AMERICAN RAILCAR INDUSTRIES, INC.

FORM 8-K
(Current report filing)

Filed 06/07/17 for the Period Ending 06/06/17

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): June 1, 2017

AMERICAN RAILCAR INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

North Dakota	000-51728	43-1481791
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

100 Clark Street St. Charles, Missouri	63301
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: (636) 940-6000

N/A
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2):

- ❑ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ❑ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ❑ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ❑ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

The information set forth in Item 8.01 of this Form 8-K regarding the RemainCo Consulting Agreements and the Subcontractor Agreement is hereby incorporated by reference into this Item 1.01.

Item 1.02 Termination of a Material Definitive Agreement.

The information set forth in Item 8.01 of this Form 8-K is hereby incorporated by reference into this Item 1.02.

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

As previously disclosed and pursuant to an offer letter dated April 26, 2017, the Company's appointment of Mr. John O'Bryan as the Company's Senior Vice President and Chief Commercial Officer became effective on the ARL Closing Date. In connection therewith, Mr. O'Bryan was granted awards of 18,316 stock appreciation rights (" SARs ").

These SARs will vest in three equal increments on June 1, 2018, June 1, 2019 and June 1, 2020. Mr. O'Bryan must remain employed by the Company through each anniversary of the grant date in order to vest in the corresponding number of SARs. The SARs have a term of seven years.

The SARs will be settled in cash and have an exercise price of $35.99, the closing price of the Company's common stock on the date of grant. Upon the exercise of any SAR, the Company shall pay Mr. O'Bryan, in cash, an amount equal to the excess of the aggregate fair market value in respect of which the SARs are being exercised, over the aggregate exercise price of the SARs being exercised. The SARs are subject in all respects to the terms and conditions of the Company's Equity Incentive Plan and the Stock Appreciation Rights Agreement evidencing the grant, which contain non-solicitation, non-competition and confidentiality provisions.

Item 5.07. Submission of Matters to a Vote of Security Holders.

The Company held its annual meeting of shareholders (the Annual Meeting) on June 6, 2017. At the Annual Meeting, shareholders voted on the following proposals and cast their votes as described below.

Proposal 1

The individuals listed below were elected at the Annual Meeting to serve on the Company's Board of Directors until the next annual meeting of shareholders or until their respective successors are duly elected and qualified.

Nominee	For	Against	Abstentions	Broker Non-Votes
SungHwan Cho	13,716,448	2,689,896	27,652	—
James C. Pontious	16,242,879	163,604	27,513	—
J. Mike Laisure	16,126,078	281,646	26,272	—
Harold First	16,038,318	367,418	28,260	—
Jonathan Frates	13,416,515	2,989,969	27,512	—
Michael Nevin	13,420,720	2,985,597	27,679	—

Proposal 2

An advisory vote on executive compensation, as described in the proxy materials. This proposal was approved.

For	Against	Abstentions	Broker Non-Votes
16,017,819	354,666	61,511	—

Proposal 3

An advisory vote regarding the frequency of holding a nonbinding advisory vote on executive compensation, as described in the proxy materials. "1 year" was approved.

1 Year	2 Years	3 Years	Abstentions	Broker Non-Votes
15,646,629	95,899	647,107	44,361	—

In light of these results, and consistent with the Company's recommendation, the Company will hold an advisory vote on executive compensation every year.

Item 7.01 Regulation FD Disclosure.

On June 6, 2017, American Railcar Industries, Inc. (" ARI " or the " Company ") issued a press release announcing the launch of in-house management of its railcar leasing business and increases to its sales force. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein in its entirety by reference.

Limitation on Incorporation by Reference. The information furnished in this Item 7.01, including the press release attached hereto as Exhibit 99.1, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the Exchange Act), or otherwise subject to the liabilities of that section, nor shall such information be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended (the Securities Act), or the Exchange Act, except as expressly set forth by specific reference in such a filing.

Cautionary Note Regarding Forward-Looking Statements. Except for historical information contained in the press release attached as Exhibit 99.1 hereto, the press release contains forward-looking statements that involve certain risks and uncertainties that could cause actual results to differ materially from those expressed or implied by these statements. Please refer to the cautionary notes in the press release regarding these forward-looking statements.

Item 8.01 Other Events.

As previously disclosed, on December 16, 2016, ARI entered into a railcar management transition agreement (the " Transition Agreement ") with American Railcar Leasing LLC (" ARL ") in anticipation of the expected sale of ARL (the " ARL Sale ") to SMBC Rail Services LLC (" Buyer "). The Transition Agreement, among other things, addresses the proposed transition, from ARL to ARI following the ARL Sale, of the management of railcars owned by ARI (the " ARI Railcars ") and railcars owned by ARI's subsidiary, Longtrain Leasing III, LLC (" Longtrain ") (the " Longtrain Railcars "). American Entertainment

Properties Corporation (" AEPC ") and SMRSH LLC, an affiliate of Buyer, are also parties to the Transition Agreement for the limited purposes previously disclosed. Immediately prior to the ARL Sale, ARL and its subsidiaries were controlled by Mr. Carl Icahn, ARI's principal beneficial stockholder, through Icahn Enterprises L.P. Following the ARL Sale, ARL will be controlled by Buyer. AEPC is controlled by Mr. Icahn.

The ARL Sale was consummated (the " ARL Closing ") on June 1, 2017 (the " ARL Closing Date "). In connection with the ARL Closing, ARI entered into the agreements described below on the ARL Closing Date:

- The Transition Agreement was amended by a Joinder and Amendment to the Transition Agreement, principally to join ACF Industries, LLC, a company controlled by Mr. Icahn (" ACF ") as a party thereto, to address certain ACF books and records in the possession of ARL.

- ARI, ARL, AEPC and AEP Rail Corp., a company controlled by Mr. Icahn (" AEP Rail "), entered into an Electronic Mail Access Agreement that addresses procedures for the handling of certain electronic mail records of the parties in the possession and control of ARL prior to the ARL Closing.

- ARI entered into substantially identical consulting services agreements (each, a " RemainCo Consulting Agreement " and, collectively, the " RemainCo Consulting Agreements ") with each of AEPC RemainCo LLC (a wholly-owned subsidiary of AEPC) and AEP Rail RemainCo LLC (a wholly-owned subsidiary of AEP Rail) (each, a " RemainCo " and, collectively, the " RemainCos "). The RemainCos collectively own approximately 4,600 railcars that, pursuant to the terms and conditions of the purchase agreement governing the ARL Sale, may be sold to Buyer over a period of three years after the ARL Closing Date. Under the RemainCo Consulting Agreements, ARI has agreed to provide to each RemainCo, upon each RemainCo's request, certain consulting services and facilitate communications among (i) each RemainCo, (ii) an unaffiliated, third party consultant engaged to assist each RemainCo to perform its duties regarding the inspection, testing and, if necessary, repair of railcars in accordance with the Federal Railroad Administration directive released September 30, 2016 and subsequently revised and superseded on November 18, 2016 (the " Directive Duties "), (iii) ARL, as manager of each RemainCo's railcars (other than in respect of the Directive Duties), and (iv) other parties (collectively referred to as " Services "). In exchange for the Services to be performed under the RemainCo Consulting Agreements, each RemainCo will pay to ARI a total weekly fee calculated based on employee hours worked multiplied by an agreed upon rate for the Services performed. In addition, each RemainCo will reimburse ARI for all reasonable and documented costs and expenses incurred in accordance with each RemainCo Consulting Agreement. Each RemainCo Consulting Agreement is terminable by ARI or the applicable RemainCo upon five business days' prior written notice with respect to any or all of the Services.

