

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

**FORM 20-F**

☐ REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934  
OR

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

For the fiscal year ended December 31, 2012

OR

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

OR

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

Date of event requiring this shell company report

For the transition period from to

Commission file number 001-33725

**Textainer Group Holdings Limited**

(Exact name of Registrant as specified in its charter)

Not Applicable

(Translation of Registrant's name into English)

Bermuda

(Jurisdiction of incorporation or organization)

Century House

16 Par-La-Ville Road

Hamilton HM 08

Bermuda

(Address of principal executive offices)

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Hamilton HM 08

Bermuda

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ccm@textainer.com

(Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)

Securities registered or to be registered pursuant to Section 12(b) of the Act.

Title of each class  
Common Shares, \$0.01 par value

Name of each exchange on which registered  
New York Stock Exchange

Securities registered or to be registered pursuant to Section 12(g) of the Act.

None

(Title of Class)

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act.

None

(Title of Class)

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report.

**55,754,529 Common Shares**

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

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. Yes ☐ No ☒

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP ☒ International Financial Reporting Standards as issued by the International Accounting Standards Board ☐ Other ☐

If "Other" has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow. Item 17 ☐ Item 18 ☐

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

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In this Annual Report on Form 20-F, unless indicated otherwise, references to: (1) "Textainer," "TGH," "the Company," "we," "us" and "our" refer, as the context requires, to Textainer Group Holdings Limited, which is the registrant and the issuer of the class of common shares that has been registered pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended, or Textainer Group Holdings Limited and its subsidiaries; (2) "TEU" refers to a "Twenty-Foot Equivalent Unit," which is a unit of measurement used in the container shipping industry to compare shipping containers of various lengths to a standard 20' dry freight container, thus a 20' container is one TEU and a 40' container is two TEU; (3) "CEU" refers to a Cost Equivalent Unit, which is a unit of measurement based on the approximate cost of a container relative to the cost of a standard 20' dry freight container, so the cost of a standard 20' dry freight container is one CEU; the cost of a 40' dry freight container is 1.6 CEU; and the cost of a 40' high cube dry freight container (9'6" high) is 1.7 CEU; (4) "our owned fleet" means the containers we own; (5) "our managed fleet" means the containers we manage that are owned by other container investors; (6) "our fleet" and "our total fleet" mean our owned fleet plus our managed fleet plus any containers we lease from other lessors; (7) "container investors" means the owners of the containers in our managed fleet; and (8) "Trencor" refers to Trencor Ltd., a public South African investment holding company, listed on the JSE Limited in Johannesburg, South Africa, which, together with certain of its subsidiaries, are the discretionary beneficiaries of a trust that indirectly owns a majority of our common shares (such interest, "beneficiary interest"). See Item 4, "Information on the Company" for an explanation of the relationship between Trencor and us.

Dollar amounts in this Annual Report on Form 20-F are expressed in thousands, unless otherwise indicated.

## INFORMATION REGARDING FORWARD-LOOKING STATEMENTS; CAUTIONARY LANGUAGE

This Annual Report on Form 20-F, including the sections entitled Item 3, “*Key Information — Risk Factors*,” and Item 5, “*Operating and Financial Review and Prospects*,” contains forward-looking statements within the “safe harbor” provisions of the U.S. Private Securities Litigation Reform Act of 1995. Forward-looking statements include all statements that are not statements of historical facts and may relate to, but are not limited to, expectations or estimates of future operating results or financial performance, capital expenditures, introduction of new products, regulatory compliance, plans for growth and future operations, as well as assumptions relating to the foregoing. In some cases, you can identify forward-looking statements by terminology such as “may,” “will,” “should,” “could,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “intend,” “potential,” “continue” or the negative of these terms or other similar terminology. Forward-looking statements include, among others, statements regarding: (i) our belief that the outlook for 2013 for our industry remains attractive; (ii) our belief that shipping lines are likely to remain dependent on container lessors for the majority of their container needs due to limitations on both the cash they have available for investment and the funding provided by their banks; (iii) our expectation that shipping lines will continue their recent increase in disposals, which provides us opportunities for purchase leaseback and trading business as well as increases the demand for new replacement containers; (iv) our belief that the container industry’s outlook, coupled with our strong balance sheet and access to financing, attractively positions us to maintain our market leading position; (v) our belief that, while we expect our average utilization in 2013 to be below 2012’s level, it should remain high since 82% of our fleet is subject to long-term and finance leases; (vi) our expectation that we will grow our finance lease and purchase leaseback business in 2013; (vii) our belief that cash flow from operations, proceeds from the sale of containers and borrowing availability under our debt facilities are sufficient to meet our liquidity needs for the next twelve months; and (ix) our expectation that we will generate sufficient operating cash flow to meet our ongoing contractual obligations in the foreseeable future.

Although we do not make forward-looking statements unless we believe we have a reasonable basis for doing so, we cannot guarantee their accuracy, and actual results may differ materially from those we anticipated due to a number of uncertainties, many of which cannot be foreseen. Our actual results could differ materially from those anticipated in these forward-looking statements for many reasons, including, among others, the risks we face that are described in the section entitled Item 3, “*Key Information — Risk Factors*” and elsewhere in this Annual Report on Form 20-F.

We believe that it is important to communicate our future expectations to potential investors, shareholders and other readers. However, there may be events in the future that we are not able to accurately predict or control and that may cause actual events or results to differ materially from the expectations expressed in or implied by our forward-looking statements. The risk factors listed in Item 3, “*Key Information — Risk Factors*,” as well as any cautionary language in this Annual Report on Form 20-F, provide examples of risks, uncertainties and events that may cause our actual results to differ materially from the expectations we describe in our forward-looking statements. Before you decide to buy, hold or sell our common shares, you should be aware that the occurrence of the events described in Item 3, “*Key Information — Risk Factors*” and elsewhere in this Annual Report on Form 20-F could negatively impact our business, cash flows, results of operations, financial condition and share price. Potential investors, shareholders and other readers should not place undue reliance on our forward-looking statements.

Forward-looking statements regarding our present plans or expectations involve risks and uncertainties relative to return expectations and related allocation of resources, and changing economic or competitive conditions which could cause actual results to differ from present plans or expectations, and such differences could be material. Similarly, forward-looking statements regarding our present expectations for operating results and cash flow involve risks and uncertainties related to factors such as utilization rates, per diem rates, container prices, demand for containers by container shipping lines, supply and other factors discussed under Item 3, “*Key Information — Risk Factors*” or elsewhere in this Annual Report on Form 20-F, which could also cause actual results to differ from present plans. Such differences could be material.

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All future written and oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. New risks and uncertainties arise from time to time, and we cannot predict those events or how they may affect us. We assume no obligation to, and do not plan to, update any forward-looking statements after the date of this Annual Report on Form 20-F as a result of new information, future events or developments, except as required by federal securities laws. You should read this Annual Report on Form 20-F and the documents that we reference and have filed as exhibits with the understanding that we cannot guarantee future results, levels of activity, performance or achievements and that actual results may differ materially from what we expect.

Industry data and other statistical information used in this Annual Report on Form 20-F are based on independent publications, reports by market research firms or other published independent sources. Some data are also based on our good faith estimates, derived from our review of internal surveys and the independent sources listed above. Although we believe these sources are reliable, we have not independently verified the information.

In this Annual Report on Form 20-F, unless otherwise specified, all monetary amounts are in U.S. dollars. To the extent that any monetary amounts are not denominated in U.S. dollars, they have been translated into U.S. dollars in accordance with our accounting policies as described in Item 18, “*Financial Statements*” in this Annual Report on Form 20-F.

## PART I

### ITEM 1. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT AND ADVISERS

Not applicable.

### ITEM 2. OFFER STATISTICS AND EXPECTED TIMETABLE

Not applicable.

### ITEM 3. KEY INFORMATION

#### A. Selected Financial Data

The selected financial data presented below under the heading “Statement of Income Data” for the years ended December 31, 2012, 2011 and 2010 and under the heading “Balance Sheet Data” as of December 31, 2012 and 2011 have been derived from our audited consolidated financial statements included in Item 18, “*Financial Statements*” in this Annual Report on Form 20-F. The selected financial data presented below under the heading “Statement of Income Data” for the years ended December 31, 2009 and 2008 and under the heading “Balance Sheet Data” as of December 31, 2010, 2009 and 2008 are audited and have been derived from our audited consolidated financial statements not included in this Annual Report on Form 20-F. The data presented below under the heading “Other Financial and Operating Data” are not audited. Historical results are not necessarily indicative of the results of operations to be expected in future periods. You should read the selected consolidated financial data and operating data presented below in conjunction with Item 5, “*Operating and Financial Review and Prospects*” and with Item 18, “*Financial Statements*” in this Annual Report on Form 20-F.

	Fiscal Years Ended December 31,				
	2012	2011	2010	2009	2008
(Dollars in thousands, except per share data)					
<b>Statement of Income Data:</b>					
Revenues:					
Lease rental income	\$383,989	\$327,627	\$235,827	\$189,779	\$198,600
Management fees	26,169	29,324	29,137	25,228	28,603
Trading container sales proceeds	42,099	34,214	11,291	11,843	36,294
Gains on sale of containers, net	34,837	31,631	27,624	12,111	17,821
Total revenues	<u>487,094</u>	<u>422,796</u>	<u>303,879</u>	<u>238,961</u>	<u>281,318</u>
Operating expenses:					
Direct container expense	25,173	18,307	25,542	39,062	25,709
Cost of trading containers sold	36,810	29,456	9,046	9,721	28,581
Depreciation expense	104,844	83,177	58,972	48,473	48,900
Amortization expense	5,020	6,110	6,544	7,080	6,979
General and administrative expense	23,015	23,495	21,670	20,304	20,991
Short-term incentive compensation expense	5,310	4,921	4,805	2,924	4,257
Long-term incentive compensation expense	6,950	5,950	5,318	3,575	3,148
Bad debt expense, net	1,525	3,007	145	3,304	3,663
Gain on sale of containers to noncontrolling interest	—	(19,773)	—	—	—
Total operating expenses	<u>208,647</u>	<u>154,650</u>	<u>132,042</u>	<u>134,443</u>	<u>142,228</u>
Income from operations	<u>278,447</u>	<u>268,146</u>	<u>171,837</u>	<u>104,518</u>	<u>139,090</u>

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	Fiscal Years Ended December 31,				
	2012	2011	2010	2009	2008
	(Dollars in thousands, except per share data)				
Other income (expense):					
Interest expense	(72,886)	(44,891)	(18,151)	(11,750)	(26,227)
Gain on early extinguishment of debt	—	—	—	19,398	—
Interest income	146	32	27	61	1,482
Realized losses on interest rate swaps and caps, net	(10,163)	(10,824)	(9,844)	(14,608)	(5,986)
Unrealized gains (losses) on interest rate swaps and caps, net	5,527	(3,849)	(4,021)	11,147	(15,105)
Bargain purchase gain	9,441	—	—	—	—
Other, net	44	(115)	(1,591)	35	(203)
Net other (expense) income	(67,891)	(59,647)	(33,580)	4,283	(46,039)
Income before income tax and noncontrolling interest	210,556	208,499	138,257	108,801	93,051
Income tax (expense) benefit	(5,493)	(4,481)	(4,493)	(3,471)	871
Net income	205,063	204,018	133,764	105,330	93,922
Less: Net loss (income) attributable to the noncontrolling interest	1,887	(14,412)	(13,733)	(14,554)	(8,681)
Net income attributable to Textainer Group Holdings Limited common shareholders	\$ 206,950	\$ 189,606	\$ 120,031	\$ 90,776	\$ 85,241
Net income per share:					
Basic	\$ 4.04	\$ 3.88	\$ 2.50	\$ 1.90	\$ 1.79
Diluted	\$ 3.96	\$ 3.80	\$ 2.43	\$ 1.88	\$ 1.78
Weighted average shares outstanding:					
Basic	51,277	48,859	48,108	47,761	47,605
Diluted	52,231	49,839	49,307	48,185	47,827
<b>Other Financial and Operating Data (unaudited):</b>					
Cash dividends declared per common share	\$ 1.63	\$ 1.28	\$ 0.99	\$ 0.92	\$ 0.89
Purchase of containers and fixed assets	\$ 1,087,489	\$ 823,694	\$ 402,286	\$ 137,387	\$ 305,251
Utilization rate(1)	97.20%	98.30%	95.40%	87.20%	94.80%
Total fleet in TEU (as of the end of the period)	2,775,034	2,469,039	2,314,219	2,239,037	2,043,778
<b>Balance Sheet Data (as of the end of the period):</b>					
Cash and cash equivalents	\$ 100,127	\$ 74,816	\$ 57,081	\$ 56,819	\$ 74,190
Containers, net	2,916,673	1,903,855	1,437,259	1,061,866	999,411
Net investment in direct financing and sales-type leases	216,887	110,196	91,341	80,551	91,719
Total assets	3,476,080	2,310,204	1,747,207	1,360,023	1,303,767
Long-term debt (including current portion)	2,261,702	1,509,191	889,197	686,896	724,643
Total liabilities	2,429,947	1,625,278	1,076,640	786,758	795,760
Total Textainer Group Holdings Limited shareholders' equity	1,007,503	683,828	583,882	500,313	449,609
Noncontrolling interest	38,630	1,098	86,685	72,952	58,398

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- (1) We measure the utilization rate on the basis of CEU on lease, using the actual number of days on-hire, expressed as a percentage of CEU available for lease, using the actual days available for lease. CEU available for lease excludes CEU that have been manufactured for us but have not been delivered yet to a lessee and CEU designated as held-for-sale units.

**B. Capitalization and Indebtedness**

Not applicable.

**C. Reasons for the Offer and Use of Proceeds**

Not applicable.

**D. Risk Factors**

*An investment in our common shares involves a high degree of risk. You should carefully consider the following risk factors, together with the other information contained elsewhere in this Annual Report on Form 20-F, including our financial statements and the related notes thereto, before you decide to buy, hold or sell our common shares. Any of the risk factors we describe below could adversely affect our business, cash flows, results of operations and financial condition. The market price of our common shares could decline and you may lose some or all of your investment if one or more of these risks and uncertainties develop into actual events.*

**Risks Related to Our Business and Industry**

**The demand for leased containers depends on many factors beyond our control.**

Substantially all of our revenue comes from activities related to the leasing, managing and selling of containers. Our ability to continue successfully leasing containers to container shipping lines, earning management fees on leased containers and sourcing capital required to purchase containers depends, in part, upon the continued demand for leased containers.

Demand for containers depends largely on the rate of world trade and economic growth, with worldwide consumer demand being the most critical factor affecting this growth. Demand for leased containers is also driven by our customers' "lease vs. buy" decisions. Economic downturns in the U.S., Europe, Asia and countries with consumer-oriented economies could result in a reduction in world trade volume and demand by container shipping lines for leased containers. Thus, a decrease in the volume of world trade may adversely affect our utilization and per diem rates and lead to reduced revenue and increased operating expenses (such as storage and repositioning costs), and have an adverse effect on our financial performance. We cannot predict whether, or when, such downturns will occur. Other material factors affecting demand for leased containers, utilization and per diem rates include the following:

- prices of new and used containers;
- economic conditions, competitive pressures and consolidation in the container shipping industry;
- shifting trends and patterns of cargo traffic;
- fluctuations in demand for containerized goods outside their area of production;
- the availability and terms of container financing;
- fluctuations in interest rates and currency exchange rates;
- overcapacity, undercapacity and consolidation of container manufacturers;

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- the lead times required to purchase containers;
- the number of containers purchased by competitors and container lessees;
- container ship fleet overcapacity or undercapacity;
- increased repositioning by container shipping lines of their own empty containers to higher demand locations in lieu of leasing containers;
- consolidation, withdrawal or insolvency of individual container shipping lines;
- import/export tariffs and restrictions;
- customs procedures, foreign exchange controls and other governmental regulations;
- natural disasters that are severe enough to affect local and global economies or interfere with trade, such as the 2011 earthquake and tsunami in Japan; and
- other political and economic factors.

Many of these and other factors affecting the container industry are inherently unpredictable and beyond our control. These factors will vary over time, often quickly and unpredictably, and any change in one or more of these factors may have a material adverse effect on our business and results of operations. In addition, many of these factors also influence the decision by container shipping lines to lease or buy containers. Should one or more of these factors influence container shipping lines to buy a larger percentage of the containers they operate, our utilization rate could decrease, resulting in decreased revenue and increased storage and repositioning costs, which would harm our business, results of operations and financial condition.

### **Any deceleration or reversal of the current domestic and global economic recoveries may materially and negatively impact our business, results of operations, cash flows, financial condition and future prospects.**

The past several years have been characterized by weak domestic and global economic conditions, inefficiencies and uncertainty in the credit markets, a low level of liquidity in many financial markets and extreme volatility in many equity markets and increasing sovereign credit risks. Although these conditions appear to be somewhat abating and domestic and global growth seems to be underway, it is not yet clear whether a sustainable recovery is currently taking place domestically or internationally. Any deceleration or reversal of the relatively slow and modest domestic and global economic recoveries could heighten a number of material risks to our business, results of operations, cash flows and financial condition, as well as our future prospects, including the following:

- Containerized cargo volume growth — A contraction or slowdown in containerized cargo volume growth or negative containerized cargo volume growth would likely create lower utilization, higher direct costs, weaker shipping lines going out of business, pressure for us to offer lease concessions and lead to a reduction in the size of our customers' container fleets.
- Credit availability and access to equity markets — Issues involving liquidity and capital adequacy affecting lenders could affect our ability to fully access our credit facilities or obtain additional debt and could affect the ability of our lenders to meet their funding requirements when we need to borrow. Further, a high level of volatility in the equity markets could make it difficult for us to access the equity markets for additional capital at attractive prices, if at all. If we are unable to obtain credit or access the capital markets, our business could be negatively impacted.
- Credit availability to our customers — We believe that many of our customers are reliant on liquidity from global credit markets and, in some cases, require external financing to fund their operations. As a consequence, if our customers lack liquidity, it would likely negatively impact their ability to pay amounts due to us.



**Lease and/or utilization rates may decrease, which could harm our business, results of operations and financial condition.**

We compete mostly on price and the availability of containers. Lease rates for our containers depend on a large number of factors, including the following:

- the supply of, and demand for, containers available;
- the price of new containers (which is positively correlated with the price of steel);
- the type and length of the lease;
- interest rates and the availability of financing for leasing companies;
- embedded residual assumptions;
- the type and age of the container;
- the location of the container being leased;
- the quantity of containers available for lease by our competitors; and
- lease rates offered by our competitors.

Most of these factors are beyond our control. In addition, lease rates can be negatively impacted by, among other things, the entrance of new leasing companies, overproduction of new containers by factories and the over-buying by shipping lines, leasing competitors and tax-driven container investors. For example, during 2001 and again in the second quarter of 2005, overproduction of new containers, coupled with a build-up of container inventories in Asia by leasing companies and shipping lines, led to decreased utilization rates. Additionally in 2012, container leasing companies, including us, raised substantial amounts in the debt and equity markets and this increased availability of funds, given a limited demand for containers, may contribute to downward pressure on lease rates. The impact to us of any future decrease in lease rates may be more severe than past rate decreases due to the substantial growth in our owned fleet in the past few years and the relatively high prices paid for new containers in the past year that were initially leased at historically high rates. If future market lease rates decrease, revenues generated by our fleet will likely be adversely affected, which could harm our business, results of operations, cash flows and financial condition.

**Lessee defaults may harm our business, results of operations and financial condition by decreasing revenue and increasing storage, repositioning, collection and recovery expenses.**

Our containers are leased to numerous container lessees. Lessees are required to pay rent and to indemnify us for damage to or loss of containers. Lessees may default in paying rent and performing other obligations under their leases. A delay or diminution in amounts received under the leases (including leases on our managed containers), or a default in the performance of maintenance or other lessee obligations under the leases could adversely affect our business, results of operations and financial condition and our ability to make payments on our debt.

We believe that there is the continued risk of lessee defaults in 2013. While shipping lines were generally successful in raising freight rates on the major trade lanes during 2012, most rates have subsequently declined. Additionally, excess vessel capacity due to new ship production and the re-activation of previously laid up vessels will continue to be a factor in 2013. High fuel costs also continue to impact the financial performance of shipping lines. Most major shipping lines reported improved financial performance in 2012 from the large losses suffered in 2011, but profits have been modest and not consistent. While containerized trade grew modestly in 2012, it was not sufficient to fully utilize the increased vessel capacity and some trade lanes experienced trade declines. Existing excess vessel capacity and continued new vessel deliveries are expected to continue to pressure freight rates for some time. As a result we continue to face heightened risk that our financial performance and cash flow could be severely affected by defaults by our customers.

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When lessees default, we may fail to recover all of our containers, and the containers that we do recover may be returned to locations where we will not be able to quickly re-lease or sell them on commercially acceptable terms. We may have to reposition these containers to other places where we can re-lease or sell them, which could be expensive, depending on the locations and distances involved. Following repositioning, we may need to repair the containers and pay container depots for storage until the containers are re-leased. For our owned containers, these costs directly reduce our income and for our managed containers, lessee defaults decrease rental revenue and increase operating expenses, and thus reduce our management fee revenue. While we maintain insurance to cover some defaults, it is subject to large deductible amounts and significant exclusions and, therefore, may not be sufficient to prevent us from suffering material losses. Additionally, this insurance might not be available to us in the future on commercially reasonable terms or at all. Any such future defaults could harm our business, results of operations and financial condition.

**Sustained reduction in the prices of new containers could harm our business, results of operations and financial condition.**

If there is a sustained downturn in new container prices, the lease rates of older, off-lease containers would also be expected to decrease. If there is a sustained reduction in the price of new containers such that the market lease rate for all containers is reduced, this trend could harm our business, results of operations and financial condition, even if this sustained reduction in price would allow us to purchase containers at a lower cost.

**If we are unable to lease our new containers shortly after we purchase them, our business, results of operations, cash flows and financial condition may be harmed.**

Lease rates for new containers are positively correlated to the fluctuations in the price of new containers, which is positively correlated with the price of steel, a major component used in the manufacture of new containers. In the past five years, prices for new standard 20' dry freight containers have moved in a wide range, with prices experiencing increases and decreases over 50% during this time. Our average new container cost per CEU decreased 6.8% during 2012. If we are unable to lease the new containers that we purchase within a short period of time of such purchase, the market price of new containers and the corresponding market lease rates for new containers may decrease, regardless of the higher cost of the previously purchased containers. Additionally, if we believe new container prices are attractive, we may determine to purchase more containers than we have immediate demand for if we expect container prices or lease rates may rise. If prices do not rise or new container demand weakens, we may be unable to lease this speculative inventory on attractive terms or at all. Declines in new container prices, lease rates, or the inability to lease new containers could harm our business, results of operations and financial condition.

**We face risks associated with re-leasing containers after their initial long term lease.**

Containers have a useful economic life that is generally between 12 and 15 years. When we purchase newly produced containers, we typically lease them out under long-term leases with terms of 3 to 5 years at a lease rate that is correlated to the price paid for the container. As containers leased under term leases are not leased out for their full economic life, we face risks associated with re-leasing containers after their initial long term lease at a rate that continues to provide a reasonable economic return based on the initial purchase price of the container. If prevailing container lease rates decline significantly between the time a container is initially leased out and when its initial long term lease expires, or if overall demand for containers declines, we may be unable to earn a sufficient lease rate from the re-leasing of containers when their initial term leases expire. This could materially adversely impact our results and financial performance.

**Sustained reduction in the production of new containers could harm our business, results of operations and financial condition.**

The lack of new production of standard dry freight containers from the fourth quarter of 2008 through the end of 2009, combined with continued retirement of older containers in the ordinary course, led to a decline in

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the world container fleet of approximately 4% in 2009, creating a shortage of containers as worldwide cargo volumes increased by 12.0% in 2010 and 8.6% in 2011. During the period of decline in the world container fleet, container manufacturers lost up to 60% of their skilled work force due to long shutdowns, and had limited production capacity in 2010 as they had to hire and train a new skilled work force. Although manufacturers resumed production in 2011 and continued steady production in 2012, if there is a sustained reduction in the production of new containers, it could impact our ability to expand our fleet, which could harm our business, results of operations and financial condition.

**Further consolidation of container manufacturers or the disruption of manufacturing for the major manufacturers could result in higher new container prices and/or decreased supply of new containers. Any material increase in the cost or reduction in the supply of new containers could harm our business, results of operations and financial condition.**

We currently purchase almost all of our containers from manufacturers based in the People's Republic of China (the "PRC"). If it were to become more expensive for us to procure containers in the PRC or to transport these containers at a low cost from the manufacturer to the locations where they are needed by our container lessees because of changes in exchange rates between the U.S. Dollar and Chinese Yuan, further consolidation among container suppliers, increased tariffs imposed by the U.S. or other governments, increased fuel costs, increased labor costs, or for any other reason, we may have to seek alternative sources of supply. While we are not dependent on any single manufacturer for our supply of containers, we may not be able to make alternative arrangements quickly enough to meet our container needs, and the alternative arrangements may increase our costs.

In particular, the availability and price of containers depend significantly on the capacity and bargaining position of the major container manufacturers. Due to consolidation in the container manufacturing industry, two major manufacturers have approximately 70% of that industry's market share. This market structure led to spikes in container prices in 2011 and in 2012. If the increased cost of purchasing containers is not matched by a corresponding increase in lease rates, our business, results of operations and financial conditions would be harmed.

**A contraction or slowdown in containerized cargo growth or negative containerized cargo growth would lead to a surplus of containers and a lack of storage space, which could negatively impact us.**

We depend on third party depot operators to repair and store our equipment in port areas throughout the world. Growth in the world's container fleet has significantly outpaced growth in depot capacity and even in the current period of historically high utilization, we are experiencing limited depot capacity in certain major port cities, including Singapore, Hong Kong and Pusan. Additionally, the land occupied by depots is increasingly being considered prime real estate, as it is coastal land in or near major cities, and this land may be developed into other uses or there may be increasing restrictions on depot operations by local communities. This could increase depots costs and in some cases force depots to relocate to sites further from the port areas. If these changes affect a large number of our depots, or if we experience a period of lower container utilization, it could significantly increase the cost of maintaining and storing our off-hire containers. Additionally, if depot space is unavailable, we may be unable to accept returned containers from lessees, which may cause us to breach our lease agreements.

**Terrorist attacks, the threat of such attacks or the outbreak of war and hostilities could negatively impact our operations and profitability and may expose us to liability.**

Terrorist attacks and the threat of such attacks have contributed to economic instability in the U.S. and elsewhere, and further acts or threats of terrorism, violence, war or hostilities could similarly affect world trade and the industries in which we and our container lessees operate. For example, worldwide containerized trade

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dramatically decreased in the immediate aftermath of the September 11, 2001 terrorist attacks in the U.S., which affected demand for leased containers. In addition, terrorist attacks, threats of terrorism, violence, war or hostilities may directly impact ports, depots, our facilities or those of our suppliers or container lessees and could impact our sales and our supply chain. A severe disruption to the worldwide ports system and flow of goods could result in a reduction in the level of international trade and lower demand for our containers.

Our lease agreements require our lessees to indemnify us for all costs, liabilities and expenses arising out of the use of our containers, including property damage to the containers, damage to third-party property and personal injury. However, our lessees may not have adequate resources to honor their indemnity obligations after a terrorist attack. Our insurance coverage is limited and is subject to large deductibles and significant exclusions and we have very limited insurance for liability arising from a terrorist attack. Accordingly, we may not be protected from liability (and expenses in defending against claims of liability) arising from a terrorist attack.

**We derive a substantial portion of our leasing revenue from a limited number of container lessees, and the loss of, or reduction in business by, any of these container lessees could harm our business, results of operations and financial condition.**

We have derived, and believe that we will continue to derive, a significant portion of our leasing revenue and cash flow from a limited number of container lessees. Lease billings from our 25 largest container lessees by revenue represented \$457.0 million or 77.3% of the total fleet billings during 2012, with lease billings from our single largest container lessee accounting for \$71.2 million, or 12.0% of container lease billings during such fiscal year. Given the high concentration of our customer base, a default by any of our largest customers would result in a major reduction in our leasing revenue, large repossession expenses, potentially large lost equipment charges and a material adverse impact on our performance and financial condition.

The introduction of very large container ships (10,000 TEU+) on the major trade lanes may lead to further industry consolidation, an even greater reliance by us on our largest customers, and negatively impact the performance of smaller and mid-size shipping lines. Several of the largest shipping lines have invested heavily in these very large ships and reportedly have achieved meaningful unit cost advantages and increased market shares on the major trade lanes. In response, some smaller shipping lines have started to exit the major trade lanes, while others are seeking to form closer operating partnerships.

**We face extensive competition in the container leasing industry and our lessees may decide to buy, rather than lease their containers.**

We may be unable to compete favorably in the highly competitive container leasing and container management businesses. We compete with a relatively small number of major leasing companies, many smaller lessors, companies and financial institutions offering finance leases, and promoters of container ownership and leasing as a tax-efficient investment. Some of these competitors have greater financial resources and access to capital than we do. Additionally, some of these competitors may have large, underutilized inventories of containers, which could, if leased, lead to significant downward pressure on per diem rates, margins and prices of containers. Competition among container leasing companies depends upon many factors, including, among others: per diem rates; supply reliability; lease terms, including lease duration, drop-off restrictions and repair provisions; customer service; and the location, availability, quality and individual characteristics of containers. New entrants into the leasing business may be attracted by the high rate of containerized trade growth and the recent financial performance of the publicly traded leasing companies. New entrants may be willing to offer pricing or other terms that we are unwilling or unable to match. Additionally, the management agreements under which we manage containers for other parties do not restrict these container owners from having other container fleets managed by competing leasing companies or from directly competing with us.

We, like other suppliers of leased containers, are dependent upon decisions by shipping lines to lease rather than buy their container equipment. Shipping lines own a significant amount of the world's intermodal containers

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and effectively compete with us. In part due to constraints on their financing and desire to allocate capital to new ship purchases and port terminals, in recent years, shipping lines have significantly reduced their purchases of new containers. In 2012 approximately 65% of all shipping containers were purchased by leasing companies and in 2013 we estimate that leasing companies might purchase up to 70% of all shipping containers produced. Should shipping lines decide to buy a larger percentage of the containers they operate, our utilization rate would decrease, resulting in decreased leasing revenues, increased storage costs and increased positioning costs. A decrease in the portion of leased containers would also reduce our investment opportunities and significantly constrain our growth.

**Our results of operations are subject to changes resulting from the political and economic policies of the PRC and economic activity in the PRC.**

A substantial portion of our containers are leased out from locations in the PRC. The main manufacturers of containers are also located in the PRC. The political and economic policies of the PRC and the level of economic activity in the PRC may have significant impact on our company and our financial performance.

Changes in the political leadership of the PRC may have a significant effect on laws and policies that impact economic growth and trade and the corresponding need for containers to ship goods from the PRC, including the introduction of measures to control inflation, changes in the rate or method of taxation, and the imposition of additional restrictions on currency conversion, remittances abroad, and foreign investment. Moreover, economic reforms and growth in the PRC have been more successful in certain provinces than in others, and the continuation of or increases in such disparities could affect the political or social stability of the PRC.

A large number of our shipping line customers are domiciled either in the PRC (including Hong Kong) or in Taiwan. In 2012, approximately 32.2% of our revenue was attributable to shipping line customers that were either domiciled in the PRC (including Hong Kong) or in Taiwan. Almost all container manufacturing facilities from which we purchased our containers in 2012 are located in the PRC. A reduced rate of economic growth, changes to economic policy or political instability in either the PRC or Taiwan could have a negative effect on our major customers, our ability to obtain containers and correspondingly, our results of operations and financial condition.

**The legal systems in the PRC and other jurisdictions have inherent uncertainties that could limit the legal protections available to us and even if legal judgments are obtained, collection may be difficult.**

We currently purchase almost all of our containers from manufacturers based in the PRC. In addition, a substantial portion of our containers are leased out from locations in the PRC. California law governs almost all of these agreements. However, disputes or settlements arising out of these agreements may need to be enforced in the PRC. The PRC legal system is based on written statutes. Prior court decisions may be cited for reference but have limited precedential value. Since 1979, PRC legislation and regulations have significantly enhanced the protections afforded to various forms of foreign investments in the PRC. However, since these laws and regulations are relatively new and the PRC legal system continues to evolve, the interpretations of many laws, regulations and rules are not always uniform and may be subject to considerable discretion, variation, or influence by external forces unrelated to the legal merits of a particular matter. The enforcement of these laws, regulations, and rules involves uncertainties that may limit remedies available to us. Any litigation or arbitration in the PRC may be protracted and may result in substantial costs and diversion of resources and management attention. In addition, the PRC may enact new laws or amend current laws that may be detrimental to us, which may have a material adverse effect on our business operations. If we are unable to enforce any legal rights that we may have under our contracts or otherwise in the PRC, our ability to compete and our results of operations could be harmed.

In addition, as our containers are used in trade involving goods being shipped to locations throughout the world, it is not possible to predict, with any degree of certainty, the jurisdictions in which enforcement

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proceedings may be commenced. Litigation and enforcement proceedings have inherent uncertainties in any jurisdiction and are expensive. These uncertainties are enhanced in countries that have less developed legal systems where the interpretation of laws and regulations is not consistent, may be influenced by factors other than legal merits and may be cumbersome, time-consuming and even more expensive. For example, repossession from defaulting lessees may be difficult and more expensive in jurisdictions whose laws do not confer the same security interests and rights to creditors and lessors as those in the United States and where the legal system is not as well developed. Additionally, even if we are successful in obtaining judgments against defaulting lessees, these lessees may have limited owned assets and/or heavily encumbered assets and the collection and enforcement of a monetary judgment may be unsuccessful. As a result, the remedies available and the relative success and expedience of collection and enforcement proceedings with respect to the containers in various jurisdictions cannot be predicted.

**Because substantially all of our revenues are generated in U.S. dollars, but a significant portion of our expenses are incurred in other currencies, exchange rate fluctuations could have an adverse impact on our results of operations.**

The U.S. dollar is our primary operating currency. Almost all of our revenues are denominated in U.S. dollars, and approximately 64% of our direct container expenses were denominated in U.S. dollars for the year ended December 31, 2012. Accordingly, a significant amount of our expenses are incurred in currencies other than the U.S. dollar. This difference could lead to fluctuations in net income due to changes in the value of the U.S. dollar relative to the other currencies. During 2012, 2011 and 2010, 36%, 36% and 34%, respectively, of our direct container expenses were paid in 18 different foreign currencies. A decrease in the value of the U.S. dollar against non-U.S. currencies in which our expenses are incurred translates into an increase in those expenses in U.S. dollar terms, which would decrease our net income.

**Sustained Asian economic instability could reduce demand for leasing, which would harm our business, results of operations and financial condition.**

Many of our customers are substantially dependent upon shipments of goods exported from Asia. From time to time, there have been health scares, such as Severe Acute Respiratory Syndrome and avian flu, financial turmoil, natural disasters and political instability in Asia. If these events were to occur in the future, they could adversely affect our container lessees and the general demand for shipping and lead to reduced demand for leased containers or otherwise adversely affect us. Any reduction in demand for leased containers would harm our business, results of operations and financial condition.

**We own a large and growing number of containers in our fleet and are subject to significant ownership risk and increasing our owned fleet entails increasing our debt, which could result in financial instability.**

Ownership of containers entails greater risk than management of containers for container investors. In 2012, we increased the percentage of containers in our fleet that we own from 59% at the beginning of the year to 73% at the end of the year. The increased number of containers in our owned fleet, increases our exposure to financing costs, financing risks, changes in per diem rates, re-leasing risk, changes in utilization rates, lessee defaults, repositioning costs, storage expenses, impairment charges and changes in sales price upon disposition of containers. The number of containers in our owned fleet fluctuates over time as we purchase new containers, sell containers into the secondary resale market, and acquire other fleets. As part of our strategy, we focus on increasing the number of owned containers in our fleet and we therefore expect our ownership risk to increase correspondingly.

As we increase the number of containers in our owned fleet, we will likely have more capital at risk and may need to maintain higher debt balances. For example, our total debt increased from \$1,509.2 million at the start of 2012 to \$2,261.7 million at the end of 2012. Additional borrowings may not be available under our revolving credit facilities or our secured debt facility, and we may not be able to refinance these facilities, if

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necessary, on commercially reasonable terms or at all. We may need to raise additional debt or equity capital in order to fund our business, expand our sales activities and/or respond to competitive pressures. We may not have access to the capital resources we desire or need to fund our business or may not have access on attractive terms. These effects, among others, may reduce our profitability and adversely affect our plans to maintain the container ownership portion of our business.

**The demand for leased containers is partially tied to international trade. If this demand were to decrease due to increased barriers to trade, or for any other reason, it could reduce demand for intermodal container leasing, which would harm our business, results of operations and financial condition.**

A substantial portion of our containers are used in trade involving goods being shipped from the PRC and other Asian countries to the United States, Europe or other regions. The willingness and ability of international consumers to purchase foreign goods is dependent on political support, in the United States, Europe and other countries, for an absence of government-imposed barriers to international trade in goods and services. For example, international consumer demand for foreign goods is related to price; if the price differential between foreign goods and domestically-produced goods were to decrease due to increased tariffs on foreign goods, strengthening in the applicable foreign currencies relative to domestic currencies, rising wages, increasing input or energy costs or other factors, demand for foreign goods could decrease, which could result in reduced demand for intermodal container leasing. A similar reduction in demand for intermodal container leasing could result from an increased use of quotas or other technical barriers to restrict trade. The current regime of relatively free trade may not continue.

**The international nature of the container shipping industry exposes us to numerous risks.**

We are subject to risks inherent in conducting business across national boundaries, any one of which could adversely impact our business. These risks include:

- regional or local economic downturns;
- fluctuations in currency exchange rates;
- changes in governmental policy or regulation;
- restrictions on the transfer of funds or other assets into or out of different countries;
- import and export duties and quotas;
- domestic and foreign customs and tariffs;
- war, hostilities and terrorist attacks, or the threat of any of these events;
- government instability;
- nationalization of foreign assets;
- government protectionism;
- compliance with export controls, including those of the U.S. Department of Commerce;
- compliance with import procedures and controls, including those of the U.S. Department of Homeland Security;
- consequences from changes in tax laws, including tax laws pertaining to the container investors;
- potential liabilities relating to foreign withholding taxes;
- labor or other disruptions at key ports;
- difficulty in staffing and managing widespread operations; and
- restrictions on our ability to own or operate subsidiaries, make investments or acquire new businesses in various jurisdictions.

One or more of these factors or other related factors may impair our current or future international operations and, as a result, harm our business, results of operations and financial condition.

**We rely on our proprietary information technology systems to conduct our business. If these systems fail to perform their functions adequately, or if we experience an interruption in their operation, our business, results of operations and financial condition could be harmed.**

The efficient operation of our business is highly dependent on our proprietary information technology systems. We rely on our systems to record transactions, such as repair and depot charges, purchases and disposals of containers and movements associated with each of our owned or managed containers. We use the information provided by these systems in our day-to-day business decisions in order to effectively manage our lease portfolio, reduce costs and improve customer service. We also rely on these systems for the accurate tracking of the performance of our managed fleet for each container investor. The failure of our systems to perform as we expect could disrupt our business, adversely affect our results of operations and cause our relationships with lessees and container investors to suffer. Our information technology systems are vulnerable to damage or interruption from circumstances beyond our control, including fire, natural disasters, power loss and computer systems failures and viruses or cyber-attacks. Even though we have developed redundancies and other contingencies to mitigate any disruptions to our information technology systems, these redundancies and contingencies may not completely prevent interruptions to our information technology systems. Any such interruptions could harm our business, results of operations and financial condition.

**Consolidation, shipping line alliances, and concentration in the container shipping industry could decrease the demand for leased containers.**

We primarily lease containers to container shipping lines. The container shipping lines have historically relied on a large number of leased containers to satisfy their needs. The shipping industry has been consolidating for a number of years, and further consolidation is expected. Shipping lines also form alliances to share vessel space. Consolidation of major container shipping lines and these alliances could create efficiencies and decrease the demand that container shipping lines have for leased containers because they may be able to fulfill a larger portion of their needs through their owned container fleets. Consolidation could also create concentration of credit risk if the number of our container lessees decreases. Additionally, large container shipping lines with significant resources could choose to manufacture or purchase their own containers, which would decrease their demand for leased containers and could harm our business, results of operations and financial condition.

**Gains and losses associated with the disposition or trading of used equipment may fluctuate and adversely affect our business, results of operations and financial condition.**

We regularly sell used containers at the end of their useful economic lives in marine service or when we believe it maximizes the projected financial return, considering the location, sale price, cost of repair, possible repositioning expenses, earnings prospects and remaining useful life. The residual value of these containers affects our profitability. The volatility of the residual values of used containers may be significant. These values depend upon, among other factors, demand for used containers for secondary purposes, comparable new container costs, used container availability, condition and location of the containers, and market conditions. Most of these factors are outside of our control.

Gains or losses on the disposition of used container equipment and the sales fees earned on the disposition of managed containers will also fluctuate and may be significant if we sell large quantities of used containers. Any such fluctuations could harm our business, results of operations and financial condition. See Item 5, “*Operating and Financial Review and Prospects*” for a discussion of our gains or losses on the disposition of used container equipment.

In addition to disposing of our fleet’s used containers at the end of their useful economic life, we opportunistically purchase used containers for resale from our shipping line customers and other sellers. If the



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supply of equipment becomes limited because these sellers develop other means for disposing of their equipment or develop their own sales network, our equipment trading revenues and our profitability could be negatively impacted. If selling prices rapidly deteriorate and we are holding a large inventory that was purchased when prices for equipment were higher, then our gross margins from trading could decline or become negative.

**We may incur significant costs to reposition our containers, which could harm our business, results of operations and financial condition.**

When lessees return containers to locations where supply exceeds demand, we sometimes reposition containers to higher demand areas. Repositioning expenses vary depending on geographic location, distance, freight rates and other factors, and may not be fully covered by drop-off charges collected from the previous lessee of the containers or pick-up charges paid by the new lessee. We seek to limit the number of and impose surcharges on containers returned to low demand locations. Market conditions, however, may not enable us to continue such practices. In addition, we may not be able to accurately anticipate which locations will be characterized by higher or lower demand in the future, and our current contracts will not protect us from repositioning costs if locations that we expect to be higher demand locations turn out to be lower demand locations at the time the containers are returned. Any such increases in costs to reposition our containers could harm our business, results of operations and financial condition.

**Our indebtedness reduces our financial flexibility and could impede our ability to operate.**

We have historically operated with, and anticipate continuing to operate with, a significant amount of debt. As of December 31, 2012, we had outstanding indebtedness of \$2,261.7 million under our debt facilities. There is no assurance that we will be able to refinance our outstanding indebtedness on terms that we can afford or at all. If we are unable to refinance our outstanding indebtedness, or if we are unable to increase the amount of our borrowing capacity, it could limit our ability to grow our business.

The amount of our indebtedness, and the terms of the related indebtedness (including interest rates and covenants), could have important consequences for us, including the following:

- require us to dedicate a substantial portion of our cash flow from operations to make payments on our debt, thereby reducing funds available for operations, investments, dividends, and future business opportunities and other purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- reduce our ability to make acquisitions or expand our business;
- make it more difficult for us to satisfy our current or future debt obligations;
- any failure to comply with our debt obligations, including financial and other restrictive covenants, could result in an event of default under the agreements governing such indebtedness, which could lead to, among other things, an acceleration of our indebtedness or foreclosure on the assets securing our indebtedness and have a material adverse effect on our business or financial condition;
- limit our ability to borrow additional funds or to sell assets to raise funds, if needed, for working capital, capital expenditures, acquisitions or other purposes; and
- increase our vulnerability to general adverse economic and industry conditions, including changes in interest rates.

We may not generate sufficient cash flow from operations to service and repay our debt and related obligations and have sufficient funds left over to achieve or sustain profitability in our operations, meet our working capital and capital expenditure needs or compete successfully in our industry.

**We will require a significant amount of cash to service and repay our outstanding indebtedness, fund future capital expenditures, and our ability to generate cash depends on many factors beyond our control.**

Our ability to make payments on and repay our indebtedness and to fund planned capital expenditures will depend on our ability to generate cash in the future. It is possible that:

- our business will not generate sufficient cash flow from operations to service and repay our debt and to fund working capital requirements and future capital expenditures;
- future borrowings will not be available under our current or future credit facilities in an amount sufficient to enable us to refinance our debt; or
- we will not be able to refinance any of our debt on commercially reasonable terms or at all.

**The terms of our debt facilities impose, and the terms of any future indebtedness may impose, significant operating, financial and other restrictions on us and our subsidiaries.**

Restrictions imposed by our revolving credit facilities, secured debt facility and bonds may limit or prohibit, among other things, our ability to:

- incur additional indebtedness;
- pay dividends on or redeem or repurchase our common shares;
- enter into new lines of business;
- issue capital stock of our subsidiaries;
- make loans and certain types of investments;
- incur liens;
- sell certain assets or merge with or into other companies or acquire other companies;
- enter into certain transactions with shareholders and affiliates; and
- restrict dividends, distributions or other payments from our subsidiaries.

We are also required to comply with certain financial ratio covenants. These restrictions could adversely affect our ability to finance our future operations or capital needs and pursue available business opportunities. A breach of any of these restrictions, including a breach of financial covenants, could result in a default in respect of the related indebtedness. If a default occurs, the relevant lenders could elect to declare the indebtedness, together with accrued interest and fees, to be immediately due and payable and proceed against any collateral securing that indebtedness, which will constitute substantially all of our container assets.

**If we are unable to enter into interest rate swaps and caps on reasonable commercial terms or if a counterparty under our interest rate swap and cap agreements defaults, our exposure associated with our variable rate debt could increase.**

We have typically funded a significant portion of the purchase price of new containers through borrowings under our revolving credit facilities and our secured debt facility and intend to use borrowings under our revolving credit facilities and our secured debt facility for such funding in the future. All of our outstanding debt, other than the \$373.3 million and \$340.0 million in aggregate principal amount under TMCL's Series 2012-1 Fixed Rate Asset Backed Notes and Series 2011-1 Fixed Rate Asset Backed Notes, respectively, are subject to variable interest rates. We have entered into various interest rate swap and cap agreements to mitigate our exposure associated with variable rate debt. The swap agreements involve payments by us to counterparties at fixed rates in return for receipts based upon variable rates indexed to the London Inter Bank Offered Rate. There can be no assurance that interest rate caps and swaps will be available in the future, or if available, will be on

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terms satisfactory to us. Moreover, our interest rate swap agreements are subject to counterparty credit exposure, which is defined as the ability of a counterparty to perform its financial obligations under a derivative contract. While we monitor our counterparties' credit ratings on an on-going basis, we cannot be certain that they will stay in compliance with the related derivative agreements and not default in the future. If we are unable to obtain interest rate caps and swaps or if a counterparty under our interest rate swap and cap agreements defaults, our exposure associated with our variable rate debt could increase.

### **Use of counterfeit and improper refrigerant in refrigeration machines for refrigerated containers could cause irreparable damage to the refrigeration machines, death or personal injury, and materially impair the value of our refrigerated container fleet.**

In 2011 and 2012, there were reports of counterfeit and improper refrigerant gas being used to service refrigeration machines in depots in Asia. The use of this counterfeit gas has led to the explosion of several refrigeration machines within the industry. Several of these incidents have resulted in personal injury or death, and in all cases, the counterfeit gas has led to irreparable damage to the refrigeration machines.

Safer testing procedures have been developed and are being implemented by refrigeration manufacturers and industry participants in order to determine whether counterfeit or improper gas has been used to service a refrigeration machine. However, the implementation of these testing procedures has only recently commenced and there can be no assurance that these procedures will prove to be reliable and cost effective. If the recently developed tests and industry procedures are not proven safe and effective or if the use of such counterfeit and improper refrigerant is more widespread than currently believed or other counterfeit refrigerant issues emerge, the value of our refrigerated container fleet and our ability to lease refrigerated containers could be materially impaired and could therefore have a material adverse effect on our financial condition, results of operations and cash flows. Additionally, we might be subject to claims for damages by parties injured from contaminated refrigeration machinery operated by our lessees which may materially adversely affect us.

### **If our insurance is inadequate or if we are unable to obtain insurance, we may experience losses.**

Under all of our leases, our lessees are generally responsible for loss of or damage to a container beyond ordinary wear and tear, and they are required to purchase insurance to cover any other liabilities. Our depots are also required to maintain insurance and indemnify us against losses. We also maintain our own insurance to cover our containers when they are not on-hire to lessees or when the lessee fails to have adequate primary coverage, and third-party liability insurance for both on-hire and off-hire containers. In addition, we maintain insurance that, after satisfying our deductibles, would cover loss of revenue as a result of default under most of our leases, as well as the recovery cost or replacement value of most of our containers. Lessees' and depots' insurance policies and indemnity rights may not protect us against losses. Our own insurance may prove to be inadequate to prevent against losses or in the future coverage may be unavailable or uneconomic, and losses could arise from a lack of insurance coverage.

### **U.S. investors in our company could suffer adverse tax consequences if we are characterized as a passive foreign investment company for U.S. federal income tax purposes.**

Based upon the nature of our business activities, we may be classified as a passive foreign investment company ("PFIC") for U.S. federal income tax purposes. Such characterization could result in adverse U.S. tax consequences to direct or indirect U.S. investors in our common shares. For example, if we are a PFIC, our U.S. investors could become subject to increased tax liabilities under U.S. tax laws and regulations and could become subject to burdensome reporting requirements. The determination of whether or not we are a PFIC is made on an annual basis and depends on the composition of our income and assets from time to time. Specifically, for any taxable year we will be classified as a PFIC for U.S. tax purposes if either:

- 75% or more of our gross income in a taxable year is passive income, or
- the average percentage of our assets (which includes cash) by value in a taxable year which produce or are held for the production of passive income is at least 50%.

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In applying these tests, we are treated as owning or generating directly our pro rata share of the assets and income of any corporation in which we own at least 25% by value. In addition, the composition of our income and assets will be affected by how, and how quickly, we spend the cash we have raised.

If you are a U.S. investor and we are a PFIC for any taxable year during which you own our common shares, you could be subject to adverse U.S. tax consequences. Under the PFIC rules, unless a U.S. investor is permitted to and does elect otherwise under the Internal Revenue Code, such U.S. investor would be liable to pay U.S. federal income tax at the then prevailing income tax rates on ordinary income plus interest upon excess distributions and upon any gain from the disposition of our common shares, as if the excess distribution or gain had been recognized ratably over the investor's holding period for our common shares. Based on the composition of our income, valuation of our assets (including goodwill), and our election to treat certain of our subsidiaries as disregarded entities for U.S. federal income tax purposes, we do not believe we were a PFIC for any period after the IPO date and we do not expect that we should be treated as a PFIC for our current taxable year. However, there can be no assurance at all in this regard. Because the PFIC determination is highly fact intensive and made at the end of each taxable year, it is possible that we may be a PFIC for the current or any future taxable year or that the IRS may challenge our determination concerning our PFIC status.

**We may become subject to unanticipated tax liabilities that may have a material adverse effect on our results of operations.**

Textainer Group Holdings Limited is a Bermuda company, and we believe that a significant portion of the income derived from our operations will not be subject to tax in Bermuda, which currently has no corporate income tax, or in many other countries in which we conduct activities or in which our customers or containers are located. However, this belief is based on the anticipated nature and conduct of our business, which may change. It is also based on our understanding of our position under the tax laws of the countries in which we have assets or conduct activities. This position is subject to review and possible challenge by taxing authorities and to possible changes in law that may have retroactive effect.

A portion of our income is treated as effectively connected with our conduct of a trade or business within the U.S., and is accordingly subject to U.S. federal income tax. It is possible that the U.S. Internal Revenue Service will conclude that a greater portion of our income is effectively connected income that should be subject to U.S. federal income tax. In October 2012, we were notified that the 2010 United States tax returns for TGH and its U.S. subsidiary, Textainer Equipment Management (U.S.) Limited, were selected for examination. These examinations, or future examinations of tax returns filed in the U.S., may result in additional tax liabilities being imposed on us and may materially adversely affect our financial results and operations.

Our results of operations could be materially and adversely affected if we become subject to a significant amount of unanticipated tax liabilities.

**Our U.S. subsidiaries may be treated as personal holding companies for U.S. federal tax purposes now or in the future.**

Any of our direct or indirect U.S. subsidiaries could be subject to additional U.S. tax on a portion of its income if it is considered to be a personal holding company ("PHC") for U.S. federal income tax purposes. This status depends on whether more than 50% of the subsidiary's shares by value could be deemed to be owned (taking into account constructive ownership rules) by five or fewer individuals and whether 60% or more of the subsidiary's adjusted ordinary gross income consists of "personal holding company income," which includes certain forms of passive and investment income. The PHC rules do not apply to non-U.S. corporations. We believe that none of our U.S. subsidiaries should be considered PHCs. In addition, we intend to cause our U.S. subsidiaries to manage their affairs in a manner that reduces the possibility that they will meet the 60% income threshold. However, because of the lack of complete information regarding our ultimate share ownership (*i.e.*, particularly as determined by constructive ownership rules), our U.S. subsidiaries may become PHCs in the future and, in that event, the amount of U.S. federal income tax that would be imposed could be material.

**The U.S. government has special contracting requirements that create additional risks.**

We have a firm, fixed price, indefinite quantity contract with the Surface Deployment and Distribution Command (“SDDC”) to supply leased marine containers to the U.S. military. As an indefinite quantity contract, there is no guarantee that the U.S. military will pay more than the minimum guarantee, which guaranteed amount is substantially below the total amount authorized under the contract. Thus, the expected revenues from the SDDC contract may not fully materialize. This contract also contains an “assured access” clause that requires us to provide as many containers as the military requests, without a cap. If we do not perform under this “assured access” clause we may incur financial penalties. To date, we have met the requirements of the “assured access” clause and no penalties have occurred. If we do not perform in accordance with the terms of the SDDC contract, we may receive a poor performance report that would be considered by the U.S. military in making any future awards. Accordingly, we cannot be certain that we will be awarded any future government contracts.

In contracting with the U.S. military, we are subject to U.S. government contract laws, regulations and other requirements that impose risks not generally found in commercial contracts. For example, U.S. government contracts require contractors to comply with a number of socio-economic requirements and to submit periodic reports regarding compliance, are subject to audit and modification by the U.S. government in its sole discretion, and impose certain requirements relating to software and/or technical data that, if not followed, could result in the inadvertent grant to the U.S. government of broader licenses to use and disclose such software or data than intended.

These laws, regulations and contract provisions also permit, under certain circumstances, the U.S. government unilaterally to:

- suspend or prevent us for a set period of time from receiving new government contracts or extending existing contracts based on violations or suspected violations of laws or regulations;
- terminate the SDDC contract;
- reduce the scope and value of the SDDC contract;
- audit our performance under the SDDC contract and our compliance with various regulations; and
- change certain terms and conditions in the SDDC contract.

In addition, the U.S. military may terminate the SDDC contract either for its convenience at any time or if we default by failing to perform in accordance with the contract schedule and terms. Termination for convenience provisions generally enable the contractor to recover only those costs incurred or committed, and settlement expenses and profit on the work completed prior to termination. Termination for default provisions do not permit these recoveries and make the contractor liable for excess costs incurred by the U.S. military in procuring undelivered items from another source.

In addition, the U.S. government could bring criminal and civil charges against us based on intentional or unintentional violations of the representations and certifications that we have made in the SDDC contract. Although adjustments arising from U.S. government audits and reviews have not seriously harmed our business in the past, future audits and reviews could cause adverse effects. We could also suffer serious harm to our reputation if allegations of impropriety were to be made against us.

**We may choose to pursue acquisitions or joint ventures that could present unforeseen integration obstacles or costs and we face risks from our two joint ventures.**

We may pursue acquisitions and joint ventures. Acquisitions involve a number of risks and present financial, managerial and operational challenges, including:

- potential disruption of our ongoing business and distraction of management;
- difficulty integrating personnel and financial and other systems;

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- hiring additional management and other critical personnel; and
- increasing the scope, geographic diversity and complexity of our operations.

In addition, we may encounter unforeseen obstacles or costs in the integration of acquired businesses. Also, the presence of one or more material liabilities of an acquired company that are unknown to us at the time of acquisition may have a material adverse effect on our business. Acquisitions or joint ventures may not be successful, and we may not realize any anticipated benefits from acquisitions or joint ventures.

On August 5, 2011, a joint venture, TW Container Leasing, Ltd (“TW”), was formed between TL and Wells Fargo Container Corp, a wholly-owned subsidiary of Wells Fargo and Company. The purpose of TW is to lease containers to lessees under direct financing leases. TW is governed by members, credit and management agreements. Under the members agreement, TL owns 25% and WFC owns 75% of the common shares and related voting rights of TW. TL also has two seats and WFC has six seats on TW’s board of directors, with each seat having equal voting rights, provided, however, that the approval of at least one TL-appointed director is required for any action of the board of directors. As we do not own the majority of TW, we face risks associated with investing in an entity that we do not control and it is possible that the interests of the controlling stockholder could be different from our interests. Conflicts between us and the controlling stockholder of TW could result in litigation, an inability to operate TW, lost business opportunities for TW and us, and other problems that might have a material adverse impact on us as a whole.

On December 20, 2012, TL purchased 50.1% of the outstanding common shares of TAP Funding Ltd. (“TAP Funding”). TAP Funding owns a fleet of containers under our management. TAP Funding is governed by members and management agreements. TL has two voting rights and TAP Ltd, the 49.9% shareholder, has one voting right in TAP Funding, with the exception of certain matters such as bankruptcy proceedings, the incurrence of debt and mergers and consolidations, which require unanimity. TL also has two seats and TAP Ltd has one seat on TAP Funding’s board of directors. While we own the majority of TAP Funding, we face risks associated with TAP Funding’s structure that requires both shareholders to agree on certain significant matters such as debt financing, mergers and liquidation. It is possible that the interests of the other shareholder could be different from our interests. Conflicts between us and the other shareholder of TAP Funding could result in litigation, an inability to finance and operate TAP Funding, and other problems that might have a material adverse impact on us as a whole.

### **A reduction in the willingness of container investors to have us manage their containers could adversely affect our business, results of operations and financial condition.**

A material percentage of our revenue is attributable to management fees earned on services related to the leasing of containers owned by container investors. This revenue has very low direct operating costs associated with it. Accordingly, fluctuations in our management fee revenue in any period will have an impact on our profitability in that period. Our ability to continue to attract new management contracts depends upon a number of factors, including our willingness to allocate a portion of our new container purchases to container investors, our ability to lease additional containers on attractive lease terms and to efficiently manage the repositioning, storage and disposition of containers. In the event container investors perceive another container leasing company as better able to provide them with a stable and attractive rate of return, we may lose management contract opportunities in the future, which could affect our business, results of operations and financial condition.

### **Our senior executives are critical to the success of our business and any inability to retain them or recruit and successfully integrate new personnel could harm our business, results of operations and financial condition.**

Our senior management has a long history in the container leasing industry, with an average of 15 years of service with us. We rely on this knowledge and experience in our strategic planning and in our day-to-day

business operations. Our success depends in large part upon our ability to retain our senior management, the loss of one or more of whom could have a material adverse effect on our business.

In October 2011, our then President and Chief Executive Officer, John Maccarone, retired and Philip Brewer was promoted to this position. At that time, Robert Pedersen was promoted to be the President and Chief Executive Officer of Textainer Equipment Management Limited, the wholly-owned subsidiary which provides container management, acquisition and disposition services for us. In September 2011, we hired Daniel Cohen as our Vice President and General Counsel, a new position. In January 2012, we hired Hilliard Terry, III, as our Executive Vice President and Chief Financial Officer, and Ernest Furtado, who previously held this position, became our Senior Vice President and Chief Accounting and Compliance Officer. Our success depends on the successful integration and performance of our newly hired officers and on the successful performance of our long-standing officers in their new positions.

Our success also depends on our ability to retain our experienced sales force and technical personnel as well as recruit new skilled sales, marketing and technical personnel. Competition for these individuals in our industry is intense and we may not be able to successfully recruit, train or retain qualified personnel. If we fail to retain and recruit the necessary personnel, our business and our ability to obtain new container lessees and provide acceptable levels of customer service could suffer. We have “at will” employment agreements with all of our executive officers.

**The lack of an international title registry for containers increases the risk of ownership disputes.**

Although the Bureau International des Containers registers and allocates a four letter prefix to every container in accordance with ISO standard 6346 (Freight container coding, identification and marking) to identify the owner/operator and each container has a unique prefix and serial number, there is no internationally recognized system of recordation or filing to evidence our title to containers nor is there an internationally recognized system for filing security interests in containers. Although this has not occurred to date, the lack of a title recordation system with respect to containers could result in disputes with lessees, end-users, or third parties who may improperly claim ownership of containers.

**We may incur costs associated with new cargo security regulations, which may adversely affect our business, results of operations and financial condition.**

We may be subject to regulations promulgated in various countries, including the U.S., seeking to protect the integrity of international commerce and prevent the use of containers for international terrorism or other illicit activities. For example, the Container Security Initiative, the Customs-Trade Partnership Against Terrorism and Operation Safe Commerce are among the programs administered by the U.S. Department of Homeland Security that are designed to enhance security for cargo moving throughout the international transportation system by identifying existing vulnerabilities in the supply chain and developing improved methods for ensuring the security of containerized cargo entering and leaving the U.S. Moreover, the International Convention for Safe Containers, 1972, as amended, adopted by the International Maritime Organization, applies to containers and seeks to maintain a high level of safety of human life in the transport and handling of containers by providing uniform international safety regulations. As these regulations develop and change, we may incur compliance costs due to the acquisition of new, compliant containers and/or the adaptation of existing containers to meet new requirements imposed by such regulations. Additionally, certain companies are currently developing or may in the future develop products designed to enhance the security of containers transported in international commerce. Regardless of the existence of current or future government regulations mandating the safety standards of intermodal shipping containers, our competitors may adopt such products or our container lessees may require that we adopt such products. In responding to such market pressures, we may incur increased costs, which could have a material adverse effect on our business, results of operations and financial condition.

**Environmental liability and regulations may adversely affect our business, results of operations and financial condition.**

We are subject to federal, state, local and foreign laws and regulations relating to the protection of the environment, including those governing the discharge of pollutants to air, ground and water, the management and disposal of hazardous substances and wastes and the cleanup of contaminated sites. We could incur substantial costs, including cleanup costs, fines and costs arising out of third-party claims for property or natural resource damage and personal injury, as a result of violations of or liabilities under or compliance with environmental laws and regulations in connection with our or our lessees' current or historical operations. Under some environmental laws in the U.S. and certain other countries, the owner or operator of a container may be liable for environmental damage, cleanup or other costs in the event of a spill or discharge of material from the container without regard to the fault of the owner or operator. While we typically maintain certain limited liability insurance and typically require lessees to provide us with indemnity against certain losses, the insurance coverage may not be sufficient to protect against any or all liabilities and such indemnities may not be sufficient, or available, to protect us against losses arising from environmental damage. Moreover, our lessees may not have adequate resources, or may refuse to honor their indemnity obligations and our insurance coverage is subject to large deductibles, coverage limits and significant exclusions.

Environmental regulations also impact container production and operation, including regulations on the use of chemical refrigerants due to their ozone depleting and global warming effects. Our refrigerated containers currently use R134A refrigerant. While R134A does not contain CFC's, the European Union has instituted regulations to phase out the use of R134A in automobile air conditioning systems beginning in 2011 due to concern that the release of R134A into the atmosphere may contribute to global warming. While the European Union regulations do not currently restrict the use of R134A in refrigerated containers or trailers, it is possible that the phase out of R134A in automobile air conditioning systems will be extended to containers in the future and our operations could be impacted.

Container production also raises environmental concerns. The floors of dry containers are plywood typically made from tropical hardwoods. Due to concerns regarding de-forestation and climate change, many countries have implemented severe restrictions on the cutting and export of this wood. Accordingly, container manufacturers have switched a significant portion of production to alternatives such as birch, bamboo, and other farm grown wood and users are also evaluating alternative designs that would limit the amount of plywood required and are also considering possible synthetic materials. New woods or other alternatives have not proven their durability over the typical life of a dry container, and if they cannot perform as well as the hardwoods have historically, the future repair and operating costs for these containers may be impacted. Also, the insulation foam in the walls of refrigerated containers requires the use of a blowing agent that contains CFC's. Manufacturers are phasing out the use of this blowing agent in manufacturing, however, if future regulations prohibit the use or servicing of containers with insulation manufactured with this blowing agent we could be forced to incur large retrofitting expenses and these containers might bring lower rental rates and disposal prices.

**We are subject to certain U.S. laws that may impact our international operations and any investigation or determination that we violated these laws may affect our business and operations adversely.**

As a Bermuda corporation that has a wholly-owned U.S. subsidiary with operations in the U.S., we are subject to certain U.S. laws that may impact our international operations. We are subject to the regulations imposed by the Foreign Corrupt Practices Act (FCPA), which generally prohibits U.S. companies and their intermediaries from making improper payments to foreign officials for the purpose of obtaining or keeping business. We are also subject to U.S. Executive Orders and U.S. Treasury sanctions regulations restricting or prohibiting business dealings in or with certain nations and with certain specially designated nationals (individuals and legal entities). Any determination or investigation into violations of these laws and regulations could have a material adverse effect on our business, financial condition, results of operations and cash flows.



**We could face litigation involving our management of containers for container investors.**

We manage containers for container investors under management agreements that are negotiated with each container investor. We make no assurances to container investors that they will make any amount of profit on their investment or that our management activities will result in any particular level of income or return of their initial capital. Although our management agreements contain contractual protections and indemnities that are designed to limit our exposure to such litigation, such provisions may not be effective, and we may be subject to a significant loss in a successful litigation by a container investor.

**Certain liens may arise on our containers.**

Depot operators, manufacturers, repairmen and transporters may come into possession of our containers from time to time and have amounts due to them from the lessees or sublessees of the containers. In the event of nonpayment of those charges by the lessees or sublessees, we may be delayed in, or entirely barred from, repossessing the containers, or be required to make payments or incur expenses to discharge such liens on our containers.

**We may not always pay dividends on our common shares or our dividends could be reduced.**

We may not be able to pay future dividends, or we may need to reduce our dividend, because dividends depend on future earnings, capital requirements, and financial condition. The declaration, amount and payment of future dividends are at the discretion of our board of directors and will be dependent on our future operating results and the cash requirements of our business. There are a number of factors that can affect our ability to pay dividends and there is no guarantee that we will pay dividends in any given year, in each quarter of a year, or pay any specific amount of dividends. In addition, we will not pay dividends in the event we are not allowed to do so under Bermuda law, are in default under (or such payment would cause a default under) our wholly-owned subsidiary, Textainer Limited's ("TL") revolving credit facility, or if such payment would cause us to breach any of our covenants. These covenants include certain financial covenants, which would be directly affected by the payment of dividends, such as a maximum ratio of consolidated funded debt to consolidated tangible net worth (which amount would decrease by the amount of any dividend paid). The reduction, suspension or elimination of dividends may negatively affect the market price of our common shares. Furthermore, since we are a holding company, substantially all of the assets shown on our consolidated balance sheet are held by our subsidiaries. Accordingly, our earnings and cash flow and our ability to pay dividends are largely dependent upon the earnings and cash flows of our subsidiaries and the distribution or other payment of such earnings to us in the form of dividends.

**The calculation of our income tax expense requires significant judgment and the use of estimates.**

We periodically assess tax positions based on current tax developments, including enacted statutory, judicial and regulatory guidance. In analyzing our overall tax position, consideration is given to the amount and timing of recognizing income tax liabilities and benefits. In applying the tax and accounting guidance to the facts and circumstances, income tax balances are adjusted appropriately through the income tax provision. We account for income tax positions on uncertainties by recognizing the effect of income tax positions only if those positions are more likely than not of being sustained and maintain reserves for income tax positions we believe are not more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. However, due to the significant judgment required in estimating those reserves, actual amounts paid, if any, could differ significantly from these estimates.

**Future changes in accounting rules could significantly impact how both we and our customers account for our leases.**

Our consolidated financial statements are prepared in accordance with GAAP. The Financial Accounting Standards Board ("FASB") and International Accounting Standards Board ("IASB") are expected to issue a new

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Exposure Draft on lease accounting in the first half of 2013 that could significantly change the accounting and reporting for lease arrangements. The main objective of the proposed standard is to create a new accounting model for both lessees and lessors, replacing the existing concepts of operating and capital leases with models based on “right-of-use” concepts. The new models would result in the elimination of most off-balance sheet lease financing for lessees. Some lessees find leasing attractive because under current GAAP they are not required to include the value (and associated liabilities) of equipment leased under operating leases on their balance sheets, thus improving certain financial metrics. If there are future changes in GAAP with regard to how we and our customers must account for leases, it could change the way we and our customers conduct our businesses, including eliminating for lessees the financial statement benefit of entering into operating leases, which might have an adverse effect on our business.

### **Risks Related to Our Common Shares**

**The market price and trading volume of our common shares, which may be affected by market conditions beyond our control, have been volatile and could continue to remain volatile.**

The market price of our common shares has been, and may continue to be highly volatile and subject to wide fluctuations. In addition, the trading volume in our common shares has fluctuated and may continue to fluctuate, causing significant price variations to occur. Since our initial public offering, our common shares have fluctuated from an intra-day low of \$4.23 per share to an intra-day high of \$43.96 per share. If the market price of the shares declines significantly, the value of an investment in our common shares would decline. The market price of our common shares may fluctuate or decline significantly in the future. Some of the factors that could negatively affect the price of our common shares or result in fluctuations in the price or trading volume of our common shares include:

- variations in our quarterly operating results;
- failure to meet analysts’ earnings estimates;
- publication of research reports about us, other intermodal container lessors or the container shipping industry or the failure of securities analysts to cover our common shares or our industry;
- additions or departures of key management personnel;
- adverse market reaction to any indebtedness we may incur or preference or common shares we may issue in the future;
- changes in our dividend payment policy or failure to execute our existing policy;
- actions by shareholders;
- changes in market valuations of similar companies;
- announcements by us or our competitors of significant contracts, acquisitions, dispositions, strategic partnerships, joint ventures or capital commitments;
- speculation in the press or investment community;
- changes or proposed changes in laws or regulations affecting the container shipping industry or enforcement of these laws and regulations, or announcements relating to these matters; and
- impact of global financial crises or stock market disruptions.

Recently and in the past, the stock market has experienced extreme price and volume fluctuations. These market fluctuations could result in extreme volatility in the trading price of our common shares, which could cause a decline in the value of your investment in our common shares. In addition, the trading price of our

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common shares could decline for reasons unrelated to our business or financial results, including in reaction to events that affect other companies in our industry even if those events do not directly affect us. You should also be aware that price volatility may be greater if the public float and trading volume of our common shares are low.

**One of our major shareholders, Halco Holdings Inc., is a company owned by a trust in which Trencor and certain of its affiliates are discretionary beneficiaries and could act in a manner with which other shareholders may disagree or that is not necessarily in the interests of other shareholders.**

Halco Holdings Inc. (“Halco”) currently beneficially owns approximately 48.5% of our issued and outstanding common shares. Accordingly, Halco has the ability to influence the outcome of matters submitted to our shareholders for approval, including the election of directors and any amalgamation, merger, consolidation or sale of all or substantially all of our assets. Five of our ten directors are also directors of Trencor. Halco may have interests that are different from other shareholders. For example, it may support proposals and actions with which you may disagree or which are not in your interests as a shareholder of our company. The concentration of ownership could delay or prevent a change in control of us or otherwise discourage a potential acquirer from attempting to obtain control of us, which in turn could reduce the price of our common shares.

**Affiliates of Halco and Trencor may compete with us and compete with some of our customers.**

Halco and Trencor, through their affiliates, are free to compete with us, and have engaged in the past and will likely continue to engage in businesses that are similar to ours. In particular, Leased Assets Pool Company Limited (“LAPCO”), an affiliate of Halco, owns containers, has competed against us and our customers through its investment in containers and has used our competitors to manage some of its containers in the past. Thus, although we have a management agreement with LAPCO to manage a majority of its containers, we expect that we will continue to compete with LAPCO in the future, which may result in various conflicts of interest.

**Our current management and share ownership structure may create conflicts of interest.**

Five of our ten directors are also directors of Trencor. These directors owe fiduciary duties to each company and may have conflicts of interest in matters involving or affecting us and Trencor, including matters arising under our agreements with Trencor and its affiliates. In addition, to the extent that some of these directors may own shares in Trencor, they may have conflicts of interest when faced with decisions that could have different implications for Trencor than they do for us. Furthermore, Trencor, as a South African company, endorses for itself and for its subsidiaries, the Code of Corporate Practices and Conduct in the King III Report on Corporate Governance. The King III Report on Corporate Governance is a document promulgated by the South African Institute of Directors which, among other things, suggests that corporations in their corporate decision-making consider the following stakeholders in addition to the owners of shares: parties who contract with the enterprise; parties who have a non-contractual nexus with the enterprise (including civic society and the environment); and the state. Trencor may seek to or be required to impose these corporate governance practices on us, which may result in constraints on management and may involve significant costs. Your interests as a holder of our common shares may not align with the interests of Trencor and its affiliates and shareholders.

**We are a holding company with no material direct operations and rely on our operating subsidiaries to provide us with funds necessary to meet our financial obligations and to pay dividends.**

We are a holding company with no material direct operations. Our principal assets are the equity interests we directly or indirectly hold in our operating subsidiaries, which own our operating assets. As a result, we are dependent on loans, dividends and other payments from our subsidiaries to generate the funds necessary to meet our financial obligations and to pay dividends on our common shares. Our subsidiaries are legally distinct from us and may be prohibited or restricted from paying dividends or otherwise making funds available to us under certain conditions. If we are unable to obtain funds from our subsidiaries, we may be unable to, or our board may exercise its discretion not to, pay dividends on our common shares.

**Our ability to issue securities in the future may be materially constrained by Trenchor's South African currency restrictions and JSE Listings Requirements.**

Trenchor, a South African company listed on the JSE, has beneficiary interest in 48.5% of our issued and outstanding shares. Five of our ten directors are also directors of Trenchor. Both South African exchange control authorities and the JSE impose certain restrictions on Trenchor.

South Africa's exchange control regulations provide for restrictions on exporting capital from South Africa. These restrictions require Trenchor to obtain approval from South African exchange control authorities before engaging in transactions that would result in dilution of their share interest in us below certain thresholds, whether through their sale of their own shareholdings or through their approval of our issuance of new shares. The exchange control authorities may decide not to grant such approval if a proposed transaction were to dilute Trenchor's beneficiary interest in us below certain levels. While the South African government has, to some extent, relaxed exchange controls in recent years, it is difficult to predict whether or how it will further relax or abolish exchange control measures in the future. The above requirements could restrict or limit our ability to issue new shares. In addition, Trenchor is required to comply with JSE Listings Requirements in connection with its holding or sale of our common shares.

Trenchor currently has an indirect beneficiary interest in 48.5% of our issued and outstanding shares. The above requirements could limit our financial flexibility by, among other things, impacting our future ability to raise funds through the issuance of securities, preventing or limiting the use of our common shares as consideration in acquisitions, and limiting our use of option grants and restricted share grants to our directors, officers and other employees as incentives to improve the financial performance of our company.

**It may not be possible for investors to enforce U.S. judgments against us.**

We and all of our subsidiaries, except Textainer Equipment Management (U.S.) Limited and Textainer Equipment Management (U.S.) II LLC, are incorporated in jurisdictions outside the U.S. A substantial portion of our assets and those of our subsidiaries are located outside of the U.S. In addition, most of our directors are non-residents of the U.S., and all or a substantial portion of the assets of these non-residents are located outside the U.S. As a result, it may be difficult or impossible for U.S. investors to serve process within the U.S. upon us, our non-U.S. subsidiaries, or our directors, or to enforce a judgment against us for civil liabilities in U.S. courts. In addition, you should not assume that courts in the countries in which we or our subsidiaries are incorporated or where our assets or the assets of our subsidiaries are located would enforce judgments of U.S. courts obtained in actions against us or our subsidiaries based upon the civil liability provisions of applicable U.S. federal and state securities laws, or would enforce, in original actions, liabilities against us or our subsidiaries based on those laws.

**We are a foreign private issuer and, as a result, under New York Stock Exchange ("NYSE") rules, we are not required to comply with certain corporate governance requirements.**

As a foreign private issuer, we are permitted by the NYSE to comply with Bermuda corporate governance practice in lieu of complying with certain NYSE corporate governance requirements. This means that we are not required to comply with NYSE requirements that:

- the board of directors consists of a majority of independent directors;
- independent directors meet in regularly scheduled executive sessions;
- the audit committee satisfy NYSE standards for director independence (although we must still comply with independence standards pursuant to Rule 10A-3 promulgated under the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act"));
- the audit committee have a written charter addressing the committee's purpose and responsibilities;

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- we have a nominating and corporate governance committee composed of independent directors with a written charter addressing the committee's purpose and responsibilities;
- we have a compensation committee composed of independent directors with a written charter addressing the committee's purpose and responsibilities;
- we establish corporate governance guidelines and a code of business conduct;
- our shareholders approve any equity compensation plans; and
- there be an annual performance evaluation of the nominating and corporate governance and compensation committees.

Our board of directors has adopted an audit committee charter, a compensation committee charter and a nominating and governance committee charter. Additionally, we have a company code of conduct, corporate governance guidelines, conduct performance evaluations of our board and committees, and have obtained shareholder approval for our equity compensation plan. However, we use some of the exemptions available to a foreign private issuer. As a result, our board of directors may not consist of a majority of independent directors and our compensation committee may not consist of any or a majority of independent directors. Accordingly, our shareholders may not have the same protections afforded to shareholders of companies that are subject to all of the NYSE corporate governance requirements.

### **Required public company corporate governance and financial reporting practices and policies have increased our costs, and we may be unable to provide the required financial information in a timely and reliable manner.**

Our management may not be able to continue to meet the regulatory compliance and reporting requirements that are applicable to us as a public company. This result may subject us to adverse regulatory consequences, and could lead to a negative reaction in the financial markets due to a loss of confidence in the reliability of our financial statements. If we do not maintain compliance with the requirements of Section 404 of the Sarbanes-Oxley Act of 2002, or if we or our independent registered public accounting firm identify deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses, we could suffer a loss of investor confidence in the reliability of our financial statements, which could cause the market price of our stock to decline.

In addition, if we fail to maintain effective controls and procedures, we may be unable to provide the required financial information in a timely and reliable manner or otherwise comply with the standards applicable to us as a public company. Any failure by us to timely provide the required financial information could materially and adversely impact our financial condition and the market value of our common shares. Furthermore, testing and maintaining internal controls can divert our management's attention from other matters that are important to our business. These regulations have increased our legal and financial compliance costs, we expect the regulations to make it more difficult to attract and retain qualified officers and directors, particularly to serve on our audit committee, and make some activities more difficult, time consuming and costly.

### **Future sales of a large number of our securities into the public market, or the expectation of such sales, could cause the market price of our common shares to decline significantly.**

Sales of substantial amounts of common securities into the public market, or the perception that such sales will occur, may cause the market price of our common shares to decline significantly. We filed a universal shelf registration statement on Form F-3 with the SEC that became effective on January 18, 2011. Under the shelf registration statement, we may from time to time sell common shares, preference shares, debt securities, warrants, rights and units in one or more offerings up to a total dollar amount of \$550.0 million. In September 2012, we completed a sale of 8,625,000 common shares, including 2,500,000 common shares offered by a selling shareholder, Halco Holdings Inc. Following the September 2012 share offering, approximately \$278 million

remains available under our universal shelf registration statement. The price of our shares could be negatively impacted if we undertake additional offerings to sell securities pursuant to our universal shelf registration statement or if shareholders sell additional shares under the universal shelf registration statement. In addition, at our 2010 Annual General Meeting of Shareholders held on May 19, 2010, our shareholders approved an amendment to our 2007 Share Incentive Plan to increase the maximum number of our common shares issuable pursuant to such plan by 1,468,500 shares from 3,808,371 shares to 5,276,871 shares. The common shares to be issued pursuant to awards under our 2007 Share Incentive Plan have been registered on registration statements on Form S-8 filed with the SEC and, when issued, will be freely tradable under the Securities Act.

**We have anti-takeover provisions in our bye-laws that may discourage a change of control.**

Bermuda law and our bye-laws contain provisions that could make it more difficult for a third party to acquire us without the consent of our board of directors. These include provisions:

- requiring the approval of not less than 66% of our issued and outstanding voting shares for certain merger or amalgamation transactions that have not been approved by our board of directors;
- prohibiting us from engaging in a business combination with an interested shareholder for a period of three years after the date of the transaction in which the person becomes an interested shareholder, unless certain conditions are met;
- authorizing our board of directors to issue blank-check preference shares without shareholder approval;
- establishing a classified board with staggered three-year terms;
- only authorizing the removal of directors (i) for cause by the affirmative vote of the holders of a majority of the votes cast at a meeting or (ii) without cause by the affirmative vote of the holders of 66% of the common shares then issued and outstanding and entitled to vote on the resolution; and
- establishing advance notice requirements for nominations for election to our board of directors.

These provisions may make it difficult and expensive for a third party to pursue a tender offer, change in control or takeover attempt that is opposed by our management and/or our board of directors. Public shareholders who might desire to participate in these types of transactions may not have an opportunity to do so. These anti-takeover provisions could substantially impede the ability of public shareholders to benefit from a change in control or change our management and board of directors and, as a result, may adversely affect the market price of our common shares and your ability to realize any potential change of control premium.

**As a shareholder of our company, you may have greater difficulties in protecting your interests than as a shareholder of a U.S. corporation.**

The Companies Act 1981 of Bermuda, as amended (the “Companies Act”), applies to our company and differs in material respects from laws generally applicable to U.S. corporations and their shareholders. Taken together with the provisions of our bye-laws, some of these differences may result in your having greater difficulties in protecting your interests as a shareholder of our company than you would have as a shareholder of a U.S. corporation. This affects, among other things, the circumstances under which transactions involving an interested director are voidable, whether an interested director can be held accountable for any benefit realized in a transaction with our company, what approvals are required for business combinations by our company with a large shareholder or a wholly-owned subsidiary, what rights you may have as a shareholder to enforce specified provisions of the Companies Act or our bye-laws, and the circumstances under which we may indemnify our directors and officers.

**Our bye-laws restrict shareholders from bringing legal action against our officers and directors.**

Our bye-laws contain a broad waiver by our shareholders of any claim or right of action, both individually and on our behalf, against any of our officers or directors. The waiver applies to any action taken by an officer or

director, or the failure of an officer or director to take any action, in the performance of his or her duties, except with respect to any matter involving any fraud or dishonesty on the part of the officer or director. This waiver limits the right of shareholders to assert claims against our officers and directors unless the act or failure to act involves fraud or dishonesty.

#### **ITEM 4. INFORMATION ON THE COMPANY**

##### **A. History and Development of the Company**

Our business began operations in 1979. We reorganized our business in 1993 and incorporated Textainer Group Holdings Limited under the laws of Bermuda as a holding company of a group of corporations involved in the purchase, ownership, management, leasing and disposal of a fleet of intermodal containers. Textainer Group Holdings Limited is incorporated with an indefinite duration under registration number EC18896. Textainer Group Holdings Limited's common shares are listed on the New York Stock Exchange ("NYSE") under the symbol "TGH". Textainer Group Holdings Limited's headquarters office is located at Century House, 16 Par-La-Ville Road, Hamilton HM 08 Bermuda and our telephone number is (441) 296-2500. Our agent in the United States is Daniel W. Cohen, Textainer Group Holdings Limited, c/o Textainer Equipment Management (U.S.) Limited, 650 California Street, 16<sup>th</sup> Floor, San Francisco, CA 94108.

Textainer Group Holdings Limited has two directly-owned subsidiaries:

- Textainer Equipment Management Limited ("TEML"), our wholly-owned subsidiary incorporated in Bermuda, which provides container management, acquisition and disposal services to affiliated and unaffiliated container investors; and
- Textainer Limited ("TL"), our wholly-owned subsidiary incorporated in Bermuda, which owns containers directly and via four subsidiaries:
  - Textainer Marine Containers Limited ("TMCL"), which is wholly owned by TL;
  - Textainer Marine Containers II Limited ("TMCL II"), which is wholly owned by TL;
  - TAP Funding Ltd. ("TAP Funding"), in which TL and TAP Limited ("TAP") hold common shares of 50.1% and 49.9%, respectively, and voting rights of 66.7% and 33.3%, respectively; and
  - TW Container Leasing Ltd. ("TW"), in which TL and Wells Fargo Container Corp. ("WFC") hold common shares and related voting rights of 25% and 75%, respectively.

Our internet website address is [www.textainer.com](http://www.textainer.com). The information contained on, or that can be accessed through, our website is not incorporated into and is not intended to be a part of this Annual Report on Form 20-F.

##### ***Significant Events***

On June 29, 2010, we extended TMCL's secured debt facility by prepaying the Series 2000-1 Notes that comprised the secured debt facility and issuing new Series 2010-1 Notes, simultaneously increasing the aggregate commitment under this facility from \$475.0 million to \$750.0 million and, on March 15, 2011, we exercised an option to increase the aggregate commitment under this facility from \$750.0 million to \$850.0 million. The secured debt facility provides for payments of interest only during an initial two-year revolving period, with a provision for the secured debt facility to then convert to a 10-year, but not to exceed 15-year amortizing note payable. Interest on the outstanding amount due under the secured debt facility is payable monthly in arrears and equals LIBOR plus 2.75% during an initial two-year revolving period. There is also a commitment fee of 0.75% on the unused portion of the secured debt facility until December 31, 2010, which was payable monthly in arrears. After December 31, 2010, during the remainder of the two-year revolving period, the commitment fee on the unused portion of the secured debt facility will be 0.75% if total borrowings under the secured debt facility equal 50% or more of the total commitment or 1.00% if total borrowings are less than 50% of the total commitment.

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On November 1, 2010, we purchased approximately 23,400 containers that we had been managing for an institutional investor, including related accounts receivable, due from owners, net, net investment in direct financing leases, accounts payable and accrued expenses for a purchase price of \$36.4 million.

Effective January 18, 2011, we filed a universal shelf registration statement on Form F-3 with the SEC, under which we may sell common shares, preference shares, debt securities, warrants, rights and units in one or more offerings up to a total dollar amount of \$550.0 million.

In 2011, we completed purchase-leaseback transactions for approximately 25,200 containers with a shipping line for a total purchase price of \$29.0 million. The purchase prices and leaseback rental rates were below market rates. The purchase price was allocated based on the fair value of the assets and liabilities acquired.

On May 16, 2011, we purchased approximately 113,500 containers that we had been managing for an institutional investor, including related accounts receivable, due from owners, net, net investment in direct financing leases, accounts payable and accrued expenses for a purchase price of \$183.3 million.

On June 22, 2011, we issued \$400.0 million aggregate principal amount of Series 2011-1 Fixed Rate Asset Backed Notes (the “2011-1 Bonds”) to qualified institutional investors pursuant to Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”) and to non-U.S. persons in accordance with Regulation S promulgated under the Securities Act. The 2011-1 Bonds represent fully amortizing notes payable on a straight-line basis over a scheduled payment term of 10 years, but not to exceed a maximum payment term of 15 years. Under the terms of the 2011-1 Bonds, both principal and interest incurred are payable monthly. We are not permitted to make voluntary prepayments of all, or a portion of, the principal balance of the 2011-1 Bonds prior to the payment date occurring in June 2013. The interest rate for the outstanding principal balance of the 2011-1 Bonds is fixed at 4.70% per annum. The final target payment date and legal final payment date are June 15, 2021 and June 15, 2026, respectively.

On June 30, 2011, TMCL completed a capital restructuring, whereby TL became the sole owner of TMCL. Immediately before the capital restructuring, TL held an 82.49% economic ownership in TMCL and TCG Fund I, L.P. (“TCG”) held the remaining 17.51% economic ownership. TL purchased 1,500 (or 12.5%) Class A common shares of TMCL from TCG for cash consideration of \$71.1 million. We accounted for this transaction as a reduction in the related noncontrolling interest and additional paid-in capital. To complete the capital restructuring, TMCL contributed 12.5% of its containers, net and investment in direct financing and sales-type leases to TCG and TCG paid \$67.3 million of principal on TMCL’s secured debt facility (equal to 12.5% of the balance of TMCL’s secured debt facility and bonds payable) in consideration for the remaining 1,500 (or 12.5%) Class A shares of TMCL held by TCG, which were immediately retired. We recognized a noncash gain on sale of containers to noncontrolling interest of \$19.8 million for the year ended December 31, 2011 in the amount by which the fair value of its containers, net and net investment in direct financing and sales-type leases exceeded their book values. Simultaneously with the contribution of containers, net and net investment in direct financing and sales-type leases, TCG repaid \$67.3 million of TMCL’s secured debt facility. TL also paid an additional \$8.0 million of cash consideration to TCG as a final determination of the purchase price as determined under the contract for 12.5% of the book value of TMCL’s net assets excluding the book value of containers, net, net investment in direct financing and sales-type leases, secured debt facility and bonds payable as of June 30, 2011. As a result of this restructuring, TL acquired the noncontrolling interest. TL’s 100% ownership and voting interest in TMCL’s Class B common shares was not affected by the capital restructuring. In addition, voting matters related to commencing bankruptcy proceedings and amending related board and shareholder meeting requirements require the approval of a separate Class C common shareholder, which does not have any economic ownership interest in TMCL and was not affected by the capital restructuring. For U.S. federal income tax purposes, as a result of the capital restructuring described above, TMCL became a disregarded entity with respect to the Company. We have consolidated TMCL since the inception of the entity in 2001.

