

# **FREIGHTCAR AMERICA, INC.**

## **CORPORATE GOVERNANCE GUIDELINES**

**Effective December 2, 2010**

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### **I. Purpose**

The Board of Directors (the “Board”) of FreightCar America, Inc. (the “Company”) has adopted these Corporate Governance Guidelines for the effective management of the Company. The Board may modify these guidelines from time to time.

### **II. Director Responsibilities**

The basic responsibility of the directors is to exercise their reasonable business judgment on behalf of the Company and its stockholders. The duties of the Board (acting through its committees in certain instances) include the following:

- overseeing the Company’s management and the conduct of the Company’s business;
- reviewing and, where appropriate, approving the Company’s major financial and business strategies, objectives, plans and actions;
- risk oversight;
- reviewing and, where appropriate, approving major changes in auditing and accounting principles and practices to be used in the preparation of the Company’s financial statements;
- evaluating the performance and approving the compensation of the Chief Executive Officer (the “CEO”) and, with the advice of the CEO, regularly evaluating the performance of other members of senior management; and
- planning for CEO succession and monitoring the Company’s succession plan for other members of senior management.

The directors are expected to act ethically at all times and to adhere to the Company’s Code of Business Conduct and Ethics.

### **III. Director Qualifications and Board Composition**

#### ***Director Qualifications***

A majority of the Board will consist of directors who meet the criteria for independence established by The NASDAQ Stock Market, LLC (“NASDAQ”). The Nominating and Corporate Governance Committee will review with the Board annually these criteria for determining director independence.

The Board must be comprised of members possessing high personal and professional ethics, integrity and values, and be committed to representing the long-term interests of the stockholders. Directors must also have an inquisitive and objective perspective, practical wisdom and mature judgment. Directors should also possess a broad range of skills, expertise, industry knowledge and contacts useful to the Company’s business. Finally, directors must be willing to devote sufficient time to carrying out their duties effectively, and should be committed to serving on the Board for an extended period of time.

The Nominating and Corporate Governance Committee shall review annually (a) the leadership structure of the Board, including whether separation of the positions of Chairman of the Board and CEO is appropriate given the specific characteristics or circumstances of the Company, (b) the existing composition of the Board as a whole, including the mix of skills, experience and other qualities of the Board at such time, and (c) the particular attributes that would be most beneficial to the Company in future Board members. The goal of the Nominating and Corporate Governance Committee shall be to maintain a strong and experienced Board by continually assessing, for each current and potential director, (i) independence and commitment to the Company; (ii) the specific experience, qualifications, attributes or skills that led to the conclusion that each director should serve on the Board in light of the Company’s business and structure; (iii) current responsibilities and time available for service; and (iv) ability to work with the other directors as an effective group. Subject to approval by the Board, the Nominating and Corporate Governance Committee shall establish and periodically update the criteria for Board membership and selection of new directors.

#### ***Recommendations and Nominations of Director Nominees***

The Nominating and Corporate Governance Committee shall solicit and receive recommendations, and review qualifications of, potential candidates to serve on the Board. The Nominating and Corporate Governance Committee shall recommend to the full Board certain director candidates for election to the Board, which may include candidates recommended by stockholders, provided that the recommending stockholders have complied with the applicable procedures for recommending Board nominees.

#### ***Board Size***

The Board should be comprised of a sufficient number of directors to enable the Board to properly perform its responsibilities and achieve its governance objectives and goals. The Board should be of a size sufficient to permit substantive discussions in which each director can

participate meaningfully, and large enough to permit well-functioning committees. The Nominating and Corporate Governance Committee is responsible for reviewing, on an annual basis, the current size of the Board and may make any recommendations regarding the appropriate size of the Board.

### ***Term, Retirement and Contingent Resignation***

The Board does not believe that a formal rotation process or term limits for its directors would be appropriate for the Company. Rather, the Board believes that it is important to monitor overall Board composition and performance and to have a process for bringing in new members to address the changing needs of the Company.