Effective upon the ARL Closing, certain agreements between ARI and its subsidiaries, on the one hand, and ARL, on the other hand, were automatically terminated, and the obligations thereunder discharged and released, all subject to the terms and conditions of the Transition Agreement, including:

- the Railcar Services Agreement, dated April 15, 2011 (as amended), between ARI and ARL, pursuant to which ARI provided ARL railcar repair, engineering, administrative and other services on an as-needed basis;
- the Consulting Services Agreement, dated as of March 1, 2016, between ARI and ARL, pursuant to which ARI provided legal services to ARL;

- the Trademark License Agreement, dated as of June 30, 2005, between ARI and ARL, pursuant to which ARI granted to ARL a license to use certain ARI trademarks;
- the Consulting Services Agreement, dated as of February 15, 2017, between ARI and ARL, pursuant to which ARI provided customer service and engineering services to ARL upon ARL's request; and
- the Railcar Management Agreement, dated February 29, 2012 (as amended), between ARI and ARL, pursuant to which ARL managed the ARI Railcars and marketed them for sale or lease.

Effective as of the ARL Closing Date, ARI manages the ARI Railcars and markets them for sale or lease.

Pursuant to a Railcar Management Agreement, dated January 29, 2015, between Longtrain and ARL (the " Longtrain RMA "), ARL, as manager, has marketed Longtrain Railcars for lease, and has also arranged for the operation, storage, re-lease, sublease, service, repair, overhaul, replacement and maintenance of the Longtrain Railcars. In addition, a subsidiary of ARL serves as administrator of the accounts used to service the debt under the Longtrain Indenture (as defined below). As previously disclosed, the Transition Agreement, among other things, requires ARI to use commercially reasonable efforts to obtain the consent of noteholders (the " Noteholder Consent ") for ARI to replace ARL as manager of the Longtrain Railcars under that certain Indenture, dated January 29, 2015, between Longtrain and U.S. Bank National Association, as indenture trustee, pursuant to which Longtrain has issued certain notes (the " Longtrain Indenture "), and certain related documents. ARI has no obligation to pay any consent or similar fees in connection with obtaining the Noteholder Consent.

As provided in the Transition Agreement, following the ARL Closing the Longtrain RMA will continue in effect, with ARL remaining as manager of the Longtrain Railcars under the Longtrain RMA and the Longtrain Indenture, unless and until ARI obtains the Noteholder Consent and becomes the manager of the Longtrain Railcars. Further, as contemplated by the Transition Agreement, effective as of the ARL Closing Date, ARI entered into a sub-contract arrangement with ARL (the " Subcontractor Agreement ") to provide services to ARL covering the day-to-day management of the Longtrain Railcars and the leases associated therewith. Under this arrangement, ARL and its subsidiary, as manager and administrator, respectively, will remain in control of the accounts used to service the debt under the Longtrain Indenture. During the term of the Subcontractor Agreement, management fees and expenses paid to ARL in respect of management duties subcontracted to ARI will be paid by ARL to ARI. The Subcontractor Agreement will continue until the earlier of the date on which ARI becomes the manager of the Longtrain Railcars following receipt of the Noteholder Consent, or the date that is thirty (30) months after the ARL Closing Date, unless terminated earlier pursuant to its terms.

The independent directors of the Company's Audit Committee reviewed and unanimously approved the terms and conditions of, and the Company's entry into, the Company's agreements discussed above with entities controlled by Mr. Icahn.

The description above includes a summary of the terms of the RemainCo Consulting Agreements and Subcontractor Agreement. This description does not purport to be complete and is qualified in its entirety by reference to the text of the RemainCo Consulting Agreements and Subcontractor Agreement, copies of which are attached hereto as Exhibits 10.1, 10.2 and 10.3 and are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
Exhibit 10.1	Consulting Services Agreement, by and between American Railcar Industries, Inc. and AEPC RemainCo LLC, dated June 1, 2017
Exhibit 10.2	Consulting Services Agreement, by and between American Railcar Industries, Inc. and AEP Rail RemainCo LLC, dated June 1, 2017
Exhibit 10.3	Subcontractor Agreement, by and among American Railcar Industries, Inc., American Railcar Leasing LLC and solely for the purposes of Section 5 thereof, American Entertainment Properties Corp., dated June 1, 2017
Exhibit 99.1	Press release dated June 6, 2017 of American Railcar Industries, Inc.

SIGNATURE

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

Date: June 6, 2017

American Railcar Industries, Inc.

By: /s/ Luke M. Williams

Name: Luke M. Williams

Title: Senior Vice President, Chief Financial Officer and Treasurer

EXHIBIT INDEX

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CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (this " Agreement "), dated as of June 1, 2017 (the " Effective Date "), is made and entered into between American Railcar Industries, Inc., a corporation organized under the laws of the State of North Dakota (together with its successors and assigns, the " Consultant "), and AEPC RemainCo LLC, a limited liability company organized under the laws of the State of Delaware (together with its Subsidiaries, and its and their respective successors and assigns, the " Company ").

RECITALS

WHEREAS, the Company desires to retain the Consultant to provide the Services (as defined below), and the Consultant is willing to perform such Services, each under the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained, the Company and the Consultant (hereinafter, collectively, the " Parties ", or each, individually, a " Party ") hereby agree as follows:

1. Definitions . As used herein, the following terms shall have the following meanings:

" Affiliate " of any Person means any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control," when used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise. The terms "controlling" and "controlled" have the meanings correlative to the foregoing.

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

" Company " shall have the meaning set forth in the preamble hereof.

" Consultant " shall have the meaning set forth in the preamble hereof.

" Effective Date " shall have the meaning set forth in the preamble hereof.

" Indemnified Party " shall have the meaning set forth in **Section 7** hereof.

" Losses " shall have the meaning set forth in **Section 7** hereof.

" Party " or " Parties " shall have the meaning set forth in the recitals hereof.

" Person " means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or other entity, or governmental authority.

" Related Party " means the officers, directors, stockholders, employees, agents, representatives and Affiliates of any Person.

" Services " means the services set forth on Schedule A hereto, as amended from time to time by mutual written agreement of the Parties.