On August 5, 2011, a joint venture, TW (a Bermuda company), was formed between TL and WFC. The purpose of TW is to lease containers to lessees under direct financing leases. TW is governed by members, credit



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and management agreements. Under the members agreement, TL owns 25% and WFC owns 75% of the common shares and related voting rights of TW. TL also has two seats and WFC has six seats on TW's board of directors, with each seat having equal voting rights, provided, however, that the approval of at least one TL-appointed director is required for any action of the board of directors. Under a credit agreement, dated as of August 5, 2011, with certain lenders and Wells Fargo Securities, LLC ("WFS"), as administrative agent for the lenders, TW maintains a revolving credit facility with an aggregate commitment of up to \$425.0 million for the origination of direct financing leases to finance up to 85% of the book value of TW's net investment in direct financing leases. Both WFC and WFS are directly and indirectly wholly owned subsidiaries of Wells Fargo and Company. The remaining cost of originating direct financing leases will be provided in the form of capital contributions from TL and WFC, split 25% and 75%, respectively. Under the management agreement, TEML manages all of TW's containers, making day-to-day decisions regarding the marketing, servicing and design of TW's direct financing leases. Based on the combined design and provisions of TW's members, credit and management agreements, we determined that TW is a variable interest entity and that we are the primary beneficiary of TW by virtue of our role as manager of the vehicle and our equity ownership in the entity. Accordingly, we include TW's financial statements in our consolidated financial statements and account for the equity owned by WFC in TW as a noncontrolling interest in our consolidated balance sheet and statement of income.

On February 3, 2012, TMCL entered into a commitment letter (the "Commitment") issued by a bank to provide an irrevocable letter of credit ("Letter of Credit") with a maximum available commitment amount of \$100,000 on the conversion date of TMCL's secured debt facility if the facility was not refinanced or terminated on or prior to its conversion date. The purpose of the commitment letter was to maintain TMCL's current credit ratings on its bonds issued in 2005 and 2011. The purpose of the letter of credit was to supplement the bonds and TMCL's secured debt facility by covering possible shortfalls in principal and interest payments under certain stress scenarios modeled by TMCL's credit rating agencies. The interest rate on the letter of credit, payable monthly in arrears, would have been one-month LIBOR plus 5.50% to 6.50% per annum for the five-year period following the conversion date and one-month LIBOR plus 11.50% per annum thereafter. There was also a commitment fee of \$500, which was paid in full upon issuance of the commitment letter on February 3, 2012, and an unused fee on the commitment letter, payable in arrears, of 0.25% per annum, from February 3, 2012 through the conversion date and 0.625% per annum thereafter. The commitment letter was terminated on May 1, 2012 and the letter of credit was never issued.

On April 18, 2012, we issued \$400.0 million aggregate principal amount of Series 2012-1 Fixed Rate Asset Backed Notes (the "2012-1 Bonds") to qualified institutional investors pursuant to Rule 144A under the Securities Act of 1933 (the "Securities Act") and to non-U.S. persons in accordance with Regulation S promulgated under the Securities Act. The 2012-1 Bonds represent fully amortizing notes payable on a straight-line basis over a scheduled payment term of 10 years, but not to exceed a maximum payment term of 15 years. Under the terms of the 2012-1 Bonds, both principal and interest incurred are payable monthly. We are not permitted to make voluntary prepayments of all, or a portion of, the principal balance of the 2012-1 Bonds prior to the payment date occurring in May 2014. The interest rate for the outstanding principal balance of the 2012-1 Bonds is fixed at 4.21% per annum. The final target payment date and legal final payment date are April 15, 2022 and April 15, 2027, respectively. The 2012-1 Notes were used to repay certain outstanding indebtedness of TMCL, in particular a portion of TMCL's secured debt facility, and for general corporate purposes.

On May 1, 2012, TMCL II entered into a secured debt facility that provides for an aggregate commitment amount of up to \$1.2 billion and it acquired a portion of the containers owned by TMCL. TMCL used proceeds it received from TMCL II for the containers to terminate TMCL's Secured Debt Facility. TMCL II's secured debt facility provides for payments of interest only during an initial two-year revolving period, with a provision that if not renewed the secured debt facility will partially amortize over a five year period and then mature. The interest rate on the secured debt facility, payable monthly in arrears, is one-month LIBOR plus 2.625% until May 1, 2014. There is also a commitment fee of 0.75% on the unused portion of the secured debt facility, which is payable monthly in arrears. If the secured debt facility is not refinanced or renewed prior to May 1, 2014, the interest rate will increase to one-month LIBOR plus 3.625%.

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On August 1, 2012, we purchased approximately 30,300 containers that we had been managing for an institutional investor, including related accounts receivable, due from owners, net, net investment in direct financing and sales-type leases, accounts payable and accrued expenses for a purchase price of \$65.4 million.

On September 19, 2012, we completed an underwritten public offering of an aggregate of 8,625,000 of our common shares at a price to the public of \$31.50 per share. Of the common shares sold, we sold 6,125,000 new common shares and Halco Holdings Inc. (“Halco”) sold 2,500,000 of its existing common shares. We received \$184.8 million and Halco received \$75.4 million after deducting underwriting discounts and other offering expenses. Halco’s total ownership and voting interest in our common shares before and after the offering was 60.0% and 48.9%, respectively.

On September 24, 2012, we extended the term of the TL’s revolving credit facility and amended certain terms, thereof, including an increase in the aggregate commitment amount from \$205,000 to \$600,000 (which includes a \$50,000 letter of credit facility). The maturity date was changed from April 22, 2013 to September 24, 2017. The revolving credit facility provides for payments of interest only during its term beginning on its inception date through September 24, 2017 when all borrowings are due in full. Interest on the outstanding amount due under the revolving credit facility at December 31, 2012 was based either on the U.S. prime rate or LIBOR plus a spread between 1.0% and 2.0%, which varies based on TGH’s consolidated leverage.

On September 30, 2012, we purchased approximately 50,800 containers that we had been managing for an institutional investor, including related accounts receivable, due from owners, net, net investment in direct financing and sales-type leases, accounts payable and accrued expenses for a purchase price of \$103.7 million.

On October 1, 2012, we amended TW’s revolving credit facility to reduce its aggregate commitment amount from \$425.0 million to \$250.0 million. The revolving credit facility provides for payment of interest, payable monthly in arrears through August 5, 2014. Interest on the outstanding amount due under the revolving credit facility is based on one-month LIBOR plus 2.75% per annum. There is a commitment fee of 0.5% on the unused portion of the revolving credit facility, which is payable monthly in arrears. In addition, there is an agent’s fee of 0.025% on the aggregate commitment amount of the revolving credit facility, which is payable monthly in arrears. TW is required to make principal payments on a monthly basis to the extent that the outstanding amount due exceeds TW’s borrowing base.

On December 20, 2012, TL purchased 50.1% of the outstanding common shares of TAP Funding Ltd. (“TAP Funding”) (a Bermuda company) from TAP Ltd. (“TAP”). TAP Funding leases containers to lessees under operating and direct financing and sales-type leases. This purchase allowed us to increase the size of our owned fleet at an attractive price and will be immediately accretive to our earnings. TAP Funding is governed by members and management agreements. Under the members agreement, TL owns 50.1% and TAP owns 49.9% of the common shares of TAP Funding. As common shareholders, TL has two voting rights and TAP has one voting right of TAP Funding, with the exception of certain matters such as bankruptcy proceedings, the incurrence of debt and mergers and consolidations, which require unanimity. TL also has two seats and TAP has one seat on TAP Funding’s board of directors. In addition, TL has an option to purchase the remaining outstanding common shares of TAP Funding held by TAP during the period beginning January 1, 2019 and through December 1, 2020. Under the management agreement, TEMPL manages all of TAP Funding’s containers, making day-to-day decisions regarding the marketing, servicing and design of TAP Funding’s leases. Subsequent to TL’s purchase of a majority ownership of TAP Funding’s common shares, the Company includes TAP Funding’s financial statements in its consolidated financial statements. TAP Funding’s profits and losses are allocated to TL and TAP on the same basis as their ownership percentages. The equity owned by TAP in TAP Funding is shown as a noncontrolling interest on the Company’s consolidated balance sheets and the net income (loss) attributable to the noncontrolling interests’ operations is shown as net income (loss) attributable to noncontrolling interests on the Company’s consolidated statements of comprehensive income. We also recorded a bargain purchase gain of \$9.4 million for the amount by which the fair value of TAP Funding’s net assets exceeded our purchase consideration.

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On December 31, 2012, we purchased approximately 16,100 containers that we had been managing for an institutional investor for a purchase price of \$33.0 million.

***Principal Capital Expenditures***

Our capital expenditures for containers in our owned fleet and fixed assets during 2012, 2011 and 2010 were \$1,087.5 million, \$823.7 million and \$402.3 million, respectively. We received proceeds from the sale of containers and fixed assets during 2012, 2011 and 2010 of \$91.3 million, \$75.3 million and \$58.2 million, respectively.

As all of our containers are used internationally, where no one container is domiciled in one particular place for a prolonged period of time, all of our long-lived assets are considered to be international with no single country of use. Our capital requirements are primarily financed through cash flows from operations, our secured debt facility, share offerings and our revolving credit facilities.

**B. Business Overview**

**Our Company**

We are the world's largest lessor of intermodal containers based on fleet size, with a total fleet of approximately 1.9 million containers, representing approximately 2.8 million TEU. Containers are an integral component of intermodal trade, providing a secure and cost-effective method of transportation because they can be used to transport freight by ship, rail or truck, making it possible to move cargo from point of origin to final destination without repeated unpacking and repacking. We lease containers to approximately 400 shipping lines and other lessees, including each of the world's top 20 container lines, as measured by the total TEU capacity of their container vessels. We believe that our scale, global presence, access to capital, customer service, market knowledge and long history with customers have made us one of the most reliable suppliers of leased containers. We have a long track record in the industry, operating since 1979, and have developed long-standing relationships with key industry participants. Our top 25 customers, as measured by revenues, have leased containers from us for an average of over 25 years.

We have provided an average of more than 181,000 TEU of new containers per year for the past five years, and have been one of the largest buyers of new containers over the same period. We are one of the largest sellers of used containers, having sold an average of more than 80,000 containers per year for the last five years to more than 1,200 customers.

We provide our services worldwide via an international network of 14 regional and area offices and more than 390 independent depots.

We operate our business in three core segments.

- *Container Ownership.* As of December 31, 2012, we owned containers accounting for approximately 73% of our fleet.
- *Container Management.* As of December 31, 2012, we managed containers on behalf of 16 affiliated and unaffiliated container investors, providing acquisition, management and disposal services. Total managed containers account for 27% of our fleet.
- *Container Resale.* We generally sell containers from our fleet when they reach the end of their useful lives in marine service or when we believe it is financially attractive for us to do so, considering location, sale price, the cost of repair, and possible repositioning expenses. We also purchase and lease or resell containers from shipping line customers, container traders and other sellers of containers.

Our total revenues primarily consist of leasing revenues derived from the lease of our owned containers and, to a lesser extent, fees received for managing containers owned by third parties and equipment resale. The most

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important driver of our profitability is the extent to which revenues on our owned fleet and management fee income exceed our operating costs. The key drivers of our revenues are fleet size, rental rates, utilization and direct costs. Our operating costs primarily consist of depreciation and amortization, interest expense, direct operating expenses and administrative expenses. Our lessees are generally responsible for loss of or damage to a container beyond ordinary wear and tear, and they are required to purchase insurance to cover any other liabilities.

We believe that our strategy of owning containers as well as managing containers for other container investors offers several benefits, including:

- a larger fleet, which enables us to serve our shipping line customers more effectively;
- increased market presence and economies of scale associated with a larger fleet;
- the ability to leverage our existing infrastructure and workforce without increasing the capital at risk; and
- a more balanced revenue and expense model.

In general, owning containers during periods of high demand for containers provides higher margins than managing containers, since we receive all of the net operating income for the containers that we own but only a percentage of the net operating income of the containers as a management fee for the containers that we manage. On the other hand, managing containers during periods of low demand for containers reduces the negative financial impact of such periods since the container investors bear the cost of owning the containers.

For 2012, we generated revenues, income from operations and income before income tax and noncontrolling interests of \$487.1 million, \$278.4 million and \$210.6 million, respectively. During 2012, the average utilization of our owned fleet was 97.2%. As mentioned above, we operate in three reportable segments: Container Ownership, Container Management and Container Resale. The following tables summarize revenues, by category of activity, and income before income tax and noncontrolling interests generated from each of our operating segments reconciled to our total revenues and income before income tax and noncontrolling interests shown in our consolidated statements of comprehensive income included in Item 18, “Financial Statements” in this Annual Report on Form 20-F for the fiscal years ended December 31, 2012, 2011 and 2010:

	<b>2012</b>	<b>Container Ownership</b>	<b>Container Management</b>	<b>Container Resale</b>	<b>Other</b>	<b>Eliminations</b>	<b>Totals</b>
Lease rental income		\$ 383,127	\$ 862	\$ —	\$ —	\$ —	\$383,989
Management fees from external customers		—	21,764	4,405	—	—	26,169
Inter-segment management fees		—	47,526	7,300	—	(54,826)	—
Trading container sales proceeds		—	—	42,099	—	—	42,099
Gains on sale of containers, net		34,829	8	—	—	—	34,837
Total revenues		<u>\$ 417,956</u>	<u>\$ 70,160</u>	<u>\$ 53,804</u>	<u>\$ —</u>	<u>\$ (54,826)</u>	<u>\$ 487,094</u>
Segment income before income tax and noncontrolling interests		<u>\$ 175,291</u>	<u>\$ 36,956</u>	<u>\$ 12,787</u>	<u>\$ (3,890)</u>	<u>\$ (10,588)</u>	<u>\$210,556</u>
	<b>2011</b>						
Lease rental income		\$ 326,519	\$ 1,108	\$ —	\$ —	\$ —	\$327,627
Management fees from external customers		—	24,603	4,721	—	—	29,324
Inter-segment management fees		—	44,751	5,599	—	(50,350)	—
Trading container sales proceeds		—	—	34,214	—	—	34,214
Gains on sale of containers, net		31,598	33	—	—	—	31,631
Total revenues		<u>\$ 358,117</u>	<u>\$ 70,495</u>	<u>\$ 44,534</u>	<u>\$ —</u>	<u>\$ (50,350)</u>	<u>\$422,796</u>
Segment income before income tax and noncontrolling interests		<u>\$ 177,694</u>	<u>\$ 36,772</u>	<u>\$ 10,759</u>	<u>\$ (3,314)</u>	<u>\$ (13,412)</u>	<u>\$208,499</u>

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<u>2010</u>	<u>Container Ownership</u>	<u>Container Management</u>	<u>Container Resale</u>	<u>Other</u>	<u>Eliminations</u>	<u>Totals</u>
Lease rental income	\$ 234,577	\$ 1,250	\$ —	\$ —	\$ —	\$235,827
Management fees from external customers	—	23,678	5,459	—	—	29,137
Inter-segment management fees	—	24,350	4,627	—	(28,977)	—
Trading container sales proceeds	—	—	11,291	—	—	11,291
Gains on sale of containers, net	27,617	7	—	—	—	27,624
Total revenues	\$ 262,194	\$ 49,285	\$ 21,377	\$ —	\$ (28,977)	\$ 303,879
Segment income before income tax and noncontrolling interests	\$ 119,772	\$ 15,901	\$ 7,995	\$ (2,815)	\$ (2,596)	\$ 138,257

General and administrative expenses are allocated to the reportable business segments based on direct overhead costs incurred by those segments. Amounts reported in the “Other” column represent activity unrelated to the active reportable operating segments. Amounts reported in the “Eliminations” column represent inter-segment management fees between the container management, container resale and container ownership segments.

Our container lessees use containers for their global trade utilizing many worldwide trade routes. The Company earns its revenue from these international carriers when the containers are on lease. Substantially all of our leasing related revenues are denominated in U.S. dollars.

The largest portion of our fleet is comprised of dry freight containers, which are by far the most common of the three principal types of intermodal containers. Dry freight intermodal containers are large, standardized steel boxes used to transport cargo by multiple modes of transportation, including ships, trains and trucks. We also lease refrigerated containers, which have integral refrigeration units on one end that plug into an outside power source and are used to transport perishable goods. Compared to traditional shipping methods, intermodal containers typically provide users with faster loading and unloading as well as some protection from weather and theft, thereby reducing both transportation costs and time to market for our lessees’ customers.

We primarily lease containers under four different types of leases. Term leases provide a customer with a specified number of containers for a specified period of time, typically ranging from three to five years, with an associated set of pick-up and drop-off conditions. Term leases also include lifecycle leases, under which lessees will lease containers until they reach a pre-specified age which is typically near the end of their useful lives. Once containers under lifecycle leases are returned to us, they are generally sold due to the age of the containers. Term leases represented 76.2% of our total on-hire fleet as of December 31, 2012. Master leases, which provide a framework of terms and conditions valid for a specified period of time, typically one year, give customers greater pick-up and drop-off flexibility than is typical in term leases and represented 15.0% of our total on-hire fleet as of December 31, 2012. Finance leases, which provide customers an alternative means for purchasing containers, represented 6.0% of our total on-hire fleet as of December 31, 2012. Spot leases, which provide customers with containers for a relatively short lease period and fixed pick-up and drop-off locations, represented 2.8% of our total on-hire fleet as of December 31, 2012.

Our expertise and flexibility in managing containers after their initial lease is an important factor in our success. The administrative process of leasing new containers is relatively easy because initial leases for new containers typically cover large volumes of units and are fairly standardized transactions. However, to successfully compete in our industry, we must not only obtain favorable initial long-term leases for new containers, but also maximize the return generated by these containers throughout their useful life in marine service and their ultimate sale into the secondary market. To do that, we focus on renewing or extending our long-term container leases beyond their expiration date (typically three to five years from the start of the lease). In addition, we attempt to negotiate favorable return provisions on all leases, maintain an active presence in the master and spot lease markets, and work to increase our options for disposing of off-lease containers so that we

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have attractive alternatives if it is not possible to achieve reasonable renewal or extension of terms with the current lessee. Unlike some of our competitors, we have the capability and the infrastructure to re-lease or dispose of our containers at comparatively attractive terms, which increases our leverage with the lessees.

We supply leased containers to the U.S. military pursuant to a contract with the Surface Deployment and Distribution Command (“SDDC”) and earn a fee for supplying and managing its fleet of leased containers. We are the main supplier of leased intermodal containers to the U.S. military.

We believe that we have the ability to reposition containers, if necessary, that are returned in lower demand locations to higher demand locations at competitive costs as a result of our experienced logistics team. Our large customer base of approximately 400 lessees increases our ability to re-lease returned containers. Our contract to supply leased containers to the U.S. military enables us to supply containers in demand locations, which are often lower demand locations for our shipping line customers. Our Container Resale segment is positioned to sell containers and optimize their residual value in multiple markets, including lower demand locations. This “life cycle” system of generating an attractive revenue stream from and achieving high utilization of our container fleet has enabled us to become the world’s largest container lessor and led to 26 consecutive years of profits.

## Industry Overview

Containers are built in accordance with standard dimensions and weight specifications established by the International Organization for Standardization (“ISO”). The industry-standard measurement unit is the Twenty-Foot Equivalent Unit (“TEU”), which compares the length of a container to a standard 20’ container. For example, a 20’ container is equivalent to one TEU and a 40’ container is equivalent to two TEU. Standard dry freight containers are typically 8’ wide, come in lengths of 20’, 40’ or 45’ and are either 8’6” or 9’6” high. The three principal types of containers are described as follows:

- *Dry freight standard containers.* A dry freight standard container is constructed of steel sides, roof, an end panel on one end and a set of doors on the other end, a wooden floor and a steel undercarriage. Dry freight standard containers are the least expensive and most commonly used type of container. They are used to carry general cargo, such as manufactured component parts, consumer staples, electronics and apparel. According to the latest available data, dry freight standard containers comprised approximately 90.4% of the worldwide container fleet, as measured in TEU, at December 31, 2011.
- *Dry freight specialized containers.* Dry freight specialized containers consist of open-top and flat-rack containers. An open-top container is similar in construction to a dry freight standard container except that the roof is replaced with a tarpaulin supported by removable roof bows. A flat-rack container is a heavily reinforced steel platform with a wood deck and steel end panels. Open-top and flat-rack containers are generally used to transport heavy or oversized cargo, such as marble slabs, building products or machinery. According to the latest available data, dry freight specialized containers comprised approximately 2.5% of the worldwide container fleet, as measured in TEU, at December 31, 2011.
- *Other containers.* Other containers include refrigerated containers, tank containers, 45’ containers, pallet-wide containers and other types of containers. The two most prominent types of such containers are refrigerated containers and tank containers. A refrigerated container has an integral refrigeration unit on one end which plugs into an outside power source and is used to transport perishable goods. Tank containers are used to transport liquid bulk products such as chemicals, oils, and other liquids. According to the latest available data, other containers comprised approximately 7.1% of the worldwide container fleet, as measured in TEU, at December 31, 2011.

Containers provide a secure and cost-effective method of transportation because they can be used in multiple modes of transportation, making it possible to move cargo from a point of origin to a final destination without repeated unpacking and repacking. As a result, containers reduce transit time and freight and labor costs,

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as they permit faster loading and unloading of shipping vessels and more efficient utilization of transportation containers than traditional break bulk shipping methods. The protection provided by containers also reduces damage, loss and theft of cargo during shipment. While the useful economic life of containers varies based upon the damage and normal wear and tear suffered by the container, we estimate that our useful economic life for a standard dry freight container used in intermodal transportation is on average 12 years. Some shipping lines have recently indicated that they intend to keep their containers for longer than 12 years.

According to *World Cargo News*, container lessors owned approximately 45% of the total worldwide container fleet of 31.2 million TEU as of January 2012. The percentage of leased containers utilized by shipping lines ranged from 39% to 54% from 1980 through 2012 and may increase in the next few years, given limited access to credit and competing needs for capital expenditures by our customers. Given the uncertainty and variability of export volumes and the fact that shipping lines have difficulty in accurately forecasting their container requirements at different ports, the availability of containers for lease significantly reduces a shipping line's need to purchase and maintain excess container inventory. In addition, leasing a portion of their total container fleets enables shipping lines to serve their manufacturer and retailer customers better by:

- increasing their flexibility to manage the availability and location of containers;
- increasing their ability to meet peak demand requirements, particularly prior to holidays such as Christmas and Chinese New Year; and
- reducing their capital expenditures.

While international containerized trade grew rapidly and was consistently positive for the twenty-six years through 2007, there was a global financial crisis and recession during the second half of 2008, which continued through 2009. With virtually no new standard dry freight containers manufactured from the fourth quarter of 2008 through the end of 2009, we estimate that the world container fleet declined by approximately 4% in 2009 as a result of the continued retirement of older containers in the ordinary course. During this period, container manufacturers lost up to 60% of their skilled workers due to long shutdowns. The difficulties manufacturers faced in hiring and training new workers limited their production capacity throughout 2010 and full production capacity only resumed in 2011. However, we have observed since 2011 that many shipping lines are still seeking to strengthen their respective balance sheets, and therefore may not have the required capital budget to purchase all of the new containers they are expected to need in 2013. Based on industry analyst reports, we expect new container production to be 2.7 million TEU in 2013 compared to 2.5 million TEU in 2012, and lessors are expected to purchase 70% or more of total production in 2013 compared to 65% in 2012. Furthermore, we expect to see strong replacement demand, vessel capacity growth of approximately 10% and cargo volume growth of approximately 4-6% in 2013.

Counterparty risk has been reduced over the last several years as several major container shipping lines have been able to recapitalize. Despite the continued challenging economic environment, to date we have not seen any bankruptcies among our major customers.

The shipping business has also been characterized by cyclical swings due to lengthy periods of excess or scarce vessel capacity. We believe that these sustained periods of vessel supply/demand imbalances are mainly a function of the multi-year ordering and production cycle associated with the manufacture of new vessels, which requires shipping lines to estimate market growth many years into the future. Container leasing companies are partially insulated from the risks of these shipping cycles by the relatively short production time associated with the manufacture of new containers. Lead times for new container orders are typically only a few months, so the rate of new container ordering can be quickly adjusted to reflect unexpected market changes.

Additionally, for most leasing companies, the percentage of containers on long-term lease has grown over the past ten years, while the percentage on master lease has declined. As of December 31, 2012, approximately 76% of our total on-hire fleet was on long-term leases, compared to approximately 54% ten years ago. As a result, changes in utilization have become less volatile for Textainer and most leasing companies.

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According to *World Cargo News*, intermodal leasing companies, as ranked by total TEU as of January 2012, are as follows:

<u>Company</u>	<u>TEU (000's)</u>	<u>Percent of Total</u>
Textainer Group <sup>(1)</sup>	2,470	17.7%
Triton Container Intl.	1,855	13.3%
Florens Group	1,775	12.7%
TAL International	1,625	11.6%
SeaCo	990	7.1%
SeaCube Container Leasing Ltd.	930	6.7%
CAI-International Inc.	930	6.7%
Cronos Group	725	5.2%
Touax-Gold Container	505	3.6%
Dong Fang International	495	3.5%
Beacon Intermodal Leasing	375	2.7%
UES International (HK)	290	2.1%
Other	985	7.1%
<b>Grand Total</b>	<b>13,950</b>	<b>100.0%</b>

(1) Textainer Group's owned and managed fleet consisted of 2,775 TEU at December 31, 2012.

### Competitive Strengths

We believe that we possess a number of strengths that provide us with a competitive advantage, including:

**Largest Container Lessor in the Industry.** We operate the world's largest fleet of leased intermodal containers by fleet size, with a total fleet of more than 1.9 million containers, representing approximately 2.8 million TEU, as of December 31, 2012. We provide our services worldwide via a network of regional and area offices and independent depots. We have been one of the largest buyers of new containers purchasing an average of more than 181,000 TEU per year for the last five years and are also one of the largest sellers of used containers, selling an average of more than 80,000 containers per year for the last five years. Our consistent presence in the market buying and selling containers provides us with broad market intelligence, and valuable insight into the demand patterns of our shipping line customers and resale container buyers.

**Proven Ability to Grow Our Fleet.** Our ability to invest in our fleet on a consistent basis has allowed us to become the world's largest container lessor. We have demonstrated our ability to increase the size of our container fleet by purchasing containers from manufacturers and by acquiring existing container fleets or their management rights. Over the past 14 years, we have acquired the rights to manage over 1,400,000 TEU from former competitors and we have acquired approximately 556,000 TEU of containers from our managed fleet. This experience provides us with a competitive advantage over other lessors who are less experienced in assuming ownership or management of other container fleets. As one of the largest buyers of new containers, we have developed strong relationships with container manufacturers. These relationships, along with our large volume buying power and solid financial structure, enable us to reliably purchase containers during periods of high demand.

**Ability to Generate Attractive Returns Throughout the Container Life-Cycle.** One of our major strengths is our demonstrated ability to generate attractive revenue streams throughout the economic life of a container in marine service and upon resale of the container at the end of its marine service life. At the end of a lease, we generally have the ability to either negotiate an extension of the lease term or to take back the container and re-lease or sell it maximizing the container's return. This flexibility, coupled with our international coverage, organization and resources, allows us to deploy containers to those markets where we can re-lease or sell them on comparatively attractive terms, thereby optimizing our returns and the residual value of our fleet.



**Strong Long-Standing Relationships with Customers.** Our scale, long presence in the business and reliability as a supplier of containers has resulted in strong relationships with our customers. We lease containers to approximately 400 shipping lines and other lessees, including each of the world's top 20 container lines, as measured by vessel fleet size in TEU and we sell containers to over 1,200 resale customers. We believe our ability to consistently supply containers in locations where our customers need them makes us one of the most reliable lessors of containers. Our top 25 customers, as measured by revenues, have leased containers from us for an average of over 25 years.

**Strategic Management of Container Portfolio.** We believe that the long-term nature of our lease portfolio, as well as the presence of both owned and managed containers in our fleet, provides us with a more predictable source of revenues and operating cash flow and higher operating margins over time, enabling us to manage and grow our business more effectively. We derive revenues from leasing our owned containers, managing containers owned by third parties, buying and selling containers and supplying leased containers to the U.S. military. These multiple revenue streams provide for a diverse income base, mitigate the effects of our cyclical industry on profitability and allow us to optimize our use of capital.

**Experienced Management Team.** Our senior management has a long history in the industry. Our senior management have an average of 15 years of service with us. The management team has extensive experience in sourcing, leasing, financing, selling, trading and managing containers, as well as a long track record of successfully acquiring and selling container assets.

## Business Strategies

We intend to grow our business profitably by pursuing the following strategies:

**Leverage Our Status as the Largest Container Lessor and Consistent Purchaser and Seller of Containers.** We maintain a young fleet age profile by making regular purchases of available containers to replace older containers and increase the size of our fleet. We believe that this consistent purchasing behavior and the resulting scale and young fleet age profile provides us with a competitive advantage in maintaining strong relationships with manufacturers and growing our market share with our existing customers.

**Pursue Attractive Container Fleet Acquisition Opportunities.** We will continue to seek to identify and acquire attractive portfolios of containers, both on an owned and on a managed basis, to allow us to grow our fleet profitably. We believe that the consolidation trend in our industry will continue and will likely offer us future growth opportunities. We also believe that the ongoing downturn in the world's major economies and the constraints in the credit markets may also result in potential acquisition opportunities, including through the purchase and leaseback of customer-owned containers. Purchase and leaseback transactions can be attractive to our customers because they free up cash for other capital needs, and these transactions enable us to buy attractively priced containers and at the same time place them on leases for the remainder of their marine service lives.

**Continue to Focus on Maintaining High Levels of Utilization and Operating Efficiency.** We will continue to target high utilization rates and attractive returns on our assets through our focus on longer-term leases and disciplined portfolio management. As of December 31, 2012, approximately 76% of our total on hire fleet (based on total TEU) was on long-term leases, compared to approximately 54% ten years ago. We also drive operating efficiency by maintaining a low cost structure, having brought down our fleet management cost per CEU per day by approximately 53% and grown the number of CEU per employee by over 223%, in each case over the 10 years ended December 31, 2012. Our management cost per CEU per day and CEU per employee metrics are significantly better than all three of the other container leasing companies publicly traded in the U.S. Furthermore, we believe that we can continue to grow our fleet without a proportionate increase in our headcount, thereby continuing to improve profitability by spreading our operating expenses over a larger revenue base.

**Extend the Lease of In-fleet Containers.** Since many shipping lines are currently finding it difficult to access debt financing, but still must utilize scarce capital to finance vessels, it is possible that some will conclude in 2013, as they did in 2012, that it is more cost-effective to extend leases of in-fleet containers than either to buy containers at higher prices or to lease new containers.

**Grow Our Container Resale Business.** Our container resale and trading business is a significant source of profits. We look to sell containers from our fleet when they reach the end of their useful lives in marine service or when we believe it is financially attractive for us to do so, considering the location, sales price, cost of repair, and possible repositioning expenses. In order to improve the sales price of our containers, we often move them from the location where they are returned by the lessee to another location that has a higher market price. We benefit not only as a result of the increased sales price but also because we often receive rental revenue from a shipping line for the one-way lease of the container. We also buy and lease or resell containers from shipping line customers, container traders and other sellers of containers. We attempt to improve the sales price of these containers in the same manner as with containers from our fleet.

**Maintain Access to Diverse Sources of Capital.** We have successfully utilized a wide variety of financing alternatives to fund our growth, including secured debt financings, bank financing, and equity from third party investors in containers. We believe this diversity of funding, combined with our access to the public equity markets, provides us with an advantage in terms of both cost and availability of capital, versus our smaller competitors and also our shipping line customers.

## Operations

We operate our business through a network of regional and area offices and independent depots. We maintain four regional offices as follows:

- Americas Region in Hackensack, New Jersey, USA responsible for North and South America;
- European Region in New Malden, UK responsible for Europe, the Mediterranean, the Middle East, and Africa;
- North Asia Region in Yokohama, Japan responsible for Japan, South Korea, and Taiwan; and
- South Asia Region in Singapore, responsible for Southeast Asia, the People's Republic of China ("PRC") (including Hong Kong) and Australia.

Regional vice presidents are in charge of regional leasing and operations. Marketing directors and assistants located in the region and area offices handle day-to-day marketing and collection activities. Our operations include a global sales force, container operations group, container resale group, and logistics services group. Our headquarters office is in Hamilton, Bermuda. Our administrative office is located in San Francisco, California.

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*Our Container Fleet*

As of December 31, 2012, we operated 2,775,034 TEU. We attempt to continually invest in our container fleet each year in an effort to replace the older containers being retired from marine service and to build our fleet size. We purchased an average of more than 181,000 TEU per year over the past five years. Our ability to invest in our fleet on a consistent basis has been instrumental in our becoming the world's largest container lessor. Our container fleet consists primarily of standard dry freight and refrigerated containers. The containers that we lease are generally either owned outright by us or owned by third parties and managed by us. The table below summarizes the composition of our owned and managed fleets, in TEU and CEU, by type of containers as of December 31, 2012 (unaudited):

	Standard Dry Freight	Refrigerated	Other Specialized	Total	Percent of Total Fleet
<b>TEU</b>					
Owned	1,920,958	52,611	42,679	2,016,248	72.7%
Managed	736,262	12,417	10,107	758,786	27.3%
Total fleet	2,657,220	65,028	52,786	2,775,034	100.0%
<b>CEU</b>					
Owned	1,717,991	213,635	66,702	1,998,328	73.3%
Managed	660,064	50,363	17,785	728,212	26.7%
Total fleet	2,378,055	263,998	84,487	2,726,540	100.0%

The amounts in the table above did not change significantly from December 31, 2012 to the date of this Annual Report on Form 20-F.

Our containers are designed to meet a number of criteria outlined by the ISO. The standard criteria include the size of the container and the gross weight rating of the container. This standardization ensures that the widest possible number of transporters can use containers and it facilitates container and vessel sharing by the shipping lines. The standardization of the container is also an important element of the container leasing business since we can operate one fleet of containers that can be used by all of our major customers.

Maintenance and repair of our containers is performed by independent depots that we retain in major port areas and in-land locations. Such depots also handle and inspect containers that are either picked up or redelivered by lessees, and store containers that are not leased.

*Our Leases*

Most of our revenues are derived from leasing our owned fleet of containers to our core shipping line customers. The vast majority of our container leases are structured as operating leases, though we also provide customers with finance leases. Regardless of lease type, we seek to exceed our targeted return on our owned and managed containers over the life of each container by managing container utilization, lease rates, drop-off restrictions and the disposal process. We lease containers under three different types of operating leases (term leases, master leases and spot leases) and also under finance leases.

*Term leases*

Term leases (also referred to as long-term leases) provide a customer with a specified number of containers for a specified period, typically ranging from three to five years, with an associated set of pick-up and drop-off conditions. Our term leases generally require our lessees to maintain all units on lease for the duration of the lease. Term leases also include lifecycle leases, under which lessees will lease containers until they reach a pre-specified age which is typically near the end of their useful lives. Once containers under lifecycle leases are returned to us, they are generally sold due to the age of the containers. Term leases provide us with enhanced

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cash flow certainty due to their extended duration but carry lower per diem rates than other lease types. As of December 31, 2012, 76.2% of our owned on-hire fleet, as measured in TEU, was on term leases.

As of December 31, 2012, our term leases had an average remaining duration of 3.5 years, assuming no leases are renewed. However, we believe that many of our customers will renew leases for containers that are less than sale age at the expiration of the lease. In addition, our containers typically remain on-hire at the contractual per diem rate for an average of an additional 18 months beyond the end of the contractual lease term, for leases that are not extended, due to the logistical requirements our customers face by having to return containers to specific drop-off locations.

The following are the minimum future rentals for our owned fleet at December 31, 2012, due under long-term leases (in thousands):

Year ending December 31 (dollars in thousands):	
2013	\$ 246,094
2014	206,674
2015	180,663
2016	126,180
2017 and thereafter	93,763
Total future minimum lease payments receivable	<u>\$ 853,374</u>

Some of our term leases give our customers Early Termination Options (“ETOs”). If exercised, ETOs allow customers to return containers prior to the expiration of the term lease. However, if an ETO is exercised, the customer is required to pay a penalty per diem rate that is applied retroactively to the beginning of the lease. As a result of this retroactive penalty, ETOs have historically rarely been exercised.

#### *Master leases*

Master leases provide a framework of terms and conditions pursuant to which lessees can lease containers on an as-needed basis for unspecified periods of time. Master lease terms and conditions are valid for a set period, typically one year, and provide the lessee with greater flexibility than is typical in term leases. Under our master leases, lessees know in advance their per diem rates and drop-off locations, subject to monthly drop-off location limits. In addition, under these master lease agreements, the lessee is generally not committed to leasing a minimum number of containers from us during the lease term and may generally return the containers to us at any time, subject to certain restrictions. Due to their flexibility and duration, master leases command higher per diem rates than term leases. A subset of master leases are our special leases, which are predominately round-trip Asia leases, allowing customers to return containers at any time but with restrictions on drop-off locations, generally in higher demand locations in Asia. As of December 31, 2012, 15.0% of our owned on-hire fleet, as measured in TEU, was on master leases.

#### *Spot leases*

Spot leases provide the customer with containers for a relatively short lease period with fixed pick-up and drop-off locations. Spot leases are generally used to position a container to a desired location for subsequent lease or sale. As of December 31, 2012, 2.8% of our total on-hire fleet, as measured in TEU, was on spot leases.

#### *Finance Leases*

Finance leases provide our lessees with an alternative method to finance their container acquisitions. Finance leases are long-term in nature, typically ranging from three to eight years and require relatively little customer service attention. They ordinarily require fixed payments over a defined period and provide lessees with a right to purchase the subject containers for a nominal amount at the end of the lease term. Per diem rates include an element of repayment of capital and, therefore, typically are higher than rates charged under other

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leases. Finance leases require the container lessee to keep the containers on lease for the entire term of the lease. Finance leases are reflected as “Net investment in direct financing and sales-type leases” on our balance sheet. As of December 31, 2012, approximately 6.0% of our owned on-hire fleet, as measured in TEU, was on finance leases with an average remaining term of 2.5 years.

### *Maintenance, Repair and Damage Protection*

Under all of our leases, our lessees are generally responsible for loss of or damage to a container beyond ordinary wear and tear, and they are required to purchase insurance to cover any other liabilities. Any damage must be repaired at the expense of the lessee according to standardized guidelines promulgated by the Institute of International Container Lessors (“IICL”). Lessees are also required to obtain insurance to cover loss of the equipment on lease, public liability and property damage insurance as well as indemnify us from claims related to their usage of the leased containers. In some cases, a Damage Protection Plan (“DPP”) is provided whereby the lessee pays us (in the form of either a higher per-diem rate or a fixed one-time payment upon the return of a container) to assume a portion of the financial burden of repairs up to a pre-negotiated amount. This DPP does not cover damages from war or war risks, loss of a container, constructive total loss of the container, damages caused by contamination or corrosion from cargo, damages to movable parts and any costs incurred in removing labels, which are all responsibilities of the lessees. DPP is generally cancelable by either party with prior written notice. Maintenance is monitored through inspections at the time that a container is leased out and returned. In 2012, DPP revenue was 1.3% of total lease rental income. We also maintain our own insurance to cover our containers when they are not on-hire to lessees or when the lessee fails to have adequate primary coverage, and third-party liability insurance for both on-hire and off-hire containers. In addition, we maintain insurance that, after satisfying our deductibles, would cover loss of revenue as a result of default under most of our leases, as well as the recovery cost or replacement value of most of our containers.

### *Lease Agreements*

In general, our lease agreements consist of two basic elements, a master terms and conditions agreement, or a “Master Agreement,” and a lease schedule. Lease schedules contain the business terms (including daily rate, term duration and drop-off schedule, among other things) for specific leasing transactions, while Master Agreements outline the general rights and obligations of the lessor and lessee under all of the lease schedules covered by the Master Agreement. For most customers, we have a small number of Master Agreements (often one) and a large number of lease schedules.

Our standard Master Agreements generally require the lessees to pay rentals, depot charges, taxes and other charges when due, to maintain the containers in good condition and repair, to return the containers in good condition in accordance with the return conditions set forth in the Master Agreement, to use the containers in compliance with all laws, and to pay us for the value of the container as determined by us if the container is lost or destroyed. The default clause gives us certain legal remedies in the event that the lessee is in breach of the lease.

### *Re-leasing, Logistics and Depot Management*

We believe that managing the period after termination of our containers’ first lease is one of the most important aspects of our business. The container shipping industry is characterized by large regional trade imbalances, with loaded containers generally flowing from export-oriented economies in Asia to North America and Western Europe. Because of these trade imbalances, container shipping lines have an incentive to return leased containers in North America and Western Europe to avoid the cost of shipping empty containers back to Asia. Successful management of the deployment of our containers after they come off their first lease requires disciplined re-leasing capabilities, logistics management, depot management, careful cost control and effective sales of used containers.

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### *Re-leasing*

Since our leases allow our lessees to return their containers, we typically lease a container several times during the time that it is part of our fleet. New containers can usually be leased with a limited sales and customer service infrastructure because initial leases for new containers typically cover large volumes of units and are fairly standardized transactions. Used containers, on the other hand, are typically leased in smaller transactions that are structured to accommodate pick-ups and returns in a variety of locations. Our utilization rates depend in part on our re-leasing capabilities. Factors that affect our ability to re-lease used containers include the size of our lessee base, ability to anticipate lessee needs, our presence in relevant geographic locations and the level of service we provide our lessees. We believe that our global presence and relationships with approximately 400 container lessees provide us an advantage in re-leasing our containers relative to many of our smaller competitors.

### *Logistics*

Other methods of reducing off-lease risks include:

- *Limiting or prohibiting container returns to low-demand areas*. In order to reduce our repositioning costs, our leases typically include a prohibition on returning containers to specific locations, limitations on the number of containers that may be returned to lower demand locations, drop-off charges for returning containers to lower demand locations or a combination of these provisions.
- *Taking advantage of a robust secondary resale market when available*. In order to optimize the investment return on a container, we have sold containers in our excess inventory locations when an analysis indicates it is financially more attractive than attempting to re-lease or reposition the container.
- *Seeking one-way lease opportunities to move containers from lower demand locations to higher demand locations*. One-way leases may include incentives, such as free days, credits and limited damage waivers. The cost of offering these incentives is generally less than the cost we would incur if we were to pay to reposition the containers. We also use one-way leases to move containers from locations where the market price for selling containers is low to locations with a higher market price for containers, to improve the resale value of the containers.
- *Paying to reposition our containers to higher demand locations*. At locations where our inventories remain high, despite the efforts described above, we will selectively choose to reposition excess containers to locations with higher demand.
- *Consistently purchasing containers in the PRC*. We purchase almost all of our new containers from manufacturers in the PRC. Certain ports in the PRC, including the locations where we purchase containers, are also generally higher demand locations. By consistently purchasing containers in the PRC, we have increased flexibility to reposition our existing containers to other higher demand locations while still maintaining good coverage of the locations in the PRC.
- *Diversifying our customers*. We have sought to diversify our customers and, correspondingly, the locations where containers are needed around the world.

### *Depot Management*

As of December 31, 2012, we managed our container fleet through 390 independent container depot facilities in 200 locations. Depot facilities are generally responsible for repairing containers when they are returned by lessees and for storing the containers while they are off-hire. Our operations group is responsible for managing our depot relationships and periodically visiting the depot facilities to conduct quality assurance audits to control costs and ensure repairs meet industry standards. We occasionally supplement our internal operations group with the use of independent inspection agents. Furthermore, depot repair work is periodically audited to prevent over-charging. We are in regular communication with our depot partners through the use of electronic data interchange ("EDI") and/or e-mail. The electronic exchange of container activity information with each

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depot is conducted via the internet. As of December 31, 2012, a large majority of our off-lease inventory was located at depots that are able to report notice of container activity and damage detail via EDI. We use the industry standard, ISO 9897 Container Equipment Data Exchange messages, for most EDI reporting.

Most of the depot agency agreements follow a standard form and generally provide that the depot will be liable for loss or damage of containers and, in the event of loss, will pay us the previously agreed loss value of the applicable containers. The agreements require the depots to maintain insurance against container loss or damage and we carry insurance to cover the risk when a depot's insurance proves insufficient.

Our container repair standards and processes are generally managed in accordance with standards and procedures specified by the IICL. The IICL establishes and documents the acceptable interchange condition for containers and the repair procedures required to return damaged containers to the acceptable interchange condition. At the time that containers are returned by lessees, the depot arranges an inspection of the containers to assess the repairs required to return the containers to acceptable IICL condition. As part of the inspection process, damages are categorized either as lessee damage or normal wear and tear. Items typically designated as lessee damage include dents in the container and debris left in the container, while items such as rust are typically designated as normal wear and tear. In general, lessees are responsible for the lessee damage portion of the repair costs and we are responsible for normal wear and tear. The lessees are generally billed the lessee damage portion at the time the containers are returned. As discussed above in "Operations — Our Leases," for an additional fee, we sometimes offer our lessees a DPP, pursuant to which we assume financial responsibility for repair costs up to a previously negotiated amount.

### *Management Services*

As of December 31, 2012, we owned approximately 73% of the containers in our fleet, and managed the rest, equaling 758,786 TEU, on behalf of 16 affiliated and unaffiliated container investors. We earn acquisition, management and disposal fees on managed containers. Our IT systems track revenues and operating expenses attributable to specific containers and the container investors receive payments based on the net operating income of their own containers. Fees to manage containers typically include acquisition fees of 1% to 2% of the purchase price; daily management fees of 8% to 13% of net operating income; and disposal fees of 5% to 12% of cash proceeds when containers are sold. We earned combined acquisition, management and disposal fees on our managed fleet of \$26.2 million, \$29.3 million and \$29.1 million for the years 2012, 2011 and 2010, respectively. If operating expenses were to exceed revenues, the container investors would be obligated to pay the excess or we would deduct the excess, including our management fee, from future net operating income. In some cases, we are compensated for sales through a percentage sharing of sale proceeds over an agreed floor amount. We will typically indemnify the container investors for liabilities or losses arising from negligence, willful misconduct or breach of our obligations in managing the containers. The container investors will indemnify us as the manager against any claims or losses arising with respect to the containers, provided that such claims or losses were not caused by our negligence, willful misconduct or breach of our obligations. Typically, the terms of the management agreements are for the expected remaining useful life in marine services of the containers subject to the agreement.

In June 2003, we entered into a contract with the SDDC pursuant to which we serve as a major supplier of leased marine containers to the U.S. military. Compared to our shipping line customers, we provide a much broader level of services to the U.S. military under the SDDC contract. We have developed and currently operate a proprietary information system for the U.S. military which provides the U.S. military real-time access to the status of its leased fleet. Furthermore, unlike our shipping line customers, who pick up from and return containers to container depots, for the U.S. military we are required to arrange transportation from a container depot to a military facility upon lease out and to pick up a container at a military facility and return it to a container depot when the lease period has ended. This requires us to arrange for movement of the empty containers by truck, rail and/or vessel. The SDDC contract provides added compensation for these services. In addition, since approximately half of these services are required in non-U.S. locations, our expenses for contracting for these

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services may be incurred in foreign currencies. The SDDC contract contains a foreign currency adjustment feature such that we are protected against many foreign currency risks for the expenses incurred under the SDDC contract.

The SDDC is the only lessee for which we are required, under the SDDC contract, to provide all containers that they request. In the event that containers are not available within our fleet, we fulfill our obligations under the SDDC contract by purchasing new or used containers or subleasing containers and equipment from other leasing companies. This contract also allows the U.S. military to return containers in many locations throughout the world. Since the inception of the SDDC contract, we have delivered or transitioned approximately 151,000 containers and chassis to the U.S. military, of which approximately 99,000 containers have been returned. In addition, approximately 49,000 containers have been reported as unaccounted for and the U.S. Military paid a stipulated value for each such container. The SDDC contract was awarded with a one-year base period, with four one-year extension options, and with a potential for up to five additional one-year “award terms,” which award terms were considered and awarded based on an annual performance review and confirmation. Due to high performance evaluations, with the last evaluation resulting in an “Exceptional” rating with a score 93.0% in 2011, the total contract period under the SDDC contract has been extended for the full ten years and, at this stage, will expire on June 23, 2013. Contract renewal discussions will commence in the first half of 2013. We intend to bid for the renewal of the contract.

### *Resale of Containers*

Our Resale Division sells containers from our fleet, at the end of their useful lives in marine service, typically about 12 years, or when we believe it is financially attractive for us to do so, considering the location, sale price, cost of repair, and possible repositioning expenses. In addition, we buy used containers (trading containers) from shipping lines and other third parties that we then lease or resell. Our Resale Division has a global team of 18 container sales and operations specialists in seven offices globally that manage the sale process for these used containers. Our Resale Division is one of the largest sellers of used containers among container lessors, selling an average of more than 80,000 containers per year for the last five years to more than 1,200 customers. Our Resale Division has become a significant profit center for us. From 2008 through 2012, this Division generated \$52.8 million in income before income tax and noncontrolling interest, including \$12.8 million during 2012. We generally sell containers to depots, domestic storage companies, freight forwarders (who often use the containers for one-way trips into less developed countries) and other purchasers of used containers.

### *Underwriting and Credit Controls*

We only lease to container shipping lines and other lessees or sell to buyers that meet our credit criteria. Our credit approval process is rigorous and all of our underwriting and credit decisions are controlled by our credit committee, which is made up of senior management from different disciplines. Our credit committee sets different maximum exposure limits depending on our relationship and previous experience with each customer lessee and container sales customer. Credit criteria may include, but are not limited to, trade route, country, social and political climate, assessments of financial performance including net worth and profitability, asset ownership, bank and trade credit references, credit bureau reports, operational history and financial strength. Our marketing and resale staff are also responsible for collections, which positively contributes to our strong collection and credit approval process through our staff's close communication with our customers.

Our credit department sets and reviews credit limits for new and existing customer lessees and container sales customers, monitors compliance with those limits on an on-going basis, monitors collections, and deals with customers in default. Our credit department actively maintains a credit watch report on our proprietary information technology systems, which is available to all regional and area offices. This credit watch report lists customer lessees and container sales customers at or near their credit limits. New leases of containers to lessees on the credit watch report would only be allowed with the approval of our credit department. Similarly, management may decide to stop sales of containers to purchasers whose payments are delinquent. Our



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underwriting processes are aided by the long payment experience we have with most of our customer lessees and container sales customers, our broad network of relationships in the container shipping industry that provides current information about customer lessees' and container sales customers' market reputations and our focus on collections.

Other factors reducing losses due to default by a lessee or customer include the strong growth in the container shipping industry, effective collection tools, our high recovery rate for containers in default situations and the re-marketability of our container fleet. The strong growth in the container shipping industry helps reduce the risk of customer defaults since the core assets of a poorly performing shipping line, its ships and containers, have historically been needed to meet the demand for world containerized trade. As a result, poorly performing shipping lines are often acquired by other shipping lines. In addition, the law in several major port locations is highly favorable to creditors and many of our large customers call on ports that will allow us to arrest, or seize, the customers' ships or fuel storage bunkers, or repossess our containers if the customer is in default under our container leases. Finally, we also purchase insurance for equipment recovery and loss of revenue due to customer defaults, in addition to the insurance that our customers are required to obtain.

During 2008 through 2012, we recovered, on average, 84.7% of the containers that were the subject of defaulted contracts which had at least 1,000 CEU on lease. We typically incur operating expenses such as repairs and repositioning when containers are recovered after a default. However, recovery expenses are typically covered under insurance and we are reimbursed above our deductible amount. Due to the above, over the last five years, our write-offs of customer receivables for our owned and managed fleet have averaged 1.1% of our lease rental income over such period.

### **Marketing and Customer Service**

Our global sales and customer service force is responsible for developing and maintaining relationships with senior management staff at our shipping line customers, negotiating lease contracts and maintaining day-to-day coordination with operations staff at our customers. This close customer communication often assists us in negotiating lease contracts that satisfy both our financial return requirements and our customers' operating needs. It also makes us more likely to be aware of our customers' potential equipment shortages and makes our customers more likely to be aware of our available container inventories.

Our senior sales people have considerable industry experience and we believe that the quality of our customer relationships and the level of communication with our customers represent an important advantage for us. As of December 31, 2012, our global sales and customer service group consisted of approximately 69 people, with 15 in North America, 36 in Asia and Australia, 13 in Europe and 5 in Africa.

### **Customers**

We believe that our staff, organization and long presence in the business have resulted in very strong relationships with our shipping line customers. Our top 25 customers, as measured by lease billings, have leased containers from us for an average of over 25 years and have an average Dynamar credit rating, a common credit report used in the maritime sector, of 3.6. The Dynamar credit rating ranges from 1 to 10, with 1 indicating low credit risk. We had one customer that individually accounted for 11.7%, 12.3% and 10.8% of our owned lease billings in 2012, 2011 and 2010, respectively. Our top 25 customers include 20 of the 25 largest shipping lines, as measured by container vessel fleet size. We currently have containers on-hire to approximately 400 customers. Our customers are mainly international shipping lines, but we also lease containers to freight forwarding companies and the U.S. military. Our five largest customers accounted for approximately 37.2% of our total owned and managed fleet's 2012 lease billings. Our top five customers by lease billings in 2012 were CMA-CGM, Cosco Container Lines, Hapag-Lloyd AG, Mediterranean Shipping Company S.A. and Mitsui O.S.K. Lines. During 2012, 2011 and 2010, lease billings from our 25 largest container lessees by lease billings represented 77.3%, 74.6% and 76.7% of our total owned and managed fleet's container leasing billings, respectively, with lease billings from our single largest container lessee accounting for \$71.2 million,

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\$68.4 million and \$52.7 million or 12.0%, 12.4% and 11.1% of our total owned and managed fleet's container lease billings during the respective periods. A default by any of these major customers could have a material adverse impact on our business, results from operations and financial condition. In addition, the largest lessees of our owned fleet are often among the largest lessees of our managed fleet. The largest lessees of our managed fleet are responsible for a significant portion of the billings that generate our management fee revenue.

### **Proprietary Information Technology**

We have developed proprietary IT systems that allow us to monitor container status and offer our customers a high level of service. Our systems include internet-based updates regarding container availability and booking status. Our systems record the status of and provide the accounting and billing for each of our containers individually by container number. We also have the ability to produce complete management reports for each portfolio of equipment we own and manage. This makes us a preferred candidate to quickly assume management of competitors' container fleets. We also maintain proprietary systems in support of our military business.

In addition, our systems allow our business partners to conduct certain business with us through our website, [www.textainer.com](http://www.textainer.com). These systems allow customers to check our container inventories, review design specifications, request bookings for container pick-ups and review and approve repair bills. Our website also allows depots to download recent statements for self-billing activity and to check the status of containers.

### **Suppliers**

We have long relationships with all of our major suppliers. We currently purchase almost all of our containers in the PRC. There are two major manufacturers of dry freight standard and specialized containers. Our operations staff reviews the designs for our containers and periodically audits the production facilities of our suppliers. In addition, we use our Asian operations group and occasionally third party inspectors to visit factories when our containers are being produced to provide an extra layer of quality control. Nevertheless, defects in our containers do sometimes occur. We work with the manufacturers to correct these defects, and our manufacturers have generally honored their warranty obligations in such cases.

### **Competition**

According to *World Cargo News*, as of January 2012, the top ten container leasing companies, as measured on a TEU basis, control approximately 88.2%, and the top five container leasing companies control approximately 62.5%, of the total equipment held by all container lessors. According to this data, we are the world's largest lessor of intermodal containers based on fleet size by TEU and we manage approximately 18% by TEU of the equipment held by all container leasing companies.

We compete with approximately ten other large or medium size container leasing companies, many smaller lessors, companies and financial institutions offering finance leases, and promoters of container ownership and leasing as a tax-efficient investment. It is common for our shipping line customers to utilize several leasing companies to meet their container needs.

Other lessors compete with us in many ways, including pricing, lease flexibility and supply reliability, as well as the location, availability, quality and individual characteristics of their containers and customer service. While we are forced to compete aggressively on price, we emphasize our supply reliability and high level of customer service to our customers. We invest heavily to ensure container availability in higher demand locations. We dedicate a large part of our organization to building customer relationships, maintaining close day-to-day coordination with customers' operating staffs and have developed powerful and user-friendly systems that allow our customers to transact business with us through the internet. We believe that our close customer relationships, experienced staff, reputation for market leadership, scale efficiencies and proprietary systems provide important competitive advantages.

## **Legal Proceedings**

From time to time we are a party to litigation matters arising in connection with the normal course of our business. While we cannot predict the outcome of these matters, in the opinion of our management, any liability arising from these matters will not have a material adverse effect on our business. Nevertheless, unexpected adverse future events, such as an unforeseen development in our existing proceedings, new claims brought against us or changes in our current insurance arrangements could result in liabilities that have a material adverse impact on our business.

## **Environmental**

We are subject to federal, state, local and foreign laws and regulations relating to the protection of the environment, including those governing the discharge of pollutants to air and water, the management and disposal of hazardous substances and wastes and the cleanup of contaminated sites. We could incur substantial costs, including cleanup costs, fines and third-party claims for property damage and personal injury, as a result of violations of or liabilities under environmental laws and regulations in connection with our or our lessees' current or historical operations or the storage of our containers. Under some environmental laws in the U.S. and certain other countries, the owner or operator of a leased container may be liable for environmental damage, cleanup or other costs in the event of a spill or discharge of material from a container without regard to the fault of the owner or operator. While we maintain certain limited liability insurance coverage as well as require our lessees to provide us with indemnity against certain losses, the insurance coverage is subject to large deductibles, limits on maximum coverage and significant exclusions and may not be sufficient to protect against any or all liabilities and such indemnities may not cover or be sufficient to protect us against losses arising from environmental damage and/or systems or services we may be required to install.

In addition to environmental regulations affecting container movement, shipping, movement and spillage, environmental regulations also impact container production and operation, including regulations on the use of chemical refrigerants due to their ozone depleting and global warming effects. Our refrigerated containers currently use R134A or R404A refrigerant. While R134A does not contain chlorofluorocarbons ("CFC's"), the European Union has instituted regulations to phase out the use of R134A in automobile air conditioning systems beginning in 2011 due to concern that the release of R134A into the atmosphere may contribute to global warming. While the European Union regulations do not currently restrict the use of R134A in refrigerated containers or trailers, it is possible that the phase out of R134A in automobile air conditioning systems will be extended to containers in the future and our operations could be impacted.

Container production also raises environmental concerns. The floors of dry containers are plywood made from timber which may include tropical hardwoods. Due to concerns regarding de-forestation and climate change, many countries have implemented severe restrictions on the cutting and export of this wood. Accordingly, container manufacturers have switched a significant portion of production to alternatives such as birch, bamboo, and other farm grown wood and users are also evaluating alternative designs that would limit the amount of plywood required and are also considering possible synthetic materials. New woods or other alternatives have not proven their durability over the typical life of a dry container, and if they cannot perform as well as the hardwoods have historically, the future repair and operating costs for these containers may be impacted. Also, the insulation foam in the walls of refrigerated containers requires the use of a blowing agent that contains CFC's. Manufacturers are phasing out the use of this blowing agent in manufacturing. However, if future regulations prohibit the use or servicing of containers with insulation manufactured with this blowing agent we could be forced to incur large retrofitting expenses and these containers might bring lower rental rates and disposal prices.

## **Regulation**

We may be subject to regulations promulgated in various countries, including the U.S., seeking to protect the integrity of international commerce and prevent the use of containers for international terrorism or other illicit activities. For example, the Container Security Initiative, the Customs-Trade Partnership Against Terrorism

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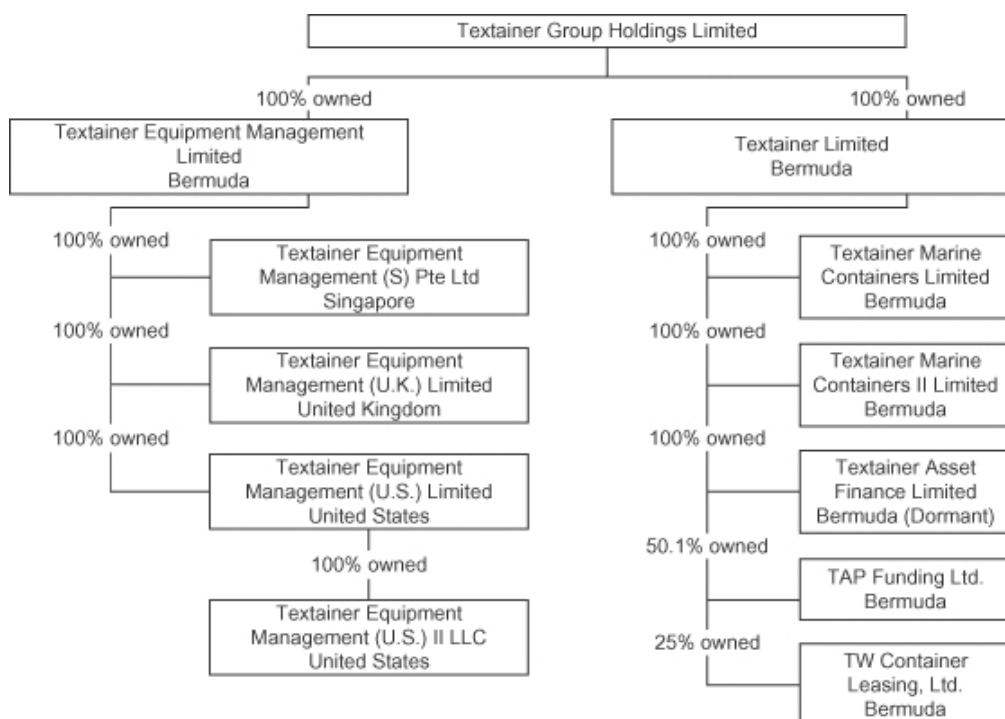
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and Operation Safe Commerce are among the programs administered by the U.S. Department of Homeland Security that are designed to enhance security for cargo moving throughout the international transportation system by identifying existing vulnerabilities in the supply chain and developing improved methods for ensuring the security of containerized cargo entering and leaving the U.S. Moreover, the International Convention for Safe Containers, 1972, as amended, adopted by the International Maritime Organization, applies to new and existing containers and seeks to maintain a high level of safety of human life in the transport and handling of containers by providing uniform international safety regulations. As these regulations develop and change, we may incur increased compliance costs due to the acquisition of new, compliant containers and/or the adaptation of existing containers to meet any new requirements imposed by such regulations.

We may also be affected by legal or regulatory responses to potential global climate change. Please see Item 3, “*Key Information — Risk Factors — We may also be affected by potential global climate change or by legal, regulatory or market responses to such potential change.*”

### C. Organizational Structure

Our current corporate structure is as follows:



We currently own 100% of all of our direct and indirect subsidiaries, except for TAP Funding and TW. TAP Funding is a joint venture involving TL and TAP. As of December 31, 2012, TL owned 50.1% and TAP owned 49.9% of the common shares and TL had two voting rights and TAP had one voting right of TAP Funding, with the exception of certain matters such as bankruptcy proceedings, the incurrence of debt and mergers and consolidations, which require unanimity. TW is a joint venture involving TL and WFC, a wholly owned subsidiary of Wells Fargo and Company. As of December 31, 2012, TL owned 25% and WFC owned 75% of the common shares and related voting rights of TW.

Our principal shareholder, Halco Holdings Inc. (“Halco”), is owned by a discretionary trust with an independent trustee. Trencor Limited and certain of its affiliates are the sole discretionary beneficiaries of this

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trust. Halco, which owned approximately 48.9% of our outstanding share capital as of December 31, 2012, is a wholly-owned subsidiary of the Halco Trust. Trenchor is a South African public investment holding company, that has been listed on the JSE in Johannesburg, South Africa since 1955. Trenchor's origins date from 1929, and it currently has businesses owning, leasing and managing marine cargo containers and finance related activities.

The protectors of the Halco Trust are Neil I. Jowell, the chairman of both our board of directors and the board of directors of Trenchor, and Cecil Jowell, James E. McQueen and David M. Nurek all members of our board of directors and the board of directors of Trenchor, and Edwin Oblowitz, a member of the board of directors of Trenchor. The protectors of the trust have the power, under the trust documents, to appoint or remove the trustee. The protectors cannot be removed and have the right to nominate replacement protectors. In addition, any changes to the beneficiary of the Halco Trust must be agreed to by both the independent trustee and the protectors of the trust.

#### **D. Property, Plant and Equipment**

As of December 31, 2012, our employees were located in 14 regional and area offices in 13 different countries. We maintain an office in Bermuda, where Textainer Group Holdings Limited is incorporated. We have 13 offices outside Bermuda, including our administrative office in San Francisco, California and another office in Hackensack, New Jersey; New Malden, United Kingdom; Hamburg, Germany; Durban, South Africa; Yokohama, Japan; Seoul, South Korea; Taipei, Taiwan; Singapore; Sydney, Australia; Port Kelang, Malaysia; Hong Kong, and Shanghai, China. We lease our office space in Bermuda, the U.S., United Kingdom and Singapore and have exclusive agents that secure office space for us in our other locations. The lease for our Bermuda office expires in May 2014, the lease for our San Francisco office expires in December 2016, the lease for our Hackensack, New Jersey office expires in April 2015, the lease for our New Malden, United Kingdom office expires in December 2019 and our lease for our Singapore office expires in December 2015. In addition, we have non-exclusive agents who represent us in India, Indonesia, Pakistan, Republic of the Philippines, Sri Lanka, Thailand, and Vietnam. We believe that our current facilities are adequate to meet current requirements and that additional or substitute space will be available as needed to accommodate our expected growth.

#### **ITEM 4A. UNRESOLVED STAFF COMMENTS**

Not applicable.

#### **ITEM 5. OPERATING AND FINANCIAL REVIEW AND PROSPECTS**

*The following Operating and Financial Review and Prospects should be read in conjunction with our audited consolidated financial statements and related notes included elsewhere in this Annual Report on Form 20-F. In addition to historical consolidated financial information, the following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Our actual results may differ materially from those contained in or implied by any forward-looking statements. See "Information Regarding Forward-Looking Statements; Cautionary Language." Factors that could cause or contribute to these differences include those discussed below and elsewhere in this Annual Report on Form 20-F, particularly in Item 3, "Key Information — Risk Factors."*

*Dollar amounts in this section of this Annual Report on Form 20-F are expressed in thousands of U.S. dollars unless otherwise indicated.*

#### **Executive Summary**

Operating since 1979, we are the world's largest lessor of intermodal containers based on fleet size, with a total fleet of approximately 1.9 million containers, representing approximately 2.8 million TEU. We had record results in 2012, including total revenues, profitability and fleet size, which demonstrates our continued successful execution of our growth strategy and industry leading position. Specifically, in 2012, we (i) grew our owned and

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managed fleet with the acquisition of 317,000 TEU of new standard dry-freight containers, 21,000 TEU of new refrigerated containers and 210,000 TEU of used containers, representing approximately \$1.2 billion in capital expenditures, the highest in Textainer's history, (ii) increased the owned portion of our total fleet to 72.7% as of December 31, 2012 from 58.6% as of December 31, 2011, (iii) benefited from a worldwide shortage of containers, which resulted in a high average utilization rate of 97.2% for 2012, (iv) completed \$2.2 billion of financing in the debt market, resulting in over \$1.1 billion in net incremental debt funding, (v) completed an underwritten public offering of 8,625,000 of our common shares, of which we sold 6,125,000 new common shares and Halco Holdings Inc. sold 2,500,000 of its existing common shares, resulting in \$184.8 million of proceeds to Textainer and \$75.4 million of proceeds to Halco Holdings Inc. ("Halco") after deducting underwriting discounts and other offering expenses, and (vi) through our wholly-owned subsidiary Textainer Limited ("TL"), purchased 50.1% of the outstanding common shares of TAP Funding Ltd. ("TAP Funding"), a company that owns a 99,000 TEU fleet of containers managed by us, resulting in the consolidation of TAP Funding and recognition of a bargain purchase gain of \$9.4 million for the amount by which the fair value of TAP Funding's net assets exceeded the purchase consideration. Our purchase of a majority ownership of TAP Funding's common shares allowed us to increase the size of our owned fleet at an attractive price and will be immediately accretive to our earnings. Refer to "2013 Outlook" below for further discussion.

Our business comprises three reportable segments for financial reporting purposes: Container Ownership, Container Management and Container Resale. Our total revenues primarily consist of leasing revenues derived from the leasing of our owned containers and, to a lesser extent, fees received for managing containers owned by third parties, equipment resale and military management. The most important driver of our profitability is the extent to which net operating income on our owned fleet and management fee income exceed our operating costs. The key drivers of our net operating income are fleet size, rental rates, direct costs and utilization. Our operating costs primarily consist of depreciation and amortization, interest expense, direct operating expenses and administrative expenses. Our lessees are generally responsible for loss of or damage to a container beyond ordinary wear and tear, and they are required to purchase insurance to cover any other liabilities.

### **Key Factors Affecting Our Performance**

We believe there are a number of key factors that have affected, and are likely to continue to affect, our operating performance. These key factors include the following, among others:

- the demand for leased containers;
- lease rates;
- our ability to lease our new containers shortly after we purchase them;
- prices of new containers and the impact of changing prices on the residual value of our owned containers;
- remarketing risk;
- further consolidation of container manufacturers and/or decreased access to new containers; and
- global and macroeconomic factors that affect trade generally, such as recessions, terrorist attacks, pandemics or the outbreak of war and hostilities.

For further details of these and other factors which may affect our business and results of operations, see Item 3, "*Key Information — Risk Factors.*"

### **2013 Outlook**

We believe the outlook for 2013 for our industry remains attractive. Shipping lines are likely to remain dependent on container lessors for the majority of their container needs due to limitations on both the cash they have available for investment and the funding provided by banks. Additionally, shipping lines are expected to

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continue their recent increase in disposals, which provides opportunities for purchase-leaseback and trading business as well as increases in the demand for new replacement containers. These factors, coupled with our strong balance sheet and access to financing, attractively position us to maintain our market leading position.

We have seen some compression of returns from new container investments over the course of the year. However, two other factors help support our outlook for 2013. First, we own a record 73% of our fleet. While we expect average utilization to be below last year's level, it should remain high since 82% of our fleet is subject to long-term and finance leases. Second, during the fourth quarter of 2012 we successfully closed several finance leases and purchase-leaseback transactions which will provide a full year of performance in 2013. Additionally, we expect to further grow this business in 2013.

## Revenue

Our revenue comprises lease rental income, management fees, trading container sale proceeds and gain on sale of containers, net.

**Lease Rental Income.** We generate lease rental income by leasing our owned containers to container shipping lines and other customers. Lease rental income comprises daily per diem rental charges due under the lease agreements, together with payments for other charges set forth in the leases, such as handling fees, drop-off charges and pick-up charges and credits (together "geography revenue") and charges for a damage protection plan ("DPP"). The operating results of our owned container business are determined by the amount by which our container rental revenue exceeds our ownership costs, consisting primarily of depreciation, interest expense, storage, handling and other direct operating expenses and management costs.

Utilization is a key performance indicator that demonstrates how much of our equipment is on lease at a point in time or over a period of time. We measure utilization on the basis of CEU on lease, dividing the actual number of CEU days on-hire by actual CEU days available for lease. We calculate containers available for lease by excluding containers that have been manufactured for us but have not yet been delivered to a lessee and containers designated as held-for-sale units. Our utilization is primarily a function of our current lease structure, overall level of container demand, the location of our available containers and prevailing lease terms by location. The location of available containers is critical because containers available in high-demand locations are more readily leased and are typically leased on more favorable terms than containers available in low-demand locations.

Lease rental income is also affected by per diem rates. The per diem rate for a lease is set at the time we enter into a lease agreement. Our long-term per diem rate for new containers has historically been strongly influenced by new container pricing (which in turn is heavily influenced by the cost of container manufacturing inputs such as steel, paint, wood, labor and other components), interest rates, the balance of supply and demand for containers at a particular time and location, our estimate of the residual value of the container at the end of its useful life in marine service, the type of the container being leased, container purchasing activities by container shipping lines and competitors, and efficiencies in container utilization by container shipping lines. Average per diem rates for containers in our owned fleet and in the portfolios of containers comprising our managed fleet change slowly in response to changes in new container prices because existing lease agreements can only be re-priced upon the expiration of the lease.

**Management Fees.** Management fee revenue is generated by our management services, which include the acquisition, leasing, repair, repositioning, storage and disposition of containers. We provide these management services pursuant to management agreements with container investors. Under these agreements, we earn fees for the acquisition of new containers and the management of the containers, and a sales commission upon disposition of containers under management. The management agreements typically cover the entire economic life of the containers.

Our acquisition fees are calculated as a percentage of the cost of the container. Our management fees are calculated as a percentage of net operating income of the containers. Net operating income is calculated as the lease payment and any other revenue attributable to a container, minus operating expenses related to that

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container (but not depreciation or financing expenses of the container investor). The management fee percentage generally varies based upon the type of lease and the terms of the management agreement. Management fee percentages for long-term leases are generally lower than management fee percentages for master or spot leases because less daily involvement by management personnel is required to manage long-term leases. Our sales commissions are either fixed dollar amount or based on a percentage of the sales price.

All rental operations are conducted worldwide in our name as agent for the container investors. Revenues, customer accounts receivable, operating expenses, and vendor payables arising from direct container operations of the managed portion of our fleet are excluded from our financial statements.

**Trading Container Sales Proceeds.** Our Container Resale Division purchases used containers from third parties, primarily shipping lines, and resells these containers to a wide variety of buyers. This activity is reported as trading container sales proceeds.

**Gains on Sale of Containers, net.** Gain on sale of containers, net, represents the excess of the sale price of our owned fleet containers over their net book value at the time of sale. Containers are generally sold at the end of their useful lives in marine service or when we believe it is financially attractive for us to do so, considering the location, sale price, cost of repair and possible repositioning expenses.

Gain on sale of containers, net, also includes gains and losses recognized at the inception of sales-type leases, representing the excess of the estimated fair value of containers placed on sales-type leases over their book value.

### **Operating Expenses**

Our operating expenses include direct container expenses and depreciation of container rental equipment applicable to our owned containers, as well as general and administrative expenses for our total fleet.

**Direct Container Expenses.** Storage, handling, maintenance, repositioning and other direct container expenses are operating costs of our owned fleet. Storage and handling expenses occur when our customers drop off containers at depots around the world. Storage and handling expenses vary significantly by location. Other direct container expenses include maintenance expenses, which are the result of normal wear and tear on the containers, and repositioning expenses, which are incurred when we contract to move containers from locations where our inventories exceed actual or expected demand to locations with higher demand. Storage, handling, maintenance, repositioning and other direct container expenses are directly related to the number of containers in our owned fleet and inversely related to our utilization rate for those containers. As utilization increases, we typically have lower storage, handling, maintenance and repositioning expenses. We use the direct expense method of accounting for maintenance and repairs.

Our leases require the lessee to pay for any damage to the container beyond normal wear and tear at the end of the lease term. We also offer a DPP pursuant to which the lessee pays a fee over the term of the lease (per diem) or a lump sum upon return of containers in exchange for not being charged for certain damages at the end of the lease term. This revenue is recognized as earned over the term of the lease. We do not recognize revenue and related expense over the lease term for customers who are billed at the end of the lease term under the DPP or for other lessees who do not participate in the DPP. Based on past history, there is uncertainty as to collectability of these amounts from lessees who are billed at the end of the lease term because the amounts due under the DPP are typically re-negotiated at the end of the lease term or the lease term is extended.

**Cost of Trading Containers Sold.** We buy used containers for resale, primarily from shipping lines. Cost of trading containers sold represents the cost of these containers and is recognized as an expense at the time the containers are sold.

**Depreciation Expense.** We depreciate our containers on a straight-line basis over a period of 12 years to a fixed residual value. We regularly assess both the estimated useful life of our containers and the expected



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residual values, and, when warranted, adjust our depreciation estimate accordingly. Depreciation expense will vary over time based upon the number and the purchase price of containers in our owned fleet. Beginning in the third quarters of 2011 and 2008, depreciation of our existing owned fleet decreased as a result of an increase in our estimate of the residual values of our containers. However, this decrease was more than offset as a result of an increase in the size of our owned fleet in subsequent periods.

**Amortization Expense.** Amortization expense represents the amortization of the price paid for the rights to manage the container fleets of Capital Intermodal Limited, Capital Intermodal GmbH, Capital Intermodal Inc., Capital Intermodal Assets Limited and Xines Limited (collectively “Capital Intermodal”); Amphibious Container Leasing Limited (“Amficon”); Capital Lease Limited, Hong Kong (“Capital”) and Gateway Management Services Limited (“Gateway”). The purchase prices are being amortized over the expected useful lives of the contracts on a pro-rata basis to the expected management fees.

**General and Administrative Expense.** Our general and administrative expenses are primarily employee-related costs such as salary, employee benefits, rent, travel and entertainment costs, as well as expenses incurred for outside services such as legal, consulting, tax and audit-related fees.

**Short-term Incentive Compensation Expense.** Short-term incentive compensation expense is the annual bonus plan in which all company employees participate. The compensation amounts are determined on an annual basis based on the company’s performance.

**Long-term Incentive Compensation Expense.** Long-term incentive compensation expense represents costs recorded for share-based and cash compensation that vests over several years in which some company employees participate.

**Bad Debt Expense, net.** Bad debt expense, net, represents the amounts recorded to provide for an allowance for the doubtful collection of accounts receivable for the owned fleet.

## A. Operating Results

### Comparison of the Years Ended December 31, 2012, 2011 and 2010

The following table summarizes our total revenues for the years ended December 31, 2012, 2011 and 2010 and percentage changes between those periods:

	Year Ended December 31,			% Change Between	
	2012	2011	2010	2012 and 2011	2011 and 2010
	(Dollars in thousands)				
Lease rental income	\$383,989	\$327,627	\$235,827	17.2%	38.9%
Management fees	26,169	29,324	29,137	(10.8%)	0.6%
Trading container sales proceeds	42,099	34,214	11,291	23.0%	203.0%
Gains on sale of containers, net	34,837	31,631	27,624	10.1%	14.5%
Total revenues	<u>\$487,094</u>	<u>\$422,796</u>	<u>\$303,879</u>	<u>15.2%</u>	<u>39.1%</u>

Lease rental income increased \$56,362 (17.2%) from 2011 to 2012. This increase was primarily due to a 19.1% increase in our owned fleet size, partially offset by a 1.0 percentage point decrease in utilization for our owned fleet. Lease rental income increased \$91,800 (38.9%) from 2010 to 2011. This increase was primarily due to a 29.5% increase in our owned fleet size, a 7.1% increase in per diem rental rates and a 3.4 percentage point increase in utilization for our owned fleet.

Management fees decreased \$3,155 (-10.8%) from 2011 to 2012 due to a \$1,513 decrease due to a 6.7% decrease in the size of the managed fleet primarily due to our acquisitions throughout the year of 155,000 TEU of containers that we previously managed, a \$1,066 decrease due to lower fleet performance, a \$317 decrease in

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sales commissions and a \$259 decrease from lower acquisition fees due to fewer managed container purchases. Management fees increased \$187 (0.6%) from 2010 to 2011 due to a \$2,369 increase from improved fleet performance and a \$769 increase from higher acquisition fees due to higher managed container purchases, partially offset by a \$2,213 decrease resulting from a 10.8% decrease in the size of the managed fleet primarily due to our May 2011 acquisition of a portion of the Gateway fleet that we previously managed and a \$738 decrease in sales commissions.

Trading container sales proceeds increased \$7,885 (23.0%) from 2011 to 2012. This increase consisted of a \$16,406 increase due to a 47.9% increase in unit sales resulting from an increase in the number of trading containers that we were able to source and sell, partially offset by a \$8,521 decrease in average sales proceeds per container. Trading container sales proceeds increased \$22,923 (203.0%) from 2010 to 2011. This increase consisted of a \$14,236 increase due to an increase in average sales proceeds per container and a \$8,687 increase due to a 76.9% increase in unit sales resulting from an increase in the number of trading containers that we were able to source and sell.

Gains on sale of containers, net, increased \$3,206 (10.1%) from 2011 to 2012 due to a \$8,899 increase due to a 29.9% increase in the number of containers sold and a \$3,254 increase in net gains on sales-type leases resulting from 7,081 containers placed on sales-type leases in 2012 compared to 1,562 containers placed on sales-type leases in 2011, partially offset by a \$8,947 decrease resulting from a decrease in average sales proceeds of \$193 per unit. Gains on sale of containers, net, increased \$4,007 (14.5%) from 2010 to 2011 due to a \$10,016 increase resulting from an increase in average sales proceeds of \$539 per unit, partially offset by a \$5,268 decrease in net gains on sales-type leases resulting from 1,562 containers placed on sales-type leases in 2011 compared to 13,692 containers placed on sales-type leases in 2010 and a \$741 decrease due to a 3.6% decrease in the number of containers sold.

The following table summarizes our total operating expenses, net for the years ended December 31, 2012, 2011 and 2010 and percentage changes between those periods:

	Year Ended December 31,			% Change Between	
	2012	2011	2010	2012 and 2011	2011 and 2010
	(Dollars in thousands)				
Direct container expense	\$ 25,173	\$ 18,307	\$ 25,542	37.5%	(28.3%)
Cost of trading containers sold	36,810	29,456	9,046	25.0%	225.6%
Depreciation expense	104,844	83,177	58,972	26.0%	41.0%
Amortization expense	5,020	6,110	6,544	(17.8%)	(6.6%)
General and administrative expense	23,015	23,495	21,670	(2.0%)	8.4%
Short-term incentive compensation expense	5,310	4,921	4,805	7.9%	2.4%
Long-term incentive compensation expense	6,950	5,950	5,318	16.8%	11.9%
Bad debt expense, net	1,525	3,007	145	(49.3%)	1973.8%
Gain on sale of containers to noncontrolling interest	—	(19,773)	—	N/A	N/A
Total operating expenses, net	<u>\$208,647</u>	<u>\$154,650</u>	<u>\$132,042</u>	<u>34.9%</u>	<u>17.1%</u>

Direct container expense increased \$6,866 (37.5%) from 2011 to 2012 primarily due to a decrease in utilization and included a \$4,004 increase in storage expense, a \$1,011 increase in handling expense and a \$758 increase in maintenance expense. Direct container expense decreased \$7,235 (-28.3%) from 2010 to 2011 primarily due to an increase in utilization and included a \$3,906 decrease in storage expense, a \$2,003 decrease in DPP repair expense and a \$1,101 decrease in handling expense.

Cost of trading containers sold increased \$7,354 (25.0%) from 2011 to 2012 due to a \$14,124 increase resulting from a 47.9% increase in the number of containers sold, partially offset by a \$6,770 decrease resulting

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from a 15.5% decrease in the average cost per unit of containers sold. Cost of trading containers sold increased \$20,410 (225.6%) from 2010 to 2011 due to a \$13,450 increase resulting from a 84.0% increase in the average cost per unit of containers sold and a \$6,960 increase resulting from a 76.9% increase in the number of containers sold.

Depreciation expense increased \$21,667 (26.0%) from 2011 to 2012 due to a \$30,859 increase resulting from an increase in fleet size, partially offset by a \$1,915 decrease resulting from a lower average price of containers purchased and a \$7,277 decrease due to an increase in estimated future residual values used in the calculation of depreciation expense. Depreciation expense increased \$24,205 (41.0%) from 2010 to 2011 due to a \$31,142 increase resulting from an increase in fleet size and a \$2,585 increase resulting from a higher average price of containers purchased, partially offset by a \$9,522 decrease due to an increase in estimated future residual values used in the calculation of depreciation expense.

Amortization expense was \$5,020, \$6,110 and \$6,544 in 2012, 2011 and 2010, respectively. Amortization expense represents the amortization of the amounts paid to acquire the rights to manage the Capital Intermodal, Amficon, Capital and Gateway fleets. Amortization expense decreased \$1,090 (-17.8%) from 2011 to 2012 primarily due to the August and September 2012 acquisitions of a portion of the Gateway and Capital fleets that we previously managed and the May 2011 acquisition of a portion of the Gateway fleet that we previously managed. Amortization expense decreased \$434 (-6.6%) from 2010 to 2011 primarily due to the May 2011 acquisition of a portion of the Gateway fleet that we previously managed.

General and administrative expense decreased \$480 (-2.0%) from 2011 to 2012 primarily due to a \$1,080 decrease in professional fees, partially offset by a \$560 increase in compensation costs. General and administrative expense increased \$1,825 (8.4%) from 2010 to 2011 primarily due to a \$821 increase in compensation costs, a \$682 increase in professional fees and a \$273 increase in travel costs.

Short-term incentive compensation expense increased \$389 (7.9%) from 2011 to 2012 primarily due to an increase in the number of employees receiving incentive compensation awards for 2012 compared to 2011. Short-term incentive compensation expense in 2011 was relatively unchanged compared to 2010 due to no significant change in the expected incentive compensation award for 2011 compared to 2010.

Long-term incentive compensation expense increased \$1,000 (16.8%) from 2011 to 2012 primarily due to additional share options and restricted share units that were granted under the 2007 Share Incentive Plan in November 2011 and 2012 and an adjustment to forfeiture rates. Long-term incentive compensation expense increased \$632 (11.9%) from 2010 to 2011 primarily due to additional share options and restricted share units that were granted under the 2007 Share Incentive Plan in November 2010 and 2011, partially offset by a decrease due to an adjustment to forfeiture rates.

Bad debt expense, net, decreased \$1,482 (-49.3%) from 2011 to 2012 primarily due to the bankruptcies of two customers in 2011, partially offset by an increase in bad debt expense in 2012 due to management's assessment that the financial condition of the Company's lessees and their ability to make required payments had deteriorated and collections on accounts during 2011 that had previously been included in the allowance for doubtful accounts. Bad debt expense, net, increased \$2,862 (1,973.8%) from 2010 to 2011 primarily due to the bankruptcies of two customers in 2011 and a reduction in bad debt expense in 2010 due to collections on accounts during 2010 that had previously been included in the allowance for doubtful accounts.

On June 30, 2011, Textainer Marine Containers Limited ("TMCL"), transferred containers, net and net investment in direct financing and sales-type leases in exchange for the purchase of 12.5% of its Class A common shares as a part of a capital restructuring, resulting in a noncash gain on sale of containers to noncontrolling interest of \$19,773.

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The following table summarizes other income (expenses) for the years ended December 31, 2012, 2011 and 2010 and percentage changes between those periods:

	Year Ended December 31,			% Change Between	
	2012	2011	2010	2012 and 2011	2011 and 2010
	(Dollars in thousands)				
Interest expense	\$ (72,886)	\$ (44,891)	\$ (18,151)	62.4%	147.3%
Interest income	146	32	27	356.3%	18.5%
Realized losses on interest rate swaps and caps, net	(10,163)	(10,824)	(9,844)	(6.1%)	10.0%
Unrealized gains (losses) on interest rate swaps and caps, net	5,527	(3,849)	(4,021)	(243.6%)	(4.3%)
Bargain purchase gain	9,441	—	—	N/A	N/A
Other, net	44	(115)	(1,591)	(138.3%)	(92.8%)
Net other expense	<u>\$ (67,891)</u>	<u>\$ (59,647)</u>	<u>\$ (33,580)</u>	<u>13.8%</u>	<u>77.6%</u>

Interest expense increased \$27,995 (62.4%) from 2011 to 2012. \$17,111 of this increase was due to an increase in average debt balances of \$507,337, \$9,421 of this increase was due to an increase in average interest rates of 0.56 percentage points and \$1,463 of this increase was due to the write-off of unamortized debt issuance costs related to the termination of TMCL's secured debt facility in 2012. Interest expense increased \$26,740 (147.3%) from 2010 to 2011. \$14,040 of this increase was due to an increase in average debt balances of \$550,162 and \$12,700 of this increase was due to an increase in average interest rates of 1.01 percentage points.

Realized losses on interest rate swaps and caps, net decreased \$661 (-6.1%) from 2011 to 2012. \$462 of this decrease was due to a decrease in the average net settlement differential between variable interest rates received compared to fixed interest rates paid on interest rate swaps of 0.09 percentage points and \$199 of this decrease was due to a decrease in average interest rate swap notional amounts of \$9,472. Realized losses on interest rate swaps and caps, net increased \$980 (10.0%) from 2010 to 2011. \$4,002 of this increase was due to an increase in average interest rate swap notional amounts of \$148,680, partially offset by a \$3,022 decrease due to a decrease in the average net settlement differential between variable interest rates received compared to fixed interest rates paid on interest rate swaps of 0.59 percentage points.

