and disbursements of counsel to the Lender (directly to such counsel if requested by the Lender) pursuant to the Credit Agreement to the extent invoiced at least one (1) Business Day prior to or on the date hereof.

4. Reaffirmation by Loan Parties.

(a) All the Loan Documents are hereby ratified, approved, reaffirmed and confirmed in all respects. Without limiting the foregoing, each of the Borrowers and the other Loan Parties, as debtors, grantors, pledgors, guarantors, assignors, or in other similar capacities in which such parties grant liens or security interests in their properties or otherwise act as accommodation parties or guarantors, as the case may be, under the Loan Documents, hereby ratifies and reaffirms all of its payment and performance obligations and obligations to indemnify, contingent or otherwise, under each of such Loan Documents to which such party is a party, and each such party hereby ratifies and reaffirms its grant of liens on or security interests in its properties pursuant to such Loan Documents to which it is a party as security for the Obligations under or with respect to the Credit Agreement, and confirms and agrees that such liens and security interests hereafter secure all of the Obligations, including, without limitation, all additional Obligations hereafter arising or incurred pursuant to or in connection with this Agreement, the Credit Agreement or any other Loan Document. The Borrowers and other Loan Parties each further agrees and reaffirms that the Loan Documents to which it is a party now apply to all Obligations as defined in the Credit Agreement, (including, without limitation, all additional

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Obligations hereafter arising or incurred pursuant to or in connection with this Agreement, the Credit Agreement or any other Loan Document). Each such party (i) further acknowledges receipt of a copy of this Agreement and all other agreements, documents, and instruments executed and/or delivered in connection herewith and (ii) consents to the terms and conditions of same.

(b) Neither the Borrowers nor any other Loan Party has any rights of offset, defenses, claims, counterclaims or challenges against the payment of any sums owing under the Loan Documents, or the enforcement of any of the terms or conditions thereof as of the date hereof. Each of the Borrowers and the other Loan Parties further agrees that, to the extent any such offset, defenses, claims, counterclaims or challenges against the payment of any sums owing under the Loan Documents, or the enforcement of any of the terms or conditions thereof of any kind exists as of the date hereof, each of the Borrowers and the other Loan Parties hereby waives and releases each and all of them in consideration for the Lender entering into this Agreement.

(c) Neither this Agreement nor any other agreement executed in connection herewith or pursuant to the terms hereof, nor any actions taken pursuant to this Agreement or such other agreement shall be deemed to waive or cure any Default or any other Events of Default which may now or hereafter exist under the Loan Documents (other than the waiver pursuant to Section 1 hereof) or of any rights or remedies in connection therewith or with respect thereto, it being the intention of the parties hereto that the obligations of Loan Parties under the Loan Documents are and shall remain in full force and effect.

5. No Waiver; Loan Documents.

(a) Other than the waiver pursuant to Section 1 hereof, nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Credit Agreement or any of the other Loan Documents and shall not be deemed to prejudice any right or rights which the Lender may now have or may have in the future under or in connection with any Loan Documents or any of the instruments or agreements referred to therein, as the same may be amended from time to time.

(b) Except as expressly stated herein, the Lender reserves all rights, privileges and remedies under the Loan Documents, and the Credit Agreement and other Loan Documents remain unmodified and in full force and effect in accordance with their terms. This Agreement is a Loan Document, and, together with the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof. This Agreement shall not be deemed or construed to be a satisfaction, reinstatement, novation or release of the Credit Agreement or any other Loan Document, nor, is it to be construed as a release, waiver or modification of any of the terms, conditions, representations, warranties or covenants set forth in the Loan Documents, except as expressly stated herein. Other than the waiver pursuant to Section 1 hereof, nothing contained in this Agreement shall constitute a waiver of any rights or remedies of the Lender under the Loan Documents, in equity or at law.

6. Representations and Warranties. Each Loan Party represents and warrants as follows:

(a) It has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of this Agreement.