" Subsidiary " means, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership, limited liability company or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

" Term " means the term of the respective obligations of Consultant and Company hereunder, commencing as of the Effective Date and continuing until terminated in accordance with the terms and provisions set forth herein.

2. Engagement .

2.1. The Company hereby engages the Consultant to provide the Services to the Company on the terms and conditions set forth herein and the Consultant hereby accepts such engagement. The Parties acknowledge and agree that in order to provide the Services, the Consultant may designate and cause one or more individuals who are employees of the Consultant or its Subsidiaries to provide the Services to the Company as provided on Schedule A .

2.2. Subject to the terms and provisions hereof, Consultant shall provide or arrange for the provision of the Services to and on behalf of the Company during the Term in the same manner as Consultant performs such services on its own behalf. The Company shall furnish to Consultant all such information as may be reasonably necessary to enable Consultant to provide the Services. Any Service to be provided by Consultant under this Agreement shall be performed by Consultant or any other Person with the capability to provide such Service that Consultant designates to provide such Service.

2.3. Company shall request Services, from time to time, on the form set forth on Schedule B (the " Services Request Form ") and Consultant shall provide such Services pursuant to the terms hereof.

3. Fees and Expenses .

For the Services to be performed hereunder, the Company shall pay to the Consultant the total weekly fee in the amount indicated by the Consultant set forth on each applicable Services Request Form. The weekly fee shall be paid as soon as practicable after the Consultant submits the applicable Services Request Form to Company for payment. In addition, the Company shall reimburse Consultant for all reasonable and documented costs and expenses incurred in accordance with this Agreement.

4. Termination .

This Agreement is terminable by the Consultant or the Company upon five (5) business days' prior written notice with respect to any or all of the Services, which termination shall be effective as of the date as such notice may specify. Notwithstanding the foregoing, the obligation to pay any fees and expenses incurred by Company through the date of termination of this Agreement shall survive such termination and be payable in accordance with **Section 3** or as otherwise agreed by the Parties.

5. Independent Contractor .

5.1. It is understood and acknowledged that the Services which the Consultant will provide to the Company hereunder shall be in the capacity of an independent contractor and not as an employee or agent of the Company. Nothing herein shall be construed to create a joint venture or partnership between the Parties hereto. Nothing in this Agreement shall be deemed or construed to enlarge the fiduciary duties and responsibilities, if any, of the Consultant or any of its Related Parties, including without limitation in any of their respective capacities as members or employees of the Company.

5.2. Consultant shall control the conditions, time, details and means by which Consultant performs the Services.

5.3. Consultant shall have the exclusive right to select, employ, pay, supervise, administer, direct and discharge any of the employees of Consultant who will perform the Services. The Parties acknowledge that employees of Consultant are not, and shall not be deemed to be employees of Company, but are, at all times, employees of Consultant. Consultant shall be solely responsible for paying such employees' compensation and providing to such employees any benefits.

6. Disclaimer; Limitation of Liability .

6.1. The Consultant makes no representations or warranties, express or implied, in respect of the Services to be provided by it hereunder.

6.2. The Consultant and its directors, officers and employees assume no liability hereunder for anything other than to render or stand ready to render the Services specifically called for herein or on any Schedule hereto, and neither the Consultant nor any of its Subsidiaries or Related Parties (other than the Company) shall be responsible hereunder for any action of the Company under any agreements, instruments or documents to which the Company is a party. Neither the Consultant nor any director, officer or employee of the Consultant shall be liable hereunder for or shall have any obligation with regard to any of the liabilities, whether direct or indirect, absolute or contingent, of the Company in connection with such agreements, instruments or documents.

6.3. Neither the Consultant nor any of its Subsidiaries or Related Parties (other than the Company) shall be liable to the Company or any of its Affiliates for any loss, liability, damage or expense arising out of or in connection with the performance of any Services contemplated by this Agreement, unless such loss, liability, damage or expense shall be proven to result directly from the willful misconduct of such person. In no event will the Consultant or any of its Related Parties be liable to the Company for special, indirect, punitive or consequential damages, including, without limitation, loss of profits or lost business, even if the Consultant has been advised of the possibility of such damages. Under no circumstances will the liability of the Consultant or any of its Related Parties exceed, in the aggregate, the fees actually paid to the Consultant hereunder.

6.5. The provisions of this **Section 6** shall survive termination of this Agreement.

7. Indemnification .

Company shall indemnify, defend and hold harmless the Consultant and each of its Related Parties, successors and permitted assigns (each, an " Indemnified Party ") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by an Indemnified Party or awarded against an Indemnified Party in a final judgment (collectively, " Losses "), relating to, arising out of or resulting from any claim of a third party or otherwise arising out of, relating to or occurring in connection with the Services or other matters referred to in or contemplated by this Agreement or the engagement of such Indemnified Party pursuant to, and the performance by such Indemnified Party, of the Services or other matters referred to or contemplated by this Agreement. The Company will not be liable under the foregoing indemnification provision to the extent that any Losses are determined by a court, in a final judgment, to have resulted primarily from the willful misconduct of such Indemnified Party. The reimbursement and indemnity obligations of the Company, under this **Section 7** shall be in addition to any liability which the Company may otherwise have. The provisions of this **Section 7** shall survive termination of this Agreement.

8. Permissible Activities; Non-Exclusive .

Nothing herein shall in any way preclude the Consultant or its Affiliates or their respective Related Parties from engaging in any business activities or from performing services for its or their own account or for the account of others, including without limitation companies which may be in competition with the business conducted by the Company and any of its Affiliates. Nothing contained herein prohibits the engagement of another consultant to represent the Company in any matter by, and in the discretion of, the management of the Company or a governing body of the Company, and nothing contained herein constitutes a representation that the Company will request that any Services be performed by the Consultant pursuant to this Agreement or otherwise.

9. Entire Agreement .

This Agreement, including and together with any related schedules, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

10. Notices .

Any notice, certificate, document, acceptance or report required or permitted to be given by either party hereto to the other party shall be in writing and shall be deemed delivered when deposited in the United States mails, first class postage prepaid, or when delivered personally, or reputable air courier, addressed as follows:

If to the Company:

AEPC RemainCo LLC
C/O Icahn Enterprises L.P.
767 Fifth Avenue, Suite 4700
New York, New York 10153
Attention: Keith Cozza

with a copy to:
Icahn Enterprises L.P.
767 Fifth Avenue, Suite 4700
New York, New York 10153
Attention: Legal Department

If to the Consultant:

American Railcar Industries, Inc.
100 Clark Street
St. Charles, Missouri 63301

11. Severability .

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

12. Amendments .

No amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless it is in writing and signed by each Party.

13. Waiver .

No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

14. Successors and Assigns .

This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

15. No Third-Party Beneficiaries .

This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

16. GOVERNING LAW .

THIS AGREEMENT AND ALL RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CHOICE OF LAW PRINCIPLES) APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED THEREIN.