Unrealized gains (losses) on interest rate swaps and caps, net changed from a net loss of \$3,849 in 2011 to a net gain of \$5,527 in 2012 due to an increase in the net fair value liability of interest rate swap agreements held in 2011 compared to a decrease in the net fair value liability of interest rate swap agreements held in 2012 resulting from a decrease in long-term interest rates during 2011 compared to an increase in long-term interest rates during 2012. Unrealized losses on interest rate swaps and caps, net decreased \$172 (-4.3%) from 2010 to 2011 due to a smaller increase in the net fair value liability of interest rate swap agreements held in 2011 compared to the increase in the net fair value liability of interest rate swap agreements held in 2010 resulting from decreases in long-term interest rates during both periods.

On December 20, 2012, TL purchased 50.1% of the outstanding common shares of TAP Funding for cash consideration of \$20,532 and reduced management fees with a fair value of \$3,852. The purchase of TAP Funding's common shares was accounted for as a business combination and, because the fair value of the net assets acquired was greater than the fair value of the consideration transferred, a bargain purchase gain of \$9,441 was recorded in 2012.

Other, net in 2012 was relatively unchanged compared to 2011. Other, net (expense) decreased \$1,476 (92.8%) from 2010 to 2011 primarily due to a decrease in structuring fees paid by TMCL for container purchases of \$1,572.

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The following table summarizes income tax expense and net (loss) income attributable to the noncontrolling interests for the years ended December 31, 2012, 2011 and 2010 and percentage changes between those periods:

	Year Ended December 31,			% Change Between	
	2012	2011	2010	2012 and 2011	2011 and 2010
	(Dollars in thousands)				
Income tax expense	\$ 5,493	\$ 4,481	\$ 4,493	22.6%	(0.3%)
Net (loss) income attributable to the noncontrolling interests	\$ (1,887)	\$ 14,412	\$ 13,733	(113.1%)	4.9%

Income tax expense increased \$1,012 (22.6%) from 2011 to 2012. \$2,609 of this increase was due to a higher increase in reserves for uncertain tax positions in 2012 compared to 2011, \$144 of this increase was due to a lower release of reserves for uncertain tax positions in 2012 compared to 2011 and \$26 of this increase was due to a higher level of income before tax and noncontrolling interests, partially offset by a \$1,767 decrease due to a lower effective tax rate excluding the impact of uncertain tax positions. Income tax expense remained relatively unchanged on an aggregate dollar basis in 2011 compared to 2010. Included in income tax expense is a decrease of \$539 due to a lower release of reserves for uncertain tax positions in 2011 compared to 2010, a decrease of \$474 due to a lower effective tax rate excluding the impact of uncertain tax positions and a decrease of \$31 due to a lower increase in reserves for uncertain tax positions in 2012 compared to 2011, partially offset by a \$1,032 increase due to a higher level of income before tax and noncontrolling interest.

In October of 2012, the Company received notification from the Internal Revenue Service ("IRS") that the 2010 United States tax return for TGH's subsidiary, Textainer Equipment Management (U.S.) Limited has been selected for examination. Additionally, in November of 2012, the Company received notification from the IRS that the 2010 United States tax return for TGH had been selected for examination. These examinations are currently ongoing and to date, no matters have arisen to alter the Company's accounting for income taxes.

Net loss attributable to the noncontrolling interests in 2012 primarily represents the noncontrolling interest's portion of TW's net loss. Net income attributable to the noncontrolling interests increased \$679 (4.9%) from 2010 to 2011 primarily due to a higher level of net income generated by TMCL, limited by the consolidation of the noncontrolling interest during the second half of 2011. See Item 4, "Information on the Company—History and Development of the Company."

## Segment Information

The following table summarizes our income before income tax and noncontrolling interest attributable to each of our business segments for the years ended December 31, 2012 and 2011 and 2010 (before inter-segment eliminations) and percentage changes between those periods:

	Year Ended December 31,			% Change Between	
	2012	2011	2010	2012 and 2011	2011 and 2010
	(Dollars in thousands)				
Container ownership	\$175,291	\$177,694	\$119,772	(1.4%)	48.4%
Container management	\$ 36,956	\$ 36,772	\$ 15,901	0.5%	131.3%
Container resale	\$ 12,787	\$ 10,759	\$ 7,995	18.8%	34.6%
Other	\$ (3,890)	\$ (3,314)	\$ (2,815)	17.4%	17.7%
Eliminations	\$ (10,588)	\$ (13,412)	\$ (2,596)	(21.1%)	416.6%
Income before income tax and noncontrolling interests	<u>\$210,556</u>	<u>\$208,499</u>	<u>\$138,257</u>	<u>1.0%</u>	<u>50.8%</u>

Income before income tax and noncontrolling interests attributable to the Container Ownership segment decreased \$2,403 (-1.4%) from 2011 to 2012. This decrease included a \$27,995 increase in interest expense due to an increase in average debt balances of \$507,337, an increase in average interest rates of 0.56 percentage points and the write-off of \$1,463 of unamortized debt issuance costs related to the termination of the TMCL's

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secured debt facility in 2012, a \$22,876 increase in depreciation expense due to a \$32,581 increase resulting from an increase in fleet size, partially offset by a \$7,683 decrease due to an increase in estimated future residual values used in the calculation of depreciation expense and a \$2,022 decrease due to a decrease in the average price of containers purchased, a \$19,773 noncash gain on sale of containers to noncontrolling interest resulting from TMCL's capital restructuring in 2011 and a \$12,952 increase in direct container expense primarily due to a decrease in utilization. These decreases were partially offset by a \$56,608 increase in lease rental income primarily due to a 19.1% increase in the size of our owned fleet, partially offset by a 1.0 percentage point decrease in utilization for our owned fleet, a \$9,441 noncash bargain purchase gain resulting from TL's acquisition of a controlling interest in TAP Funding, a change in unrealized gains (losses) on interest rate swaps and caps, net from net losses of \$3,849 in 2011 due to a decrease in long-term interest rates to net gains of \$5,527 in 2012 due to an increase in long-term interest rates and a \$3,231 increase in gain on sale of containers, net primarily due to a 29.9% increase in the number of containers sold and a 353.3% increase in the number of containers placed on sales type leases, partially offset by a decrease in average sales proceeds of \$193 per unit. The increase in direct container expense included increases in inter-segment management fees and sales commissions of \$4,209 and \$1,701, respectively, paid to our Container Management and Container Resale segments, respectively, due to an increase in the size of the owned container fleet and an increase in the volume of owned container sales. Inter-segment management fees and sales commissions are eliminated in consolidation.

Income before income tax and noncontrolling interests attributable to the Container Ownership segment increased \$57,922 (48.4%) from 2010 to 2011. This increase primarily consisted of a \$91,942 increase in lease rental income primarily due to a 29.5% increase in the size of our owned fleet, a 7.1% increase in per diem rental rates and a 3.4 percentage point increase in utilization for our owned fleet and a \$19,773 noncash gain on sale of containers to noncontrolling interest resulting from TMCL's capital restructuring in 2011, partially offset by a \$26,740 increase in interest expense due to an increase in average debt balances of \$550,162 and an increase in average interest rates of 1.01 percentage points, a \$25,245 increase in depreciation expense due to a \$31,142 increase resulting from an increase in fleet size and a \$2,585 increase due to an increase in the higher average price of containers purchased, partially offset by a \$9,522 decrease resulting from an increase in the estimated residual values used in the calculation of depreciation expense and a \$2,641 decrease in direct container expense primarily due to an increase in utilization. The increase in direct container expense included increases in inter-segment management fees and sales commissions of \$8,340 and \$972, respectively, paid to our Container Management and Container Resale segments, respectively, due to an increase in the size of the owned container fleet and an increase in the volume of owned container sales. Inter-segment management fees and sales commissions are eliminated in consolidation.

Income before income tax and noncontrolling interests attributable to the Container Management segment increased \$184 (0.5%) from 2011 to 2012. This increase primarily consisted of a \$1,065 decrease in amortization expense primarily due to the acquisitions throughout the year of 155,000 TEU of containers that we previously managed, partially offset by a \$508 increase in short-term incentive expense and a \$278 increase in long-term incentive expense. Management fees increased \$9 and primarily consisted of a \$2,839 decrease in management fees to external customers primarily due to a 6.7% decrease in the size of the managed fleet primarily due the acquisitions of managed containers discussed above, lower fleet performance and lower acquisition fees due to fewer managed container purchases, a \$1,627 decrease in inter-segment acquisition fees received from our Container Ownership segment primarily due to a decrease in inter-segment acquisition rates, partially offset by a \$4,209 increase in inter-segment operating and capital lease management fees received from our Container Ownership segment due to the increased size of the owned container fleet. Inter-segment acquisition fees and operating and capital lease management fees are eliminated in consolidation.

Income before income tax and noncontrolling interests attributable to the Container Management segment increased \$20,871 (131.3%) from 2010 to 2011 primarily due to a \$21,326 increase in management fees, partially offset by a \$1,031 increase in overhead expense. The increase in management fees included increases in acquisition fees and management fees of \$11,939 and \$8,340, respectively, received from our Container Ownership segment due to the increased size of the container fleet. Inter-segment acquisition fees and

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management fees are eliminated in consolidation. The remaining increase in management fees was primarily due to improved fleet performance and higher acquisition fees due to higher container purchases, partially offset by a decrease in the size of the managed fleet primarily due to our May 2011 acquisition of a portion of the Gateway fleet.

Income before income tax and noncontrolling interests attributable to the Container Resale segment increased \$2,028 (18.8%) from 2011 to 2012 primarily due to a \$1,385 increase in sales commissions and a \$538 increase in gains on container trading, net, primarily due to a 47.9% increase in unit sales resulting from an increase in the number of trading containers that we were able to source and sell partially offset by a decrease in average sales margin per container. The increase in sales commissions included an increase in inter-segment sales commissions of \$1,701 received from our Container Ownership segment primarily due to an increase in the volume of owned container sales, which are eliminated in consolidation, partially offset by a \$316 decrease in sales commissions to external customers primarily due to a decrease in average sales proceeds of managed container sales.

Income before income tax and noncontrolling interests attributable to the Container Resale segment increased \$2,764 (34.6%) from 2010 to 2011 primarily due to a \$2,508 increase in gains on container trading, net primarily due to a 76.9% increase in unit sales resulting from an increase in the number of trading containers that we were able to source and sell and an increase in average sales margin per container and a \$234 increase in sales commissions. The increase in sales commissions included an increase in inter-segment sales commissions of \$972 received from our Container Ownership segment primarily due to an increase in the volume of owned container sales, which are eliminated in consolidation, partially offset by a \$738 decrease in sales commissions to external customers primarily due to a decrease in the volume of managed container sales.

Loss before income tax and noncontrolling interests attributable to Other activities unrelated to our reportable business segments increased \$576 (17.4%) from 2011 to 2012 primarily due to a \$702 increase in long-term incentive compensation expense primarily due to share options and restricted share units that were granted to our board of directors under our 2007 Share Incentive Plan in May 2012 and an adjustment to forfeiture rates, partially offset by a \$121 decrease in corporate overhead expenses.

Loss before income tax and noncontrolling interests attributable to Other activities unrelated to our reportable business segments increased \$499 (17.7%) from 2010 to 2011 primarily due to \$638 of long-term incentive compensation expense recorded in 2011 for restricted share units that were granted to our board of directors under our 2007 Share Incentive Plan in January and May 2011, partially offset by a \$142 decrease in corporate overhead expenses.

Segment eliminations decreased \$2,824 (-21.1%) from 2011 to 2012 and primarily consisted of a \$1,627 decrease in acquisition fees received by our Container Management segment from our Container Ownership segment and a \$1,211 increase in depreciation expense related to capitalized acquisition fees received by our Container Management segment from our Container Ownership. Our Container Ownership segment capitalizes acquisition fees billed by our Container Management segment as part of containers, net and records depreciation expense to amortize the acquisition fees over the useful economic lives of the containers, which is eliminated in consolidation.

Segment eliminations increased \$10,816 (416.6%) from 2010 to 2011 primarily due to a \$11,939 increase in acquisition fees received by our Container Management segment from our Container Ownership segment, partially offset by a \$1,053 increase in depreciation expense related to capitalized acquisition fees received by our Container Management segment from our Container Ownership.

## Currency

As in previous years, almost all of our revenues are denominated in U.S. dollars and approximately 64% of our direct container expenses in 2012 were denominated in U.S. dollars. Our operations in locations outside of

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the U.S. have some exposure to foreign currency fluctuations, and trade growth and the direction of trade flows can be influenced by large changes in relative currency values. In 2012, our non-U.S. dollar operating expenses were spread among 18 currencies, resulting in some level of self-hedging. We do not engage in currency hedging.

### **Critical Accounting Policies and Estimates**

The preparation of financial statements in conformity with U.S. GAAP requires management to use judgment in making estimates and assumptions that affect reported amounts of assets and liabilities, the reported amounts of income and expenses during the reporting period and the disclosure of contingent assets and liabilities as of the date of the financial statements. We have identified the policies and estimates below as among those critical to our business operations and the understanding of our results of operations. These policies and estimates are considered critical due to the existence of uncertainty at the time the estimates are made, the likelihood of changes in estimates from period to period and the potential impact that these estimates can have on our financial statements. The following accounting policies and estimates include inherent risks and uncertainties related to judgments and assumptions made by us. Our estimates are based on the relevant information available at the end of each period.

#### *Revenue Recognition*

**Lease Rental Income.** We recognize revenue from operating leases of our owned containers as earned over the term of the lease. Where minimum lease payments vary over the lease term, revenue is recognized on a straight-line basis over the term of the lease. We cease recognition of lease revenue if and when a container lessee defaults in making timely lease payments or we otherwise determine that future lease payments are not likely to be collected from the lessee. Our determination of the collectability of future lease payments is made by management on the basis of available information, including the current creditworthiness of container shipping lines that lease containers from us, historical collection results and review of specific past due receivables. If we experience unexpected payment defaults from our container lessees, we will cease revenue recognition for those leases, which will reduce container rental revenue. Finance lease income is recognized using the effective interest method, which generates a constant rate of interest over the period of the lease. The same risks of collectability discussed above apply to our collection of finance lease income. If we experience unexpected payment defaults under our finance leases, we will cease revenue recognition for those leases that will reduce finance lease income.

Our leases typically require the lessee to pay, at the end of the lease term, for any damage to the container beyond normal wear and tear. We also offer a Damage Protection Plan ("DPP") pursuant to which the lessee pays a fee over the term of the lease, primarily on a daily basis, in exchange for not being charged for certain damages at the end of the lease term. It is our policy to recognize these revenues as earned on a daily basis over the related term of the lease. We have not recognized revenue for customers who are billed at the end of the lease term under our DPP or for other lessees who do not participate in the DPP. Based on past history, there is uncertainty as to collectability of these amounts because the amounts due under the DPP are typically re-negotiated at the end of the lease term or when the lease term is extended.

**Management Fee Revenue.** We recognize revenue from management fees earned under management agreements on an as earned basis. Fees are typically calculated as a percentage of net operating income, which is revenue from the containers under management minus direct operating expense related to those containers. If a lessee of a managed container defaults in making timely lease payments or we otherwise determine that future lease payments are not likely to be collected from the lessee, then we will cease to record lease revenue, which in turn will result in reduced management fee revenue.



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*Accounting for Container Leasing Equipment*

Accounting for container leasing equipment includes depreciation, impairment of held for use equipment and the impairment of containers held for sale.

*Depreciation.* When we acquire containers, we record the cost of the container on our balance sheet. We then depreciate the container over its estimated useful life (which represents the number of years we expect to be able to lease the container to shipping lines) to its estimated “residual value” (which represents the amount we estimate we will recover upon the sale or other disposition of the equipment at the end of its “useful life” as a shipping container). Our estimates of useful life are based on our actual experience with our fleet, and our estimates of residual value are based on a number of factors including disposal price history.

We review our depreciation policies, including our estimates of useful lives and residual values, on a regular basis to determine whether a change in our estimates of useful lives and residual values is warranted. Prior to July 1, 2011, we estimated that standard dry freight containers, which represent most of the containers in our fleet, have a useful life of 12 years and had residual values of \$950 for a 20’, \$1,100 for a 40’ and \$1,200 for a 40’ high cube. Beginning July 1, 2011, we changed our residual value estimates to \$1,050 for a 20’, \$1,300 for a 40’ and \$1,650 for a 40’ high cube. Our change in residual value estimates was based on recent sales history and market conditions for the sale of used containers, which we believe are currently the best indicator of the residual value we will realize. The effect of these changes has been and will continue to be a reduction in both depreciation expense and gains on sales of containers, net, as compared to what would have been reported using the previous estimates. We continue to estimate a container’s “useful life” in marine service to be 12 years from the first lease out date after manufacture.

If market conditions in the future warrant a further change of our estimates of the useful lives or residual values of our containers, we may be required to again recognize increased or decreased depreciation expense. A decrease in either the useful life or residual value of our containers would result in increased depreciation expense and decreased net income.

*Impairment.* On a quarterly basis we evaluate our containers held for use in our leasing operation to determine whether there has been any event such as a decline in results of operations or residual values that would cause the book value of our containers held for use to be impaired. This evaluation is performed at the lowest level of identifiable cash flows which we have determined to be groups of containers based on equipment type and year of manufacture. Any such impairment would be expensed in our results of operations. Impairment exists when the estimated future undiscounted cash flows to be generated by an asset group are less than the net book value of that asset group. Were there to be a triggering event that may indicate impairment, undiscounted future cash flows would be compared to the book values of the corresponding asset group. Estimated undiscounted cash flows would be based on historical lease operating revenue and expenses and historical residual values, adjusted to reflect current market conditions. The Company has never recorded an impairment for any container while classified as held for use, see below for discussion of *Containers Held for Sale*. If impairment were to exist, the containers would be written down to their fair value. This fair value would then become the containers’ new cost basis and would be depreciated over their remaining useful life in marine services to their estimated residual values. Any impairment charge would result in decreased net income.

*Containers Held for Sale.* We also evaluate all off-lease containers to determine whether the containers will be repaired and returned to service or sold based upon what we estimate will be the best economic alternative. If we designate a container as held for sale, depreciation on the container ceases, and the container is reported at the lower of (1) its recorded value or (2) the amount we expect to receive upon sale (less the estimated cost to sell the container). Containers held for sale are evaluated for impairment on a quarterly basis based on sale prices for similar types of equipment in the locations in which the containers are stored. Any write-down of containers held for sale is reflected in our statement of operations as an expense. If a large number of containers are designated as held for sale or prices for used containers drop, impairment charges for containers held for sale may increase which would result in decreased net income.

### *Allowance for Doubtful Accounts*

We only lease to container shipping lines and other lessees that meet our credit criteria. Our credit approval process is rigorous and all of our underwriting and credit decisions are controlled by our credit committee, which is made up of senior management from different disciplines. Our credit committee sets different maximum exposure limits depending on our relationship and previous experience with each shipping line customer and container sales customer. Credit criteria may include, but are not limited to, trade route, country, social and political climate, assessments of net worth, asset ownership, bank and trade credit references, credit bureau reports, operational history and financial strength.

Our credit department sets and reviews credit limits for new and existing shipping line customers and container sales customers, monitors compliance with those limits on an on-going basis, monitors collections, and deals with customers in default. Our credit department actively maintains a credit watch report on our proprietary information technology systems, which is available to all regional and area offices. This credit watch report lists shipping line customers and container sales customers at or near their credit limits. New leases of containers by shipping line customers on the credit watch report would only be allowed with the approval of our credit department. Similarly, management may decide to stop sales of containers to purchasers whose payments are delinquent. Our underwriting processes are aided by the long payment experience we have with most of our shipping line customers and container sales customers, our broad network of relationships in the container shipping industry that provide current information about shipping line customers' and container sales customers' market reputations and our focus on collections.

Other factors reducing losses due to default by a lessee or customer include the strong growth in the container shipping industry, effective collection tools, our high recovery rate for containers in default situations and the re-marketability of our container fleet. The strong growth in the container shipping industry helps reduce the risk of customer defaults since the core assets of a poorly performing shipping line, its ships and containers, have historically been needed to meet the demand for world containerized trade. As a result, poorly performing shipping lines are often acquired by other shipping lines. In addition, the law in several major port locations is highly favorable to creditors and many of our large customers call on ports that will allow us to arrest, or seize, the customers' ships or fuel storage bunkers, or repossess our containers if the customer is in default under our container leases. Finally, we also purchase insurance for equipment recovery and loss of revenue due to customer defaults, in addition to the insurance that our customers are required to obtain.

During 2008 through 2012, we recovered, on average, 84.0% of the containers that were the subject of defaulted contracts which had at least 1,000 CEU on lease. We typically incur operating expenses such as repairs and repositioning when containers are recovered after a default. However, recovery expenses are typically covered under insurance and we are reimbursed above our deductible amount.

Our allowance for doubtful accounts is reviewed regularly by our management and is based on the risk profile of the receivables, credit quality indicators such as the level of past due amounts and economic conditions. Our credit committee meets regularly to assess performance of our container lessees and to recommend actions to be taken in order to reduce credit risks. Changes in economic conditions or other events may necessitate additions or deductions to the allowance for doubtful accounts. The allowance is intended to provide for losses inherent in the owned fleet's accounts receivable, and requires the application of estimates and judgments as to the outcome of collection efforts and the realization of collateral, among other things. If the financial condition of our container lessees were to deteriorate, reducing their ability to make payments, additional allowances may be required, which would decrease our net income or increase our net loss in the period of the adjustment.

### *Income Taxes*

Deferred tax liabilities and assets are recognized for the expected future tax consequences of events that have been reflected in our consolidated financial statements. Deferred tax liabilities and assets are determined

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based on the differences between the book values and the tax basis of particular assets and liabilities, using tax rates in effect for the years in which the differences are expected to reverse. A valuation allowance would be recorded to reduce our deferred tax assets to an amount we determine is more likely than not to be realized, based on our analyses of past operating results, future reversals of existing taxable temporary differences and projected taxable income. Our analyses of future taxable income are subject to a wide range of variables, many of which involve estimates. Uncertainty regarding future events and changes in tax regulation could materially alter our valuation of deferred tax liabilities and assets. If we determine that we would not be able to realize all or part of our deferred tax assets in the future, we would record a valuation allowance and make a corresponding change to our earnings in the period in which we make such determination. If we later determine that we are more likely than not to realize our deferred tax assets, we would reverse the applicable portion of the previously provided valuation allowance.

In certain situations, a taxing authority may challenge positions adopted in our income tax filings. For transactions that we believe may be challenged, we may apply a different tax treatment for financial reporting purposes. We account for income tax positions by recognizing the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in the recognition or measurement are reflected in the period in which the change in judgment occurs. Should an audit by a taxing authority result in settlement for an amount greater than the amount we have reserved, we will incur additional tax expense and reduced net income.

#### **Recent Accounting Pronouncements**

In May 2011, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2011-04 *Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRS* (“ASU 2011-04”), which amends current guidance to achieve common fair value measurement and disclosure requirements in U.S. GAAP and International Financial Reporting Standards. The amendments generally represent clarification of FASB Accounting Standards Codification Topic 820, but also include instances where a particular principle or requirement for measuring fair value or disclosing information about fair value measurements has changed. The amendments were effective for interim and annual reporting periods beginning after December 15, 2011. Accordingly, the Company adopted ASU 2011-04 on January 1, 2012, which had no effect on the Company’s consolidated financial position, results of operations or cash flows.

In June 2011, the FASB issued ASU 2011-05, *Comprehensive Income (Topic 220): Presentation of Comprehensive Income* (“ASU 2011-05”), which provides new guidance on the presentation of comprehensive income in financial statements. Entities are required to present total comprehensive income either in a single, continuous statement of comprehensive income or in two separate, but consecutive, statements. Under the single-statement approach, entities must include the components of net income, a total for net income, the components of other comprehensive income and a total for comprehensive income. Under the two-statement approach, entities must report an income statement and, immediately following, a statement of other comprehensive income. Under either method, entities must display adjustments to items reclassified from other comprehensive income to net income in both net income and other comprehensive income. ASU 2011-05 was effective for interim and annual reporting periods beginning after December 15, 2011, with early adoption permitted. The adoption of ASU 2011-05 did not have a material effect on its consolidated financial position, results of operations or cash flows.

## B. Liquidity and Capital Resources

As of December 31, 2012, we had cash and cash equivalents of \$100,127. Our principal sources of liquidity have been (1) cash flows from operations, (2) the sale of containers, (3) proceeds from the issuance of Series 2011-1 and 2012-1 Fixed Rate Asset Backed Notes (the “2011-1 Bonds” and “2012-1 Bonds”, respectively), (4) borrowings under conduit facilities (which allow for recurring borrowings and repayments) granted to Textainer Marine Containers II Limited (“TMCL II”) (the “TMCL II Secured Debt Facility”) and TMCL (the “TMCL Secured Debt Facility”), which was terminated in 2012 with proceeds from the TMCL II Secured Debt Facility, (5) borrowings under the revolving credit facilities extended to TL and TW (the “TL Revolving Credit Facility” and “TW Revolving Credit Facility”, respectively) and (6) proceeds from the issuance of common shares in a public offering. As of December 31, 2012, we had the following outstanding borrowings and borrowing capacities under the TL Revolving Credit Facility, the TW Revolving Credit Facility, the revolving credit facility extended to TAP Funding (the “TAP Funding Revolving Credit Facility”), the TMCL II Secured Credit Facility, and TMCL’s variable rate amortizing bonds (the “2005-1 Bonds”) and the 2011-1 and 2012-1 Bonds (in thousands):

Facility	Current Borrowing	Additional Borrowing Commitment	Total Commitment	Current Borrowing	Additional Available Borrowing, as Limited by our Borrowing Base	Total Current and Available Borrowing
TL Revolving Credit Facility	\$ 352,500	\$ 247,500	\$ 600,000	\$ 352,500	\$ 152,224	\$ 504,724
TW Revolving Credit Facility	88,940	161,060	250,000	88,940	—	88,940
TAP Funding Revolving Credit Facility	108,471	11,529	120,000	108,471	3,310	111,781
TMCL II Secured Debt Facility	874,000	326,000	1,200,000	874,000	3,353	877,353
2005-1 Bonds	124,458	—	124,458	124,458	—	124,458
2011-1 Bonds	340,000	—	340,000	340,000	—	340,000
2012-1 Bonds	373,333	—	373,333	373,333	—	373,333
Total	<u>\$2,261,702</u>	<u>\$746,089</u>	<u>\$3,007,791</u>	<u>\$2,261,702</u>	<u>\$ 158,887</u>	<u>\$2,420,589</u>

We have typically funded a significant portion of the purchase price of new containers through borrowings under our TL Revolving Credit Facility, TW Revolving Credit Facility, TMCL Secured Debt Facility and TMCL II Secured Debt Facility and intend to continue to utilize these facilities, as well as, the TAP Funding Revolving Credit Facility in the future. In 2001, 2005, 2011 and again in 2012, at such time as the Secured Debt Facility reached an appropriate size, the facility was refinanced through the issuance of bonds to institutional investors. We anticipate similar refinancings at such times as the TMCL II Secured Debt Facility or any similar revolving debt facilities we establish nears their maximum size. This timing will depend on our level of future purchases of containers and the size of our debt facilities in the future.

Our cash inflows from operations are affected by the utilization rate of our fleet and the per diem rates of our leases, whereas the cash inflows from proceeds for the sale of containers are affected by market demand for used containers and our available inventory of containers for sale. Our cash outflows are affected by payments and expenses related to our purchasing of containers, interest on our debt obligations or other contingencies discussed in Note 14 “Commitments and Contingencies” to our consolidated financial statements in Item 18, “Financial Statements” in this Annual Report on Form 20-F, which may place demands on our short-term liquidity.

We are a holding company with no material direct operations. Our principal assets are the equity interests we directly or indirectly hold in our operating subsidiaries, which own our operating assets. As a result, we are dependent on loans, dividends and other payments from our subsidiaries to generate the funds necessary to meet our financial obligations and to pay dividends on our common shares. Our subsidiaries are legally distinct from us and may be prohibited or restricted from paying dividends or otherwise making funds available to us under certain conditions. If we are unable to obtain funds from our subsidiaries, we may be unable to, or our board may

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exercise its discretion not to, pay dividends on our common shares. Our board of directors takes a fresh view every quarter, taking into consideration our cash needs for opportunities that may be available to us, and sets our dividend accordingly. TL's Revolving Credit Facility also prohibits TL from paying dividends to TGH in excess of 70% of TL's immediately preceding four quarters of net income attributable to TL excluding unrealized losses (gains) on interest rate swaps and caps, net. A substantial amount of cash used by TGH to pay dividends to its common shareholders is received from TL in the form of dividends.

Our consolidated financial statements do not reflect the income taxes that would be payable to foreign taxing jurisdictions if the earnings of a group of corporations operating in those jurisdictions were to be transferred out of such jurisdictions, because such earnings are intended to be permanently reinvested in those countries. At December 31, 2012, cumulative earnings of approximately \$1,919 would be subject to income taxes of approximately \$576 if such earnings of foreign corporations were transferred out of such jurisdictions in the form of dividends.

The disruption in the credit market in 2008 and 2009 had a significant adverse impact on a number of financial institutions. To date, our liquidity has not been impacted by the current credit environment. Assuming that our lenders remain solvent, we currently believe that cash flow from operations, proceeds from the sale of containers and borrowing availability under our debt facilities are sufficient to meet our liquidity needs, including for the payment of dividends, for the next twelve months. We will continue to monitor our liquidity and the credit markets. However, we cannot predict with any certainty the impact to the Company of any further disruptions in the credit environment.

#### *Description of Indebtedness*

*TL Revolving Credit Facility.* TL has a credit agreement with Bank of America, N.A. and other lenders to provide it with a revolving credit facility in the amount of \$600,000 (the "TL Credit Agreement"). The TL Credit Agreement also provides for a \$50,000 letter of credit facility included within the \$600,000 commitment (together, the "TL Revolving Credit Facility"). The TL Revolving Credit Facility provides for payments of interest only during its term, beginning on its inception date through September 24, 2017, the Maturity Date. There is a commitment fee of 0.30% to 0.40% on the unused portion of the TL Revolving Credit Facility, which varies based on the leverage of TGH and is payable quarterly in arrears. In addition, there is an agent's fee on the commitment amount, which is payable annually in advance.

Under the terms of the TL Revolving Credit Facility, the total outstanding principal amount available to be drawn thereunder is calculated pursuant to a formula based on the net book value of our containers and our outstanding debt with respect thereto. Any outstanding letter of credit not cash collateralized will reduce the amount available in the form of cash borrowings under the TL Revolving Credit Facility. The TL Revolving Credit Facility provided an additional amount available, as limited by the Company's borrowing base, in the amount of \$152,224 as of December 31, 2012.

The TL Revolving Credit Facility contains restrictive covenants, including limitations on certain liens, indebtedness and investments. In addition the TL Credit Facility contains certain restrictive financial covenants on TL and TGH. The TL Revolving Credit Facility's covenants require TGH and TL each to maintain (1) a consolidated leverage ratio of 3.50 to 1.00 or less; and (2) a minimum consolidated interest coverage ratio of 1.50 to 1.00. We were in compliance with all such covenants at December 31, 2012.

Interest on the borrowings under the TL Revolving Credit Facility at December 31, 2012 was based on either the U.S. prime rate or LIBOR plus a spread between 1.0% and 2.0%, which varies based on TGH's leverage. As of December 31, 2012, \$352,500 was outstanding under the TL Revolving Credit Facility.

Although no repayment of the principal amount of outstanding borrowings is required until September 24, 2017, we may make optional prepayments prior to this date. Mandatory prepayments are required prior to the

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Maturity Date if the amount of outstanding loans and letters of credit exceeds the amount of the borrowing base. Any such prepayment will be in the amount required to reduce the amount of outstanding loans and letters of credit to the amount of the borrowing base.

The TL Revolving Credit Facility is secured by certain container-related assets of TL. TGH acts as a guarantor of the TL Revolving Credit Facility. The guaranty is secured by ordinary shares of TL, cash, assets readily convertible into cash and amounts due to us from our subsidiaries.

We have made certain representations and warranties in the TL Credit Agreement and are subject to certain reporting requirements and financial performance and other covenants. We are required to reaffirm certain representations and warranties as a condition to borrowing. If we are not able to do so, the committed borrowing amounts may not be available. The TL Credit Agreement restricts, among other things, our ability to consummate mergers, sell and acquire assets, make certain types of payments relating to our share capital, including dividends, incur indebtedness, permit liens on assets, make investments, enter into or amend certain contracts, enter into certain transactions with affiliates or negative pledge with respect to shares of TMCL, TMCL II, TW and other receivable subsidiaries.

Events of default under the TL Credit Agreement include, among others:

- A default in required payment;
- Failure to perform or observe covenants set forth in the loan documentation within a specified period of time;
- Any representation or warranty proving to have been incorrect when made or confirmed;
- a default in required payment by TL or TGH on any indebtedness or guarantee in excess of \$15,000 (other than the TL Revolving Credit Facility and interest rate swap agreements);
- bankruptcy or insolvency defaults of TL or TGH or any subsidiary;
- inability to pay debts by TL or TGH or any subsidiary;
- unsatisfied judgments against us that could result in a material adverse change or that equal at least \$15,000 to the extent not subject to a policy of insurance;
- the occurrence of certain Employee Retirement Income Security Act (“ERISA”) events;
- actual or asserted invalidity or impairment of any loan documentation; and
- change of control of TGH, TL, TMCL, TMCL II, TAP Funding and Textainer Equipment Management Limited (“TEML”), TGH’s wholly owned container management subsidiary.

*TW Revolving Credit Facility.* Our 25% owned joint venture, TW, has a credit agreement (“TW Credit Agreement”) with Wells Fargo Bank, N.A. (“WFB”), a wholly-owned subsidiary of Wells Fargo & Company, with a total commitment amount of up to \$250,000 (the “TW Revolving Credit Facility”). TW’s primary ongoing container financing requirements are funded by commitments under the TW Revolving Credit Facility. The interest rate on the TW Revolving Credit Facility, payable monthly in arrears, is LIBOR plus 2.75% during the revolving period beginning on its inception date through August 5, 2014. There is a commitment fee of 0.5% on the unused portion of the TW Revolving Credit Facility, which is payable monthly in arrears. In addition, there is an agent’s fee of 0.025% on the aggregate commitment amount of the TW Revolving Credit Facility, which is payable monthly in arrears. TW is required to make principal payment on any payment date for the outstanding loan principal amount that exceeds the borrowing base on such payment date. The aggregate loan principal balance is due on the maturity date, August 5, 2024.

The TW Revolving Credit Facility is secured by TW’s containers and under the terms of the TW Revolving Credit Facility, the total outstanding principal may not exceed the lesser of the commitment amount and the

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borrowing base, a formula based on TW's net book value of containers and restricted cash and direct financing and sales-type leases. The additional amount available for borrowing under the TW Revolving Credit Facility, as limited by TW's borrowing base, was \$0 as of December 31, 2012.

The TW Revolving Credit Facility is secured by a pledge of TW's assets. TW's total assets amounted to \$105,397 as of December 31, 2012. The TW Revolving Credit Facility contains restrictive covenants, including limitations on TW's finance lease default ratio, debt service coverage ratio, certain liens, indebtedness and investments. In addition, the TW Revolving Credit Facility contains certain restrictive financial covenants on TGH's tangible net worth, leverage, debt service coverage, TEMPL's net income and debt levels, and TW's overall Asset Base minimums. We were in compliance with all such covenants at December 31, 2012.

We have made certain representations and warranties in the TW Credit Agreement and are subject to certain reporting requirements and financial performance and other covenants. We are required to reaffirm certain representations and warranties as a condition to borrowing. If we are not able to do so, the committed borrowing amounts may not be available.

Events of default under the TW Credit Agreement include, among others:

- a default in required payment;
- the aggregate loan principal balance exceeding the asset base beyond cure period;
- failure to perform or observe covenants set forth in the loan documentation within a specified period of time;
- any representation or warranty proving to have been incorrect when made and the continuance for a specific period of time;
- manager default shall have occurred and shall have not been remedied, waived or cured;
- make an assignment for the benefit of creditors or inability to pay debts;
- bankruptcy or insolvency defaults;
- unsatisfied judgments against us that equal at least \$1,000 to the extent not subject to a policy of insurance;
- any of the loan documents shall be cancelled, terminated, revoked or rescinded or if the liens on the collateral shall cease to be perfected or to have the priority contemplated by the security documents without prior agreement of the lenders;
- TW becoming obligated to register as an investment company under the Investment Company Act; and
- the occurrence of certain ERISA events.

*TAP Funding Credit Facility.* Our 50.1% owned joint venture, TAP Funding, has a credit agreement ("TAP Funding Credit Agreement") with a bank effective May 1, 2012 that provides for a revolving credit facility with an aggregate commitment amount of up to \$120,000 (the "TAP Funding Revolving Credit Facility"). The interest rate on the TAP Funding Revolving Credit Facility, payable monthly in arrears, is either the Base Rate (as defined in TAP Funding's Credit Agreement) or one-month LIBOR plus 3.75% beginning on its inception date through its maturity date, October 31 2015. There is a commitment fee of 0.625% on the unused portion of the TAP Funding Revolving Credit Facility, which is payable monthly in arrears. TAP Funding is required to make principal payment on any payment date for the outstanding loan principal amount that exceeds the borrowing base on such payment date. The aggregate loan principal balance is due on the maturity date, October 31, 2015.

The TAP Funding Revolving Credit Facility is secured by TAP Funding's containers and under the terms of the TAP Funding Revolving Credit Facility, the total outstanding principal may not exceed the lesser of the

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commitment amount or the borrowing base, a formula based on TAP Funding's net book value of containers, restricted cash and direct financing and sales-type leases. The additional amount available for borrowing under the TAP Funding Revolving Credit Facility, as limited by TAP Funding's borrowing base, was \$3,310 as of December 31, 2012.

The TAP Funding Revolving Credit Facility is secured by a pledge of TAP Funding's assets. TAP Funding's total assets amounted to \$174,127 as of December 31, 2012. The TAP Funding Revolving Credit Facility contains restrictive covenants, including thresholds on TAP Funding's average net operating income, average sales proceeds, certain liens, indebtedness, investments, overall Asset Base minimums and average age of TAP Funding's container fleet, in which TAP Funding was in full compliance at December 31, 2012.

We have made certain representations and warranties in the TAP Funding Credit Agreement and are subject to certain reporting requirements and financial performance and other covenants. We are required to reaffirm certain representations and warranties as a condition to borrowing. If we are not able to do so, the committed borrowing amounts may not be available.

Events of default under the TAP Funding Credit Agreement include, among others:

- a default in required payment;
- the aggregate loan principal balance exceeding the asset base beyond cure period;
- failure to perform or observe covenants set forth in the loan documentation within a specified period of time;
- any representation or warranty proving to have been incorrect when made and the continuance for a specific period of time;
- manager default shall have occurred and shall have not been remedied, waived or cured;
- make an assignment for the benefit of creditors or inability to pay debts;
- bankruptcy or insolvency defaults;
- unsatisfied judgments against us that equal at least \$1,000 to the extent not subject to a policy of insurance;
- any of the loan documents shall be cancelled, terminated, revoked or rescinded or if the liens on the collateral shall cease to be perfected or to have the priority contemplated by the security documents without prior agreement of the lenders; TAP Funding becoming obligated to register as an investment company under the Investment Company Act;
- the occurrence of certain ERISA events; and
- a change of control occurs.

*TMCL II Secured Debt Facility.* TMCL II has a securitization facility pursuant to which it has issued Floating Rate Asset Backed Notes, Series 2012-1 ("2012-1 Notes") with a total commitment of \$1,200,000 pursuant to the Indenture, dated as of May 1, 2012. Our primary ongoing container financing requirements have been funded by commitments under the TMCL II Secured Debt Facility. The TMCL II Secured Debt Facility provided a total commitment in the amount of \$1,200,000 as of December 31, 2012. Of this amount, \$874,000 had been drawn and the additional amount available for borrowing, as limited by TMCL II's borrowing base, was \$3,353 as of December 31, 2012.

Prior to the conversion date (currently defined as May 1, 2014), each of the 2012-1 Notes is a revolving note with a maximum principal amount equal to the amount of that 2012-1 Note. As a result, the amount funded under such 2012-1 Notes may be less than the face amount of that 2012-1 Note. TMCL II may request funding under



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the 2012-1 Notes from time to time prior to the conversion date. Each of the 2010-1 Notes provides for payments of interest only during the period from its inception until its conversion date, with a provision that if not renewed the 2012-1 Notes will partially amortize, at a ten percent annual rate over a five year period and then mature.

Payments of interest on the 2012-1 Notes are due monthly in arrears. Interest on the outstanding amounts of the 2012-1 Notes equal one-month LIBOR plus 2.625% during the revolving period prior to the conversion date. Overdue payments of principal and interest of the 2012-1 Notes accrue interest at a rate of 2.0% above the interest rate ordinarily applicable to such amounts. There is a commitment fee of 0.75% on the unused portion of the commitments under the 2012-1 Notes, which is payable in arrears. If the 2012-1 Notes are not refinanced or renewed prior to the conversion date, the interest rate will increase to one-month LIBOR plus 3.625%.

Under the TMCL II Indenture, TGH, TMCL II and TEML must maintain certain financial covenants, including the following (i) TMCL II must maintain at least a 1.25 to 1.00 ratio of earnings (before interest expense and taxes) to interest expense; (ii) TEML may not incur more than \$1,000 of consolidated funded debt (iii) TEML must make at least \$2,000 in after-tax profits annually, (iv) Textainer Equipment Management (U.S.) Limited ("TEML US"), a wholly owned subsidiary of TEML, may not incur more than \$1,000 of consolidated funded debt (v) TEML US must make at least \$200 in after-tax profits annually and (vi) TGH must maintain a ratio of consolidated funded debt to consolidated tangible net worth that is no greater than 4.00 to 1.00. We were in compliance with these requirements at December 31, 2012.

The TMCL II Secured Debt Facility is governed by the Indenture and secured by a pledge of, among other things, TMCL II's containers, certain contracts related to TMCL II's containers and the securitization facility, certain bank accounts, proceeds from the operation of TMCL II's containers, and all other assets of TMCL II to the extent that they relate to the containers. Under the terms of the TMCL II Secured Debt Facility, the total outstanding principal may not exceed an amount that is calculated by a formula based on TMCL II's book value of equipment, restricted cash and direct financing and sales-type leases. The Secured Debt Facility also contains restrictive covenants regarding the average age of TMCL II's container fleet, ability to incur other obligations and to distribute earnings, and overall asset base minimums, with which TMCL II and TEML were in compliance at December 31, 2012.

We have made certain representations and warranties and are subject to certain reporting requirements and other covenants in connection with the Indenture and the TMCL II Secured Debt Facility. In addition, we are required to reaffirm certain representations and warranties as a condition to borrowing. If we are not able to do so, the committed borrowing amounts may not be available. These covenants restrict, among other things, TMCL II's ability to transfer the collateral, permit liens on collateral, engage in activities within the U.S., incur indebtedness, make loans or guarantees, consummate mergers, sell assets, enter into or amend certain contracts, create subsidiaries and make investments. We were in compliance with all such covenants at December 31, 2012.

Events of default under the 2012-1 Notes include, among others:

- a default in required payment;
- failure to perform or observe covenants set forth in the loan documentation within a specified period of time;
- any representation or warranty proving to have been incorrect when made and the continuance for a specific period of time;
- insolvency defaults;
- manager default shall have occurred and shall have not been remedied, waived or cured;
- invalidity of the lien on collateral;
- the funded notes exceeding the asset base over a specific period;

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- payment on the notes by the insurer thereof;
- TMCL II becoming obligated to register as an investment company under the Investment Company Act; and
- the occurrence of certain ERISA events.

*2012-1 Bonds.* TMCL has issued \$400,000 in Series 2012-1 Fixed Rate Asset Backed Notes (“the 2012-1 Bonds”) pursuant to its Series 2012-1 Supplement, dated as of April 18, 2012, to its Second Amended and Restated Indenture, dated as of May 26, 2005 (as amended as of June 3, 2005, June 8, 2006, July 2, 2008, June 29, 2010, June 10, 2011, February 3, 2012 and March 30, 2012 (the “TMCL Indenture”). The 2012-1 Bonds are term notes. The 2012-1 Bonds were purchased by various institutional investors.

Payments of principal and interest on the 2012-1 Bonds are due monthly. The 2012-1 Bonds fully amortize on a straight-line basis over a payment term that is scheduled to equal 10 years (with a target final payment date of April 15, 2022), but shall not exceed a maximum payment term of 15 years (with a legal final payment date of April 15, 2027). Under a 10-year amortization schedule, \$40,000 of principal of the 2012-1 Bonds will amortize per year. TMCL will not be permitted to make voluntary prepayments of all, or a portion of, the principal balance of the 2012-1 Bonds prior to the payment date occurring in May 2014. The interest rate applicable to the 2012-1 Bonds is fixed at 4.21% per annum. Overdue payments of principal and interest on the 2012-1 Bonds accrue interest at a rate of 2.0% above the interest rate ordinarily applicable to such amounts.

*2011-1 Bonds.* TMCL has issued \$400,000 in Series 2011-1 Fixed Rate Asset Backed Notes (“the 2011-1 Bonds”) pursuant to its Series 2011-1 Supplement, dated as of June 22, 2011, to the TMCL Indenture. The 2011-1 Bonds are term notes. The 2011-1 Bonds were purchased by various institutional investors.

Payments of principal and interest on the 2011-1 Bonds are due monthly. The 2011-1 Bonds fully amortize on a straight-line basis over a payment term that is scheduled to equal 10 years (with a target final payment date of June 15, 2021), but shall not exceed a maximum payment term of 15 years (with a legal final payment date of June 15, 2026). Under a 10-year amortization schedule, \$40,000 of principal of the 2011-1 Bonds will amortize per year. TMCL will not be permitted to make a voluntary prepayments of all, or a portion of, the principal balance of the 2011-1 Bonds prior to the payment date occurring in June 2013. The interest rate applicable to the 2011-1 Bonds is fixed at 4.70% per annum. Overdue payments of principal and interest on the 2011-1 Bonds accrue interest at a rate of 2.0% above the interest rate ordinarily applicable to such amounts.

*2005-1 Bonds.* TMCL has also issued \$580,000 in Floating Rate Asset Backed Notes, Series 2005-1 (“the “2005-1 Bonds”) pursuant to its Series 2005-1 Supplement, dated as of May 26, 2005, to the TMCL Indenture. The 2005-1 Bonds are term notes. The 2005-1 Bonds were purchased by various institutional investors.

Payments of principal and interest on the 2005-1 Bonds are due monthly. The 2005-1 Bonds fully amortize on a straight-line basis over a payment term that is scheduled to equal 10 years (with a target final payment date of May 15, 2015), but shall not exceed a maximum payment term of 15 years (with a legal final payment date of May 15, 2020). Under a 10-year amortization schedule, \$51,500 of principal of the 2005-1 Bonds will amortize per year. TMCL is permitted to make voluntary prepayments of all, or a portion of, the principal balance of the 2005-1 Bonds. The interest rate applicable to the 2005-1 Bonds equals one-month LIBOR plus 0.25 %. Overdue payments of principal and interest on the 2005-1 Bonds accrue interest at a rate of 2.0% above the interest rate ordinarily applicable to such amounts. Ultimate repayment of the 2005-1 Bonds has been insured by Ambac Assurance Corporation and the cost of this insurance coverage, which is equal to 0.275% on the outstanding principal balance of the 2005-1 Bonds, is recognized as incurred on a monthly basis.

Under the TMCL Indenture, TGH, TMCL, TEML and TEML US must maintain certain financial covenants, including the following (i) TMCL must maintain at least a 1.25 to 1.00 ratio of earnings (before interest expense and taxes) to interest expense; (ii) TEML may not incur more than \$1,000 of consolidated funded debt

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(iii) TEMPL must make at least \$2,000 in after-tax profits annually, (iv) TEMPL US may not incur more than \$1,000 of consolidated funded debt (v) TEMPL US must make at least \$200 in after-tax profits annually and (vi) TGH must maintain a ratio of consolidated funded debt to consolidated tangible net worth that is no greater than 4.00 to 1.00. We were in compliance with these requirements at December 31, 2012.

The 2012-1 Bonds, 2011-1 Bonds and the 2005-1 Bonds are all governed by the Indenture and are secured by a pledge of, among other things, TMCL's containers, certain contracts related to TMCL's containers and the securitization facility, certain bank accounts, proceeds from the operation of TMCL's containers, and all other assets of TMCL to the extent that they relate to the containers. Under the terms of the 2012-1 Bonds, the 2011-1 Bonds and the 2005-1 Bonds, the total outstanding principal of these two programs may not exceed an amount that is calculated by a formula based on TMCL's book value of equipment, restricted cash and direct financing and sales-type leases. The 2012-1 Bonds, the 2011-1 Bonds and the 2005-1 Bonds also contain restrictive covenants regarding the average age of TMCL's container fleet, ability to incur other obligations and to distribute earnings, and overall asset base minimums, with which TMCL and TEMPL were in compliance at December 31, 2012.

We have made certain representations and warranties and are subject to certain reporting requirements and other covenants in connection with the Indenture and the 2012-1 Bonds, the 2011-1 Bonds and 2005-1 Bonds. In addition, we are required to reaffirm certain representations and warranties as a condition to borrowing. If we are not able to do so, the committed borrowing amounts may not be available. These covenants restrict, among other things, TMCL's ability to transfer the collateral, permit liens on collateral, engage in activities within the U.S., incur indebtedness, make loans or guarantees, consummate mergers, sell assets, enter into or amend certain contracts, create subsidiaries and make investments. We were in compliance with all such covenants at December 31, 2012.

Events of default under the 2012-1 Bonds, the 2011-1 Bonds and the 2005-1 Bonds include, among others:

- invalidity of the lien on collateral;
- a default in required payment;
- failure to perform or observe covenants set forth in the loan documentation within a specified period of time;
- any representation or warranty proving to have been incorrect when made and the continuance for a specific period of time;
- insolvency defaults;
- manager default shall have occurred and shall have not been remedied, waived or cured;
- invalidity of the lien on collateral;
- the funded notes exceeding the asset base over a specific period;
- payment on the notes by the insurer thereof;
- certain defaults under other documents related to each of the notes;
- the funded notes exceeding the asset base;
- payment on the notes by the insurer thereof;
- TMCL becoming obligated to register as an investment company under the Investment Company Act; and
- the occurrence of certain ERISA events.

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*Cash Flow*

The following table summarizes historical cash flow information for the years ended December 31, 2012, 2011 and 2010:

	December 31,		
	2012	2011	2010
	(Dollars in thousands)		
Net income	\$ 205,063	\$ 204,018	\$ 133,764
Adjustments to reconcile net income to net cash provided by operating activities	61,464	9,327	30,119
Net cash provided by operating activities	266,527	213,345	163,883
Net cash used in investing activities	(974,287)	(725,124)	(302,964)
Net cash provided by financing activities	732,929	529,490	139,284
Effect of exchange rate changes	142	24	59
Net increase in cash and cash equivalents	25,311	17,735	262
Cash and cash equivalents at beginning of year	74,816	57,081	56,819
Cash and cash equivalents at end of year	\$ 100,127	\$ 74,816	\$ 57,081

*Operating Activities*

Net cash provided by operating activities increased \$53,182 (24.9%) from 2011 to 2012 primarily due to a \$24,040 increase in net income adjusted for noncash items such as depreciation expense, gain on sale of containers to noncontrolling interest and bargain purchase gain resulting primarily from a 19.1% increase in fleet size due to the purchase of new and used containers, partially offset by a 1.0 percentage point decrease in utilization for our owned fleet, a \$21,698 lower increase in accounts receivable, net during 2012 compared to 2011 due to improved working capital management, a \$5,674 decrease in trading containers, net during 2012 compared to a \$12,566 increase in 2011 due to a change in the number of trading containers that were held for sale and a \$4,850 decrease in accrued expenses in 2012 compared to a \$6,503 increase in 2011 due to the timing of payments made.

Net cash provided by operating activities increased \$49,462 (30.2%) from 2010 to 2011 primarily due to a \$73,619 increase in net income adjusted for non-cash items such as depreciation expense and gain on sale of containers to noncontrolling interest resulting primarily from a 29.5% increase in the size of our owned fleet due to the purchases of new and used containers, a 7.1% increase in per diem rental rates for our owned fleet and a 3.4 percentage point increase in utilization for our owned fleet due to improved conditions in the container leasing industry. These increases were partially offset by a \$17,096 higher increase in accounts receivable, net during 2011 compared to 2010 mainly due to a larger fleet size, a \$12,566 increase in trading containers, net during 2011 compared to an \$867 decrease during 2010 due to more trading containers being available for purchase and a \$6,713 increase in deferred revenue and other in 2011 compared to a \$2,311 decrease in 2010 primarily due to \$7,104 of deferred revenue recorded for below market rental rates received under purchase leaseback transactions for 25,200 containers completed in 2011.

*Investing Activities*

Net cash used in investing activities increased \$249,163 (34.4%) from 2011 to 2012 due to a higher amount of container purchases and the payment for the acquisition of TAP Funding Ltd. in 2012, partially offset by higher proceeds from the sale of containers and fixed assets, the payment for TMCL's capital restructuring (net of cash acquired) in 2011 and higher receipt of principal payments on direct financing and sales-type leases.

Net cash used in investing activities increased \$422,160 (139.3%) from 2010 to 2011 due to a higher amount of container purchases, the payment for TMCL's capital restructuring (net of cash acquired) in 2011 and

a lower receipt of principal payments on direct financing and sales-type leases, partially offset by higher proceeds from the sale of containers and fixed assets.

#### *Financing Activities*

Net cash provided by financing activities increased \$203,439 (38.4%) from 2011 to 2012 due to a \$279,346 increase in net proceeds from our TL and TW Revolving Credit Facilities, \$184,839 of net proceeds received from the issuance of common shares in our public offering in 2012, a \$23,651 lower increase in restricted cash and a \$10,184 increase in capital contributions from noncontrolling interest, partially offset by a \$208,894 decrease in net proceeds from our TMCL and TMCL II Secured Debt Facilities, a \$46,668 increase in principal payments on our 2012-1, 2011-1 and 2005-1 Bonds, a \$20,924 increase in dividends paid, a \$15,646 increase in debt issuance costs, a \$1,396 decrease in proceeds from the issuance of common shares upon the exercise of share options and a \$1,053 decrease in excess tax benefit from share-based compensation awards.

Net cash provided by financing activities increased \$390,206 (280.2%) from 2010 to 2011 primarily due to \$400,000 of proceeds from the issuance of our 2011-1 Bonds, a \$33,697 increase in proceeds from our TMCL Secured Debt Facility, a \$4,047 increase in net proceeds from our TL and TW Credit Facilities, an excess tax benefit from share-based compensation awards of \$3,633 in 2011, a \$3,268 decrease in debt issuance costs, capital contributions from noncontrolling interest of \$1,823 in 2011 and a \$1,032 increase in proceeds from the issuance of common shares upon the exercise of share options, partially offset by a \$22,376 higher increase in restricted cash, a \$20,000 increase in principal payments on our 2011-1 and 2005-1 Bonds and a \$14,918 increase in dividends paid.

#### **C. Research and Development, Patents and Licenses, etc.**

We do not carry out research and development activities and our business and profitability are not materially dependent upon any patents or licenses. We have registered “TEXTAINER,” “TEX” and “tex” (logo) in the U.S. Patent and Trademark Office and in the patent and trademark agencies of thirteen countries as trademarks.

#### **D. Trend Information**

Please see Item 5, “*Operating and Financial Review and Prospects – Tabular Disclosure of Contractual Obligations*” for a description of identifiable trends, demands, commitments, events or uncertainties that will result in, or that are reasonably likely to result in, our liquidity either increasing or decreasing at present or in the foreseeable future. We will require sufficient capital in the future to meet our payments and other obligations under our contractual obligations and commercial commitments. The need to make such payments is a “Trend” as it is unlikely that all such obligations will be eliminated from our future business activities. We intend to utilize cash on hand in order to meet our obligations under our contractual obligations and commercial commitments. It is likely that we will generate sufficient operating cash flow to meet these ongoing obligations in the foreseeable future. From time to time, we may issue additional debt in order to raise capital for future requirements.

#### **E. Off-Balance Sheet Arrangements**

At December 31, 2012, we had no off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, change in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

## F. Tabular Disclosure of Contractual Obligations

The following table sets forth our contractual obligations and commercial commitments by due date as of December 31, 2012:

	Payments Due by Period						
	Total	1 year	1-2 years	2-3 years	3-4 years	4-5 years	>5 years
(Dollars in thousands)							
(Unaudited)							
Total debt obligations:							
TL Revolving Credit Facility	\$ 352,500	\$ —	\$ —	\$ —	\$ —	\$ 352,500	\$ —
TW Revolving Credit Facility	88,940	—	—	—	—	—	88,940
TAP Revolving Credit Facility	108,471	—	—	108,471	—	—	—
TMCL II Secured Debt Facility	874,000	—	50,983	87,400	87,400	87,400	560,817
2005-1 Bonds	124,458	51,500	51,500	21,458	—	—	—
2011-1 Bonds	340,000	40,000	40,000	40,000	40,000	40,000	140,000
2012-1 Bonds	373,333	40,000	40,000	40,000	40,000	40,000	173,333
Interest obligation (1)	345,721	69,309	64,885	57,935	48,149	40,373	65,070
Interest rate swaps payable (2)	12,823	7,221	3,790	1,362	281	95	74
Office lease obligations	6,307	1,558	1,573	1,525	1,366	95	190
Container contracts payable	87,708	87,708	—	—	—	—	—
Total contractual obligations	\$2,714,261	\$297,296	\$209,031	\$358,151	\$217,196	\$560,463	\$1,072,124

- (1) Assuming an estimated current interest rate of LIBOR plus a margin, which equals an all-in interest rate of 3.11%.
- (2) Calculated based on the difference between our fixed contractual rates and the counterparties' estimated average LIBOR rate of 0.21%, for all periods, for all interest rate contracts outstanding as of December 31, 2012.

## G. Safe Harbor

This Annual Report on Form 20-F contains forward-looking statements. See "Information Regarding Forward-Looking Statements; Cautionary Language."

## ITEM 6. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES

### A. Directors and Senior Management

The following table sets forth information regarding our executive officers and directors as of March 15, 2013. Our board of directors is elected annually and each director holds office until his successor has been duly elected, except in the event of his death, resignation, removal or earlier termination of his office. Our bye-laws provide for, among other things, the election of our board of directors on a staggered basis. The business address of each of our executive officers and non-management directors is Century House, 16 Par-La-Ville Road, Hamilton HM 08, Bermuda.

In accordance with our bye-laws, our board of directors are elected annually on a staggered basis, with each director holding office until his successor has been duly elected, except in the event of his death, resignation, removal or earlier termination of his office. John A. Maccarone, Dudley R. Cottingham, Hyman Shwiell and

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James E. Hoelter are designated Class I directors, to hold office until our 2013 annual general meeting of shareholders. Neil I. Jowell, Cecil Jowell and David M. Nurek are designated Class III directors, to hold office until our 2014 annual general meeting of shareholders and Philip K. Brewer, Isam K. Kabbani and James E. McQueen are designated Class II directors, to hold office until our 2015 annual general meeting of shareholders. Thereafter, directors in each class will be elected for three-year terms. Directors may be re-elected when their term of office expires.

As of March 8, 2013, Trecor, through the Halco Trust and Halco, held a beneficiary interest in approximately 48.5% of our outstanding share capital. See Item 4, “*Information on the Company—Organizational Structure*” for an explanation of the relationship between us and Trecor. As indicated below, five of our directors are also directors of Trecor.

<u>Executive Officers and Directors</u>	<u>Age</u>	<u>Position</u>
Neil I. Jowell(1)(2)(3)(4)	79	Chairman
Philip K. Brewer	55	Director, President and Chief Executive Officer
Dudley R. Cottingham(1)(2)(3)	61	Director
James E. Hoelter(1)(2)(3)(4)	73	Director
Cecil Jowell(4)	77	Director
Isam K. Kabbani	78	Director
John A. Maccarone(2)(3)	68	Director
James E. McQueen(1)(4)	68	Director
David M. Nurek(2)(3)(4)	63	Director
Hyman Shwiel(1)(2)(3)	68	Director
Robert D. Pedersen	53	President and Chief Executive Officer of Textainer Equipment Management Limited
Hilliard C. Terry, III	43	Executive Vice President and Chief Financial Officer
Ernest J. Furtado	57	Senior Vice President and Chief Accounting and Compliance Officer

- (1) Member of the audit committee. Messrs. Cottingham and Shwiel are voting members and Messrs. Hoelter, Neil Jowell and McQueen are non-voting members.
- (2) Member of the compensation committee.
- (3) Member of the nominating and governance committee.
- (4) Director of Trecor, the indirect beneficiary of 48.5% of our share interest.

Certain biographical information about each of these individuals is set forth below.

#### *Directors*

**Neil I. Jowell** has served as our director and chairman since December 1993. He has been a director of Trecor since 1966, and was appointed chairman in 1973. Mr. Jowell has over 50 years experience in the transportation industry. He holds an M.B.A. from Columbia University and Bachelor of Commerce and L.L.B. degrees from the University of Cape Town. Mr. Neil I. Jowell and Mr. Cecil Jowell are brothers.

**Philip K. Brewer** was appointed President and Chief Executive Officer and to our board of directors in October 2011. Mr. Brewer served as our Executive Vice President from 2006 to October 2011, responsible for managing our capital structure and identifying new sources of finance for our company, as well as overseeing the management and coordinating the activities of our risk management and resale divisions. Mr. Brewer was Senior Vice President of our asset management group from 1999 to 2005 and Senior Vice President of our capital markets group from 1996 to 1998. Prior to joining our company in 1996, Mr. Brewer worked at Bankers Trust starting in 1990 as a Vice President and ending as a Managing Director and President of its Indonesian

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subsidiary. From 1989 to 1990, he was Vice President in Corporate Finance at Jardine Fleming. From 1987 to 1989, he was Capital Markets Advisor to the United States Agency for International Development in Indonesia. From 1984 to 1987, he was an associate with Drexel Burnham Lambert, an investment banking firm, in New York. Mr. Brewer holds a B.A. in Economics and Political Science from Colgate University and an M.B.A. in Finance from Columbia University.

**Dudley R. Cottingham** has been a member of our board of directors since December 1993 and served as assistant Secretary and/or secretary between December 1993 and October 2007. He has also served in the past as president of certain of our subsidiaries and continues to serve as a director of our Bermuda subsidiaries. Mr. Cottingham has over 30 years of experience in public accounting for a variety of international and local clients. He is a director and the audit committee chairman of Bermuda Press (Holdings) Ltd., a newspaper publishing and commercial printing company listed on the Bermuda Stock Exchange and is chairman of the listing committee of the Bermuda Stock Exchange. He is chairman and an Investment and Operational Committee member of the Aurum Funds which are listed on the Bermuda and Irish Stock Exchanges. He has been a partner with Arthur Morris and Company, a provider of audit and accounting services for international clients, since 1982, and has served as vice president and director of Continental Management Ltd., a Bermuda company providing corporate representation, administration and management services, since 1982 and Continental Trust Corporation Ltd., a Bermuda company that provides corporate and individual trust administration services, since 1994. He is a director of Morris, Cottingham & Co. Ltd. and their other group companies in Turks & Caicos Islands. Mr. Cottingham is a Chartered Accountant.

**James E. Hoelter** has been a member of our board of directors since December 1993 and was our President and Chief Executive Officer from that time until his retirement in December 1998. Mr. Hoelter is a non-executive member of the board of directors of Trecor and a member of Trecor's risk committee. He is the president of Summit Station LLC, a commercial real estate development company. Mr. Hoelter received a Bachelor of Business Administration degree from the University of Wisconsin and an M.B.A. from the Harvard Business School.

**Cecil Jowell** has been a member of our board of directors since March 2003. Mr. C. Jowell also serves on the board of Trecor and has been an executive of Trecor for over 40 years. He has also served as a director and chairman of WACO International Ltd., an international industrial group previously listed on the JSE. Mr. C. Jowell holds a Bachelor of Commerce and L.L.B. degrees from the University of Cape Town and is a graduate of the Institute of Transport.

**John A. Maccarone** retired as our President and Chief Executive Officer in October 2011 when he became a non-executive director of Textainer Group Holdings Limited. He served as our President and Chief Executive Officer since January 1999, and as a member of our board of directors since December 1993. Until October 2011, Mr. Maccarone was a member of the board of directors of the Institute of International Container Lessors, a trade association for the container and chassis leasing industry, and served as its chairman from January 2006 to December 2006. Mr. Maccarone co-founded Intermodal Equipment Associates, a marine container leasing company based in San Francisco, and held a variety of executive positions with the company from 1979 until 1987, when he joined the Textainer Group as President and Chief Executive Officer of Textainer Equipment Management Limited, now a subsidiary of our company. From 1977 through 1978, Mr. Maccarone was Director of Marketing based in Hong Kong for Trans Ocean Leasing Corporation, a San Francisco-based company. From 1969 to 1976, Mr. Maccarone was a marketing representative for IBM Corporation in Chicago, Illinois. From 1966 to 1968, he served as a Lieutenant in the U.S. Army Corps of Engineers in Thailand and Virginia. Mr. Maccarone holds a B.S. in Engineering Management from Boston University and an M.B.A. from Loyola University of Chicago.

**Isam K. Kabbani** has been a member of our Board of Directors since December 1993. Mr. Kabbani is the chairman and principal stockholder of the IKK Group, Jeddah, Saudi Arabia, a manufacturing, trading and construction group active both in Saudi Arabia and internationally. In 1959, Mr. Kabbani joined the Saudi



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Arabian Ministry of Foreign Affairs, and in 1960 moved to Ministry of Petroleum for a period of ten years. During this time, he was seconded to the Organization of Petroleum Exporting Countries (“OPEC”). After a period as Chief Economist of OPEC, in 1967 he became the Saudi Arabian member of OPEC’s Board of Governors. In 1970, he left the Ministry of Petroleum to establish his own business starting with National Marketing, a small trading company in specialized building materials. The IKK Group has been for the past decade consistently among the largest 35 Saudi Companies. Mr. Kabbani holds a B.A. from Swarthmore College (Pennsylvania, USA) and an M.A. in Economics and International Relations from Columbia University.

**James E. McQueen** has been a member of our board of directors since March 2003. Mr. McQueen joined Trecor in June 1976 and has served as financial director of Trecor since April 1984. Mr. McQueen is also a director of a number of Trecor’s subsidiaries. Prior to joining Trecor, Mr. McQueen was an accountant in public practice. Mr. McQueen received a Bachelor of Commerce degree and a Certificate in the Theory of Accounting from the University of Cape Town and is a Chartered Accountant (South Africa).

**David M. Nurek** has been a member of our board of directors since September 2007. Mr. Nurek was appointed as an alternate director of Trecor in November 1992 and as a non-executive member of its board of directors in July 1995 and is chairman of Trecor’s remuneration and nomination committees and a member of its audit committee. Mr. Nurek is an executive of Investec Bank Limited, a subsidiary of Investec Limited, which is listed on the JSE. Investec Limited has entered into a dual listed company structure with Investec plc, which is quoted on the London Stock Exchange (collectively, the “Investec Group”). He is the regional chairman of Investec Limited’s various businesses in the Western Cape, South Africa, and is also the Investec Group’s worldwide head of legal risk. Prior to joining Investec Limited in June 2000, Mr. Nurek served as chairman of the South African legal firm Sonnenberg Hoffman & Galombik, which has since changed its name to Edward Nathan Sonnenbergs Inc. Mr. Nurek serves as a non-executive on the boards of directors of various listed and unlisted companies in South Africa and holds a Diploma in Law and a Graduate Diploma in Company Law from the University of Cape Town, and completed a Program of Instruction for Lawyers at Harvard Law School and a Leadership in Professional Services Firms program at Harvard Business School.

**Hyman Shwiel** has been a member of our board of directors since September 2007. Mr. Shwiel was a partner with Ernst & Young LLP for 25 years. He served during that period in various roles, including Area Managing Partner and as National Director of Enterprise and Professional Risk. Upon his retirement in 2005, he became a consultant to Ernst & Young until 2007. Mr. Shwiel holds a C.T.A. and a M.B.A. from the University of Cape Town and is a Chartered Accountant (South Africa) and a CPA.

### *Executive Officers*

For certain biographical information about Philip K. Brewer, see “Directors” above.

**Robert D. Pedersen** was appointed President and Chief Executive Officer of Textainer Equipment Management Limited, our management company, in October 2011. Mr. Pedersen served as our Executive Vice President responsible for worldwide sales and marketing related activities and operations since January 2006. Mr. Pedersen was Senior Vice President of our leasing group from 1999 to 2005. From 1991 to 1999, Mr. Pedersen held several positions within our company, and from 1978 through 1991, he worked in various capacities for Klinge Cool, a manufacturer of refrigerated container cooling units, XTRA, a container lessor, and Maersk Line, a container shipping line. Mr. Pedersen is a graduate of the A.P. Moller Shipping and Transportation Program and the Merkonom Business School in Copenhagen, where he majored in Company Organization.

**Hilliard C. Terry, III** was appointed Executive Vice President and Chief Financial Officer in January 2012. Prior to joining the company, Mr. Terry served as Vice President and Treasurer at Agilent Technologies, Inc., where he worked since the company’s initial public offering in 1999 and subsequent spin-off from Hewlett-

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Packard Company (HP). He was the head of Investor Relations until he was appointed Vice President and Treasurer in 2006. Before joining Agilent, Mr. Terry worked in marketing and investor relations for HP's VeriFone subsidiary and joined VeriFone, Inc. in 1995 prior to the company's acquisition by HP in 1997. He has also held positions in investor relations and investment banking with Kenetech Corporation and Goldman, Sachs & Co, respectively. Mr. Terry has also served on the board of directors of Umpqua Holdings Corporation since January 2010. Mr. Terry holds a B.A. in Economics from the University of California at Berkeley and an M.B.A. from Golden Gate University.

**Ernest J. Furtado** has served as our First Vice President, Senior Vice President, Chief Financial Officer and Secretary or Assistant Secretary since 1999. Mr. Furtado currently serves as our Senior Vice President and Chief Accounting and Compliance Officer. Prior to joining our company in 1991, Mr. Furtado was Controller for Itel Instant Space, a container leasing company based in San Francisco, California, and Manager of Accounting for Itel Containers International Corporation, a container leasing company based in San Francisco, California. Mr. Furtado was also a Manager of Internal Audit for Wells Fargo Bank and worked as a Certified Public Accountant at John F. Forbes & Co. Mr. Furtado is a Certified Public Accountant and holds a B.S. in Business Administration from the University of California at Berkeley and an M.B.A. in Information Systems from Golden Gate University.

## **Board of Directors**

Our board of directors currently consists of ten members. Our bye-laws provide that our board of directors shall consist of five to twelve directors, as the board of directors may determine from time to time.

## **B. Compensation**

The aggregate direct compensation we paid to our executive officers as a group (five persons, including a bonus paid to John A. Maccarone, our former President and Chief Executive Officer who retired in October 2011) for the year ended December 31, 2012 was approximately \$3.1 million, which included approximately \$1.4 million in bonuses and approximately \$90 in funds set aside or accrued to provide for health and life insurance, retirement, or similar benefits. On January 20, 2012, Hilliard C. Terry III, our Executive Vice President and Chief Financial Officer, was also granted 10,000 share options, with an exercise price of \$31.34 and an expiration date of January 20, 2022, and 10,000 restricted share units and on November 14, 2012, our executive officers as a group were granted 76,000 share options, with an exercise price of \$28.05 and an expiration date of November 14, 2022, and 76,000 restricted share units through our 2007 Share Incentive Plan. This amount does not include expenses we incurred for other payments, including dues for professional and business associations, business travel and other expenses. We did not pay our officers who also serve as directors any separate compensation for their directorship during 2012, other than reimbursements for travel expenses.

All of our full-time employees, including employees of our direct and indirect subsidiaries and dedicated agents and our executive officers, were eligible to participate in our 2012 Short Term Incentive Plan ("STIP"). Under that plan, all eligible employees received an incentive award based on their respective job classification and our return on assets and earnings per share. In 2012, all STIP participants, including our executive officers received 200% of their target incentive award.

The aggregate direct compensation we paid to our directors who are not officers for their services as directors as a group for the year ended December 31, 2012 was approximately \$588. Some directors were also reimbursed for expenses incurred in order to attend board or committee meetings.

## **2007 Share Incentive Plan**

Our board of directors adopted the 2007 Share Incentive Plan on August 9, 2007, and our shareholders approved the 2007 Share Incentive Plan on September 4, 2007. The maximum number of common shares of

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Textainer Group Holdings Limited that could be granted pursuant to the 2007 Share Incentive Plan was 3,808,371 shares, representing 8% of the number of common shares issued and outstanding 45 days following our initial public offering on October 9, 2007, subject to adjustments for share splits, share dividends or other similar changes in our common shares or our capital structure. On February 23, 2010, the Company's Board of Directors approved an increase in the number of shares available for future issuance by 1,468,500 from 3,808,371 shares to 5,276,871 shares, which was approved by the Company's shareholders at the annual meeting of shareholders on May 19, 2010. The shares to be issued pursuant to awards under the 2007 Share Incentive Plan may be authorized, but unissued, or reacquired common shares.

The 2007 Share Incentive Plan provides for the grant of share options, restricted shares, restricted share units, share appreciation rights and dividend equivalent rights, collectively referred to as "awards." Share options granted under the 2007 Share Incentive Plan may be either incentive share options under the provisions of Section 422 of the Code, or non-qualified share options. We may grant incentive share options only to our employees or employees of any parent or subsidiary of Textainer Group Holdings Limited. Awards other than incentive share options may be granted to our employees, directors and consultants or the employees, directors and consultants of any parent or subsidiary of Textainer Group Holdings Limited.

Our board of directors or a committee designated by our board of directors, referred to as the "plan administrator," will administer the 2007 Share Incentive Plan, including selecting the award recipients, determining the number of shares to be subject to each award, determining the exercise or purchase price of each award and determining the vesting and exercise periods of each award. Awards under the plan may vest upon the passage of time or upon the attainment of certain performance criteria.

The exercise price of all share options granted under the 2007 Share Incentive Plan will be at least equal to 100% of the fair market value of our common shares on the date of grant. If, however, incentive share options are granted to an employee who owns shares possessing more than 10% of the voting power of all classes of our common shares or the shares of any parent or subsidiary, the exercise price of any incentive share option granted must equal at least 110% of the fair market value on the grant date and the maximum term of these incentive share options must not exceed five years. The maximum term of all other awards under the 2007 Share Incentive Plan will be ten years. The base appreciation amount of any share appreciation right and the exercise price or purchase price, if any, of any awards intended to be performance-based compensation (within the meaning of Section 162(m) of the Code) will be at least equal to 100% of the fair market value of our common shares on the date of grant. The plan administrator will determine the term and exercise or purchase price of any other awards granted under the 2007 Share Incentive Plan.

Under the 2007 Share Incentive Plan, incentive share options may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised during the lifetime of the participant only by the participant. Other awards shall be transferable by will or by the laws of descent or distribution and to the extent provided in the award agreement. The 2007 Share Incentive Plan permits the designation of beneficiaries by holders of awards, including incentive share options.

In the event a participant in the 2007 Share Incentive Plan terminates employment or is terminated by us (or by our parent or subsidiary) without cause, any options which have become exercisable prior to the time of termination will remain exercisable for three months from the date of termination (unless a shorter or longer period of time is determined by the plan administrator). In the event a participant in the 2007 Share Incentive Plan is terminated by us (or by our parent or subsidiary) for cause, any options which have become exercisable prior to the time of termination will immediately terminate. If termination was caused by death or disability, any options which have become exercisable prior to the time of termination, will remain exercisable for twelve months from the date of termination (unless a shorter or longer period of time is determined by the plan administrator). Unless an individual award agreement otherwise provides, all vesting of all other awards will generally terminate upon the date of termination.

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Subject to any required action by our shareholders, the number of common shares covered by outstanding awards, the number of common shares that have been authorized for issuance under the 2007 Share Incentive Plan, the exercise or purchase price of each outstanding award, the maximum number of common shares that may be granted subject to awards to a participant in any calendar year, and the like, shall be proportionally adjusted by the plan administrator in the event of any increase or decrease in the number of issued common shares resulting from certain changes in our capital structure as described in the 2007 Share Incentive Plan.

In the event of a corporate transaction or a change in control of Textainer Group Holdings Limited, all outstanding awards under the 2007 Share Incentive Plan will terminate unless the acquirer assumes or replaces such awards. In addition and except as otherwise provided in an individual award agreement, assumed or replaced awards will automatically become fully vested if a participant is terminated by the acquirer without cause within twelve months after a corporate transaction. In the event of a corporate transaction where the acquirer does not assume or replace awards granted under the 2007 Share Incentive Plan, all of these awards become fully vested immediately prior to the consummation of the corporate transaction. In the event of a change in control and except as otherwise provided in an individual award agreement, outstanding awards will automatically become fully vested if a participant is terminated by the acquirer without cause within twelve months after such change in control.

Under the 2007 Share Incentive Plan, a “corporate transaction” is generally defined as:

- acquisition of 50% or more of the common shares by any individual or entity including by tender offer;
- a reverse merger or amalgamation in which 40% or more of the common shares by an individual or entity is acquired;
- a sale, transfer or other disposition of all or substantially all of the assets of Textainer Group Holdings Limited;
- a merger, amalgamation or consolidation in which Textainer Group Holdings Limited is not the surviving entity; or
- a complete liquidation or dissolution.

Under the 2007 Share Incentive Plan, a “change in control” is generally defined as:

- acquisition of 50% or more of the common shares by any individual or entity which a majority of our board of directors (who have served on the board for at least 12 months) do not recommend that our shareholders accept, or
- a change in the composition of the board of directors as a result of contested elections over a period of 12 months or less.

Unless terminated sooner, the 2007 Share Incentive Plan will automatically terminate in 2017. The board of directors will have authority to amend or terminate the 2007 Share Incentive Plan. To the extent necessary to comply with applicable provisions of federal securities laws, state corporate and securities laws, the Code, the rules of any applicable stock exchange or national market system, and the rules of any non-U.S. jurisdiction applicable to awards granted to residents therein, we will obtain shareholder approval of any such amendment to the 2007 Share Incentive Plan in such a manner and to such a degree as required.

### **2008 Bonus Plan**

On September 21, 2007, our board of directors approved the Textainer Group Holdings Limited 2008 Bonus Plan (the “Bonus Plan”). The Bonus Plan provides for incentive payments to our employees and those of our affiliates, including our dedicated agents and key executives who may be affected by Section 162(m) of the Internal Revenue Code of 1986, as amended (“Code”). Although the Bonus Plan permits the awards to be paid in shares, we expect that the awards will be cash-based. The Bonus Plan is designed to provide incentive awards

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based on the achievement of goals relating to our performance and the performance of our individual business units, and to qualify certain components of compensation paid to certain of our key executives for the tax deductibility exception under Code Section 162(m) while maintaining a degree of flexibility in the amount of incentive compensation paid to such individuals. Under the Bonus Plan, performance goals may relate to one or more of the following measures, for the company as a whole, a line of business, service or product: increase in share price, earnings per share, total shareholder return, operating margin, gross margin, return on equity, return on assets, return on investment, operating income, net operating income, pre-tax income, cash flow, revenue, expenses, earnings before interest, taxes and depreciation, economic value added, market share, corporate overhead costs, liquidity management, net interest income, net interest income margin, return on capital invested, shareholders' equity, income before income tax expense, residual earnings after reduction for certain compensation expenses, net income, profitability of an identifiable business unit or product, or performance relative to a peer group of companies on any of the foregoing measures. The Bonus Plan replaced our 2007 Short Term Incentive Plan beginning in 2008.

Code Section 162(m) generally disallows a Federal income tax deduction to any publicly held corporation for non-performance based compensation paid in excess of \$1,000,000 in any taxable year to the chief executive officer or any of the four other most highly compensated executive officers employed on the last day of the taxable year. We intend to structure awards under the Bonus Plan so that compensation resulting from awards would be qualified "performance based compensation" eligible for continued deductibility. The Bonus Plan will be administered by a committee to be appointed by our board of directors, which will select the employees who will be eligible to receive awards, the target pay-out level and the performance targets. The maximum performance award payable to any individual for any performance period is \$2,000,000. Each performance period will be a period of three years or less, as determined by the committee. The committee may establish programs under the Bonus Plan permitting select participants to defer receipt of awards.

### **Employment and Consulting Agreements with Executive Officers and Directors**

We have entered into employment agreements with most of our executive officers. Each of these employment agreements contains provisions requiring us to make certain severance payments in case the executive officer is terminated without cause. The agreements terminate upon termination of employment. Employment is at-will for each of our executive officers and they may be terminated at any time for any reason. In addition, in the past we have entered into consulting arrangements with Mr. Hoelter, one of our directors.

Other than as disclosed above, none of our directors has service contracts with us or any of our subsidiaries providing for benefits upon termination of employment.

### **C. Board Practices**

Our corporate governance practices are in compliance with, and are not prohibited by, the laws of Bermuda. Therefore, we are exempt from many of the New York Stock Exchange's ("NYSE") corporate governance practices, other than the establishment of a formal audit committee satisfying the requirements of Rule 10A-3 under the Exchange Act and notification of non-compliance with NYSE listing requirements pursuant to Rule 10A-3 promulgated under the Exchange Act. The practices that we follow in lieu of the NYSE's corporate governance rules are described below.

- We do not, and are not required under Bermuda law to, maintain a board of directors with a majority of independent directors. Currently, a majority of our directors are not independent, as that term is defined by the NYSE.
- We are not required by Bermuda law to hold regular meetings of the board of directors at which only independent directors are present.
- Under Bermuda law, compensation of executive officers does not need to be determined by an independent committee. We have established a compensation committee that reviews and approves the

compensation and benefits for our executive officers and other key executives, makes recommendations to the board regarding compensation matters and is responsible for awarding compensation to our executive officers and other employees under our share compensation plans. The committee also has the discretion to interpret and amend the terms of, and take all other actions necessary to administer, the 2007 Share Incentive Plan. However, our compensation committee is not comprised solely of independent directors, as required by NYSE standards. The members of our compensation committee are Messrs. Cottingham, Hoelter, Maccarone, Neil Jowell, Nurek and Shwiel. Messrs. Neil Jowell, Hoelter and Nurek are directors of Trencor. Messrs. Cottingham and Shwiel satisfy the NYSE's standards for director independence.

- We have established an audit committee responsible (i) for advising the board regarding the selection of independent auditors, (ii) overseeing the Company's accounting and financial reporting process, (iii) evaluating our internal controls, and (iv) overseeing compliance with policies and legal requirements with respect to financial reporting. Our audit committee need not comply with NYSE requirements that the audit committee have a minimum of three members or the NYSE's standards of director independence for domestic issuers. Our audit committee has five members, Messrs. Shwiel, Cottingham, Neil Jowell, McQueen and Hoelter. Messrs. Shwiel and Cottingham are voting members of the committee and are independent as that term is defined in Rule 10A-3 under the Exchange Act. The other three members are representatives of Trencor and have no voting rights.
- We have established a nominating and governance committee, although this committee is not comprised solely of independent directors, as would be required of a domestic issuer. Our nominating and governance committee has five members, Messrs. Cottingham, Hoelter, Maccarone, Neil Jowell, Nurek and Shwiel. Messrs. Cottingham and Shwiel satisfy the NYSE's standards for director independence. Our board of directors has adopted a nominating and governance committee charter.
- Under Bermuda law, we are not required to obtain shareholder consent prior to issuing securities or adopting share compensation plans. Nonetheless, we sought and received the approval of our shareholders for our 2007 Share Incentive Plan on September 4, 2007. Under Bermuda law, consent of the Bermuda Monetary Authority is required for the issuance of securities in certain circumstances.
- Under Bermuda law, we are not required to adopt corporate governance guidelines or a code of business conduct. Nonetheless, we have adopted both corporate governance guidelines and a code of business conduct.

#### **D. Employees**

As of December 31, 2012, we employed 164 people. We believe that our relations with our employees are good, and we are not a party to any collective bargaining agreements.

#### **E. Share Ownership**

See Item 7, "*Major Shareholders and Related Party Transactions*" for information regarding director and senior management ownership of our common shares.

### **ITEM 7. MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS**

#### **A. Major Shareholders**

The following table presents information regarding the beneficial ownership of our common shares as of March 8, 2013:

- each person or entity that we know beneficially owns more than 5% of our issued and outstanding shares;
- each director, director nominee and executive officer; and
- all of our directors, director nominees and executive officers as a group.

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Beneficial ownership is determined in accordance with the rules of the SEC and generally includes any shares over which a person exercises sole or shared voting or investment power. The percentage of beneficial ownership of our common shares owned is based on 56,256,627 common shares issued and outstanding on March 8, 2013. We do not believe that we are directly or indirectly owned or controlled by any foreign government. The voting rights of our common shares held by major shareholders are the same as the voting rights of shares held by all other shareholders. We are unaware of any arrangement that might result in a change of control.

<u>Holders</u>	<u>Number of Common Shares Beneficially Owned</u>	
	<u>Shares (1)</u>	<u>% (2)</u>
<b>5% or More Shareholders</b>		
Halco Holdings Inc. (3)	27,278,802	48.5%
Trencor Limited (3)	27,278,802	48.5%
<b>Directors and Executive Officers</b>		
Philip K. Brewer	345,103	*
Dudley R. Cottingham	5,982	*
James E. Hoelter (4)	28,283,299	50.3%
Cecil Jowell (5)	27,878,740	49.6%
Neil I. Jowell (5)	27,941,721	49.7%
Isam K. Kabbani (6)	2,719,509	4.8%
John A. Maccarone (7)	1,897,558	3.4%
James E. McQueen (8)	27,281,784	48.5%
David M. Nurek (9)	27,281,784	48.5%
Hyman Shwiel	2,982	*
Robert D. Pedersen	231,926	*
Hilliard C. Terry, III	41,050	*
Ernest J. Furtado (10)	160,446	*
Current directors and executive officers (13 persons) as a group	34,956,676	62.1%

\* Less than 1%.

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- (1) Beneficial ownership by a person assumes the exercise of all share options, warrants and rights held by such person. Common shares beneficially owned include the following share options and restricted share units:

	Grant Date							
	October 9, 2007	November 19, 2008	November 18, 2009	November 18, 2010	November 16, 2011	January 20, 2012	May 17, 2012	November 14, 2012
<b>Share options</b>								
Exercise price	\$ 16.50	\$ 16.97	\$ 7.10	\$ 28.26	\$ 28.54	\$ 31.34	N/A	\$ 28.05
Expiration date	October 8, 2017	November 18, 2018	November 17, 2019	November 17, 2020	November 15, 2021	January 19, 2022	N/A	November 14, 2022
Philip K. Brewer	44,430	19,500	22,350	15,000	30,000	—	—	32,000
Dudley R. Cottingham	—	—	—	—	—	—	—	—
James E. Hoelter	—	—	—	—	—	—	—	—
Cecil Jowell	—	—	—	—	—	—	—	—
Neil I. Jowell	—	—	—	—	—	—	—	—
Isam K. Kabbani	—	—	—	—	—	—	—	—
John A. Maccarone	—	8,125	—	—	—	—	—	—
James E. McQueen	—	—	—	—	—	—	—	—
David M. Nurek	—	—	—	—	—	—	—	—
Hyman Shwiel	—	—	—	—	—	—	—	—
Robert D. Pederson	—	—	10,279	15,000	22,000	—	—	23,000
Hilliard C. Terry, III	—	—	—	—	—	10,000	—	11,000
Ernest J. Furtado	—	—	3,762	5,000	7,125	—	—	10,000
<b>Restricted share units</b>								
Philip K. Brewer	—	6,500	11,174	7,500	22,500	—	—	32,000
Dudley R. Cottingham	—	—	—	—	—	—	1,157	—
James E. Hoelter	—	—	—	—	—	—	1,157	—
Cecil Jowell	—	—	—	—	—	—	1,157	—
Neil I. Jowell	—	—	—	—	—	—	1,157	—
Isam K. Kabbani	—	—	—	—	—	—	1,157	—
John A. Maccarone	—	8,125	15,606	—	—	—	1,157	—
James E. McQueen	—	—	—	—	—	—	1,157	—
David M. Nurek	—	—	—	—	—	—	1,157	—
Hyman Shwiel	—	—	—	—	—	—	1,157	—
Robert D. Pederson	—	6,500	11,174	7,500	16,500	—	—	23,000
Hilliard C. Terry, III	—	—	—	—	—	7,500	—	11,000
Ernest J. Furtado	—	4,375	7,524	5,000	7,125	—	—	10,000

- (2) Percentage ownership is based on 56,236,815 shares outstanding as of February 13, 2013.
- (3) Includes 27,278,802 shares held by Halco Holdings Inc. (“Halco”). Halco is wholly owned by Halco Trust, a discretionary trust with an independent trustee. Trenchor and certain of Trenchor’s subsidiaries are the sole discretionary beneficiaries of Halco Trust. The protectors of the trust are Mr. Neil Jowell, the chairman of both our board of directors and the board of directors of Trenchor, Mr. Cecil Jowell, Mr. McQueen and Mr. Nurek, all members of our board of directors and the board of directors of Trenchor and Mr. Edwin Oblowitz, a member of the board of directors of Trenchor.
- (4) Includes 27,278,802 shares held by Halco (which in terms of SEC regulations are solely reported herewith as beneficially owned by Mr. Hoelter due to his position as a director of Trenchor), 113,438 shares held by the James E. Hoelter & Virginia S. Hoelter Trust, 519,156 shares held by the JEH-VSH Limited Partnership #1, and 370,746 shares held by the JEH-VSH Limited Partnership #2. The general partners of each of the partnerships are James and Virginia Hoelter. Mr. Hoelter is one of our directors and a member of the board of directors of Trenchor. Mr. Hoelter disclaims beneficial ownership, except to the extent of his pecuniary interest therein, if any, of the shares held by Halco.
- (5) Includes 27,278,802 shares held by Halco (which in terms of SEC regulations are solely reported herewith as beneficially owned by Mr. Cecil Jowell and Mr. Neil Jowell due to their position as a directors of Trenchor) and 596,956 shares held by EA Finance, a company owned by a trust in which members of Mr. Cecil Jowell and Mr. Neil Jowell’s family are discretionary beneficiaries. Mr. Cecil Jowell and



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Mr. Neil Jowell are our directors, directors of Halco, protectors of the Halco Trust and members of the board of directors of Trencor. In addition, Mr. Cecil Jowell has a significant ownership interest in Trencor. Mr. Cecil Jowell and Mr. Neil Jowell disclaim beneficial ownership, except to the extent of his pecuniary interest therein, if any, of the shares held by EA Finance and Halco.