The Board does not have an age limit or a mandatory retirement policy for directors.

Each director must submit a contingent resignation from the Board, which will become effective in the following situations:

- If a majority of the shares in an uncontested election are “withheld” from or voted “against” the director’s election and the Board accepts the resignation following the election; or
- If the director experiences a change in his or her principal employment status (other than retirement) and the Board accepts the resignation following the change in status.

### ***Other Commitments***

The Board recognizes that members of the Board benefit from service on the boards of other companies, including companies in the industry in which the Company operates. The Company encourages that service but also believes it is critical that directors have the opportunity to dedicate sufficient time to their service on the Board.

Accordingly:

- A director may serve as a member of a board of directors or as an officer of another entity operating in the same industry as the Company (but not a direct competitor of the Company) and, absent an express determination by the Board to the contrary, may be deemed an independent director of the Company.
- Any director who is also an employee of the Company shall serve on no more than one (1) other public company board in addition to the Board.
- It is recommended that directors who are not employees of the Company serve on no more than three (3) public company boards in addition to the Board.
- No officer of the Company shall serve on the compensation committee of any other public company board.
- Unless the Board otherwise approves, directors on the Company’s Audit Committee

shall serve on no more than two (2) audit committees of public company boards in addition to the Company's Audit Committee.

A director may accept an offer of directorship on another public company board only upon prior written notice to the Board.

For purposes of this section, "public company board" shall mean a board of directors of a company with equity securities registered pursuant to Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934, as amended.

#### **IV. Meetings**

Directors are expected to attend as many Board meetings and meetings of committees on which they serve as possible, and to spend the appropriate time needed and meet as frequently as necessary to discharge their responsibilities. In assessing whether a director should be re-nominated for election to the Board, the Nominating and Corporate Governance Committee will take into account the director's attendance at past Board meetings. Directors are expected to attend all annual and special meetings of Company stockholders.

The Chairman of the Board, in consultation with senior management, will establish the agenda for each Board meeting. Each Board member is free to raise at any Board meeting subjects that are not on the agenda for that meeting. Meeting materials will generally be distributed to the directors reasonably in advance of each regular Board or committee meeting. Directors are expected to be prepared for meetings by reviewing all advance materials.

The Board will review the Company's long-term strategic plans and the principal issues that the Company will face in the future during at least one Board meeting each year.

The independent directors will meet in separate executive sessions without the presence of non-independent directors at least twice each year.

#### **V. Board Committees**

The Board has the authority to establish committees for any purpose it deems appropriate. The Board currently has the following standing committees: Audit Committee, Compensation Committee, Nominating and Corporate Governance Committee, and Strategy and Growth Committee.

Each committee will have its own charter. The charters will set forth the purposes, goals and responsibilities of the committees as well as qualifications for committee membership, procedures for committee member appointment and removal, committee structure and operations and committee reporting to the Board. The charters will also provide that each committee will annually evaluate the adequacy of its charter and its performance.

All of the members of the Audit Committee, the Compensation Committee and the Nominating and Corporate Governance Committee will be independent directors in accordance with the criteria established by the Securities and Exchange Commission, NASDAQ and any

other applicable governmental or regulatory authorities. Members of the Strategy and Growth Committee need not be independent directors.

The Board will appoint committee members and approve committee chairpersons upon recommendation of the Nominating and Corporate Governance Committee with consideration of the desires of individual directors. The Board may, from time to time, establish or maintain additional committees as necessary or appropriate.

The chairperson of each committee, in consultation with the committee members, will determine the frequency and length of the committee meetings consistent with any requirements set forth in the committee's charter. Each committee chairperson, in consultation with management and other members of the committee, will set the agenda for his or her respective committee.

## **VI. Director Access to Officers, Employees and Independent Advisors**

Directors shall have full access to officers and employees of the Company, but will use their judgment to ensure that any such contact is not disruptive to business operations. Non-employee directors are encouraged to consult with employees of the Company without senior management present.