17. CONSENT TO JURISDICTION.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST THE COMPANY OR THE ADMINISTRATOR ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY TRANSACTION CONTEMPLATED HEREBY, MUST BE INSTITUTED ONLY IN ANY

FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, STATE OF NEW YORK AND ADMINISTRATOR AND COMPANY EACH WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING AND, SOLELY FOR THE PURPOSES OF ENFORCING THIS AGREEMENT, ADMINISTRATOR AND COMPANY EACH IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING.

18. WAIVER OF JURY TRIAL .

EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, AS AGAINST THE OTHER PARTY HERETO, ANY RIGHTS IT MAY HAVE TO A JURY TRIAL IN RESPECT OF ANY CIVIL ACTION OR PROCEEDING (WHETHER ARISING IN CONTRACT OR TORT OR OTHERWISE), INCLUDING ANY COUNTERCLAIM, ARISING UNDER OR RELATING TO THIS AGREEMENT, INCLUDING IN RESPECT OF THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT HEREOF.

19. Headings .

The descriptive headings of the several subsections and articles of this Agreement are inserted for convenience only and do not constitute part of this Agreement.

20. No Strict Construction .

The Parties to this Agreement have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

21. Counterparts .

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in **Section 9** , a signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

22. Force Majeure .

Neither party hereto shall be deemed to be in breach or in violation of the Agreement if such Person is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including acts of God, strikes, fires, storms, insurrections, public disturbances, natural disasters, embargoes, explosions, riots, wars, acts of terrorism or any regulation of any federal, state or local government or any agency thereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company and the Consultant have caused this Agreement to be duly executed and delivered on the date first above written.

AEPC REMAINCO LLC

By_____
Name:
Title:

AMERICAN RAILCAR INDUSTRIES, INC.

By_____
Name:
Title:

CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (this " Agreement "), dated as of June 1, 2017 (the " Effective Date "), is made and entered into between American Railcar Industries, Inc., a corporation organized under the laws of the State of North Dakota (together with its successors and assigns, the " Consultant "), and AEP Rail RemainCo LLC, a limited liability company organized under the laws of the State of Delaware (together with its Subsidiaries, and its and their respective successors and assigns, the " Company ").

RECITALS

WHEREAS, the Company desires to retain the Consultant to provide the Services (as defined below), and the Consultant is willing to perform such Services, each under the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained, the Company and the Consultant (hereinafter, collectively, the " Parties ", or each, individually, a " Party ") hereby agree as follows:

1. Definitions . As used herein, the following terms shall have the following meanings:

" Affiliate " of any Person means any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control," when used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise. The terms "controlling" and "controlled" have the meanings correlative to the foregoing.

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

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" Indemnified Party " shall have the meaning set forth in **Section 7** hereof.

" Losses " shall have the meaning set forth in **Section 7** hereof.

" Party " or " Parties " shall have the meaning set forth in the recitals hereof.

" Person " means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or other entity, or governmental authority.

" Related Party " means the officers, directors, stockholders, employees, agents, representatives and Affiliates of any Person.

" Services " means the services set forth on Schedule A hereto, as amended from time to time by mutual written agreement of the Parties.

" Subsidiary " means, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership, limited liability company or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

" Term " means the term of the respective obligations of Consultant and Company hereunder, commencing as of the Effective Date and continuing until terminated in accordance with the terms and provisions set forth herein.

2. Engagement .

2.1. The Company hereby engages the Consultant to provide the Services to the Company on the terms and conditions set forth herein and the Consultant hereby accepts such engagement. The Parties acknowledge and agree that in order to provide the Services, the Consultant may designate and cause one or more individuals who are employees of the Consultant or its Subsidiaries to provide the Services to the Company as provided on Schedule A .

2.2. Subject to the terms and provisions hereof, Consultant shall provide or arrange for the provision of the Services to and on behalf of the Company during the Term in the same manner as Consultant performs such services on its own behalf. The Company shall furnish to Consultant all such information as may be reasonably necessary to enable Consultant to provide the Services. Any Service to be provided by Consultant under this Agreement shall be performed by Consultant or any other Person with the capability to provide such Service that Consultant designates to provide such Service.

2.3. Company shall request Services, from time to time, on the form set forth on Schedule B (the " Services Request Form ") and Consultant shall provide such Services pursuant to the terms hereof.

3. Fees and Expenses .

For the Services to be performed hereunder, the Company shall pay to the Consultant the total weekly fee in the amount indicated by the Consultant set forth on each applicable Services Request Form. The weekly fee shall be paid as soon as practicable after the Consultant submits the applicable Services Request Form to Company for payment. In addition, the Company shall reimburse Consultant for all reasonable and documented costs and expenses incurred in accordance with this Agreement.

4. Termination .

This Agreement is terminable by the Consultant or the Company upon five (5) business days' prior written notice with respect to any or all of the Services, which termination shall be effective as of the date as such notice may specify. Notwithstanding the foregoing, the obligation to pay any fees and expenses incurred by Company through the date of termination of this Agreement shall survive such termination and be payable in accordance with **Section 3** or as otherwise agreed by the Parties.

5. Independent Contractor .

5.1. It is understood and acknowledged that the Services which the Consultant will provide to the Company hereunder shall be in the capacity of an independent contractor and not as an employee or agent of the Company. Nothing herein shall be construed to create a joint venture or partnership between the Parties hereto. Nothing in this Agreement shall be deemed or construed to enlarge the fiduciary duties and responsibilities, if any, of the Consultant or any of its Related Parties, including without limitation in any of their respective capacities as members or employees of the Company.

5.2. Consultant shall control the conditions, time, details and means by which Consultant performs the Services.

5.3. Consultant shall have the exclusive right to select, employ, pay, supervise, administer, direct and discharge any of the employees of Consultant who will perform the Services. The Parties acknowledge that employees of Consultant are not, and shall not be deemed to be employees of Company, but are, at all times, employees of Consultant. Consultant shall be solely responsible for paying such employees' compensation and providing to such employees any benefits.

6. Disclaimer; Limitation of Liability .

6.1. The Consultant makes no representations or warranties, express or implied, in respect of the Services to be provided by it hereunder.

6.2. The Consultant and its directors, officers and employees assume no liability hereunder for anything other than to render or stand ready to render the Services specifically called for herein or on any Schedule hereto, and neither the Consultant nor any of its Subsidiaries or Related Parties (other than the Company) shall be responsible hereunder for any action of the Company under any agreements, instruments or documents to which the Company is a party. Neither the Consultant nor any director, officer or employee of the Consultant shall be liable hereunder for or shall have any obligation with regard to any of the liabilities, whether direct or indirect, absolute or contingent, of the Company in connection with such agreements, instruments or documents.