- (6) Includes 2,716,527 shares held by IKK Foundation, an affiliate of Mr. Kabbani.
- (7) Includes 1,572,916 shares held by the Maccarone Family Partnership L.P., 289,179 shares held by the Maccarone Revocable Trust, 1,100 shares held by the Maccarone Charitable Trust, 1,000 shares held by the John Maccarone IRA Rollover and 350 shares held by the Bryan Maccarone UTMA.
- (8) Includes 27,278,802 shares are held by Halco (which in terms of SEC regulations are solely reported herewith as beneficially owned by Mr. McQueen due to his position as a director of Trencor). Mr. McQueen is one of our directors, a director of Halco, a protector of the Halco Trust and a member of the board of directors of Trencor. Mr. McQueen disclaims beneficial ownership, except to the extent of his pecuniary interest therein, if any, of the shares held by Halco.
- (9) Includes 27,278,802 shares are held by Halco (which in terms of SEC regulations are solely reported herewith as beneficially owned by Mr. Nurek due to his position as a director of Trencor). Mr. Nurek is one of our directors, a protector of the Halco Trust and a member of the board of directors of Trencor. Mr. Nurek disclaims beneficial ownership, except to the extent of his pecuniary interest therein, if any, of the shares held by Halco.
- (10) Includes 100,000 shares held by Ernest James Furtado and Barbara Ann Pelletreau, Trustees of the Furtado-Pelletreau 2003 Revocable Living Trust UDT dated November 28, 2003, 335 shares held by David Furtado and 200 shares held by Michelle Pelletreau, son and daughter, respectively, of Ernest James Furtado.

As of March 8, 2013, based on information available to the Company, 4,825 of our common shares issued and outstanding were held by one record holder in our domicile and headquarters country (Bermuda).

### **B. Related Party Transactions**

We do not have a corporate policy regarding related party transactions, nor are there any provisions in our memorandum of association or bye-laws regarding related party transactions, other than the provision, as permitted by Bermuda law, that we, or one of our subsidiaries, may enter into a contract in which our directors or officers are directly or indirectly interested if the director or officer discloses his interest to our board of directors at the first opportunity at a meeting of directors or in writing.

### **Loans to Executive Officers**

As permitted by Bermuda law, in the past, we have extended loans to our employees in connection with their acquisition of our common shares in accordance with our various employees' share schemes. As of December 31, 2012 and December 31, 2011, no amounts were outstanding on such loans to employees. Currently, there are no loans outstanding to our directors or executive officers, and we will not extend loans to our directors or executive officers in the future, in compliance with the requirements of Section 402 of the Sarbanes-Oxley Act of 2002 and Section 13(k) of the Securities Exchange Act of 1934, as amended.

### **Indemnification of Officers and Directors**

We have entered into indemnification agreements with each of our directors and executive officers to give such directors and officers, as well as their immediate family members, additional contractual assurances regarding the scope of indemnification set forth in our bye-laws, and to provide additional procedural protections which may, in some cases, be broader than the specific indemnification provisions contained in our bye-laws. The indemnification agreements may require us, among other things, to indemnify such directors and officers, as well as their immediate family members, against liabilities that may arise by reason of their status or service as directors or officers and to advance expenses as a result of any proceeding against them as to which they could be indemnified.

### **Agreements with IKK Group**

Textainer Equipment Management Limited has entered into a management agreement with IKK Foundation, related to Textainer Equipment Management Limited's management of containers owned by IKK Foundation. Director Isam Kabbani is the beneficial owner of IKK Foundation. In 2012, 2011 and 2010, we managed approximately 8,000 TEU (for which we received approximately \$155 in management fees), 8,000 TEU (for which we received approximately \$178 in management fees) and 9,000 TEU (for which we received approximately \$173 in management fees), respectively, for IKK Foundation.

### **Relationships and Agreements with Entities Related to Trencor Limited**

Halco is wholly owned by Halco Trust, a discretionary trust with an independent trustee. Trencor and certain of Trencor's subsidiaries are the sole discretionary beneficiaries of Halco Trust. The protectors of the trust include Neil I. Jowell, Cecil Jowell, David Nurek and James McQueen, all of whom are members of our board of directors and the board of directors of Trencor. In addition, two of our directors, Cecil Jowell and James McQueen, are also members of the board of directors of Halco.

We have entered into an agreement with LAPCO, an associate of Halco, related to our management of containers owned by LAPCO. Pursuant to this agreement, LAPCO has the right, but not an obligation, to require us to purchase containers on its behalf, within guidelines specified in the agreement and for as long as the management agreement is in place. In 2012, 2011 and 2010, we received the following fees or commissions from LAPCO: (i) \$3,072, \$3,239 and \$3,274, respectively, in management fees, (ii) \$1,195, \$1,395 and \$1,383, respectively, in sales commissions and (iii) \$0, \$0 and \$180, respectively, in acquisition fees. In 2012, 2011 and 2010, fees received under the LAPCO agreement accounted for 3.4%, 4.0% and 6.8%, respectively, of total combined Container Management and Container Resale segment revenue and 0.9%, 1.1% and 1.6%, respectively, of total revenue. LAPCO is free to compete against us with respect to its investment in containers and uses our competitors to manage some of its containers.

Halco acquired 2,100,000 common shares in the Company's initial public offering on October 15, 2007 at the initial public offering price. The underwriters did not receive any discount or commission on these shares. The common shares that were purchased by Halco in the offering are not freely tradable in the public market due to Halco's status as our "affiliate," as such term is defined in Rule 144 under the Securities Act. See Item 14. "*Material Modifications to the Rights of Security Holders and Use of Proceeds*" for further details on these trading restrictions.

### **Transactions with Umpqua Bank**

Our Executive Vice President and Chief Financial Officer, Hilliard C. Terry, III, serves as a member of the Board of Directors of Umpqua Holdings Corporation, the NASDAQ listed holding company for Umpqua Bank and Umpqua Investments, Inc. Umpqua Bank is a lender with a less than 5% commitment in the \$600,000 TL Credit Agreement. Umpqua Bank participates in the TL Credit Agreement on the same terms as the other lenders in the facility.

### **C. Interests of Experts and Counsel**

Not applicable.

## **ITEM 8. FINANCIAL INFORMATION**

### **A. Consolidated Statements and Other Financial Information**

#### **Financial Statements**

Our audited consolidated financial statements which are comprised of our consolidated balance sheets as of December 31, 2012 and 2011 and the related consolidated statements of comprehensive income, shareholders'

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equity and cash flows for each of the years in the three-year period ended December 31, 2012 and the notes to those statements and the report of independent registered public accounting firm thereon, are included under Item 18, “*Financial Statements*” of this Annual Report on Form 20-F. Also, see Item 5, “*Operating and Financial Review and Prospects*” for additional financial information.

### Legal Proceedings

See Item 4, “*Information on the Company — Business Overview—Legal Proceedings*” for information on our legal proceedings which may have, or have had in the recent past, significant effects on our financial position or profitability.

### Dividend Policy

The following table summarizes dividends that we have declared and paid since January 1, 2010:

<u>Date Declared</u>	<u>Dividend per Outstanding Common Share</u>	<u>Total Dividend</u>
February 2010	\$ 0.23	\$ 11,035
May 2010	\$ 0.24	\$ 11,533
August 2010	\$ 0.25	\$ 12,038
November 2010	\$ 0.27	\$ 13,025
February 2011	\$ 0.29	\$ 14,115
May 2011	\$ 0.31	\$ 15,157
August 2011	\$ 0.33	\$ 16,149
November 2011	\$ 0.35	\$ 17,128
February 2012	\$ 0.37	\$ 18,288
May 2012	\$ 0.40	\$ 19,816
August 2012	\$ 0.42	\$ 20,839
November 2012	\$ 0.44	\$ 24,530
February 2013	\$ 0.45	\$ 25,313

Our board of directors has adopted a dividend policy which reflects its judgment that our shareholders would be better served if we distributed to them, as quarterly dividends payable at the discretion of our board of directors, a part of the total shareholder return, balancing near term cash needs for potential acquisitions or other growth opportunities, rather than retaining such excess cash or using such cash for other purposes. On an annual basis we expect to pay dividends with cash flow from operations, but due to seasonal or other temporary fluctuations in cash flow, we may from time to time use temporary short-term borrowings to pay quarterly dividends.

We are not required to pay dividends, and our shareholders will not be guaranteed, or have contractual or other rights, to receive dividends. The timing and amount of future dividends will be at the discretion of our board of directors and will be dependent on our future operating results and the cash requirements of our business. There are a number of factors that can affect our ability to pay dividends and there is no guarantee that we will pay dividends in any given year. See Item 3, “*Key Information — Risk Factors*,” for a discussion of these factors. Our board of directors may decide, in its discretion, at any time, to decrease the amount of dividends, otherwise modify or repeal the dividend policy or discontinue entirely the payment of dividends.

In addition, we will not pay dividends in the event we are not allowed to do so under Bermuda law, are in default under (or such payment would cause a default under) the revolving credit facility of our wholly-owned subsidiary, Textainer Limited, or if such payment would cause us to breach any of our covenants. These covenants include certain financial covenants, which would be directly affected by the payment of dividends, such as (i) a minimum tangible net worth level (which level would decrease by the amount of any dividend paid),

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(ii) a maximum ratio of consolidated funded debt to consolidated tangible net worth (which amount would decrease by the amount of any dividend paid) and (iii) a minimum ratio of certain income (which amount would decrease by the amount of any dividend paid) to current obligations. Please see Item 5, “*Operating and Financial Review and Prospects—Liquidity and Capital Resources*” for a description of these covenants. Furthermore, since we are a holding company, substantially all of the assets shown on our consolidated balance sheet are held by our subsidiaries. Accordingly, our earnings and cash flow and our ability to pay dividends are largely dependent upon the earnings and cash flows of our subsidiaries and the distribution or other payment of such earnings to us in the form of dividends.

**B. Significant Changes**

Except as disclosed in the Annual Report on Form 20-F, no significant changes have occurred since December 31, 2012, which is the date of our audited consolidated financial statements included in this Annual Report on Form 20-F.

**ITEM 9. THE OFFER AND LISTING**

**A. Offer and Listing Details**

**Trading Markets and Price History**

Our common shares have been listed on the New York Stock Exchange (“NYSE”) under the symbol “TGH” since October 10, 2007. Prior to that time, there was no public market for our common shares. The following table sets forth the high and low closing sale prices, as reported on the NYSE for our common shares for the periods indicated:

	High	Low
<b>Annual Highs and Lows:</b>		
2012	\$ 39.00	\$ 27.45
2011	\$ 37.56	\$ 19.74
2010	\$ 31.35	\$ 14.72
2009	\$ 17.25	\$ 4.30
2008	\$ 22.35	\$ 6.36
<b>Quarterly Highs and Lows (two most recent full financial years):</b>		
Fourth quarter 2012	\$ 32.39	\$ 27.45
Third quarter 2012	\$ 39.00	\$ 30.23
Second quarter 2012	\$ 37.01	\$ 30.00
First quarter 2012	\$ 35.26	\$ 29.03
Fourth quarter 2011	\$ 29.98	\$ 19.74
Third quarter 2011	\$ 32.04	\$ 20.28
Second quarter 2011	\$ 37.56	\$ 28.06
First quarter 2011	\$ 37.16	\$ 28.81
<b>Monthly Highs and Lows (over the most recent six month period):</b>		
February 2013	\$ 43.06	\$ 39.86
January 2013	\$ 41.87	\$ 31.98
December 2012	\$ 32.12	\$ 29.77
November 2012	\$ 31.20	\$ 27.45
October 2012	\$ 32.39	\$ 29.94
September 2012	\$ 35.44	\$ 30.23

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**Transfer Agent**

A register of holders of our common shares is maintained by Continental Management Limited in Bermuda and a branch register is maintained in the United States by Computershare Limited. The transfer agent and branch registrar for our common shares is Computershare Shareholder Services, Inc. and its fully owned subsidiary Computershare Trust Company, N.A., having its principal office at 250 Royall Street, Canton, MA 02021.

**B. Plan of Distribution**

Not applicable.

**C. Markets**

See Item 9, “*Offer and Listing Details – Trading Markets*” above.

**D. Selling Shareholders**

Not applicable.

**E. Dilution**

Not applicable.

**F. Expenses of the Issue**

Not applicable.

**ITEM 10. ADDITIONAL INFORMATION**

**A. Share Capital**

Not applicable.

**B. Memorandum and Articles of Association**

We are an exempted company incorporated under the laws of Bermuda. We are registered with the Registrar of Companies in Bermuda under registration number EC18896. We were incorporated on December 3, 1993 under the name Textainer Group Holdings Limited, prior to that time our business was based in Panama. Our headquarters office is located at 16 Par-La-Ville Road, Hamilton HM 08 Bermuda.

We incorporate by reference into this Annual Report on Form 20-F the description of our memorandum of association and our bye-laws contained in “Description of Share Capital” of our Registration Statement on Form F-1 filed with the SEC on September 26, 2007. Such information is a summary which does not purport to be complete and is qualified in its entirety by reference to our memorandum of association and our bye-laws, copies of which have been filed as Exhibits 3.1 and 3.2, respectively, to such Registration Statement.

**C. Material Contracts**

We have not entered into any material contracts during the two years immediately preceding the date of this Annual Report on Form 20-F other than contracts entered into in the ordinary course of business and other than those described in Item 4, “*Information on the Company—History and Development of the Company—Significant Events*” or elsewhere in this Annual Report on Form 20-F.

#### **D. Exchange Controls**

Trencor, a South African company listed on the JSE, has an indirect beneficiary interest in 48.5% of our issued and outstanding shares. South Africa's exchange control regulations provide for restrictions on exporting capital from South Africa. These restrictions require Trencor to obtain approval from South African exchange control authorities before engaging in transactions that would result in dilution of their share interest in us below certain thresholds, whether through their sale of their own shareholdings or through the approval of our issuance of new shares. The exchange control authorities may decide not to grant such approval if a proposed transaction were to dilute Trencor's beneficiary interest in us below certain levels. While the South African government has, to some extent, relaxed exchange controls in recent years, it is difficult to predict whether or how it will further relax or abolish exchange control measures in the future. The above requirements could restrict or limit our ability to issue new shares. In addition, Trencor is required to comply with JSE Listings Requirements in connection with its holding or sale of our common shares.

#### **E. Taxation**

The following discussion is a summary of the material Bermuda and U.S. federal income tax consequences of an investment in our common shares. This discussion is not exhaustive of all possible tax considerations. In particular, this discussion does not address the tax consequences under state, local, and other national (e.g., non-Bermuda and non-U.S.) tax laws. Accordingly, we urge you to consult your own tax advisor regarding your particular tax circumstances and the tax consequences under state, local, and other national tax laws. The following discussion is based upon laws and relevant interpretations thereof in effect as of the date hereof, all of which are subject to change, possibly with retroactive effect.

##### **Bermuda Tax Consequences**

The following is a summary of the material Bermuda tax consequences of an investment in our common shares. The following discussion is not exhaustive of all possible tax considerations. We urge you to consult your own tax advisor regarding your particular tax circumstances.

##### **Taxation of the Companies**

We and our Bermuda subsidiaries have obtained an assurance from the Bermuda Minister of Finance under the Exempted Undertakings Tax Protection Act 1966 that, if any legislation is enacted in Bermuda imposing any tax computed on profits or income, or computed on any capital asset, gain, or appreciation, or any tax in the nature of estate duty or inheritance tax, then such tax will not until March 28, 2016 be applicable to us or any of our operations, or to any of our shares, debentures, or other obligations, except insofar as such tax applies to persons ordinarily resident in Bermuda or is payable by us in respect of real property owned or leased by us in Bermuda. Given the limited duration of the Minister of Finance's assurance, we cannot be certain that we will not be subject to any Bermuda tax after March 28, 2016. However, given recently enacted legislation, we intend to apply for an extension of this assurance through 2035. As an exempted company, we are required to pay to the Bermuda government an annual fee presently not to exceed \$32, based on our assessable capital.

##### **Taxation of Holders**

Currently, there is no Bermuda income or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by our shareholders in respect of our common shares. The issue, transfer, or redemption of our common shares is not currently subject to stamp duty.

##### **United States Federal Income Tax Consequences**

The following is a summary of the material U.S. federal income tax consequences of an investment in our common shares. The following discussion is not exhaustive of all possible tax considerations. This summary is

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based upon the Code, regulations promulgated under the Code by the U.S. Treasury Department (including proposed and temporary regulations), rulings, current administrative interpretations and official pronouncements of the IRS, and judicial decisions, all as currently in effect and all of which are subject to differing interpretations or to change, possibly with retroactive effect. Such change could materially and adversely affect the tax consequences described below. No assurance can be given that the IRS will not assert, or that a court will not sustain, a position contrary to any of the tax consequences described below.

This summary does not address all aspects of the U.S. federal income taxation that may be important to a particular holder in light of its investment or tax circumstances or to holders subject to special tax rules, such as: banks; financial institutions; insurance companies; dealers in stocks, securities, or currencies; traders in securities that elect to use a mark-to-market method of accounting for their securities holdings; tax-exempt organizations; real estate investment trusts; regulated investment companies; qualified retirement plans, individual retirement accounts, and other tax-deferred accounts; expatriates of the U.S.; persons subject to the alternative minimum tax; persons holding common shares as part of a straddle, hedge, conversion transaction, or other integrated transaction; persons who acquired common shares pursuant to the exercise of any employee share option or otherwise as compensation for services; persons actually or constructively holding 10% or more of our voting shares; and U.S. Holders (as defined below) whose functional currency is other than the U.S. dollar.

**This discussion is not a comprehensive description of all of the U.S. federal tax consequences that may be relevant with respect to an investment in common shares. We urge you to consult your own tax advisor regarding your particular circumstances and the U.S. federal income and estate tax consequences to you of owning and disposing of common shares, as well as any tax consequences arising under the laws of any state, local, or foreign or other tax jurisdiction and the possible effects of changes in U.S. federal or other tax laws.**

This summary is directed solely to persons who hold their common shares as capital assets within the meaning of Section 1221 of the Code, which includes property held for investment. For purposes of this discussion, the term “U.S. Holder” means a beneficial owner of common shares that is any of the following:

- a citizen or resident of the U.S. or someone treated as a U.S. citizen or resident for U.S. federal income tax purposes;
- a corporation (or other entity taxable as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the U.S., any state thereof, or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income taxation regardless of its source;
- a trust if a U.S. court can exercise primary supervision over the trust’s administration and one or more U.S. persons have the authority to control all substantial decisions of the trust; or
- a trust in existence on August 20, 1996 that has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

The term “Non-U.S. Holder” means a beneficial owner of common shares that is not a U.S. Holder. As described in “—Taxation of Non-U.S. Holders” below, the tax consequences to a Non-U.S. Holder may differ substantially from the tax consequences to a U.S. Holder.

If a partnership (including for this purpose any entity treated as a partnership for U.S. federal income tax purposes) is a beneficial owner of common shares, the U.S. federal income tax consequences to a partner in the partnership will depend on the status of the partner and the activities of the partnership. A holder of common shares that is a partnership and the partners in such partnership should consult their own tax advisors regarding the U.S. federal income tax consequences of an investment in common shares.

## **Taxation of the Companies**

### *Textainer and Non-U.S. Subsidiaries*

A non-U.S. corporation deemed to be engaged in a trade or business within the U.S. is subject to U.S. federal income tax on income which is treated as effectively connected with the conduct of that trade or business.

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Such income tax, if imposed, is based on effectively connected income computed in a manner similar to the manner in which the income of a domestic corporation is computed, except that a foreign corporation will be entitled to deductions and credits for a taxable year only if it timely files a U.S. federal income tax return for that year. In addition, a non-U.S. corporation may be subject to the U.S. federal branch profits tax on the portion of its effectively connected earnings and profits, with certain adjustments, deemed repatriated out of the U.S. Currently, the maximum U.S. federal income tax rates are 35% for a corporation's effectively connected income and 30% for the branch profits tax.

A portion of our income is treated as effectively connected with the conduct of a trade or business within the U.S., and such effectively connected income is subject to U.S. federal income tax. U.S. federal income tax returns have been filed declaring such effectively connected income.

The determination of whether a person is engaged in a U.S. trade or business is based on a highly factual analysis. In general, there is no clear test as to the nature and scope of activities that constitute being engaged in a U.S. trade or business, and it is unclear how a court would construe the existing authorities with respect to our activities. Accordingly, it is possible that the IRS could assert that a significantly greater portion of our income than we currently report is derived from the conduct of a U.S. trade or business and therefore, is effectively connected income that is subject to U.S. federal income tax.

In addition to U.S. federal income tax on income associated with a U.S. trade or business, we are also subject to a 30% U.S. withholding tax imposed on the gross amount of certain "fixed or determinable annual or periodic gains, profits and income" derived from sources within the U.S. (such as rents, dividends and interest on investments), to the extent such amounts are not effectively connected income. This 30% U.S. withholding tax is subject to reduction by applicable treaties. Distributions by our U.S. subsidiaries to us are expected to be subject to this 30% U.S. withholding tax.

#### *U.S. Subsidiaries*

Our U.S. subsidiaries are subject to U.S. federal income tax at regular corporate rates on their worldwide income, regardless of its source, subject to reduction by allowable foreign tax credits.

#### *Transfer Pricing*

Under U.S. federal income tax laws, transactions among taxpayers that are owned or controlled directly or indirectly by the same interests generally must be at arm's-length terms. We consider the transactions among our subsidiaries and us to be at arm's-length terms. However, the IRS may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such taxpayers if it determines that such transactions are not at arm's-length terms and that such distribution, apportionment, or allocation is necessary in order to clearly reflect the income of any of such taxpayers. In such a situation, we may incur increased tax liability, possibly materially, thereby reducing our profitability and cash flows.

#### **Taxation of U.S. Holders**

The discussion in "—Distributions on Common Shares" and "—Dispositions of Common Shares" below assumes that we will not be treated as a passive foreign investment company ("PFIC") for U.S. federal income tax purposes. For a discussion of the rules that apply if we are treated as a PFIC, see "—Passive Foreign Investment Company" below.

#### *Distributions on Common Shares*

*General.* Subject to the discussion in "—Passive Foreign Investment Company" below, if you actually or constructively receive a distribution on common shares, you must include the distribution in gross income as a taxable dividend on the date of your receipt of the distribution, but only to the extent of our current or



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accumulated earnings and profits, as calculated under U.S. federal income tax principles. Such amount must be included without reduction for any foreign taxes withheld. Dividends paid by us will not be eligible for the dividends received deduction allowed to corporations with respect to dividends received from certain domestic corporations. Dividends paid by us may or may not be eligible for preferential rates applicable to qualified dividend income, as described below. In addition, certain non-corporate U.S. Holders may be subject to an additional 3.8% Medicare tax on dividend income whether or not it is “qualified dividend income.” See “—Legislative Developments” below.

To the extent a distribution exceeds our current and accumulated earnings and profits, it will be treated first as a non-taxable return of capital to the extent of your adjusted tax basis in the common shares, and thereafter as capital gain. Preferential tax rates for long-term capital gain may be applicable to non-corporate U.S. Holders.

We do not intend to calculate our earnings and profits under U.S. federal income tax principles. Therefore, you should expect that a distribution will be reported as a dividend even if that distribution would otherwise be treated as a non-taxable return of capital or as capital gain under the rules described above.

*Qualified Dividend Income.* With respect to non-corporate U.S. Holders (i.e., individuals, trusts, and estates), for individuals earning \$400,000 or less per year or married couples earning \$450,000 or less per year, the maximum individual U.S. federal income tax rate applicable to “qualified dividend income” (“QDI”) generally is 15%. For individuals earning more than \$400,000 per year or married couples earning more than \$450,000 per year, the maximum U.S. federal income tax rate increases effective January 1, 2013, to 20% for “qualified dividend income.” Among other requirements, dividends will be treated as QDI if either (i) our common shares are readily tradable on an established securities market in the U.S., or (ii) we are eligible for the benefits of a comprehensive income tax treaty with the U.S. which includes an information exchange program and which is determined to be satisfactory by the Secretary of the U.S. Treasury. The income tax treaty between the U.S. and Bermuda (the jurisdiction of our incorporation) does not qualify for these purposes. However, under current administrative guidance, our common shares are “readily tradable” on an established securities market as a result of being listed on the NYSE.

In addition, for dividends to be treated as QDI, we must not be a PFIC (as discussed below) for either the taxable year in which the dividend was paid or the preceding taxable year. We do not believe that we were a PFIC for our prior taxable year and we intend to conduct our business so that we should not be treated as a PFIC for our current taxable year or any future taxable year. However, because the PFIC determination is highly fact intensive and made at the end of each taxable year, it is possible that we may be a PFIC for the current or any future taxable year. Please see the discussion under “—Passive Foreign Investment Company” below. Additionally, in order to qualify for QDI treatment, you generally must have held the common shares for more than 60 days during the 121-day period beginning 60 days prior to the ex-dividend date. However, your holding period will be reduced for any period during which the risk of loss is diminished.

Since the QDI rules are complex, you should consult your own tax advisor regarding the availability of the preferential tax rates for dividends paid on common shares.

*In-Kind Distributions.* Generally, distributions to you of new common shares or rights to subscribe for new common shares that are received as part of a pro rata distribution to all of our shareholders will not be subject to U.S. federal income tax. The adjusted tax basis of the new common shares or rights so received will be determined by allocating your adjusted tax basis in the old common shares between the old common shares and the new common shares or rights received, based on their relative fair market values on the date of distribution. However, in the case of a distribution of rights to subscribe for common shares, the adjusted tax basis of the rights will be zero if the fair market value of the rights is less than 15% of the fair market value of the old common shares on the date of distribution and you do not make an election to determine the adjusted tax basis of the rights by allocation as described above. Your holding period for the new common shares or rights should include the holding period for the old common shares on which the distribution was made.

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*Foreign Tax Credits.* Subject to certain conditions and limitations, any foreign taxes paid on or withheld from distributions from us and not refundable to you may be credited against your U.S. federal income tax liability or, alternatively, may be deducted from your taxable income. This election is made on a year-by-year basis and applies to all foreign taxes paid by you or withheld from you that year.

Distributions will constitute foreign source income for foreign tax credit limitation purposes. The foreign tax credit limitation is calculated separately with respect to two specific classes of income. For this purpose, distributions characterized as dividends distributed by us are expected to constitute “passive category income” or, in the case of certain U.S. Holders, “general category income.” Special limitations may apply if a dividend is treated as QDI (as defined above).

Since the rules governing foreign tax credits are complex, you should consult your own tax advisor regarding the availability of foreign tax credits in your particular circumstances.

#### *Dispositions of Common Shares*

Subject to the discussion in “—Passive Foreign Investment Company” below, you will recognize taxable gain or loss on the sale or other taxable disposition of common shares equal to the difference between the U.S. dollar value of (i) the amount realized on the disposition (i.e., the amount of cash plus the fair market value of any property received), and (ii) your adjusted tax basis in the common shares. Such gain or loss will be capital gain or loss.

If you have held the common shares for more than one year at the time of disposition, such capital gain or loss will be long-term capital gain or loss. Preferential tax rates for long-term capital gain will apply to non-corporate U.S. Holders. For individuals earning \$400,000 or less per year or married couples earning \$450,000 or less per year, the maximum individual U.S. federal income tax rate applicable to net long-term capital gain generally is 15%. For individuals earning more than \$400,000 per year or married couples earning more than \$450,000 per year, the maximum U.S. federal income tax rate increases effective January 1, 2013, to 20% for net long-term capital gain. In the case of a corporation, capital gains are taxed at the same rate as ordinary income, which is currently 35%. If you have held the common shares for one year or less, such capital gain or loss will be short-term capital gain or loss taxable as ordinary income at your marginal income tax rate. The deductibility of capital losses is subject to limitations. In addition, certain U.S. persons, including individuals, estates and trusts, will be subject to an additional 3.8% Medicare tax on capital gain income. See “—Legislative Developments” below.

Any gain or loss recognized on the disposition of common shares is not expected to give rise to foreign source income for U.S. foreign tax credit purposes.

You should consult your own tax advisor regarding the U.S. federal income tax consequences if you receive currency other than U.S. dollars upon the disposition of common shares.

#### *Passive Foreign Investment Company*

We will be a PFIC under Section 1297 of the Code if, for a taxable year, either (a) 75% or more of our gross income for such taxable year is passive income (the “income test”) or (b) 50% or more of the average percentage, generally determined by fair market value, of our assets during such taxable year either produce passive income or are held for the production of passive income (the “asset test”). “Passive income” includes, for example, dividends, interest, certain rents and royalties, certain gains from the sale of stock and securities, and certain gains from commodities transactions. However, rents meeting certain requirements are treated as derived from the conduct of an active trade or business and are not treated as passive income.

Certain “look through” rules apply for purposes of the income and asset tests described above. If we own, directly or indirectly, 25% or more of the total value of the outstanding shares of another corporation, we will be

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treated as if we (a) held directly a proportionate share of the other corporation's assets, and (b) received directly a proportionate share of the other corporation's income. In addition, passive income does not include any interest, dividends, rents, or royalties that are received or accrued by us from a "related person" (as defined in Section 954(d)(3) of the Code), to the extent such items are properly allocable to income of such related person that is not passive income.

Under the income and asset tests, whether or not we are a PFIC will be determined annually based upon the composition of our income and the composition and valuation of our assets, all of which are subject to change. In analyzing whether we should be treated as a PFIC, we are relying on the amount and character of our projected revenues and the amount and character of our projected capital expenditures, the valuation of our assets, and our election to treat certain of our subsidiaries as disregarded entities for U.S. federal income tax purposes. If the amount and character of our actual revenues and capital expenditures do not match our projections, we may be a PFIC. In these calculations, we have valued our intangible assets based on our market capitalization, determined using the market price of our common shares. Such market price may fluctuate. If our market capitalization is less than anticipated or subsequently declines, this will decrease the value of our intangible assets and we may be a PFIC. Furthermore, we have made a number of assumptions regarding the value of our intangible assets. We believe our valuation approach is reasonable. However, it is possible that the IRS could challenge the valuation of our intangible assets, which may result in our being a PFIC.

We do not believe that we were a PFIC for our prior taxable year and we intend to conduct our business so that we should not be treated as a PFIC for our current taxable year or any future taxable year. However, because the PFIC determination is highly fact intensive and made at the end of each taxable year, it is possible that we may be a PFIC for the current or any future taxable year or that the IRS may challenge our determination concerning our PFIC status.

*Default PFIC Rules under Section 1291 of the Code.* If we are a PFIC, the U.S. federal income tax consequences to a U.S. Holder of an investment in common shares will depend on whether such U.S. Holder is permitted to make and makes (i) an election to treat us as a qualified electing fund ("QEF") under Section 1295 of the Code (a "QEF Election") or (ii) a mark-to-market election under Section 1296 of the Code (a "Mark-to-Market Election"). A U.S. Holder owning common shares while we were or are a PFIC that has not made either a QEF Election or a Mark-to-Market Election will be referred to in this summary as a "Non-Electing U.S. Holder."

If you are a Non-Electing U.S. Holder, you will be subject to the default tax rules of Section 1291 of the Code with respect to:

- any "excess distribution" paid on common shares, which means the excess (if any) of the total distributions received by you during the current taxable year over 125% of the average distributions received by you during the three preceding taxable years (or during the portion of your holding period for the common shares prior to the current taxable year, if shorter); and
- any gain recognized on the sale or other taxable disposition (including a pledge) of common shares.

Under these default tax rules:

- any excess distribution or gain will be allocated ratably over your holding period for the common shares;
- the amount allocated to the current taxable year and any period prior to the first day of the first taxable year in which we were a PFIC will be treated as ordinary income in the current year;
- the amount allocated to each of the other years will be treated as ordinary income and taxed at the highest applicable tax rate in effect for that year; and
- the resulting tax liability from any such prior years will be subject to the interest charge applicable to underpayments of tax.

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In addition, notwithstanding any election you may make, dividends that you receive from us will not be eligible for the preferential tax rates applicable to QDI (as discussed above in “—Distributions on Common Shares”) if we are a PFIC either in the taxable year of the distribution or the preceding taxable year, but will instead be taxable at rates applicable to ordinary income.

Special rules for Non-Electing U.S. Holders will apply to determine U.S. foreign tax credits with respect to foreign taxes imposed on distributions on common shares.

If we are a PFIC for any taxable year during which you hold common shares, we will continue to be treated as a PFIC with respect to you for all succeeding years during which you hold common shares, regardless of whether we actually continue to be a PFIC.

*QEF Election.* We currently do not intend to prepare or provide you with certain tax information that would permit you to make a QEF Election to avoid the adverse tax consequences associated with owning PFIC stock.

*Mark-to-Market Election.* U.S. Holders may make a Mark-to-Market Election, but only if the common shares are marketable stock. The common shares will be “marketable stock” as long as they remain listed on the NYSE and are regularly traded. Shares are “regularly traded” for any calendar year during which it is traded (other than in *de minimis* quantities) on at least fifteen days during each calendar quarter. There can be no assurances, however, that our common shares will be treated, or continue to be treated, as regularly traded.

If you make a Mark-to-Market Election, you generally will not be subject to the default rules of Section 1291 of the Code discussed above. Rather, you will be required to recognize ordinary income for any increase in the fair market value of the common shares for each taxable year that we are a PFIC. You will also be allowed to deduct as an ordinary loss any decrease in the fair market value to the extent of net marked-to-market gain previously included in prior years. Your adjusted tax basis in the common shares will be adjusted to reflect the amount included or deducted.

The Mark-to-Market Election will be effective for the taxable year for which the election is made and all subsequent taxable years, unless the common shares cease to be marketable stock or the IRS consents to the revocation of the election. You should consult your own tax advisor regarding the availability of, and procedure for making, a Mark-to-Market Election.

Since the PFIC rules are complex, you should consult your own tax advisor regarding them and how they may affect the U.S. federal income tax consequences of an investment in common shares.

### *Legislative Developments*

Signed into law March 30, 2010, the Health Care and Education Reconciliation Act provides, among other things, with respect to taxable years beginning after December 31, 2012, certain U.S. persons, including individuals, estates and trusts, will be subject to an additional 3.8% Medicare tax on unearned income. For individuals, the additional Medicare tax applies to the lesser of (i) “net investment income” or (ii) the excess of “modified adjusted gross income” over \$200,000 (\$250,000 if married and filing jointly or \$125,000 if married and filing separately). “Net investment income” generally equals the taxpayer’s gross investment income reduced by the deductions that are allocable to such income. You should consult your tax advisors regarding the implications of the additional Medicare tax resulting from your ownership and disposition of our common shares.

### *Information Reporting and Backup Withholding*

Information reporting requirements will apply to distributions on common shares or proceeds from the disposition of common shares paid within the U.S. (and, in certain cases, outside the U.S.) to a U.S. Holder unless such U.S. Holder is an exempt recipient, such as a corporation. Furthermore, backup withholding (currently at 28%) may apply to such amounts unless such U.S. Holder (i) is an exempt recipient that, if required,

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establishes its right to an exemption, or (ii) provides its taxpayer identification number, certifies that it is not currently subject to backup withholding, and complies with other applicable requirements. A U.S. Holder may avoid backup withholding if it furnishes a properly completed IRS Form W-9 and is able to make the required certifications.

Backup withholding is not an additional tax. Rather, amounts withheld under the backup withholding rules may be credited against your U.S. federal income tax liability. Furthermore, you may obtain a refund of any excess amounts withheld by filing an appropriate claim for refund with the IRS and furnishing any required information in a timely manner.

#### *Information Reporting Regarding PFICs and Specified Foreign Financial Assets*

Under legislation enacted on March 18, 2010, commonly referred to as the “Foreign Account Tax Compliance Act” or “FATCA,” if we were a PFIC, each U.S. Holder would be required to file an annual report containing such information as the IRS may require, unless otherwise provided by the IRS. Before the enactment of this legislation, a U.S. shareholder of a PFIC was only required to file such an annual report if the shareholder recognized gain on a direct or indirect disposition of PFIC stock, received certain direct or indirect distributions from the PFIC, or was making certain elections with respect to the PFIC. In recently proposed administrative guidance, the IRS advised that, until it develops further guidance regarding the PFIC reporting obligation under FATCA, U.S. holders that would not otherwise have been required to file an annual report under the reporting rules prior to March 18, 2010, will not be required to file an annual report as a result of FATCA for taxable years beginning on or after March 18, 2010.

U.S. Holders who are individuals will be subject to reporting obligations with respect to their common shares if they do not hold their common shares in an account maintained by a financial institution and the aggregate value of their common shares and certain other “specified foreign financial assets” exceeds \$50,000. Significant penalties can apply if a U.S. Holder is required to disclose its common shares under these rules and fails to do so.

In the event a U.S. Holder does not file the information reports described above relating to ownership of a PFIC or disclosure of specified foreign financial assets, the statute of limitations on the assessment and collection of U.S. federal income taxes of such U.S. holder for the related tax year will not close before such report is filed.

If you are a U.S. Holder, you are urged to consult with your own tax advisor regarding the application of the PFIC and specified foreign financial assets information reporting requirements and related statute of limitations tolling provisions with respect to our common shares.

#### **Taxation of Non-U.S. Holders**

##### *Distributions on Common Shares*

Subject to the discussion in “—Information Reporting and Backup Withholding” below, as a Non-U.S. Holder, you generally will not be subject to U.S. federal income tax, including withholding tax, on distributions received on common shares, unless the distributions are effectively connected with a trade or business that you conduct in the U.S. and (if an applicable income tax treaty so requires) attributable to a permanent establishment that you maintain in the U.S.

If distributions are effectively connected with a U.S. trade or business and (if applicable) attributable to a U.S. permanent establishment, you will be subject to tax on such distributions in the same manner as a U.S. Holder, as described in “Taxation of U.S. Holders – Distributions on Common Shares” above. In addition, any such distributions received by a corporate Non-U.S. Holder may also, under certain circumstances, be subject to an additional “branch profits tax” at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

### *Dispositions of Common Shares*

Subject to the discussion in “—Information Reporting and Backup Withholding” below, as a Non-U.S. Holder, you generally will not be subject to U.S. federal income tax, including withholding tax, on any gain recognized on a sale or other taxable disposition of common shares, unless (i) the gain is effectively connected with a trade or business that you conduct in the U.S. and (if an applicable income tax treaty so requires) attributable to a permanent establishment that you maintain in the U.S., or (ii) you are an individual and are present in the U.S. for at least 183 days in the taxable year of the disposition, and certain other conditions are met.

If you meet the test in clause (i) above, you generally will be subject to tax on any gain that is effectively connected with your conduct of a trade or business in the U.S. in the same manner as a U.S. Holder, as described in “Taxation of U.S. Holders – Dispositions of Common Shares” above. Effectively connected gain realized by a corporate Non-U.S. Holder may also, under certain circumstances, be subject to an additional “branch profits tax” at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

If you meet the test in clause (ii) above, you generally will be subject to tax at a 30% rate on the amount by which your U.S. source capital gain exceeds your U.S. source capital loss during the taxable year.

### *Information Reporting and Backup Withholding*

Payments to Non-U.S. Holders of distributions on, or proceeds from the disposition of, common shares are generally exempt from information reporting and backup withholding. However, a Non-U.S. Holder may be required to establish that exemption by providing certification of non-U.S. status on an appropriate IRS Form W-8.

Backup withholding is not an additional tax. Rather, amounts withheld under the backup withholding rules may be credited against your U.S. federal income tax liability. Furthermore, you may obtain a refund of any excess amounts withheld by filing an appropriate claim for refund with the IRS and furnishing any required information in a timely manner.

## **F. Dividends and Paying Agents**

Not applicable.

## **G. Statement by Experts**

Not applicable.

## **H. Documents on Display**

Whenever a reference is made in this Annual Report on Form 20-F to any contract, agreement or other document, the reference may not be complete and you should refer to the copy of that contract, agreement or other document filed as an exhibit to one of our previous SEC filings. You can read our SEC filings over the Internet at the SEC’s website at <http://www.sec.gov>. You may also read and copy any document we file with the SEC at its public reference facilities at 100 F Street N.E., Washington, D.C. 20549. You may also obtain copies of these documents at prescribed rates by writing to the Public Reference Section of the SEC at 100 F Street N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities. Copies of reports and other information may also be inspected in the offices of the NYSE, 20 Broad Street, New York, New York 10005.

## **I. Subsidiary Information**

Not applicable.

## ITEM 11. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk represents the risk of changes in value of a financial instrument, derivative or non-derivative, caused by fluctuations in foreign exchange rates and interest rates. Changes in these factors could cause fluctuations in our results of operations and cash flows. We are exposed to the market risks described below.

**Foreign Exchange Rate Risk.** Although we have significant foreign-based operations, the U.S. dollar is our primary operating currency. Thus, substantially all of our revenue and the majority of our expenses in 2012, 2011 and 2010 were denominated in U.S. dollars. During 2012, 2011 and 2010, 36%, 36% and 34%, respectively, of our direct container expenses were paid in 18 different foreign currencies. We do not hedge these container expenses as there are no significant payments made in any one foreign currency. Foreign exchange fluctuations did not materially impact our financial results in those periods.

**Interest Rate Risk.** We have entered into various interest rate swap and cap agreements to mitigate our exposure associated with our variable rate debt. The swap agreements involve payments by us to counterparties at fixed rates in return for receipts based upon variable rates indexed to the London Inter Bank Offered Rate ("LIBOR"). The differentials between the fixed and variable rate payments under these agreements are recognized in realized (losses) gains on interest rate swaps and caps, net in the consolidated statements of comprehensive income.

As of December 31, 2012, 2011 and 2010, none of the derivative instruments we have entered into qualify for hedge accounting. The fair value of the derivative instruments is measured at each of these balance sheet dates and the change in fair value is recorded in the consolidated statements of comprehensive income as unrealized gains (losses) on interest rate swaps and caps, net.

We utilize a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. This hierarchy prioritizes the inputs into three broad levels as follows: Level 1 inputs which are observable inputs such as quoted prices (unadjusted) in active markets for identical assets or liabilities; Level 2 inputs which are inputs other than quoted prices that are observable for the asset or liability, either directly or indirectly, which include quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in markets that are not active; and Level 3 inputs which are unobservable inputs that reflect the reporting entity's own assumptions.

We use the exchange price notion, which is the price in an orderly transaction between market participants to sell an asset or transfer a liability in the market in which the reporting entity would transact for the asset or liability, that is, the principal or most advantageous market for the asset or liability. The transaction to sell the asset or transfer the liability is a hypothetical transaction at the measurement date, considered from the perspective of a market participant that holds the asset or owes the liability. Therefore, the definition focuses on the price that would be received to sell the asset or paid to transfer the liability (an exit price), not the price that would be paid to acquire the asset or received to assume the liability (an entry price).

Our liability valuation reflects our credit standing and the credit standing of the counterparties to the interest rate swaps and caps. The valuation technique we utilized to calculate the fair value of the interest rate swaps and caps was the income approach. This approach represents the present value of future cash flows based upon current market expectations. The decrease in the interest rate swap agreements' net fair value liability during 2012 primarily reflects an increase in rates in the future portion of the swaps' curves as of December 31, 2012.

The notional amount of the interest rate swap agreements was \$578,657 as of December 31, 2012, with expiration dates between February 2013 and November 2020. We receive fixed rates between 0.48% and 3.96% under the interest rate swap agreements. The net fair value liability of these agreements was \$10,819 and \$16,110 as of December 31, 2012 and 2011, respectively.

The notional amount of the interest rate cap agreements was \$482,180 as of December 31, 2012, with expiration dates between March 2013 and November 2015.

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Based on the debt balances and derivative instruments as of December 31, 2012, it is estimated that a 1% increase in interest rates would result in a decrease in the fair value of interest rate swaps and caps, net of \$8,520, an increase in interest expense of \$17,827 and a decrease in realized losses on interest rate swaps and caps, net of \$5,106.

### **Quantitative and Qualitative Disclosures About Credit Risk**

We maintain detailed credit records about our container lessees. Our credit policy sets different maximum exposure limits for our container lessees. Credit criteria may include, but are not limited to, container lessee trade route, country, social and political climate, assessments of net worth, asset ownership, bank and trade credit references, credit bureau reports, including those from Dynamar B.V. or “Dynamar,” and Lloyd’s Marine Intelligence Unit (common credit reporting agencies used in the maritime sector), operational history and financial strength. We monitor our container lessees’ performance and our lease exposures on an ongoing basis, and our credit management processes are aided by the long payment experience we have with most of our container lessees and our broad network of long-standing relationships in the shipping industry that provide current information about our container lessees. In managing this risk, we also make an allowance for doubtful accounts. The allowance for doubtful accounts is developed based on two key components:

- specific reserves for receivables which are impaired for which management believes full collection is doubtful; and
- reserves for estimated losses inherent in the receivables based upon historical trends.

As of December 31, 2012, approximately 95.3% of accounts receivable for our total fleet and 99.7% of the finance lease receivables were from container lessees and customers outside of the U.S. Customers in the PRC (including Hong Kong) and France accounted for approximately 24.1% and 12.2%, respectively, of our total fleet container leasing revenue for 2012. Customers in no other country accounted for greater than 10.0% of our total fleet container leasing revenue for the same period. Total fleet container leasing revenue differs from our reported container rental revenue in that total fleet container leasing revenue comprises revenue earned from leases on containers in our total fleet, including revenue earned by our investors from leases on containers in our managed fleet, while our reported container revenue only comprises container leasing revenue associated with our owned fleet. We derive revenue with respect to container leasing revenue associated with our managed fleet from management fees based upon the operating performance of the managed containers.

Lease billings from our 25 largest container lessees represented \$456,954, or 77.3% of our total owned and managed fleet container lease billings for 2012, with lease billings from our single largest container lessee accounting for \$71,166, or 12.0% and another container lessee accounting for \$61,548, or 10.4% of our owned and managed fleet container lease billings during such period. We had no other container lessees accounting for over 10% of our owned and managed fleet container lease billings in 2012.

An allowance for doubtful accounts of \$8,025 has been established against receivables as of December 31, 2012 for our owned fleet. During 2012, receivable write-offs, net of recoveries, totaled \$1,340 for our owned fleet.

### **ITEM 12. DESCRIPTION OF SECURITIES OTHER THAN EQUITY SECURITIES**

Not applicable.



## PART II

### ITEM 13. DEFAULTS, DIVIDEND ARREARAGES AND DELINQUENCIES

None.

### ITEM 14. MATERIAL MODIFICATIONS TO THE RIGHTS OF SECURITY HOLDERS AND USE OF PROCEEDS

On October 15, 2007, we completed our initial public offering of our common shares at a price of \$16.50 per share and listed our common shares on the New York Stock Exchange (“NYSE”) under the symbol “TGH.” We sold an aggregate of 9,000,000 of our common shares and generated proceeds of \$138.0 million, after deducting underwriting discounts and other offering expenses. The managing underwriters of our initial public offering were Credit Suisse Securities (USA) LLC, Wachovia Capital Markets, LLC, Jefferies & Company, Inc., Piper Jaffray & Co. and Fortis Securities LLC. There have been no material modifications to the rights of our security holders and the use of proceeds from our initial public offering previously disclosed in our registration statement on Form F-1 (File No. 333-146304) filed by us in connection with our initial public offering.

On September 19, 2012, we completed an underwritten public offering of an aggregate of 8,625,000 of our common shares at a price of \$31.50. We sold 6,125,000 new common shares, which were listed on the NYSE under the symbol “TGH” and Halco Holdings Inc. (“Halco”) sold 2,500,000 of its existing common shares. We received \$184.8 million after deducting underwriting discounts and other offering expenses. The managing underwriters of our public offering were Merrill Lynch, Pierce, Fenner & Smith Incorporated, Wells Fargo Securities, LLC and Credit Suisse Securities (USA) LLC. There have been no material modifications to the rights of our security holders and the use of proceeds from our public offering previously disclosed in our registration statement on Form F-3 (File No. 333-171410) and related prospectus supplements filed by us in connection with our public offering.

### ITEM 15. CONTROLS AND PROCEDURES

#### A. Disclosure Controls and Procedures

Textainer’s Chief Executive Officer and Chief Financial Officer, after evaluating the effectiveness of our disclosure controls and procedures (as defined in Exchange Act Rule 13a-15(e)) as of December 31, 2012, have concluded that, as of such date, our disclosure controls and procedures were effective.

Disclosure controls are controls and procedures designed to reasonably assure that information required to be disclosed in our reports filed under the Exchange Act, such as this Annual Report on Form 20-F, is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms. Disclosure controls are also designed to reasonably assure that this information is accumulated and communicated to our management, including the Chief Executive Officer and the Chief Financial Officer, to allow timely decisions regarding required disclosure.

#### B. Management’s Annual Report on Internal Control Over Financial Reporting

Textainer’s management, with oversight by the Board of Directors, is responsible for establishing and maintaining adequate internal control over financial reporting. Textainer’s internal control system was designed to provide reasonable assurance regarding the reliability of our financial reporting and the preparation and fair presentation of financial statements in accordance with generally accepted accounting principles in the United States.

Textainer’s management assessed the effectiveness of our internal control over financial reporting as of December 31, 2012. In making this assessment, management used the criteria established in *Internal Control*—

*Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this assessment, our management concluded that our internal control over financial reporting was effective as of December 31, 2012.

All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective may not prevent or detect misstatements and can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

#### **C. Report of the Registered Public Accounting Firm**

Our internal controls over financial reporting as of December 31, 2012 have been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report, which is included under Item 18, “*Financial Statements*” on page F-2 in this Annual Report on Form 20-F.

#### **D. Changes in Internal Control Over Financial Reporting**

There have been no changes in the Company’s internal control over financial reporting during the period covered by this Annual Report on Form 20-F that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

#### **ITEM 16. [RESERVED]**

#### **ITEM 16A. AUDIT COMMITTEE FINANCIAL EXPERT**

In accordance with New York Stock Exchange (“NYSE”) rules, we have an audit committee responsible for advising the board regarding the selection of independent auditors and evaluating our internal controls. As a foreign private issuer, we are not required to comply with NYSE requirements that our audit committee has a minimum of three members and that all of our audit committee members satisfy the NYSE’s requirements for independence. Our audit committee has five members, Messrs. Shwiel, Cottingham, Neil Jowell, McQueen and Hoelter. Messrs. Shwiel and Cottingham are voting members of the audit committee and are independent as that term is defined in Rule 10A-3 under the Exchange Act. The board affirmatively determined that Mr. Shwiel and Mr. Cottingham are audit committee financial experts. The other three members (Messrs. Hoelter, Neil Jowell and McQueen) are representatives of Tencor and have no voting rights. Our board of directors has adopted an audit committee charter effective October 9, 2007.

#### **ITEM 16B. CODE OF ETHICS**

We have adopted the Textainer Group Holdings Limited Code of Business Conduct and Ethics (the “Code of Business Conduct and Ethics”), which covers members of our board of directors and all of our employees (including our principal executive officer, principal financial officer, principal accounting officer or controller, and persons performing similar functions).

The Code of Business Conduct and Ethics addresses, among other things, the following items:

- honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- full, fair, accurate, timely and understandable disclosure in reports and documents that we file with, or submit to, the Securities and Exchange Commission and in other public communications made by us;
- compliance with applicable governmental laws, rules and regulations;

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- the prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and
- accountability for adherence to the code.

During 2012, no waivers or amendments were made to the Code of Business Conduct and Ethics for any of our directors or executive officers. We have posted the text of the Code of Business Conduct and Ethics on our website at [www.textainer.com](http://www.textainer.com).

#### ITEM 16C. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Our audit committee pre-approves all services provided by our principal accountants, KPMG LLP. All of the services and fees described below were reviewed and pre-approved by our audit committee. Our audit committee has delegated to the chairman of the audit committee certain limited authority to grant pre-approvals. These decisions to pre-approve a service must be presented to the full audit committee at its next scheduled meeting.

The following is a summary of the fees billed to us by our principal accountants for professional services rendered during 2012 and 2011:

<u>Fee Category</u>	<u>2012 Fees</u>	<u>2011 Fees</u>
Audit Fees	\$1,359	\$ 978
Audit-Related Fees	123	85
Tax Fees	13	13
All Other Fees	—	—
Total Fees	<u>\$1,495</u>	<u>\$1,076</u>

*Audit Fees*—Consists of fees billed for professional services rendered for the audit of our financial statements and services that are normally provided by our principal accountants in connection with statutory and regulatory filings or engagements.

*Audit-Related Fees*—Consists of fees for attestation related services other than those described above as Audit fees. Fees of \$123 billed in 2012 relate to the performance of agreed upon procedures on certain specific lender requirements and the review of our registration statement in connection with our underwritten public offering of common shares. Fees of \$85 billed in 2011 relate to the performance of agreed upon procedures on certain specific lender requirements.

*Tax Fees*—Consists of fees billed for professional services for tax compliance, tax advice and tax planning. KPMG LLP did not provide any tax compliance, tax advice or tax planning services to Textainer during 2012.

*All Other Fees*—Consists of fees for product and services other than the services reported above. KPMG LLP did not provide any other services to Textainer during 2012 and 2011.

#### ITEM 16D. EXEMPTIONS FROM THE LISTING STANDARDS FOR AUDIT COMMITTEES

We rely on the exemption afforded by Rule 10A-3(b)(1)(iv)(D) under the Exchange Act. Three of the five members of our audit committee (Messrs. Hoelter, Neil Jowell and McQueen) are directors of Trencor, which, together with certain of its subsidiaries, are the discretionary beneficiaries of a trust that indirectly owns a majority of our common shares. Each of Messrs. Hoelter, Neil Jowell and McQueen is neither a voting member or chairperson of our audit committee nor one of our executive officers. We believe that such reliance does not materially adversely affect the ability of the audit committee to act independently or to satisfy the other requirements of Rule 10A-3.

**ITEM 16E. PURCHASES OF EQUITY SECURITIES BY THE ISSUER AND AFFILIATED PURCHASERS**

None.

**ITEM 16F. CHANGE IN REGISTRANT'S CERTIFYING ACCOUNTANT**

None.

**ITEM 16G. CORPORATE GOVERNANCE**

Our corporate governance practices are in compliance with, and are not prohibited by, the laws of Bermuda. Therefore, we are exempt from many of the New York Stock Exchange's ("NYSE") corporate governance practices, other than the establishment of a formal audit committee satisfying the requirements of Rule 10A-3 under the Exchange Act and notification of non-compliance with NYSE listing requirements pursuant to Rule 10A-3 promulgated under the Exchange Act. The practices that we follow in lieu of the NYSE's corporate governance rules are described below.

- We do not, and are not required under Bermuda law to, maintain a board of directors with a majority of independent directors. Currently, a majority of our directors are not independent, as that term is defined by the NYSE.
- We are not required by Bermuda law to hold regular meetings of the board of directors at which only independent directors are present.
- Under Bermuda law, compensation of executive officers need not be determined by an independent committee. We have established a compensation committee that reviews and approves the compensation and benefits for our executive officers and other key executives, makes recommendations to the board regarding compensation matters and is responsible for awarding compensation to our executive officers and other employees under our share compensation plans. The committee also has the discretion to interpret and amend the terms of, and take all other actions necessary to administer, the 2007 Share Incentive Plan. However, our compensation committee is not comprised solely of independent directors, as required by NYSE standards. The members of our compensation committee are Messrs. Neil Jowell, Cottingham, Hoelter, Maccarone, Nurek and Shwiel. Messrs. Neil Jowell, Hoelter and Nurek are directors of Trencor. Messrs. Cottingham, Maccarone and Shwiel satisfy the NYSE's standards for director independence. Our board of directors has also adopted a compensation committee charter.
- We have established an audit committee responsible for (i) advising the board regarding the selection of independent auditors, (ii) overseeing the Company's accounting and financial reporting processes, (iii) evaluating our internal controls, and (iv) overseeing compliance with policies and legal requirements with respect to financial reporting. Our audit committee need not comply with the NYSE's requirements that the audit committee have a minimum of three members or the NYSE's standards of independence for domestic issuers. Our audit committee has five members, Messrs. Neil Jowell, Cottingham, Hoelter, McQueen and Shwiel. Messrs. Cottingham and Shwiel are voting members of the committee and are independent as that term is defined in Rule 10A-3 under the Exchange Act. The other three members are representatives of Trencor and have no voting rights. Our board of directors has also adopted an audit committee charter.
- We have established a nominating and governance committee, although this committee is not comprised solely of independent directors, as would be required of a domestic issuer. Our nominating and governance committee has five members, Messrs. Neil Jowell, Cottingham, Hoelter, Maccarone, Nurek and Shwiel. Messrs. Cottingham, Maccarone and Shwiel satisfy the NYSE's standards for director independence. Our board of directors has also adopted a nominating and governance committee charter.
- Under Bermuda law, we are not required to obtain shareholder consent prior to issuing securities or adopting share compensation plans. Nonetheless, we sought and received the approval of our

shareholders for our 2007 Share Incentive Plan on September 4, 2007. We are also required under Bermuda law to obtain the consent of the Bermuda Monetary Authority for the issuance of securities in certain circumstances.

- Under Bermuda law, we are not required to adopt corporate governance guidelines or a code of business conduct. Nonetheless, we have adopted both corporate governance guidelines and a code of business conduct.
- As a foreign private issuer, we are not required to solicit proxies or provide proxy statements to the NYSE. However, we have provided a proxy statement to the NYSE and expect to continue to do so in the future.

**PART III**

**ITEM 17. FINANCIAL STATEMENTS**

We have responded to Item 18 “Financial Statements.”

**ITEM 18. FINANCIAL STATEMENTS**

Reference is made to pages F-1 through F-46 and is incorporated herein by reference.

**Audited Consolidated Financial Statements**

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**ITEM 19. EXHIBITS**

The exhibits filed as part of this Annual Report on Form 20-F are listed in the Exhibit Index.

**SIGNATURES**

The registrant hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned to sign this Annual Report on its behalf.

**Textainer Group Holdings Limited**

/S/ PHILIP K. BREWER

Philip K. Brewer  
President and Chief Executive Officer

/S/ HILLIARD C. TERRY, III

Hilliard C. Terry, III  
Executive Vice President and Chief Financial Officer

March 15, 2013

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**  
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**Report of Independent Registered Public Accounting Firm**

The Board of Directors and Shareholders  
Textainer Group Holdings Limited:

We have audited the accompanying consolidated balance sheets of Textainer Group Holdings Limited and subsidiaries as of December 31, 2012 and 2011, and the related consolidated statements of comprehensive income, shareholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2012. In connection with our audits of the consolidated financial statements, we have also audited financial statement schedules I and II. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedules based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Textainer Group Holdings Limited and subsidiaries as of December 31, 2012 and 2011, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2012, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the related financial statement schedules I and II, when considered in relation to the basic consolidated financial statements taken as a whole, present fairly, in all material respects, the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Textainer Group Holdings Limited's internal control over financial reporting as of December 31, 2012, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 15, 2013 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP  
San Francisco, CA  
March 15, 2013

**Report of Independent Registered Public Accounting Firm**

The Board of Directors and Shareholders  
Textainer Group Holdings Limited:

We have audited Textainer Group Holdings Limited and subsidiaries' internal control over financial reporting as of December 31, 2012, based on criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Textainer Group Holdings Limited and subsidiaries' management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

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

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

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

In our opinion, Textainer Group Holdings Limited and subsidiaries' maintained, in all material respects, effective internal control over financial reporting as of December 31, 2012, based on criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Textainer Group Holdings Limited and subsidiaries as of December 31, 2012 and 2011, and the related consolidated statements of comprehensive income, shareholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2012, and the financial statement schedules I and II, and our report dated March 15, 2013 expressed an unqualified opinion on those consolidated financial statements and financial statement schedules.

/s/ KPMG LLP  
San Francisco, CA  
March 15, 2013

# **TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

## Consolidated Statements of Comprehensive Income

Years ended December 31, 2012, 2011 and 2010

(All currency expressed in United States dollars in thousands, except per share amounts)

	2012	2011	2010
Revenues:			
Lease rental income	\$ 383,989	\$ 327,627	\$ 235,827
Management fees	26,169	29,324	29,137
Trading container sales proceeds	42,099	34,214	11,291
Gains on sale of containers, net	<u>34,837</u>	<u>31,631</u>	<u>27,624</u>
Total revenues	<u>487,094</u>	<u>422,796</u>	<u>303,879</u>
Operating expenses:			
Direct container expense	25,173	18,307	25,542
Cost of trading containers sold	36,810	29,456	9,046
Depreciation expense	104,844	83,177	58,972
Amortization expense	5,020	6,110	6,544
General and administrative expense	23,015	23,495	21,670
Short-term incentive compensation expense	5,310	4,921	4,805
Long-term incentive compensation expense	6,950	5,950	5,318
Bad debt expense, net	1,525	3,007	145
Gain on sale of containers to noncontrolling interest	<u>—</u>	<u>(19,773)</u>	<u>—</u>
Total operating expenses	<u>208,647</u>	<u>154,650</u>	<u>132,042</u>
Income from operations	<u>278,447</u>	<u>268,146</u>	<u>171,837</u>
Other income (expense):			
Interest expense	(72,886)	(44,891)	(18,151)
Interest income	146	32	27
Realized losses on interest rate swaps and caps, net	(10,163)	(10,824)	(9,844)
Unrealized gains (losses) on interest rate swaps and caps, net	5,527	(3,849)	(4,021)
Bargain purchase gain	9,441	—	—
Other, net	<u>44</u>	<u>(115)</u>	<u>(1,591)</u>
Net other expense	<u>(67,891)</u>	<u>(59,647)</u>	<u>(33,580)</u>
Income before income tax and noncontrolling interests	210,556	208,499	138,257
Income tax expense	<u>(5,493)</u>	<u>(4,481)</u>	<u>(4,493)</u>
Net income	205,063	204,018	133,764
Less: Net loss (income) attributable to the noncontrolling interests	<u>1,887</u>	<u>(14,412)</u>	<u>(13,733)</u>
Net income attributable to Textainer Group Holdings Limited common shareholders	<u>\$206,950</u>	<u>\$189,606</u>	<u>\$120,031</u>
Net income attributable to Textainer Group Holdings Limited common shareholders per share:			
Basic	\$ 4.04	\$ 3.88	\$ 2.50
Diluted	\$ 3.96	\$ 3.80	\$ 2.43
Weighted average shares outstanding (in thousands):			
Basic	51,277	48,859	48,108
Diluted	52,231	49,839	49,307
Comprehensive income:			
Foreign currency translation adjustments	142	24	59
Comprehensive loss (income) attributable to the noncontrolling interest	<u>1,887</u>	<u>(14,412)</u>	<u>(13,733)</u>
Comprehensive income attributable to Textainer Group Holdings Limited common shareholders	<u>\$207,092</u>	<u>\$189,630</u>	<u>\$120,090</u>

**See accompanying notes to consolidated financial statements**

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Consolidated Balance Sheets

December 31, 2012 and 2011

(All currency expressed in United States dollars in thousands)

	2012	2011
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 100,127	\$ 74,816
Accounts receivable, net of allowance for doubtful accounts of \$8,025 and \$7,840 at 2012 and 2011, respectively	94,102	86,428
Net investment in direct financing and sales-type leases	43,253	25,075
Trading containers	7,296	12,970
Containers held for sale	15,717	7,832
Prepaid expenses	14,006	10,243
Deferred taxes	2,332	2,443
Due from affiliates, net	4,377	—
Total current assets	281,210	219,807
Restricted cash	54,945	45,858
Containers, net of accumulated depreciation of \$490,930 and \$377,731 at 2012 and 2011, respectively	2,916,673	1,903,855
Net investment in direct financing and sales-type leases	173,634	85,121
Fixed assets, net of accumulated depreciation of \$9,189 and \$9,027 at 2012 and 2011, respectively	1,621	1,717
Intangible assets, net of accumulated amortization of \$26,963 and \$33,340 at 2012 and 2011, respectively	33,383	46,675
Other assets	14,614	7,171
Total assets	\$ 3,476,080	\$ 2,310,204
<b>Liabilities and Equity</b>		
Current liabilities:		
Accounts payable	\$ 4,451	\$ 2,616
Accrued expenses	14,329	18,491
Container contracts payable	87,708	25,510
Deferred revenue and other	1,681	6,245
Due to owners, net	13,218	15,812
Secured debt facility	—	41,035
Bonds payable	131,500	91,500
Total current liabilities	252,887	201,209
Revolving credit facilities	549,911	133,047
Secured debt facility	874,000	779,383
Bonds payable	706,291	464,226
Deferred revenue and other	3,210	1,136
Interest rate swaps and caps	10,819	16,110
Income tax payable	27,580	22,729
Deferred taxes	5,249	7,438
Total liabilities	2,429,947	1,625,278
Equity:		
Textainer Group Holdings Limited shareholders' equity:		
Common shares, \$0.01 par value. Authorized 140,000,000 shares; issued and outstanding 55,754,529 and 48,951,114 at 2012 and 2011, respectively	558	490
Additional paid-in capital	354,448	154,460
Accumulated other comprehensive income (loss)	114	(28)
Retained earnings	652,383	528,906
Total Textainer Group Holdings Limited shareholders' equity	1,007,503	683,828
Noncontrolling interests	38,630	1,098
Total equity	1,046,133	684,926
Total liabilities and equity	\$ 3,476,080	\$ 2,310,204

See accompanying notes to consolidated financial statements.

# **TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

## Consolidated Statements of Shareholders' Equity

Years ended December 31, 2012, 2011 and 2010

(All currency expressed in United States dollars in thousands, except share amounts)

	<b>Textainer Group Holdings Limited Shareholders' Equity</b>						
	<b>Common shares</b>		<b>Additional paid-in capital</b>	<b>Accumulated other comprehensive income (loss)</b>	<b>Retained earnings</b>	<b>Noncontrolling interest</b>	<b>Total equity</b>
	<b>Shares</b>	<b>Amount</b>					
Balances, December 31, 2009	47,760,771	\$ 478	\$ 170,497	\$ (111)	\$ 329,449	\$ 72,952	\$ 573,265
Dividends to shareholders (\$0.99 per common share)	—	—	—	—	(47,631)	—	(47,631)
Restricted share units vested	193,241	2	(2)	—	—	—	—
Exercise of share options	364,046	3	5,030	—	—	—	5,033
Long-term incentive compensation expense	—	—	5,457	—	—	—	5,457
Tax benefit from share options exercised and restricted share units vested	—	—	620	—	—	—	620
Comprehensive income:							
Net income attributable to Textainer Group Holdings Limited common shareholders	—	—	—	—	120,031	—	120,031
Net income attributable to noncontrolling interest	—	—	—	—	—	13,733	13,733
Foreign currency translation adjustments	—	—	—	59	—	—	59
Total comprehensive income							<u>133,823</u>
Balances, December 31, 2010	48,318,058	\$ 483	\$ 181,602	\$ (52)	\$ 401,849	\$ 86,685	\$ 670,567
Dividends to shareholders (\$1.28 per common share)	—	—	—	—	(62,549)	—	(62,549)
Restricted share units vested	274,172	3	(3)	—	—	—	—
Exercise of share options	358,884	4	6,061	—	—	—	6,065
Long-term incentive compensation expense	—	—	6,177	—	—	—	6,177
Tax benefit from share options exercised and restricted share units vested	—	—	3,633	—	—	—	3,633
Capital restructuring	—	—	(43,010)	—	—	(101,822)	(144,832)
Capital contributions from noncontrolling interest	—	—	—	—	—	1,823	1,823
Comprehensive income:							
Net income attributable to Textainer Group Holdings Limited common shareholders	—	—	—	—	189,606	—	189,606
Net income attributable to noncontrolling interest	—	—	—	—	—	14,412	14,412
Foreign currency translation adjustments	—	—	—	24	—	—	24
Total comprehensive income							<u>204,042</u>
Balances, December 31, 2011	48,951,114	\$ 490	\$ 154,460	\$ (28)	\$528,906	\$ 1,098	\$ 684,926
Dividends to shareholders (\$1.63 per common share)	—	—	—	—	(83,473)	—	(83,473)
Restricted share units vested	376,315	4	(4)	—	—	—	—
Exercise of share options	302,100	3	4,666	—	—	—	4,669
Issuance of common shares in public offering, net of offering costs	6,125,000	61	184,778	—	—	—	184,839
Long-term incentive compensation expense	—	—	7,968	—	—	—	7,968
Tax benefit from share options exercised and restricted share units vested	—	—	2,580	—	—	—	2,580
Capital contributions from noncontrolling interest	—	—	—	—	—	12,007	12,007
Acquisition of TAP Funding Ltd.	—	—	—	—	—	27,412	27,412
Comprehensive income:							
Net income attributable to Textainer Group Holdings Limited common shareholders	—	—	—	—	206,950	—	206,950
Net loss attributable to noncontrolling interests	—	—	—	—	—	(1,887)	(1,887)
Foreign currency translation adjustments	—	—	—	142	—	—	142
Total comprehensive income							<u>205,205</u>
Balances, December 31, 2012	<u>55,754,529</u>	<u>\$ 558</u>	<u>\$ 354,448</u>	<u>\$ 114</u>	<u>\$652,383</u>	<u>\$ 38,630</u>	<u>\$1,046,133</u>

See accompanying notes to consolidated financial statements.

# **TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Consolidated Statements of Cash Flows  
Years ended December 31, 2012, 2011 and 2010  
(All currency expressed in United States dollars in thousands)

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Cash flows from operating activities:			
Net income	\$ 205,063	\$ 204,018	\$ 133,764
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation expense	104,844	83,177	58,972
Bad debt expense, net	1,525	3,007	145
Unrealized (gains) losses on interest rate swaps and caps, net	(5,527)	3,849	4,021
Amortization of debt issuance costs	11,700	8,101	4,399
Amortization of intangible assets	5,020	6,110	6,544
Amortization of acquired net (below) above-market leases	(33)	(411)	26
Amortization of deferred revenue	(6,026)	(9,181)	(7,082)
Amortization of unearned income on direct financing and sales-type leases	(11,828)	(9,055)	(7,853)
Gains on sale of containers, net	(34,837)	(31,631)	(27,624)
Bargain purchase gain	(9,441)	—	—
Gain on sale of containers to noncontrolling interest	—	(19,773)	—
Share-based compensation expense	7,968	6,177	5,457
Decrease (increase) in:			
Accounts receivable, net	(4,226)	(25,924)	(8,828)
Trading containers, net	5,674	(12,566)	867
Prepaid expenses and other current assets	218	(7,046)	(2,140)
Due from affiliates, net	(3,564)	—	126
Other assets	2,219	4,736	(1,561)
Increase (decrease) in:			
Accounts payable	1,631	(3,680)	(2,782)
Accrued expenses	(4,850)	6,503	2,868
Deferred revenue	(316)	6,713	(2,311)
Due to owners, net	(1,460)	(1,733)	3,404
Long-term income tax payable	4,851	1,908	2,165
Deferred taxes, net	(2,078)	46	1,306
Total adjustments	<u>61,464</u>	<u>9,327</u>	<u>30,119</u>
Net cash provided by operating activities	<u>266,527</u>	<u>213,345</u>	<u>163,883</u>
Cash flows from investing activities:			
Purchase of containers and fixed assets	(1,087,489)	(823,694)	(402,286)
Payment for TAP Funding Ltd.	(20,532)	—	—
Payment for Textainer Marine Containers Ltd. capital restructuring, net of cash acquired	—	(11,783)	—
Proceeds from sale of containers and fixed assets	91,324	75,311	58,166
Receipt of principal payments on direct financing and sales-type leases	<u>42,410</u>	<u>35,042</u>	<u>41,156</u>
Net cash used in investing activities	<u>(974,287)</u>	<u>(725,124)</u>	<u>(302,964)</u>
Cash flows from financing activities:			
Proceeds from revolving credit facilities	435,720	202,100	152,000
Principal payments on revolving credit facilities	(127,327)	(173,053)	(127,000)
Proceeds from secured debt facility	907,000	627,000	327,000
Principal payments on secured debt facility	(853,697)	(364,803)	(98,500)
Proceeds from bonds payable	400,000	400,000	—
Principal payments on bonds payable	(118,168)	(71,500)	(51,500)
Increase in restricted cash	(7,173)	(30,824)	(8,448)
Debt issuance costs	(24,048)	(8,402)	(11,670)
Issuance of common shares upon exercise of share options	4,669	6,065	5,033
Issuance of common shares in public offering, net of offering costs	184,839	—	—
Excess tax benefit from share-based compensation awards	2,580	3,633	—
Capital contributions from noncontrolling interest	12,007	1,823	—
Dividends paid	<u>(83,473)</u>	<u>(62,549)</u>	<u>(47,631)</u>
Net cash provided by financing activities	<u>732,929</u>	<u>529,490</u>	<u>139,284</u>
Effect of exchange rate changes	<u>142</u>	<u>24</u>	<u>59</u>
Net increase in cash and cash equivalents	25,311	17,735	262
Cash and cash equivalents, beginning of the year	<u>74,816</u>	<u>57,081</u>	<u>56,819</u>
Cash and cash equivalents, end of the year	<u>\$ 100,127</u>	<u>\$ 74,816</u>	<u>\$ 57,081</u>

(Continued)

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Consolidated Statements of Cash Flows  
Years ended December 31, 2012, 2011 and 2010  
(All currency expressed in United States dollars in thousands)

	<b>2012</b>	<b>2011</b>	<b>2010</b>
Supplemental disclosures of cash flow information:			
Cash paid during the year for:			
Interest and realized losses on interest rate swaps and caps, net	\$ 70,392	\$ 46,287	\$ 23,061
Net income taxes paid	\$ 820	\$ 391	\$ 649
Supplemental disclosures of noncash investing activities:			
(Decrease) increase in accrued container purchases	\$ 62,198	\$ (73,221)	\$85,591
Containers placed in direct financing and sales-type leases	\$149,115	\$ 47,672	\$23,590
Intangible assets relinquished for container purchases	\$ 8,305	\$ 7,748	\$ —
Contribution of nonmonetary assets for Textainer Marine Containers Ltd. capital restructuring:			
Net investment in direct financing and sales-type leases	\$ —	\$ 8,896	\$ —
Containers, net	\$ —	\$124,153	\$ —

See accompanying notes to consolidated financial statements.

## TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES

Notes to Consolidated Financial Statements  
December 31, 2012, 2011, and 2010  
(All currency expressed in U.S. dollars in thousands)

### (1) Nature of Business and Summary of Significant Accounting Policies

#### (a) *Nature of Operations*

Textainer Group Holdings Limited (“TGH”) is incorporated in Bermuda. TGH is the holding company of a group of corporations, Textainer Group Holdings Limited and subsidiaries (the Company), involved in the purchase, management, leasing and resale of a fleet of marine cargo containers. The Company manages and provides administrative support to the affiliated and unaffiliated owners (the “Owners”) of the containers and structures and manages container leasing investment programs.

The Company conducts its business activities in three main areas: Container Ownership, Container Management and Container Resale. These activities are described below (also see Note 13 “Segment Information”).

TGH completed an underwritten public offering of an aggregate of 8,625,000 of its common shares at a price to the public of \$31.50 per share on September 19, 2012. Of the common shares sold, TGH sold 6,125,000 new common shares and Halco Holdings Inc. (“Halco”) sold 2,500,000 of its existing common shares. TGH received \$184,839 and Halco received \$75,424 after deducting underwriting discounts and other offering expenses. Halco’s total ownership and voting interest in TGH’s common shares before and after the offering was 60% and 49%, respectively. The Company intends to use all of its net proceeds from the offering for capital expenditures and general corporate purposes.

#### **Container Ownership**

The Company’s containers consist primarily of standard dry freight containers, but also include special-purpose containers. These containers are financed through retained earnings, revolving credit facilities and secured debt facilities provided by banks, bonds payable to investors and a public offering of TGH’s common shares. Expenses related to lease rental income include direct container expenses, depreciation expense and interest expense.

#### **Container Management**

The Company manages, on a worldwide basis, a fleet of containers for and on behalf of the Owners.

All rental operations are conducted worldwide in the name of the Company who, as agent for the Owners, acquires and sells containers, enters into leasing agreements and depot service agreements, bills and collects lease rentals from the lessees, disburses funds to depots for container handling, and remits net amounts, less management fees and commissions, to the Owners. Revenues, customer accounts receivable, fixed assets, depreciation and other operating expenses, and vendor payables arising from direct container operations of the managed portion of the Owners’ fleet have been excluded from the Company’s financial statements.

Management fees are typically a percentage of net operating income of each Owner’s fleet and consist of fees earned by the Company for services related to management of the containers, sales commissions and net acquisition fees earned on the acquisition of containers. Expenses related to the



## TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES

Notes to Consolidated Financial Statements—Continued

December 31, 2012, 2011, and 2010

(All currency expressed in U.S. dollars in thousands)

provision of management services include general and administrative expense, short-term and long-term incentive compensation expense and amortization expense.

### Container Resale

The Company buys and subsequently resells used containers (trading containers) from third parties. Container sales revenue represents the proceeds on the sale of containers purchased for resale. Cost of containers sold represents only the cost of equipment purchased for resale that were sold as well as the related selling costs. The Company earns sales commissions related to the sale of the containers that it manages.

### (b) *Principles of Consolidation and Variable Interest Entity*

The consolidated financial statements of the Company include TGH and all its subsidiaries. All material intercompany balances have been eliminated in consolidation.

On December 20, 2012, the Company's wholly owned subsidiary, Textainer Limited ("TL"), purchased 50.1% of the outstanding common shares of TAP Funding Ltd. ("TAP Funding") (a Bermuda company) from TAP Ltd. ("TAP") (also see Note 2 "Bargain Purchase Gain"). Both before and after this purchase, TAP Funding leases containers to lessees under operating and direct financing and sales-type leases. TAP is governed by members and management agreements and the Company's wholly owned subsidiary, Textainer Equipment Management Limited ("TEML"), manages all of TAP Funding's containers, making day-to-day decisions regarding the marketing, servicing and design of TAP Funding's leases. TL's purchase of a majority ownership of TAP Funding's common shares allowed the Company to increase the size of its owned fleet at an attractive price. Under TAP Funding's members agreement, TL owns 50.1% and TAP owns 49.9% of the common shares of TAP Funding. As common shareholders, TL has two voting rights and TAP has one voting right of TAP Funding, with the exception of certain matters such as bankruptcy proceedings, the incurrence of debt and mergers and consolidations, which require unanimity. TL also has two seats and TAP has one seat on TAP Funding's board of directors. In addition, TL has an option to purchase the remaining outstanding common shares of TAP Funding held by TAP during the period beginning January 1, 2019 and through December 1, 2020 for a purchase price equal to the equity carrying value of TAP plus 6% of TAP's percentage ownership interest in TAP Funding minus the sum of any and all U.S. federal, state and local taxes of any nature that would be recognized by TL if TAP were liquidated by TL immediately after TL purchased its shares.

Subsequent to TL's purchase of a majority ownership of TAP Funding's common shares, the Company includes TAP Funding's financial statements in its consolidated financial statements. TAP Funding's profits and losses are allocated to TL and TAP on the same basis as their ownership percentages. The equity owned by TAP in TAP Funding is shown as a noncontrolling interest on the Company's consolidated balance sheets and the net income (loss) attributable to the noncontrolling interests' operations is shown as net income (loss) attributable to noncontrolling interests on the Company's consolidated statements of comprehensive income.

On August 5, 2011, a joint venture, TW Container Leasing, Ltd. ("TW") (a Bermuda company), was formed between TL, and Wells Fargo Container Corp. ("WFC"). The purpose of TW is to lease containers to lessees under direct financing leases. TW is governed by members, credit and

## TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES

Notes to Consolidated Financial Statements—Continued

December 31, 2012, 2011, and 2010

(All currency expressed in U.S. dollars in thousands)

management agreements. Under the members agreement, TL owns 25% and WFC owns 75% of the common shares and related voting rights of TW. TL also has two seats and WFC has six seats on TW's board of directors, with each seat having equal voting rights, provided, however, that the approval of at least one TL-appointed director is required for any action of the board of directors. Under a credit agreement, dated as of August 5, 2011, with certain lenders and Wells Fargo Securities, LLC ("WFS"), as administrative agent for the lenders, TW maintains a revolving credit facility with an aggregate commitment of up to \$250,000 for the origination of direct financing leases to finance up to 85% of the book value of TW's net investment in direct financing leases (see Note 12 "Revolving Credit Facilities, Bonds Payable and Secured Debt Facilities, and Derivative Instruments"). Both WFC and WFS are directly and indirectly wholly owned subsidiaries of Wells Fargo and Company. The remaining cost of originating direct financing leases will be provided in the form of capital contributions from TL and WFC, split 25% and 75%, respectively. Under the management agreement, TEML manages all of TW's containers, making day-to-day decisions regarding the marketing, servicing and design of TW's direct financing leases.

Based on the combined design and provisions of TW's members, credit and management agreements, the Company has determined that TW is a variable interest entity ("VIE") and that the Company is the primary beneficiary of TW by its equity ownership in the entity and by virtue of its role as manager of the vehicle. An entity is the primary beneficiary of a VIE if it meets both of the following criteria:

- The power to direct the activities of a VIE that most significantly impact the VIE's economic performance; and
- The obligation to absorb losses of the VIE or the right to receive benefits from the VIE that could be potentially significant to the VIE.

Accordingly, the Company includes TW's financial statements in its consolidated financial statements. TW's profits and losses are allocated to TL and WFC on the same basis as their ownership percentages. The equity owned by WFC in TW is shown as a noncontrolling interest on the Company's consolidated balance sheets and the net income (loss) attributable to the noncontrolling interests' operations is shown as net income (loss) attributable to noncontrolling interests on the Company's consolidated statements of comprehensive income.

The majority of the container equipment included in the accompanying consolidated financial statements is owned by Textainer Marine Containers Limited ("TMCL") in which the Company held a 100.0% economic ownership as of December 31, 2012 and 2011 (see Note 3 "Gain on Sale of Containers to Noncontrolling Interest").

### (c) *Cash and Cash Equivalents and Restricted Cash*

Cash and cash equivalents are comprised of interest-bearing deposits or money market securities with original maturities of three months or less. The Company maintains cash and cash equivalents and restricted cash (see Note 14 "Commitments and Contingencies—Restricted Cash") with various financial institutions. These financial institutions are located in the United States, Canada, Bermuda, Singapore, the United Kingdom and Malaysia. A significant portion of the Company's cash and cash equivalents and restricted cash is maintained with a small number of banks and, accordingly, the Company is exposed to the credit risk of these counterparties in respect of the Company's cash and

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Notes to Consolidated Financial Statements—Continued

December 31, 2012, 2011, and 2010

(All currency expressed in U.S. dollars in thousands)

cash equivalents and restricted cash. Furthermore, the deposits maintained at some of these financial institutions exceed the amount of insurance provided on the deposits. Restricted cash is excluded from cash and cash equivalents and is included in long-term assets.

**(d) *Intangible Assets***

Intangible assets, consisting primarily of exclusive rights to manage container fleets, are amortized over the expected life of the contracts based on forecasted income to the Company. The contract terms range from 11 to 13 years. The Company reviews its intangible assets for impairment if events and circumstances indicate that the carrying amount of the intangible assets may not be recoverable. The Company compares the carrying value of the intangible assets to expected future undiscounted cash flows for the purpose of assessing the recoverability of the recorded amounts. If the carrying amount exceeds expected undiscounted cash flows, the intangible assets shall be reduced to their fair value.

**(e) *Lease Rental Income***

Leasing income arises principally from the renting of containers owned by the Company to various international shipping lines. Revenue is recorded when earned according to the terms of the container rental contracts. These contracts are typically for terms of five years or less and are generally classified as operating leases.

Under long-term lease agreements, containers are usually leased from the Company for periods of three to five years. Such leases are generally cancelable with a penalty at the end of each 12-month period. Under master lease agreements, the lessee is not committed to leasing a minimum number of containers from the Company during the lease term and may generally return the containers to the Company at any time, subject to certain restrictions in the lease agreement. Under long-term lease and master lease agreements, revenue is earned and recognized evenly over the period that the equipment is on lease. Under direct financing and sales-type leases, the containers are usually leased from the Company for the remainder of the container's useful life with a bargain purchase option at the end of the lease term. Revenue is earned and recognized on direct financing leases over the lease terms so as to produce a constant periodic rate of return on the net investment in the leases. Under sales-type leases, a gain or loss is recognized at the inception of the leases by subtracting the book value of the containers from the estimated fair value of the containers and the remaining revenue is earned and recognized over the lease terms so as to produce a constant periodic rate of return on the net investment in the leases.

With the exception of certain purchase leasebacks (see Note 5 "Purchase-leaseback Transactions"), container leases generally do not include step-rent provisions or lease concessions, nor do they depend on indices or rates.

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Notes to Consolidated Financial Statements—Continued

December 31, 2012, 2011, and 2010

(All currency expressed in U.S. dollars in thousands)

The following is a schedule, by year, of future minimum lease payments receivable under the long-term leases as of December 31, 2012:

Year ending December 31:	
2013	\$ 246,094
2014	206,674
2015	180,663
2016	126,180
2017 and thereafter	93,763
Total future minimum lease payments receivable	<u>\$ 853,374</u>

The Company maintains allowances for doubtful accounts for estimated losses resulting from the inability of its lessees to make required payments. These allowances are based on management's current assessment of the financial condition of the Company's lessees and their ability to make their required payments. If the financial condition of the Company's lessees were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.

**(f) Direct Container Expense**

Direct container expense represents the operating costs arising from the containers owned by the Company and includes storage, handling, maintenance, Damage Protection Plan ("DPP") repair, agent and insurance expense.

**(g) Containers Held for Resale**

The Company, through one or more of its subsidiaries, buys trading containers for resale, which are valued at the lower of cost or market value. The cost of trading containers sold is specifically identified.

**(h) Foreign Currencies**

A functional currency is determined for each of the entities within the Company based on the currency of the primary economic environment in which the entity operates. The Company's functional currency, excluding its foreign subsidiaries, is the U.S. dollar. Assets and liabilities denominated in a currency other than the entity's functional currency are re-measured into its functional currency at the balance sheet date with a gain or loss recognized in current year net income. Foreign currency exchange gains and losses that arise from exchange rate changes on transactions denominated in a foreign currency are recognized in net income as incurred. Foreign currency exchange losses, reported in direct container expense in the consolidated statements of comprehensive income were \$177, \$31 and \$434 for the years ended December 31, 2012, 2011 and 2010, respectively. For consolidation purposes, the financial statements are then translated into U.S. dollars using the current exchange rate for the assets and liabilities and a weighted average exchange rate for the revenues and expenses recorded during the year with any translation adjustment shown as an element of accumulated other comprehensive income (loss).

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Notes to Consolidated Financial Statements—Continued  
December 31, 2012, 2011, and 2010  
(All currency expressed in U.S. dollars in thousands)

**(i) Containers and Fixed Assets**

Capitalized container costs include the container cost payable to the manufacturer and the associated transportation costs incurred in moving the containers from the manufacturer to the containers' first destined port. Containers purchased new are depreciated using the straight-line method over their estimated useful lives of 12 years to an estimated dollar residual value. Containers purchased used are depreciated based upon their remaining useful lives at the date of acquisition to an estimated dollar residual value. The Company evaluates the estimated residual values and remaining estimated useful lives on an ongoing basis. The Company has experienced a significant increase in container resale prices over the last few years as a result of an industry-wide shortage of older containers available for sale and the increased cost of new containers. Based on this extended period of higher realized container resale prices and the Company's expectation that new equipment prices will remain near current levels, the Company increased the estimated future residual values of its containers used in the calculation of depreciation expense during the second half of 2011. The effect of this change was a reduction in depreciation expense of \$9,522 (\$9,279 after tax or \$0.19 per diluted share) for the year ended December 31, 2011. No such adjustment of residual values was necessary for the year ended December 31, 2012 and the newest residual values were used for the year ended December 31, 2012. Depreciation expense may fluctuate in future periods based on fluctuations in these estimates.