The Board may invite members of senior management or other key personnel of the Company to Board and committee meetings to make presentations and provide additional insight on items being discussed.

The Board, its committees and the non-employee directors shall have the right at any time to retain independent outside financial, legal or other advisors as they may deem necessary, without the necessity of consulting with or obtaining the prior approval of any officer of the Company.

## **VII. Communications to the Board, Independent Directors or the Audit Committee**

Interested persons may communicate to the Board, the independent directors or the Audit Committee in writing to FreightCar America, Inc., 3422 Old Capitol Trail, Ste. 1450, Wilmington, Delaware 19808-6192, to the attention of either the Chairman of the Board (for the Board or the independent directors) or the Chairperson of the Audit Committee (for the Audit Committee).

Any submissions to the Board, the independent directors or the Audit Committee may be made on an anonymous and/or confidential basis. The Company is prohibited from retaliating or taking any adverse action against anyone for raising or helping to resolve an integrity concern.

## **VIII. CEO Evaluation and Management Succession**

The CEO shall report directly to the full Board. The Compensation Committee shall conduct an annual review of the CEO's performance, as required in its charter. The Board shall

review the Compensation Committee's report in order to ensure that the CEO is providing the best leadership for the Company in the long- and short-term.

The Board will periodically review with the Compensation Committee and the CEO a succession plan for the CEO and other senior executives of the Company, including (a) profiles of ideal candidates for senior executives in accordance with the Company's business strategy and leadership needs and (b) plans for interim management of the Company in the event that the CEO or any other senior executive retires, becomes disabled or is otherwise unable to fulfill his or her duties. The Board will consider the recommendations and evaluations of potential successors from the CEO and the Compensation Committee, along with a review of any development plans recommended for such individuals.

## **IX. Compensation of Directors**

The Compensation Committee will annually review and recommend to the Board the appropriate compensation for non-employee directors. The Compensation Committee will periodically review how the Company's director compensation practices compare with those of other public and peer group corporations. Any change in Board compensation shall be made upon the recommendation of the Compensation Committee, and following discussion and concurrence by the full Board.

Directors who are officers of the Company shall receive no remuneration from the Company for serving as a director.

## **X. Annual Performance Evaluation**

The Board will conduct an annual evaluation to determine whether the Board and its committees are functioning effectively. The Nominating and Corporate Governance Committee will oversee and prepare the evaluation method and criteria for this annual evaluation. The Nominating and Corporate Governance Committee will collect and submit to the full Board the results of any self-evaluations, peer evaluations and evaluations by any consultant or advisor of the Board, its committees and/or individual directors. The assessment will include director succession planning based on expected future needs of the Board and the Company.

## **XI. Director Orientation and Continuing Education**

All directors are expected to be knowledgeable about the Company and its industry. This knowledge may be gained from attendance at Board meetings, periodic director training sessions, regular meetings with management, reading of appropriate industry, corporate governance and directorship literature and attendance at educational seminars. Management may also conduct orientation sessions for new and continuing directors. Directors are encouraged to participate, at the Company's expense, in continuing director education programs.

## **XII. Recommendations and Nominations of Directors**

All recommendations or proposed nominations for Board membership received by the Company will be referred to the Nominating and Corporate Governance Committee for

consideration. Nominations of persons for Board membership may be made at a meeting of stockholders by or at the direction of the Board or by any stockholder of the Company entitled to vote in the election of directors at the meeting who complies with the notice procedures set forth in the Company's By-Laws. The Nominating and Corporate Governance Committee will also consider recommendations by stockholders for directors to be nominated, provided that any such recommendation complies with the applicable procedures.

The Nominating and Corporate Governance Committee will consider candidates recommended by stockholders using the same criteria as it uses for candidates the committee identifies.

### **XIII. Review of and Changes to the Corporate Governance Guidelines**

The Nominating and Corporate Governance Committee shall be responsible for reviewing these Corporate Governance Guidelines at least annually and recommending any proposed changes to the full Board for approval.

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