6.3. Neither the Consultant nor any of its Subsidiaries or Related Parties (other than the Company) shall be liable to the Company or any of its Affiliates for any loss, liability, damage or expense arising out of or in connection with the performance of any Services contemplated by this

Agreement, unless such loss, liability, damage or expense shall be proven to result directly from the willful misconduct of such person. In no event will the Consultant or any of its Related Parties be liable to the Company for special, indirect, punitive or consequential damages, including, without limitation, loss of profits or lost business, even if the Consultant has been advised of the possibility of such damages. Under no circumstances will the liability of the Consultant or any of its Related Parties exceed, in the aggregate, the fees actually paid to the Consultant hereunder.

6.5. The provisions of this **Section 6** shall survive termination of this Agreement.

7. Indemnification .

Company shall indemnify, defend and hold harmless the Consultant and each of its Related Parties, successors and permitted assigns (each, an " Indemnified Party ") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by an Indemnified Party or awarded against an Indemnified Party in a final judgment (collectively, " Losses "), relating to, arising out of or resulting from any claim of a third party or otherwise arising out of, relating to or occurring in connection with the Services or other matters referred to in or contemplated by this Agreement or the engagement of such Indemnified Party pursuant to, and the performance by such Indemnified Party, of the Services or other matters referred to or contemplated by this Agreement. The Company will not be liable under the foregoing indemnification provision to the extent that any Losses are determined by a court, in a final judgment, to have resulted primarily from the willful misconduct of such Indemnified Party. The reimbursement and indemnity obligations of the Company, under this **Section 7** shall be in addition to any liability which the Company may otherwise have. The provisions of this **Section 7** shall survive termination of this Agreement.

8. Permissible Activities; Non-Exclusive .

Nothing herein shall in any way preclude the Consultant or its Affiliates or their respective Related Parties from engaging in any business activities or from performing services for its or their own account or for the account of others, including without limitation companies which may be in competition with the business conducted by the Company and any of its Affiliates. Nothing contained herein prohibits the engagement of another consultant to represent the Company in any matter by, and in the discretion of, the management of the Company or a governing body of the Company, and nothing contained herein constitutes a representation that the Company will request that any Services be performed by the Consultant pursuant to this Agreement or otherwise.

9. Entire Agreement .

This Agreement, including and together with any related schedules, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

10. Notices .

Any notice, certificate, document, acceptance or report required or permitted to be given by either party hereto to the other party shall be in writing and shall be deemed delivered when deposited in the United States mails, first class postage prepaid, or when delivered personally, or reputable air courier, addressed as follows:

If to the Company:

AEP Rail RemainCo LLC
C/O Icahn Enterprises L.P.
767 Fifth Avenue, Suite 4700
New York, New York 10153
Attention: Keith Cozza

with a copy to:
Icahn Enterprises L.P.
767 Fifth Avenue, Suite 4700
New York, New York 10153
Attention: Legal Department

If to the Consultant:

American Railcar Industries, Inc.
100 Clark Street
St. Charles, Missouri 63301

11. Severability .

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, the Parties

shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

12. Amendments .

No amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless it is in writing and signed by each Party.

13. Waiver .

No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

14. Successors and Assigns .

This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

15. No Third-Party Beneficiaries .

This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

16. GOVERNING LAW .

THIS AGREEMENT AND ALL RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CHOICE OF LAW PRINCIPLES) APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED THEREIN.

17. CONSENT TO JURISDICTION.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST THE COMPANY OR THE ADMINISTRATOR ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY TRANSACTION CONTEMPLATED HEREBY, MUST BE INSTITUTED ONLY IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, STATE OF NEW YORK AND ADMINISTRATOR AND COMPANY EACH WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING AND, SOLELY FOR THE PURPOSES OF ENFORCING THIS AGREEMENT,

ADMINISTRATOR AND COMPANY EACH IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING.

18. WAIVER OF JURY TRIAL .

EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, AS AGAINST THE OTHER PARTY HERETO, ANY RIGHTS IT MAY HAVE TO A JURY TRIAL IN RESPECT OF ANY CIVIL ACTION OR PROCEEDING (WHETHER ARISING IN CONTRACT OR TORT OR OTHERWISE), INCLUDING ANY COUNTERCLAIM, ARISING UNDER OR RELATING TO THIS AGREEMENT, INCLUDING IN RESPECT OF THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT HEREOF.

19. Headings .

The descriptive headings of the several subsections and articles of this Agreement are inserted for convenience only and do not constitute part of this Agreement.

20. No Strict Construction .

The Parties to this Agreement have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

21. Counterparts .

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in **Section 9** , a signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

22. Force Majeure .

Neither party hereto shall be deemed to be in breach or in violation of the Agreement if such Person is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including acts of God, strikes, fires, storms, insurrections, public disturbances, natural disasters, embargoes, explosions, riots, wars, acts of terrorism or any regulation of any federal, state or local government or any agency thereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company and the Consultant have caused this Agreement to be duly executed and delivered on the date first above written.

AEP RAIL REMAINCO LLC

By_____
Name:
Title:

AMERICAN RAILCAR INDUSTRIES, INC.

By_____
Name:
Title:

SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement (the " Agreement ") is made as of June 1, 2017 (the " Effective Date "), by and among American Railcar Leasing LLC, a Delaware limited liability company (" ARL "), American Railcar Industries, Inc., a North Dakota corporation (" ARI "), and solely for the purposes of Section 5 , American Entertainment Properties Corp. (" AEPC "). Defined terms not otherwise defined herein shall have the meaning given to such term in the RMTA (as defined below).

WHEREAS , (i) ARL has acted as Manager under that certain Railcar Management Agreement, dated as of January 29, 2015, by and between Longtrain Leasing III, LLC (" Longtrain ") and ARL (as amended from time to time, the " Management Agreement "), attached as **Exhibit A** hereto, (ii) ARL has performed certain services as Manager with respect to Longtrain's railcars under that certain Collateral Agency Agreement, dated as of July 20, 2004 (as amended from time to time, the " CAA "), attached as **Exhibit B** hereto and (iii) ARL has performed certain services as Manager with respect to Longtrain's railcars under Sections 3.4, 3.5, 3.6, 3.7 and 3.8 of that certain Amended and Restated Lease Administration Agreement, dated October 2, 2016 (as amended from time to time, the " LAA "), attached as **Exhibit C** hereto.