Fixed assets are recorded at cost and depreciated on a straight-line basis over the estimated useful lives of the assets, ranging from three to seven years.

The Company reviews its containers and fixed assets for impairment whenever events or circumstances indicate that the carrying amount may not be recoverable. The Company compares the carrying value of the containers to expected future undiscounted cash flows for the purpose of assessing the recoverability of the recorded amounts. If the carrying value exceeds expected future undiscounted cash flows, the assets are reduced to fair value. In addition, containers identified as being available for sale are valued at the lower of carrying value or fair value, less costs to sell.

The Company has evaluated the recoverability of the recorded amount of container rental equipment at December 31, 2012 and 2011. During the year ended December 31, 2012, no reduction in the carrying values of containers held for continued use was required. During the year ended December 31, 2011, the Company recorded an impairment of \$1,213 which is included in depreciation expense in the consolidated statement of income, to write-down the carrying values of 554 containers held for continued use that were determined to be unrecoverable from a lessee.

During the years ended December 31, 2012, 2011 and 2010, the Company recorded impairments of \$759, \$1,222 and \$1,602, which are included in depreciation expense in the consolidated statements of comprehensive income, to write-down the carrying value of 1,771, 1,268 and 4,244 containers identified for sale, respectively, to their estimated fair value. The fair value was estimated based on recent gross sales proceeds for sales of similar containers. When containers are retired or otherwise disposed of, the cost and related accumulated depreciation are removed from the accounts and any resulting gain or loss is recognized. At December 31, 2012 and 2011, the carrying value of 652 and 324 containers identified for sale included impairment charges of \$234 and \$134, respectively. The carrying value of these containers identified for sale amounted to \$890 and \$173 as of December 31, 2012 and 2011, respectively, and is included in containers held for sale in the consolidated balance sheets.

# **TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Notes to Consolidated Financial Statements—Continued

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During the years ended December 31, 2012, 2011 and 2010, the Company recorded the following net gains on sales of containers, included in gains on sale of containers, net in the consolidated statements of comprehensive income:

	2012		2011		2010	
	Units	Amount	Units	Amount	Units	Amount
Gains on sale of previously written down containers, net	1,441	\$ 971	1,540	\$ 2,464	6,767	\$ 3,337
Gains on sale of containers not written down, net	45,621	33,866	34,101	29,167	30,724	24,287
Gains on sales of containers, net	<u>47,062</u>	<u>\$ 34,837</u>	<u>35,641</u>	<u>\$ 31,631</u>	<u>37,491</u>	<u>\$27,624</u>

If other containers are subsequently identified as available for sale, the Company may incur additional write-downs or may incur losses on the sale of these containers if they are sold. The Company will continue to evaluate the recoverability of recorded amounts of containers and a write-down of certain containers held for continued use and/or an increase in its depreciation rate may be required in future periods for some or all containers.

**(j) Income Taxes**

The Company uses the asset and liability method to account for income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in the tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is recorded when the realization of a deferred tax asset is unlikely.

The Company also accounts for income tax positions by recognizing the effect on income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in the recognition or measurement are reflected in the period in which the change in judgment occurs. If there are findings in future regulatory examinations of the Company's tax returns, those findings may result in additional income tax expense.

The Company records interest and penalties related to unrecognized tax benefits in income tax expense.

**(k) Maintenance and Repair Expense and Damage Protection Plan**

The Company's leases generally require the lessee to pay for any damage to the container beyond normal wear and tear at the end of the lease term. The Company offers a DPP to certain lessees of its containers. Under the terms of the DPP, the Company charges lessees an additional amount primarily on a daily basis and the lessees are no longer obligated for certain future repair costs for containers subject to the DPP. It is the Company's policy to recognize these revenues as earned on a daily basis

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

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over the related term of its lease. The Company has not recognized revenue and related expense for customers who are billed at the end of the lease term under the DPP or for other lessees who do not participate in the DPP. Based on past history, there is uncertainty as to collectability of these amounts from lessees who are billed at the end of the lease term because the amounts due under the DPP are typically re-negotiated at the end of the lease term or the lease term is extended. The Company uses the direct expense method of accounting for maintenance and repairs.

**(l) Debt Issuance Costs**

The Company capitalizes costs directly associated with the issuance or modification of its debt in prepaid expenses and other assets in the consolidated balance sheets. Debt issuance costs are amortized using the interest rate method over the terms of the related debt and the amortization is recorded in the consolidated statements of comprehensive income as interest expense. In 2012 and 2011, debt issuance costs of \$24,048 and \$8,402, respectively, were capitalized and in 2012, 2011 and 2010 amortization of debt issuance costs of \$11,700, \$8,101 and \$4,399, respectively, were recorded in interest expense. When the Company's debt is modified or terminated, any unamortized debt issuance costs related to a decrease in borrowing capacity under any of the Company's lenders is immediately written-off and recorded in interest expense. In 2012, interest expense included a \$1,463 write-off of unamortized debt issuance costs related to the termination of TMCL's secured debt facility. No unamortized debt issuance costs were written off in 2011 and 2010.

**(m) Concentrations**

Although substantially all of the Company's income from operations is derived from assets employed in foreign countries, virtually all of this income is denominated in U.S. dollars. The Company does pay some of its expenses in various foreign currencies. During 2012, 2011 and 2010, \$9,073 or 36%, \$6,614 or 36% and \$8,796 or 34%, respectively, of the Company's direct container expenses were paid in 18 different foreign currencies. The Company does not hedge these container expenses as there are no significant payments made in any one foreign currency.

The Company's customers are international shipping lines, which transport goods on international trade routes. Once the containers are on-hire with a lessee, the Company does not track their location. The domicile of the lessee is not indicative of where the lessee is transporting the containers. The Company's business risk in its foreign concentrations lies with the creditworthiness of the lessees rather than the geographic location of the containers or the domicile of the lessees. Except for one major lessee which accounted for 11.7%, 12.3% and 10.8% of the Company's lease rental income during 2012, 2011 and 2010, respectively, no other single lessees accounted for greater than 10% of the Company's lease rental income for each of those years. One single lessee accounted for 11.9% and 20.6% of the Company's accounts receivable, net as of December 31, 2012 and 2011.

Total fleet lease rental income differs from reported lease rental income in that total fleet lease rental income comprises revenue earned from leases on containers in the Company's total fleet, including revenue earned by the Owners from leases on containers in its managed fleet, while the Company's reported lease rental income only comprises income associated with its owned fleet. The Company's largest customer (Customer A) represented approximately \$71.2 million or 12.0%, \$68.4 million or 12.4% and \$52.7 million or 11.1% of the Company's total fleet 2012, 2011 and 2010 leasing billings, respectively. The Company had another customer (Customer B) that represented

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

## Notes to Consolidated Financial Statements—Continued

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\$61.5 million or 10.4% of the Company's total fleet's 2012 lease billings. The Company had no other customer that individually accounted for over 10% of the lease billings of the Company's total fleet in 2012, 2011 and 2010. The Company currently has containers on-hire to approximately 400 customers. The Company's customers are mainly international shipping lines, but the Company also leases containers to freight forwarding companies and the U.S. military. The Company's five largest customers accounted for approximately 37.2%, 34.8% and 32.3% of the Company's 2012, 2011 and 2010 total fleet leasing billings, respectively. During 2012, 2011 and 2010, revenue from the Company's 25 largest container lessees by lease billings represented 77.3%, 74.6% and 76.7% of the Company's total fleet container lease billings, respectively. A default by any of these major customers could have a material adverse impact on the Company's business, results from operations and financial condition.

As of December 31, 2012 and 2011, approximately 95.3% and 95.8%, respectively, of the Company's accounts receivable for its total fleet were from container lessees and customers outside of the U.S. As of both December 31, 2012 and 2011, approximately 99.7% of the Company's finance lease receivables for its total fleet were from container lessees and customers outside of the U.S. Except for the countries outside of the U.S. noted in the table below, customers in no other single countries made up greater than 10% of the Company's total fleet container lease billings during 2012, 2011 and 2010.

<u>Country</u>	<u>2012</u>	<u>2011</u>	<u>2010</u>
People's Republic of China	24.1%	22.0%	20.6%
France	12.2%	12.6%	11.4%

**(n) Fair Value of Financial Instruments**

The Company calculates the fair value of financial instruments and includes this additional information in the notes to the consolidated financial statements when the fair value is different from the book value of those financial instruments. The Company's financial instruments include cash and cash equivalents, restricted cash, accounts receivable and payable, net investment in direct financing and sales-type leases, due from affiliates, net, container contracts payable, due to owners, net, debt and interest rate swaps and caps. At December 31, 2012 and 2011, the fair value of the Company's financial instruments approximates the related book value of such instruments except that, the fair value of net investment in direct financing and sales-type leases (including the short-term balance) was approximately \$204,899 and \$106,948 at December 31, 2012 and 2011, respectively, compared to book values of \$216,887 and \$110,196 at December 31, 2012 and 2011, respectively, and the fair value of long-term debt (including current maturities) based on the borrowing rates available to the Company was approximately \$2,283,193 and \$1,483,150 at December 31, 2012 and 2011, respectively, compared to book values of \$2,261,702 and \$1,509,191 at December 31, 2012 and 2011, respectively.

**(o) Derivative Instruments**

The Company has entered into various interest rate swap and cap agreements to mitigate its exposure associated with its variable rate debt. The swap agreements involve payments by the Company to counterparties at fixed rates in return for receipts based upon variable rates indexed to the London Inter Bank Offered Rate ("LIBOR"). The differentials between the fixed and variable rate payments under these agreements are recognized in realized losses on interest rate swaps and caps, net in the consolidated statement of income.



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As of the balance sheet dates, none of the derivative instruments is designated by the Company for hedge accounting. The fair value of the derivative instruments is measured at each balance sheet date and the change in fair value is recorded in the consolidated statements of comprehensive income as unrealized gains (losses) on interest rate swaps and caps, net.

**(p) *Share Options and Restricted Share Units***

The Company estimates the fair value of all employee share options awarded under its 2007 Share Incentive Plan (the “2007 Plan”) on the grant date using an option-pricing model. The value of the portion of the award that is ultimately expected to vest is recognized as expense over the requisite service periods in the Company’s consolidated statements of comprehensive income.

The Company uses the Black-Scholes-Merton (“Black-Scholes”) option-pricing model to determine the estimated fair value for employee share option awards. Compensation expense for employee share awards is recognized on a straight-line basis over the vesting period of the award. Share-based compensation expense of \$7,968, \$6,177 and \$5,457 was recorded as a part of long-term incentive compensation during 2012, 2011 and 2010 for share options and restricted share units awarded to employees under the 2007 Plan.

**(q) *Comprehensive Income (Loss)***

The Company discloses the effect of its foreign currency translation adjustment as a component of other comprehensive income (loss).

**(r) *Estimates***

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires the Company’s management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. The Company’s management evaluates its estimates on an ongoing basis, including those related to the container rental equipment, intangible assets, accounts receivable, income taxes, and accruals.

These estimates are based on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments regarding the carrying values of assets and liabilities. Actual results could differ from those estimates under different assumptions or conditions.

**(s) *Net income per share***

Basic net income per share is computed by dividing net income by the weighted average number of shares outstanding during the period. Diluted net income per share reflects the potential dilution that could occur if all outstanding share options were exercised or converted into common shares. During 2012, 2011 and 2010, 343,146, 173,635 and 18,286 share options were excluded, respectively from the computation of diluted earnings per share because they were anti-dilutive under the treasury stock

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method. A reconciliation of the numerator and denominator of basic earnings per share (“EPS”) with that of diluted EPS during 2012, 2011 and 2010 is presented as follows:

<i>Share amounts in thousands</i>	<u>2012</u>	<u>2011</u>	<u>2010</u>
<b>Numerator</b>			
Net income attributable to Textainer Group Holdings Limited common shareholders—basic and diluted EPS	\$ 206,950	\$ 189,606	\$ 120,031
<b>Denominator</b>			
Weighted average common shares outstanding—basic	51,277	48,859	48,108
Dilutive share options and restricted share units	<u>954</u>	<u>980</u>	<u>1,199</u>
Weighted average common shares outstanding—diluted	<u>\$ 52,231</u>	<u>\$ 49,839</u>	<u>\$ 49,307</u>
Net income attributable to Textainer Group Holdings Limited common shareholders per common share			
Basic	\$ 4.04	\$ 3.88	\$ 2.50
Diluted	\$ 3.96	\$ 3.80	\$ 2.43

**(i) Fair value measurements**

The Company utilizes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. The following is a brief description of those levels:

- Level 1: Observable inputs such as quoted prices (unadjusted) in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices which are observable for the asset or liability, either directly or indirectly. These include quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in markets that are not active.
- Level 3: Unobservable inputs that reflect the reporting entity’s own assumptions.

The Company uses the exchange price notion, which is the price in an orderly transaction between market participants to sell an asset or transfer a liability in the market in which the reporting entity would transact for the asset or liability, that is, the principal or most advantageous market for the asset or liability. The transaction to sell the asset or transfer the liability is a hypothetical transaction at the measurement date, considered from the perspective of a market participant that holds the asset or owes the liability. Therefore, the definition focuses on the price that would be received to sell the asset or paid to transfer the liability (an exit price), not the price that would be paid to acquire the asset or received to assume the liability (an entry price).

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The following table summarizes the Company's assets and liabilities measured at fair value on a recurring basis as of December 31, 2012 and 2011:

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>December 31, 2012</b>			
Assets			
Interest rate swaps and caps	\$ —	\$ —	\$ —
Total	\$ —	\$ —	\$ —
Liabilities			
Interest rate swaps and caps	\$ —	\$ 10,819	\$ —
Total	\$ —	\$ 10,819	\$ —
<b>December 31, 2011</b>			
Assets			
Interest rate swaps and caps	\$ —	\$ —	\$ —
Total	\$ —	\$ —	\$ —
Liabilities			
Interest rate swaps and caps	\$ —	\$ 16,110	\$ —
Total	\$ —	\$ 16,110	\$ —

The following table summarizes the Company's assets measured at fair value on a non-recurring basis as of December 31, 2012 and 2011:

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Years Ended December 31, 2012 and 2011 Total Impairments (2)
<b>December 31, 2012</b>				
Assets				
Containers held for sale (1)	\$ —	\$ 890	\$ —	\$ 759
Total	\$ —	\$ 890	\$ —	\$ 759
<b>December 31, 2011</b>				
Assets				
Containers held for sale (1)	\$ —	\$ 173	\$ —	\$ 1,222
Total	\$ —	\$ 173	\$ —	\$ 1,222

- (1) Represents the carrying value of containers included in containers held for sale in the consolidated balance sheets that have been impaired to write down the value of the containers to their estimated fair value less cost to sell.

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- (2) Included in depreciation expense in the accompanying consolidated statements of income.

When the Company is required to write down the cost basis of its containers identified for sale to fair value less cost to sell, the Company measures the fair value of its containers identified for sale under a Level 2 input. The Company relies on its recent sales prices for identical or similar assets in markets, by geography, that are active. The Company records impairments to write down the value of containers identified for sale to their estimated fair value less cost to sell.

The Company measures the fair value of its \$1,060,837 notional amount of interest rate swaps and caps under a Level 2 input. The valuation also reflects the credit standing of the Company and the counterparties to the interest rate swaps and caps. The valuation technique utilized by the Company to calculate the fair value of the interest rate swaps and caps was the income approach. This approach represents the present value of future cash flows based upon current market expectations. The Company's interest rate swap agreements had a net fair value liability of \$10,819 and \$16,110 as of December 31, 2012 and 2011, respectively. The credit valuation adjustment (which was a reduction in the liability) was determined to be \$47 and \$134 as of December 31, 2012 and 2011, respectively. The change in fair value during 2012, 2011 and 2010 of \$5,527, \$(3,849) and \$(4,021), respectively, was recorded in the consolidated statement of income as unrealized gains (losses) on interest rate swaps and caps, net.

**(u) Recently Issued Accounting Standards**

In May 2011, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2011-04 *Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRS* ("ASU 2011-04"), which amends current guidance to achieve common fair value measurement and disclosure requirements in U.S. GAAP and International Financial Reporting Standards. The amendments generally represent clarification of FASB Accounting Standards Codification Topic 820, but also include instances where a particular principle or requirement for measuring fair value or disclosing information about fair value measurements has changed. The amendments were effective for interim and annual reporting periods beginning after December 15, 2011. Accordingly, the Company adopted ASU 2011-04 on January 1, 2012, which had no effect on the Company's consolidated financial position, results of operations or cash flows.

In June 2011, the FASB issued ASU 2011-05, *Comprehensive Income (Topic 220): Presentation of Comprehensive Income* ("ASU 2011-05"), which provides new guidance on the presentation of comprehensive income in financial statements. Entities are required to present total comprehensive income either in a single, continuous statement of comprehensive income or in two separate, but consecutive, statements. Under the single-statement approach, entities must include the components of net income, a total for net income, the components of other comprehensive income and a total for comprehensive income. Under the two-statement approach, entities must report an income statement and, immediately following, a statement of other comprehensive income. Under either method, entities must display adjustments to items reclassified from other comprehensive income to net income in both net income and other comprehensive income. ASU 2011-05 was effective for interim and annual reporting periods beginning after December 15, 2011, with early adoption permitted. Accordingly, the Company adopted ASU 2011-04 on January 1, 2012, which had no effect on the Company's consolidated financial position, results of operations or cash flows.

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### (2) Bargain Purchase Gain

On December 20, 2012, TL purchased 501 common shares of TAP Funding from TAP for cash consideration of \$20,532 and reduced management fees with a fair value of \$3,852. The common shares acquired by TL represented 50.1% of TAP Funding's total outstanding 1,000 common shares held by TAP before the acquisition. TL's purchase of a majority controlling ownership interest in TAP Funding's common shares allowed the Company to increase the size of its owned fleet at an attractive price. In accordance with the FASB's Accounting Standards Codification Topic 805 *Business Combinations*, ("ASC 805"), the Company accounted for this transaction as a business combination. ASC 805 requires that a gain be recorded when the fair value of the net assets acquired is greater than the fair value of the consideration transferred. Because the fair value of TAP Funding's net assets exceeded the purchase consideration, a bargain purchase gain was recorded in 2012 as follows:

Containers, net	\$ 161,038
Net investment in direct financing and sales-type leases	4,120
Revolving credit facility	(108,471)
Other net assets	3,607
Net assets	<u>\$ 60,294</u>
Net assets acquired by TL (1)	\$ 33,825
Cash consideration	(20,532)
Reduced management fees	(3,852)
Bargain purchase gain	<u>\$ 9,441</u>

- (1) In accordance with ASC 805, the control acquired by TL was calculated as TL's ownership interest in TAP Funding's common shares of 50.1% plus a control premium determined to be 12% of the noncontrolling interest in TAP Funding's common shares of 49.9%.

The fair value of reduced management fee was recorded as a part of deferred revenue on the consolidated balance sheets and other and will be amortized to management fees and eliminated entirely by net income attributable to the noncontrolling interest from the acquisition date (December 20, 2012) through January 1, 2019, the beginning of the period in which TL has an option to purchase TAP Funding under TAP Funding's members agreement.

Net income (loss) attributable to TAP Funding's operations from December 20, 2012 through December 31, 2012 of \$102 was included in the Company's consolidated financial statements with the equity owned by TAP of \$51, or 49.9%, recorded in net income attributable to noncontrolling interest.

### (3) Gain on Sale of Containers to Noncontrolling Interest

On June 30, 2011, TMCL completed a capital restructuring, whereby TL became the sole owner of TMCL. Immediately before the capital restructuring, TL held an 82.49% economic ownership in TMCL and TCG Fund I, L.P. ("TCG") held the remaining 17.51% economic ownership. TL's total ownership and voting interest in TMCL's Class A common shares before and after the capital restructuring was 75% and 100%, respectively.

On June 30, 2011, TL purchased 1,500 (or 12.5%) Class A common shares of TMCL from TCG for cash consideration of \$71,089. The Company accounted for this transaction as a reduction in the related

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noncontrolling interest and additional paid-in capital. To complete the capital restructuring, TMCL contributed 12.5% of its containers, net and investment in direct financing and sales-type leases to TCG and TCG paid \$67,303 of principal on TMCL's secured debt facility (equal to 12.5% of the balance of TMCL's secured debt facility and bonds payable) in consideration for the remaining 1,500 (or 12.5%) Class A shares of TMCL held by TCG, which were immediately retired. The fair value of the containers, net and investment in direct financing and sales-type leases contributed was \$124,153 and \$8,896, respectively, compared to a book value of \$104,345 and \$8,931, respectively. The Company recorded a gain on sale of containers to noncontrolling interest of \$19,773 for the year ended December 31, 2011 in the amount by which the fair value of its containers, net and net investment in direct financing and sales-type leases exceeded their book values. Simultaneously with the contribution of containers, net and net investment in direct financing and sales-type leases, TCG repaid \$67,303 of TMCL's secured debt facility. TL also paid an additional \$7,997 of cash consideration to TCG as a final determination of the purchase price as determined under the contract for 12.5% of the book value of TMCL's net assets excluding the book value of containers, net, net investment in direct financing and sales-type leases, secured debt facility and bonds payable as of June 30, 2011. As a result of this restructuring, TL acquired the noncontrolling interest in TMCL and additional paid-in capital was reduced by \$43,010 during the year ended December 31, 2011.

Changes in the Company's shareholders' equity resulting from the changes in its ownership interest in TMCL for the years ended December 31, 2012, 2011 and 2010 were as follows:

	2012	2011	2010
Net income attributable to TGH common shareholders	\$206,950	\$189,606	\$120,031
Transfers to the noncontrolling interest:			
Decrease in TGH's additional paid-in capital for TMCL capital restructuring	—	(43,010)	—
Transfers to the noncontrolling interest	—	(43,010)	—
Change in net income attributable to TGH common shareholders and transfers to the noncontrolling interest	\$206,950	\$146,596	\$120,031

TL's 100% ownership and voting interest in TMCL's Class B common shares was not affected by the capital restructuring. In addition, voting matters related to commencing bankruptcy proceedings and amending related board and shareholder meeting requirements require the approval of a separate Class C common shareholder, which does not have any economic ownership interest in TMCL and was not affected by the capital restructuring. For U.S. federal income tax purposes, as a result of the capital restructuring described above, TMCL became a disregarded entity with respect to the Company. The Company has consolidated TMCL since the inception of the entity in 2001.

### (4) Container Purchases

In 2012, excluding the containers obtained as part of the TAP Funding business combination discussed in Note 2 "Bargain Purchase Gain", the Company concluded five separate purchases of approximately 102,900 containers that it had been managing for institutional investors, including related accounts receivable, due from owners, net, net investment in direct financing leases, accounts payable and accrued expenses for total purchase consideration of \$211,677 (consisting of cash of \$203,374 and elimination of the

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Company's intangible asset for the management rights relinquished of \$8,305). The total purchase price, which was allocated based on the fair value of the assets and liabilities acquired, was recorded as follows:

Containers, net	\$ 200,080
Other net assets	11,597
	<u>\$211,677</u>

In 2011 the Company concluded three separate purchases of approximately 115,500 containers that it had been managing for institutional investors, including related accounts receivable, due from owners, net, net investment in direct financing leases, accounts payable and accrued expenses for total purchase consideration of \$187,191 (consisting of cash of \$179,443 and elimination of the Company's intangible asset for the management rights relinquished of \$7,748). The total purchase price, which was allocated based on the fair value of the assets and liabilities acquired, was recorded as follows:

Containers, net	\$ 178,059
Other net assets	9,132
	<u>\$ 187,191</u>

On November 1, 2010, the Company purchased approximately 23,400 containers that it had been managing for an institutional investor, including related accounts receivable, due from owners, net, net investment in direct financing leases, accounts payable and accrued expenses for a total purchase price equal to \$36,408. The total purchase price, which was allocated based on the fair value of the assets and liabilities acquired, was recorded as follows:

Containers, net	\$ 33,978
Other net assets	2,430
	<u>\$ 36,408</u>

**(5) Purchase-leaseback Transactions**

In 2011, the Company completed purchase-leaseback transactions for approximately 25,200 containers with a shipping line for a total purchase price of \$29,027. The purchase price and leaseback rental rates were below market rates. The prepayment of the leases by the lessee by selling the containers at below-market prices to the company was recorded as follows:

Containers, net of accumulated depreciation	\$ 36,131
Deferred revenue—operating lease contracts	(7,104)
Purchase price	<u>\$ 29,027</u>

The deferred revenue was recorded as deferred revenue and other on the consolidated balance sheets and is being amortized to lease rental income so as to produce even revenue recognition over the terms of the respective leases. The balance of deferred revenue, included in deferred revenue and other, related to these purchase-leaseback transactions as of December 31, 2012 and 2011 of \$1,039 and \$7,381, respectively, reflects reductions resulting from the amortization of the deferred revenue recorded at the time of purchase and reversals of deferred revenue related to containers that were returned by the lessee since the origination of the purchase-leaseback transactions that have been sold.

# **TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Notes to Consolidated Financial Statements—Continued

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## **(6) Transactions with Affiliates and Owners**

Amounts due from affiliates, net generally result from cash advances and the payment of affiliated companies' administrative expenses by the Company on behalf of such affiliates. Balances are generally paid within 30 days.

Management fees, including acquisition fees and sales commissions during 2012, 2011 and 2010 were as follows:

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Fees from affiliated Owner	\$ 5,259	\$ 4,636	\$ 4,837
Fees from unaffiliated Owners	18,906	22,741	22,410
Fees from Owners	24,165	27,377	27,247
Other fees	2,004	1,947	1,890
Total management fees	<u>\$26,169</u>	<u>\$29,324</u>	<u>\$29,137</u>

Due to owners, net represents lease rentals collected on behalf of and payable to Owners, net of direct expenses and management fees receivable. Due to owners, net at December 31, 2012 and 2011 consisted of the following:

	<u>2012</u>	<u>2011</u>
Affiliated Owner	\$ 1,665	\$ 919
Unaffiliated Owners	11,553	14,893
Total due to Owners, net	<u>\$ 13,218</u>	<u>\$ 15,812</u>

## **(7) Direct Financing and Sales-type Leases**

The Company leases containers under direct financing and sales-type leases. The Company had 97,780 and 56,857 containers under direct financing and sales-type leases as of December 31, 2012 and 2011, respectively.

The components of the net investment in direct financing and sales-type leases, which are reported in the Company's Container Ownership segment as of December 31, 2012 and 2011 were as follows:

	<u>2012</u>	<u>2011</u>
Future minimum lease payments receivable	\$252,616	\$ 122,349
Residual value of containers on sales-type leases	9,110	11,032
Less unearned income	(44,839)	(23,185)
Net investment in direct financing and sales-type leases	<u>\$ 216,887</u>	<u>\$ 110,196</u>
Amounts due within one year	\$ 43,253	\$ 25,075
Amounts due beyond one year	173,634	85,121
Net investment in direct financing and sales-type leases	<u>\$ 216,887</u>	<u>\$ 110,196</u>

The carrying value of TW's net investment in direct financing and sales-type leases was \$102,836 and \$9,298 at December 31, 2012 and 2011, respectively.



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The Company maintains detailed credit records about its container lessees. The Company's credit policy sets different maximum exposure limits for its container lessees. The Company uses various credit criteria to set maximum exposure limits rather than a standardized internal credit rating. Credit criteria used by the Company to set maximum exposure limits may include, but are not limited to, container lessee trade route, country, social and political climate, assessments of net worth, asset ownership, bank and trade credit references, credit bureau reports, including those from Dynamar B.V. and Lloyd's Marine Intelligence Unit (common credit reporting agencies used in the maritime sector), operational history and financial strength. The Company monitors its container lessees' performance and its lease exposures on an ongoing basis, and its credit management processes are aided by the long payment experience the Company has had with most of its container lessees and the Company's broad network of long-standing relationships in the shipping industry that provide the Company current information about its container lessees.

If the aging of current billings for the Company's direct financing and sales-type leases included in accounts receivable, net were applied to the related balances of the unbilled future minimum lease payments receivable component of the Company's net investment in direct finance leases and sales-type leases as of December 31, 2012, the aging would be as follows:

1-30 days past due	\$ 41,931
31-60 days past due	7,919
61-90 days past due	13,803
Greater than 90 days past due	192
Total past due	63,845
Current	188,771
Total future minimum lease payments	<u>\$252,616</u>

The Company maintains allowances, if necessary, for doubtful accounts and estimated losses resulting from the inability of its lessees to make required payments under direct financing and sales-type leases based on, but not limited to, each lessee's payment history, management's current assessment of each lessee's financial condition and the adequacy of the fair value of containers that collateralize the leases compared to the book value of the related net investment in direct financing and sales-type leases. Management does not set an internal credit score or obtain an external credit score as part of estimating the allowance as of period end. The changes in the carrying amount of the allowance for doubtful accounts related to billed amounts under direct financing and sales-type leases and included in accounts receivable, net, during the year ended December 31, 2012 are as follows:

Balance as of December 31, 2011	\$ —
Additions charged to expense	519
Write-offs	(68)
Balance as of December 31, 2012	<u>\$ 451</u>

Based on management's assessment, there was no allowance for doubtful accounts recorded related to the Company's net investment in direct financing and sales-type leases as of December 31, 2011.

# **TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Notes to Consolidated Financial Statements—Continued

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The following is a schedule by year of future minimum lease payments receivable under these direct financing and sales-type leases as of December 31, 2012:

Year ending December 31:	
2013	\$ 57,990
2014	55,045
2015	49,476
2016	40,614
2017 and thereafter	49,491
Total future minimum lease payments receivable	<u>\$252,616</u>

Lease rental income includes income earned from direct financing and sales-type leases in the amount of \$11,040, \$8,553 and \$7,303 during 2012, 2011 and 2010 respectively.

## **(8) Containers and Fixed Assets**

Containers, net at December 31, 2012 and 2011 consisted of the following:

	<u>2012</u>	<u>2011</u>
Containers	\$ 3,407,603	\$2,281,586
Less accumulated depreciation	(490,930)	(377,731)
Containers, net	<u>\$2,916,673</u>	<u>\$ 1,903,855</u>

Trading containers had carrying values of \$7,296 and \$12,970 as of December 31, 2012 and 2011 and are not subject to depreciation. Containers held for sale that had carrying values of \$15,717 and \$7,832 as of December 31, 2012 and 2011 are also not subject to depreciation. All owned containers are pledged as collateral for debt as of December 31, 2012 and 2011.

Fixed assets, net at December 31, 2012 and 2011 consisted of the following:

	<u>2012</u>	<u>2011</u>
Computer equipment and software	\$ 7,557	\$ 7,111
Office furniture and equipment	1,456	1,803
Automobiles	44	51
Leasehold improvements	1,753	1,779
	<u>10,810</u>	<u>10,744</u>
Less accumulated depreciation	(9,189)	(9,027)
Fixed assets, net	<u>\$ 1,621</u>	<u>\$ 1,717</u>

# **TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

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## **(9) Intangible Assets**

The changes in the carrying amount of intangible assets during the years ended December 31, 2012, 2011 and 2010 are as follows:

Balance as of December 31, 2009	\$ 66,692
Amortization expense of step acquisition adjustment related to lease contracts (1)	(26)
Amortization expense	<u>(6,544)</u>
Balance as of December 31, 2010	60,122
Amortization expense of step acquisition adjustment related to lease contracts (1)	411
Amortization expense	(6,110)
Reduction arising from the relinquishment of management rights from the purchase of containers from institutional investors	<u>(7,748)</u>
Balance as of December 31, 2011	46,675
Amortization expense of step acquisition adjustment related to lease contracts (1)	33
Amortization expense	(5,020)
Reduction arising from the relinquishment of management rights from the purchase of containers from institutional investors	<u>(8,305)</u>
Balance as of December 31, 2012	<u>\$ 33,383</u>

- (1) Represents a step acquisition adjustment related to TL's purchase of 3,000 additional Class A shares of TMCL on November 1, 2007. The adjustment was recorded to increase the balance of lease contracts to an amount that equaled the fair market value of the lease contracts on the date of the acquisition.

The following is a schedule, by year, of future amortization of intangible assets as of December 31, 2012:

Year ending December 31:	
2013	\$ 4,410
2014	4,571
2015	4,663
2016	4,825
2017 and thereafter	<u>14,914</u>
Total future amortization of intangible assets	<u>\$ 33,383</u>

## **(10) Accrued Expenses**

Accrued expenses at December 31, 2012 and 2011 consisted of the following:

	<u>2012</u>	<u>2011</u>
Accrued compensation	\$ 6,179	\$ 6,280
Direct container expense	3,479	7,718
Interest payable	3,864	2,907
Other	807	1,586
Total accrued expenses	<u>\$ 14,329</u>	<u>\$ 18,491</u>

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**(11) Income Taxes**

The Company is not subject to taxation in its country of incorporation; however, the Company is subject to taxation in certain other jurisdictions due to the nature of the Company's operations. The Company estimates its tax liability based upon its understanding of the tax laws of the various countries in which it operates. Income tax expense for 2012, 2011 and 2010 consisted of the following:

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Current			
Bermuda	\$ —	\$ —	\$ —
Foreign	<u>7,569</u>	<u>6,223</u>	<u>3,187</u>
	<u>7,569</u>	<u>6,223</u>	<u>3,187</u>
Deferred			
Bermuda	—	—	—
Foreign	<u>(2,076)</u>	<u>(1,742)</u>	<u>1,306</u>
	<u>(2,076)</u>	<u>(1,742)</u>	<u>1,306</u>
	<u>\$ 5,493</u>	<u>\$ 4,481</u>	<u>\$ 4,493</u>

The components of income before income taxes and noncontrolling interest were as follows:

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Bermuda sources	\$ —	\$ —	\$ —
Foreign sources	<u>210,556</u>	<u>208,499</u>	<u>138,257</u>
	<u>\$210,556</u>	<u>\$208,499</u>	<u>\$138,257</u>

A reconciliation of the differences between the Bermuda statutory income tax rate and the effective tax rate as provided in the consolidated statements of comprehensive income is as follows:

	<u>2012</u>	<u>2011</u>	<u>2010</u>
Bermuda tax rate	0.00%	0.00%	0.00%
Foreign tax rate	0.54%	0.44%	1.63%
Tax uncertainties	<u>2.07%</u>	<u>1.71%</u>	<u>1.62%</u>
	<u>2.61%</u>	<u>2.15%</u>	<u>3.25%</u>

# **TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

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The tax effects of temporary differences that give rise to significant portions of the current and non-current deferred tax assets and deferred tax liabilities at December 31, 2012 and 2011 are presented below:

	<u>2012</u>	<u>2011</u>
Current deferred tax assets		
Other	\$ 2,332	\$ 2,443
Current deferred tax assets	<u>2,332</u>	<u>2,443</u>
Non-current deferred tax assets		
Net operating loss carryforwards	11,605	7,352
Other	<u>2,957</u>	<u>2,109</u>
Non-current deferred tax assets	<u>14,562</u>	<u>9,461</u>
Non-current deferred tax liabilities		
Containers, net	19,067	15,853
Other	<u>744</u>	<u>1,046</u>
Non-current deferred tax liabilities	<u>19,811</u>	<u>16,899</u>
Net deferred tax liability	<u>\$ 2,917</u>	<u>\$ 4,995</u>

In assessing the realizability of deferred tax assets, the Company's management considers whether it is more likely than not that the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. The Company's management considers the projected future taxable income for making this assessment. Based upon the level of historical taxable income and projections for future taxable income over the periods in which the deferred tax assets are deductible, the Company's management believes it is more likely than not the Company will realize the benefits of these deductible differences noted above.

The Company has net operating loss carry-forwards of \$34,009 that will begin to expire from December 31, 2012 through December 31, 2032 if not utilized.

The accompanying consolidated financial statements do not reflect the income taxes that would be payable to foreign taxing jurisdictions if the earnings of a group of corporations operating in those jurisdictions were to be transferred out of such jurisdictions, because such earnings are intended to be permanently reinvested in those countries. At December 31, 2012, cumulative earnings of approximately \$1,919 would be subject to income taxes of approximately \$576 if such earnings of foreign corporations were transferred out of such jurisdictions in the form of dividends.

The Company's foreign tax returns, including the United States, State of California, State of New Jersey, State of Texas, Malaysia, Singapore, and United Kingdom, are subject to examination by the various tax authorities. The Company's foreign tax returns are no longer subject to examinations by taxing authorities for years before 2008, except for both Singapore and United Kingdom tax returns which are no longer subject to examinations for years before 2006.

In May of 2009, the Company received notification from the Internal Revenue Service (IRS) that the 2007 and 2008 United States tax return for TEMUS had been selected for examination. In May 2010, the Company received notification from the IRS that they had completed their examination, making changes to the 2007 and 2008 taxable income of TEMUS which did not significantly alter the Company's income tax

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for these years. As a result, the Company reduced the amount of unrecognized tax benefits and recognized a tax provision reduction during the year ended December 31, 2010. The Company's effective tax rate reflects the recognition of this \$2,259 tax provision reduction.

In October of 2012, the Company received notification from the Internal Revenue Service that the 2010 United States tax return for TEMUS had been selected for examination. Additionally, in November of 2012, the Company received notification from the Internal Revenue Service that the 2010 United States tax return for TGH had been selected for examination. These examinations are ongoing and the Company has not been made aware of any proposed adjustments to taxable income for the year in question. The IRS' plan is to complete the TEMUS exam by August 31, 2013 and the TGH exam by October 31, 2013.

A reconciliation of the beginning and ending unrecognized tax benefit amounts for 2012 and 2011 are as follows:

Balance at December 31, 2010	\$ 19,549
Increases related to prior year tax positions	243
Decreases related to prior year tax positions	(2,215)
Increases related to current year tax positions	7,689
Settlements	—
Lapse of statute of limitations	(3,826)
Balance at December 31, 2011	21,440
Increases related to prior year tax positions	348
Decreases related to prior year tax positions	—
Increases related to current year tax positions	7,978
Settlements	—
Lapse of statute of limitations	(3,682)
Balance at December 31, 2012	\$ 26,084

If the unrecognized tax benefits of \$26,084 at December 31, 2012 were recognized, tax benefits in the amount of \$25,250 would reduce our annual effective tax rate. The Company believes the total amount of unrecognized tax benefit as of December 31, 2012 will decrease by \$2,951 in the next twelve months due to expiration of the statute of limitations, of which \$2,854 would reduce our annual effective tax rate.

Interest and penalty (benefit) expense recorded during 2012 and 2011 amounted to \$90 and \$188, respectively. Total accrued interest and penalties as of December 31, 2012 and 2011 were \$928 and \$838, respectively, and were included in non-current income taxes payable.

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**(12) Revolving Credit Facilities, Bonds Payable and Secured Debt Facilities, and Derivative Instruments**

The following represents the Company's debt obligations as of December 31, 2012 and 2011:

	2012	2011
<b>Revolving Credit Facilities, Bonds Payable and Secured Debt Facility</b>		
TL Revolving Credit Facility, weighted average variable interest at 1.76% and 1.53% at December 31, 2012 and 2011, respectively	\$ 352,500	\$ 125,000
TW Revolving Credit Facility, weighted average variable interest at 2.97% and 3.02% at December 31, 2012 and 2011, respectively	88,940	8,047
TAP Funding Revolving Credit Facility, weighted average variable interest at 3.96% at December 31, 2012	108,471	—
2005-1 Bonds, variable interest at 0.74% and 0.81% at December 31, 2012 and 2011, respectively	124,458	175,726
2011-1 Bonds, fixed interest at 4.70%	340,000	380,000
2012-1 Bonds, fixed interest at 4.21%	373,333	—
TMCL Secured Debt Facility, weighted average variable interest at 3.03% at December 31, 2011	—	820,418
TMCL II Secured Debt Facility, weighted average variable interest at 2.84% at December 31, 2012	874,000	—
Total debt obligations	<u>\$2,261,702</u>	<u>\$1,509,191</u>
Amount due within one year	<u>\$ 131,500</u>	<u>\$ 132,535</u>
Amounts due beyond one year	<u>\$ 2,130,202</u>	<u>\$1,376,656</u>

***Revolving Credit Facilities***

TL has a credit agreement with a group of banks that provides for a revolving credit facility ("TL Revolving Credit Facility"). On September 24, 2012, TL extended the term of the TL Revolving Credit Facility and amended certain terms, thereof, including an increase in the aggregate commitment amount from \$205,000 to \$600,000 (which includes a \$50,000 letter of credit facility). The maturity date was changed from April 22, 2013 to September 24, 2017. The TL Revolving Credit Facility provides for payments of interest only during its term beginning on its inception date through September 24, 2017 when all borrowings are due in full. Interest on the outstanding amount due under the TL Revolving Credit Facility at December 31, 2012 was based either on the U.S. prime rate or LIBOR plus a spread between 1.0% and 2.0%, which varies based on TGH's leverage. Total outstanding principal under the TL Revolving Credit Facility was \$352,500 and \$125,000 as of December 31, 2012 and 2011, respectively. The Company had no outstanding letters of credit under the TL Revolving Credit Facility as of December 31, 2012 and 2011.

The TL Revolving Credit Facility is secured by the Company's containers and under the terms of the TL Revolving Credit Facility, the total outstanding principal may not exceed the lesser of the commitment amount and a formula based on the Company's net book value of containers and outstanding debt. The additional amount available for borrowing under the TL Revolving Credit Facility, as limited by the Company's borrowing base, was \$152,224 as of December 31, 2012.

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TGH acts as a full and unconditional guarantor of the TL Revolving Credit Facility. The TL Revolving Credit Facility contains restrictive covenants, including limitations on certain liens, indebtedness and investments. In addition, the TL Revolving Credit Facility contains certain restrictive financial covenants on TGH's tangible net worth, leverage, debt service coverage and on TL's leverage and interest coverage. The TL Revolving Credit Facility does not prevent TGH's ability to obtain funds from TL in the form of dividends or loans. The Company was in compliance with all such covenants at December 31, 2012. There is a commitment fee of 0.30% to 0.40% on the unused portion of the TL Revolving Credit Facility, which varies based on the leverage of TGH and is payable in arrears. In addition, there is an agent's fee, which is payable annually in advance.

TW is party to a credit agreement, dated as of August 5, 2011, with certain lenders and WFS, as administrative agent for the lenders, which provided for a revolving credit facility with an aggregate commitment amount of up to \$425,000 (the "TW Revolving Credit Facility"). On October 1, 2012, the TW Revolving Credit Facility was amended to reduce the aggregate commitment amount of the TW Credit Facility from \$425,000 to \$250,000. The TW Revolving Credit Facility provides for payment of interest, payable monthly in arrears, during its term beginning on its inception date through August 5, 2014. Interest on the outstanding amount due under the TW Revolving Credit Facility is based on one-month LIBOR plus 2.75% per annum. There is a commitment fee of 0.5% on the unused portion of the TW Revolving Credit Facility, which is payable monthly in arrears. In addition, there is an agent's fee of 0.025% on the aggregate commitment amount of the TW Revolving Credit Facility, which is payable monthly in arrears. TW is required to make principal payments on a monthly basis to the extent that the outstanding amount due exceeds TW's borrowing base. The aggregate loan principal balance is due on the maturity date, August 5, 2024. Total outstanding principal under the TW Revolving Credit Facility was \$88,940 and \$8,047 as of December 31, 2012 and December 31, 2011 respectively.

The TW Revolving Credit Facility is secured by TW's containers and under the terms of the TW Revolving Credit Facility, the total outstanding principal may not exceed the lesser of the commitment amount and the borrowing base, a formula based on TW's net book value of containers and restricted cash and direct financing and sales-type leases. The additional amount available for borrowing under the TW Revolving Credit Facility, as limited by TW's borrowing base, was \$0 as of both December 31, 2012 and December 31, 2011.

The TW Revolving Credit Facility is secured by a pledge of TW's assets. TW's total assets amounted to \$105,397 as of December 31, 2012. The TW Revolving Credit Facility contains restrictive covenants, including limitations of TW's finance lease default ratio, debt service coverage ratio, certain liens, indebtedness and investments. In addition, the TW Revolving Credit Facility contains certain restrictive financial covenants on TGH's tangible net worth, leverage, debt service coverage, TGH's container management subsidiary net income and debt levels, and TW's overall Asset Base minimums, in which TW, TGH and TGH's container management subsidiary were in full compliance at December 31, 2012.

TAP Funding has a credit agreement with a bank effective May 1, 2012 that provides for a revolving credit facility with an aggregate commitment amount of up to \$120,000 (the "TAP Funding Revolving Credit Facility"). The interest rate on the TAP Funding Revolving Credit Facility, payable monthly in arrears, is either the Base Rate (as defined in TAP Funding's Credit Agreement) or one-month LIBOR plus 3.75% beginning on its inception date through its maturity date, October 31 2015. There is a commitment fee of 0.625% on the unused portion of the TAP Funding Revolving Credit Facility, which is payable monthly in arrears. TAP Funding is required to make principal payments on a monthly basis to the extent that the outstanding amount due exceeds TAP Funding's borrowing base. The revolving credit period ends



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on October 31, 2014 and the aggregate loan principal balance is due on the maturity date. Total outstanding principal under the TAP Funding Revolving Credit Facility was \$108,471 as of December 31, 2012.

The TAP Funding Revolving Credit Facility is secured by TAP Funding's containers and under the terms of the TAP Funding Revolving Credit Facility, the total outstanding principal may not exceed the lesser of the commitment amount or the borrowing base, a formula based on TAP Funding's net book value of containers, restricted cash and direct financing and sales-type leases. The additional amount available for borrowing under the TAP Funding Revolving Credit Facility, as limited by TAP Funding's borrowing base, was \$3,310 as of December 31, 2012.

The TAP Funding Revolving Credit Facility is secured by a pledge of TAP Funding's assets. TAP Funding's total assets amounted to \$174,127 as of December 31, 2012. The TAP Funding Revolving Credit Facility contains restrictive covenants, including limitations on TAP Funding's average net operating income, average sales proceeds, certain liens, indebtedness, investments, overall Asset Base minimums and average age of TAP Funding's container fleet, in which TAP Funding was in full compliance at December 31, 2012.

### ***Bonds Payable and Secured Debt Facility***

In 2005, TMCL issued \$580,000 in variable rate amortizing bonds (the "2005-1 Bonds") to institutional investors. The \$580,000 in 2005-1 Bonds represent fully amortizing notes payable on a straight-line basis over a scheduled payment term of 10 years, but not to exceed the maximum payment term of 15 years. Based on the outstanding principal amount at December 31, 2012 and under a 10-year amortization schedule, \$51,500 in 2005-1 Bond principal will amortize per year. Under the terms of the 2005-1 Bonds, both principal and interest incurred are payable monthly. TMCL is permitted to make voluntary prepayments of all, or a portion of, the principal balance of the 2005-1 Bonds. Ultimate payment of the 2005-1 Bonds' principal has been insured and the cost of this insurance coverage, which is equal to 0.275% on the outstanding principal balance of the 2005-1 Bonds, is recognized as incurred on a monthly basis. The interest rate for the outstanding principal balance of the 2005-1 Bonds equals one-month LIBOR plus 0.25%. The target final payment date and legal final payment date are May 15, 2015 and May 15, 2020, respectively.

In June 2011, TMCL issued \$400,000 aggregate principal amount of Series 2011-1 Fixed Rate Asset Backed Notes (the "2011-1 Bonds") to qualified institutional investors pursuant to Rule 144A under the Securities Act of 1933, as amended (the "Securities Act") and to non-U.S. persons in accordance with Regulation S promulgated under the Securities Act. The \$400,000 in 2011-1 Bonds represent fully amortizing notes payable on a straight-line basis over a scheduled payment term of 10 years, but not to exceed a maximum payment term of 15 years. Based on the outstanding principal amount at December 31, 2012 and under the 10-year amortization schedule, \$40,000 in 2011-1 Bond principal will amortize per year. Under the terms of the 2011-1 Bonds, both principal and interest incurred are payable monthly. TMCL is not permitted to make voluntary prepayments of all, or a portion of, the principal balance of the 2011-1 Bonds prior to June 2013. The interest rate for the outstanding principal balance of the 2011-1 Bonds is fixed at 4.70% per annum. The final target payment date and legal final payment date are June 15, 2021 and June 15, 2026, respectively.

In April 2012, TMCL issued \$400,000 aggregate principal amount of Series 2012-1 Fixed Rate Asset Backed Notes (the "2012-1 Bonds") to qualified institutional investors pursuant to Rule 144A under the Securities Act and to non-U.S. persons in accordance with Regulation S promulgated under the Securities

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Act. The \$400,000 in 2012-1 Bonds represent fully amortizing notes payable on a straight-line basis over a scheduled payment term of 10 years, but not to exceed a maximum payment term of 15 years. Based on the outstanding principal amount at December 31, 2012 and under the 10-year amortization schedule, \$40,000 in 2012-1 Bond principal will amortize per year. Under the terms of the 2012-1 Bonds, both principal and interest incurred are payable monthly. TMCL is not permitted to make voluntary prepayments of all, or a portion of, the principal balance of the 2012-1 Bonds prior to May 2014. The interest rate for the outstanding principal balance of the 2012-1 Bonds is fixed at 4.21% per annum. The final target payment date and legal final payment date are April 15, 2022 and April 15, 2027, respectively. The 2012-1 Notes were used to repay certain outstanding indebtedness of TMCL, in particular a portion of the TMCL Secured Debt Facility, and for general corporate purposes. The 2012-1 Notes are secured by a pledge of TMCL's assets.

At December 31, 2011, the Company's primary ongoing container financing requirements were funded by revolving notes issued by TMCL (the "TMCL Secured Debt Facility"), which provided a total commitment in the amount of \$850,000. The TMCL Secured Debt Facility provided for payments of interest only during the period from its inception through June 29, 2012 (the Conversion Date as defined in the Indenture governing the 2005-1 Bonds, the 2011-1 Bonds and the TMCL Secured Debt Facility), with a provision for the TMCL Secured Debt Facility to amortize over a 10-year period, but not to exceed the maximum term of a 15-year period, beginning on the Conversion Date. The interest rate on the TMCL Secured Debt Facility at December 31, 2011, payable monthly in arrears, was one-month LIBOR plus 2.75%. There was also a commitment fee on the unused portion of the TMCL Secured Debt Facility, payable in arrears, of 0.75% if total borrowings under the TMCL Secured Debt Facility equaled 50% or more of the total commitment or 1.00% if total borrowings were less than 50% of the total commitment.

In May 2012, Textainer Marine Containers II Limited ("TMCL II"), a new asset owning subsidiary wholly owned by TL, entered into a securitization facility (the "TMCL II Secured Debt Facility") that provides for an aggregate commitment amount of up to \$1,200,000 and it acquired a portion of the containers owned by TMCL. TMCL used proceeds it received from TMCL II for the containers to terminate the TMCL Secured Debt Facility. The additional amount available for borrowing under the TMCL II Secured Debt Facility, as limited by the Company's borrowing base was \$3,353 as of December 31, 2012. The TMCL II Secured Debt Facility provides for payments of interest only during the period from its inception until its Conversion Date (currently set at May 1, 2014), with a provision that if not renewed the TMCL II Secured Debt Facility will partially amortize over a five year period and then mature. The interest rate on the TMCL II Secured Debt Facility, payable monthly in arrears, is one-month LIBOR plus 2.625% during the revolving period prior to the Conversion Date. There is also a commitment fee of 0.75% on the unused portion of the TMCL II Secured Debt Facility, which is payable monthly in arrears. If the TMCL II Secured Debt Facility is not refinanced or renewed prior to the Conversion Date, the interest rate will increase to one-month LIBOR plus 3.625%.

Under the terms of the 2005-1 Bonds, 2011-1 Bonds, 2012-1 Bonds and TMCL II Secured Debt Facility, the total outstanding principal of these four programs may not exceed an amount (the "Asset Base"), which is calculated by a formula based on TMCL's and TMCL II's book value of equipment, restricted cash and direct financing and sales-type leases. The total obligations under the 2005-1 Bonds, 2011-1 Bonds, 2012-1 Bonds are secured by a pledge of TMCL's assets. The total obligations under the TMCL II Secured Debt Facility are secured by a pledge of TMCL II's assets. At December 31, 2012, TMCL and TMCL II's total assets amounted to \$1,268,305 and \$1,153,962, respectively. The 2005-1 Bonds, 2011-1 Bonds, 2012-Bonds and TMCL II Secured Debt Facility also contain restrictive covenants regarding

# **TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Notes to Consolidated Financial Statements—Continued

December 31, 2012, 2011, and 2010

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the average age of TMCL's and TMCL II's container fleet, certain earnings ratios, ability to incur other obligations and to distribute earnings, TGH's container management subsidiary net income and debt levels, and overall Asset Base minimums, for which TMCL, TMCL II and TGH's container management subsidiary were in compliance at December 31, 2012.

On February 3, 2012, TMCL entered into a commitment letter (the "Commitment") issued by a bank to provide an irrevocable letter of credit ("Letter of Credit") with a maximum available commitment amount of \$100,000 on the Conversion Date of the TMCL Secured Debt Facility if the facility was not refinanced or terminated on or prior to the Conversion Date. The purpose of the Commitment was to maintain TMCL's current credit ratings on the 2005-1 Bonds, the 2011-1 Bonds and the TMCL Secured Debt Facility. The purpose of the Letter of Credit was to supplement the 2005-1 Bonds, the 2011-1 Bonds and the Secured Debt Facility by covering possible shortfalls in principal and interest payments under certain stress scenarios modeled by TMCL's credit rating agencies. The interest rate on the Letter of Credit, payable monthly in arrears, would have been one-month LIBOR plus 5.50% to 6.50% per annum for the five-year period following the Conversion Date and one-month LIBOR plus 11.50% per annum thereafter. There was also a commitment fee of \$500, which was paid in full upon issuance of the Commitment on February 3, 2012, and an unused fee on the Commitment, payable in arrears, of 0.25% per annum, from February 3, 2012 through the Conversion Date and 0.625% per annum thereafter. The Commitment was terminated on May 1, 2012 and the Letter of Credit was never issued.

The following is a schedule by year, of future scheduled repayments, as of December 31, 2012:

	TL Revolving Credit Facility	TW Revolving Credit Facility	TAP Funding Revolving Credit Facility	2005-1 Bonds	2011-1 Bonds	2012-1 Bonds	TMCL II Secured Debt Facility
Year ending December 31:							
2013	\$ —	\$ —	\$ —	\$ 51,500	\$ 40,000	\$ 40,000	\$ —
2014	—	—	—	51,500	40,000	40,000	50,983
2015	—	—	108,471	21,458	40,000	40,000	87,400
2016	—	—	—	—	40,000	40,000	87,400
2017 and thereafter	352,500	88,940	—	—	180,000	213,333	648,217
	<u>\$ 352,500</u>	<u>\$ 88,940</u>	<u>\$ 108,471</u>	<u>\$ 124,458</u>	<u>\$ 340,000</u>	<u>\$ 373,333</u>	<u>\$ 874,000</u>

The future repayments schedule for the TMCL II Secured Debt Facility is based on the assumption that the facility will not be extended on its Conversion Date and will then convert into a five-year partially amortizing note payable.

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

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***Derivative Instruments***

The Company has entered into several interest rate cap and swap agreements with several banks to reduce the impact of changes in interest rates associated with its debt obligations. The following is a summary of the Company's derivative instruments as of December 31, 2012:

<u>Derivative instruments</u>	<u>Notional amount</u>
Interest rate cap contracts with several banks with fixed rates between 3.21% and 5.63% per annum, nonamortizing notional amounts, with termination dates through November 2015	\$ 482,180
Interest rate swap contracts with several banks, with fixed rates between 0.48% and 3.96% per annum, amortizing notional amounts, with termination dates through November 2020	578,657
Total notional amount as of December 31, 2012	<u>\$1,060,837</u>

During January 2013, the Company entered into an interest rate swap contract with a bank, with a fixed rate at 0.667% per annum, a non-amortizing notional amount of \$7,341 and a term from March 27, 2013 through April 15, 2018.

During February 2013, the Company entered into an interest rate swap contract with a bank, with a fixed rate at 0.463% per annum, an amortizing notional amount with initial notional amount of \$40,000 and a term from February 15, 2013 through February 15, 2016.

During February 2013, the Company entered into an interest rate swap contract with a bank, with a fixed rate at 1.237% per annum, an amortizing notional amount with initial notional amount of \$6,452 and a term from April 16, 2013 through May 15, 2021.

During March 2013, the Company entered into an interest rate cap contract with a bank, which caps one-month LIBOR at 3.202% per annum, in non-amortizing notional amount of \$20,000 and a term from March 15, 2013 through June 15, 2013.

During March 2013, the Company entered into an interest rate cap contract with a bank, which caps one-month LIBOR at 3.02% per annum, in non-amortizing notional amount of \$230,000 and a term from March 15, 2013 through April 15, 2013.

The Company's interest rate swap agreements had a fair value liability of \$10,819 and \$16,110, as of December 31, 2012 and 2011, respectively, which are inclusive of counterparty risk. The primary external risk of the Company's interest rate swap agreements is the counterparty credit exposure, as defined as the ability of a counterparty to perform its financial obligations under a derivative contract. The Company monitors its counterparties' credit ratings on an on-going basis and they were in compliance with the related derivative agreements at December 31, 2012. The Company does not have any master netting arrangements with its counterparties. The change in fair value was recorded in the consolidated statement of income as unrealized (losses) gains on interest rate swaps and caps, net.

**(13) Segment Information**

As described in Note 1(a) "Nature of Operations", the Company operates in three reportable segments: Container Ownership, Container Management and Container Resale. The following tables show segment

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

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information for 2012, 2011 and 2010, reconciled to the Company's income before income tax and noncontrolling interest as shown in its consolidated statements of comprehensive income:

<b>2012</b>	<b>Container Ownership</b>	<b>Container Management</b>	<b>Container Resale</b>	<b>Other</b>	<b>Eliminations</b>	<b>Totals</b>
Lease rental income	\$ 383,127	\$ 862	\$ —	\$ —	\$ —	\$ 383,989
Management fees from external customers	—	21,764	4,405	—	—	26,169
Inter-segment management fees	—	47,526	7,300	—	(54,826)	—
Trading container sales proceeds	—	—	42,099	—	—	42,099
Gains on sale of containers, net	34,829	8	—	—	—	34,837
Total revenue	\$ 417,956	\$ 70,160	\$ 53,804	\$ —	\$ (54,826)	\$ 487,094
Depreciation expense	\$ 108,519	\$ 793	\$ —	\$ —	\$ (4,468)	\$ 104,844
Interest expense	\$ 72,886	\$ —	\$ —	\$ —	\$ —	\$ 72,886
Unrealized gains on interest rate swaps and caps, net	\$ 5,527	\$ —	\$ —	\$ —	\$ —	\$ 5,527
Segment income before income tax and noncontrolling interest	\$ 175,291	\$ 36,956	\$ 12,787	\$ (3,890)	\$ (10,588)	\$ 210,556
Total assets	\$ 3,408,194	\$ 130,786	\$ 9,088	\$ 4,977	\$ (76,965)	\$ 3,476,080
Purchases of long-lived assets	\$ 1,148,990	\$ 697	\$ —	\$ —	\$ —	\$ 1,149,687

<b>2011</b>	<b>Container Ownership</b>	<b>Container Management</b>	<b>Container Resale</b>	<b>Other</b>	<b>Eliminations</b>	<b>Totals</b>
Lease rental income	\$ 326,519	\$ 1,108	\$ —	\$ —	\$ —	\$ 327,627
Management fees from external customers	—	24,603	4,721	—	—	29,324
Inter-segment management fees	—	44,751	5,599	—	(50,350)	—
Trading container sales proceeds	—	—	34,214	—	—	34,214
Gains on sale of containers, net	31,598	33	—	—	—	31,631
Total revenue	\$ 358,117	\$ 70,495	\$ 44,534	\$ —	\$ (50,350)	\$ 422,796
Depreciation expense	\$ 85,643	\$ 791	\$ —	\$ —	\$ (3,257)	\$ 83,177
Interest expense	\$ 44,891	\$ —	\$ —	\$ —	\$ —	\$ 44,891
Unrealized losses on interest rate swaps and caps, net	\$ (3,849)	\$ —	\$ —	\$ —	\$ —	\$ (3,849)
Segment income before income tax and noncontrolling interest	\$ 177,694	\$ 36,772	\$ 10,759	\$ (3,314)	\$ (13,412)	\$ 208,499
Total assets	\$ 2,243,977	\$ 99,287	\$ 17,590	\$ 3,413	\$ (54,063)	\$ 2,310,204
Purchases of long-lived assets	\$ 749,766	\$ 707	\$ —	\$ —	\$ —	\$ 750,473

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(All currency expressed in U.S. dollars in thousands)

<b>2010</b>	<b>Container Ownership</b>	<b>Container Management</b>	<b>Container Resale</b>	<b>Other</b>	<b>Eliminations</b>	<b>Totals</b>
Lease rental income	\$ 234,577	\$ 1,250	\$ —	\$ —	\$ —	\$ 235,827
Management fees from external customers	—	23,678	5,459	—	—	29,137
Inter-segment management fees	—	24,350	4,627	—	(28,977)	—
Trading container sales proceeds	—	—	11,291	—	—	11,291
Gains on sale of containers, net	27,617	7	—	—	—	27,624
Total revenue	\$ 262,194	\$ 49,285	\$ 21,377	\$ —	\$ (28,977)	\$ 303,879
Depreciation expense	\$ 60,398	\$ 779	\$ —	\$ —	\$ (2,205)	\$ 58,972
Interest expense	\$ 18,151	\$ —	\$ —	\$ —	\$ —	\$ 18,151
Unrealized losses on interest rate swaps and caps, net	\$ (4,021)	\$ —	\$ —	\$ —	\$ —	\$ (4,021)
Segment income before income tax and noncontrolling interest	\$ 119,772	\$ 15,901	\$ 7,995	\$ (2,815)	\$ (2,596)	\$ 138,257
Total assets	\$ 1,660,626	\$ 114,060	\$ 996	\$ 3,290	\$ (31,765)	\$ 1,747,207
Purchases of long-lived assets	\$ 504,650	\$ 601	\$ —	\$ —	\$ —	\$ 505,251

General and administrative expenses are allocated to the reportable business segments based on direct overhead costs incurred by those segments. Amounts reported in the “Other” column represent activity unrelated to the active reportable business segments. Amounts reported in the “Eliminations” column represent inter-segment management fees between the Container Management and Container Ownership segments.

***Geographic Segment Information***

The Company’s container lessees use containers for their global trade utilizing many worldwide trade routes. The Company earns its revenue from international carriers when the containers are in use and carrying cargo around the world. Substantially all of the Company’s leasing related revenue are denominated in U.S. dollars. As all of the Company’s containers are used internationally, where no one container is domiciled in one particular place for a prolonged period of time, all of the Company’s long-lived assets are considered to be international with no single country of use.

**(14) Commitments and Contingencies**
***(a) Leases***

The Company has entered into several operating leases for office space. Rent expense amounted to \$1,479, \$1,600 and \$1,594 during 2012, 2011 and 2010, respectively.

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Notes to Consolidated Financial Statements—Continued

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Future minimum lease payment obligations under the Company's noncancelable operating leases at December 31, 2012 were as follows:

	<u>Operating leasing</u>
Year ending December 31:	
2013	\$ 1,558
2014	1,573
2015	1,525
2016	1,366
2017 and thereafter	285
Total	<u>\$ 6,307</u>

**(b) Restricted Cash**

Restricted interest-bearing cash accounts were established by the Company as additional collateral for outstanding borrowings under the Company's TW Revolving Credit Facility, TAP Funding Revolving Credit Facility, 2005-1 Bonds, 2011-1 Bonds, 2012-1 Bonds TMCL Secured Debt Facility and TMCL II Secured Debt Facility. The total balance of these restricted cash accounts was \$54,945 and \$45,858 as of December 31, 2012 and 2011, respectively.

**(c) Container Commitments**

At December 31, 2012, the Company had placed orders with manufacturers for containers to be delivered subsequent to December 31, 2012 in the total amount of \$22,756.

**(15) Share Option and Restricted Share Unit Plans**

As of December 31, 2012, the Company maintained one active share option and restricted share unit plan, the 2007 Plan. The 2007 Plan provides for the grant of share options, restricted share units, restricted shares, share appreciation rights and dividend equivalent rights. The 2007 Plan provides for grants of incentive share options only to the Company's employees or employees of any parent or subsidiary of TGH. Awards other than incentive share options may be granted to the Company's employees, directors and consultants or the employees, directors and consultants of any parent or subsidiary of TGH. Under the 2007 Plan, which was approved by the Company's shareholders on September 4, 2007, a maximum of 3,808,371 share awards may be granted under the plan. On February 23, 2010, the Company's Board of Directors approved an increase in the number of shares available for future issuance by 1,468,500 shares, which was approved by the Company's shareholders at the annual meeting of shareholders on May 19, 2010. At December 31, 2012, 1,078,548 shares were available for future issuance under the 2007 Plan.

Share options are granted at exercise prices equal to the fair market value of the shares on the grant date. Each employee's options vest in increments of 25% per year beginning approximately one year after an option's grant date. Unless terminated pursuant to certain provisions within the share option plans, including discontinuance of employment with the Company, all unexercised options expire ten years from the date of grant.

# TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES

## Notes to Consolidated Financial Statements—Continued

December 31, 2012, 2011, and 2010

(All currency expressed in U.S. dollars in thousands)

Beginning approximately one year after a restricted share unit's grant date for each restricted share unit granted in 2007, 2008 and 2009, each employee's restricted share units vest in increments of 15% per year for the first two years, 20% for the third year and 25% for the fourth and fifth year. Beginning approximately one year after a restricted share unit's grant date for each restricted share unit granted in 2010, 2011 and 2012, each employee's restricted share units vest in increments of 25% per year.

The following is a summary of activity in the Company's 2007 Plan for the years ended December 31, 2012, 2011 and 2010:

	Share options (common share equivalents)	Weighted average exercise price
Balances, December 31, 2009	1,502,916	\$ 15.01
Options granted during the period	151,687	\$ 28.26
Options exercised during the period	(364,046)	\$ 15.41
Options forfeited during the period	(32,475)	\$ 14.49
Balances, December 31, 2010	1,258,082	\$ 16.51
Options granted during the period	173,350	\$ 28.54
Options exercised during the period	(358,884)	\$ 15.29
Options forfeited during the period	(3,503)	\$ 18.48
Balances, December 31, 2011	1,069,045	\$ 18.86
Options granted during the period	201,658	\$ 28.21
Options exercised during the period	(302,100)	\$ 15.45
Options forfeited during the period	(2,675)	\$ 22.63
Balances, December 31, 2012	965,928	\$ 21.87
Options exercisable at December 31, 2012	317,340	\$ 16.30
Options vested and expected to vest at December 31, 2012	957,084	\$ 21.82

	Restricted share units	Weighted average grant date fair value
Balances, December 31, 2009	1,346,506	\$ 12.28
Share units granted during the period	152,687	\$ 25.62
Share units vested during the period	(193,241)	\$ 12.20
Share units forfeited during the period	(40,056)	\$ 12.04
Balances, December 31, 2010	1,265,896	\$ 13.90
Share units granted during the period	191,449	\$ 25.45
Share units vested during the period	(274,172)	\$ 13.23
Share units forfeited during the period	(4,561)	\$ 14.73
Balances, December 31, 2011	1,178,612	\$ 15.95
Share units granted during the period	213,295	\$ 28.29
Share units vested during the period	(376,056)	\$ 14.37
Share units forfeited during the period	(4,445)	\$ 17.58
Balances, December 31, 2012	1,011,406	\$ 19.13
Share units outstanding and expected to vest at December 31, 2012	1,000,827	\$ 19.33



# **TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Notes to Consolidated Financial Statements—Continued

December 31, 2012, 2011, and 2010

(All currency expressed in U.S. dollars in thousands)

The estimated weighted average grant date fair value of share options granted during 2012, 2011 and 2010 was \$9.42, \$11.60 and \$9.82 per share, respectively. As of December 31, 2012, \$14,953 of total compensation cost related to non-vested share option and restricted share unit awards not yet recognized is expected to be recognized over a weighted average period of 2.6 years. The aggregate intrinsic value of all options exercisable and outstanding, which represents the total pre-tax intrinsic value, based on the Company's closing common share price of \$31.46 per share as of December 31, 2012 was \$4,812. The aggregate intrinsic value is calculated as the difference between the exercise prices of the Company's share options that were in-the-money and the market value of the common shares that would have been issued if those share options were exercised as of December 31, 2012. The aggregate intrinsic value of all options exercised during 2012, based on the closing share price on the date each option was exercised was \$5,504.

The following table summarizes information about share options exercisable and outstanding at December 31, 2012:

	Share options exercisable		Share options outstanding	
	Number of shares	Weighted average exercise price	Number of shares	Weighted average exercise price
Range of per-share exercise prices				
\$7.10	47,320	\$ 7.10	106,090	\$ 7.10
\$16.50	201,104	16.50	201,104	16.50
\$16.97	38,106	16.97	141,938	16.97
\$28.05	—	—	191,658	28.05
\$28.26	30,810	28.26	143,582	28.26
\$28.54	—	—	171,556	28.54
\$31.34	—	—	10,000	31.34
	<u>317,340</u>	<u>\$ 16.30</u>	<u>965,928</u>	<u>\$ 21.87</u>

The weighted average contractual life of options exercisable and outstanding as of December 31, 2012 was 5.5 years and 7.5 years, respectively.

The fair value of each share option granted under the 2007 Plan was estimated on the date of grant using the Black-Scholes option pricing model for the years ended December 31, 2012, 2011 and 2010 with the following assumptions:

	2012	2011	2010
Risk-free interest rates	0.7% - 1.1%	1.1%	2.0%
Expected terms (in years)	5.2 - 5.7	5.7	6.3
Expected common share price volatilities	62.5%-67.1%	68.0%	50.1%
Expected dividends	4.5% - 6.3%	4.9%	3.8%
Expected forfeitures	1.0%	5.0%	5.0%

The risk-free interest rate is based on the implied yield on a U.S. Treasury zero-coupon issue with a remaining term equal to the expected term of the share option life. The expected term is calculated based on historical exercises for share options granted during the years ended December 31, 2012 and 2011 and the short-cut method was used to calculate the expected term for share options granted during the years ended December 31, 2010 because the Company did not have sufficient historical information to calculate the expected terms. The expected common share price volatility for the 2007 Plan is based on the historical

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Notes to Consolidated Financial Statements—Continued

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volatility of publicly traded companies within the Company's industry. The dividend yield reflects the estimated future yield on the date of grant. The Company only recognizes expense for share-based awards that are ultimately expected to vest. The forfeiture rate is based on the Company's estimate of share options that are expected to cancel prior to vesting.

**(16) Subsequent Events**

***Dividend***

On February 8, 2013, the Company's board of directors approved and declared a quarterly cash dividend of \$0.45 per share on the Company's issued and outstanding common shares, payable on March 5, 2013 to shareholders of record as of February 22, 2013.

***Other Subsequent Events***

See Note 12 "Revolving Credit Facilities, Bonds Payable and Secured Debt Facilities, and Derivative Instruments" for other subsequent events.

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**  
**SCHEDULE I—CONDENSED STATEMENTS OF COMPREHENSIVE INCOME**  
Parent Company Information  
Years Ended December 31, 2012, 2011 and 2010  
(All currency expressed in United States dollars in thousands)

	2012	2011	2010
Operating expenses:			
General and administrative expense	\$ 2,555	\$ 2,676	\$ 2,818
Long-term incentive compensation expense	1,340	638	—
Total operating expenses	3,895	3,314	2,818
Loss from operations	(3,895)	(3,314)	(2,818)
Other income:			
Equity in net income of subsidiaries	209,036	207,332	136,579
Interest income	5	—	—
Other income	—	—	3
Net other income	209,041	207,332	136,582
Income before income tax	205,146	204,018	133,764
Income tax expense	(83)	—	—
Net income	205,063	204,018	133,764
Less: Net loss (income) attributable to the noncontrolling interests	1,887	(14,412)	(13,733)
Net income attributable to Textainer Group Holdings Limited common shareholders	<u>\$206,950</u>	<u>\$189,606</u>	<u>\$120,031</u>
Net income attributable to Textainer Group Holdings Limited common shareholders per share:			
Basic	\$ 4.04	\$ 3.88	\$ 2.50
Diluted	\$ 3.96	\$ 3.80	\$ 2.43
Weighted average shares outstanding (in thousands):			
Basic	51,277	48,859	48,108
Diluted	52,231	49,839	49,307
Comprehensive income:			
Foreign currency translation adjustments	142	24	59
Comprehensive loss (income) attributable to the noncontrolling interest	1,887	(14,412)	(13,733)
Comprehensive income attributable to Textainer Group Holdings Limited common shareholders	<u>\$207,092</u>	<u>\$189,630</u>	<u>\$120,090</u>

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**
**SCHEDULE I—CONDENSED BALANCE SHEETS**

Parent Company Information

December 31, 2012 and 2011

(All currency expressed in United States dollars in thousands)

	<u>2012</u>	<u>2011</u>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 4,055	\$ 2,587
Prepaid expenses	252	230
Due from affiliates, net	851	215
Other assets	—	50
Total current assets	5,158	3,082
Investments in subsidiaries	1,002,734	681,589
Total assets	<u>\$ 1,007,892</u>	<u>\$ 684,671</u>
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Accrued expenses	\$ 389	\$ 843
Total current liabilities	389	843
Shareholders' equity:		
Common shares	558	490
Additional paid-in capital	354,448	154,460
Accumulated other comprehensive income (loss)	114	(28)
Retained earnings	652,383	528,906
Total shareholders' equity	1,007,503	683,828
Total liabilities and shareholders' equity	<u>\$ 1,007,892</u>	<u>\$ 684,671</u>

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**
**SCHEDULE I—CONDENSED STATEMENTS OF CASH FLOWS**
**Parent Company Information**
**Years ended December 31, 2012, 2011 and 2010**
**(All currency expressed in United States dollars in thousands)**

	<b>2012</b>	<b>2011</b>	<b>2010</b>
<b>Cash flows from operating activities:</b>			
Net income attributable to Textainer Group Holdings Limited common shareholders	<u>\$ 205,063</u>	<u>\$ 204,018</u>	<u>\$ 133,764</u>
Adjustments to reconcile net income to net cash provided by operating activities:			
Equity in income of subsidiaries	(209,036)	(207,332)	(136,579)
Dividends received from subsidiaries	76,500	53,500	40,500
Share-based compensation	7,968	6,177	5,457
Decrease (increase) in:			
Accounts receivable, net	50	115	(165)
Prepaid expenses	(22)	36	32
Other assets	—	—	4
Increase (decrease) in:			
Accrued expenses	(454)	64	483
Total adjustments	<u>(124,994)</u>	<u>(147,440)</u>	<u>(90,268)</u>
Net cash provided by operating activities	<u>80,069</u>	<u>56,578</u>	<u>43,496</u>
<b>Cash flows from investing activities:</b>			
Increase in investments in subsidiaries, net	(184,142)	(177)	(679)
Net cash used in investing activities	<u>(184,142)</u>	<u>(177)</u>	<u>(679)</u>
<b>Cash flows from financing activities:</b>			
Issuance of common shares upon exercise of share options	4,669	6,065	5,033
Issuance of common shares in public offering, net of offering costs	184,839	—	—
Dividends paid	(83,473)	(62,549)	(47,631)
Due (from) to affiliates, net	(636)	513	48
Net cash provided by (used in) financing activities	<u>105,399</u>	<u>(55,971)</u>	<u>(42,550)</u>
Effect of exchange rate changes	142	24	59
Net increase in cash and cash equivalents	<u>1,468</u>	<u>454</u>	<u>326</u>
Cash and cash equivalents, beginning of the year	<u>2,587</u>	<u>2,133</u>	<u>1,807</u>
Cash and cash equivalents, end of the year	<u>\$ 4,055</u>	<u>\$ 2,587</u>	<u>\$ 2,133</u>

## TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES

## Valuation Accounts

Years ended December 31, 2012, 2011 and 2010

(All currency expressed in United States dollars in thousands)

	<u>Balance at Beginning of Period</u>	<u>Additions Charged to Expense</u>	<u>Additions/ (Deductions)</u>	<u>Balance at End of Period</u>
<b>December 31, 2010</b>				
Accounts receivable, allowance for doubtful accounts	\$ 8,347	\$ 145	\$ 161	\$8,653
<b>December 31, 2011</b>				
Accounts receivable, allowance for doubtful accounts	\$8,653	\$ 3,007	\$ (3,820)	\$ 7,840
<b>December 31, 2012</b>				
Accounts receivable, allowance for doubtful accounts	\$ 7,840	\$ 1,525	\$ (1,340)	\$ 8,025

## ITEM 19. EXHIBITS

The following exhibits are filed as part of this Annual Report on Form 20-F:

<u>Exhibit Number</u>	<u>Description of Document</u>
1.1	Memorandum of Association of Textainer Group Holdings Limited(1)
1.2	Bye-laws of Textainer Group Holdings Limited(2)
2.1	Form of Common Share Certificate(3)
4.1	Office Lease, dated August 8, 2001, by and between Pivotal 650 California St., LLC and Textainer Equipment Management (U.S.) Limited (the "Office Lease")(4)
4.2	First Amendment to the Office Lease, dated as of December 23, 2008, by and between A – 650 California Street, LLC and Textainer Equipment Management (U.S.) Limited(5)
4.3*	Employment Agreement, dated as of October 1, 2011 by and between Textainer Equipment Management (U.S.) Limited and Philip K. Brewer(6)
4.4*†	Employment Agreement, dated April 1, 2012 by and between Textainer Equipment Management (U.S.) Limited and Ernest J. Furtado
4.5*	Employment Agreement, dated October 1, 2011 by and between Textainer Equipment Management (U.S.) Limited and Robert D. Pedersen(7)
4.6*	Employment Agreement, dated January 10, 2012 by and between Textainer Equipment Management (U.S.) Limited and Hilliard C. Terry, III(8)
4.7*	2007 Short-Term Incentive Plan effective January 1, 2007(9)
4.8*	2007 Share Incentive Plan (as amended and restated effective May 19, 2010)(10)
4.9*	2008 Bonus Plan(11)
4.10*	Form of Indemnification Agreement(12)
4.11	Second Amended and Restated Indenture, dated as of May 26, 2005, by and between Textainer Marine Containers Limited, as issuer, and Wells Fargo Bank, National Association, as indenture trustee (the "Second Amended and Restated Indenture")(13)
4.12	Amendment Number 1, dated as of June 3, 2005, to the Second Amended and Restated Indenture(14)
4.13	Amendment Number 2, dated as of June 8, 2006, to the Second Amended and Restated Indenture(15)
4.14	Amendment Number 3, dated as of July 2, 2008, to the Second Amended and Restated Indenture(16)
4.15	Amendment Number 4, dated as of June 29, 2010, to the Second Amended and Restated Indenture(17)
4.16	Amendment Number 5, dated as of June 29, 2010, to the Second Amended and Restated Indenture(18)
4.17	Omnibus Amendment, Consent and Waiver, dated as of June 10, 2011, to the Second Amended and Restated Indenture(19)
4.18	Amendment Number 7, dated as of February 3, 2012, to the Second Amended and Restated Indenture(20)
4.19†	Amendment Number 8, dated as of March 30, 2012, to the Second Amended and Restated Indenture
4.20	Textainer Marine Containers Limited Series 2005-1 Supplement, dated as of May 26, 2005 to the Second Amended and Restated Indenture(21)

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<u>Exhibit Number</u>	<u>Description of Document</u>
4.21	Textainer Marine Containers Limited Series 2011-1 Supplement, dated as of June 29, 2010 to the Second Amended and Restated Indenture(22)
4.22†	Textainer Marine Containers Limited Series 2012-1 Supplement, dated as of April 18, 2012 to the Second Amended and Restated Indenture
4.23†	Indenture, dated as of May 1, 2012, by and between Textainer Marine Containers Limited II, as issuer, and Wells Fargo Bank, National Association, as indenture trustee (the “TMCLII Indenture”)
4.24†	Textainer Marine Containers Limited II Series 2012-1 Supplement, dated as of May 1, 2012 to the TMCLII Indenture
4.25†	Credit Agreement, dated September 24, 2012, by and among, Textainer Limited, as borrower, Textainer Group Holdings Limited, as guarantor, Bank of America, N.A., as agent and the lenders party thereto
4.26**	Fourth Amended and Restated Equipment Management Services Agreement, dated as of June 1, 2002, by and between Textainer Equipment Management Limited and Leased Assets Pool Company Limited(23)
4.27	Amendment to Fourth Amended and Restated Equipment Management Services Agreement, dated as of September 12, 2007, by and between Textainer Equipment Management Limited and Leased Asset Pool Company Limited(24)
4.28**	Container Management Services Agreement (revised), dated as of September 1, 1990, by and between Isam K. Kabbani and Textainer Equipment Management N.V., as amended(25)
4.29	Credit Agreement, dated August 5, 2011, by and among TW Container Leasing, Ltd., as Borrower, the Lenders from time to time party thereto and Wells Fargo Securities LLC, as Administrative Agent (“TWCL Credit Agreement”)(26)
4.30	Amendment No. 1, dated March 26, 2012 to the TWCL Credit Agreement(27)
4.31†	Amendment No. 2, dated October 1, 2012 to the TWCL Credit Agreement
4.32†	Amendment No. 3, dated December 12, 2012 to the TWCL Credit Agreement
4.33	Members Agreement, dated August 5, 2011 of the members of TW Container Leasing, Ltd, and Supplement Number 1 to the Members Agreement, dated August 5, 2011(28)
4.34	Equipment Management Services Agreement, dated August 5, 2011, between Textainer Equipment Management Limited and TW Container Leasing, Ltd.(29)
4.35	Share Purchase Agreement, dated June 29, 2011 between TCG Fund I, L.P. and Textainer Limited(30)
4.36	Contribution and Distribution Agreement, dated June 30, 2011 among TCG Fund I, L.P., Textainer Limited and Textainer Marine Containers Limited(31)
4.37†	Credit Agreement, dated April 30, 2012, among TAP Funding Ltd., the lenders from time to time party thereto and Wells Fargo Securities LLC as administrative agent (“TAP Funding Credit Agreement”)
4.38†	Amendment No. 1, dated June 29, 2012, to TAP Funding Credit Agreement
4.39†	Amendment No. 2, dated December 19, 2012, to TAP Funding Credit Agreement
4.40†	Share Purchase Agreement, dated December 20, 2012, between TAP Ltd. and Textainer Limited
4.41†	Members Agreement, dated December 20, 2012 of the members of TAP Funding Ltd.
4.42†	Amended and Restated Management Agreement, dated December 20, 2012, between Textainer Equipment Management Limited and TAP Funding Ltd.



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<u>Exhibit Number</u>	<u>Description of Document</u>
4.43†	Container Purchase Agreement, dated December 20, 2012, between Textainer Group Holdings Limited and TAP Funding Ltd.
8.1†	Subsidiaries of the Registrant
12.1†	Certification of the Chief Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
12.2†	Certification of the Chief Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a) under the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
13.1†	Certification of the Chief Executive Officer required by Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
13.2†	Certification of the Chief Financial Officer required by Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
15.1†	Consent of KPMG LLP
101.INS†	XBRL Instance Document
101.SCH†	XBRL Taxonomy Extension Schema Document
101.CAL†	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF†	XBRL Taxonomy Definition Linkbase Document
101.LAB†	XBRL Taxonomy Extension Label Linkbase Document
101.PRE†	XBRL Taxonomy Extension Presentation Linkbase Document

† Filed herewith.

\* Indicates management contract or compensatory plan.

\*\* Confidential treatment requested for certain portions of this exhibit, which portions are omitted and filed separately with the SEC.

- (1) Incorporated by reference to Exhibit 3.1 to the Registrant's Registration Statement on Form F-1 (File No. 333-146304) filed with the SEC on September 26, 2007.
- (2) Incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form F-1 (File No. 333-146304) filed with the SEC on September 26, 2007.
- (3) Incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form F-1 (File No. 333-146304) filed with the SEC on September 26, 2007.
- (4) Incorporated by reference to Exhibit 10.1 to the Registrant's Registration Statement on Form F-1 (File No. 333-146304) filed with the SEC on September 26, 2007.
- (5) Incorporated by reference to Exhibit 4.2 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 16, 2009.
- (6) Incorporated by reference to Exhibit 4.3 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 15, 2012.
- (7) Incorporated by reference to Exhibit 4.5 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 15, 2012.
- (8) Incorporated by reference to Exhibit 4.6 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 15, 2012.
- (9) Incorporated by reference to Exhibit 10.6 to the Registrant's Registration Statement on Form F-1 (File No. 333-146304) filed with the SEC on September 26, 2007.
- (10) Incorporated by reference to Exhibit 4.4 to the Registrant's Registration Statement on Form S-8 (File No. 333-171409) filed with the SEC on December 23, 2010.

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- (11) Incorporated by reference to Exhibit 10.8 to the Registrant's Registration Statement on Form F-1 (File No. 333-146304) filed with the SEC on September 26, 2007.
- (12) Incorporated by reference to Exhibit 4.10 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 15, 2012.
- (13) Incorporated by reference to Exhibit 10.10 to the Registrant's Registration Statement on Form F-1 (File No. 333-146304) filed with the SEC on September 26, 2007.
- (14) Incorporated by reference to Exhibit 10.11 to the Registrant's Registration Statement on Form F-1 (File No. 333-146304) filed with the SEC on September 26, 2007.
- (15) Incorporated by reference to Exhibit 10.12 to the Registrant's Registration Statement on Form F-1 (File No. 333-146304) filed with the SEC on September 26, 2007.
- (16) Incorporated by reference to Exhibit 4.14 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 16, 2009.
- (17) Incorporated by reference to Exhibit 4.15 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 18, 2011.
- (18) Incorporated by reference to Exhibit 4.16 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 18, 2011.
- (19) Incorporated by reference to Exhibit 4.17 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 15, 2012.
- (20) Incorporated by reference to Exhibit 4.18 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 15, 2012.
- (21) Incorporated by reference to Exhibit 10.14 to the Registrant's Registration Statement on Form F-1 (File No. 333-146304) filed with the SEC on September 26, 2007.
- (22) Incorporated by reference to Exhibit 4.21 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 15, 2012.
- (23) Incorporated by reference to Exhibit 10.17 to the Registrant's Registration Statement on Form F-1 (File No. 333-146304) filed with the SEC on September 26, 2007.
- (24) Incorporated by reference to Exhibit 10.18 to the Registrant's Registration Statement on Form F-1 (File No. 333-146304) filed with the SEC on September 26, 2007.
- (25) Incorporated by reference to Exhibit 10.19 to the Registrant's Registration Statement on Form F-1 (File No. 333-146304) filed with the SEC on September 26, 2007.
- (26) Incorporated by reference to Exhibit 4.27 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 15, 2012.
- (27) Incorporated by reference to Exhibit 4.32 to the Registrant's Amended Annual Report on Form 20-F/A (File No. 001-33725) filed with the SEC on June 27, 2012.
- (28) Incorporated by reference to Exhibit 4.28 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 15, 2012.
- (29) Incorporated by reference to Exhibit 4.29 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 15, 2012.
- (30) Incorporated by reference to Exhibit 4.30 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 15, 2012.
- (31) Incorporated by reference to Exhibit 4.31 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 15, 2012.

**EMPLOYMENT AGREEMENT**

THIS AGREEMENT made as of the 1st day of April 2012 (the “Effective Date”) by and between TEXTAINER EQUIPMENT MANAGEMENT (U.S.) LIMITED (“Employer”), a Delaware corporation, and ERNEST J. FURTADO (hereinafter referred to as “Employee”) (jointly, the “Parties”).

**RECITALS**

Employee has been employed by Employer or an Affiliate of the Employer since the 6th day of May 1991 (the “Employment Date”). The terms and conditions of Employee’s employment with Employer are set forth in that certain employment agreement dated the 1st day of January 1998 by and between Employee and Employer (the “Original Agreement”).

Employee and Employer desire to terminate the Original Agreement and replace it in its entirety with this Agreement.

In consideration of the mutual covenants and agreements hereinafter set forth, as of the Effective Date, Employee agrees to continue such employment, upon the following terms and conditions:

**DEFINITIONS**

“**Affiliate**” means, when used with reference to Employer (a) any entity that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the Employer; or (b) any person or entity owning or controlling ten percent (10%) or more of the outstanding voting securities of Employer. For the purposes of this definition, “control”, when used with respect to any entity, means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Base Salary**” means Employee’s annual base compensation in effect from time to time hereunder, exclusive of any short- or long-term incentive compensation, commissions or the value of any Benefit Plans.

“**Base Salary Program**” means the Base Salary Program of Employer, as in effect from time to time.

**“Benefit Plans”** means employee benefit programs which Employer has or will establish for health, dental, vision insurance, disability, life insurance, retirement and other benefits for its U.S.-based employees.