(b) This Agreement has been duly executed and delivered by such Loan Party and constitutes its legal, valid and binding obligation, enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law).

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(c) No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by such Loan Party of this Agreement, other than those that have been duly obtained or made and which are in full force and effect, or if not obtained or made, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(d) The execution and delivery of this Agreement does not (i) contravene the terms of its Organization Documents or (ii) violate any material applicable Law, except, with respect to the foregoing clause (ii), to the extent such contravention could not reasonably be expected to have a Material Adverse Effect.

(e) After giving effect to this Agreement (i) the representations and warranties set forth in Article VI of the Credit Agreement and in each other Loan Document, are true and correct in all material respects (except to the extent such representations and warranties are already qualified by materiality or Material Adverse Effect, which representations and warranties shall be true and correct in all respects) as of the date hereof, except to the extent such representations and warranties expressly relate solely to an earlier date, in which case they are true and correct in all material respects as of such earlier date and (ii), no Default or Event of Default exists as of the date hereof.

(f) After giving effect to this Agreement and the other transactions related thereto, Company and its Subsidiaries, on a consolidated basis, are Solvent.

(g) Since the Closing Date, (i) no new Loan Parties or Subsidiaries have been formed or acquired, other than FCAI and Designated Entities, (ii) the address of the principal place of business, the chief executive office and the location of books and records of each Loan Party has not changed, and (iii) no Loan Party has changed its name or jurisdiction of organization.

7. Release. Each Loan Party hereby remises, releases, acquits, satisfies and forever discharges the Lender, its affiliates, agents, employees, officers, directors, members, shareholders, partners, predecessors, attorneys, other advisors and all other Persons acting or purporting to act on behalf of or at the direction of the Lender (the foregoing, collectively, the "**Releasees**"), of and from any and all manner of actions, causes of action, suit, debts, accounts, covenants, contracts, controversies, agreements, variances, damages, judgments, claims and demands whatsoever, in law or in equity, and whether known or unknown, in each case, which any of such parties ever had, now has or, to the extent arising from or in connection with any act, omission or state of facts relating to, or in connection with or arising out of the Loan Documents or the transactions contemplated thereby and taken or existing on or prior to the date hereof. Without limiting the generality of the foregoing, each Loan Party waives and affirmatively agrees not to allege or otherwise pursue any defenses, affirmative defenses, counterclaims, claims, causes of action, setoffs or other rights they do, shall or may have as of the date hereof relating to, or in connection with or arising out of the Loan Documents or the transactions contemplated thereby, including, but not limited to, the rights to contest: (a) the right of the Lender to exercise its rights and remedies described in this Agreement, the Credit Agreement or the other Loan Documents; (b) any provision of this Agreement, the Credit Agreement or the other Loan Documents; or (c) the conduct of the Lender or any other Releasees relating to, in connection with, or arising out of the Credit Agreement or any of the other Loan Documents on or prior to the date hereof.



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8. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. Delivery of executed counterparts of this Agreement by facsimile or other secure electronic format (.pdf) shall be effective as an original.

9. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial. The terms and provisions of Sections 10.13 (“Governing Law; Jurisdiction; Etc.”) and 10.14 (“Waivers of Jury Trial”) of the Credit Agreement are hereby incorporated herein by reference, mutatis mutandis, with the same force and effect as if fully set forth herein, and the parties hereto agree to such terms.

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted by the Credit Agreement.

11. Headings. The headings of the sections hereof are provided for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

12. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

13. Loan Document. This Agreement constitutes a “Loan Document” under and defined in the Credit Agreement and is subject to the provisions therein regarding Loan Documents.