WHEREAS , ARL now desires to engage ARI to assume and perform (i) all of ARL's obligations and duties as the Manager under the Management Agreement other than the Excluded Services (as defined below) (the " RMA Services "), (ii) all of ARL's obligations and duties as the Manager of Longtrain's railcars under the CAA and (iii) all of ARL's obligations and duties as the Manager of Longtrain's railcars under Sections 3.4, 3.5, 3.6, 3.7 and 3.8 of the LAA (collectively, the " Services ");

WHEREAS, ARL and ARI entered into that certain Railcar Management Transition Agreement, dated as of December 16, 2016 (the " RMTA "), to, among other things, facilitate the transition of the management of railcars owned by Longtrain from ARL to ARI;

WHEREAS, Section 5.02(d) of the RMTA provides for a subcontracting arrangement between ARL and ARI and for the parties to work together, in good faith, to enter into a contract to more fully document, in a form reasonably satisfactory to the parties, the subcontractor arrangement;

WHEREAS , this Agreement is the contract that more fully documents the subcontractor arrangement and is intended to fully replace and supersede Section 5.02(d) of the RMTA;

WHEREAS , ARL desires to have ARI assume and perform the Services, ARI wishes to assume and perform the Services, subject to the terms and conditions herein; and

WHEREAS , AEPC desires to acknowledge that the indemnification it provided ARL in the RMTA with respect to the Subcontractor Agreement applies to this Agreement;

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

1. Engagement of ARI as a Subcontractor.

(a) (i) ARL hereby engages ARI to assume and perform the Services during the Term (as defined below) and perform the RMA Services consistently with the Services Standard (as defined in the Management Agreement) and (ii) ARI hereby accepts such assumption and performance and hereby covenants, promises and agrees to assume and perform the Services and agrees to perform the RMA Services consistently with the Services Standard. Notwithstanding the foregoing, the parties hereby agree that during the Term, the term "Other Railcar" in the Management Agreement shall be interpreted to refer to any railcars under ARI's management other than a railcar owned by Longtrain.

(b) ARI shall not be obligated to perform (1) the obligations of ARL set forth in Sections 5.3(b), 7.4 and 7.5 of the Management Agreement and (2) any obligations of ARL Lease Administrators, LLC (" ALLC ") under the CAA and LAA (the " Excluded Services ").

2. Officer's Certificates .

(a) ARI shall deliver to ARL, five (5) Business Days prior to the date the delivery of the Officer's Certificate set forth in Section 7.5 of the Management Agreement is required to be delivered from ARL to Longtrain, a certificate of an authorized officer of ARI stating that (a) the authorized officer signing such officer's certificate has reviewed the relevant terms of this Agreement and the Management Agreement and has made, or caused to be made under such person's supervision, a review of the activities of ARI during the period covered by the financial statements then being furnished by ARL pursuant to Section 7.4 of the Management Agreement, (b) the review has not disclosed the existence of any Manager Termination Event (as defined in the Management Agreement) or, if a Manager Termination Event (as defined in the Management Agreement) exists, describing its nature and what action ARI has taken and is taking with respect thereto, and (c) on the basis of such review, the authorized officer signing such certificate certifies that during such period ARI has fulfilled its duties hereunder in accordance with the terms of this Agreement, except as described in such officer's certificate.

(b) No later than the fifth (5th) Business Day of each calendar month (beginning with the month of July 2017), ARI shall provide ARL with a certificate of an authorized officer of ARI (1) certifying that ARI has performed its obligations and duties under this Agreement and (2) detailing any material written complaint made by any lessee of railcars owned by Longtrain in the prior calendar month regarding ARI's performance under this Agreement (without describing the identity of the lessee) and any material claim or complaint in writing by any noteholder under that certain Indenture, dated January 29, 2015, by and between Longtrain and U.S. Bank National Association, as Indenture Trustee (the " Longtrain Indenture ") regarding this Agreement (without describing the identity of the noteholder).

3. Term and Termination .

(a) The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect thereafter until the earlier of (i) the date that is thirty (30) months after the Effective Date; (ii) the Longtrain Termination Date; (iii) the date upon which ARI's

performance or non-performance has caused a Manager Termination Event (as defined in the Management Agreement); and (iv) the date upon which noteholders constituting the Requisite Majority (as defined in the Longtrain Indenture) have objected to the subcontracting arrangement set forth in this Agreement to ARL or ARI in writing (the " Term "). Notwithstanding the foregoing, in the event that ARL will continue as Manager under the Management Agreement after the termination of this Agreement, this Agreement shall not terminate until ARI has performed its obligations set forth in Section 8 .

(b) Termination under this Agreement shall not affect ARL's rights in and to all deliverables, materials and work product created by ARI pursuant to this Agreement prior to such termination.

4. Compensation of the Subcontractor and Payment Timing .

(a) Notwithstanding the provisions of the Management Agreement that provide for certain fees to be paid to ARL, from and after the Effective Date until this Agreement is terminated, ARL shall as promptly as practicable deliver to ARI any fee, commission, or other payment payable to ARL under one or more provisions of the Management Agreement attributable to the period from and after the Effective Date until this Agreement is terminated, but in no event shall ARL be required to deliver any fee, commission or other payment earlier than five (5) Business Days after the date on which ARL receives such fee, commission or other payment from Longtrain. For the avoidance of doubt, ARL shall not be entitled to keep such fees, commissions or other payments.

(b) In addition to the amounts paid to ARI under subsection (a) above, solely to the extent that expenses are eligible for reimbursement and paid to ARL by Longtrain pursuant to the terms of the Management Agreement, ARL shall as promptly as practicable deliver to ARI reimbursement for any such expenses paid or expended by ARI solely to the extent such expenses were incurred by ARI in its execution of the Services, but in no event shall ARL be required to deliver any expenses paid or expended by ARI earlier than five (5) Business Days after the date on which ARL receives such reimbursement from Longtrain.

(c) To the extent that payments are made to the Lockbox Account (as defined in the LAA) that do not indicate adequate remittance information in order to identify which invoice relates to such payments, ARL and ALLC shall cooperate with ARI, consistent with past practice and in good faith, to identify which invoice relates to such payments as promptly as practicable. In all cases where any payments are to be shared or reapplied among ARL and its Subsidiaries and the ARI Entities, the payments shall first be applied to the oldest unpaid invoices of each of them, pro rata, and then to the next oldest unpaid invoices of each of them, pro rata, and so on.

(d) Each party shall perform its obligations under this Agreement without setoff, deduction, recoupment, or withholding of any kind for amounts owed or payable by the other party whether under this Agreement, applicable law, or otherwise and whether relating to the other party's breach, bankruptcy or otherwise.

(e) If this Agreement terminates, ARL agrees to pay ARI for all fees, commissions, or other payments under the Management Agreement attributable to the period from and after the Effective Date until this Agreement is terminated and all expenses of ARI that are eligible for reimbursement and paid to ARL by Longtrain pursuant to the terms of the Management Agreement, in each case to the extent provided for in this Section 4 prior to the effective date of termination.