**“Cause”** means a termination of Employee’s employment due to one or more of the following, as determined by Employer: (a) the failure of Employee to comply with a lawful instruction of Employer so long as the instruction is consistent with the scope and responsibilities of Employee’s position after there has been delivered to the Employee a written demand for performance from Employer and Employee has not corrected such failure within thirty (30) days of such written demand; (b) Employee’s failure or refusal to perform according to, or to comply with, the material policies, procedures or practices established by Employer (including but not limited to, any policies, procedures, practices or agreements related to confidentiality, proprietary information, trade secrets, corporate governance, conflicts of interest, and code of conduct); (c) Employee’s commission of or participation in a material fraud or act of dishonesty against Employer; or (d) Employee’s conviction of, or the entering of a guilty plea or a plea of “no contest” with respect to (i) a felony involving fraud, dishonesty or an act of moral turpitude or (ii) other crime, provided that with respect to such other crime, the crime has had or will have a material detrimental effect on TGH’s or an Affiliate’s business or reputation.

**“Compensation Committee”** means the Compensation Committee of the board of directors of TGH.

**“Confidential Information”** means, without limitation, for Employer and its Affiliates: (a) records, data, specifications, trade secrets and customer lists; (b) the names, buying habits and practices of customers; (c) marketing methods and related data; (d) the names of any vendors or suppliers; (e) costs of material and the prices at which products or services are sold; (f) manufacturing and sales costs; (g) lists or other written records used in the business; (h) compensation paid to employees and other terms of employment; and (i) other confidential information of, about or concerning the business, its manner of operation or other confidential data of any kind, nature or description.

**“Retirement”** means:

(a) A termination of Employee’s employment by Employee that is designated by Employee in writing as a voluntary termination other than due to Employee’s death and that occurs after (x) attaining age fifty (50), (y) completing at least ten (10) Years of Service with Employer and (z) having 70 points, where points are made up of Years of Service with Employer plus Employee’s age at termination. For example, if Employee has fifteen (15) Years of Service and is age sixty (60), Employee would have seventy-five (75) points.

For this purpose, "Years of Service" equals the number of full months from Employee's latest hire date with Employer to the date of his termination, divided by 12.

"STIP" means TGH's short-term incentive plan.

"TGH" means Textainer Group Holdings Limited, a Bermuda corporation, the parent company of Employer.

#### **AGREEMENT**

1. Duties: Employee shall be employed as, and shall perform the duties of Senior Vice President, Chief Accounting and Compliance Officer of Employer, or shall serve in such other capacity and with such other duties and for such Affiliates as Employer shall hereafter from time to time prescribe. Employee is subject to, and hereby agrees to comply with the rules, regulations, practices and policies of Employer and its Affiliates, as may be adopted or modified from time to time in the sole discretion of Employer and its Affiliates, including but not limited to any rules, regulations, practices, and policies related to corporate governance, conflicts of interest, and code of conduct.

2. Term of Employment: The term of employment shall commence on the Effective Date and shall terminate as provided in Clause 8 hereof.

3. Compensation: In consideration of Employee's services during the term of Employee's employment hereunder, Employee shall be paid compensation and receive benefits from Employer as follows:

(a) Employer shall pay Employee a Base Salary in accordance with Employer's standard compensation policies as they exist from time to time, subject to such deductions, if any, as are required by law, with such increases during the term of this Agreement as may be set by Employer. Employee's Base Salary shall be reviewed at least annually according to Employer's Base Salary Program.

(b) Employee is hereby designated as a participant in the STIP for 2012, a copy of which is incorporated by reference into this Agreement, and shall continue to be so designated for the remainder of 2012 subject to Employee's continued employment with Employer. Employee shall be eligible to receive an annual incentive award for each calendar year in

accordance with, and subject to, the terms and conditions of the short-term incentive compensation plan of Employer or TGH which is in effect for such year.

(c) Employee will be eligible to receive awards of share options or other equity awards pursuant to the Textainer Group Holdings Limited 2007 Share Incentive Plan ("Plan"), as may be amended from time to time. Any such awards will be subject to approval of the Compensation Committee and the terms and conditions of the Plan and applicable award agreements to be entered into by and between Employee and TGH. The awards may be scheduled to vest at such times and under such conditions as determined by the Compensation Committee and set forth in the applicable award agreement.

(d) Employee shall be entitled to vacation leave in accordance with Employer's standard vacation policy as it exists from time to time. This vacation leave shall be in addition to the public holidays Employer recognizes for its employees. Employee's accrued vacation leave, if any, as of the Effective Date shall be carried forward under this Agreement. Employee shall not accrue vacation leave in excess of the amount allowed under Employer's standard vacation policy for U.S.-based employees, as it exists from time to time. Upon termination of employment for whatever reason, Employee shall receive the economic value of Employee's accrued but unused vacation leave, which value shall be calculated using only Employee's then current Base Salary.

(e) Employee shall also be entitled to fully participate in other Benefit Plans established for Employer's U.S.-based employees. The extent of Employee's participation in or coverage by any such Benefit Plans shall be determined by Employer, but in no case shall be less than the participation and/or coverage provided to other officers and senior executives of Employer or its Affiliates. Employee acknowledges and agrees that Employer may in its discretion terminate at any time or modify from time to time such Benefit Plans.

Employee shall be responsible for any taxes due related to the receipt of any of the above items of compensation and benefits from Employer. Employee expressly acknowledges and agrees that Employer will not compensate Employee for any such taxes. Employer will deduct and withhold from any amount payable to Employee under this Agreement such amounts as Employer is required by law to deduct and withhold. Employer may also deduct and withhold from any such amount, to the extent permitted by law, such amounts as the Employee may owe to Employer.

4. Indemnity: Employee shall be indemnified in accordance with the Indemnification Agreement entered into between Employee and Employer or one or more of its Affiliates.

5. Exclusivity of Services: Employee agrees to devote Employee's full-time and exclusive services (except for attention to personal interests outside normal office hours) to Employer and its Affiliates. Any exception to this must be approved in writing by Employer.

6. Conflict of Interest and Non-Competition: During Employee's employment hereunder, Employee shall not, directly or indirectly, either individually or as an employee, agent, partner, shareholder, consultant, or in any other capacity, participate, engage in, or have any financial or other interest in any business which is competitive in any manner whatsoever with any business in which Employer, any of its Affiliates, or the successors or assigns of Employer and its Affiliates are now or may hereafter become engaged. This prohibition shall not include ownership by Employee of less than five percent (5%) of the outstanding shares of any publicly-traded corporation, provided that Employee does not otherwise participate in that corporation as a director, officer, or in any other capacity.

7. Confidential Information: Employee realizes that during the course of Employee's employment, Employee will produce and/or have access to Confidential Information. The Parties agree that, as between them, the Confidential Information contains important, material and confidential trade secrets and affects the successful conduct of the business and goodwill of Employer and its Affiliates. The Parties further agree that any breach of any term of this Clause is a material breach of this Agreement. During or subsequent to Employee's employment by Employer, Employee shall hold in confidence and shall not directly or indirectly disclose, use, copy or make lists of any such Confidential Information, except to the extent authorized in writing by Employer or an Affiliate or where Employee is compelled or required to do so in a Court of Law or in conjunction with any legal proceedings. All Confidential Information relating to the business of Employer and its Affiliates, which Employee shall prepare, use or come into contact with shall be and remain the sole property of Employer and its Affiliates, shall not be removed by Employee from the premises of Employer or its Affiliates without the prior consent of Employer or the relevant Affiliate, except in the normal course of carrying out Employee's responsibilities, and shall be promptly returned by Employee to Employer or the relevant Affiliate upon any termination of this Agreement.

8. Termination:

(a) With or Without Cause: Notwithstanding any other provision of this Agreement, either party may terminate this Agreement and Employee's employment at any time, for any reason, with or without cause, and with or without notice except as in Clause 8(c) below.

(b) Death: In the event of Employee's death, this Agreement shall terminate automatically. Subject to Clause 11 below, Employee's beneficiary will receive:

(i) A prorated incentive award based on the percentage of the STIP year over which Employee was employed by Employer. Such percentage will be applied to the bonus amount that would have been payable to Employee based on actual achievement of the applicable corporate performance criteria had Employee remained employed through the date incentive awards under the STIP are payable to employees generally (the "STIP Payment Date"). The prorated incentive award will be paid to Employee's beneficiary on the STIP Payment Date, plus

(ii) With respect to all awards issued under TGH's share plans and outstanding immediately prior to the Termination Date, Employee will immediately vest in and have the right to exercise such awards, all restrictions will lapse, and all performance goals or other vesting criteria will be deemed achieved at target levels and all other terms and conditions met.

(c) Incapacity: If Employee is materially incapacitated from fully performing Employee's duties pursuant to this Agreement by reason of illness or other incapacity or by reason of any statute, law, ordinance, regulation, order, judgment or decree, Employer may terminate this Agreement and Employee's employment by written notice to Employee, but only in the event that such conditions shall aggregate not less than ninety (90) days during any twelve (12) month period during Employee's term of employment.

9. Severance: In the event Employer terminates Employee's employment pursuant to Clause 8(a) for any reason other than for Cause, then, subject to Clause 11 below and Employee's continued compliance with Clause 16, Employee shall be entitled to receive:

(a) if Employee has been in the employ of Employer (whether pursuant to this Agreement or otherwise) as of the date of Employee's termination (the "Termination Date") for an aggregate period of less than ten (10) years after the Employment Date:

(i) A lump sum severance payment equal to six (6) months of Employee's Base Salary in effect as of the Termination Date, plus

(ii) If Employee and any spouse and/or dependents of the Employee ("Family Members") has coverage on the Termination Date under a Benefit Plan that provides medical, dental or vision coverage and Employee is eligible for and validly elects to continue coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986, 29 U.S.C. Sections 1161-1168; 26 U.S.C. Section 4980B(f), as amended, and all applicable regulations (referred to collectively as "COBRA") for the Employee and his Family Members, such continued coverage will be provided to Employee and his Family Members for a period of up to six (6) months following the Termination Date at a cost to Employee that is no greater than that which would have been incurred by Employee had Employee remained as an employee of Employer.



(b) if Employee has been in the employ of Employer (whether pursuant to this Agreement or otherwise) for an aggregate period of ten (10) years or more after the Employment Date:

(i) A lump sum severance payment equal to twelve (12) months of Employee's Base Salary in effect as of the Termination Date, plus

(ii) If Employee and any spouse and/or dependents of the Employee ("Family Members") has coverage on the Termination Date under a Benefit Plan that provides medical, dental or vision coverage and Employee is eligible for and validly elects to continue coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986, 29 U.S.C. Sections 1161-1168; 26 U.S.C. Section 4980B(f), as amended, and all applicable regulations (referred to collectively as "COBRA") for the Employee and his Family Members, such continued coverage will be provided to Employee and his Family Members for a period of up to twelve (12) months following the Termination Date at a cost to Employee that is no greater than that which would have been incurred by Employee had Employee remained as an employee of Employer.

10. Retirement: In the event Employee terminates employment pursuant to Clause 8(a) due to Retirement, then, subject to Clause 11 below and Employee's continued compliance with Clause 16, Employee shall be entitled to receive:

(a) A lump sum severance payment equal to one month of Employee's Base Salary in effect as of the Termination Date, subject to a minimum amount of \$3,500 and maximum amount of \$10,000, plus

(b) A prorated incentive award based on the percentage of the STIP year over which Employee was employed by Employer. Such percentage will be applied to the bonus amount that would have been payable to Employee based on actual achievement of the applicable corporate performance criteria had Employee remained employed through the STIP Payment Date. The prorated incentive award will be paid to Employee on the STIP Payment Date.

11. Release: The receipt of any payment pursuant to Clauses 8(b), 9 or 10, above, will be subject to Employee timely signing and not revoking a standard release of all claims in a form reasonably satisfactory to Employer (the "Severance Release"). To be timely, the Severance Release must become effective and irrevocable no later than sixty (60) days following the Termination Date (the "Severance Release Deadline"). If the Severance Release does not become effective and irrevocable by the Severance Release Deadline, Employee will forfeit any rights to the severance benefits described in Clauses 8(b), 9 or 10, as applicable. In no event will any severance benefits be paid under Clauses 8(b), 9 or 10, until the Severance Release becomes effective and irrevocable. Subject to Annex A attached hereto, severance benefits will commence or be provided once the Severance Release becomes effective and irrevocable.

12. Excise Taxes. Notwithstanding anything herein to the contrary, in the event that any payments or benefits paid or payable hereunder or otherwise to Employee (the "Payments") would (a) constitute "parachute payments" within the meaning of Section 280G of the Code, and (b) but for this sentence, would be subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then such Payments will be reduced to be equal to the Reduced Amount (as defined below) if and to the extent that a reduction in the Payments would result in Employee retaining a larger amount, on an after-tax basis (taking into account federal, state and local income and employment taxes and the Excise Tax), than if Employee received the entire amount of such Payments in accordance with their existing terms. The "Reduced Amount" will be the largest portion of the Payments that would result in no portion of the Payments being subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction shall occur in a manner necessary to provide Employee with the greatest economic benefit. If more than one manner of reduction of payments or benefits necessary to arrive at the Reduced Amount yields the greatest economic benefit, the payments and benefits shall be reduced pro rata. Employee may not exercise any discretion with respect to the ordering of any reductions of payments or benefits under this Clause 12. Unless the Parties otherwise agree in writing, any determination required under this Clause 12 shall be made in writing by Employer's or an Affiliate's independent public accountants (the "Accountants"), whose determination shall be conclusive.

and binding upon Employer and Employee for all purposes. For purposes of making the calculations required by this Clause 12, the Accountants may make reasonable assumptions and approximations concerning applicable taxes. The Parties shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Clause 12. Employer shall bear all costs incurred for and by the Accountants in connection with any calculations or determinations contemplated by this Clause 12.

13. Remedies - Injunction: In the event of a breach or threatened breach by Employee of any of the provisions of this Agreement, Employee agrees that Employer and its Affiliates, in addition to and not in limitation of any other rights, remedies, or damages available to Employer at law or in equity, shall be entitled to seek a preliminary and a permanent injunction from a court of competent jurisdiction in order to prevent or restrain any such breach by Employee or by Employee's partners, agents, representatives, servants, employers, employees and/or any and all persons directly or indirectly acting for or with Employee. Nothing in Clause 14 below shall limit the Employer from applying to any court of competent jurisdiction for the equitable relief noted in this Clause to which the Employer may be entitled without reference to an arbitrator for any decision whatsoever under Clause 14.

14. Arbitration: All disputes concerning the meaning or effect of this Agreement and all disputes arising under this Agreement (except those arising under Clause 13 above), including but not limited to all claims of discrimination based on age, race, creed, color, sex, national origin, disability, gender preference or any other claim of discrimination arising under any state or federal law, including, but not limited to the federal Title VII of the Civil Rights Act, as amended, and the California Fair Employment and Housing Act, shall be subject to final and binding arbitration in accordance with the Code of Civil Procedure of the State of California or under such other procedures as the Parties may hereafter agree to in writing.

15. Return of Information: In the event of termination of Employee's employment for any reason, Employee shall immediately deliver to Employer or the relevant Affiliate all originals and copies in Employee's custody or control of any and all Confidential Information, equipment, and written materials obtained by Employee from Employer, any Affiliate of Employer or any representative or client of Employer during the period of employment.

16. Post-Employment Non-Solicitation of Other Employees: Employee agrees that for a period of one (1) year after termination of Employee's employment, Employee will not directly or indirectly solicit or otherwise discuss with any other employee of Employer or any of its Affiliates, for as long as such employee remains employed by Employer or its Affiliates, any terms or conditions relating to such employee's leaving the employ of Employer or its Affiliates. The receipt

of any severance benefits pursuant to Clauses 9 or 10 will be subject to Employee not violating the provisions of this Clause 16. In the event Employee breaches the provisions of Clause 16, all continuing payments and benefits to which Employee may otherwise be entitled pursuant to Clauses 9 or 10 will immediately cease and Employer will be entitled to any other rights and remedies and may take any other action legally permissible as a result of breaching the provisions of Clause 16.

17. Representation and Warranty Regarding Prior Obligations of Confidentiality: Employee represents and warrants that Employee's performance of all the terms of this Agreement does not and will not breach any agreement previously entered into by Employee to keep in confidence proprietary information acquired by Employee in confidence or in trust prior to Employee's employment by Employer. Employee represents that Employee has not entered into, and agrees not to enter into, any agreement, either written or oral, which is or may be in conflict with this Agreement.

18. Survival of Provisions: Each of the provisions contained in this Agreement shall survive the termination of Employee's employment with Employer to the extent that each provision remains enforceable and relevant to any post-termination proceedings.

19. Notices: Any notice under this Agreement shall be deemed sufficient if addressed in writing and delivered or mailed to Employer or Employee at the address set forth below or to such other address as Employer or Employee may designate by notice in writing to the other.

If to Employer:                      Textainer Equipment Management (U.S.) Limited  
650 California Street, 16th Floor  
San Francisco, CA 94108 U.S.A.  
ATTN: Chief Executive Officer

If to Employee:                      Ernest J. Furtado  
[                      ]

20. Assignment; Successors: This Agreement is not assignable by either party. This Agreement shall be binding upon Employee and Employee's heirs, assigns, executors and administrators, and shall be binding upon and inure to the benefit of Employer, Employer's successors and assigns, including without limitation any person, partnership, or corporation which may acquire all or substantially all of Employer or Employer's assets or business or with or into which Employer may be consolidated or merged, and this provision also shall apply in the event of any subsequent merger, consolidation, or transfer of Employer or of Employer's assets or businesses.

21. Modification, Amendment, Waiver: This Agreement is the entire agreement between the Parties and it may not be modified, amended or waived or any provision thereof modified, amended or waived unless approved in writing by the Employer and the Employee. No subsequent conduct of the Parties and no prior or subsequent policy of the Employer shall in any way be deemed to be a modification of this Agreement unless the Parties expressly intend that such conduct or policy become a modification of this Agreement and such intention is reduced to a written agreement signed by the Parties.

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

In the event any document incorporated into this Agreement by reference conflicts with any provision contained in this Agreement, the provision contained in this Agreement shall control and the provision contained in the incorporated document shall be deemed ineffective and invalid, without invalidating the remainder of the incorporated document.

23. Choice of Law: All questions concerning the construction, validity and interpretation of this Agreement shall be governed by the internal laws of the State of California.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate as of the date first above written.

**ERNEST J. FURTADO**

/S/ Ernest Furtado

**TEXTAINER EQUIPMENT MANAGEMENT (U.S.)  
LIMITED**

BY: /S/ Philip Brewer

Philip K. Brewer  
President and Chief Executive Officer

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**ANNEX A**

**SECTION 409A ADDENDUM**

Notwithstanding anything to the contrary in the Agreement, no severance pay or benefits to be paid or provided to Employee, if any, pursuant to the Agreement that, when considered together with any other severance payments or separation benefits, are considered deferred compensation under Section 409A of the Internal Revenue Code of 1986, as amended, and the final regulations and any guidance promulgated thereunder (“Section 409A”) (together, the “Deferred Payments”) will be paid or otherwise provided until Employee has had a “separation from service” within the meaning of Section 409A. Similarly, no severance payable to Employee, if any, that otherwise would be exempt from Section 409A pursuant to Treasury Regulation Section 1.409A-1(b)(9) will be payable until Employee has had a “separation from service” within the meaning of Section 409A. Each payment and benefit payable under the Agreement is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

Any severance payments or benefits under the Agreement that would be considered Deferred Payments will be paid or will commence on the sixtieth (60th) day following Employee’s separation from service, or, if later, such time as required by the next paragraph.

Notwithstanding anything to the contrary in the Agreement, if Employee is a “specified employee” within the meaning of Section 409A at the time of Employee’s termination (other than due to death), then the Deferred Payments that would otherwise have been payable within the first six (6) months following Employee’s separation from service, will be paid on the first payroll date that occurs on or after the date six (6) months and one (1) day following the date of Employee’s separation from service, but in no event later than seven months after the date of such separation from service. All subsequent Deferred Payments, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if Employee dies following Employee’s separation from service, but prior to the six (6) month anniversary of the separation from service, then any payments delayed in accordance with this paragraph will be payable in a lump sum as soon as administratively practicable after the date of Employee’s death and all other Deferred Payments will be payable in accordance with the payment schedule applicable to each payment or benefit.

Any amount paid under the Agreement that satisfies the requirements of the “short-term deferral” rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations will not constitute Deferred Payments. Any amount paid under the Agreement that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit (as defined below) will not constitute Deferred Payments. For this purpose, the “Section 409A Limit” will mean two (2) times the

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lesser of: (i) Employee's annualized compensation based upon the annual rate of pay paid to him during Employee's taxable year preceding his taxable year of his separation from service as determined under Treasury Regulation Section 1.409A-1(b)(9)(iii)(A)(1) and any Internal Revenue Service guidance issued with respect thereto; or (ii) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Internal Revenue Code for the year in which Employee's separation from service occurred.

The foregoing provisions are intended to comply with the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities herein will be interpreted to so comply. Employer and Employee agree to work together in good faith to consider amendments to the Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to Employee under Section 409A.

## AMENDMENT NUMBER 8 TO SECOND AMENDED AND RESTATED INDENTURE, CONSENT AND WAIVER

THIS AMENDMENT NUMBER 8 AND CONSENT, dated as of March 30, 2012 (this “*Amendment*”), between TEXTAINER MARINE CONTAINERS LIMITED, a company organized and existing under the laws of Bermuda (the “*Issuer*”), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Indenture Trustee under the Indenture referred to below (the “*Indenture Trustee*”), is made to such Indenture.

## WITNESSETH:

WHEREAS, the Issuer and the Indenture Trustee have previously entered into the Second Amended and Restated Indenture, dated as of May 26, 2005 (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, including by Amendment Number 1, dated as of June 3, 2005, Amendment Number 2, dated as of June 8, 2006, Amendment Number 3, dated as of July 2, 2008, Amendments Number 4 and 5, dated as of June 29, 2010, the Omnibus Amendment and Waiver, dated as of June 10, 2011, and Amendment Number 7, dated as of February 3, 2012, the “*Indenture*”);

WHEREAS, the Issuer and TEML are parties to the Fourth Amended & Restated Management Agreement, dated as of June 29, 2010 (as amended, restated, modified or otherwise supplemented from time to time, including by the Omnibus Amendment and Waiver, dated as of June 10, 2011, the “*Existing Management Agreement*”), and wish to amend and restate the Existing Management Agreement in the form attached hereto as **Exhibit A** (the “*Management Agreement*”), which is incorporated herein by reference;

WHEREAS, in order to accommodate the preferences of certain end users of shipping containers, TEML desires to enter into that certain lease agreement, to be dated on or about the date hereof (as amended, modified or supplemented from time to time, the “*TUS Head Lease*”) between TEML, as lessor, and Textainer Equipment Management (U.S.) II LLC, a Delaware limited liability company (“*TUS*”), as lessee. TUS will then enter into subleases with certain end users with respect to the containers leased to TUS pursuant to the terms of the TUS Head Lease;

WHEREAS, Issuer desires to consummate the transactions described in **Exhibit B** hereto (the “*Transaction*”), which is incorporated herein by reference, which is subject to certain restrictions set forth in certain of the Related Documents; and

WHEREAS, the parties hereto desire (i) to amend certain provisions of the Indenture to permit (A) the execution and delivery of the TUS Head Lease and (B) the Transaction and (ii) to consent to, and waive certain provisions of the Related Documents that would otherwise restrict Issuer’s ability to consummate, the Transaction;



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NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

**SECTION 1. Defined Terms.** Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings assigned in the Indenture (or if not defined therein, as defined in the applicable other Related Document).

**SECTION 2. Full Force and Effect.** Other than as specifically modified hereby, the Related Documents shall remain in full force and effect in accordance with the terms and provisions thereof and are hereby ratified and confirmed by the parties hereto. This Amendment is effective only for the specific purpose for which it is given and shall not be deemed a consent, waiver, amendment or other modification of any other term or condition set forth in the Related Documents.

**SECTION 3. Amendment to the Indenture.** Pursuant to **Section 1001(a)(viii)** of the Indenture, the definition of “Eligible Container” in **Section 101** of the Indenture is hereby amended as follows:

(a) **Clause (viii)** of the definition of “Eligible Container” is hereby amended by inserting the phrase “(other than TUS Subleases)” immediately following the word “Lease” therein.

(b) **Clause (xix)** of the definition of “Eligible Container” is hereby amended and restated in its entirety as follows:

“(xix) Restrictions on Leases with Affiliates. Such Managed Container is not subject to a Lease in which the Manager, the Issuer or any of their respective Affiliates is the lessee; *provided however* that a Managed Container is permitted to be subject to a Head Lease Agreement and a TUS Sublease;”

(c) The following sentence is hereby added to the end of the definition of “Eligible Container”:

“In applying the concentration limits set forth in clauses (i), (iii), (ix), (x), (xiv) and (xxi) through (xxv), TUS, in its capacity as Lessee under the Head Lease Agreement, shall be excluded from such calculations, and each TUS Sublease shall be included in such calculations.”

**SECTION 4. Amendment to the Indenture.** Pursuant to **Section 1002(a)** of the Indenture, the Indenture is hereby amended as follows:

(a) The definition of “Manager Account” in **Section 101** is hereby amended by restating the defined term as “Master Account”. References to the “Manager Account” in **clause (iv)** of the Granting Clause and in **Section 607(a)(3)** are hereby restated as references to the “Master Account”.

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(b) The following definitions in **Section 101** are hereby amended and restated as follows:

(i) The definition of “Finance Lease” is hereby amended and restated to read in its entirety as follows:

“*Finance Lease*: Any Lease of a Container whose initial lease agreement provides the Lessee the right or option to purchase the Container at the expiration of the Lease and whose initial lease agreement satisfies the criteria for classification as a capital lease pursuant to GAAP, including Statement of Financial Accounting Standards No. 13, as amended.”

(ii) The definition of “Lease” is hereby amended and restated to read in its entirety as follows:

“*Lease*: A lease relating to one or more Managed Containers entered into on behalf of the Issuer (which lease may relate to both Managed Containers and other Containers). Leases may be in the name of Manager, any Affiliate thereof or any third-party lessor from whom Manager has acquired management rights. Leases shall include all TUS Subleases.”

(iii) The definition of “Seller” is hereby amended and restated to read in its entirety as follows:

“*Seller(s)*: Any or all, as the context may require, of Textainer Limited, a Bermuda exempted company, and TMCLII.”

(c) The definition of “TEML(US)” is hereby deleted in its entirety.

(d) The following definitions are hereby added to **Section 101** of the Indenture in appropriate alphabetical order as follows:

“*Head Lease Agreement*: A Lease with TUS, as lessee, that possesses all of the following attributes:

(1) The rent payable by TUS under such Lease with respect to Managed Containers equals at least 98.5% of the amount of rent received by TUS from the applicable TUS Sublessee;

(2) the obligations of TUS under such Lease are secured by a first priority security interest granted by TUS in all TUS Subleases, and the proceeds of such TUS Subleases, in each case, to the extent but only to the extent related to the Managed Containers subject to the Head Lease Agreement;

(3) such Lease requires that all rental payments payable under the TUS Subleases shall be remitted directly to a Master Account;

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(4) such Lease requires that a Managed Container not be subleased by TUS to a Prohibited Person and, to the actual knowledge of TUS, shall not be subleased by a TUS Sublessee to a Prohibited Person or located, operated or used in a Prohibited Jurisdiction unless it is used pursuant to a license granted by the Office of Foreign Assets Control of the United States Treasury Department;

(5) the term of such Head Lease Agreement with respect to a Managed Container shall expire upon the expiration or earlier termination of the TUS Sublease of such Managed Container;

(6) events of default by TUS under such Lease shall include (but not be limited to) the following:

a. any rental or other payments received by TUS with respect to a TUS Sublease (other than (i) amounts permitted to be deducted pursuant to Section 6.1 of the Management Agreement and (ii) amounts equal to the TUS Sublease Spread) with respect to a TUS Sublease of a Managed Container are not remitted to the Trust Account within seven days after the last Business Day of the week during which such payments are received by TUS from the applicable TUS Sublessees, and such condition continues unremedied for three (3) Business Days after such remittance is due;

b. any representation and warranty made by TUS in such Lease, or in any certificate, report, or financial statement delivered by it pursuant thereto, shall prove to have been untrue in any material and adverse respect when made and shall continue unremedied for a period of 30 days after the earlier to occur of (i) an officer of TUS has actual knowledge thereof or (ii) TUS receives notice thereof;

c. TUS shall cease to be engaged in the container management business;

d. the filing of any petition in any bankruptcy proceeding, any assignment for the benefit of creditors, appointment of a receiver of all or any of TUS's assets, entry into any type of liquidation, whether compulsory or voluntary, or the initiation of any other bankruptcy or insolvency proceeding by or against TUS including, without limitation, any action by TUS to call a meeting of its creditors or to compound with or negotiate for any composition with its creditors; provided that, in the case of any involuntary proceeding, such proceeding is not dismissed or stayed within 60 days;

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- e. TUS is unable to pay its debts when due or shall commence an insolvency proceeding;
- f. TUS assigns its interest in such Lease (provided that no sublease of a Managed Container shall be deemed to constitute an assignment of such Lease);
- g. TUS shall have failed to pay any amounts due or suffered to exist an event of default with respect to the term of any indebtedness which singularly or in the aggregate exceeds \$1,000,000 and the effect of such failure or event of default is to cause such indebtedness to be immediately declared due and payable prior to the date on which it would otherwise have been due and payable;
- h. either of the following shall occur: (i) TUS shall have Consolidated Funded Debt (as defined in the Management Agreement) in excess of \$1,000,000 or (ii) the annual after-tax profit of TUS (calculated on a rolling four quarter basis) shall be less than \$200,000;
- i. (i) TUS amalgamates or consolidates with, or merges with or into, another Person, (ii) TUS sells, assigns, conveys, transfers, leases, or otherwise disposes of (in each case, whether in one transaction or a series of transactions) all, or substantially all, of its assets to any person, other than pursuant to subleases of Containers, (iii) any person amalgamates or consolidates with, or merges with or into, TUS, or (iv) the Manager shall fail to own, directly or indirectly, a majority of the equity interests in TUS;
- j. a judgment is rendered against TUS that is in excess of \$1,000,000 or that is not covered by insurance or bonded or stayed within 30 days of becoming final, and that results in a material adverse change with respect to TUS; or
- k. the lien, created by TUS on its interest in the TUS Subleases and the proceeds thereof (the "Sublease Collateral") pursuant to the terms of the Head Lease Agreement, shall fail to be perfected or the Sublease Collateral shall be subject to a Lien other than a Permitted Encumbrance."

"TUS: This term shall have the meaning set forth in the Management Agreement."

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*“TUS Sublease Spread:* This term shall have the meaning set forth in the Management Agreement.”

*“TUS Sublease:* This term shall have the meaning set forth in the Management Agreement.”

*“TUS Sublessee:* This term shall have the meaning set forth in the Management Agreement.”

*“TMCLII:* Textainer Marine Containers II Limited, a Bermuda exempted company.”

(e) **Section 606(a)** is hereby amended by deleting the “or” at the end of **clause (vii)** thereof, and amending and restating **clause (viii)** thereof with the following **clauses (viii) and (ix)**:

“(viii) sales to an Affiliate of the Issuer of one or more Managed Containers included in the calculation of the Asset Base not otherwise addressed in clause (vii), so long as (w) neither an Early Amortization Event nor an Event of Default is then continuing or would result from a sale of such Managed Containers, (x) the cash sales proceeds realized by the Issuer from such sale of Managed Containers shall equal or exceed an amount equal to the greater of (A) the sum of the then Net Book Values of all such sold Managed Containers and (B) the sum of the then fair market values of all such sold Managed Containers, (y) the Indenture Trustee shall have received a written confirmation from counsel to the Issuer confirming that sales shall not change the conclusions set forth in its previously delivered Opinions of Counsel regarding true sale and nonconsolidation, and (z) in the case of any sale of Managed Containers pursuant to clause (viii) or (ix) of this Section 606(a) to an Affiliate of the Issuer that is not a bankruptcy-remote, special purpose entity, (i) in any calendar year, such sales under this subclause (z), which shall be limited to not more than two sales transactions a year, may not occur with respect to Managed Containers representing greater than 3% of the aggregate Net Book Value of all Managed Containers, as measured based on the average aggregate Net Book Value of all Managed Containers for the prior calendar year, and (ii) the Issuer may make such sale so long as the aggregate Net Book Value of all such sales of Managed Containers after March 30, 2012 (inclusive of such sale) shall be less than 10% of the greatest of (A) the aggregate Net Book Value of all Managed Containers, as measured on March 30, 2012, (B) the aggregate Net Book Value of all Managed Containers, as measured on the date of such sale, and (C) the average aggregate Net Book Value of all Managed Containers for the prior calendar year; or

(ix) sales of one or more Managed Containers to an Affiliate of the Issuer or an unaffiliated third party, for a purchase price greater than or equal to the then aggregate Net Book Value of all such sold Managed Containers (the “Purchase Price”); *provided that* (A) in any calendar year, such sales may not occur with respect to Managed Containers representing greater than 7% of the aggregate Net Book Value of all Managed Containers, as measured at the beginning of such calendar year, and (B) no Asset Base Deficiency, Early Amortization Event or Event of Default is then continuing or would result from such sale; *provided further that*, in the case of any such sale of Managed Containers to an Affiliate of the Issuer that is not a bankruptcy-remote, special purpose entity, (x) the purchase price therefor shall be greater than or equal to the then fair market value of all such sold Managed Containers, (y) the Indenture Trustee shall have received a written confirmation from counsel to the Issuer confirming that such sale shall not change the conclusions set forth in its previously delivered Opinions of Counsel regarding true sale and nonconsolidation; *provided further that*, in the case of any sale of Managed Containers pursuant to clause (viii) or (ix) of this Section 606(a) to an Affiliate of the Issuer that is not a bankruptcy-remote, special purpose entity, (i) in any calendar year, such sales under this proviso, which shall be limited to not more than two sales transactions a year, may not occur with respect to Managed Containers representing greater than 3% of the aggregate Net Book Value of all Managed Containers, as measured based on the average aggregate Net Book Value of all Managed Containers for the prior calendar year, and (ii) the Issuer may make such sale so long as the aggregate Net Book Value of all such sales of Managed Containers after March 30, 2012 (inclusive of such sale) shall be less than 10% of the greatest of (A) the aggregate Net Book Value of all Managed Containers, as measured on March 30, 2012, (B) the aggregate Net Book Value of all Managed Containers, as measured on the date of such sale, and (C) the average aggregate Net Book Value of all Managed Containers for the prior calendar year. In the case of any such sale to TMCLII, the Purchase Price need not be paid in cash, but may be paid by TMCLII in the form of Containers the aggregate Net Book Value of which equal the Purchase Price; *provided that*, as between the Containers sold by the Issuer in such sale and the Containers received by the Issuer in such sale (in the aggregate, on average), both such pools of Containers shall (i) be of comparable equipment type composition and (ii) be subject to Leases”.

**SECTION 5. Consent to Amendment and Restatement of Existing Management Agreement** . Each party hereto (other than the Indenture Trustee), which include the Requisite Global Majority, hereby directs the Indenture Trustee to execute and deliver this Amendment

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and to consent to the amendment and restatement of the Existing Management Agreement in the form of the Management Agreement and the Indenture Trustee (based on such direction) hereby consents to the amendment and restatement of the Existing Management Agreement in the form of the Management Agreement.

**SECTION 6. Consent to the Transaction.**

(a) For all purposes of all Related Documents, each of the Persons (other than the Indenture Trustee) that has signed a signature page to this Amendment, hereby (i) consents to the consummation of the Transaction and (ii) agrees that the consummation of the Transaction, in and of itself, will not constitute (or be deemed to constitute) any Conversion Event, Early Amortization Event, Event of Default or Manager Default, or other breach of any provision contained in any Related Document, and hereby waives any such event, default or breach solely to the extent resulting from the consummation of the Transaction, and hereby directs the Indenture Trustee to consent, and the Indenture Trustee does hereby consent (based on such direction) to the foregoing clauses (i) and (ii). The waiver set forth in this Amendment is effective only for the specific purpose for which it is given and shall not be deemed a consent, waiver, amendment or other modification of any other term or condition set forth in any other Related Documents.

(b) Each party (other than the Indenture Trustee) that has signed a signature page to this Amendment, hereby agrees, and hereby directs the Indenture Trustee to agree, and the Indenture Trustee (based on the consent of each of the Noteholders that has signed this Amendment), does hereby agree, that, notwithstanding **Section 302** of the Indenture, the prepayment of the Aggregate Outstanding Obligations, in part but not in whole, under the Indenture pursuant to the Transaction may be accomplished on such date (regardless of whether such date is a Payment Date), in such amount (including any accrued interest and other amounts required by Article VII of the Indenture) and in respect of such Series of Notes and Interest Rate Hedge Agreements as is designated by the Issuer in a written notice to the Indenture Trustee on the date of such prepayment (or, if such written notice received after 2:00 p.m. (New York time), then on the Business Day prior to the date of such prepayment).

(c) With respect to the Series 2010-1 Notes, each of the Series 2010-1 Noteholders hereby agrees that, with respect to the Interest Accrual Period (as defined in the Series 2010-1 Supplement) commencing on or after March 15, 2012 and prior to the consummation of the Transaction, the LIBOR Rate shall be determined by the Indenture Trustee, in accordance with the definition of "LIBOR Rate" set forth in the Series 2010-1 Supplement, as a Series 2010-1 Advance made on a Business Day other than the first day of an Interest Accrual Period, and the related Interest Accrual Period shall be deemed to end on the date of the consummation of such Transaction.

(d) Each Interest Rate Hedge Provider, by consenting to this Amendment, hereby acknowledges and agrees that nothing herein or contemplated hereby (including without limitation, the amendments contemplated hereby and the consummation of the Transaction) shall in any way (i) diminish or impair the rights, interests or benefits granted to such Interest Rate Hedge Provider under the Indenture with respect to its respective Interest Rate Hedge Agreement or (ii) give rise to an "Event of Default" or a "Termination Event" (as such terms are defined in

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the applicable Interest Rate Hedge Agreement) under its respective Interest Rate Hedge Agreement, or any right of such Interest Rate Hedge Provider to designate an "Early Termination Date" (as defined in the applicable Interest Rate Hedge Agreement) or exercise any other remedies thereunder.

**SECTION 7. Representations and Warranties.**

(a) The Issuer represents and warrants as follows:

(i) Each of the representations and warranties set forth in the Indenture and the Related Documents is true and correct in all respects as of the date first written above with the same effect as though each had been made as of such date, except to the extent that any of such representations and warranties expressly relates to earlier dates.

(ii) It is duly authorized to execute, deliver and perform its obligations set forth in this Amendment and this Amendment has been duly authorized, executed and delivered by all requisite corporate and, if required, equityholder action.

(iii) The execution, delivery and performance by it of this Amendment shall not (1) result in the breach of, or constitute (alone or with notice or with the lapse of time or both) a default under, any material indenture, agreement or instrument to which it or any of its affiliates is a party or by which any of them or their property is or may be bound or (2) violate (A) any provision of law, statute, rule or regulation, or certificate or organizational documents or other constitutive documents of it, or (B) any order of any Governmental Authority.

(iv) This Amendment constitutes its legal, valid and binding obligation, enforceable against it (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting creditors' rights generally and to general principles of equity).

(v) No Conversion Event, Early Amortization Event, Event of Default or Manager Default, nor any event that with the passage of time or the giving of notice or both would constitute a Conversion Event, Early Amortization Event, Event of Default or Manager Default, has occurred and is continuing.

(vi) The unpaid principal balance of all Series 2005-1 Notes as of the date hereof is \$163,083,333; the aggregate commitments of all Series 2010-1 Noteholders as of the date hereof is \$850,000,000; and the unpaid principal balance of all Series 2011-1 Notes as of the date hereof is \$370,000,000.

**SECTION 8. Effectiveness of Amendment.**

(a) **Sections 3 and 4** of this Amendment shall become effective, as of the date first written above, upon satisfaction of the following conditions:

(i) This Amendment shall have been duly executed and delivered by the parties hereto;



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(ii) The Indenture Trustee shall have received the Opinion of Counsel (in form and substance reasonably acceptable to the Requisite Global Majority) with respect to this Amendment contemplated by **Section 1001(a)** of the Indenture;

(iii) The Indenture Trustee shall have received the Opinion of Counsel with respect to this Amendment contemplated by **Section 1003** of the Indenture;

(iv) This Amendment shall have been consented to by such parties as constitute the Requisite Global Majority, as determined by the Indenture Trustee pursuant to **Section 503** of the Indenture;

(v) Each Series Enhancer shall have consented hereto;

(vi) Each affected Interest Rate Hedge Provider shall have consented hereto;

(vii) The Rating Agency Condition shall have been satisfied with respect to (A) the amendments of the Indenture as contemplated by this Amendment and (B) the amendment and restatement of the Existing Management Agreement in the form of the Management Agreement; and

(viii) The Manager and the Issuer shall have executed and delivered the Management Agreement.

(b) Upon the execution and delivery of this Amendment by the parties hereto, this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(c) Upon the effectiveness of **Section 3** of this Amendment, (x) **Section 3** of this Amendment shall be a part of the Indenture and (y) each reference in the Indenture to “this Indenture” and “hereof”, “hereunder” or words of like import, and each reference in any other document to the Indenture shall mean and be a reference to the Indenture as amended or modified hereby. Upon the effectiveness of **Section 4** of this Amendment, (x) **Section 4** of this Amendment shall be a part of the Indenture and (y) each reference in the Indenture to “this Indenture” and “hereof”, “hereunder” or words of like import, and each reference in any other document to the Indenture shall mean and be a reference to the Indenture as amended or modified hereby.

(d) Each party hereto agrees and acknowledges that this Amendment constitutes a “Related Document” under the Indenture.

**SECTION 9. Execution in Counterparts.** This Amendment may be executed by the parties hereto in separate counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement. A facsimile or an electronic file (PDF) counterpart shall be effective as an original.

**SECTION 10. Governing Law.** THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES; PROVIDED THAT SECTIONS 5-1401 AND 5-1402

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OF THE NEW YORK GENERAL OBLIGATIONS LAW SHALL APPLY, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

**SECTION 11. Consent to Jurisdiction.** The parties hereto hereby irrevocably consent to the personal jurisdiction of the state and federal courts located in New York County, New York, in any action, claim or other proceeding arising out of any dispute in connection with this Amendment, any rights or obligations hereunder, or the performance of such rights and obligations.

**SECTION 12. No Novation.** Notwithstanding that the Indenture is hereby amended by this Amendment as of the date hereof, nothing contained herein shall be deemed to cause a novation or discharge of any existing Indebtedness of the Issuer under the original Indenture or the security interest in the Collateral created thereby.

**SECTION 13. Direction of Requisite Global Majority to Indenture Trustee.** The parties hereto, which include the Requisite Global Majority, hereby direct the Indenture Trustee to execute and deliver this Amendment.

[Signature pages follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized, all as of the day and year first above written.

TEXTAINER MARINE CONTAINERS LIMITED, as Issuer

By Continental Management Limited, its Assistant  
Secretary

By: /s/ Christopher C. Morris

Name: Christopher C. Morris

Title: Director

TEXTAINER EQUIPMENT MANAGEMENT LIMITED,  
as Manager

By Continental Management Limited, its Assistant  
Secretary

By: /s/ Christopher C. Morris

Name: Christopher C. Morris

Title: Director

Amendment 8 to Indenture

---

WELLS FARGO BANK, NATIONAL ASSOCIATION, as  
Indenture Trustee

By: /s/ Kristen L. Puttin

Name: Kristen L. Puttin

Title: Vice President

Amendment 8 to Indenture

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CONSENT OF SERIES 2005-1 NOTEHOLDERS

The undersigned hereby consents and agrees  
to the foregoing Amendment:

AMBAC ASSURANCE CORPORATION,  
as Series Enhancer for the Series 2005-1 Notes, Control Party  
for the Series 2005-1 Notes and as a Series Enhancer

By: /s/ David G. Gleeson

Name: David G. Gleeson

Title: First Vice President

Amendment 8 to Indenture

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CONSENT OF DEAL AGENTS, PURCHASERS  
AND CP PURCHASERS FOR SERIES 2010-1 NOTES

The undersigned hereby consents and agrees  
to the foregoing Amendment:

WELLS FARGO BANK, NATIONAL ASSOCIATION, a  
national banking association, as a Purchaser

By: /s/ Daniel Miller

Name: Daniel Miller

Title: Managing Director

VARIABLE FUNDING CAPITAL COMPANY LLC, as a CP  
Purchaser

By: Wells Fargo Securities, LLC, as its attorney-in-fact

By: /s/ Douglas R. Wilson Sr.

Name: Douglas R. Wilson Sr

Title: Director

WELLS FARGO SECURITIES, LLC, as a Deal Agent

By: /s/ Jerri A. Kallam

Name: Jerri A. Kallam

Title: Director

Amendment 8 to Indenture

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FORTIS BANK SA/NV, CAYMAN ISLANDS BRANCH,  
as a Purchaser and as a Deal Agent

By: Sriram Chandrasekaran

Name: Sriram Chandrasekaran

Title: Vice President

By: /s/ Guillaume Deve

Name: Guillaume Deve

Title: managing Director

Amendment 8 to Indenture

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ING BANK N.V.,  
as a Purchaser and as a Deal Agent

By: /s/ Jules Oscar E. Kollmann

Name: Jules Oscar E. Kollmann

Title: Managing Director

By: /s/ Ben Dijkhulzen

Name: Ben Dijkhulzen

Title: Director

Amendment 8 to Indenture



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BANK OF AMERICA, N.A.,  
as a Purchaser and as a Deal Agent

By: /s/ Margaux L. Karagosian

Name: Margaux L. Karagosian

Title: Vice President

Amendment 8 to Indenture

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THREE PILLARS FUNDING, LLC,  
as a CP Purchaser

By: /s/ Doris J. Hearn

Name: Doris J. Hearn

Title: Vice President

SUNTRUST BANK, N.A.,  
as a Purchaser

By: /s/ Michael Maza

Name: Michael Maza

Title: Senior Vice President

SUNTRUST ROBINSON HUMPHREY, INC.  
as a Deal Agent

By: /s/ Michael Peden

Name: Michael Peden

Title: Vice President

Amendment 8 to Indenture

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UNICREDIT BANK AG, as a Purchaser and as a Deal Agent

By: /s/ S. Gobel

Name: S. Gobel

Title:

By: /s/ Torsten Heise

Name: Torsten Heise

Title: Associate Director

Amendment 8 to Indenture

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CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,  
as a Purchaser and as a Deal Agent

By: /s/ Robbin W. Conner

Name: Robbin W. Conner

Title: Authorized Signatory

By: /s/ Bruce Kaiserman

Name: Bruce Kaiserman

Title: Authorized Signatory

ALPINE SECURITIZATION CORP., as a CP Purchaser

By: Credit Suisse AG, New York Branch, as attorney-in-fact

By: /s/ Robbin W. Conner

Name: Robbin W. Conner

Title: Authorized Signatory

By: /s/ Bruce Kaiserman

Name: Bruce Kaiserman

Title: Authorized Signatory

Amendment 8 to Indenture

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DVB BANK S.E.,  
as a Purchaser and as a Deal Agent

By: /s/ C. Sklira

Name: C. Sklira

Title: Senior Vice President

By: /s/ A. Baardvik

Name: A. Baardvik

Title: Vice President

Amendment 8 to Indenture

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ABN AMRO BANK N.V.,  
as a Purchaser and as a Deal Agent

By: [signature illegible]

Name:

Title:

By: /s/ A.C.A.J. Biesbroeck

Name: A.C.A.J. Biesbroeck

Title:

Amendment 8 to Indenture

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CONSENT OF INTEREST RATE HEDGE PROVIDERS

The undersigned hereby consents and agrees  
to the foregoing Amendment:

HSH NORDBANK, NEW YORK BRANCH, as Interest Rate  
Hedge Provider

By: /s/ Francis Ballard Jr.

Name: Francis Ballard Jr.

Title: Sr. VP, HSH Nordbank AG, NY Branch

By: /s/ Wolfgang Arbaczewski

Name: Wolfgang Arbaczewski

Title: Sr. VP, HSH Nordbank AG, NY Branch

Amendment 8 to Indenture

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WELLS FARGO BANK, NATIONAL ASSOCIATION, as  
Interest Rate Hedge Provider

By: /s/ John Michkowski

Name: John Michkowski

Title: Authorized Signatory

Amendment 8 to Indenture



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THE BANK OF TOKYO-MITSUBISHI UFJ, LTD, as  
Interest Rate Hedge Provider

By: /s/ T. Ichioka

Name: T. Ichioka

Title: Managing Director

Amendment 8 to Indenture

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FORTIS BANK SA/NV, CAYMAN ISLANDS BRANCH,  
as Interest Rate Hedge Provider

By: Sriram Chandrasekaran  
Name: Sriram Chandrasekaran  
Title: Vice President

By: /s/ Guillaume Deve  
Name: Guillaume Deve  
Title: managing Director

Amendment 8 to Indenture

By: /s/ Jules Oscar E. Kollmann

Name: Jules Oscar E. Kollmann

Title: Managing Director

By: /s/ Ben Dijkhulzen

Name: Ben Dijkhulzen

Title: Director

Amendment 8 to Indenture

By: /s/ S. Gobel

Name: S. Gobel

Title:

By: /s/ Torsten Heise

Name: Torsten Heise

Title: Associate Director

Amendment 8 to Indenture

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CREDIT SUISSE INTERNATIONAL, as Interest Rate Hedge  
Provider

By: /s/ Bik Kwan Chung

Name: Bik Kwan Chung

Title: Authorized Signatory

By: /s/ Shui Wong

Name: Shui Wong

Title: Authorized Signatory

Amendment 8 to Indenture

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TEXTAINER MARINE CONTAINERS LIMITED

Issuer

and

WELLS FARGO BANK, NATIONAL ASSOCIATION

Indenture Trustee

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SERIES 2012-1 SUPPLEMENT

DATED AS OF APRIL 18, 2012

TO

SECOND AMENDED AND RESTATED INDENTURE

DATED AS OF MAY 26, 2005

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SERIES 2012-1 NOTES

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### SCHEDULES

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SERIES 2012-1 SUPPLEMENT, dated as of April 18, 2012 (as amended, modified and supplemented from time to time in accordance with the terms hereof, this “Supplement”), between TEXTAINER MARINE CONTAINERS LIMITED, a Bermuda company (the “Issuer”), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Indenture Trustee (the “Indenture Trustee”).

WHEREAS, pursuant to the Second Amended and Restated Indenture, dated as of May 26, 2005 (as amended and supplemented from time to time in accordance with its terms, the “Indenture”), between the Issuer and the Indenture Trustee, the Issuer may from time to time direct the Indenture Trustee to authenticate one or more new Series of Notes. The Principal Terms of any new Series are to be set forth in a Supplement to the Indenture.

WHEREAS, pursuant to this Supplement, the Issuer and the Indenture Trustee shall create a new Series of Notes (“Series 2012-1”) and specify the Principal Terms thereof.

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

## ARTICLE I

### Definitions: Calculation Guidelines

Section 101. Definitions. (a) Whenever used in this Supplement, the following words and phrases shall have the following meanings, and the definitions of such terms are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

“**Accelerated Measurement Period**” shall have the meaning set forth in **Section 205(c)** hereof.

“**Aggregate Series 2012-1 Note Principal Balance**” means, as of any date of determination, an amount equal to the sum of the Series 2012-1 Note Principal Balances of all Series 2012-1 Notes then Outstanding, which as of the Closing Date shall be Four Hundred Million Dollars (\$400,000,000).

“**Closing Date**” means April 18, 2012.

“**Control Party**” means, with respect to Series 2012-1 Notes, the holders representing more than fifty percent (50%) of the then unpaid principal balance of all Series 2012-1 Notes then Outstanding.

“**Default Interest**” means, for any Payment Date, the amount of incremental interest payable on the Series 2012-1 Notes in accordance with the provisions of **Section 203(b)** hereof.

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“**DTC**” shall have the meaning set forth in **Section 207(b)(v)** hereof.

“**February 2012 Amendment**” shall mean that certain Amendment Number 7 to Second Amended and Restated Indenture, Amendment 2 to Series 2005-1 Supplement and Series 2010-1 Supplement and Amendment 1 to Series 2011-1 Supplement, dated as of February 3, 2012, by and between the Issuer and the Indenture Trustee.

“**Initial Commitment**” means (i) on the Closing Date, Four Hundred Million Dollars (\$400,000,000) and (ii) at any date of determination thereafter, the then Aggregate Series 2012-1 Note Principal Balance.

“**Initial Purchasers**” means each of (i) Wells Fargo Securities, LLC, a limited liability company organized and existing under the laws of the State of Delaware, (ii) Merrill Lynch, Pierce, Fenner & Smith Incorporated, a corporation organized and existing under the laws of the State of Delaware, and (iii) Credit Suisse Securities (USA) LLC, a Delaware limited liability company.

“**Interest Accrual Period**” means the period beginning with, and including, a Payment Date and ending on (and including) the day before the next succeeding Payment Date; except that, in the case of the first Interest Accrual Period, the period beginning with and including the Closing Date and ending on and including the day before the initial Payment Date.

“**Minimum Principal Payment Amount**” means, for the Series 2012-1 Notes on any Payment Date, the excess, if any, of (x) the then Aggregate Series 2012-1 Note Principal Balance, over (y) the Minimum Targeted Principal Balance for the Series 2012-1 Notes for such Payment Date.

“**Minimum Targeted Principal Balance**” means for the Series 2012-1 Notes for each Payment Date, subject to Section 205(c), the amount set forth opposite such Payment Date on Schedule 1 hereto under the column entitled “Minimum Targeted Principal Balance”.

“**Notes**” means the Series 2012-1 Notes.

“**144A Book-Entry Notes**” means the 144A Book-Entry Notes substantially in the form of Exhibit A-1 hereto.

“**Overdue Rate**” means, for any date of determination, an interest rate per annum equal to the sum of (i) the interest rate otherwise in effect hereunder plus (ii) two percent (2.00%).

“**Permitted Non-U.S. Person**” means any Person (i) who is not a U.S. Person and (ii) to whom the offer and sale of the Series 2012-1 Notes may be made without registration under the Securities Act in reliance upon Regulation S.

“**Permitted Payment Date Withdrawal**” means, with respect to Series 2012-1, either or both of the Permitted Interest Withdrawal, as such term is defined in **Section 302** hereof, and/or the Permitted Principal Withdrawal, as such term is defined in **Section 302(b)** hereof.

---

**“Qualified Institutional Buyers”** shall have the meaning set forth in **Section 207(a)(i)** hereof.

**“Regulation S”** means Regulation S under the Securities Act.

**“Regulation S Temporary Book-Entry Notes”** means the Regulation S Temporary Book-Entry Notes substantially in the form of Exhibit A-2.

**“Rule 144A”** shall have the meaning set forth in **Section 207(a)(i)** hereof.

**“Scheduled Principal Payment Amount”** means, for the Series 2012-1 Notes for any Payment Date, the excess, if any, of (x) the then Aggregate Series 2012-1 Note Principal Balance (after giving effect to any payment of the Minimum Principal Payment Amount for the Series 2012-1 Notes actually paid on such Payment Date), over (y) the Scheduled Targeted Principal Balance for the Series 2012-1 Notes for such Payment Date.

**“Scheduled Targeted Principal Balance”** means, for the Series 2012-1 Notes for each Payment Date, subject to Section 205(c), the amount set forth opposite such Payment Date on Schedule 1 hereto under the column entitled “Scheduled Targeted Principal Balance”.

**“Series 2005-1 Related Documents”** has the meaning set forth in the Series 2005-1 Supplement, dated as of May 26, 2005 (as amended, restated, supplemented or modified from time to time), between the Issuer and the Indenture Trustee.

**“Series 2010-1 Related Documents”** has the meaning set forth in the Series 2010-1 Supplement, dated as of June 29, 2010 (as amended, restated, supplemented or modified from time to time), between the Issuer and the Indenture Trustee.

**“Series 2011-1 Related Documents”** has the meaning set forth in the Series 2011-1 Supplement, dated as of June 22, 2011 (as amended, restated, supplemented or modified from time to time), between the Issuer and the Indenture Trustee.

**“Series 2012-1”** means the Series of Notes the terms of which are specified in this Supplement.

**“Series 2012-1 Expected Final Payment Date”** means the Payment Date occurring in March 2022.

**“Series 2012-1 Legal Final Payment Date”** means the Payment Date occurring in March 2027.

**“Series 2012-1 Note”** means any one of the notes issued pursuant to the terms of Section 201(a) hereof, substantially in the forms of Exhibit A-1, A-2, A-3 and A-4 to this Supplement, and any and all replacements or substitutions of such note. Each Series 2012-1 Note is designated as a “Senior Note” as defined in the Indenture.

---

**“Series 2012-1 Note Interest Payment”** means, for each Series 2012-1 Note on each Payment Date, the amount set forth in **Section 203(a)** hereof (exclusive of any Default Interest).

**“Series 2012-1 Note Interest Rate”** means, with respect to any Note, four and twenty-one hundredths of one percent (4.21%) per annum.

**“Series 2012-1 Note Principal Balance”** means, with respect to each Series 2012-1 Note as of any date of determination, an amount equal to the excess of (x) the Series 2012-1 Note Principal Balance of such Series 2012-1 Note as of the Closing Date, over (y) the cumulative amount of all Minimum Principal Payment Amounts, Scheduled Principal Payment Amounts and any other principal payments actually paid to the Holder of such Series 2012-1 Note subsequent to the Closing Date.

**“Series 2012-1 Note Purchase Agreement”** means the Series 2012-1 Note Purchase Agreement, dated as of April 11, 2012 (as amended, restated, supplemented or modified from time to time), among the Issuer, Textainer Limited, TGH and the Initial Purchasers.

**“Series 2012-1 Noteholder”** means, at any time of determination for the Series 2012-1 Notes, any Person in whose name a Series 2012-1 Note is registered in the Note Register.

**“Series 2012-1 Related Documents”** means any and all of the Indenture, this Supplement, the Series 2012-1 Notes, the Management Agreement, the Contribution and Sale Agreement, the Series 2012-1 Note Purchase Agreement, the Administration Agreement, the Manager Transfer Facilitator Agreement, each Interest Rate Hedge Agreement (upon execution thereof) and any and all other agreements, documents and instruments executed and delivered by or on behalf or in support of the Issuer with respect to the issuance and sale of the Series 2012-1 Notes, as any of the foregoing may from time to time be amended, modified, supplemented or renewed; provided, the term “Series 2012-1 Related Documents” shall not include the Members Agreement.

**“Series 2012-1 Series Account”** means the account of that name established in accordance with **Section 301** hereof.

**“Supplemental Principal Payment Amount”** means, on each Payment Date, the amount of any Prepayment made in accordance with the provisions of Section 702(a) of the Indenture that is allocated to the Series 2012-1 Notes in accordance with such provision of the Indenture.

**“TL”** means Textainer Limited, an exempted company organized and existing under the laws of Bermuda.

**“Transferor”** shall have the meaning set forth in **Section 207(b)(v)** hereof.

**“Unrestricted Book-Entry Notes”** means the Unrestricted Book-Entry Notes substantially in the form of Exhibit A-3.

---

**“U.S. Person”** has the meaning set forth in Regulation S.

(b) Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Indenture or, if not defined therein, as defined in the Series 2012-1 Note Purchase Agreement.

(c) References in this Supplement and any other Series 2012-1 Related Document to any section of the Uniform Commercial Code or the UCC shall mean, on or after the effective date of adoption of any revision to the Uniform Commercial Code or the UCC in the applicable jurisdiction, such revised or successor section thereto.

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ARTICLE II

Creation of the Series 2012-1 Notes

Section 201. Designation. (a) There is hereby created a Series of Notes to be issued in one class pursuant to the Indenture and this Supplement to be known respectively as “Textainer Marine Containers Limited Fixed Rate Asset-Backed Notes, Series 2012-1”. The Notes will be issued in the initial principal balance of Four Hundred Million Dollars (\$400,000,000) and will not have priority over any other Series, except to the extent set forth in the Supplement for such other Series. The issuance date of the Series 2012-1 Notes is April 18, 2012.

(b) The Payment Date with respect to the Series 2012-1 Notes shall be the fifteenth (15<sup>th</sup>) calendar day of each month or, if such day is not a Business Day, the immediately following Business Day, commencing May 15, 2012.

(c) Payments of principal on the Series 2012-1 Notes shall be payable from funds on deposit in the Series 2012-1 Series Account or otherwise at the times and in the amounts set forth in Article III of the Indenture and Article III of this Supplement.

(d) The Series 2012-1 Notes are classified as a “Term Note”, as such term is used in the Indenture.

(e) The “Expected Final Maturity Date” for Series 2012-1, as such term is used in the Indenture, is the Payment Date occurring in March 2022.

(f) The initial “Record Date” for Series 2012-1, as such term is used in the Indenture, is the Closing Date.

(g) All of the Early Amortization Events set forth in Article XII of the Indenture are applicable to Series 2012-1.

(h) The “Related Documents” for Series 2012-1, as such term is used in the Indenture, shall be the Series 2012-1 Related Documents.

(i) The “Rating Agency” for Series 2012-1, as such term is used in the Indenture, shall be Standard & Poor’s.

(j) The “Letter of Credit” (as defined in the February 2012 Amendment) shall constitute a Series Enhancement for Series 2012-1 and the “Letter of Credit Provider” (as defined in the February 2012 Amendment) shall constitute a Series Enhancer for Series 2012-1, each solely to the extent provided, and subject to the limitations set forth, in the February 2012 Amendment.

(k) In the event that any term or provision contained herein shall conflict with or be inconsistent with any term or provision contained in the Indenture, the terms and provisions of this Supplement shall govern.

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Section 202. Authentication and Delivery.

(a) On the Closing Date, Issuer shall sign, and shall direct the Indenture Trustee in writing pursuant to Section 204 of the Indenture to duly authenticate, and the Indenture Trustee, upon receiving such direction, shall authenticate, subject to compliance with the conditions precedent set forth in **Section 501** hereof and in the Series 2012-1 Note Purchase Agreement, the Series 2012-1 Notes in accordance with such written directions.

(b) In accordance with Section 202 of the Indenture, the Series 2012-1 Notes sold in reliance on Rule 144A shall be represented by one or more 144A Book-Entry Notes. Any Series 2012-1 Notes sold in reliance on Regulation S shall be represented by one or more Regulation S Book-Entry Notes. Any Series 2012-1 Notes sold to Institutional Accredited Investors or other Persons that are not Qualified Institutional Buyers or Permitted Non-U.S. Persons shall be represented by one or more Definitive Notes.

(c) The Series 2012-1 Notes shall be executed by manual or facsimile signature on behalf of Issuer by any officer of Issuer and shall be substantially in the forms of Exhibit A-1, A-2, A-3 and A-4 hereto, as applicable.

(d) The Series 2012-1 Notes shall be issued in minimum denominations of \$250,000 and in integral multiples of \$100,000 in excess thereof.

Section 203. Interest Payments on the Series 2012-1 Notes.

(a) Interest on Series 2012-1 Notes. Interest on each Series 2012-1 Note shall (i) accrue during each Interest Accrual Period at the Series 2012-1 Note Interest Rate, (ii) accrue on the basis of a year consisting of twelve thirty (30) day months, (iii) be due and payable on each Payment Date, (iv) be calculated based on the then Series 2012-1 Note Principal Balance of such Series 2012-1 Note and (v) be payable from the Series 2012-1 Series Account in accordance with **Section 302** hereof (the amount of interest calculated pursuant to this sentence for any Series 2012-1 Note for any Payment Date being the “**Series 2012-1 Note Interest Payment**” with respect to such Series 2012-1 Note and Payment Date). To the extent that the amount of interest which is due and payable on any Payment Date is not paid in full on such date, such shortfall, together with interest thereon at the Overdue Rate, shall be due and payable on the immediately succeeding Payment Date.

(b) Interest on Overdue Amounts. If the Issuer shall default in the payment of (i) the Series 2012-1 Note Principal Balance of any Series 2012-1 Notes on the Series 2012-1 Legal Final Payment Date, or (ii) the Series 2012-1 Note Interest Payment on any Series 2012-1 Note on any Payment Date, or (iii) any other amount becoming due under this Supplement, the Issuer shall, from time to time, pay interest on such unpaid amounts, to the extent permitted by Applicable Law, at a rate per annum equal to the Overdue Rate, for the period during which such principal, interest or other amount shall be unpaid from the due date of such payment to but not including the date of actual payment thereof (after as well as before judgment). Default Interest shall be payable at the times and subject to the priorities set forth in **Section 303** hereof.

(c) Maximum Interest Rate. In no event shall the interest charged with respect to a Series 2012-1 Note exceed the maximum amount permitted by Applicable Law. If at



any time the interest rate charged with respect to the Series 2012-1 Notes exceeds the maximum rate permitted by Applicable Law, the rate of interest to accrue pursuant to this Supplement and such Series 2012-1 Note shall be limited to the maximum rate permitted by Applicable Law. If the total amount of interest paid or accrued on the Series 2012-1 Note under the foregoing provisions is less than the total amount of interest that would have accrued if the interest rate had at all times been in effect, the Issuer agrees to pay to the Series 2012-1 Noteholders an amount equal to the difference between (a) the lesser of (i) the amount of interest that would have accrued if the maximum rate permitted by Applicable Law had at all times been in effect, or (ii) the amount of interest that would have accrued if the interest rate had at all times been in effect, and (b) the amount of interest accrued in accordance with the other provisions of this Supplement.

**Section 204. Principal Payments on the Series 2012-1 Notes.** The principal balance of the Series 2012-1 Notes shall be payable on each Payment Date from amounts on deposit in the Series 2012-1 Series Account in an amount equal to (i) so long as no Early Amortization Event is continuing, the Minimum Principal Payment Amount and the Scheduled Principal Payment Amount for such Payment Date or (ii) if an Early Amortization Event is then continuing, the then unpaid Aggregate Series 2012-1 Note Principal Balance shall be payable in full to the extent that funds are available for such purposes in accordance with the provisions of clause (4) of Part (II) of **Section 303** hereof. The unpaid principal amount of each Series 2012-1 Note together with all unpaid interest (including all Default Interest), indemnifications, fees, expenses, costs and other amounts payable by the Issuer to the Series 2012-1 Noteholders, the Indenture Trustee and any Interest Rate Hedge Provider pursuant to the terms of the Indenture and this Supplement, shall be due and payable in full on the earlier to occur of (x) the date on which an Event of Default shall occur and the Series 2012-1 Notes have been accelerated in accordance with the provisions of Section 802 of the Indenture and (y) the Series 2012-1 Legal Final Payment Date.

**Section 205. Prepayment of Principal on the Series 2012-1 Notes.**

(a) The Aggregate Series 2012-1 Note Principal Balance of the Series 2012-1 Notes shall be required to be prepaid at the time and in the amounts set forth in Section 702(a) of the Indenture. In connection with any Prepayment made in accordance with this **Section 205(a)**, the Issuer shall pay any termination, notional reduction, breakage or other fees or costs assessed by any Interest Rate Hedge Provider.

(b) The Issuer will not be permitted to make a voluntary Prepayment of all, or any portion of, the principal balance of the Series 2012-1 Notes prior to the Payment Date occurring in May 2014. Nothing contained herein shall prohibit any allocation to the Series 2012-1 Noteholders of Supplemental Principal Payment Amounts in accordance with Section 702(a) of the Indenture on any Payment Date. On any Payment Date thereafter, the Issuer will have the option to prepay, without premium, on any Payment Date all, or a portion of, the Aggregate Series 2012-1 Note Principal Balance, in a minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000), together with accrued interest thereon, to be applied to the Series 2012-1 Notes. The Issuer shall provide prior written notice of any Prepayment to the Indenture Trustee and the Series 2012-1 Noteholders. Any such Prepayment of the Aggregate Series 2012-1 Note Principal Balance shall also include accrued interest to the date of Prepayment on the

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principal balance being prepaid. The Issuer may not make such Prepayment from funds in the Trust Account, the Series 2012-1 Series Account, or the Restricted Cash Account, except to the extent that funds in any such account would otherwise be payable to the Issuer in accordance with the terms of this Supplement and the Indenture. In the event of any Prepayment of the Series 2012-1 Notes in accordance with this **Section 205(b)** or any provision of the Indenture, the Issuer shall simultaneously pay any termination, notional reduction, breakage or other fees or costs assessed by any Interest Rate Hedge Provider.

(c) In the event that the Issuer makes a Prepayment in accordance with the provisions of this **Section 205** of less than the Series 2012-1 Notes, the Issuer shall promptly (but in any event within five (5) Business Days after the date on which such Prepayment is made) thereafter recalculate the Minimum Targeted Principal Balance and Scheduled Targeted Principal Balance for each future Payment Date such that the Minimum Targeted Principal Balance and the Scheduled Targeted Principal Balance is reduced by an amount equal to the quotient of (i) the aggregate amount of the Prepayment divided by (ii) the number of remaining Payment Dates to and including (A) the Series 2012-1 Legal Final Payment Date (in the case of the Minimum Targeted Principal Balance) and (B) the Series 2012-1 Expected Final Payment Date (in the case of the Scheduled Targeted Principal Balance). In addition, if an Early Amortization Event has occurred and been subsequently cured and/or waived in accordance with the Series 2012-1 Related Documents (the period between such occurrence and such cure or waiver being the “Accelerated Measurement Period”), the Minimum Targeted Principal Balance and Scheduled Targeted Principal Balance for each Payment Date following such Accelerated Measurement Period shall be reduced, utilizing a similar methodology, by the amount of payments made pursuant to **Section 303(II)(4)** or **303(III)(2)**, as the case may be, during the Accelerated Measurement Period in excess of the amounts that would have been paid pursuant to **Sections 303(I)(2)** and **(3)** were such Accelerated Measurement Period not to have occurred.

**Section 206. Payments of Principal and Interest.** All payments of principal and interest on the Series 2012-1 Notes shall be paid to the Series 2012-1 Noteholders reflected in the Note Register as of the related Record Date by wire transfer of immediately available funds for receipt prior to 11:00 a.m. (New York City time) on the related Payment Date. Any payments received by the Series 2012-1 Noteholders after 11:00 a.m. (New York City time) on any day shall be considered to have been received on the next succeeding Business Day.

**Section 207. Restrictions on Transfer.** (a) On the Closing Date, the Issuer shall sell the Series 2012-1 Notes to the Initial Purchasers pursuant to the Series 2012-1 Note Purchase Agreement and deliver such Series 2012-1 Notes in accordance herewith and therewith. Thereafter, no Series 2012-1 Note may be sold, transferred or otherwise disposed of except in compliance with the provisions of the Indenture and except as follows:

(i) to Persons that take delivery of such Series 2012-1 Note in an amount of at least \$250,000 and that the transferring Person reasonably believes are qualified institutional buyers as defined in Rule 144A (“Qualified Institutional Buyers”) in reliance on the exemption from the registration requirements of the Securities Act provided by Rule 144A promulgated thereunder (“Rule 144A”);

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(ii) to Permitted Non-U.S. Persons that take delivery of such Series 2012-1 Note in an amount of at least \$250,000;

(iii) to Institutional Accredited Investors that take delivery of such Series 2012-1 Note in an amount of at least \$250,000 and that deliver to the Indenture Trustee a letter substantially in the form of Exhibit D to the Indenture to the Indenture Trustee; or

(iv) to a Person that is taking delivery of such Series 2012-1 Note in an amount of at least \$250,000 and that is otherwise exempt from the registration requirements of the Securities Act and from any applicable State law securities registration or qualification requirements, as confirmed in an Opinion of Counsel addressed to the Indenture Trustee and the Issuer, which counsel and opinion are satisfactory to the Indenture Trustee and the Issuer.

The Indenture Trustee shall have no obligations or duties with respect to determining whether any transfers of the Series 2012-1 Notes are made in accordance with the Securities Act or any other law; *provided* that with respect to Definitive Notes, the Indenture Trustee shall enforce such transfer restrictions in accordance with the terms set forth in this Supplement.

(b) Each purchaser (other than any Initial Purchaser) of the Series 2012-1 Notes (including any purchaser, other than any Initial Purchaser, of an interest in the Series 2012-1 Notes which are Book-Entry Notes) shall be deemed to have acknowledged and agreed as follows:

(i) It is (A) Qualified Institutional Buyer and is acquiring such Series 2012-1 Notes for its own institutional account or for the account or accounts of a Qualified Institutional Buyer or (B) purchasing such Series 2012-1 Notes in a transaction exempt from registration under the Securities Act and in compliance with the provisions of this Supplement and in compliance with the legend set forth in **Section 207(b)(v)** below or (C) not a U.S. Person and is acquiring such Series 2012-1 Notes outside of the United States.

(ii) It is purchasing one or more Series 2012-1 Notes in an amount of at least \$250,000 and it understands that such Series 2012-1 Notes may be resold, pledged or otherwise transferred only in an amount of at least \$250,000.

(iii) It represents and warrants to the Issuer, the Indenture Trustee, each Initial Purchaser, the Manager and any successor Manager that (a) either (1) it is not, and is not acting on behalf of, a Plan or a governmental, church or non-U.S. plan which is subject to any federal, state, local, or non-U.S. law that is similar to the prohibited transaction provisions of Section 406 of ERISA or Section 4975 of the Code, and no part of the assets to be used by it to purchase or hold the Series 2012-1 Notes or any interest therein constitutes the assets of any Plan or such a governmental, church, or non-U.S. plan; or (2) (A) the acquisition, holding, and disposition of any Series 2012-1 Note will not give rise to a nonexempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental, church, or non-U.S. plan, a violation of any similar

federal, state, local, or non-U.S. law) and (B) the Series 2012-1 Notes are rated investment grade or better and such Person believes that the Series 2012-1 Notes are properly treated as indebtedness without substantial equity features for purposes of Section 2510.3-101 of the regulations issued by the U.S. Department of Labor, and agrees to so treat the Series 2012-1 Notes; and (b) it will not sell or otherwise transfer the Series 2012-1 Notes or any interest therein otherwise than to a purchaser or transferee that represents and agrees with respect to its purchase, holding, and disposition of the Series 2012-1 Notes to the same effect as the purchaser's representation and agreement set forth in this **Section 207(b)(ii)**. Alternatively, regardless of the rating of the Series 2012-1 Notes, such Person may provide the Indenture Trustee with an Opinion of Counsel, which Opinion of Counsel will not be at the expense of the Issuer, the Indenture Trustee, the Manager or any successor Manager which opines that the purchase, holding and transfer of such Series 2012-1 Notes or interest therein is permissible under applicable law, will not constitute or result in a non exempt prohibited transaction under ERISA or Section 4975 of the Code and will not subject the Issuer, the Indenture Trustee, the Manager or any successor Manager to any obligation in addition to those undertaken in the Indenture;

(iv) It understands that the Series 2012-1 Notes are being transferred to it in a transaction not involving any public offering within the meaning of the Securities Act, and that, if in the future it decides to resell, pledge or otherwise transfer any Series 2012-1 Notes, such Series 2012-1 Notes may be resold, pledged or transferred only in accordance with applicable state securities laws and (1) in a transaction meeting the requirements of Rule 144A, to a Person that the seller reasonably believes is a Qualified Institutional Buyer that purchases for its own account (or for the account or accounts of a Qualified Institutional Buyer) and to whom notice is given that the resale, pledge or transfer is being made in reliance on Rule 144A, or (2) (A) to a Person that is an Institutional Accredited Investor, is taking delivery of such Series 2012-1 Notes in an amount of at least \$250,000, and delivers to the Indenture Trustee a letter substantially in the form of Exhibit D to the Indenture or (B) to a Person that is taking delivery of such Series 2012-1 Notes pursuant to a transaction that is otherwise exempt from the registration requirements of the Securities Act and from any applicable state law securities registration or qualification requirements, as confirmed in an Opinion of Counsel addressed to the Indenture Trustee, the Issuer and the transferor, which counsel and Opinion are satisfactory to the Indenture Trustee, the Issuer and the transferor, or (3) in an offshore transaction in accordance with Rule 903 or 904 of Regulation S.

(v) It understands that each Series 2012-1 Note shall bear a legend substantially to the following effect:

**[For Book-Entry Notes Only: UNLESS THIS SERIES 2012-1 NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE TRANSFEROR OF SUCH NOTE (THE "TRANSFEROR") OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SERIES 2012-1 NOTE ISSUED IS**

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REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR THE USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN. ]

THIS SERIES 2012-1 NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER HEREOF, BY PURCHASING THIS SERIES 2012-1 NOTE, AGREES THAT SUCH SERIES 2012-1 NOTE MAY BE RESOLD, PLEDGED OR TRANSFERRED ONLY IN ACCORDANCE WITH ANY APPLICABLE STATE SECURITIES LAWS AND (1) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON THAT TAKES DELIVERY OF SUCH SERIES 2012-1 NOTE IN AN AMOUNT OF AT LEAST \$250,000 AND THAT THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT (OR FOR THE ACCOUNT OR ACCOUNTS OF A QUALIFIED INSTITUTIONAL BUYER) AND TO WHOM NOTICE IS GIVEN THAT THE RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, OR (2) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT WITH SUCH SERIES 2012-1 NOTE IN AN AMOUNT OF AT LEAST \$250,000 OR (3) TO A PERSON (A) THAT IS AN INSTITUTIONAL "ACCREDITED INVESTOR," WITHIN THE MEANING OF RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT, IS TAKING DELIVERY OF SUCH SERIES 2012-1 NOTE IN AN AMOUNT OF AT LEAST \$250,000 AND DELIVERS TO THE INDENTURE TRUSTEE A LETTER SUBSTANTIALLY IN THE FORM OF EXHIBIT D TO THE INDENTURE OR (B) THAT IS TAKING DELIVERY OF SUCH SERIES 2012-1 NOTE IN AN AMOUNT OF AT LEAST \$250,000 PURSUANT TO A TRANSACTION THAT IS OTHERWISE EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND FROM ANY APPLICABLE STATE LAW SECURITIES REGISTRATION OR QUALIFICATION REQUIREMENTS, AS CONFIRMED IN AN OPINION OF COUNSEL ADDRESSED TO THE INDENTURE TRUSTEE AND THE ISSUER, WHICH COUNSEL AND OPINION ARE SATISFACTORY TO THE ISSUER AND THE INDENTURE TRUSTEE.

EACH PURCHASER OF A SERIES 2012-1 NOTE SHALL BE DEEMED TO REPRESENT AND WARRANT TO THE INITIAL PURCHASERS, THE ISSUER, THE INDENTURE TRUSTEE AND THE MANAGER THAT (I) EITHER (1) IT IS NOT ACQUIRING THE SERIES 2012-1 NOTE WITH THE ASSETS OF A PLAN; OR (2) (A) THE ACQUISITION AND HOLDING OF THE SERIES 2012-1 NOTE WILL NOT GIVE RISE TO A NONEXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE AND (B) THE SERIES 2012-1 NOTE IS RATED INVESTMENT GRADE OR BETTER AND SUCH PERSON BELIEVES THAT THE SERIES 2012-1 NOTE IS PROPERLY TREATED AS INDEBTEDNESS WITHOUT SUBSTANTIAL EQUITY FEATURES FOR PURPOSES OF THE DEPARTMENT OF LABOR REGULATIONS SECTION 2510.101, AND AGREES TO SO TREAT THE SERIES 2012-1 NOTE; AND (II) IT WILL NOT SELL OR OTHERWISE TRANSFER THE SERIES 2012-1 NOTES OR ANY INTEREST THEREIN OTHERWISE THAN TO A PURCHASER OR TRANSFEREE THAT REPRESENTS AND AGREES WITH RESPECT TO ITS PURCHASE, HOLDING, AND DISPOSITION OF THE SERIES 2012-1 NOTES TO THE SAME EFFECT AS THE PURCHASER'S REPRESENTATION AND AGREEMENT SET FORTH IN CLAUSE (I) OF THIS PARAGRAPH.

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**THIS SERIES 2012-1 NOTE IS NOT GUARANTEED OR INSURED BY ANY GOVERNMENTAL AGENCY OR INSTRUMENTALITY.**

(vi) Each Series 2012-1 Noteholder that is a Permitted Non-U.S. Person described in **Section 207(b)(i)(C)** understands that the Series 2012-1 Notes have not and will not be registered under the Securities Act, that any offers, sales or deliveries of the Series 2012-1 Notes purchased by it in the United States or to U.S. Persons prior to the date that is 40 days after the later of (i) the commencement of the distribution of the Series 2012-1 Notes and (ii) the Closing Date, may constitute a violation of United States law, and that distributions of principal and interest will be made in respect of such Series 2012-1 Notes only following the delivery by the holder of a certification of non-U.S. beneficial ownership or the exchange of beneficial interest in Regulation S Temporary Book-Entry Notes for beneficial interests in the related Unrestricted Book-Entry Notes (which in each case will itself require a certification of non-U.S. beneficial ownership), at the times and in the manner set forth in this Supplement.

(vii) The Regulation S Temporary Book-Entry Notes representing the Series 2012-1 Notes sold to each Series 2012-1 Noteholder that is a Permitted Non-U.S. Person described in **Section 207(b)(i)(C)** will bear a legend to the following effect, unless the Issuer determines otherwise consistent with Applicable Law:

**[FOR REGULATION S BOOK-ENTRY NOTES ONLY: THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) AND, PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE LATER OF (I) THE COMPLETION OF THE DISTRIBUTION OF THE SERIES 2012-1 NOTES AND (II) THE CLOSING DATE, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED IN THE UNITED STATES OR TO A U.S. PERSON EXCEPT PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.]**

(viii) The Indenture Trustee shall not permit the transfer of any Series 2012-1 Notes unless such transfer complies with the terms of the foregoing legends and, in the case of a transfer (i) to an Institutional Accredited Investor (other than a Qualified Institutional Buyer), the transferee delivers to the Indenture Trustee a letter substantially in the form of Exhibit D to the Indenture, or (ii) to a Person other than a Qualified Institutional Buyer, an Institutional Accredited Investor or a Permitted Non-U.S. Person, upon delivery of an Opinion of Counsel satisfactory to the Indenture Trustee and the applicable transferor, to the effect that the transferee is taking delivery of the Series 2012-1 Notes in a transaction that is otherwise exempt from the registration requirements of the Securities Act and from any applicable state law securities registration or qualification requirements.

(c) The applicable transferor and transferee shall execute and deliver, or in the case of a Note Owner, is deemed to have executed and delivered, to the Indenture Trustee documentation in substantially the forms of (i) **Exhibit(s) B** through **F** hereto or (ii) Exhibit D to the Indenture, as appropriate, in connection with any transfer of Series 2012-1 Notes.

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ARTICLE III

Series 2012-1 Series Account and  
Allocation and Application of Amounts Therein

Section 301. Series 2012-1 Series Account. The Indenture Trustee shall establish on or prior to the Closing Date and maintain, so long as any Series 2012-1 Note is Outstanding, an Eligible Account which shall be designated as the Series 2012-1 Series Account, which account shall be held in the name of the Indenture Trustee (and with respect to any investments in such account, in its capacity as Securities Intermediary of the Indenture Trustee) for the benefit of the Series 2012-1 Noteholders, and shall be maintained in the State of Minnesota. In furtherance of the Grant set forth in the Indenture, the Issuer hereby Grants to the Indenture Trustee for the benefit of the Series 2012-1 Noteholders, among other things, a Lien on the Series 2012-1 Series Account. All deposits of funds by or for the benefit of the Series 2012-1 Noteholders from the Trust Account and the Restricted Cash Account shall be accumulated in, and withdrawn from, the Series 2012-1 Series Account in accordance with the provisions of the Indenture and this Supplement.

Section 302. Drawing Funds from the Restricted Cash Account.

(a) In the event that the Manager Report with respect to any Determination Date shall state that the funds on deposit in the Series 2012-1 Series Account will not be sufficient to make payment in full on the related Payment Date of the related Interest Payment then due for the Series 2012-1 Notes (the amount of such deficiency, the “Permitted Interest Withdrawal”), then the Indenture Trustee shall on such Determination Date draw on the Restricted Cash Account in an amount equal to the lesser of (x) the Permitted Interest Withdrawal, and (y) the amount then on deposit in the Restricted Cash Account.

(b) In the event that the Manager Report delivered with respect to the Determination Date immediately preceding the Series 2012-1 Legal Final Payment Date shall state that (or the Administrative Agent shall, pursuant to Section 302(c) of the Indenture, determine that) the funds on deposit in the Series 2012-1 Series Account will not be sufficient to make payment in full on the Series 2012-1 Legal Final Payment Date of the then Aggregate Series 2012-1 Note Principal Balance (the amount of such deficiency, the “Permitted Principal Withdrawal”), then the Indenture Trustee shall on such Determination Date draw on the Restricted Cash Account in an amount equal to the least of (w) the Aggregate Series 2012-1 Note Principal Balance, (x) the Permitted Principal Withdrawal, (y) the Maximum Principal Withdrawal Amount, as calculated for Series 2012-1 and (z) the amount then on deposit in the Restricted Cash Account.

(c) Drawings will be made pursuant to **Section 302(a)** before any drawing is made on such date pursuant to **Section 302(b)**, and notice of each such drawing will be delivered to the Manager, by hand delivery or facsimile transmission. Any such funds actually received by the Indenture Trustee pursuant to **Section 302(a)** or **Section 302(b)** shall be used solely to make payments of the Series 2012-1 Note Interest Payment or the Aggregate Series 2012-1 Note Principal Balance, as the case may be.

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Section 303. Distributions from Series 2012-1 Series Account. On each Payment Date, the Indenture Trustee shall distribute funds then on deposit in the Series 2012-1 Series Account in accordance with the provisions of **Section 303(I), (II) or (III)**.

(I) If neither an Early Amortization Event nor an Event of Default shall have occurred and be continuing with respect to any Series of Notes:

(1) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its *pro rata* portion of the Series 2012-1 Note Interest Payment for each such Payment Date;

(2) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its *pro rata* portion of the Minimum Principal Payment Amount then due and payable to the Holders of a Series 2012-1 Note on such Payment Date;

(3) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its *pro rata* portion of the Scheduled Principal Payment Amount then due and payable to the Holders of a Series 2012-1 Note on such Payment Date;

(4) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its *pro rata* portion (if any) of the Supplemental Principal Payment Amount then due and payable to the Holders of a Series 2012-1 Note on such Payment Date;

(5) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, *pro rata* (based on respective amounts due), an amount equal to all taxes, increased costs, indemnities and other amounts (excluding Default Interest) then due and payable by the Issuer to the Series 2012-1 Noteholders pursuant to the Series 2012-1 Related Documents; and

(6) To each Series 2012-1 Noteholder on the immediately preceding Record Date, an amount equal to Default Interest (if any, including any interest on such interest) then due and payable pursuant to the Series 2012-1 Related Documents; and

(7) To the Issuer, any remaining amounts then on deposit in the Series 2012-1 Series Account.



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(II) If an Early Amortization Event shall have occurred and be continuing with respect to any Series but no Event of Default shall have occurred and be continuing with respect to any Series:

(1) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its *pro rata* portion of the Series 2012-1 Note Interest Payment for each such Payment Date;

(2) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its *pro rata* portion of the Minimum Principal Payment Amount then due and payable to the Holders of a Series 2012-1 Note on such Payment Date;

(3) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its *pro rata* portion of the Scheduled Principal Payment Amount then due and payable to the Holders of a Series 2012-1 Note on such Payment Date;

(4) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its *pro rata* portion of the then Aggregate Series 2012-1 Note Principal Balance until the Aggregate Series 2012-1 Note Principal Balance has been reduced to zero;

(5) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, *pro rata* (based on respective amounts due), an amount equal to all taxes, increased costs, indemnities and other amounts (including Default Interest) then due and payable by the Issuer to the Series 2012-1 Noteholders pursuant to the Series 2012-1 Related Documents; and

(6) To the Issuer, any remaining amounts then on deposit in the Series 2012-1 Series Account.

(III) If an Event of Default shall have occurred and be continuing with respect to any Series:

(1) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date an amount equal to its *pro rata* portion of the Series 2012-1 Note Interest Payment then due and payable for such Payment Date;

(2) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date on a *pro rata* basis, an amount equal to the Aggregate Series 2012-1 Note Principal Balance until the Aggregate Series 2012-1 Note Principal Balance has been reduced to zero;

(3) To the following Persons on a *pro rata* basis, to each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to all taxes, increased costs, indemnities and other amounts (including Default Interest); and

(4) To the Issuer, any remaining amounts then on deposit in the Series 2012-1 Series Account.

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Any amounts payable to a Series 2012-1 Noteholder shall be made by wire transfer of immediately available funds to the account that such Series 2012-1 Noteholder has designated to the Indenture Trustee in writing on or prior to the Business Day immediately preceding the Payment Date.

#### ARTICLE IV

##### Additional Covenants

In addition to the covenants set forth in Article VI of the Indenture, the Issuer hereby makes the following additional covenants for the benefit of the Series 2012-1 Noteholders:

Section 401. Rule 144A. So long as any of the Series 2012-1 Notes are “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, Issuer shall, unless it becomes subject to and complies with the reporting requirements of Section 13 or 15(d) of the Exchange Act, or rule 12g3-2(b) thereunder, (i) provide to any Series 2012-1 Noteholder of such restricted securities, or to any prospective Series 2012-1 Noteholder of such restricted securities designated by a Series 2012-1 Noteholder, upon the request of such Series 2012-1 Noteholder or prospective Series 2012-1 Noteholder, any information required to be provided by Rule 144A(d)(4) under the Securities Act and (ii) update such information to prevent such information from becoming materially false and materially misleading in a manner adverse to any Series 2012-1 Noteholder.