*[Signature pages follow]*

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**BORROWERS:**

**FREIGHTCAR AMERICA, INC.**

By: /s/ Chris Eppel  
Name: Chris Eppel  
Title: Chief Financial Officer

**JAC OPERATIONS, INC.**

By: /s/ Chris Eppel  
Name: Chris Eppel  
Title: Chief Financial Officer

**FREIGHT CAR SERVICES, INC.**

By: /s/ Chris Eppel  
Name: Chris Eppel  
Title: Chief Financial Officer

**JOHNSTOWN AMERICA, LLC**

By: /s/ Chris Eppel  
Name: Chris Eppel  
Title: Chief Financial Officer

**FREIGHTCAR RAIL SERVICES, LLC**

By: /s/ Chris Eppel  
Name: Chris Eppel  
Title: Chief Financial Officer

[Signature Page to Limited Waiver and First Amendment to Credit and Security Agreement]

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**FREIGHTCAR ROANOKE, LLC**

By: /s/ Chris Eppel

Name: Chris Eppel

Title: Chief Financial Officer

**FREIGHTCAR ALABAMA, LLC**

By: /s/ Chris Eppel

Name: Chris Eppel

Title: Chief Financial Officer

**GUARANTORS:**

**FREIGHTCAR SHORT LINE, INC.**

By: /s/ Chris Eppel

Name: Chris Eppel

Title: Chief Financial Officer

**FCAI HOLDINGS, LLC**

By: /s/ Chris Eppel

Name: Chris Eppel

Title: Chief Financial Officer

[Signature Page to Limited Waiver and First Amendment to Credit and Security Agreement]

**LENDER:**

**BMO HARRIS BANK N.A.**, as Lender

By: /s/ Jason Hoefler

Name: Jason Hoefler

Title: Managing Director

[Signature Page to Limited Waiver and First Amendment to Credit and Security Agreement]

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## Section 8: EX-21 (EX-21)

**Exhibit 21**

SUBSIDIARIES OF FREIGHTCAR AMERICA, INC.

Name of Subsidiary	Percent Ownership by Registrant
JAC Operations Inc.	100%
Johnstown America, LLC	100%
Freight Car Services, Inc.	100%
JAIX Leasing Company	100%
FreightCar Roanoke, LLC	100%
FreightCar Rail Services, LLC	100%
FreightCar Rail Management Services, LLC	100%
FreightCar Short Line, Inc.	100%
FreightCar Mauritius Ltd.	100%
FreightCar Alabama, LLC	100%
FreightCar (Shanghai) Trading Co., Ltd.	100%
FreightCar America Leasing, LLC	100%
FreightCar America Railcar Management, LLC	100%
FreightCar America Capital Leasing LLC	100%
FreightCar America Leasing 1, LLC	100%
FCAI Holdings, LLC	100%
FCA-FASEMEX, LLC	50%
FCA-FASEMEX, S. de R.L., de C.V.	50%
FCA-FASEMEX Enterprise, S. de R.L., de C.V.	50%

All subsidiaries are Delaware corporations or Delaware limited liability companies except FreightCar Mauritius Ltd., which is incorporated in Mauritius, FreightCar (Shanghai) Trading Co., Ltd., which is organized in the People's Republic of China and FCA-FASEMEX, S. de R.L., de C.V. and FCA-FASEMEX Enterprise, S. de R.L., de C.V. which are organized in Mexico.

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## Section 9: EX-23 (EX-23)

**Exhibit 23**

### CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of  
FreightCar America, Inc.  
Chicago, Illinois

We consent to the incorporation by reference in Registration Statement No. 333-131981, 333-184820 and 333-225886 on Form S-8 of our reports dated March 4, 2020, relating to the consolidated financial statements of FreightCar America, Inc. and subsidiaries ("the Company") (which report expresses an unqualified opinion and includes an explanatory paragraph related to the Company's change in method of accounting for leases in the year ended December 31, 2019, due to the adoption of Accounting Standard Update No. 2016-02), and the effectiveness of Company's internal control over financial reporting, appearing in this Annual Report on Form 10-K of the Company for the year ended December 31, 2019.

Chicago, Illinois  
March 4, 2020

We have served as the Company's auditor since 1999.

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