5. AEPC Acknowledgment . American Entertainment Properties Corp. (" AEPC ") hereby acknowledges and agrees that this Agreement replaces and supersedes Section 5.02(d) of the RMTA (other than the last sentence thereof). Pursuant to Section 6.01(b) of the RMTA, from and after the Effective Date, AEPC agrees to indemnify, defend, and hold ARL and its Subsidiaries harmless against any and all Losses suffered or incurred by ARL and its Subsidiaries arising out of or relating to this Agreement, any of ARI and its Subsidiaries' (the " ARI Entities ") obligations hereunder and any ARI Entity's acts or omissions with respect thereto, including without limitation, any act or omission or other occurrence constituting (1) a breach or violation of any of the duties of ARL under the Management Agreement or (2) a Manager Termination Event (as defined in the Management Agreement) for purposes of the Management Agreement, and any and all Losses suffered or incurred by ARL under Section 12 of the Management Agreement, except to the extent that such Losses are the result of the fraud, gross negligence or willful misconduct of ARL or any of its Subsidiaries after the Effective Date.

6. Disputes . Any dispute arising under or relating to this Agreement shall be resolved in a federal or state court located in the New York, which shall be the exclusive forum for resolution of any such disputes. Each party hereby consents to jurisdiction in the courts of the New York.

7. WAIVER OF JURY TRIAL . EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR FROM SUCH PARTIES PERFORMANCE UNDER THIS AGREEMENT OR FROM THE FORMATION, BREACH, TERMINATION, VALIDITY, INTERPRETATION OR ENFORCEMENT OF THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES IN RESPECT OF THIS AGREEMENT, OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. EACH PARTY HEREBY FURTHER AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

8. Work Product; ARL's Access . Solely in the event that this Agreement is to be terminated and ARL will continue as Manager under the Management Agreement, ARI hereby agrees that at such time, it will provide to ARL rights to remotely access and use ARI's railcar

management software system used for the management of owned and leased railcar fleets, in object code form, as well as related documentation (collectively, the " ARI Management System ") sufficient to allow ARL to manage Longtrain's railcars under the Management Agreement. The right to access and use the ARI Management System shall survive the termination or expiration of this Agreement until such time as ARL is no longer the Manager under the Management Agreement.

9. Confidentiality . Each party agrees that the provisions of Article VII (Confidentiality) of the RMTA shall apply to any information received by it from the other Party or its Affiliates or Representatives in connection with this Agreement.

10. Rights of the Parties . Nothing expressed or implied in this Agreement is intended or will be construed to confer upon or give any Person, other than the parties, including their respective Subsidiaries, any rights or remedies under or by reason of this Agreement or any of the transactions contemplated hereby.

11. Assignability . The rights and obligations of the parties under this Agreement shall not be assignable by either party without the other party's prior written consent. Notwithstanding the foregoing, without the prior written consent of the other party, each party may at any time, assign, in whole, its rights and obligations pursuant to this Agreement to any subsequent purchaser of all or substantially all of the assets of such party or, in the case of ARI, all or substantially all of the assets of the ARI Entities' leasing business (whether any such sale is structured as a sale of stock, sale of assets, merger, consolidation, share exchange, business combination, reorganization, recapitalization, liquidation, dissolution or otherwise). In addition, notwithstanding the first sentence of this Section 11, ARI may at any time, assign, in whole or in part, its rights and obligations pursuant to this Agreement to one or more of its Subsidiaries (provided such assignment in no way increases, alters or changes any of the obligations hereunder, and provided, further, that no such assignment shall relieve ARI of its obligations hereunder).

12. Waiver . No waiver of any provision of this Agreement or consent to any departure by any party hereto herefrom or therefrom, shall in any event be effective unless the same shall be in writing and signed by both parties and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party hereto to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

13. Force Majeure . Neither party shall be liable for any default or delay in performance of its obligations under this Agreement, if and to the extent that such default or delay is caused by acts beyond the reasonable control of such party that could not have been prevented by reasonable precautions. If such event occurs, the non-performing party will be excused from performance for as long as such circumstances prevail and the party continues to use its commercial best efforts to resolve performance without delay.

14. Survival . Notwithstanding any expiration or termination of this Agreement, the provisions of Sections 4(c) , 4(d) , 4(e) , 5 , 6 , 7 , 8 , 9 and 12 through 22 shall survive such termination and continue in full force and effect.

15. Notices. Any notice, demand, request, or other communication which ARI or ARL may be required or may desire to give hereunder shall be in writing and shall be hand delivered, sent by facsimile or sent by a reputable courier service, addressed as set forth on the signature page hereto, and shall be effective upon actual receipt. The notice addresses on the signature page may be changed at any time by providing written notice to the other party in the manner set forth in this Section 15.

16. Entire Agreement; Amendment. This Agreement contains the entire agreement of the parties and replaces and supersedes all prior negotiations and agreements with respect to the subject matter hereof, including the subcontractor agreement set forth in Section 5.02(d) of the RMTA (other than the last sentence thereof). The parties agree that by negotiating, executing and delivering this Agreement, each has satisfied the obligations in the last sentence of Section 5.02(d) of the RMTA. There are no representations, warranties, covenants, conditions, terms, agreements, promises, understandings, commitments or other arrangements other than those expressly set forth or referenced herein, including the obligations and duties referenced under the Management Agreement, the CAA and the LAA. This Agreement may not be modified or amended by oral agreement, but only by an agreement in writing signed by the parties hereto on or after the date of this Agreement.

17. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the agreement.

18. Relationship of Parties. ARI shall at all times be considered an independent contractor and shall in no sense be considered an employee, representative, partner or agent of ARL. ARL shall not be responsible for any payroll-related taxes related to the performance of the services, including but not limited to, withholding or other taxes related to federal or state income tax, social security benefits or unemployment compensation. Neither party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability on behalf of, or to otherwise bind, the other party.

19. Compliance with Law. ARI agrees to discharge all obligations and perform all services hereunder in accordance with the terms of this Agreement, the Management Agreement, the CAA and the LAA and with all applicable law.

20. Binding Effect. All of the covenants and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, employees or agents, including those by operation of law, merger, consolidation or otherwise.

21. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of New York.

22. Section Titles. The section titles contained in this Agreement are for convenience only and shall be without substantive meaning or content of any kind whatsoever.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF , the parties have executed this Subcontractor Agreement as of the day and year first written above.

AMERICAN RAILCAR LEASING LLC

By: _____
Name:
Title:

AMERICAN RAILCAR INDUSTRIES, INC.

By: _____
Name:
Title:

AMERICAN ENTERTAINMENT PROPERTIES CORP. , solely for the purposes of Section 5

By: _____
Name:
Title:

Exhibit 99.1

NEWS RELEASE

AMERICAN RAILCAR INDUSTRIES, INC.
100 Clark Street, St. Charles Missouri 63301
americanrailcar.com
636.940.6000

AMERICAN RAILCAR INDUSTRIES, INC. ANNOUNCES LAUNCH OF IN-HOUSE MANAGEMENT OF RAILCAR LEASING BUSINESS AND INCREASED SALES FORCE

ST. CHARLES, MO (June 6, 2017) – American Railcar Industries, Inc. (NASDAQ: ARII) ("ARI" or the "Company") is excited to announce that it has begun managing its railcar leasing business in-house. The sale of our former lease fleet manager, American Railcar Leasing LLC (ARL), to SMBC Rail Services LLC was completed on June 1, 2017. ARI will now be able to serve its customers with a complete suite of products and services, including ARI-built railcars for direct sale and lease, in-house lease fleet management, railcar and industrial components, and railcar services.