Section 402. Use of Proceeds. The proceeds from the issuance of the Series 2012-1 Notes shall be used as follows: (i) to pay the costs of issuance of the Series 2012-1 Notes and (ii) for other general corporate purposes, as contemplated in Section 624 of the Indenture.

Section 403. Perfection Requirements. The Issuer will not (a) change any of (i) its corporate name or (ii) the name under which it does business or (b) amend any provision of its certificate of formation or operating agreement or become organized under the laws of any other jurisdiction without the prior written consent of the Control Party.

Section 404. United States Federal Income Tax Election. The Issuer shall not make an election to be classified as an association taxable as a corporation pursuant to Section 301.7701-3 of the United States Treasury Regulations.

Section 405. OFAC Matters. The Issuer shall not in a manner which would violate the laws of the United States, other than pursuant to a license issued by OFAC (i) lease, or consent to any sublease of, any of the Containers to any Person that is a Prohibited Person or (ii) derive any of its assets or operating income from investments in or transactions with any such Prohibited Person. If the Issuer obtains knowledge that a Container is subleased to a Prohibited Person or located or used in a Prohibited Jurisdiction in a manner which would violate the laws of the United States (other than pursuant to a license issued by OFAC), then the Issuer shall, within ten (10) Business Days after obtaining knowledge thereof, remove such Container from the Asset Base for so long as such condition continues.

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ARTICLE V

Conditions to Issuance

Section 501. Conditions to Issuance. The Indenture Trustee shall not authenticate the Series 2012-1 Notes unless (i) all conditions to the issuance and purchase of the Series 2012-1 Notes under the Series 2012-1 Note Purchase Agreement shall have been satisfied, and (ii) the Issuer shall have delivered a certificate to the Indenture Trustee to the effect that all conditions set forth in the Series 2012-1 Note Purchase Agreement shall have been satisfied.

ARTICLE VI

Representations and Warranties

To induce the Series 2012-1 Noteholders to purchase the Series 2012-1 Notes hereunder, the Issuer hereby represents and warrants as of the Closing Date to the Indenture Trustee for the benefit of the Series 2012-1 Noteholders that:

Section 601. Existence. Issuer is a company duly organized, validly existing and in compliance under the laws of Bermuda. Issuer is in good standing and is duly qualified to do business in each jurisdiction where the failure to do so would have a material adverse effect upon the Issuer and in each jurisdiction in which a failure to so qualify would materially and adversely affect the ability of the Indenture Trustee to enforce its security interest in the Collateral.

Section 602. Authorization. Issuer has the power and is duly authorized to execute and deliver this Supplement and the other Series 2012-1 Related Documents to which it is a party; Issuer is and will continue to be duly authorized to borrow monies hereunder; and Issuer is and will continue to be authorized to perform its obligations under this Supplement and under the other Series 2012-1 Related Documents. The execution, delivery and performance by Issuer of this Supplement and the other Series 2012-1 Related Documents to which it is a party and the borrowings hereunder do not and will not require any consent or approval of any Governmental Authority, shareholder or any other Person which has not already been obtained.

Section 603. No Conflict; Legal Compliance. The execution, delivery and performance of this Supplement and each of the other Series 2012-1 Related Documents and the execution, delivery and payment of the Series 2012-1 Notes will not: (a) contravene any provision of the Issuer's bye-laws or memorandum of association; (b) contravene, conflict with or violate any Applicable Law or regulation, or any order, writ, judgment, injunction, decree, determination or award of any Governmental Authority; or (c) violate or result in the breach of, or constitute a default under the Indenture, the Series 2012-1 Related Documents, any other indenture or other loan or credit agreement, or other agreement or instrument to which Issuer is a party or by which Issuer, or its property and assets may be bound or affected. Issuer is not in violation or breach of or default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any contract, agreement, lease, license, indenture or other instrument to which it is a party.

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Section 604. Validity and Binding Effect. This Supplement is, and each Series 2012-1 Related Document to which Issuer is a party, when duly executed and delivered, will be, the legal, valid and binding obligation of Issuer, enforceable against Issuer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or by general principles of equity limiting the availability of equitable remedies.

Section 605. Financial Statements. Since December 31, 2010, there has been no Material Adverse Change in the financial condition of any of the Issuer, the Seller or the Manager.

Section 606. Place of Business. The Issuer's only "place of business" (within the meaning of Section 9-307 of the UCC) is located at Century House, 16 Par-la-Ville Road, Hamilton HM HX, Bermuda. The Issuer does not maintain an office or assets in the United States, other than (i) the Trust Account, the Restricted Cash Account, and the Series Accounts and (ii) off-hire containers located in depots in the United States and Managed Containers described in Section 606(g) of the Indenture and Leases pursuant to Section 7.7 of the Management Agreement.

Section 607. No Agreements or Contracts. The Issuer is not a party to any contract or agreement (whether written or oral) other than the Series 2005-1 Related Documents, the Series 2010-1 Related Documents (as each such term is defined in the Supplement for such Series), the Series 2011-1 Related Documents (as each such term is defined in the Supplement for such Series), certain documents related to the transactions contemplated by that certain Omnibus Amendment, Consent and Waiver, dated as of June 10, 2011 (the "**Omnibus Consent**"), among the Issuer, the Indenture Trustee, TL, the Manager, and ABN AMRO Bank N.V., the Related Documents and the Members Agreement.

Section 608. Consents and Approvals. No approval, authorization or consent of any trustee or holder of any Indebtedness or obligation of Issuer or of any other Person under any agreement, contract, lease or license or similar document or instrument to which Issuer is a party or by which Issuer is bound, is required to be obtained by Issuer in order to make or consummate the transactions contemplated under the Series 2012-1 Related Documents, except for those approvals, authorizations and consents that have been obtained on or prior to the Closing Date. All consents and approvals of, filings and registrations with, and other actions in respect of, all Governmental Authorities required to be obtained by Issuer in order to make or consummate the transactions contemplated under the Series 2012-1 Related Documents have been, or prior to the time when required will have been, obtained, given, filed or taken and are or will be in full force and effect.

Section 609. Margin Regulations. Issuer does not own any "margin security", as that term is defined in Regulation U of the Federal Reserve Board, and the proceeds of the Series 2012-1 Notes issued under this Supplement will be used only for the purposes contemplated hereunder. None of such proceeds will be used, directly or indirectly, for the purpose of purchasing or carrying any margin security, for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any margin security or for any other purpose which might cause any of the loans under this Supplement to be considered a

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“purpose credit” within the meaning of Regulations T, U and X. Issuer will not take or permit any agent acting on its behalf to take any action which might cause this Supplement or any document or instrument delivered pursuant hereto to violate any regulation of the Federal Reserve Board.

Section 610. Taxes. All federal, state, local and foreign tax returns, reports and statements required to be filed by Issuer have been filed with the appropriate Governmental Authorities, and all taxes and other impositions shown thereon to be due and payable by Issuer have been paid prior to the date on which any fine, penalty, interest or late charge may be added thereto for nonpayment thereof, or any such fine, penalty, interest, late charge or loss has been paid, or Issuer is contesting its liability therefor in good faith and has fully reserved all such amounts according to GAAP in the financial statements provided to the Noteholders pursuant to Section 626 of the Indenture. Issuer has paid when due and payable all material charges upon the books of Issuer and no Governmental Authority has asserted any Lien against Issuer with respect to unpaid taxes. Proper and accurate amounts have been withheld by Issuer from its employees for all periods in full and complete compliance with the tax, social security and unemployment withholding provisions of applicable federal, state, local and foreign law and such withholdings have been timely paid to the respective Governmental Authorities.

Section 611. Other Regulations. Issuer is not an “investment company,” or an “affiliated person” of, or a “promoter” or “principal underwriter” for, an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended. The issuance of the Series 2012-1 Notes hereunder and the application of the proceeds and repayment thereof by Issuer and the performance of the transactions contemplated by this Supplement and the other Series 2012-1 Related Documents will not violate any provision of the Investment Company Act, or any rule, regulation or order issued by the SEC thereunder.

Section 612. Solvency and Separateness.

(a) The capital of the Issuer is adequate for the business and undertakings of the Issuer.

(b) Other than with respect to the transactions contemplated hereby and by the Series 2005-1 Related Documents, the Series 2010-1 Related Documents, the Series 2011-1 Related Documents, the Series 2012-1 Related Documents and the Related Documents, the Issuer is not engaged in any business transactions with the Seller or the Manager, except as permitted by the Management Agreement, the Contribution and Sale Agreement, the Members Agreement and the Omnibus Consent.

(c) The bye-laws of the Issuer provide that the Issuer shall have six directors, unless increased to seven directors under certain circumstances described in the bye-laws (the “Special Matters”), including, but not limited to, those discussed below. In the event of a proposed resolution to institute voluntary Insolvency Proceedings on behalf of the Issuer, the bye-laws of the Issuer further provide that the number of directors is automatically increased to seven, one of which must be an independent director from the Director Services Provider elected by an affirmative vote of a majority of the directors. Such independent director shall participate solely in the vote on the relevant Special Matter and shall cease to be a director immediately

following such vote. No action can be taken to institute voluntary Insolvency Proceedings on behalf of the Issuer unless such action shall have been approved or authorized by (x) a resolution of the board of directors of the Issuer for which at least ninety-nine percent (99%) of all directors (including the independent director) have voted in favor and (y) a resolution of the members of the Issuer representing at least ninety-nine percent (99%) of all Class A Shares (as defined in the Issuer's bye-laws) then issued and outstanding and Class B Shares (as defined in the Issuer's bye-laws) and (z) a resolution of the members representing at least ninety-nine percent (99%) of all Class C Shares (as defined in the Issuer's bye-laws) then issued and outstanding.

(d) The Issuer's funds and assets are not, and will not be, commingled with those of the Seller or the Manager, except as permitted by the Management Agreement.

(e) The bye-laws of the Issuer require it to maintain correct and complete books and records of account, and Bermuda law requires it to maintain minutes of the meetings and other proceedings of its members.

(f) The Issuer is not insolvent under the Insolvency Law and will not be rendered insolvent by the transactions contemplated by the Series 2012-1 Related Documents and after giving effect to such transactions, the Issuer will not be left with an unreasonably small amount of capital with which to engage in its business nor will the Issuer have intended to incur, or believe that it has incurred, debts beyond its ability to pay such debts as they mature. The Issuer does not contemplate the commencement of insolvency, bankruptcy, liquidation or consolidation proceedings or the appointment of a receiver, liquidator, trustee or similar official in respect of the Issuer or any of its assets.

Section 613. Title; Liens. On the Closing Date, the Issuer will have good, legal, and marketable title to each of its respective assets, and none of such assets is subject to any Lien, except for Permitted Encumbrances.

Section 614. No Default. No Event of Default or Early Amortization Event (or event or condition which with the giving of notice or passage of time or both would become an Event of Default or Early Amortization Event) has occurred and is continuing.

Section 615. Litigation and Contingent Liabilities. No claims, litigation, arbitration proceedings or governmental Proceedings by any Governmental Authority are pending or threatened against or are affecting the Issuer or any of its Affiliates the results of which might interfere with the consummation of any of the transactions contemplated by this Supplement or any document issued or delivered in connection herewith.

Section 616. Subsidiaries. Issuer has no subsidiaries.

Section 617. No Partnership. Issuer is not a partner or joint venturer in any partnership or joint venture.

Section 618. Pension and Welfare Plans. No accumulated funding deficiency (as defined in Section 412 of the Code or Section 302 of ERISA) or reportable event (within the meaning of section 4043 of ERISA), has occurred with respect to any Plan of the Issuer or any ERISA Affiliate. The present value of all benefit liabilities under all Plans of the Issuer or any

ERISA Affiliate subject to Title IV of ERISA, as defined in Section 4001(a)(16) of ERISA, exceeds the fair market value of all assets of Plans subject to Title IV of ERISA (determined as of the most recent valuation date for such Plan on the basis of assumptions prescribed by the Pension Benefit Guaranty Corporation for the purpose of Section 4044 of ERISA), by no more than \$1.9 million. Neither Issuer nor any ERISA Affiliate is subject to any present or potential withdrawal liability pursuant to Title IV of ERISA and no multi-employer plan (with the meaning of Section 4001(a)(3) of ERISA) to which the Issuer or any ERISA Affiliate has an obligation to contribute or any liability, is or is likely to be disqualified for tax purposes, in reorganization within the meaning of Section 4241 of ERISA or Section 418 of the Code) or is insolvent (as defined in Section 4245 of ERISA). No liability (other than liability to make periodic contributions to fund benefits) with respect to any Plan of Issuer, or Plan subject to Title IV of ERISA or any ERISA Affiliate, has been, or is expected to be, incurred by Issuer or an ERISA Affiliate, either directly or indirectly. All Plans of Issuer are in material compliance with ERISA and the Code. No lien under Section 412 of the Code or 302(f) of ERISA or requirement to provide security under the Code or ERISA has been or is reasonably expected by Issuer to be imposed on its assets. The Issuer does not have any obligation under any collective bargaining agreement. As of the Closing Date, the Issuer is not an employee benefit plan with the meaning of ERISA or a “plan” within the meaning of Section 4975 of the Code and assets of the Issuer do not constitute “plan assets” within the meaning of Section 2510.3-101 of the regulations of the Department of Labor.

Section 619. Ownership of Issuer. As of the Closing Date, the Issuer has three classes of common shares issued and outstanding: the Class A Shares, the Class B Shares and the Class C Shares. The Class A Shares represent the only class of voting shares of the Issuer that are currently issued and outstanding. As of the Closing Date, 10,500 Class A Shares are issued and outstanding, all of which Class A Shares are owned by TL. The Class B Shares do not have voting rights (other than with respect to (i) the Special Matters (as defined in Section 612(c) hereof) and (ii) as required by law) and all of such Class B Shares are owned by TL on the Closing Date. The Class C Shares do not have voting rights (other than with respect to (i) the Special Matters and (ii) as required by law). On the Closing Date, all of the Class C Shares are owned by AMACAR Investments LLC, a Delaware limited liability company. As of December 31, 2011, TL held a 100% economic ownership interest in the Issuer.

Section 620. Security Interest Representations.

(a) This Supplement and the Indenture create a valid and continuing security interest (as defined in the UCC) in the Collateral in favor of the Indenture Trustee, for the benefit of the Series 2012-1 Noteholders and any Interest Rate Hedge Provider, which security interest is prior to all other Liens (other than Permitted Encumbrances), and is enforceable as such as against creditors of and purchasers from the Issuer.

(b) The Managed Containers constitute “goods” or “inventory” within the meaning of the applicable UCC. The Leases constitute “tangible chattel paper” within the meaning of the UCC. The lease receivables constitute “accounts” or “proceeds” of the Leases within the meaning of the UCC. The Trust Account, the Restricted Cash Account and the Series 2012-1 Series Account constitute “securities accounts” within the meaning of the UCC. The Issuer’s contractual rights under any Interest Rate Hedge Agreements, the Contribution and Sale Agreement and the Management Agreement constitute “general intangibles” within the meaning of the UCC.

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(c) The Issuer owns and has good and marketable title to the Collateral, free and clear of any Lien (whether senior, junior or pari passu), claim or encumbrance of any Person, except for Permitted Encumbrances.

(d) The Issuer has caused the filing of all appropriate financing statements or documents of similar import in the proper filing office in the appropriate jurisdictions under Applicable Law in order to perfect the security interest in the Collateral granted to the Indenture Trustee in this Supplement and the Indenture. All financing statements filed against the Issuer in favor of the Indenture Trustee in connection herewith describing the Collateral contain a statement to the following effect: "A purchase of or security interest in any collateral described in this financing statement will violate the rights of the Indenture Trustee."

(e) Other than the security interest granted to the Indenture Trustee pursuant to this Supplement and the Indenture, the Issuer has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Collateral, except as permitted pursuant to the Indenture. The Issuer has not authorized the filing of, and is not aware of, any financing statements against the Issuer that include a description of collateral covering the Collateral other than any financing statement or document of similar import (i) relating to the security interest granted to the Indenture Trustee in this Supplement or the Indenture or (ii) that has been terminated. The Issuer is not aware of any judgment or tax lien filings against the Issuer.

(f) The Issuer has received a written acknowledgment from the Manager that the Manager or an Affiliate thereof is holding the Leases, to the extent they relate to the Managed Containers, on behalf of, and for the benefit of, the Indenture Trustee. None of the Leases that constitute or evidence the Collateral have any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any Person. The Seller has caused the filing of all appropriate financing statements or documents of similar import in the proper filing office in the appropriate jurisdictions under Applicable Law in order to perfect the security interest of the Issuer (and the Indenture Trustee as its assignee) in the Leases (to the extent that such Leases relate to the Managed Containers) granted to the Issuer in the Contribution and Sale Agreement.

(g) The Issuer has received all necessary consents and approvals required by the terms of the Collateral to the pledge to the Indenture Trustee of its interest and rights in such Collateral hereunder or under the Indenture.

(h) The Issuer has taken all steps necessary to cause Wells Fargo Bank, National Association (in its capacity as securities intermediary) to identify in its records the Indenture Trustee as the Person having a Securities Entitlement in each of the Trust Account, the Restricted Cash Account and the Series 2012-1 Series Account.

(i) The Trust Account, the Restricted Cash Account and Series 2012-1 Series Account are not in the name of any Person other than the Indenture Trustee. The Issuer has not consented to Wells Fargo Bank, National Association (as the Securities Intermediary of the Trust



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Account, the Restricted Cash Account and the Series 2012-1 Series Account) entering into any agreement in which it has agreed to comply with entitlement orders of any Person other than the Indenture Trustee.

(j) No creditor of the Issuer (other than (x) with respect to the Managed Containers, the related Lessee and (y) the Manager in its capacity as Manager under the Management Agreement) has in its possession any goods that constitute or evidence the Collateral.

Any breaches of the representations and warranties set forth in this **Section 620** may be waived by the Indenture Trustee, only with the prior written consent of the Control Party and with the prior satisfaction of the Rating Agency Condition.

Section 621. ERISA Lien. As of the Closing Date, the Issuer has not received notice that any Lien arising under ERISA has been filed against the assets of the Issuer.

Section 622. Survival of Representations and Warranties. So long as any of the Series 2012-1 Notes shall be Outstanding, the representations and warranties contained herein shall have a continuing effect as having been true when made.

## ARTICLE VII

### Miscellaneous Provisions

Section 701. Ratification of Indenture. As supplemented by this Supplement, the Indenture is in all respects ratified and confirmed and the Indenture as so supplemented by this Supplement shall be read, taken and construed as one and the same instrument.

Section 702. Counterparts. This Supplement may be executed in two or more counterparts, and by different parties on separate counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart of this Supplement by facsimile or by electronic means shall be equally effective as of the delivery of an originally executed counterpart.

Section 703. Governing Law. THIS SUPPLEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAWS BUT OTHERWISE WITHOUT REFERENCE TO ITS CONFLICTS OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

Section 704. Notices. All demands, notices and communications hereunder shall be in writing, personally delivered, or by facsimile (with subsequent telephone confirmation of receipt thereof), or sent by internationally recognized overnight courier service, (a) in the case of the Indenture Trustee, at the following address: Sixth Street and Marquette Avenue, MAC N9311-161, Minneapolis, Minnesota, 55479, Attention: Corporate Trust Services/Asset-Backed Administration, (b) in the case of the Issuer, at the following address: Century House, 16 Par-la-Ville

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Road, Hamilton HM HX, Bermuda, Telephone: (441) 292-2487, Facsimile: (441) 295-4164, Attention: Chief Financial Officer, with a copy to each: (i) Textainer Equipment Management Limited at its address at Century House, 16 Par-la-Ville Road, Hamilton HM HX, Bermuda, Telephone: (441) 292-2487, Facsimile: (441) 295-4164, Attention: Chief Financial Officer, and (ii) Textainer Equipment Management (U.S.) Limited at its address at 650 California Street, 16th floor, San Francisco, CA 94108, Telephone: (415) 658-8214, Facsimile: (415) 434-0599, Attention: Chief Financial Officer, and (c) in the case of Rating Agency, at the following address: Standard & Poor's Ratings Services, 55 Water Street, New York, NY 10041-0003, or at such other address as shall be designated by such party in a written notice to the other parties. Any notice required or permitted to be given to a Series 2012-1 Noteholder shall be given by certified first class mail, postage prepaid (return receipt requested), or by courier, or by facsimile, with subsequent telephone confirmation of receipt thereof, in each case at the address of such Series 2012-1 Noteholder as shown in the Note Register or to the telephone and fax number furnished by such Series 2012-1 Noteholder. Notice shall be effective and deemed received (A) upon receipt, if sent by courier or U.S. mail, (B) upon receipt of confirmation of transmission, if sent by facsimile, or (C) when delivered, if delivered by hand. Any rights to notices conveyed to a Rating Agency pursuant to the terms hereof with respect to any Series shall terminate immediately if such Rating Agency no longer has a rating outstanding with respect to such Series.

Section 705. Amendments and Modifications. The terms of this Supplement may be waived, modified, or amended only in a written instrument signed by each of the Issuer, the Control Party and the Indenture Trustee (except with respect to the matters set forth in Section 1001(a) of the Indenture, in the case of which any such waiver, modification or amendment shall be made subject to the terms of such Section 1001). Any amendment to or modification or waiver of any of the provisions of this Supplement shall be deemed a supplemental indenture subject to Sections 1001 or 1002 of the Indenture.

Section 706. Consent to Jurisdiction. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST THE ISSUER ARISING OUT OF OR RELATING TO THIS SUPPLEMENT, OR ANY TRANSACTION CONTEMPLATED HEREBY, MAY BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, STATE OF NEW YORK AND THE ISSUER HEREBY WAIVES ANY OBJECTION WHICH 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 SUPPLEMENT, THE ISSUER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING.

Section 707. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, AS AGAINST THE OTHER PARTIES 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 SUPPLEMENT OR ANY OTHER SERIES 2012-1 RELATED DOCUMENT, INCLUDING IN RESPECT OF THE NEGOTIATION, ADMINISTRATION OR ENFORCEMENT HEREOF OR THEREOF.

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Section 708. Successors. This Supplement shall inure to the benefit of and be binding upon the Issuer, the Indenture Trustee and, by its acceptance of any Series 2012-1 Note or any legal or beneficial interest therein, each Series 2012-1 Noteholder and each Note Owner, and each of such Person's successors and assigns.

Section 709. Nonpetition Covenant. Each Series 2012-1 Noteholder by its acquisition of a Series 2012-1 Note shall be deemed to covenant and agree, that it will not institute against the Issuer any bankruptcy, reorganization, arrangement insolvency or liquidation Proceedings, or other Proceedings under any federal or state bankruptcy or similar law, at any time other than on a date which is at least one (1) year and one (1) day after the later of (a) the last date on which any Note of any Series was Outstanding and (b) the date on which all amounts owing to each Series Enhancer pursuant to the terms of the related Insurance Agreements have been paid in full.

Section 710. Recourse Against the Issuer. No recourse under or with respect to any obligation, covenant or agreement (including, without limitation, the payment of any fees or any other obligations) of the Issuer as contained in this Supplement or any other agreement, instrument or document entered into by the Issuer pursuant hereto or in connection herewith shall be had against any administrator of the Issuer or any incorporator, affiliate, shareholder, officer, employee, manager or director of the Issuer or of any such administrator, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that the agreements of the Issuer contained in this Supplement and all of the other agreements, instruments and documents entered into by the Issuer pursuant hereto or in connection herewith are, in each case, solely the corporate obligations of the Issuer, and that no personal liability whatsoever shall attach to or be incurred by any administrator of the Issuer or any incorporator, shareholder, affiliate, officer, employee, manager or director of the Issuer or of any such administrator, as such, or any other of them, under or by reason of any of the obligations, covenants or agreements of the Issuer contained in this Supplement or in any other such instruments, documents or agreements, or which are implied therefrom, and that any and all personal liability of every such administrator of the Issuer and each incorporator, shareholder, affiliate, officer, employee, manager or director of the Issuer or of any such administrator, as such, or any of them, for breaches by the Issuer of any such obligations, covenants or agreements, which liability may arise either at common law or at equity, by statute or constitution, or otherwise, is hereby expressly waived as a condition of and in consideration for the execution of this Supplement. The provisions of this **Section 710** shall survive the termination of this Supplement.

Section 711. Reports, Financial Statements and Other Information to Noteholders. The Indenture Trustee will make available promptly upon receipt thereof to the Series 2012-1 Noteholders via the Indenture Trustee's internet website at [www.CTSLink.com](http://www.CTSLink.com) the financial statements referred to in Section 7.2 of the Management Agreement, the Manager Report, the Asset Base Report, and the annual insurance confirmation; *provided*, that, as a condition to access to the Indenture Trustee's website, the Indenture Trustee shall require each such Series 2012-1 Noteholder to execute the Indenture Trustee's standard form documentation, and upon such execution, each such Series 2012-1 Noteholder shall be deemed to have certified

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to the Indenture Trustee it (i) is a Series 2012-1 Noteholder, (ii) understands that such items contain material nonpublic information (within the meaning of U.S. Federal Securities laws), (iii) is requesting the information solely for use in evaluating such party's investment in the Series 2012-1 Notes and will keep such information strictly confidential (with such exceptions and restrictions to distribution of the information as are more fully set forth in the information request certification) and (iv) is not a Competitor. Each time a Series 2012-1 Noteholder accesses the internet website, it will be deemed to have confirmed the representations and warranties made pursuant to the confirmation as of the date of such access. The Indenture Trustee will provide the Issuer with copies of such information request certification. Assistance in using the Indenture Trustee's website can be obtained by calling the Indenture Trustee's customer service desk at (866) 846-4526.

**[Signature page follows.]**

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IN WITNESS WHEREOF, the Issuer and the Indenture Trustee have caused this Supplement to be duly executed and delivered by their respective officers all as of the day and year first above written.

TEXTAINER MARINE CONTAINERS LIMITED

By Continental Management Limited, its Assistant Secretary

By: /s/ Christopher C. Morris

Name: Christopher C. Morris

Title: Director

**SERIES 2012-1 SUPPLEMENT**

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WELLS FARGO BANK, NATIONAL ASSOCIATION, as  
Indenture Trustee

By: /s/ Kristen L. Puttin

Name: Kristen L. Puttin

Title: Vice President

**SERIES 2012-1 SUPPLEMENT**

TEXTAINER MARINE CONTAINERS II LIMITED  
Issuer

and

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Indenture Trustee

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INDENTURE

Dated as of May 1, 2012

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This Indenture, dated as of May 1, 2012 (as amended or supplemented from time to time as permitted hereby, the “Indenture”), between TEXTAINER MARINE CONTAINERS II LIMITED, a company organized and existing under the laws of Bermuda (the “Issuer”), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Indenture Trustee (the “Indenture Trustee”).

W I T N E S S E T H:

WHEREAS, the Issuer desires to issue asset-backed notes pursuant to this Indenture;

WHEREAS, the Notes will be full recourse obligations of the Issuer and will be secured by the Collateral; and

WHEREAS, all acts and things have been done and performed which are necessary to make the Notes, when executed by the Issuer, authenticated by the Indenture Trustee and issued, the legal, valid and binding obligations of the Issuer, enforceable in accordance with their terms, and to make this Indenture a valid and binding agreement for the security of the Notes authenticated and delivered under this Indenture;

NOW THEREFORE, in consideration of the mutual agreements herein contained, each party agrees as follows for the benefit of the Noteholders, each Series Enhancer and each Interest Rate Hedge Provider:

GRANTING CLAUSE

To secure the payment of the Aggregate Outstanding Obligations and the performance of all of the Issuer’s covenants and agreements in this Indenture and each other Related Document to which it is a party, the Issuer hereby grants, assigns, conveys, mortgages, pledges, charges, hypothecates and transfers to the Indenture Trustee, for the benefit of the Noteholders, each Series Enhancer and each Interest Rate Hedge Provider, a first priority perfected security interest in and to all assets and property of the Issuer, whether now existing or hereafter acquired including, without limitation, all of the Issuer’s right, title and interest in, to and under the following whether now existing or hereafter created or acquired (with respect to clauses (v) through (xv) below, only to the extent such assets or property arise out of or in any way relate to (but only to the extent they relate to) the Managed Containers):

(i) the Managed Containers and all other Transferred Assets;

(ii) all Deposit Accounts and all Securities Accounts, including the Trust Account, the Restricted Cash Account, the Counterparty Collateral Account, any Pre-Funding Account and any Series Account, and all cash and cash equivalents, Eligible Investments, Financial Assets, Investment Property, Securities Entitlements and other instruments or amounts credited or deposited from time to time in any of the foregoing;

(iii) the Container Sale Agreement, the Container Transfer Agreement, the Management Agreement, Interest Rate Hedge Agreement and each other Related Document to which the Issuer is a party;

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(iv) all collections received by the Issuer from the operation of the Managed Containers, including any Issuer Proceeds and Pre-Adjustment Issuer Proceeds, on deposit in the Master Account;

(v) all Accounts;

(vi) all Chattel Paper, and all Leases and all schedules, supplements, amendments, modifications, renewals, extensions and all guaranties and other credit support with respect to the foregoing and all rentals, payments and monies due and to become due in respect of the foregoing, and all rights to terminate or compel performance thereof;

(vii) all Contracts;

(viii) all Documents;

(ix) all General Intangibles;

(x) all Instruments;

(xi) all Inventory;

(xii) all Supporting Obligations;

(xiii) all Equipment;

(xiv) all Letter of Credit Rights;

(xv) all Commercial Tort Claims;

(xvi) all property of the Issuer held by the Indenture Trustee including, without limitation, all property of every description now or hereafter in the possession or custody of or in transit to the Indenture Trustee for any purpose, including, without limitation, safekeeping, collection or pledge, for the account of the Issuer, or as to which the Issuer may have any right or power;

(xvii) the right of the Issuer to terminate, perform under, or compel performance of the terms of the Container Related Agreements and all claims for damages arising out of the breach of any Container Related Agreement;

(xviii) any guarantee of the Container Related Agreements and any rights of the Issuer in respect of any subleases or assignments permitted under the Container Related Agreements;

(xix) all or any part of insurance proceeds of all or any part of the Collateral and all proceeds of the voluntary or involuntary disposition of all or any part of the Collateral or such proceeds;

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(xx) any and all payments made or due to the Issuer in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority and any other cash or non-cash receipts from the sale, exchange, collection or other disposition of all or any part of the Collateral;

(xxi) to the extent not otherwise included, all income, payments and Proceeds of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of each of the foregoing.

All of the property described in this Granting Clause is herein collectively called the “Collateral” and as such is security for the payment of the Aggregate Outstanding Obligations and the performance of all of the Issuer’s covenants and agreements in this Indenture and each other Related Document to which it is a party.

In furtherance of the foregoing, the Issuer hereby grants, assigns, conveys, mortgages, pledges, charges, hypothecates and transfers to the Indenture Trustee, for the benefit of the Noteholders, each Series Enhancer and each Interest Rate Hedge Provider (i) a fixed charge over the Container Sale Agreement, the Container Transfer Agreement, each Interest Rate Hedge Agreement and the Management Agreement and (ii) a floating charge over all other assets of the Issuer.

In furtherance of the foregoing, the Issuer hereby appoints the Indenture Trustee as its designee for purposes of exercising the power of attorney granted by the Manager pursuant to Section 11.4 of the Management Agreement.

The Indenture Trustee acknowledges such Grant, accepts the trusts hereunder in accordance with the provisions hereof, and agrees to perform the duties herein required as hereinafter provided. Notwithstanding the foregoing, the Indenture Trustee does not assume, and shall have no liability to perform, any of the Issuer’s obligations under any agreement included in the Collateral and shall have no liability arising from the failure of the Issuer or any other Person to duly perform any such obligations. The Issuer hereby confirms and the Indenture Trustee hereby acknowledges that the Issuer does not currently have any rights with respect to Commercial Tort Claims on the Closing Date.

The Issuer hereby irrevocably authorizes the Indenture Trustee at any time, and from time to time, to file in any filing office in any UCC jurisdiction any financing statements (including any such financing statements claiming a security interest in all assets of the Issuer) and amendments thereto that (i) indicate the Collateral, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC, and (ii) provide any other information required by Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether the Issuer is an organization, the type of organization and any organizational identification number issued to the Issuer. The Issuer agrees to furnish any such information to the Indenture Trustee promptly upon the Indenture Trustee’s request. The Issuer also ratifies its authorization for the Indenture Trustee to have filed in any jurisdiction any similar initial financing statements or amendments thereto if filed prior to the date hereof.

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ARTICLE I  
DEFINITIONS

Section 101. Defined Terms.

Capitalized terms used in this Indenture shall have the following meanings and the definitions of such terms shall be equally applicable to both the singular and plural forms of such terms:

*Account:* Any “account”, as such term is defined in Section 9-102(a)(2) of the UCC.

*Account Debtor:* Any “account debtor”, as such term is defined in Section 9-102(a)(3) of the UCC .

*Administrative Agent:* The Person performing the duties of the Administrative Agent under the Administrative Agreement; initially, Wells Fargo Securities, LLC, acting under the trade name Wells Fargo Securities.

*Administrative Agent Fee:* This term shall have the meaning set forth in the Administration Agreement, as such agreement may be amended, modified and restated from time to time in accordance with its terms.

*Administration Agreement:* The Administration Agreement, dated as of the Closing Date, among the Issuer, the Manager, the Administrative Agent and the Indenture Trustee, as such agreement may be amended, modified and restated from time to time in accordance with its terms.

*Advance Rate:* Eighty percent (80.00%); *provided* that, at all times after the Residual Requirement is not met, the Advance Rate shall be seventy-two and one-half of one percent (72.50%). A failure to comply with the Residual Requirement is not curable, and such noncompliance can be waived by the Requisite Global Majority.

*Affiliate:* With respect to a specified Person, any other Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the specified Person. For the purposes of this definition, “control”, when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

*Aggregate Net Book Value:* As of any date of determination, an amount equal to the sum of the Net Book Values of all Eligible Containers.

*Aggregate Outstanding Obligations:* As of any date of determination, an amount equal to the sum of (i) the Outstanding Obligations for all Series of Notes then Outstanding, and (ii) all other amounts owing by the Issuer to the Indenture Trustee, any Series Enhancer, any Noteholder, or any Interest Rate Hedge Provider pursuant to the terms of any Related Document.

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*Aggregate Principal Balance:* As of any date of determination, an amount equal to the sum of the then unpaid principal balance of all Series of Notes then Outstanding.

*Applicable Law:* With respect to any Person or Managed Container, all law, treaties, judgment, decrees, injunctions, waits, rules, regulations, orders, directives, concessions, licenses and permits of any Governmental Authority applicable to such Person or its Property or in respect of its operations.

*Asset Base:* Either or both (as the context may require) of a Senior Asset Base or a Subordinate Asset Base.

*Asset Base Deficiency:* The condition that exists on any Payment Date, after giving effect to the payment of (i) all Supplemental Principal Payment Amounts then due and payable for each Series of Senior Notes on such Payment Date (to the extent that there is cash available to make such payments), if the sum of the then unpaid principal balances of all Series of Senior Notes exceeds the Senior Asset Base, or (ii) all Subordinate Supplemental Principal Payment Amounts then due and payable for each Series of Subordinate Notes on such Payment Date (to the extent that there is cash available to make such payments), if the sum of the then unpaid principal balances of all Series of Subordinate Notes exceeds the Subordinate Asset Base.

*Asset Base Report:* A certificate with appropriate insertions setting forth the components of the Asset Base as of the date of determination for which such certificate is submitted, which certificate shall be substantially in the form of Exhibit A to this Indenture and shall be certified by an Authorized Signatory of the Manager or one of its permitted Affiliates on behalf of the Manager.

*Authorized Signatory:* Any Person designated by written notice delivered to the Indenture Trustee and the related Series Enhancer as authorized to execute documents and instruments on behalf of a Person.

*Available Distribution Amount:* For any Payment Date, an amount equal to the sum (without duplication) of (i) the Pre-Adjustment Issuer Proceeds and (without duplication) Issuer Proceeds received from the Manager during the immediately preceding Collection Period, less certain sums deducted in accordance with the terms of the Management Agreement, (ii) all amounts received by the Issuer on the related Determination Date pursuant to any Interest Rate Hedge Agreement, (iii) all Warranty Purchase Amounts and Manager Advances received by the Issuer since the immediately preceding Determination Date and (iv) any earnings on Eligible Investments in the Trust Account to the extent that such earnings were credited to such account during the related Collection Period.

*Back-up Data Files:* This term shall have the meaning set forth in the Management Agreement.

*Bankruptcy Code:* The United States Bankruptcy Reform Act of 1978, as amended.



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*Book-Entry Custodian:* The Person appointed pursuant to the terms of this Indenture to act in accordance with a certain letter of representations agreement such Person has with the Depositary, in which the Depositary delegates its duties to maintain the Book-Entry Notes to such Person and authorizes such Person to perform such duties.

*Book-Entry Notes:* Collectively, the Rule 144A Book-Entry Notes, the Regulation S Temporary Book-Entry Notes and the Unrestricted Book-Entry Notes.

*Business Day:* Any day other than a Saturday, a Sunday or a day on which the New York Stock Exchange, the Federal Reserve Bank or banking institutions in San Francisco, California, New York, New York, London, United Kingdom, Amsterdam, The Netherlands or the city in which the Corporate Trust Office is located, are authorized or are obligated by law, executive order or governmental decree to be closed.

*Casualty Loss:* Any of the following events with respect to any Managed Container: (a) the actual total loss or compromised total loss of such Managed Container, (b) the loss, theft or destruction of such Managed Container, (c) thirty (30) days following a determination by, or on behalf of, the Issuer that such Managed Container is damaged beyond repair or permanently rendered unfit for use for any reason whatsoever, (d) the seizure, condemnation or confiscation of such Managed Container for a period exceeding sixty (60) days or (e) if such Managed Container is subject to a Lease, such Managed Container shall have been deemed under its Lease to have suffered a casualty loss as to the entire Managed Container. In determining the date on which a Casualty Loss occurred, the application of the time frames set forth in clauses (a) through (e) above shall in no event result in the deemed occurrence of a Casualty Loss prior to the date on which an officer of the Issuer or the Manager obtains actual knowledge of such Casualty Loss.

*Casualty Proceeds:* This term shall have the meaning set forth in the Management Agreement.

*CEU:* A cost-equivalent unit which is a fixed unit of measurement based on the cost of a Container relative to the cost of a twenty-foot standard dry freight Container.

*Chattel Paper:* Any lease (including any Finance Lease) or other “chattel paper”, as such term is defined in Section 9-102(a)(11) of the UCC.

*Class:* With respect to any Series, all Notes within such Series having the same rights to payment under the related Supplement.

*Closing Date:* This term shall have the meaning set forth in the related Supplement.

*Code:* The Internal Revenue Code of 1986, as amended, or any successor statute thereto.

*Collateral:* This term shall have the meaning set forth in the Granting Clause of this Indenture.

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*Collection Period.* With respect to the first Payment Date, the period commencing on May 1, 2012 and ending on May 31, 2012 and, for any subsequent Payment Date, the period from the first day of the calendar month immediately preceding the month in which such Payment Date occurs through and including the last day of such calendar month.

*Collections:* With respect to any Collection Period, all payments (including any cash proceeds) actually received by the Issuer, or by the Manager on behalf of the Issuer, with respect to the Managed Containers and the other items of Collateral.

*Commercial Tort Claims:* Any “commercial tort claim”, as such term is defined in 9-102(a)(13) of the UCC.

*Competitor:* Any Person engaged and competing with any of the Issuer, Textainer Limited, Textainer Group Holdings Limited or the Manager in the Container leasing business; *provided, however*, that in no event shall any insurance company, bank, bank holding company, savings institution or trust company, fraternal benefit society, pension, retirement or profit sharing trust or fund, or any collateralized bond obligation fund or similar fund (or any trustee of any such fund) or any holder of any obligations of any such fund (solely as a result of being such a holder) be deemed to be a Competitor.

*Container:* Any dry freight cargo, high cube or other type of marine or intermodal container.

*Container Related Agreement:* Any agreement relating to the Managed Containers or agreements relating to the use or management of such Managed Containers whether in existence on any Series Issuance Date or thereafter acquired, including, but not limited to, all Leases, the Management Agreement, the Container Transfer Agreement, the Container Sale Agreement and the Chattel Paper.

*Container Representations and Warranties:* This term shall have the meanings set forth in the Container Sale Agreement and the Container Transfer Agreement, respectively.

*Container Sale Agreement:* The Container Sale Agreement, dated as of May 1, 2012, between the Issuer and Textainer Limited, as such agreement may be amended, modified or supplemented from time to time in accordance with its terms.

*Container Transfer Agreement:* The Container Transfer Agreement, dated as of May 1, 2012, between the Issuer and TMCL, as such agreement may be amended, modified or supplemented from time to time in accordance with its terms.

*Contracts:* All contracts, undertakings, franchise agreements or other agreements (other than rights evidenced by Chattel Paper, Documents or Instruments), arising out of or in any way related to the Managed Containers or to the Notes, in or under which Issuer may now or hereafter have any right, title or interest, including, without limitation, the Management Agreement, the Container Sale Agreement, the Container Transfer Agreement, any Interest Rate Hedge Agreements and any related agreements, security interests or UCC or other financing statements and, with respect to an Account, any agreement relating to the terms of payment or the terms of performance thereof.

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*Control Agreement:* A control agreement, among the Issuer, the Indenture Trustee and the Securities Intermediary, which shall be substantially in the form of Exhibit G to this Indenture, for each of the Trust Account, the Restricted Cash Account and each Series Account.

*Control Party:* This term shall have the meaning set forth in the Supplement for the related Series.

*Conversion Date:* With respect to any Series of Warehouse Notes, the date on which a Conversion Event occurs with respect to such Series of Warehouse Notes.

*Conversion Event:* With respect to any Series of Warehouse Notes, any event that will result in the termination of the revolving period for such Series and the commencement of principal amortization of such Series as set forth in the related Supplement.

*Corporate Trust Office:* The principal office of the Indenture Trustee at which at any particular time its corporate trust business shall be administered. As of the Closing Date, such office is located at Sixth Street and Marquette Avenue in Minneapolis, Minnesota 55479.

*Corporate Trust Officer:* Any Treasurer, Assistant Treasurer, Assistant Trust Officer, Trust Officer, Assistant Vice President, Vice President or Senior Vice President of the Indenture Trustee or any other officer who customarily performs functions similar to those performed by the Persons who at the time shall be such officers to whom any corporate trust matter is referred because of their knowledge of and familiarity with the particular subject.

*Counterparty Collateral Account:* The account or accounts established by and held in the name of the Indenture Trustee as provided in Section 627(i).

*Default Interest:* The incremental interest specified in the related Supplement payable by the Issuer resulting from (i) the failure of the Issuer to pay when due any principal of or interest on the Notes of the related Series or (ii) the occurrence of an Event of Default with respect to such Series.

*Definitive Note:* A Note issued in physical form pursuant to the terms and conditions of Section 202 hereof.

*Deposit Account:* Any “deposit account,” as such term is defined in Section 9-102(a)(29) of the UCC.

*Depository:* The Depository Trust Company until a successor depository shall have become such pursuant to the applicable provisions of this Indenture and thereafter “Depository” shall mean or include each Person who is then a Depository hereunder. For purposes of this Indenture, unless otherwise specified pursuant to Section 202, any successor Depository shall, at the time of its designation and at all times while it serves as Depository, be a clearing agency registered under the Exchange Act, and any other applicable statute or regulation.

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*Depository Participants:* A broker, dealer, bank, other financial institution or other Person for whom from time to time the Depository effects book-entry transfers and pledges of securities deposited with the Depository.

*Depreciation Expense:* With respect to any calculation of the Asset Base, means either (i) the Depreciation Policy or (ii) such other depreciation policy as may be utilized by the Manager from time to time, with the prior written consent of the Control Party for each Series.

*Depreciation Policy:* A depreciation policy:

(i) under which, for purposes of calculating the Asset Base, the Original Equipment Cost of a Managed Container is depreciated (x) in the case of a Managed Container acquired by the Issuer or TL directly from the manufacturer of such Managed Container, using the straight-line method over a twelve (12) year useful life to the Residual Value, or (y) in the case of a Managed Container not included in clause (x), using straight-line method over the remaining useful life of such Managed Container as of the date of acquisition of such Managed Container by the Issuer or TL (based upon a total useful life of 12 years) to the Residual Value; and

(ii) which, for any purpose other than calculating the Asset Base, is determined in accordance with GAAP.

*Determination Date:* The fourth (4<sup>th</sup>) Business Day prior to the related Payment Date.

*Director Services Provider:* AMACAR Investments LLC, a Delaware limited liability company, and its successors and assigns.

*Documents:* Any “documents,” as such term is defined in Section 9-102(a)(30) of the UCC.

*Dollars:* Dollars and the sign “\$” means lawful money of the United States of America.

*Early Amortization Event:* The occurrence of any of the events or conditions set forth in Section 1201 hereof.

*EBIT:* For any fiscal quarter, earnings (loss) before Interest Expense and taxes, determined in accordance with GAAP, including gains and losses from the sale of assets and foreign exchange transactions, but excluding gains or losses resulting from changes in the Depreciation Policy and excluding unrealized gains or losses arising from implementation of Statement of Financial Accounting Standards No. 133 issued by the Financial Accounting Standards Board.

*EBIT Ratio:* For the Issuer as of any date of determination, the ratio of (a) aggregate EBIT to (b) aggregate Interest Expense, in each case for the most recently concluded six (6) fiscal quarters, or, if fewer than six fiscal quarters have passed since the Closing Date, for the number of concluded fiscal quarters since the Closing Date.

*Eligible Account:* Any of (a) a segregated account with an Eligible Institution, (b) a segregated trust account with the corporate trust department of a depository institution organized under the laws of the United States or any of the states thereof, including the District of Columbia (or any domestic branch of a foreign bank), and acting as a trustee for funds deposited in such account, so long as the senior securities of such depository institution shall have a credit rating from each of Moody's and Standard & Poor's in one of its generic credit rating categories no lower than "A3" or "A-", as the case may be, or (c) an account held with the Indenture Trustee.

*Eligible Container:* As of any date of determination, any Managed Container which, when considered with all other Managed Containers, shall comply with various customary requirements including each of the following requirements which are subject to modification upon, and receipt of, the prior written consent of the Requisite Global Majority:

(i) Maximum Concentration of Specialized Containers. The sum of the Net Book Values of all specialized Containers (other than twenty foot (20') dry freight, forty foot (40') dry freight or forty foot (40') high cube dry freight cargo Containers and refrigerated Containers) then owned by the Issuer shall not exceed an amount equal to fifteen percent (15%) of the Aggregate Net Book Value on such date;

(ii) Specifications. The Container conforms to the standard specifications used by the Manager for Containers purchased by and on behalf of Container owners other than the Issuer for that category of Container and to any applicable standards promulgated by applicable international standards organizations;

(iii) Finance Leases. The sum of the Net Book Values of all Eligible Containers then owned by the Issuer whose initial Leases were Finance Leases shall not exceed an amount equal to ten percent (10%) of the Aggregate Net Book Value on such date, *provided*, that the Issuer, or the Manager, on behalf of the Issuer, has to the extent necessary, taken the actions specified in Section 3.5 of the Management Agreement with respect to such Finance Leases;

(iv) Casualty Losses. Such Container shall not have suffered a Casualty Loss;

(v) Title. The related Seller shall have had good and marketable title to such Container at the time of sale to the Issuer;

(vi) No Violation. The contribution and conveyance of such Container to the Issuer does not violate any agreement of the related Seller;

(vii) Assignability. Except with respect to the U.S. Lease Contract or other Leases with the U.S. government, the Lease rights with respect to such Container are freely assignable;

(viii) All Necessary Actions Taken. The related Seller and the Issuer shall have taken all necessary actions to transfer title to such Container and all related Leases (other than TUS Subleases) from such Seller to the Issuer;

(ix) Non-Monthly Leases. The percentage of CEUs of all Eligible Containers that are subject to Leases specifying that rental payments are payable less frequently than monthly shall not exceed two percent (2%) of the aggregate number of CEUs of all Eligible Containers on such date;

(x) Non-United States Dollar Leases. The percentage of CEUs of all Eligible Containers that are subject to Leases specifying payment in a currency other than United States Dollars and that are not sufficiently hedged in accordance with the currency hedging policy approved by the Requisite Global Majority shall not exceed two percent (2%) of the aggregate number of CEUs of all Eligible Containers on such date;

(xi) General Trading Terms. Substantially all of the Leases for such Containers shall contain the general trading terms the Manager uses in its normal course of business;

(xii) Maximum Concentration for Insolvent Lessees. Both of the following: (A) the sum of the Net Book Values of all Eligible Containers that are on Lease to any lessee (or sublessee) that is the subject of an Insolvency Proceeding shall not exceed 25% of the Aggregate Net Book Value, and (B) such Managed Container is not then on Lease to a lessee that is both (x) the subject of an Insolvency Proceeding and (y) more than 150 days delinquent on any rental payment owing with respect to any Managed Container in the Fleet;

(xiii) Purchase Price. In the case of a purchase (as opposed to a capital contribution) of a Container, the purchase price paid by the related Seller and/or the Issuer for such Container was not greater than the fair market value of the Container at the time of acquisition;

(xiv) Lessees. The sum of the CEUs of all Eligible Containers that are subject to Leases to Persons for use other than the intermodal transportation of cargo shall not exceed seven percent (7%) of the aggregate CEUs of all Eligible Containers on such date;

(xv) No Adverse Selection Procedures. The selection procedures in selecting any Container to be transferred to the Issuer did not or shall not, as the case may be, discriminate against the Issuer as to the type of Containers, utilization potential, lease rates, lessees, age of Containers or Lease terms, in comparison to the Fleet, except for any such adverse selection as may result from the compliance with paragraphs (ix) and/or (x) above;

(xvi) No Prohibited Person or Prohibited Jurisdiction. Such Container is then not on lease to a Prohibited Person, and to the actual knowledge of the Issuer or the Manager, is not subleased to a Prohibited Person or located, operated or used in a Prohibited Jurisdiction unless it is used by the government of the United States or one of its allies or pursuant to a license granted by the Office of Foreign Assets Control of the United States Treasury Department;

(xvii) Good Title; No Liens. The Issuer has good and marketable title to such Managed Container, free and clear of all Liens other than Permitted Encumbrances;

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(xviii) Container Representations and Warranties. Each Managed Container complies with the Container Representations and Warranties applicable to such Managed Container;

(xix) Restrictions on Leases with Affiliates. Such Managed Container is not subject to a Lease in which the Manager, the Issuer or any of their respective Affiliates is the lessee; provided however that a Managed Container is permitted to be subject to a Head Lease Agreement and a TUS Sublease;

(xx) Bankrupt Lessees under Finance Leases. Such Managed Container is not then under a Finance Lease to a lessee which, to the best knowledge of the Manager, is the subject of an Insolvency Proceeding;

(xxi) Maximum Concentration for Single Lessee. The sum of the Net Book Values of all Eligible Containers that are on Lease to any single lessee (or sublessee) shall not exceed 25% of the Aggregate Net Book Value;

(xxii) Maximum Concentration of Top Ten Lessees. The sum of the Net Book Values of all Eligible Containers that are on Lease to any ten (10) lessees (or sublessees) shall not exceed 75% of the Aggregate Net Book Value;

(xxiii) U.S. Government Leases. The sum of the Net Book Values of all Eligible Containers that are on Lease to the U.S. government under the U.S. Lease Contract and any other Lease under which the U.S. government is the Lessee shall not exceed 4% of the Aggregate Net Book Value; *provided*, any Containers subject to any such Lease shall not count against the limitation contained in this paragraph (xxiii) following the execution by the appropriate U.S. governmental official(s) of a consent to assignment with respect thereto; *provided, further*, any Containers subject to any such Lease shall not count against the limitation contained in this paragraph (xxiii) following delivery to the Indenture Trustee of an Opinion of Counsel to the effect that the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), has been complied with by the Issuer (or an agent thereof) regarding such Containers;

(xxiv) Maximum Concentration of Finance Leases by Lessee. The sum of the Net Book Values of all Eligible Containers that are subject to Finance Leases with a single Lessee shall not exceed five percent (5%) of the Aggregate Net Book Value on such date; and

(xxv) Maximum Concentration of Refrigerated Containers. The sum of the Net Book Values of all refrigerated Containers then owned by the Issuer shall not exceed an amount equal to fifty percent (50%) of the Aggregate Net Book Value on such date.

In applying the concentration limits set forth in clauses (i), (iii), (ix), (x), (xii), (xiv) and (xxi) through (xxv), TUS, in its capacity as Lessee under the Head Lease Agreement, shall be excluded from such calculations, and each TUS Sublease shall be included in such calculations. The concentration limit set forth in clause (xii) shall not be applicable with respect to any Managed Container acquired by the Issuer on the Closing Date.

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*Eligible Institution:* Any one or more of the following institutions: (i) the corporate trust department of the Indenture Trustee; *provided* that the Indenture Trustee maintains a long-term unsecured senior debt rating of at least “A” or better from Standard & Poor’s or “A2” or better from Moody’s (so long as Notes deemed Outstanding hereunder are rated by Moody’s), or (ii) a depository institution organized under the laws of the United States of America or any one of the states thereof or the District of Columbia (or any domestic branch of a foreign bank), (a) which has both (x) a long-term unsecured senior debt rating of not less than “A” by Standard & Poor’s Ratings Group and “A2” by Moody’s Investors Service, Inc., and (y) a short-term unsecured senior debt rating rated in the highest rating category by each Rating Agency and (b) whose deposits are insured by the Federal Deposit Insurance Corporation.

*Eligible Interest Rate Hedge Provider:* At the time of execution and delivery of the related Interest Rate Hedge Agreement, any bank or other financial institution (or any party providing credit support on such Person’s behalf) that (A) has (x) a long-term senior unsecured debt rating of at least “A-” from Standard & Poor’s or “A3” from Moody’s and (y) a short-term unsecured debt rating of “A-2” from Standard & Poor’s or “P-2” from Moody’s, or (B) is otherwise approved by each Control Party for each Series of Notes.

*Eligible Investments:* One or more of the following:

- (i) direct obligations of, and obligations fully guaranteed as to the timely payment of principal and interest by, the United States or obligations of any agency or instrumentality thereof when such obligations are backed by the full faith and credit of the United States;
- (ii) certificates of deposit and bankers’ acceptances (which shall each have an original maturity of not more than three hundred sixty-five (365) days) of any United States depository institution or trust company incorporated under the laws of the United States or any State and subject to supervision and examination by federal and/or State authorities, *provided* that the long-term unsecured senior debt obligations of such depository institution or trust company at the date of acquisition thereof have been rated “AA-/Aa3” or the equivalent or better by the Rating Agencies, or the short-term unsecured senior debt obligations of such depository institution or trust company are rated by each Rating Agency in its highest rating category;
- (iii) commercial paper (having original maturities of not more than two hundred seventy (270) days) of any corporation incorporated under the laws of the United States or any State thereof which on the date of acquisition has been rated by each Rating Agency in the highest short-term unsecured commercial paper rating category;
- (iv) any money market fund that has been rated by each Rating Agency in its highest rating category (including any designations of “plus” or “minus”) or that invests solely in Eligible Investments;
- (v) eurodollar deposits (which shall each have an original maturity of not more than three hundred sixty-five (365) days) of any depository institution or trust company, *provided* that the long-term unsecured senior debt obligations of such



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depository institution or trust company at the date of acquisition thereof have been rated “AA-/Aa3” or the equivalent or better by the Rating Agencies, or the short-term unsecured senior debt obligations of such depository institution or trust company are rated by each Rating Agency in its highest rating category; and

(vi) other obligations or securities that are acceptable to the related Series Enhancer and each Rating Agency as an Eligible Investment hereunder and will not result in a reduction or withdrawal in the then current rating of the Notes as evidenced by a letter to such effect from each Rating Agency and the related Series Enhancer.

Nothing in the definition of “Eligible Investments” is intended to prohibit the Issuer from acquiring (to the extent permitted above) an Eligible Investment issued by the Indenture Trustee or an Affiliate of the Indenture Trustee.

*Enhancement Agreement:* Any agreement, instrument or document governing the terms of any Series Enhancement or pursuant to which any Series Enhancement is issued or outstanding.

*Entitlement Order:* Any “entitlement order” as defined in Section 8-102(8) of the UCC.

*Equipment:* Any “equipment” as defined in Section 9-102(a)(33) of the UCC.

*ERISA:* The Employee Retirement Income Security Act of 1974, as amended.

*ERISA Affiliate:* With respect to any Person, any other Person meeting the requirements of paragraphs (b), (c), (m) or (o) of Section 414 of the Code.

*Event of Default:* With respect to any Series, the occurrence of any of the events or conditions set forth in Section 801 of this Indenture.

*Exchange Act:* The Securities Exchange Act of 1934, as amended.

*Existing Commitment:* With respect to any Series (A) of Warehouse Notes (i) prior to its Conversion Date, the aggregate Initial Commitment with respect to such Series of Notes Outstanding, consisting of one or more classes, expressed as a dollar amount, as set forth in the related Supplement and subject to reduction from time to time in accordance with the related Supplement and (ii) after its Conversion Date, the then unpaid principal balance of the Notes of such Series and (B) of Term Notes, the then unpaid principal balance of the Notes of such Series.

*Expected Final Payment Date:* With respect to any Series, the date on which the principal balance of the Outstanding Notes of such Series are expected to be paid in full. The Expected Final Payment Date for a Series shall be set forth in the related Supplement.

*Failed Test Period:* Any Test Period during which the average Sales Proceeds per CEU realized from all sales of Managed Containers during such Test Period is less than Seven Hundred Fifty Dollars (\$750).

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*Failed Test Cure:* The occurrence of either of the following events: (i) during the twelve month period immediately following the end of the Failed Test Period, the Issuer has, with the concurrence of the Independent Accountants, reduced the estimated Residual Value of each type of Managed Container to an amount not greater than the average Sales Proceeds per CEU, for all types of Managed Container during the Failed Test Period, or (ii) the average Sales Proceeds per CEU of all Managed Containers sold during the twelve month period immediately following the end of the Failed Test Period exceeds \$850 per CEU.

*Finance Lease:* Any Lease of a Container whose initial lease agreement provides the Lessee the right or option to purchase the Container at the expiration of the Lease and whose initial lease agreement satisfies the criteria for classification as a capital lease pursuant to GAAP, including Statement of Financial Accounting Standards No. 13, as amended.

*Financial Asset:* Any “financial asset” as such term is defined in Section 8-102(a)(9) of the UCC.

*Fleet:* As of any date of determination, both of the following collectively: (i) the Managed Containers and (ii) without duplication of clause (i), all other Containers then managed by Manager.

*General Intangibles:* Any “general intangible” as such term is defined in Section 9-102(a)(42) of the UCC.

*Generally Accepted Accounting Principles or GAAP:* With respect to any Person, those generally accepted accounting principles and practices which are recognized as such by (i) the American Institute of Certified Public Accountants acting through its Accounting Principles Board or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof consistently applied as to the party in question or (ii) such other equivalent entity(ies) that has or have authority for promulgating accounting principles and practices applicable to such Person.

*Governmental Authority:* Any of the following: (i) any national, state or other sovereign government, and any federal, regional, state, provincial, local, city government or other political subdivision, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, (iii) any court or administrative tribunal or (iv) with respect to any Person, any arbitration tribunal or other non-governmental authority to whose jurisdiction that Person has consented.

*Grant:* To grant, bargain, sell, convey, assign, transfer, mortgage, pledge, create and perfect a security interest in and right of set-off against, deposit, set over and confirm.

*Head Lease Agreement:* A Lease with TUS, as lessee, that possesses all of the following attributes:

- (1) the rent payable by TUS under such Lease with respect to Managed Containers equals at least 98.5% of the amount of rent received by TUS from the applicable TUS Sublessee;

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- (2) the obligations of TUS under such Lease are secured by a first priority security interest granted by TUS in all TUS Subleases, and the proceeds of such TUS Subleases, in each case, to the extent but only to the extent related to the Managed Containers subject to the Head Lease Agreement;
  - (3) such Lease requires that all rental payments payable under the TUS Subleases shall be remitted directly to a Master Account;
  - (4) such Lease requires that a Managed Container not be subleased by TUS to a Prohibited Person and, to the actual knowledge of TUS, shall not be subleased by a TUS Sublessee to a Prohibited Person or located, operated or used in a Prohibited Jurisdiction unless it is used pursuant to a license granted by the Office of Foreign Assets Control of the United States Treasury Department;
  - (5) the term of such Head Lease Agreement with respect to a Managed Container shall expire upon the expiration or earlier termination of the TUS Sublease of such Managed Container;
  - (6) events of default by TUS under such Lease shall include (but not be limited to) the following:
    - i. any rental or other payments received by TUS with respect to a TUS Sublease (other than (i) amounts permitted to be deducted pursuant to Section 6.1 of the Management Agreement and (ii) amounts equal to the TUS Sublease Spread) with respect to a TUS Sublease of a Managed Container are not remitted to the Trust Account within seven days after the last Business Day of the week during which such payments are received by TUS from the applicable TUS Sublessees, and such condition continues unremedied for three (3) Business Days after such remittance is due;
    - ii. any representation and warranty made by TUS in such Lease, or in any certificate, report, or financial statement delivered by it pursuant thereto, shall prove to have been untrue in any material and adverse respect when made and shall continue unremedied for a period of 30 days after the earlier to occur of (i) an officer of TUS has actual knowledge thereof or (ii) TUS receives notice thereof;
    - iii. TUS shall cease to be engaged in the container management business;
    - iv. the filing of any petition in any bankruptcy proceeding, any assignment for the benefit of creditors, appointment of a receiver of all or any of TUS's assets, entry into any type of liquidation, whether compulsory or voluntary, or the initiation of any other

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- bankruptcy or insolvency proceeding by or against TUS including, without limitation, any action by TUS to call a meeting of its creditors or to compound with or negotiate for any composition with its creditors; provided that, in the case of any involuntary proceeding, such proceeding is not dismissed or stayed within 60 days;
- v. TUS is unable to pay its debts when due or shall commence an insolvency proceeding;
  - vi. TUS assigns its interest in such Lease (provided that no sublease of a Managed Container shall be deemed to constitute an assignment of such Lease);
  - vii. TUS shall have failed to pay any amounts due or suffered to exist an event of default with respect to the term of any indebtedness which singularly or in the aggregate exceeds \$1,000,000 and the effect of such failure or event of default is to cause such indebtedness to be immediately declared due and payable prior to the date on which it would otherwise have been due and payable;
  - viii. either of the following shall occur: (i) TUS shall have Consolidated Funded Debt (as defined in the Management Agreement) in excess of \$1,000,000 or (ii) the annual after-tax profit of TUS (calculated on a rolling four quarter basis) shall be less than \$200,000;
  - ix. (i) TUS amalgamates or consolidates with, or merges with or into, another Person, (ii) TUS sells, assigns, conveys, transfers, leases, or otherwise disposes of (in each case, whether in one transaction or a series of transactions) all, or substantially all, of its assets to any person, other than pursuant to subleases of Containers, (iii) any person amalgamates or consolidates with, or merges with or into, TUS, or (iv) the Manager shall fail to own, directly or indirectly, a majority of the equity interests in TUS;
  - x. a judgment is rendered against TUS that is in excess of \$1,000,000 and such judgment is not covered by insurance or bonded or stayed within 30 days of becoming final; or
  - xi. the lien, created by TUS on its interest in the TUS Subleases and the proceeds thereof (the "Sublease Collateral") pursuant to the terms of the Head Lease Agreement, shall fail to be perfected or the Sublease Collateral shall be subject to a Lien other than a Permitted Encumbrance.

*Hedging Reference Date:* The first date on which the Aggregate Principal Balance equals more than Fifteen Million Dollars (\$15,000,000); *provided however,* that the date

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will be reset and deemed not to have occurred if the Issuer or an Affiliate thereof shall issue a series of asset-backed term notes and the Outstanding Obligations are repaid with the proceeds of such issuance so that the Aggregate Principal Balance is less than Fifteen Million Dollars (\$15,000,000).

*Holder:* See *Noteholder*.

*Indebtedness:* With respect to any Person means, without duplication, (a) any obligation of such Person for borrowed money, including, without limitation, (i) any obligation incurred through the issuance and sale of bonds, debentures, notes or other similar debt instruments, and (ii) any obligation for borrowed money which is non-recourse to the credit of such Person but which is secured by any asset of such Person, (b) any obligation of such Person on account of deposits or advances, (c) any obligation of such Person for the deferred purchase price of any property or services, except accounts payable arising in the ordinary course of such Person's business, (d) any obligation of such Person as lessee under a capital lease, (e) any Indebtedness of another secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person, (f) any obligation in respect of interest rate or foreign exchange hedging agreements, (g) liabilities and obligations of others for which such Person is directly or indirectly liable, by way of guaranty (whether by direct guaranty, suretyship, discount, endorsement, take-or-pay agreement, agreement to purchase or advance or keep in funds or other agreement having the effect of a guaranty) and (h) any obligation of such Person to reimburse the issuer of any letter of credit issued for the account of such Person upon which a draw has been made.

*Indenture:* This Indenture, dated as of the Closing Date, between the Issuer and the Indenture Trustee and all amendments hereof and supplements hereto, including, with respect to any Series or Class, the related Supplement.

*Indenture Trustee:* The Person performing the duties of the Indenture Trustee under this Indenture.

*Indenture Trustee Fee:* The compensation payable to the Indenture Trustee for its services under this Indenture and the other Related Documents to which it is a party. Indenture Trustee Fees do not include Indenture Trustee Indemnified Amounts.

*Indenture Trustee Indemnified Amounts:* Any indemnities payable to the Indenture Trustee pursuant to Section 905 of the Indenture.

*Independent Accountants:* KPMG LLP or other independent certified public accountants of internationally recognized standing selected by Issuer and acceptable to the Administrative Agent and each Series Enhancer.

*Initial Commitment:* With respect to any Series, the aggregate initial commitment, expressed as a dollar amount, to purchase up to a specified principal balance of all Classes of such Series, which commitments shall be set forth in the related Supplement.

*Insolvency Law:* The Bankruptcy Code, the Bermuda Companies Act 1981 or similar Applicable Law in any other applicable jurisdiction.

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*Insolvency Proceeding:* Any Proceeding under any applicable Insolvency Law.

*Instrument:* Any “instrument,” as such term is defined in Section 9-102(a)(47) of the UCC.

*Insurance Agreement:* Any Insurance and Indemnification Agreement among the Issuer, the Manager, the Indenture Trustee and the related Series Enhancer.

*Intangible Assets:* As of any date of determination, with respect to any Person, the intangible assets of such Person determined in accordance with GAAP.

*Interest Expense:* For any period, the aggregate amount of interest expense as shown for such period on the income statement of the Issuer, determined in accordance with GAAP.

*Interest Payment:* For each Series of Notes Outstanding on any Payment Date, all amounts to be paid from the related Series Account on such Payment Date which represent payments of (i) interest (but not Default Interest, Warehouse Note Increased Interest or Step Up Warehouse Fees) on such Series of Notes, (ii) commitment fees or deal agent fees payable to the Holders of such Series of Notes, and (iii) other fees acceptable to any Series Enhancer. If any Interest Payments are paid by a Series Enhancer, then any reimbursement obligations of the Issuer to such Series Enhancer in respect of such payments, including interest thereon shall be included in the calculation of the Interest Payments for such Series and shall be paid to the Series Enhancer to the extent that such payment would not cause a shortfall in other Interest Payments for the Noteholders of such Series.

*Interest Rate Hedge Agreement:* An interest rate cap agreement, interest rate swap agreement, interest rate ceiling agreement, interest rate floor agreement or any combination of the foregoing or other similar agreement entered into pursuant to Section 627 of this Indenture between the Issuer and an Interest Rate Hedge Provider named therein, including any schedules and confirmations prepared and delivered in connection therewith, pursuant to which the provisions of Section 627(d) of this Indenture, shall be incorporated by reference and recourse by the Interest Rate Hedge Provider to the Issuer is limited to the Collateral and the Available Distribution Amount which pursuant to the terms of the Indenture is available for such purpose.

*Interest Rate Hedge Provider:* Any Eligible Interest Rate Hedge Provider or any counterparty to a cap, collar or other hedging instrument permitted to be entered into pursuant to this Indenture.

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*Interest Rate Hedge Provider Required Rating Downgrade Event:* Unless waived in writing by Control Party for each Series, the Interest Rate Hedge Provider's (or any party providing credit support on its behalf) rating with respect to its unsecured and unsubordinated debt, deposit or letter of credit obligations are rated as set forth in the table below:

Rating of Interest Rate Hedge Provider	
<u>S&amp;P</u>	<u>Moody's</u>
Long-term of "BBB" or lower	Long-term of "Baa2" or lower

*Interest Rate Hedge Provider Required Rating Replacement Event:* Unless waived in writing by Control Party for each Series, the Interest Rate Hedge Provider's (or any party providing credit support on its behalf) rating with respect to its unsecured and unsubordinated debt, deposit or letter of credit obligations are rated as set forth in the table below:

Rating of Interest Rate Hedge Provider	
<u>S&amp;P</u>	<u>Moody's</u>
Long-term of "BB-" or lower	Long-term of "Ba3" or lower

*Inventory:* Any "inventory," as such term is defined in Section 9-102(a)(48) of the UCC.

*Investment:* When used in connection with any Person, any investment by or of that Person, whether by means of purchase or other acquisition of securities of any other Person or by means of loan, advance, capital contribution, guaranty or other debt or equity participation or interest in any other Person including any partnership and joint venture interests of each Person in any other Person. The amount of any Investment shall be the original principal or capital amount thereof, plus additional paid in capital (including, without limitation, share premium and contributed surplus), plus retained earnings, less all returns of principal or equity thereon (and without adjustment by reason of the financial condition of such other Person) and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital amount equal to the fair market value of such property.

*Investment Property:* Any "investment property" as such term is defined in Section 9-102(a)(49) of the UCC.

*Issuer:* Textainer Marine Containers II Limited, a company organized and existing under the laws of Bermuda.

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*Issuer Expenses:* For any Collection Period an amount equal to overhead and all other costs, expenses and liabilities of the Issuer (other than Operating Expenses paid pursuant to the Management Agreement and any Management Fee) payable during such Collection Period (including costs and expenses permitted to be paid to or by the Manager in connection with the conduct of the Issuer's business), in each case determined on a cash basis, including but not limited to the following:

- (A) administration expenses;
- (B) accounting and audit expenses of the Issuer, and tax preparation, filing and audit expenses of the Issuer;
- (C) premiums for liability, casualty, fidelity, directors and officers and other insurance;
- (D) directors' fees and expenses, including fees and expenses of the Director Services Provider;
- (E) legal fees and expenses;
- (F) other professional fees;
- (G) taxes (including personal or other property taxes and all sales, value added, use and similar taxes but excluding any such amounts that are included as an Operating Expense);
- (H) taxes imposed in respect of any and all issuances of equity interests, stock exchange listing fees, registrar and transfer expenses and trustee's fees with respect to any outstanding securities of the Issuer;
- (I) the fees, if any, due under any Enhancement Agreement, if any, or any agreement relating thereto;
- (J) surveillance fees assessed by the Rating Agencies; and
- (K) the expenses, if any, incurred by the Manager in performing its duties pursuant to Sections 3.4, 7.11 and 7.12 of the Management Agreement.

Notwithstanding the foregoing, Issuer Expenses shall not include (i) depreciation or amortization on the Managed Containers, (ii) payments of principal, interest and premium, if any, on or with respect to the Notes, or (iii) funds used to acquire additional Containers. In no event shall the Manager be obligated to pay any Issuer Expenses from its own funds.

*Issuer Proceeds:* This term shall have the meaning set forth in the Management Agreement.

*Lease:* A lease relating to one or more Managed Containers entered into on behalf of the Issuer (which lease may relate to both Managed Containers and other Containers). Leases may be in the name of Manager, any Affiliate thereof or any third-party lessor from whom Manager has acquired management rights. Leases shall include all TUS Subleases.

*Legal Final Payment Date:* With respect to any Series, the date on which the unpaid principal balance of, and accrued interest on, the Notes of such Series will be due and payable. The Legal Final Payment Date for a Series shall be set forth in the related Supplement.



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*Letter of Credit Right:* Any “letter-of-credit right,” as such term is defined in Section 9-102(a)(51) of the UCC.

*Lien:* Any security interest, lien, charge, pledge, equity or encumbrance of any kind.

*Long-Term Lease:* A Lease, other than a Finance Lease, having an initial term of twenty-four (24) months or more.

*Managed Containers:* As of any date of determination, all Containers then owned by the Issuer.

*Management Agreement:* The Management Agreement, dated as of May 1, 2012, between the Manager and the Issuer, as such agreement shall be amended, supplemented or modified from time to time in accordance with its terms.

*Management Fee:* For any Collection Period, the Management Fee calculated in accordance with the terms of the Management Agreement.

*Management Fee Arrearage:* For any Payment Date, an amount equal to any unpaid Management Fee from all prior Collection Periods.

*Manager:* The Person performing the duties of the Manager under the Management Agreement; initially, TEMPL.

*Manager Advance:* The term shall have the meaning as set forth in the Management Agreement.

*Manager Default:* The occurrence of any of the events or conditions set forth in Section 11.1 of the Management Agreement.

*Manager Report:* A written informational statement in the form attached as Exhibit A to the Management Agreement to be provided by the Manager in accordance with the Management Agreement and furnished to the Indenture Trustee.

*Manager Termination Notice:* A written notice to be provided to the Manager and other specified Persons pursuant to Section 405(b) of this Indenture.

*Manager Transfer Facilitator:* The Person performing the duties of the Manager Transfer Facilitator under the Manager Transfer Facilitator Agreement; initially, ABN AMRO Bank N.V.

*Manager Transfer Facilitator Agreement:* The Manager Transfer Facilitator Agreement, dated as of Closing Date, by and among the Manager Transfer Facilitator, the Issuer and the Indenture Trustee, as such agreement shall be amended, supplemented or modified from time to time in accordance with its terms.

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*Manager Transfer Facilitator Fee:* This term shall have the meaning set forth in the Manager Transfer Facilitator Agreement.

*Managing Officer:* Any representative of the Manager involved in, or responsible for, the management of the day-to-day operations of the Issuer and the administration and servicing of the Managed Containers whose name appears on a list of managing officers furnished to Issuer, the Series Enhancer and the Indenture Trustee by the Manager, as such list may from time to time be amended.

*Master Account:* The term shall have the meaning as set forth in the Management Agreement.

*Master Lease:* A Lease other than a Long-Term Lease or a Finance Lease.

*Material Adverse Change:* Any set of circumstances or events which (i) has, or could reasonably be expected to have, any material adverse effect whatsoever upon the validity or enforceability of any Related Document or the security for any of the Notes, (ii) is, or could reasonably be expected to be, material and adverse to the condition (financial or otherwise) or business operations of Issuer or Manager, individually or taken together as a whole, (iii) materially impairs, or could reasonably be expected to materially impair, the ability of Issuer or Manager to perform any of their respective obligations under the Related Documents, or (iv) materially impairs, or could reasonably be expected to materially impair, the ability of Indenture Trustee or the Series Enhancer to enforce any of its or their respective legal rights or remedies pursuant to the Related Documents.

*Maximum Principal Withdrawal Amount:* With respect to the Legal Final Payment Date of any Series, an amount equal to the product of (i) all funds and Eligible Investments on deposit in the Restricted Cash Account on such Payment Date (calculated after giving effect to the disbursements to be made from the Restricted Cash Account on such Payment Date to pay interest shortfalls on all Series of Notes) and (ii) a fraction, the numerator of which is the then unpaid principal balance of the Series for which the Legal Final Payment Date has occurred and the denominator of which is the then Aggregate Principal Balance.

*Minimum Principal Payment Amount:* With respect to any Series, the amount identified as such in the related Supplement.

*Moody's:* Moody's Investors Service, Inc. and any successor thereto.

*Net Book Value:* For purposes of the calculation of the Asset Base, Asset Base Deficiency and any related calculations, including without limitation calculations pursuant to Sections 606, 627, 801 and 1201 of this Indenture, one of the following:

(i) With respect to a Container that is not subject to Finance Lease, as of any date of determination, an amount equal to the Original Equipment Cost of such Container, less any accumulated depreciation calculated utilizing the Depreciation Policy; and

(ii) With respect to a Container that is subject to a Finance Lease, the then "investment" in such Finance Lease, as determined in accordance with GAAP.

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*Net Issuer Proceeds:* This term shall have the meaning set forth in the Management Agreement.

*Noteholder or Holder:* The Person in whose name a Note is registered in the Note Register, except that, solely for the purposes of giving any consent, waiver, request or demand, the interest evidenced by any Note registered in the name of either of the Sellers or the Issuer or any Affiliate of any of them known to be such an Affiliate by the Indenture Trustee shall not be taken into account in determining whether the requisite percentage of the Aggregate Principal Balance of the Outstanding Notes necessary to effect any such consent, waiver, request or demand is represented.

*Note Purchase Agreement:* Any underwriting agreement or other agreement for the Notes of any Series or Class.

*Note Register:* The register maintained by the Indenture Trustee pursuant to Section 205 of this Indenture.

*Note Registrar:* This term shall have the meaning set forth in Section 205(a) of this Indenture.

*Notes:* One or more of the promissory notes or other securities executed by the Issuer pursuant to this Indenture and authenticated by, or on behalf of, the Indenture Trustee, substantially in the form attached to the related Supplement.

*OFAC:* The Office of Foreign Assets Control of the United States Department of the Treasury.

*Officer's Certificate:* A certificate signed by a duly authorized officer of the Person who is required to sign such certificate.

*Operating Expenses:* This term shall have the meaning set forth in the Management Agreement.

*Opinion of Counsel:* A written opinion of counsel, in each case reasonably acceptable to the Person or Persons to whom such Opinion of Counsel is to be delivered. Unless otherwise specified, the counsel rendering such opinion may be counsel employed by the Issuer, any Seller, or the Manager, as the context may require. The counsel rendering such opinion may rely (i) as to factual matters, on a certificate of a Person whose duties relate to the matters being certified, and (ii) insofar as the opinion relates to local law matters, upon opinions of local counsel.

*Original Equipment Cost:* With respect to a Managed Container, one of the following:

(A) for each Managed Container acquired by the Issuer from TMCL, the Original Equipment Cost reflected on the books and records of TMCL;

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(B) with respect to each Managed Container purchased by the Issuer or TL directly from the manufacturer of such Managed Container, an amount equal to the sum of (i) the vendor's or manufacturer's invoice price of the related Container, (ii) all reasonable and customary inspection, transport, and initial positioning costs necessary to put such Container in service and (iii) reasonable acquisition fees and other fees not to exceed 2.5% of the amounts described in clauses (i) and (ii) above; or

(C) with respect to each Managed Container acquired by the Issuer or TL from a third party that is not the manufacturer of such Managed Container, the cash purchase price paid by the Issuer or TL (as applicable) for such Managed Container.

*Outstanding:* When used with reference to the Notes and as of any particular date, any Note theretofore and thereupon being authenticated and delivered except:

- (i) any Note canceled by the Indenture Trustee or proven to the satisfaction of the Indenture Trustee to have been duly canceled by the Issuer at or before said date;
- (ii) any Note, or portion thereof, called for payment or redemption for which monies equal to the principal amount or redemption price thereof, as the case may be, with interest to the date of maturity or redemption, shall have theretofore been deposited with the Indenture Trustee (whether upon or prior to maturity or the redemption date of such Note);
- (iii) any Note in lieu of or in substitution for which another Note shall subsequently have been authenticated and delivered; and
- (iv) any Note held by the Issuer, the Sellers or any Affiliate of either the Issuer or Sellers.

Notwithstanding the foregoing, any Note on which any portion of principal or interest has been paid by a Series Enhancer pursuant to an Enhancement Agreement, shall be Outstanding until such Series Enhancer has been reimbursed in full therefor in accordance with the related Enhancement Agreement.

*Outstanding Obligations:* As of any date of determination for any Series of Notes issued under this Indenture or any Supplement thereto, an amount equal to the sum of (i) all accrued interest payable on such Series of Notes (including, for any Series of Notes for which the related Noteholder has funded or maintains its investment through the issuance of commercial paper, interest accrued through the last maturing tranche, interest or fixed period, as applicable), (ii) the then outstanding principal balance of such Series of Notes, (iii) all other amounts owing by the Issuer to Noteholders or to any Person under this Indenture or any Supplement hereto and any amounts owed to the Series Enhancer and (iv) amounts owing by the Issuer under any Interest Rate Hedge Agreement.

*Overdue Rate:* The rate of interest specified in the related Supplement applicable to a Note then earning Default Interest, but in no event to exceed two percent (2%) over the interest rate per annum otherwise then applicable to such Note.

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*Ownership Interest:* An ownership interest in a Book-Entry Note.

*Payment Date:* With respect to any Series, the fifteenth (15th) calendar day of each calendar month; *provided, however*, if such day is not a Business Day, then the immediately succeeding Business Day.

*Permitted Encumbrance:* With respect to the Collateral, any of the following: (i) Liens for taxes not yet due or which are being contested in good faith by appropriate Proceedings and for the payment of which adequate reserves are provided by the Manager; (ii) with respect to the Managed Containers, carriers', warehousemen's, mechanics', or other like Liens arising in the ordinary course of business and relating to amounts not yet due or which shall not have been overdue for a period of more than sixty (60) days or which are being contested in good faith by appropriate Proceedings and for the payment of which adequate reserves are provided for by the Manager; (iii) with respect to the Managed Containers, Leases entered into in the ordinary course of business providing for the leasing of Managed Containers; (iv) Liens created by this Indenture; and (v) the rights of the Manager under the Management Agreement; *provided, however*, that Proceedings described in (i) and (ii) above could not reasonably subject the Series Enhancer, the Indenture Trustee or the Noteholders to any civil or criminal penalty or liability or involve any material risk of loss, sale or forfeiture of any of the Collateral.

*Permitted Payment Date Withdrawals:* Both of the following with respect to each Series of Notes: (i) on any Payment Date other than the Legal Final Payment Date for a Series of Notes, the amounts required to pay any shortfall in interest on each Series of Notes (calculated after giving effect to the application of all Available Distribution Amounts on such Payment Date); and (ii) on the Legal Final Payment Date for a Series of Notes, the amount (not to exceed the Maximum Principal Withdrawal Amount for such Series of Notes) required to pay any shortfall in the unpaid principal balance of such Series of Notes (calculated after giving effect to the application of the Available Distribution Amount on such Payment Date).

*Person:* An individual, a partnership, a limited liability company, a corporation, a joint venture, an unincorporated association, a joint-stock company, a trust, or other entity or a Governmental Authority.

*Plan:* An "employee benefit plan," as such term is defined in Section 3(3) of ERISA, or a plan described in Section 4975(e)(1) of the Code of the Issuer or its ERISA Affiliates.

*Policy:* This term shall have the meaning set forth in each Supplement.

*Pre-Adjustment Issuer Proceeds:* This term shall have the meaning set forth in the Management Agreement.

*Pre-Funding Account:* An account that is designated as a "Pre-Funding Account" for any Series of Notes in the Supplement for such Series, to be used solely to hold funds that will be used to acquire additional Containers from the Sellers during a specified period of time following the issuance of such Series of Notes.

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*Premium:* A fee or premium payable to a Series Enhancer for guaranteeing all or a portion of the Notes of a Series (or a Class thereof).

*Prepayment:* Any mandatory or optional prepayment of principal of any Series of Notes prior to the Expected Final Payment Date of such Series including, without limitation, any prepayment made in accordance with the provisions of Article VII of this Indenture.

*Principal Terms:* With respect to any Series, all of the following: (i) the name or designation of such Series; (ii) the initial principal amount of the Notes to be issued for such Series (or method for calculating such amount) and the Minimum Principal Payment Amounts and the Scheduled Principal Payment Amount for each Payment Date (or method for calculating such amount); (iii) the interest rate to be paid with respect to each Class of Notes for such Series (or method for the determination thereof); (iv) the Payment Date and the date or dates from which interest shall accrue and principal shall be paid; (v) the designation of any Series Accounts and the terms governing the operation of any such Series Accounts including the Permitted Payment Date Withdrawals with respect to such Series; (vi) the terms of any form of Series Enhancement with respect thereto; (vii) the Expected Final Payment Date for the Series; (viii) the Legal Final Payment Date for the Series; (ix) the number of Classes of Notes of the Series and, if the Series consists of more than one Class, the rights and priorities of each such Class; (x) the priority of the Series with respect to any other Series; (xi) the designation of such Series on its Series Issuance Date as either a Term Note or a Warehouse Note; and (xiii) the Control Party with respect to such Series; and (xii) any other terms of such Series.

*Proceeding:* Any suit in equity, action at law, or other judicial or administrative proceeding.

*Proceeds:* Any “proceeds,” as such term is defined in Section 9-102(a)(64) of the UCC.

*Prohibited Jurisdiction:* Any country or jurisdiction, from time to time, that is the subject of a prohibition order (or any similar order or directive), sanctions or restrictions promulgated or administered by the Office of Foreign Assets Control of the United States Treasury Department.

*Prohibited Person:* Any of the following currently or in the future: (i) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/eotffc/ofac/sdn/index.html>, or (ii) (A) an agency of the government of a Prohibited Jurisdiction, (B) an organization controlled by a Prohibited Jurisdiction, or (C) a person resident in a Prohibited Jurisdiction, to the extent the agency, organization, or person is subject to a sanctions program administered by OFAC.

*Prospective Owner:* This term shall have the meaning as set forth in Section 205 of this Indenture.

*Purchaser Letter:* This term shall have the meaning set forth in Section 205(h) of this Indenture.

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*Rated Institutional Noteholder:* An institutional Noteholder whose long term unsecured debt obligations are then rated “BBB-” or better by Standard & Poor’s and “Baa3” or better by Moody’s.

*Rating Agency or Rating Agencies:* With respect to any Outstanding Series, each statistical rating agency selected by the Issuer (with the approval of any Series Enhancer for such Series) to rate such Series which has an outstanding rating with respect to such Series.

*Rating Agency Condition:* Each of the following:

(i) With respect to (A) the issuance of an additional Series, (B) any Change in Control of the Manager, (C) any waiver of an Event of Default or Manager Default or (D) any other action expressly specified in any Related Document as requiring the affirmative approval or consent of each Rating Agency, the Rating Agency Condition shall mean (1) the confirmation issued in writing by each Rating Agency that has issued an outstanding rating with respect to any Series of Notes then Outstanding that the rating(s) on such existing Series will not be downgraded or withdrawn as the result of the issuance of such additional Series, Change of Control, waiver or other action and (2) any other requirement for the fulfillment of the Rating Agency Condition that may be set forth in a Supplement for any Series of Notes which is not rated shall be satisfied; and

(ii) With respect to any other action, the Rating Agency Condition shall mean (1) that each Rating Agency that has issued an outstanding rating with respect to any Series of Notes then Outstanding shall have been given ten (10) Business Days (or such shorter period as is practicable or acceptable to such Rating Agency) prior notice thereof and, within such notice period, such Rating Agency shall not have notified the Seller, the Indenture Trustee or Issuer in writing that such action will result in a downgrade, qualification or withdrawal of any such outstanding rating and (2) any other requirement for the fulfillment of the Rating Agency Condition that may be set forth in a Supplement for any Series of Notes which is not rated shall be satisfied.

*Record Date:* With respect to any Payment Date, the last Business Day of the month preceding the month in which the related Payment Date occurs, except as otherwise provided with respect to a Series in the related Supplement.

*Regulation S Book-Entry Notes:* Collectively, the Unrestricted Book-Entry Notes and the Regulation S Temporary Book-Entry Notes.

*Regulation S Temporary Book-Entry Notes:* The temporary book-entry notes in fully registered form without coupons that represent the Notes sold in offshore transactions within the meaning of and in compliance with Regulation S under the Securities Act and which will be registered with the Depositary.

*Reimbursement Amount:* Reimbursement and other amounts payable by the Issuer to a Series Enhancer under an Insurance Agreement, Policy or a premium letter for the related Series Enhancer.

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*Related Documents:* With respect to any Series, the Container Transfer Agreement, the Container Sale Agreement, this Indenture, the related Supplement, the Notes of such Series, the Note Purchase Agreement for such Series, the Management Agreement, the Enhancement Agreement for such Series (if any), each Policy, each Interest Rate Hedge Agreement (upon execution thereof), the Insurance Agreement for such Series (if any), each premium letter and each other document or instrument executed in connection with the issuance of any Series, as any of the foregoing may from time to time be amended, modified, supplemented or renewed.

*Release Date:* The date on which Released Assets are transferred by the Issuer to any Seller or any Affiliate of any Seller pursuant to the terms of the Related Documents.

*Released Assets:* This term shall have the meaning set forth in the Container Sale Agreement or the Container Transfer Agreement (as applicable).

*Replacement Manager:* Any Person appointed to replace the then Manager as manager of the Managed Containers, which Person shall be acceptable to the Requisite Global Majority.

*Reportable Event:* This term shall have the meaning given to such term in ERISA.

*Required Deposit Rating:* With regard to an institution, the short-term unsecured senior debt rating of such institution is in the highest category by each Rating Agency.