In planning for this endeavor, ARI has increased its workforce, including by adding staffing to internally manage its own lease fleet and increasing its sales and marketing staff. ARI promoted internal ARI resources, recruited talent from external companies with important rail experience, and hired certain key ARL sales and lease personnel. The Company expects to continue to build out its lease management, sales and marketing team.

Over the past several years, ARI has grown its lease fleet to more than 12,000 railcars. ARI's commitment to building its leasing business is strong and will continue in the future. In the first quarter of 2017, more than half of ARI's railcar production and shipments were for lease. Furthermore, ARI's order backlog of railcars as of March 31, 2017 included 1,199 railcars to be added to the lease fleet in 2017 and beyond.

"We want everyone to know that ***'it's all here'*** at ARI, and we are excited by this opportunity to further enhance our capabilities," said Jeff Hollister, President and CEO of ARI. "The addition of in-house lease fleet management staff and an increase in our sales force will help to further enhance ARI's business model of offering solutions to our customers of railcar products and services over the entire railcar life cycle. This will provide us additional flexibility and more tools that we expect will help us continue to grow our business. "

ARI's heritage covers many years with leadership in all aspects of railcar manufacturing, innovation, creative leasing solutions, and railcar repair services. "It's all here" highlights ARI's ability to provide railcar solutions for all of our customers' needs.

"We are excited to focus on providing a seamless relationship between ARI and our customers," said Mr. Hollister. "These events give us an opportunity to better understand our customer's needs and build deeper relationships. As always, our goal is to listen to our customers, develop solutions to meet their requirements, and deliver high-quality products and services."

About American Railcar Industries, Inc.

ARI is a prominent North American designer and manufacturer of hopper and tank railcars. ARI provides its railcar customers with integrated solutions through a comprehensive set of high quality products and related services. ARI manufactures and sells railcars, custom designed railcar parts, and other industrial products. ARI and its subsidiaries also lease railcars manufactured by the Company to certain markets. In addition, ARI and its subsidiaries provide railcar repair services through its various repair facilities, including mini-shops and mobile units, offering a range of services from full to light repair. More information about American Railcar Industries, Inc. is available on its website at americanrailcar.com or call the Investor Relations Department, 636.940.6000.

Forward Looking Statement Disclaimer

This press release contains statements relating to the Company's objectives, long-term strategies and/or future business prospects, events and plans that are forward-looking statements. Forward-looking statements represent the Company's estimates and assumptions only as of the date of this press release. Such statements include, without limitation, statements regarding: transitioning management of our lease fleet from ARL to in-house, our anticipated lease fleet management capabilities, anticipated benefits regarding the growth of our leasing business and our management and sales teams, expected future trends relating to our industry, products and markets, anticipated customer demand for our products and services, trends relating to our shipments, leasing business, railcar services, revenues, profit margin, capacity, financial condition, and results of operations, our backlog and any implication that our backlog may be indicative of our future revenues, and our strategic objectives and long-term strategies. These forward-looking statements are subject to known and unknown risks and uncertainties that could cause actual results to differ materially from those anticipated. Investors should not place undue reliance on forward-looking statements, which speak only as of the date they are made and are not guarantees of future performance. Potential risks and uncertainties that could adversely affect our business and prospects include without limitation: our prospects in light of the cyclical nature of our business; the health of and prospects for the overall railcar industry; risks relating to transitioning management of our lease fleet from ARL to in-house and the termination of our remaining arrangements with ARL, including the ongoing railcar management agreement pursuant to which ARL remains manager of the railcars held by our subsidiary, Longtrain Leasing III, LLC (LL III), with respect to which we will, in order for ARI to replace ARL as manager of such railcars, require the consent of certain noteholders under an indenture pursuant to which LL III has issued debt (ARI has no obligation to pay any consent or similar fees in connection with obtaining such noteholder consent); risks relating to the subcontractor arrangement we have entered into with ARL for ARI to provide services to ARL covering the day-to-day management of the LL III railcars; risks related to our and our subsidiaries' indebtedness and compliance with covenants contained in our and our subsidiaries' financing arrangements, including the LL III indenture; our compliance with the FRA directive applicable to our railcars, any developments related to the directive and any costs or loss of revenue related thereto; risks relating to successfully transitioning the management of our railcar leasing business in-house and managing our lease fleet; the risk of being unable to market or remarket railcars for sale or lease at favorable prices or on favorable terms or at all; fluctuations in commodity prices, including oil and gas; the impact, costs and expenses of any warranty claims we may be subject to now or in the future; the highly competitive nature of the manufacturing, railcar leasing and railcar services industries; the variable purchase patterns of our railcar customers and the timing of completion, customer acceptance and shipment of orders, as well as the mix of railcars for lease versus direct sale; risks relating to our compliance with, and the overall railcar industry's implementation of, United States and Canadian regulations related to the transportation of flammable liquids by rail; our ability to manage overhead and variations in

production rates; our ability to recruit, retain and train qualified personnel; the impact of any economic downturn, adverse market conditions or restricted credit markets; our reliance upon a small number of customers that represent a large percentage of our revenues and backlog; fluctuations in the costs of raw materials, including steel and railcar components, and delays in the delivery of such raw materials and components; fluctuations in the supply of components and raw materials we use in railcar manufacturing; the ongoing risks related to our relationship with Mr. Carl Icahn, our principal beneficial stockholder through Icahn Enterprises L.P. (IELP), and certain of his affiliates; the risks associated with ongoing compliance with environmental, health, safety, and regulatory laws and regulations, which may be subject to change; the impact, costs and expenses of any litigation we may be subject to now or in the future; the sufficiency of our liquidity and capital resources, including long-term capital needs to support the growth of our lease fleet; the impact of repurchases pursuant to our Stock Repurchase Program on our current liquidity and the ownership percentage of our principal beneficial stockholder through IELP, Mr. Carl Icahn; the risks associated with our current joint ventures and anticipated capital needs of, and production capabilities at our joint ventures; the conversion of our railcar backlog into revenues equal to our reported estimated backlog value; the risks and impact associated with any potential joint ventures, acquisitions, strategic opportunities, dispositions or new business endeavors; the integration with other systems and ongoing management of our new enterprise resource planning system; and the additional risk factors described in ARI's filings with the Securities and Exchange Commission. The Company expressly disclaims any duty to provide updates to any forward-looking statements made in this press release, whether as a result of new information, future events or otherwise.