*Requisite Global Majority:* As of any date of determination, the determination of whether a Requisite Global Majority exists with respect to a particular course of action shall be determined in accordance with Section 503 of this Indenture.

*Residual Deficiency:* The condition that will exist on any Payment Date if (A) a Failed Test Period has occurred and (B) both (i) twelve months shall have elapsed since the occurrence of such Failed Test Period and (ii) a Failed Test Cure has not occurred with respect to such Failed Test Period. If a Residual Deficiency has occurred, such Residual Deficiency shall continue until waived by the Requisite Global Majority.

*Residual Requirement:* The requirement that shall be satisfied if the average Sales Proceeds for the most recently concluded six (6) month period, or, if fewer than six (6) months have passed since the Closing Date, for the most recently concluded three-month, four-month, or five-month period from the Closing Date, equal or exceed (i) \$550 per CEU for dry freight and specialized Containers, (ii) \$3,000 per unit for 40-foot high cube refrigerated Containers and (iii) \$2,000 per unit for 20-foot refrigerated Containers; *provided, however*, if for any calculation period the total number of refrigerated Containers sold is less than one hundred (100), all such refrigerated Container sales for such calculation period will be subject to clause (i). A failure to comply with the Residual Requirement is not curable, and such noncompliance can be waived by the Requisite Global Majority.

*Residual Value:* A stated residual value determined in accordance with GAAP, *provided* that the stated residual value may not exceed the values shown on Exhibit B (which exhibit may not be amended in a manner that would increase the assumed residual value without the approval of all of the Noteholders).



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*Restricted Cash Account:* This term shall have the meaning set forth in Section 306 of this Indenture.

*Restricted Cash Amount:* As of any Payment Date, the amount required to be deposited or maintained in the Restricted Cash Account, which shall be equal to the product of (i) five (5), (ii) one-twelfth, (iii) the weighted average (based on the then Aggregate Principal Balance, calculated after giving effect to any principal payments paid on such Payment Date) of the annual rates of interest payable on all Series of Notes then Outstanding (or, if any Series bears interest at a variable rate of interest, the interest rate then in effect on such Series of Notes), and (iv) the Aggregate Principal Balance, calculated after giving effect to all advances of principal and principal payments made on such Payment Date; *provided, however*, that, on any Payment Date on or after the Conversion Date for any Series of Warehouse Notes, if there is an incremental increase in the weighted average of the annual rates of interest in clause (iii) above resulting from such Conversion Date, then any resulting increase in the required amount of the Restricted Cash Amount shall be deposited or maintained in the Restricted Cash Account, in equal amounts, over the course of three (3) consecutive Payment Dates (commencing on such Payment Date).

*Rule 144A:* Rule 144A under the Securities Act, as such Rule may be amended from time to time.

*Rule 144A Book-Entry Notes:* The permanent book-entry notes in fully registered form without coupons that represent the Notes sold in reliance on Rule 144A and which will be registered with the Depository.

*Sale:* This term shall have the meaning set forth in Section 816 of this Indenture.

*Sales Proceeds:* This term shall have the meaning set forth in the Management Agreement.

*Scheduled Principal Payment Amount:* With respect to any Series of Notes, the amount identified as such in the related Supplement.

*Securities Account:* Any “securities account,” as such term is defined in Section 8-501 of the UCC.

*Securities Act:* The Securities Act of 1933, as amended from time to time.

*Securities Entitlement:* Any “securities entitlement,” as such term is defined in Section 8-102(a)(17) of the UCC.

*Securities Intermediary:* Any “securities intermediary,” as such term is defined in Section 8-102 of the UCC.

*Seller(s):* Any or all, as the context may require, of TL and TMCL.

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*Senior Asset Base:* As of any date of determination, an amount equal to the sum of (a) the product of (i) the Advance Rate and (ii) the Aggregate Net Book Value, determined as of such date of determination, (b) the amount on deposit in the Restricted Cash Account on such date of determination, after giving effect to all deposits to and withdrawals from the Restricted Cash Account on such date and (c) any amount on deposit in any Pre-Funding Account as of such date (and in the case of clause (c), solely as funded from an issuance of a Series of Notes).

*Senior Notes:* With respect to any Series of Notes, those Note(s) of such Series, if any, that are designated as “Senior Notes” in the related Supplement. Notwithstanding the foregoing, the Series 2012-1 Notes shall be deemed to constitute “Senior Notes”.

*Senior Series:* Any Series of Senior Notes issued pursuant to a Supplement.

*Senior Warehouse Notes:* Any Series of Warehouse Notes that constitute Senior Notes.

*Series:* Any series of Notes established pursuant to a Supplement.

*Series 2012-1 Note Purchase Agreement:* The Series 2012-1 Note Purchase Agreement, dated as of the Closing Date, among the Issuer, the purchasers, deal agents and other parties thereto, as such agreement may be amended, modified and restated from time to time in accordance with its terms.

*Series 2012-1 Notes:* The Series 2012-1 Notes established pursuant to the Series 2012-1 Supplement.

*Series 2012-1 Supplement:* The Series 2012-1 Supplement, dated as of the Closing Date, between the Issuer and the Indenture Trustee, as such agreement may be amended, modified and restated from time to time in accordance with its terms.

*Series Account:* Any deposit, trust, escrow or similar account maintained for the benefit of the Noteholders of any Series or Class as specified in the related Supplement.

*Series Enhancement:* The rights and benefits provided to the Noteholders of any Series or Class pursuant to any surety bond, financial guaranty insurance policy, insurance agreement or other similar arrangement. The subordination of any Class to another Class shall not be deemed to be a Series Enhancement.

*Series Enhancer:* For each Series, the Person as set forth in the related Supplement then providing any Series Enhancement, other than the Noteholders of any Class which is subordinated to another Class.

*Series Enhancer Default:* With respect to any Series, this term shall have the meaning set forth in the related Supplement.

*Series Enhancer Expenses:* For any Collection Period, an amount equal to all reasonable out-of-pocket expenses incurred by any Series Enhancer pursuant to the Related Documents.

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*Series Issuance Date:* With respect to any Series, the date on which the Notes of such Series are to be originally issued in accordance with Section 1006 of this Indenture and the related Supplement.

*Standard & Poor's:* Standard and Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

*Step Up Warehouse Fee:* The incremental fee (whether or not characterized as a fee in the relevant Related Documents) payable by the Issuer on the Warehouse Notes upon the occurrence and continuance of an Early Amortization Event or Event of Default.

*Structuring Agent:* Wells Fargo Securities.

*Subordinate Advance Rate:* The advance rate percentage for a Series of Subordinate Notes, as set forth in the Supplement for such Series.

*Subordinate Asset Base:* As of any date of determination, an amount equal to the excess (not less than zero) of (1) the sum of (a) an amount equal to the product of (i) the Subordinate Advance Rate and (ii) the Aggregate Net Book Value, determined as of such date of determination, (b) the amount on deposit in the Restricted Cash Account on such date of determination, after giving effect to all deposits to and withdrawals from the Restricted Cash Account on such date and (c) any amount on deposit in any Pre-Funding Account as of such date, minus (2) the sum of the then unpaid principal balances on such date of determination of all Series of Senior Notes then Outstanding, such then unpaid principal balances to be determined after giving effect to (i) all advances of principal made by the Noteholders of Senior Notes on such date and (ii) principal payments actually paid in respect of Senior Notes by the Issuer to the Noteholders thereof on such date.

*Subordinate Notes:* With respect to any Series of Notes, those Note(s), if any, that are designated as "Subordinate Notes" in the related Supplement.

*Subordinate Series:* Any Series of Subordinate Notes issued pursuant to a Supplement.

*Subordinate Supplemental Principal Payment Amount:* With respect to any Series of Subordinate Notes on any Payment Date, one of the following:

(i) If on any Payment Date a Residual Deficiency shall exist and shall not have been waived by the Requisite Global Majority, an amount equal to the excess (if any) of (x) the unpaid principal balance of such Subordinate Notes (after giving effect to all payments of Minimum Principal Payment Amounts and Scheduled Principal Payment Amounts actually paid on such Subordinate Notes on such Payment Date) over (y) the excess of (A) Subordinate Asset Base on such Payment Date less (B) the product of fifteen percent (15%) and the cumulative amount of all Sales Proceeds which have accrued since the date on which such Subordinate Residual Deficiency initially occurred; or

(ii) On any Payment Date not addressed in clause (i) above, an amount equal to the excess, if any, of (x) the then unpaid principal balance of such Subordinate Notes (after

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giving effect to all payments of Minimum Principal Payment Amounts and Scheduled Principal Payment Amounts actually paid on such Subordinate Notes on such Payment Date), over (y) the Subordinate Asset Base on such Payment Date.

*Subsidiary:* A subsidiary of a Person means any corporation, association, partnership, limited liability company, joint venture or other business entity of which more than fifty percent (50.0%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled directly or indirectly by such Person, or one or more of the Subsidiaries of such Person, or a combination thereof.

*Supplement:* Any supplement to the Indenture executed in accordance with Article X of this Indenture.

*Supplemental Principal Payment Amount:* With respect to any Series of Senior Notes on any Payment Date, one of the following:

(i) If on any Payment Date a Residual Deficiency shall exist and shall not have been waived by the Requisite Global Majority, an amount equal to the excess (if any) of (x) the unpaid principal balance of such Senior Notes (after giving effect to all payments of Minimum Principal Payment Amounts and Scheduled Principal Payment Amounts actually paid on such Senior Notes on such Payment Date) over (y) the excess of (A) Senior Asset Base on such Payment Date less (B) the product of fifteen percent (15%) and the cumulative amount of all Sales Proceeds which have accrued since the date on which such Residual Deficiency initially occurred; or

(ii) On any Payment Date not addressed in clause (i) above, an amount equal to the excess, if any, of (x) the then unpaid principal balance of such Senior Notes (after giving effect to all payments of Minimum Principal Payment Amounts and Scheduled Principal Payment Amounts actually paid on such Senior Notes on such Payment Date), over (y) the Senior Asset Base on such Payment Date.

*Supporting Obligation:* Any “supporting obligation” as defined in Section 9-102(a)(77) of the UCC.

*TEML:* Textainer Equipment Management Limited, a company continued into and existing under the laws of Bermuda, and its successors and permitted assigns.

*Term Lease:* This term shall have the meaning set forth in the Management Agreement.

*Term Note:* Any Note that pays principal and interest on each Payment Date from and after its date of issuance.

*Test Period:* With respect to any Payment Date, the period of six consecutive calendar months ending on the last day of the calendar month immediately preceding the month in which such Payment Date occurs.

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*TEU*: A twenty (20) foot equivalent unit, an industry standard measure based on the physical dimensions of a Container.

*TEU Factor*: Either (a) one, in the case of a twenty (20) foot Container or (b) two, in the case of a forty (40) foot Container.

*TGH*: Textainer Group Holdings Limited, a company with limited liability organized under the laws of Bermuda, including its permitted successors and assigns.

*TL*: Textainer Limited, a company organized and existing under the laws of Bermuda, including its permitted successors and assigns.

*TMCL*: Textainer Marine Containers Limited, a company organized and existing under the laws of Bermuda, including its permitted successors and assigns.

*Transferred Assets*: (i) the “Transferred Assets” (as defined in the Container Sale Agreement) transferred by TL to the Issuer thereunder, and (ii) the “Transferred Assets” (as defined in the Container Transfer Agreement) transferred by TMCL to the Issuer thereunder.

*Trust Account*: The account or accounts established by the Indenture Trustee, in the name of the Indenture Trustee, for the benefit of the Noteholders, each Interest Rate Hedge Provider and each Series Enhancer pursuant to Section 302 hereof.

*TUS*: This term shall have the meaning set forth in the Management Agreement.

*TUS Sublease Spread*: This term shall have the meaning set forth in the Management Agreement.

*TUS Sublease*: This term shall have the meaning set forth in the Management Agreement.

*TUS Sublessee*: This term shall have the meaning set forth in the Management Agreement.

*UCC*: The Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; *provided, however*, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of Indenture Trustee’s security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection of priority and for purposes of definitions related to such provisions.

*Unrestricted Book-Entry Notes*: The permanent book-entry notes in fully registered form without coupons that are exchangeable for Regulation S Temporary Book-Entry Notes after the expiration of the 40-day distribution compliance period and which will be registered with the Depositary.

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*U.S. Lease Contract:* The Container Management Streamlining Contract (Contract No. DAMTO1-03-D-0173) effective as of June 24, 2003, between TEML (US) and The Surface Deployment and Distribution Command (f/k/a The Military Traffic Management Command), as such agreement may be further amended, supplemented or modified from time to time in accordance with its terms.

*Warehouse Note:* Any Series of Notes that has a revolving period during which periodic payments of principal are not scheduled to be paid.

*Warehouse Note Increased Interest:* The incremental interest payable by the Issuer on the Warehouse Notes upon the occurrence of a Conversion Event.

*Warranty Purchase Amount:* With respect to any Container, (i) the “Warranty Purchase Amount” (as defined in the Container Sale Agreement) or (ii) the sum of the “Agreed Values” (as defined in the Container Transfer Agreement) of “Non-Conforming Assets” (as defined in the Container Transfer Agreement) owned by the Issuer, as applicable.

*Weighted Average Age:* For any date of determination shall be equal to the quotient of (A) the sum of the products of (i) the age in years (determined from the date of the initial sale thereof by the manufacturer) of each Managed Container being evaluated, multiplied by (ii) the TEU Factor of such Managed Container being evaluated, divided by (B) the sum of the TEU Factors of all Managed Containers being evaluated.

*Wells Fargo Securities:* Wells Fargo Securities, LLC, a Delaware limited liability company, and its permitted successors and assigns.

Section 102. Other Definitional Provisions.

(a) With respect to any Series, all terms used herein and not otherwise defined herein shall have meanings ascribed to them in the related Supplement.

(b) All terms defined in this Indenture shall have the defined meanings when used in any agreement, certificate or other document made or delivered pursuant hereto, including any Supplement, unless otherwise defined therein.

(c) As used in this Indenture and in any certificate or other document made or delivered pursuant hereto or thereto, accounting terms not defined in this Indenture or in any such certificate or other document, and accounting terms partly defined in this Indenture or in any such certificate or other document to the extent not defined, shall have the respective meanings given to them under GAAP, consistently applied. To the extent that the definitions of accounting terms in this Indenture or in any such certificate or other document are inconsistent with the meanings of such terms under GAAP or regulatory accounting principles, the definitions contained in this Indenture or in any such certificate or other document shall control.

(d) With respect to any Collection Period, the “related Record Date,” the “related Determination Date,” and the “related Payment Date,” shall mean the Record Date occurring on the last Business Day of such Collection Period and the Determination Date and Payment Date occurring in the month immediately following the end of such Collection Period.

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(e) With respect to any Series of Notes, the “related Supplement” shall mean the Supplement pursuant to which such Series of Notes is issued and the “related Series Enhancer” shall mean the Series Enhancer for such Series of Notes.

(f) References to the Manager’s financial statements shall mean the financial statements of the Manager and its consolidated Subsidiaries.

(g) With respect to any ratio analysis required to be performed as of the most recently completed fiscal quarter, the most recently completed fiscal quarter shall mean the fiscal quarter for which financial statements were required hereunder to have been delivered.

(h) With respect to the calculation of any financial ratio set forth in this Indenture or any other Related Document, the components of such calculations are to be determined in accordance with GAAP, consistently applied, with respect to the Issuer or the Manager, as the case may be.

Section 103. Computation of Time Periods.

Unless otherwise stated in this Indenture or any Supplement issued pursuant to the terms hereof, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding.”

Section 104. Statutory References.

References in this Indenture and any other Related Document to any section of the UCC shall mean, on or after the effective date of adoption of any revision to the UCC in the applicable jurisdiction, such revised or successor section thereto.

Section 105. Duties of Administrative Agent and Manager Transfer Facilitator.

All of the duties and responsibilities of the Administrative Agent and Manager Transfer Facilitator set forth in this Indenture, any Supplement or any other Related Document issued pursuant hereto are subject in all respects to the terms and conditions of the Administration Agreement and the Manager Transfer Facilitator Agreement, respectively. Each of the Issuer, the Indenture Trustee and, by acceptance of its Notes, each Noteholder hereby acknowledges the terms of the Administration Agreement and the Manager Transfer Facilitator Agreement, respectively, and agrees to cooperate with the Administrative Agent and the Manager Transfer Facilitator in their execution of its respective duties and responsibilities.

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## ARTICLE II

### THE NOTES

#### Section 201. Authorization of Notes.

(a) The number of Series or Classes of Notes which may be created by this Indenture is not limited; *provided, however*, that, the issuance of any Series of Notes shall not result in, or with the giving of notice or the passage of time or both would result in, the occurrence of an Early Amortization Event. The aggregate principal amount of Notes of each Series which may be issued, authenticated and delivered under this Indenture is not limited except as shall be set forth in any Supplement and as restricted by the provisions of this Indenture.

(b) The Notes issuable under this Indenture shall be issued in such Series, and such Class or Classes within a Series, as may from time to time be created by a Supplement pursuant to this Indenture. Each Series shall be created by a different Supplement and shall be designated to differentiate the Notes of such Series from the Notes of any other Series.

(c) Upon satisfaction of and compliance with the requirements and conditions to closing set forth in the related Supplement, Notes of the Series to be executed and delivered on a particular Series Issuance Date pursuant to such related Supplement, may be executed by the Issuer and delivered to the Indenture Trustee for authentication following the execution and delivery of the related Supplement creating such Series or from time to time thereafter, and the Indenture Trustee shall authenticate and deliver Notes upon an Issuer request set forth in an Officer's Certificate of the Issuer signed by one of its Authorized Signatories, without further action on the part of the Issuer.

#### Section 202. Form of Notes; Book-Entry Notes.

(a) Notes of any Series or Class may be issued, authenticated and delivered, at the option of the Issuer, as Regulation S Book-Entry Notes, Rule 144A Book-Entry Notes, or as Definitive Notes or as may otherwise be set forth in a Supplement and shall be substantially in the form of the exhibits attached to the related Supplement. Notes of each Series shall be dated the date of their authentication and shall bear interest at such rate, be payable as to principal, premium, if any, and interest on such date or dates, and shall contain such other terms and provisions as shall be established in the related Supplement. Except as otherwise provided in any Supplement, the Notes shall be issued in minimum denominations of \$250,000 and in integral multiples of \$250,000 in excess thereof; *provided* that one Note of each Class may be issued in a nonstandard denomination.

(b) If the Issuer shall choose to issue Regulation S Book-Entry Notes or Rule 144A Book-Entry Notes, such notes shall be issued in the form of one or more Regulation S Book-Entry Notes or one or more Rule 144A Book-Entry Notes which (i) shall represent, and shall be denominated in an aggregate amount equal to, the aggregate principal amount of all Notes to be issued hereunder, (ii) shall be delivered as one or more Notes held by the Book-Entry Custodian, or, if appointed to hold such Notes as provided below, the Notes shall be registered in



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the name of the Depositary or its nominee, (iii) shall be substantially in the form of the exhibits attached to the related Supplement, with such changes therein as may be necessary to reflect that each such Note is a Book-Entry Note, and (iv) shall each bear a legend substantially to the effect included in the form of the exhibits attached to the related Supplement.

(c) Notwithstanding any other provisions of this Section 202 or of Section 205, unless and until a Book-Entry Note is exchanged in whole for Definitive Notes, a Book-Entry Note may be transferred, in whole, but not in part, and in the manner provided in this Section 202, only by (i) the Depositary to a nominee of such Depositary, or (ii) by a nominee of such Depositary to such Depositary or another nominee of such Depositary or (iii) by such Depositary or any such nominee to a successor Depositary selected or approved by the Issuer or to a nominee of such successor Depositary or in the manner specified in Section 202(d). The Depositary shall order the Note Registrar to authenticate and deliver any Book-Entry Notes and any Book-Entry Note for each Class of Notes having an aggregate initial outstanding principal balance equal to the initial outstanding balance of such Class. Noteholders shall hold their respective Ownership Interests in and to such Notes through the book-entry facilities of the Depositary. Without limiting the foregoing, any Book-Entry Noteholders shall hold their respective Ownership Interests, if any, in Book-Entry Notes only through Depositary Participants.

(d) If (i) the Issuer elects to issue Definitive Notes, (ii) the Depositary for the Notes represented by one or more Book-Entry Notes at any time notifies the Issuer that it is unwilling or unable to continue as Depositary of the Notes or if at any time the Depositary shall no longer be a clearing agency registered under the Exchange Act and any other applicable statute or regulation, and a successor Depositary is not appointed or approved by the Issuer within 90 days after the Issuer receives such notice or becomes aware of such condition, as the case may be, (iii) the Indenture Trustee, at the written direction of the Noteholders representing more than 50% of the outstanding principal balance of the Notes, elects to terminate the book-entry system through the Depositary or (iv) after an Event of Default or a Manager Default, Noteholders notify the Depositary, or Book-Entry Custodian, as the case may be, in writing that the continuation of a book-entry system through the Depositary, or the Book-Entry Custodian, as the case may be, is no longer in the Noteholders' best interest, upon the request of the Noteholders, the Issuer will promptly execute, and the Indenture Trustee, upon receipt of an Officer's Certificate evidencing such determination by the Issuer, will promptly authenticate and make available for delivery, Definitive Notes, in authorized denominations and in an aggregate principal amount equal to the principal amount of the Book-Entry Note then outstanding in exchange for such Book-Entry Note or as an original issuance of Notes and this Section 202(d) shall no longer be applicable to the Notes. Upon the exchange of the Book-Entry Notes for such Definitive Notes without coupons, in authorized denominations, such Book-Entry Notes shall be canceled by the Indenture Trustee. All Definitive Notes shall be issued without coupons. Such Definitive Notes issued in exchange of the Book-Entry Notes pursuant to this Section 202(d) shall be registered in such names and in such authorized denominations as the Depositary, in the case of an exchange, or the Note Registrar, in the case of an original issuance, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Indenture Trustee. The Indenture Trustee may conclusively rely on any such instructions furnished by the Depositary or the Note Registrar, as the case may be, and shall not be liable for any delay in delivery of such instructions. The Indenture Trustee shall make such Notes available for delivery to the Persons in whose names such Notes are so registered.

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(e) As long as the Notes outstanding are represented by one or more Book-Entry Notes:

(i) the Note Registrar and the Indenture Trustee may deal with the Depositary for all purposes (including the payment of principal of and interest on the Notes) as the authorized representative of the Noteholders;

(ii) the rights of Noteholders shall be exercised only through the Depositary and shall be limited to those established by law and agreements between such Noteholders and the Depositary and/or the Depositary Participants. Unless and until Definitive Notes are issued, the Depositary will make book-entry transfers among the Depositary Participants and receive and transmit payments of principal of, and interest on, the Notes to such Depositary Participants; and

(iii) whenever this Indenture requires or permits actions to be taken based upon instructions or directions of Holders of Notes evidencing a specified percentage of the voting rights of a particular series, the Depositary shall be deemed to represent such percentage only to the extent that it has received instructions to such effect from Noteholders and/or Depositary Participants owning or representing, respectively, such required percentage of the beneficial interest in the Notes (or Class of Notes) and has delivered such instruction to the Indenture Trustee.

(f) Whenever a notice or other communication to the Noteholders is required under this Indenture, unless and until Definitive Notes have been issued to Noteholders, the Indenture Trustee shall give all such notices and communications to the Depositary.

(g) The Indenture Trustee is hereby initially appointed as the Book-Entry Custodian and hereby agrees to act as such in accordance with the agreement that it has with the Depositary authorizing it to act as such. The Book-Entry Custodian may, and, if it is no longer qualified to act as such, the Book-Entry Custodian shall, appoint, by written instrument delivered to the Issuer and the Depositary, any other transfer agent (including the Depositary or any successor Depositary) to act as Book-Entry Custodian under such conditions as the predecessor Book-Entry Custodian and the Depositary or any successor Depositary may prescribe, *provided* that the predecessor Book-Entry Custodian shall not be relieved of any of its duties or responsibilities by reason of any such appointment of other than the Depositary. If the Indenture Trustee resigns or is removed in accordance with the terms hereof, the successor Indenture Trustee or, if it so elects, the Depositary shall immediately succeed to its predecessor's duties as Book-Entry Custodian. The Issuer shall have the right to inspect, and to obtain copies of, any Notes held as Book-Entry Notes by the Book-Entry Custodian.

(h) The provisions of Section 205(i) shall apply to all transfers of Definitive Notes, if any, issued in respect of Ownership Interests in the Rule 144A Book-Entry Notes.

(i) No transfer of any Note or interest therein shall be made unless that transfer is made pursuant to an effective registration statement under the Securities Act, and effective registration or qualification under applicable state securities laws, or is made in a transaction that does not require such registration or qualification. If a transfer of any Definitive Note is to be made without registration under the Securities Act (other than in connection with the initial issuance thereof or a transfer thereof by the Depositary or one of its Affiliates), then the Note Registrar shall refuse to register such transfer unless it receives (and upon receipt, may conclusively rely upon) either: (i) a certificate from such Noteholder substantially in the form attached as Exhibit C hereto or such other certification reasonably acceptable to the Indenture Trustee and a certificate from such Noteholder's prospective transferee substantially in the form attached as Exhibit C hereto or such other certification reasonably acceptable to the Indenture Trustee; or (ii) an Opinion of Counsel satisfactory to the Indenture Trustee to the effect that such transfer may be made without registration under the Securities Act (which Opinion of Counsel shall not be an expense of the Issuer or any Affiliate thereof or of the Depositary, the Manager or Affiliate thereof, the Indenture Trustee or the Note Registrar in their respective capacities as such), together with the written certification(s) as to the facts surrounding such transfer from the Noteholder desiring to effect such transfer and/or such Noteholder's prospective transferee on which such Opinion of Counsel is based. If such a transfer of any interest in a Book-Entry Note is to be made without registration under the Securities Act, the transferor will be deemed to have made each of the representations and warranties set forth on Exhibit C hereto in respect of such interest as if it was evidenced by a Definitive Note and the transferee will be deemed to have made each of the representations and warranties set forth in Exhibit C hereto in respect of such interest as if it was evidenced by a Definitive Note. None of the Depositary, the Issuer, the Indenture Trustee or the Note Registrar is obligated to register or qualify any Class of Notes under the Securities Act or any other securities law or to take any action not otherwise required under this Indenture to permit the transfer of any Note or interest therein without registration or qualification. Any Noteholder desiring to effect such a transfer shall, and does hereby agree to, indemnify the Depositary, the Issuer, the Indenture Trustee and the Note Registrar against any liability that may result if the transfer is not so exempt or is not made in accordance with such federal and state laws.

Section 203. Execution, Recourse Obligation.

The Notes shall be executed on behalf of the Issuer by an Authorized Signatory of the Issuer. The Notes shall be dated the date of their authentication by the Indenture Trustee.

In case any Authorized Signatory of the Issuer whose signature shall appear on the Notes shall cease to be an Authorized Signatory of the Issuer before the authentication by the Indenture Trustee and delivery of such Notes, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes.

All Notes and the interest thereon shall be full recourse obligations of the Issuer and shall be secured by all of the Issuer's right, title and interest in the Collateral. The Notes shall never constitute obligations of the Indenture Trustee, the Manager, the Sellers or of any shareholder or any Affiliate of any Seller (other than the Issuer) or any member or shareholder of the Issuer, or any officers, directors, employees or agents of any thereof, and no recourse may be had under or upon any obligation, covenant or agreement of this Indenture, any Supplement or of

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any Notes, or for any claim based thereon or otherwise in respect thereof, against any incorporator or against any past, present, or future owner, partner of an owner or any officer, employee or director thereof or of any successor entity, or any other Person, either directly or through the Issuer, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed that this Indenture and the obligations issued hereunder are solely obligations of the Issuer, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any other Person under or by reason of this Indenture, any Supplement or any Notes or implied therefrom, or for any claim based thereon or in respect thereof, all such liability and any and all such claims being hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of such Notes. Except as provided in any Supplement, no Person other than the Issuer shall be liable for any obligation of the Issuer under this Indenture or any Note or any losses incurred by any Noteholder.

Section 204. Certificate of Authentication.

No Notes shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless there shall be endorsed thereon a certificate of authentication by the Indenture Trustee, substantially in the form set forth in the form of Note attached to the related Supplement. Such certificate on any Note issued by the Issuer shall be conclusive evidence and the only competent evidence that it has been duly authenticated and delivered hereunder.

At the written direction of the Issuer, the Indenture Trustee shall authenticate and deliver the Notes. It shall not be necessary that the same Authorized Signatory of the Indenture Trustee execute the certificate of authentication on each of the Notes.

Section 205. Registration; Registration of Transfer and Exchange of Notes.

(a) The Indenture Trustee shall keep at its Corporate Trust Office books for the registration and transfer of the Notes (the "Note Register"). The Issuer hereby appoints the Indenture Trustee as its registrar (the "Note Registrar") and transfer agent to keep such books and make such registrations and transfers as are hereinafter set forth in this Section 205 and also authorizes and directs the Indenture Trustee to provide a copy of such registration record to each of the Administrative Agent and the Manager upon their request. The names and addresses of the Holders of all Notes and all transfers of, and the names and addresses of the transferee of, all Notes will be registered in such Note Register. The Person in whose name any Note is registered shall be deemed and treated as the owner and Holder thereof for all purposes of this Indenture, and the Indenture Trustee, the related Series Enhancer and the Issuer shall not be affected by any notice or knowledge to the contrary. The related Series Enhancer and, if a Person other than the Indenture Trustee is appointed by the Issuer to maintain the Note Register, the Indenture Trustee shall have the right to inspect the Note Register at all reasonable times and to obtain copies thereof and the Indenture Trustee shall have the right to conclusively rely upon a certificate executed on behalf of the Note Registrar by an officer thereof as to the names and addresses of the Noteholders and the principal amounts and number of such Notes. If a Person other than the Indenture Trustee is appointed by the Issuer to maintain the Note Register, the Issuer will give the Indenture Trustee and the Administrative Agent prompt written notice of such appointment and of the location, and any change in the location, of the successor note registrar.

(b) Payments of principal, premium, if any, and interest on any Note shall be payable on each Payment Date only to the registered Holder thereof on the Record Date immediately preceding such Payment Date. The principal of, premium, if any, and interest on each Note shall be payable at the Corporate Trust Office in immediately available funds in such coin or currency of the United States of America as at the time for payment shall be legal tender for the payment of public and private debts. Except as set forth in any Supplement, all interest payable on the Notes shall be computed on the basis of a 360-day year for the actual number of days which have elapsed in the relevant calculation period. Notwithstanding the foregoing or any provision in any Note to the contrary, if so requested by the registered Holder of any Note by written notice to the Indenture Trustee, all amounts payable to such registered Holder may be paid either (i) by crediting the amount to be distributed to such registered Holder to an account maintained by such registered Holder with the Indenture Trustee or by transferring such amount by wire to such other bank in the United States, including a Federal Reserve Bank, as shall have been specified in such notice, for credit to the account of such registered Holder maintained at such bank, or (ii) by mailing a check to such address as such Holder shall have specified in such notice, in either case without any presentment or surrender of such Note to the Indenture Trustee at the Corporate Trust Office.

(c) All payments on the Notes shall be paid to the Noteholders reflected in the Note Register as of the related Record Date by wire transfer of immediately available funds for receipt prior to 2:00 p.m. (New York City time) on the related Payment Date. Any payments received by the Noteholders after 2:00 p.m. (New York City time) on any day shall be considered to have been received on the next succeeding Business Day; *provided, however*, that if the Issuer has deposited the required funds with the Indenture Trustee by 1:00 p.m. (New York City time), on such date, then the Issuer, upon receipt by the Noteholders of such payment, shall be deemed to have made such payment at the time so required. Notwithstanding the foregoing or any provision in any Note to the contrary, if so requested by the registered Noteholder by written notice to the Indenture Trustee, all amounts payable to such registered Noteholder may be paid by mailing on the related Payment Date a check to such address as such Noteholder shall have specified in such notice, in either case without any presentment or surrender of such Note to the Indenture Trustee at the Corporate Trust Office.

(d) Upon surrender for registration of transfer of any Note at the Corporate Trust Office, the Issuer shall execute and the Indenture Trustee, upon written request, shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of the same class, of any authorized denominations and of a like aggregate original principal amount.

(e) All Notes issued upon any registration of transfer or exchange of Notes shall be the legal, valid and binding obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture and any Supplement, as the Notes surrendered upon such registration of transfer or exchange.

(f) Every Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Issuer or the Indenture Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Indenture Trustee duly executed, by the Holder thereof or his attorney duly authorized in writing.

(g) Any service charge, fees or expenses made or expense incurred by the Indenture Trustee for any such registration, discharge from registration or exchange referred to in this Section 205 shall be paid by the Noteholder. The Indenture Trustee or the Issuer may require payment by the Holder of a sum sufficient to cover any tax expense or other governmental charge payable in connection therewith.

(h) If Notes are issued or exchanged in definitive form under Section 202, such Notes will not be registered by the Indenture Trustee unless each prospective initial Noteholder acquiring a Note, each prospective transferee acquiring a Note and each prospective owner (or transferee thereof) of a beneficial interest in Notes (each, a "Prospective Owner") acquiring such beneficial interest provides the Manager, the Issuer, the Indenture Trustee and any successor Manager with a written representation that the statement in either subsection (1) or (2) of Section 208 is an accurate representation as to all sources of funds to be used to pay the purchase price of the Notes.

(i) No transfer of a Note shall be deemed effective unless (x) the transference of such Note is not to a Competitor and (y) the registration and prospectus delivery requirements of Section 5 of the Securities Act and any applicable state securities laws are complied with, or such transfer is exempt from the registration and prospectus delivery requirements under said Securities Act and laws. In the event that a transfer is to be made without registration or qualification, such Noteholder's prospective transferee shall deliver to the Indenture Trustee an investment letter substantially in the form of Exhibit C hereto (the "Purchaser Letter"). Neither the Indenture Trustee nor the Issuer is under any obligation to register the Notes under the Securities Act or any other securities law or to bear any expense with respect to such registration by any other Person or monitor compliance of any transfer with the securities laws of the United States regulations promulgated in connection thereto or ERISA.

Section 206. Mutilated, Destroyed, Lost and Stolen Notes.

(a) If (i) any mutilated Note is surrendered to the Indenture Trustee, or the Indenture Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, and (ii) there is delivered to the Indenture Trustee such security or indemnity as it and the Issuer may require to hold the Issuer, the Manager and the Indenture Trustee harmless (the unsecured indemnity of a Rated Institutional Noteholder being deemed satisfactory for such purpose), then the Issuer shall execute and the Indenture Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a replacement Note of the same Series and Class and maturity and of like terms as the mutilated, destroyed, lost or stolen Note; *provided, however*, that if any such destroyed, lost or stolen Note, but not a mutilated Note, shall have become, or within seven days shall be due and payable, the Issuer may pay such destroyed, lost or stolen Note when so due or payable instead of issuing a replacement Note.

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(b) If, after the delivery of such replacement Note, or payment of a destroyed, lost or stolen Note pursuant to the proviso to the preceding sentence, a bona fide purchaser of the original Note in lieu of which such replacement Note was issued presents for payment such original Note, the Issuer and the Indenture Trustee shall be entitled to recover upon the security or indemnity provided therefor to the extent of any and all loss, damage, cost or expense incurred by the Issuer or the Indenture Trustee in connection therewith.

(c) The Indenture Trustee and the Issuer may, for each new Note authenticated and delivered under the provisions of this Section 206, require the advance payment by the Noteholder of the expenses, including counsel fees, service charges and any tax or governmental charge which may be incurred by the Indenture Trustee or the Issuer. Any Note issued under the provisions of this Section 206 in lieu of any Note alleged to be destroyed, mutilated, lost or stolen, shall be equally and proportionately entitled to the benefits of this Indenture with all other Notes of the same Series and Class. The provisions of this Section 206 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

Section 207. Delivery, Retention and Cancellation of Notes.

Each Noteholder is required, and hereby agrees, to return to the Indenture Trustee on or prior to the Legal Final Payment Date (or, if earlier, the date on which the unpaid principal balance of, and accrued interest and other amounts related to, the applicable Series of Notes shall have been paid in full (for example, pursuant to a refinancing of the Notes of the applicable Series or pursuant to the exercise of remedies under Article VIII hereof)), any Note on which the final payment due thereon has been made for the related Series of Notes. Any such Note as to which the Indenture Trustee has made or holds the final payment thereon shall be deemed canceled and unless any unreimbursed payment on such Note has been made by a Series Enhancer, shall no longer be Outstanding for any purpose of this Indenture, whether or not such Note is ever returned to the Indenture Trustee. Matured Notes delivered upon final payment to the Indenture Trustee and any Notes transferred or exchanged for other Notes shall be canceled and disposed of by the Indenture Trustee in accordance with its policy of disposal and the Indenture Trustee shall promptly deliver to the Issuer such canceled Notes upon reasonable prior written request. If the Indenture Trustee shall acquire, for its own account, any of the Notes, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Notes. If the Issuer shall acquire any of the Notes, such acquisition shall operate as a redemption or satisfaction of the indebtedness represented by such Notes. Notes which have been canceled by the Indenture Trustee shall be deemed paid and discharged for all purposes under this Indenture.

Section 208. ERISA Deemed Representations.

Unless otherwise specified in any applicable Supplement, each prospective initial Noteholder acquiring Notes and each Prospective Owner will be deemed to have represented by such purchase to Wells Fargo Securities, LLC, as the initial purchaser of the Notes, the Issuer, the Indenture Trustee, the Manager and any successor Manager that either (1) it is not acquiring the Notes with the assets of a Plan; or (2) the acquisition and holding of the Notes will not give rise to a nonexempt prohibited transaction under Section 406(a) of ERISA or Section 4975 of the Code.

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ARTICLE III

PAYMENT OF NOTES; STATEMENTS TO NOTEHOLDERS

Section 301. Principal and Interest.

Distributions of principal, premium, if any, and interest on any Series or Class of Notes shall be made to Noteholders of each Series and Class as set forth in Section 302 of this Indenture and the related Supplement. The maximum Overdue Rate for any Note under any Series shall be equal to the sum of (i) two percent (2.00%) per annum, plus (ii) the interest rate for such Note prior to the occurrence of the relevant Event of Default. If interest or principal amounts are paid by a Series Enhancer, then the Overdue Rate shall be owed to such Series Enhancer and shall not be paid to applicable Noteholders of such Series unless the related Series Enhancer has failed to make payment of such amounts in accordance with the terms of any applicable Enhancement Agreement. Except as set forth in any Supplement, all interest and fees payable on, or with respect to, the Notes shall be computed on the basis of a 360-day year for the actual number of days which have elapsed in the relevant calculation period.

Section 302. Trust Account.

(a) On or prior to the Closing Date, the Indenture Trustee shall establish and maintain the Trust Account into which the following amounts shall be deposited: all (i) Collections, (ii) Warranty Purchase Amounts and (iii) other payments required by this Indenture and other Related Documents to be deposited therein. Such Trust Account shall initially be established and maintained with the Corporate Trust Office in trust for the Indenture Trustee, on behalf of the Noteholders, each Interest Rate Hedge Provider and each Series Enhancer, and shall be maintained until the Aggregate Outstanding Obligations are paid in full. The Trust Account shall at all times be an Eligible Account and shall be pledged to the Indenture Trustee pursuant to the terms of this Indenture. The Issuer shall not establish any additional Trust Accounts without prior written notice to the Indenture Trustee and without the prior written consent of the Requisite Global Majority.

(b) The Issuer shall cause the Manager to deposit funds into the Trust Account at the times and in the amounts required pursuant to the terms of the Management Agreement. So long as no Event of Default, Manager Default or an Early Amortization Event of the type described in clauses (1), (2), (3), (4), (5) or (9) of Section 1201 of this Indenture shall have occurred and then be continuing, the Manager shall be permitted to request the Indenture Trustee to withdraw from amounts on deposit in the Trust Account, or otherwise net out, from amounts otherwise required to be deposited into the Trust Account pursuant to Section 302(a) the amount of any Management Fees or Management Fee Arrearage that would otherwise be due and payable on the immediately succeeding Payment Date.

(c) On each Determination Date, the Manager, pursuant to the Management Agreement, shall prepare and deliver to the Issuer, the Indenture Trustee, each Interest Rate Hedge Provider, each Series Enhancer and the Administrative Agent, the Manager Report. On each Payment Date, the Indenture Trustee, based on the Manager Report (*provided* that, in the absence of any Manager Report, the Indenture Trustee shall distribute all funds available for



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distribution in accordance with written instructions from the Administrative Agent (with a copy to the Issuer, each Series Enhancer, each Interest Rate Hedge Provider and the Administrative Agent) and shall hold until delivery of such Manager Report (i) any funds otherwise payable to the Issuer and (ii) any other amounts which the Administrative Agent is unable to ascertain or allocate to a specific payment priority set forth in this Indenture), shall distribute funds in an amount equal to the Available Distribution Amount to the following Persons in the following order of priority:

(1) On each Payment Date, if neither an Early Amortization Event nor an Event of Default shall have occurred and then be continuing, the Indenture Trustee will make the following payments from the Available Distribution Amount then on deposit in the Trust Account to the following Persons in the following order of priority:

(1) To the Indenture Trustee by wire transfer of immediately available funds (not to exceed \$20,000 annually for each Series of Notes then Outstanding at any time Wells Fargo Bank, National Association, is acting as Indenture Trustee), all Indenture Trustee Fees then due and payable for all Series then Outstanding;

(2) To the Manager, any unpaid Management Fees and any Management Fee Arrearages to the extent not withheld by the Manager in accordance with the terms of the Management Agreement;

(3) To the Issuer and the Series Enhancer, *pro rata*, to pay Issuer Expenses (in an aggregate amount not to exceed \$250,000 annually) and Series Enhancer Expenses (in an aggregate amount not to exceed \$250,000 annually) to the extent such payments would not result in the occurrence of an Early Amortization Event or an Event of Default;

(4) To the Manager Transfer Facilitator, the amount of any Manager Transfer Facilitator Fee (including any reimbursements payable to the Manager Transfer Facilitator pursuant to the Manager Transfer Facilitator Agreement);

(5) In payment of the following amounts on a *pro rata* basis: (A) to the Administrative Agent, the amount of Administrative Agent Fee (and any arrearages thereof) then due and payable and (B) to each Series Enhancer, any Premium payments then due and payable;

(6) To each Interest Rate Hedge Provider on a *pro rata* basis (based on amounts then due and payable under all Interest Rate Hedge Agreements), all scheduled payments and interest thereon (but excluding termination payments thereunder) then due and payable under the related Interest Rate Hedge Agreement and the amount of any arrearages thereof;

(7) In payment of the following amounts on a *pro rata* basis: (A) to each Series Account for each Series of Senior Notes then Outstanding on a *pro rata* basis (based on respective amounts then due), an amount equal to the Interest Payments then due and payable for such Series of Senior Notes, and (B) to each Series Enhancer with respect to Senior Notes, any Reimbursement Amounts then due and payable in respect

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of Interest Payments for such Senior Notes paid by such Series Enhancer (including interest thereon at the rate specified in the Insurance Agreement or the related Supplement) and any arrearages of Premium payments then due and payable to such Series Enhancer with respect to such Senior Notes (including interest thereon at the rate specified in the Insurance Agreement or the related Supplement);

(8) To each Series Account for each Series of Subordinate Notes then Outstanding, an amount equal to the Interest Payments then due and payable for such Series of Subordinate Notes;

(9) To the Restricted Cash Account, the amount (if any) necessary to restore amounts on deposit therein to the Restricted Cash Amount for such Payment Date;

(10) To the Series Account for each Series of Senior Notes then Outstanding and subject to the provisions of Section 302(d), an amount equal to the Minimum Principal Payment Amounts then due and payable for such Series;

(11) To the Series Account for each Series of Senior Notes then Outstanding and subject to the provisions of Section 302(d), an amount equal to the Scheduled Principal Payment Amounts then due and payable for such Series;

(12) To the Series Account for each Series of Senior Notes in accordance with the provisions of Section 302(e) hereof, an amount equal to the Supplemental Principal Payment Amount then due and payable;

(13) To each Interest Rate Hedge Provider on a *pro rata* basis (based on amounts then due and payable under all Interest Rate Hedge Agreements), all remaining amounts then due and payable under the related Interest Rate Hedge Agreement (after giving effect to clause (6) above);

(14) To each Series Account for each Series of Senior Notes then Outstanding on a *pro rata* basis (based on respective amounts then due), an amount equal to all other amounts then due and payable to the Noteholders of such Series and the related Series Enhancer, including, without limitation, Step Up Warehouse Fees, Default Interest, increased costs, taxes and indemnity payments identified in the related Supplement;

(15) To the Series Account for each Series of Subordinate Notes then Outstanding and subject to the provisions of Section 302(d), an amount equal to the Minimum Principal Payment Amounts then due and payable for such Series;

(16) To the Series Account for each Series of Subordinate Notes then Outstanding and subject to the provisions of Section 302(d), an amount equal to the Scheduled Principal Payment Amounts then due and payable for such Series;

(17) To the Series Account for each Series of Subordinate Notes in accordance with the provisions of Section 302(e) hereof, an amount equal to the Subordinate Supplemental Principal Payment Amount then due and payable;

(18) To each Series Account for each Series of Subordinate Notes then Outstanding on a *pro rata* basis (based on respective amounts then due), an amount equal to all other amounts then due and payable to the Noteholders of such Series and the related Series Enhancer, including, without limitation, Step Up Warehouse Fees, Warehouse Note Increased Interest, Default Interest, increased costs, taxes and indemnity payments identified in the related Supplement;

(19) To the Manager, the amount of any unreimbursed Manager Advances;

(20) To the Indenture Trustee, the amount of any unpaid Indenture Trustee Indemnified Amounts;

(21) To the officers and directors of the Issuer, the amount of any unpaid indemnification payments then due and payable to them by the Issuer;

(22) To the Manager in the amount of any unpaid indemnification payments payable to the Manager pursuant to Section 18.1 of the Management Agreement; and

(23) To the Issuer (or its designee), any remaining Available Distribution Amount.

(II) On each Payment Date, if an Early Amortization Event shall have occurred and then be continuing with respect to any Series then Outstanding, but no Event of Default has occurred and is continuing, the Indenture Trustee will make the following payments from the Available Distribution Amount then on deposit in the Trust Account to the following Persons in the following order of priority:

(1) To the Indenture Trustee by wire transfer of immediately available funds (not to exceed \$20,000 annually for each Series of Notes then Outstanding at any time Wells Fargo Bank, National Association, is acting as Indenture Trustee), all Indenture Trustee Fees then due and payable for all Series then Outstanding;

(2) To the Manager, any unpaid Management Fees and any Management Fee Arrearages to the extent not withheld by the Manager in accordance with the terms of the Management Agreement;

(3) To the Issuer and the Series Enhancer, *pro rata*, to pay Issuer Expenses (in an aggregate amount not to exceed \$250,000 annually) and Series Enhancer Expenses (in an aggregate amount not to exceed \$250,000 annually) to the extent such payments would not result in the occurrence of an Event of Default;

(4) To the Manager Transfer Facilitator, the amount of any Manager Transfer Facilitator Fee (including any reimbursements payable to the Manager Transfer Facilitator pursuant to the Manager Transfer Facilitator Agreement);

(5) In payment of the following amounts on a *pro rata* basis: (A) to the Administrative Agent, the amount of Administrative Agent Fee (and any arrearages thereof) then due and payable, and (B) to each Series Enhancer, any Premium payments then due and payable;

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(6) To each Interest Rate Hedge Provider on a *pro rata* basis (based on amounts then due and payable under all Interest Rate Hedge Agreements), all scheduled payments and interest thereon (but excluding termination payments thereunder) then due and payable under the related Interest Rate Hedge Agreement and the amount of any arrearages thereof;

(7) In payment of the following amounts on a *pro rata* basis: (A) to each Series Account for each Series of Senior Notes then Outstanding on a *pro rata* basis (based on respective amounts then due), an amount equal to the Interest Payments then due and payable for such Series of Senior Notes, and (B) to each Series Enhancer with respect to Senior Notes, any Reimbursement Amounts then due and payable in respect of Interest Payments for such Senior Notes paid by such Series Enhancer (including interest thereon at the rate specified in the Insurance Agreement or the related Supplement) and any arrearages of Premium payments then due and payable to such Series Enhancer with respect to such Senior Notes (including interest thereon at the rate specified in the Insurance Agreement or the related Supplement);

(8) To each Series Account for each Series of Subordinate Notes then Outstanding, an amount equal to the Interest Payments then due and payable for such Series of Subordinate Notes;

(9) To the Restricted Cash Account, the amount (if any) necessary to restore amounts on deposit therein to the Restricted Cash Amount for such Payment Date;

(10) To the Series Account for each Series of Senior Notes then Outstanding and subject to the provisions of Section 302(d) hereof, an amount equal to the Minimum Principal Payment Amounts then due and payable for such Series;

(11) To the Series Account for each Series of Senior Notes then Outstanding and subject to the provisions of Section 302(d) hereof, an amount equal to the Scheduled Principal Payment Amounts then due and payable for such Series;

(12) To the Series Account for each Series of Senior Notes then Outstanding (other than the Series Account for any Series of Senior Warehouse Notes for which a Conversion Event has not occurred) on a *pro rata* basis (based on the unpaid principal balance then Outstanding), all remaining Available Distribution Amount until the principal balance of all Senior Notes then Outstanding are paid in full (including Reimbursement Amounts payable in respect thereof to the Series Enhancer);

(13) To each Interest Rate Hedge Provider on a *pro rata* basis (based on amounts then due and payable under all Interest Rate Hedge Agreements), all remaining amounts then due and payable under the related Interest Rate Hedge Agreement (after giving effect to clause (6) above);

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(14) To each Series Account for each Series of Senior Notes then Outstanding on a *pro rata* basis (based on respective amounts then due), an amount equal to all other amounts then due and payable to the Noteholders of such Series and the related Series Enhancer, including, without limitation, Step Up Warehouse Fees, Warehouse Note Increased Interest, Default Interest, increased costs, taxes and indemnity payments identified in the related Supplement;

(15) To the Series Account for each Series of Subordinate Notes then Outstanding and subject to the provisions of Section 302(d) hereof, an amount equal to the Minimum Principal Payment Amounts then due and payable for such Series;

(16) To the Series Account for each Series of Subordinate Notes then Outstanding and subject to the provisions of Section 302(d) hereof, an amount equal to the Scheduled Principal Payment Amounts then due and payable for such Series;

(17) To the Series Account for each Series of Subordinate Notes then Outstanding (other than the Series Account for any Series of Subordinate Warehouse Notes for which a Conversion Event has not occurred) on a *pro rata* basis (based on the unpaid principal balance then Outstanding), all remaining Available Distribution Amount until the principal balance of all Subordinate Notes then Outstanding are paid in full;

(18) To each Series Account for each Series of Subordinate Notes then Outstanding on a *pro rata* basis (based on respective amounts then due), an amount equal to all other amounts then due and payable to the Noteholders of such Series and the related Series Enhancer, including, without limitation, Step Up Warehouse Fees, Warehouse Note Increased Interest, Default Interest, increased costs, taxes and indemnity payments identified in the related Supplement;

(19) To the Manager, the amount of any unreimbursed Manager Advances;

(20) To the Indenture Trustee, the amount of any unpaid Indenture Trustee Indemnified Amounts;

(21) To the officers and directors of the Issuer, the amount of any unpaid indemnification payments then due and payable to them by the Issuer;

(22) To the Manager in the amount of any unpaid indemnification payments payable to the Manager pursuant to Section 18.1 of the Management Agreement; and

(23) To the Issuer (or its designee), any remaining Available Distribution Amount.

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(III) On each Payment Date, if an Event of Default shall have occurred and then be continuing with respect to any Series then Outstanding, the Indenture Trustee will make the following payments from the Available Distribution Amount then on deposit in the Trust Account to the following Persons in the following order of priority:

(1) To the Indenture Trustee by wire transfer of immediately available funds (not to exceed \$20,000 annually for each Series of Notes then Outstanding at any time Wells Fargo Bank, National Association, is acting as Indenture Trustee), all Indenture Trustee Fees then due and payable for all Series then Outstanding;

(2) To the Manager, any unpaid Management Fees and any Management Fee Arrearages to the extent not withheld by the Manager in accordance with the terms of the Management Agreement;

(3) To the Issuer and the Series Enhancer, *pro rata*, to pay Issuer Expenses (in an aggregate amount not to exceed \$250,000 annually) and Series Enhancer Expenses (in an aggregate amount not to exceed \$250,000 annually);

(4) To the Manager Transfer Facilitator, the amount of any Manager Transfer Facilitator Fee (including any reimbursements payable to the Manager Transfer Facilitator pursuant to the Manager Transfer Facilitator Agreement);

(5) In payment of the following amounts on a *pro rata* basis: (A) to the Administrative Agent, the amount of Administrative Agent Fee (and any arrearages thereof) then due and payable and (B) to each Series Enhancer, any Premium payments then due and payable;

(6) To each Interest Rate Hedge Provider on a *pro rata* basis (based on amounts then due and payable under all Interest Rate Hedge Agreements), all scheduled payments and interest thereon (but excluding termination payments thereunder) then due and payable under the related Interest Rate Hedge Agreement and the amount of any arrearages thereof;

(7) In payment of the following amounts on a *pro rata* basis: (A) to each Series Account for each Series of Senior Notes then Outstanding on a *pro rata* basis (based on respective amounts then due), an amount equal to the Interest Payments then due and payable for such Series of Senior Notes, and (B) to each Series Enhancer with respect to Senior Notes, any Reimbursement Amounts then due and payable in respect of Interest Payments for such Senior Notes paid by such Series Enhancer (including interest thereon at the rate specified in the Insurance Agreement or the related Supplement) and any arrearages of Premium payments then due and payable to such Series Enhancer with respect to such Senior Notes (including interest thereon at the rate specified in the Insurance Agreement or the related Supplement);

(8) To each Series Account for each Series of Subordinate Notes then Outstanding, an amount equal to the Interest Payments then due and payable for such Series of Subordinate Notes;

(9) One of the following: (A) if the Notes of any Series then Outstanding have been accelerated, each of the following on a *pro rata* and a *pari passu* basis (based on amounts then due), all remaining Available Distribution Amount, (1) to each Series Account for each Series of Senior Notes Outstanding, the then unpaid principal balance of such Series (*pro rata* based on the amounts unpaid on the date on which such Event

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of Default first occurs) (including Reimbursement Amounts payable in respect thereof to the Series Enhancer) and (2) to each Interest Rate Hedge Provider, the remaining amounts then due and payable under the related Interest Rate Hedge Agreement, until such amounts are paid in full; or (B) if none of the Notes of any Series then Outstanding has been accelerated, to the Series Account for each Series of Senior Notes then Outstanding ( *pro rata* based on the amounts unpaid on the date on which such Event of Default occurs) all remaining Available Distribution Amount until the then unpaid principal balances of all Notes then Outstanding are paid in full (including Reimbursement Amounts payable in respect thereof to the Series Enhancer);

(10) To each Series Account for each Series of Senior Notes then Outstanding on a *pro rata* basis (based on respective amounts then due), an amount equal to all other amounts then due and payable to the Noteholders of such Series and the related Series Enhancer, including, without limitation, Step Up Warehouse Fees, Warehouse Note Increased Interest, Default Interest, increased costs, taxes and indemnity payments identified in the related Supplement;

(11) To each Interest Rate Hedge Provider on a *pro rata* basis (based on amounts then due and payable under all Interest Rate Hedge Agreements), all remaining amounts then due and payable under the related Interest Rate Hedge Agreement (after giving effect to clauses (6) and (9)(A) above);

(12) All remaining Available Distribution Amount, to each Series Account for each Series of Subordinate Notes Outstanding, the then unpaid principal balance of such Series (*pro rata* based on the amounts unpaid on the date on which such Event of Default first occurs);

(13) To each Series Account for each Series of Subordinate Notes then Outstanding on a *pro rata* basis (based on respective amounts then due), an amount equal to all other amounts then due and payable to the Noteholders of such Series and the related Series Enhancer, including, without limitation, Step Up Warehouse Fees, Warehouse Note Increased Interest, Default Interest, increased costs, taxes and indemnity payments identified in the related Supplement;

(14) To the Manager, the amount of any unreimbursed Manager Advances;

(15) To the Indenture Trustee, the amount of any unpaid Indenture Trustee Indemnified Amounts;

(16) To the officers and directors of the Issuer, the amount of any unpaid indemnification payments then due and payable to them by the Issuer;

(17) To the Manager in the amount of any unpaid indemnification payments payable to the Manager pursuant to Section 18.1 of the Management Agreement; and

(18) To the Issuer (or its designee), any remaining Available Distribution Amount.

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(d) If on any Payment Date on which no Event of Default is then continuing there are not sufficient funds to pay, in full, the Minimum Principal Payment Amounts and/or Scheduled Principal Payment Amounts owing to all Series of Notes then Outstanding, as the case may be, then principal payments having the same payment priority will be paid, in full, to the Series first issued (based on their respective dates of issuance or Conversion Dates, as applicable) in chronological order based on their respective dates of issuance or Conversion Dates, as applicable. For purposes of this Section 302(d) only, any Series designated as a Warehouse Note will be deemed to have an issuance date equivalent to its Conversion Date. If two or more Series of the Notes were issued on the same date or have the same Conversion Date, then principal payments having the same payment priority will be allocated among each such Series, on a *pro rata* basis, based on the principal payments then due.

(e) (I) On each Payment Date, any Supplemental Principal Payment Amount then due and owing shall be applied first to each Senior Series of Warehouse Notes then Outstanding on a *pro rata* basis, in proportion to the then unpaid principal balance of such Warehouse Notes, until the principal balances of such Warehouse Notes have been paid in full, and then to all Senior Series of Term Notes then Outstanding on a *pro rata* basis, in proportion to the then unpaid principal balance of each such Senior Series of Term Notes. Notwithstanding the foregoing, if sufficient funds are not available to allow the Issuer to prepay the principal balance of the Senior Series of Warehouse Notes on such Payment Date in an amount equal to the Asset Base Deficiency with respect to the Senior Asset Base (if any), then the amount of any Supplemental Principal Payment Amount to be actually paid on such Payment Date shall be allocated among all Series of Senior Notes then Outstanding (including the Term Notes) on a *pro rata* basis, in proportion to the then unpaid principal balance of such Notes; and

(II) On each Payment Date, any Subordinate Supplemental Principal Payment Amount then due and owing shall be applied first to each Subordinate Series of Warehouse Notes then Outstanding on a *pro rata* basis, in proportion to the then unpaid principal balance of such Warehouse Notes, until the principal balances of such Warehouse Notes have been paid in full, and then to all Subordinate Series of Term Notes then Outstanding on a *pro rata* basis, in proportion to the then unpaid principal balance of each such Subordinate Series of Term Notes. Notwithstanding the foregoing, if sufficient funds are not available to allow the Issuer to prepay the principal balance of the Subordinate Series of Warehouse Notes on such Payment Date in an amount equal to the Asset Base Deficiency with respect to the Subordinate Asset Base (if any), then the amount of any Subordinate Supplemental Principal Payment Amount to be actually paid on such Payment Date shall be allocated among all Series of Subordinate Notes then Outstanding (including the Term Notes) on a *pro rata* basis, in proportion to the then unpaid principal balance of such Notes.

(f) If any Series has more than one Class of Notes then Outstanding, then the Available Distribution Amount shall be calculated without regard to the payment priorities of the Classes of Notes within such Series. Once the Available Distribution Amount has been allocated to each Series, then that portion of the Available Distribution Amount allocable to such Series shall be paid to each Class of Noteholders of such Series in accordance with the priority of payments set forth in the related Supplement.



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Section 303. Investment of Monies Held in the Trust Account, the Restricted Cash Account and Series Accounts.

(a) Subject to the provisions of Section 703 hereof, the Indenture Trustee shall invest any cash deposited in the Trust Account, the Restricted Cash Account and each Series Account in such Eligible Investments as the Issuer or its designee (or its authorized agent) shall direct in writing or by telephone, subsequently confirmed in writing. Each Eligible Investment (including reinvestment of the income and proceeds of Eligible Investments) shall be held to its maturity and shall mature or shall be payable on demand not later than the Determination Date immediately preceding the next succeeding Payment Date. If the Indenture Trustee has not received written instructions from the Issuer or its designee by 2:30 p.m. (New York time) on the day such funds are received as to the investment of funds then on deposit in any of the aforementioned accounts, the Issuer hereby instructs the Indenture Trustee to invest such funds in overnight investments in Wells Fargo Bank, National Association of the type described in clause (iv) of the definition of Eligible Investments. Any funds in the Trust Account, each Restricted Cash Account and each Series Account not so invested must be fully insured by the Federal Deposit Insurance Corporation. Eligible Investments shall be made in the name of the Indenture Trustee for the benefit of the Noteholders, each Interest Rate Hedge Provider and each Series Enhancer. Any earnings on Eligible Investments in the Trust Account, the Restricted Cash Account and each Series Account shall be retained in each such account and be distributed in accordance with the terms of this Indenture or any related Supplement. The Indenture Trustee shall not be liable or responsible for losses on any investments made by it pursuant to this Section 303.

(b) On or prior to the Closing Date, each of the Issuer and the Securities Intermediary shall enter into Control Agreements each in the form of Exhibit G hereto for each of the Trust Account, the Restricted Cash Account and any Series Accounts. At all times on and after the Closing Date, each such account shall be the subject of a Control Agreement.

(c) The Indenture Trustee, acting in accordance with the terms of this Indenture, shall be entitled to deliver an Entitlement Order to the Securities Intermediary at which such accounts are maintained at any time; *provided, however*, that the Indenture Trustee agrees not to invoke its right to provide an Entitlement Order unless an Event of Default has occurred and is continuing. The Control Agreements shall provide that upon receipt of the Entitlement Order in accordance with the provisions of this Indenture, the Indenture Trustee shall comply with such Entitlement Order without further consent by the Issuer or any other Person.

(d) Each of the Trust Account, the Restricted Cash Account and the Series Accounts shall be initially established with the Indenture Trustee and, so long as any Outstanding Obligation remains unpaid, shall be maintained with the Indenture Trustee so long as (A) the short-term unsecured debt obligations of the financial institution fulfilling the role of the Indenture Trustee are rated not less than the Required Deposit Rating or (B) each of the Trust Account, the Restricted Cash Account and the Series Accounts are maintained at the Corporate Trust Office. If any of the Trust Account, the Restricted Cash Account or the Series Accounts are not maintained at the Corporate Trust Office or if the short-term unsecured debt obligations of the Indenture Trustee fall below the Required Deposit Rating, then the Issuer shall within ten (10) days after obtaining knowledge of such condition, with the Indenture Trustee's assistance as

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necessary, cause each of the Trust Account, the Restricted Cash Account and the Series Accounts to be transferred to either (A) an Eligible Institution which then maintains the Required Deposit Rating and is otherwise acceptable to the Administrative Agent and each Series Enhancer, or (B) with the prior written consent of the Administrative Agent and each Series Enhancer, the Corporate Trust Office of the successor Indenture Trustee. Prior to any of the Trust Account, the Restricted Cash Account or any Series Accounts being maintained with a Person other than the Indenture Trustee, the Issuer shall obtain the prior written consent of the Administrative Agent and each Series Enhancer and shall cause a new Control Agreement to be entered into with such Person as securities intermediary.

(e) Each of the Trust Account, the Restricted Cash Account and the Series Accounts shall be maintained in the State of New York and shall be governed by the laws of the State of New York, regardless of any provision in any other agreement. Each Control Agreement shall provide for purposes of the UCC that New York shall be deemed to be the Securities Intermediary's jurisdiction and each of the Trust Account, the Restricted Cash Account and each Series Account (as well as the Securities Entitlements related thereto) shall be governed by the laws of the State of New York.

(f) The Indenture Trustee, in its capacity as the Securities Intermediary, has not entered into, and until the termination of this Indenture will not enter into, any agreement with any other Person relating to any of the Trust Account, the Restricted Cash Account, any Series Account or any Financial Assets credited thereto pursuant to which it has agreed to comply with Entitlement Orders of such other Person and the Securities Intermediary has not entered into, and until the termination of this Agreement will not enter into, any agreement with the Issuer, any Seller, the Manager or the Indenture Trustee purporting to limit or condition the obligation of the Securities Intermediary to comply with Entitlement Orders as set forth in Section 303(c) hereof.

(g) Except for the claims and interest of the Indenture Trustee and of the Issuer hereunder in each of the Trust Account, the Restricted Cash Account and each Series Account, to the best of its knowledge without independent investigation, the Indenture Trustee, in its capacity as the initial Securities Intermediary, knows of no claim to, or interest in, any of the Trust Account, the Restricted Cash Account, any Series Account or in any Financial Asset credited thereto. If any other Person asserts any Lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against any of the Trust Account, the Restricted Cash Account, any Series Account or in any Financial Asset credited thereto, the Securities Intermediary will promptly notify the Indenture Trustee, the Manager, the Administrative Agent, each Series Enhancer, each Interest Rate Hedge Provider and the Issuer thereof.

(h) The Indenture Trustee shall possess a perfected security interest in all right, title and interest in and to all funds on deposit from time to time in each of the Trust Account, the Restricted Cash Account, each Series Account and in all Proceeds thereof. Each of the Trust Account, the Restricted Cash Account and each Series Account shall be in the name of and under the sole dominion and control of the Indenture Trustee for the benefit of the Noteholders, each Interest Rate Hedge Provider and each Series Enhancer. The Indenture Trustee shall make withdrawals and payments from each of the Trust Account, the Restricted

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Cash Account and each Series Account and apply such amounts in accordance with the provisions of the Indenture and the related Manager Report or, in the absence of any Manager Report, in accordance with written instructions from the Administrative Agent. Effective upon any submission by the Indenture Trustee to each Series Enhancer of a certificate requesting a draw under any related Enhancement Agreement, the Indenture Trustee will be deemed to have assigned to each Series Enhancer all rights under the obligations insured under such Enhancement Agreement in respect of which payment is being requested to each Series Enhancer.

(i) The Issuer shall not direct the Indenture Trustee to make any investment of any funds or to sell any investment held in any of the Trust Account, the Restricted Cash Account and any Series Account unless the security interest of the Indenture Trustee in such account and any funds or investments held therein shall continue to be perfected without any further action by any Person.

(j) The Financial Assets and other items deposited to the accounts will not be subject to deduction, set-off, banker's lien, or any other right in favor of any Person except as created pursuant to this Indenture. For the avoidance of doubt, the fees and expenses of the Indenture Trustee shall be payable solely pursuant to Section 302 or Section 806 of this Indenture and shall not be subject to deduction, set-off, bankers lien or other right of the Indenture Trustee.

Section 304. Copies of Reports to Noteholders, each Interest Rate Hedge Provider and each Series Enhancer .

(a) Upon request, the Indenture Trustee shall promptly furnish to each Noteholder, the Administrative Agent, each Interest Rate Hedge Provider and each Series Enhancer a copy of all reports, financial statements and notices received by the Indenture Trustee pursuant to the Container Sale Agreement, this Indenture, the Management Agreement or any other Related Document.

(b) The Indenture Trustee will make available promptly upon receipt thereof to the Noteholders via the Indenture Trustee's internet website at [www.CTSLink.com](http://www.CTSLink.com) the financial statements referred to in Section 7.2 of the Management Agreement, the Equipment and Lease Report, the Manager Report, the Asset Base Report and the annual insurance confirmation; *provided*, that, as a condition to access to the Indenture Trustee's website, the Indenture Trustee shall require each such Noteholder to execute the Indenture Trustee's standard form documentation, and upon such execution, each such Noteholder shall be deemed to have certified to the Indenture Trustee it (i) is a Noteholder, (ii) understands that such items contain material nonpublic information (within the meaning of U.S. Federal Securities laws), (iii) is requesting the information solely for use in evaluating such party's investment in the Notes and will keep such information strictly confidential (with such exceptions and restrictions to distribution of the information as are more fully set forth in the information request certification) and (iv) is not a Competitor. Each time a Noteholder accesses the internet website, it will be deemed to have confirmed the representations and warranties made pursuant to the confirmation as of the date of such access. The Indenture Trustee will provide the Issuer with copies of such information request certification. Assistance in using the Indenture Trustee's website can be obtained by calling the Indenture Trustee's customer service desk at (866) 846-4526.

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Section 305. Records.

The Indenture Trustee shall cause to be kept and maintained adequate records pertaining to the Trust Account, each Restricted Cash Account and each Series Account and all receipts and disbursements therefrom. The Indenture Trustee shall deliver at least monthly an accounting thereof in the form of a trust statement to the Issuer, each member of the Issuer, the Manager, the Administrative Agent, each Interest Rate Hedge Provider and each Series Enhancer.

Section 306. Restricted Cash Account.

(a) The Indenture Trustee shall establish and maintain in the name of the Indenture Trustee an Eligible Account in the name of the Indenture Trustee with the Corporate Trust Office which shall be designated the restricted cash account (the “Restricted Cash Account”) for all Series and which shall be held by the Indenture Trustee pursuant to this Indenture and the related Supplements. Any and all moneys remitted by the Issuer, or Manager on its behalf, to the Restricted Cash Account from the Trust Account, together with any Eligible Investments in which such moneys are or will be invested or reinvested, shall be held in the Restricted Cash Account for all Series. On the issuance date of any Series, the Issuer will deposit, or cause to be deposited, into the Restricted Cash Account sufficient amount of funds such that, after giving effect to such deposit, the amount of funds on deposit therein shall be equal to the Restricted Cash Amount, and thereafter amounts shall be deposited in the Restricted Cash Account in accordance with Section 302. Any and all moneys remitted by the Indenture Trustee to the Restricted Cash Account shall be invested in Eligible Investments in accordance with this Indenture and shall be distributed in accordance with this Section 306.

(b) On each Determination Date, the Indenture Trustee shall, in accordance with the terms of each applicable Supplement and the Manager Report or, in the absence of a Manager Report, pursuant to written instructions from the Administrative Agent, withdraw from the Restricted Cash Account and deposit into the Series Account for each affected Series an amount equal to the Permitted Payment Date Withdrawals for such Series. Amounts transferred to a Series Account pursuant to the provisions of this Section 306(b) may only be used to pay amounts specified in the definition of “Permitted Payment Date Withdrawals”. Any other conditions or restrictions related to such draw for a specific Series shall be set forth in the related Supplement.

(c) On each Payment Date, the Indenture Trustee shall, in accordance with the Manager Report or, in the absence of a Manager Report, pursuant to written instructions from the Administrative Agent, deposit in the Trust Account for distribution in accordance with Section 302 of this Indenture the excess, if any, of (A) amounts then on deposit in the Restricted Cash Account (after giving effect to any withdrawals therefrom on such Payment Date) over (B) the Restricted Cash Amount. On the Legal Final Payment Date for the Series with the latest Legal Final Payment Date, any remaining funds in the Restricted Cash Account shall be deposited in the Trust Account and, subject to the limitations set forth in any Supplement, distributed in accordance with Section 302 of this Indenture and the related Supplements.

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(d) If the amount on deposit in the Restricted Cash Account on a Determination Date is not sufficient to pay in full the aggregate Permitted Payment Date Withdrawals referred to in Section 306(b) above, then the amount of funds then available in the Restricted Cash Account will be allocated among the various Series on a *pro rata* basis in proportion to the amount of their respective Permitted Payment Date Withdrawals.

(e) In addition to the withdrawals set forth in Section 306(b) above, on any date on which an Event of Default has occurred and is continuing and the Notes have been accelerated in accordance with the terms of this Indenture, the Indenture Trustee, acting at the direction of the Requisite Global Majority, shall withdraw all amounts on deposit in the Restricted Cash Account and use such amounts to pay the sum of interest and arrearages then payable on the Notes plus the Aggregate Principal Balance in accordance with the priorities set forth in Section 806 hereof.

Section 307. CUSIP Numbers.

The Issuer in issuing the Notes may use “CUSIP” numbers (if then generally in use), and, if so, the Indenture Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Indenture Trustee of any change in the “CUSIP” numbers.

Section 308. No Claim.

The Indenture Trustee hereby agrees, and by accepting the benefits of this Indenture, each of the Seller and Manager shall be deemed to have agreed, that amounts payable to it pursuant to the terms of the Related Documents shall be non-recourse to the Issuer and shall not constitute a claim against the Issuer or the Collateral in the event such amounts are not paid in accordance with Section 302 or 806 of this Indenture.

Section 309. Compliance with Withholding Requirements.

Notwithstanding any other provision of this Indenture, the Indenture Trustee shall comply with all United States federal income tax withholding requirements with respect to payments to Noteholders of interest, original issue discount, or other amounts that the Indenture Trustee reasonably believes are applicable under the Code. The consent of Noteholders shall not be required for any such withholding.

Section 310. Tax Treatment of Notes.

The Issuer has entered into this Indenture, and the Notes will be issued, with the intention that, for United States federal, state and local income, single business and franchise tax

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purposes, the Notes will qualify as indebtedness. The Issuer and the Indenture Trustee, by entering into this Indenture, and each Noteholder, by its acceptance of its Note, agree to treat the Notes for United States federal, state and local income, single business and franchise tax purposes as indebtedness.

Section 311. Subordination.

Wells Fargo Bank, National Association, in its capacity as the Securities Intermediary hereby irrevocably subordinates to the security interest of the Indenture Trustee under this Indenture any and all security interest in, liens on and rights of setoff against any and all of the Collateral that the Securities Intermediary may have or acquire on the date hereof or at any time hereafter until all Outstanding Obligations, and all amounts payable by the Issuer under this Indenture and all other Related Documents have been paid in full and all covenants and agreements of the Issuer in this Indenture and all other Related Documents have been fully performed.

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ARTICLE IV  
COLLATERAL

Section 401. Collateral.

(a) The Notes and the obligations of the Issuer hereunder shall be obligations of the Issuer as provided in Section 203 hereof. The Noteholders, each Interest Rate Hedge Provider and each Series Enhancer shall also have the benefit of, and the Notes shall be secured by and be payable from, the Issuer's right, title and interest in the Collateral. The income, payments and Proceeds of such Collateral shall be allocated to each such Series of Notes strictly in accordance with the applicable payment priorities set forth in Section 302 and Section 806 hereof.

(b) Notwithstanding anything contained in this Indenture to the contrary, the Issuer expressly agrees that it shall remain liable under each of its Contracts and Leases to observe and perform all the conditions and obligations to be observed and performed by it thereunder and that it shall perform all of its duties and obligations thereunder, all in accordance with and pursuant to the terms and provisions of each such Contract or Lease, as the case may be.

(c) The Indenture Trustee hereby acknowledges the appointment by the Issuer of the Manager to service and administer the Collateral in accordance with the provisions of the Management Agreement and, so long as such Management Agreement shall not have been terminated in accordance with its terms, the Indenture Trustee hereby agrees to provide the Manager with such documentation and to take all such actions with respect to the Collateral as the Manager may reasonably request in writing in accordance with the express provisions of the Management Agreement; *provided, however*, that the Indenture Trustee shall be entitled to receive from the Issuer reasonable compensation and cost reimbursement for any such action. Until such time as the Management Agreement has been terminated in accordance with its terms, the Manager, on behalf of the Issuer, shall continue to collect all Accounts and payments on the Leases in accordance with the provisions of the Management Agreement and make such deposits into the Trust Account as are required pursuant to the terms of the Management Agreement. Any Proceeds received directly by the Issuer in payment of any Account or Leases or in payment for, or in respect of, any of the Managed Containers or on account of any of the Contracts to which the Issuer is a party shall be promptly deposited by the Issuer in precisely the form received (with all necessary endorsements) in the Trust Account, and until so deposited shall be deemed to be held in trust by the Issuer as the Indenture Trustee's property and shall continue to be collateral security for all of the obligations secured by this Indenture and shall not constitute payment thereof until applied as hereinafter provided. If (i) an Event of Default has occurred, (ii) any Sale of the Collateral pursuant to Section 816 hereof shall have occurred or (iii) a Manager Default has occurred, the Issuer shall at the request of the Indenture Trustee, acting with the consent of or at the direction of the Requisite Global Majority, to the extent practicable and to the extent the Issuer possesses such documents, deliver to the Indenture Trustee (or such other Person as the Indenture Trustee may direct) originals (or, to the extent originals cannot be delivered, copies) of all other documents evidencing, and relating to, the sale and delivery of the Managed Containers and the Issuer shall, to the extent practicable and to the extent the Issuer

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possesses such documents, deliver originals (or, to the extent originals cannot be delivered, copies) of all other documents evidencing and relating to, the performance of any labor, maintenance, remarketing or other service which created such Accounts, including, without limitation, all original orders, invoices and shipping receipts. The Issuer shall be required to deliver or disclose any information, data, document or agreement which is proprietary to the Issuer, only to the extent required by the terms of the Management Agreement.

Section 402. Pro Rata Interest.

(a) Except as expressly provided for herein and in any Supplement, the Notes of all Outstanding Series shall be equally and ratably entitled to the benefits of this Indenture without preference, priority or distinction, all in accordance with the terms and provisions of this Indenture and the related Supplement. All Notes of a particular Class issued hereunder are and are to be, to the extent (including any exceptions) provided in this Indenture and the related Supplement, equally and ratably secured by this Indenture without preference, priority or distinction on account of the actual time or times of the authentication or delivery of the Notes so that all Notes of a particular Series and Class at any time Outstanding (including Notes owned by any Seller and its Affiliates, other than the Issuer) shall have the same right, Lien and preference under this Indenture and shall all be equally and ratably secured hereby with like effect as if they had all been executed, authenticated and delivered simultaneously on the date hereof.

(b) With respect to each Series of Notes, the execution and delivery of the related Supplement shall be upon the express condition that if the conditions specified in Section 701 of this Indenture are met with respect to such Series of Notes, the security interest and all other estate and rights granted by this Indenture with respect to such Series of Notes shall cease and become null and void and all of the property, rights, and interest granted as security for the Notes of such Series shall revert to and revest in the Issuer without any other act or formality whatsoever.

Section 403. Indenture Trustee's Appointment as Attorney-in-Fact.

(a) The Issuer hereby irrevocably constitutes and appoints Indenture Trustee, and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Issuer and in the name of the Issuer or in its own name, from time to time, for the purpose of carrying out the terms of this Indenture, to take any and all action and to execute and deliver any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Indenture; *provided, however*, that the Indenture Trustee has no obligation or duty to take such action nor to determine whether to perfect, file, record or maintain any perfected, filed or recorded document or instrument (all of which the Issuer shall prepare, deliver and instruct the Indenture Trustee to execute) in connection with the grant of a security interest in the Collateral hereunder.

(b) The Indenture Trustee shall not exercise the power of attorney or any rights granted to the Indenture Trustee pursuant to this Section 403 unless an Event of Default shall have occurred and then be continuing. The Issuer hereby ratifies, to the extent permitted by law, all actions that said attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted pursuant to this Section 403 is a power coupled with an interest and shall be irrevocable until all Series of Notes are paid and performed in full.



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(c) The powers conferred on the Indenture Trustee hereunder are solely to protect Indenture Trustee's interests in the Collateral and shall not impose any duty upon it to exercise any such powers except as set forth herein. The Indenture Trustee shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees, agents or representatives shall be responsible to the Issuer for any act or failure to act, except for its own negligence or willful misconduct.

(d) The Issuer also authorizes (but does not obligate) the Indenture Trustee to (i) so long as a Manager Default is continuing, communicate with any party to any Contract or Lease relating to a Managed Container with regard to the assignment of the right, title and interest of the Issuer in and under the Contracts or Leases relating to a Managed Container hereunder and other matters relating thereto and (ii) so long as an Event of Default is continuing, execute, in connection with the sale of Collateral provided for in Article VIII hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

(e) If the Issuer fails to perform or comply with any of its agreements contained herein and the Indenture Trustee, with the consent of and at the direction of the Requisite Global Majority, shall perform or comply, or otherwise cause performance or compliance, with such agreement, the reasonable expenses, including attorneys' fees and expenses, of Indenture Trustee incurred in connection with such performance or compliance together with interest thereon at the rate specified in the related Supplement, shall be payable by the Issuer to the Indenture Trustee on demand and shall constitute additional Outstanding Obligations secured hereby.

Section 404. Release of Security Interest.

The Indenture Trustee, at the written direction of the Manager, shall release from the Lien of this Indenture, any Managed Container and the Related Assets sold or transferred or paid-in-kind pursuant to, and in accordance with the terms of, Section 606(a) hereof. In effectuating such release, the Indenture Trustee shall be provided with and shall be entitled to rely on: (A) so long as no Early Amortization Event is then continuing, a written direction of the Manager (with a copy to the Administrative Agent and each Series Enhancer) identifying each Managed Container or other items to be released from the Lien of this Indenture in accordance with the provisions of this Section 404 accompanied by an Asset Base Certificate, or (B) (x) if an Early Amortization Event is then continuing, all of the following: (i) the items set forth in clause (A) above, and (ii) a certificate from the Manager (with a copy to the Administrative Agent and each Series Enhancer) stating that such release is in compliance with Sections 404 and 606(a) hereof and (y) if a Manager Default (other than a Manager Default of the type described in Section 11.1(i), (j) or (l) of the Management Agreement) is then continuing, the prior consent of the Requisite Global Majority shall also be required with respect to each such release. The Indenture Trustee shall, at the expense of the Issuer, execute documents prepared by, or on behalf of, the Issuer evidencing such release was made in accordance with the provisions of this Section 404. The Issuer is authorized to file any UCC partial releases in the appropriate jurisdictions with respect to such released Containers.

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The Indenture Trustee will, promptly upon receipt of such certificate from the Manager and at the Issuer's expense, execute and deliver to the Issuer, the Sellers or, the Manager, as appropriate, the Administrative Agent, each Interest Rate Hedge Provider and each Series Enhancer, a non-recourse certificate of release substantially in the form of Exhibit E hereto and such additional documents and instruments as that Person may reasonably request to evidence the termination and release from the Lien of this Indenture of such Container and the other related items of Collateral.

Section 405. Administration of Collateral.

(a) The Indenture Trustee hereby acknowledges the appointment by the Issuer of the Manager to service and administer the Collateral in accordance with the provisions of the Management Agreement and agrees to provide the Manager with such documentation, and to take all such actions, as the Manager may reasonably request in accordance with the provisions of the Management Agreement.

(b) The Indenture Trustee shall promptly as practicable notify the Noteholders, each Series Enhancer, the Administrative Agent, each Interest Rate Hedge Provider and the Manager Transfer Facilitator of any Manager Default of which a Corporate Trust Officer has actual knowledge. If a Manager Default shall have occurred and then be continuing, the Indenture Trustee, in accordance with the written direction of the Requisite Global Majority, shall deliver to the Manager (with a copy to the Administrative Agent, each Interest Rate Hedge Provider, each Series Enhancer and the Manager Transfer Facilitator) a Manager Termination Notice terminating the Manager of its responsibilities in accordance with the terms of the Management Agreement. If the Manager Transfer Facilitator is unable to locate and qualify a Replacement Manager acceptable to the Requisite Global Majority within sixty (60) days after the date of delivery of the Manager Termination Notice, then the Indenture Trustee may and shall, at the direction of the Requisite Global Majority, appoint, or petition a court of competent jurisdiction to appoint as a successor Manager, a Person acceptable to the Requisite Global Majority, having a net worth of not less than \$15,000,000 and whose regular business includes marine cargo container leasing and/or container chassis leasing. In connection with the appointment of a Replacement Manager, the Indenture Trustee or Administrative Agent may, with the written consent of the Requisite Global Majority, make such arrangements for the compensation of such Replacement Manager out of Collections as the Indenture Trustee (acting in accordance with the Requisite Global Majority), each Series Enhancer, the Administrative Agent and such Replacement Manager shall agree. The terminated Manager shall not be entitled to receive any Management Fee or other amounts owing to it pursuant to the Management Agreement for any period after the effective date of such replacement, but shall be entitled to receive any such amounts earned or accrued through the effective date of such replacement which amounts shall be payable in accordance with Section 302 of this Indenture. The Indenture Trustee shall take such action, consistent with the Management Agreement and the other Related Documents, as shall be reasonably necessary to effectuate any such succession including exercising the power of attorney granted by the Manager pursuant to Section 11.4 of the Management Agreement.

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(c) Upon a Corporate Trust Officer obtaining actual knowledge or the receipt of notice by the Indenture Trustee that any repurchase obligations of the Sellers under Section 2.04 of the Container Sale Agreement or Section 2.04 of the Container Transfer Agreement have arisen, the Indenture Trustee shall notify each Series Enhancer, each Interest Rate Hedge Provider and each Noteholder of such event and shall enforce such repurchase obligations at the written direction of the Requisite Global Majority.

Section 406. Quiet Enjoyment.

The security interest hereby granted to the Indenture Trustee by the Issuer is subject to the right of any lessee to the quiet enjoyment of any Managed Container under lease to such lessee for so long as such lessee is not in default under the Lease therefor and the Manager under the Management Agreement (including any Replacement Manager) or the Indenture Trustee (as provided in Section 405 hereof) continues to receive all amounts payable under such Lease.

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ARTICLE V

RIGHTS OF NOTEHOLDERS; ALLOCATION  
AND APPLICATION OF NET ISSUER PROCEEDS;  
REQUISITE GLOBAL MAJORITY

Section 501. Rights of Noteholders.

The Noteholders of each Series shall have the right to receive, to the extent necessary to make the required payments with respect to the Notes of such Series at the times and in the amounts specified in the related Supplement, (i) the portion of Collections allocable to Noteholders of such Series pursuant to this Indenture and the related Supplement, (ii) funds on deposit in the Trust Account (subject to the priorities set forth in Section 302 hereof) and the Restricted Cash Account, and (iii) funds on deposit in any Series Account for such Series or Class, or payable with respect to any Series Enhancement for such Series or Class. Each Noteholder, by acceptance of its Notes, (a) acknowledges and agrees that (except as expressly provided herein and in a Supplement entered into in accordance with Section 1006(b) hereof) the Noteholders of a Series or Class shall not have any interest in any Series Account or Series Enhancement for the benefit of any other Series or Class and (b) ratifies and confirms the terms of this Indenture and the Related Documents executed in connection with such Series.

Section 502. Allocations Among Series.

With respect to each Collection Period, Collections on deposit in the Trust Account will be allocated to each Series then Outstanding in accordance with Article III of this Indenture and the Supplements.

Section 503. Determination of Requisite Global Majority.

A Requisite Global Majority shall exist with respect to any action proposed to be taken pursuant to the terms of this Indenture or any Supplement if the Control Party or Control Parties representing more than fifty percent (50%) of the sum of the Existing Commitments of all Series then Outstanding shall approve or direct such proposed action (in making such a determination, each Control Party shall be deemed to have voted the entire Existing Commitment of the related Series in favor of, or in opposition to, such proposed action, as the case may be). The Indenture Trustee shall be responsible for identifying the Requisite Global Majority in accordance with the terms of this Section 503.

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ARTICLE VI  
COVENANTS

For so long as any Aggregate Outstanding Obligation of the Issuer remains outstanding the Issuer shall observe each of the following covenants:

Section 601. Payment of Principal and Interest, Payment of Taxes.

(a) The Issuer will duly and punctually pay the principal of and interest on the Notes in accordance with the terms of the Notes, this Indenture and the related Supplement.

(b) The Issuer will take all actions as are necessary to insure that all taxes and governmental claims, if any, in respect of the Issuer's activities and assets are promptly paid.

Section 602. Maintenance of Office.

(a) The only "place of business" (within the meaning of Section 9-307 of the UCC) of the Issuer is located at Century House, 16 Par-la-Ville Road, Hamilton HM HX, Bermuda. The Issuer shall not establish a new place of business or location for its chief executive office outside of Bermuda unless (i) it shall have given to the Indenture Trustee, the Administrative Agent, each Interest Rate Hedge Provider and each Series Enhancer not less than sixty (60) days' prior written notice of its intention so to do, clearly describing such new location and providing such other information in connection therewith as the Indenture Trustee, the Administrative Agent, any Interest Rate Hedge Provider or any Series Enhancer may reasonably request, (ii) not less than fifteen (15) days' prior to the effective date of such relocation, the Issuer shall have taken, at its own cost, all action necessary so that such change of location does not impair the security interest of the Indenture Trustee in the Collateral, or the perfection of the sale or contribution of the containers to the Issuer, and shall have delivered to the Indenture Trustee, the Administrative Agent, each Interest Rate Hedge Provider and each Series Enhancer copies of all filings required in connection therewith and (iii) the Issuer has delivered to the Indenture Trustee, the Administrative Agent, each Series Enhancer and each Eligible Interest Rate Hedge Provider, one or more Opinions of Counsel satisfactory to the Requisite Global Majority, stating that, after giving effect to such change of location: (A) none of the Sellers and the Issuer will, pursuant to applicable Insolvency Law, be substantively consolidated in the event of any Insolvency Proceeding by, or against, any Seller, (B) under applicable Insolvency Law, the transfers of Transferred Assets made in accordance with the terms of the Related Documents will be treated as a "true sale" in the event of any Insolvency Proceeding by, or against, either Seller, and (C) either (1) in the opinion of such counsel, all registration of charges, financing statements, or other documents of similar import, and amendments thereto have been executed and filed that are necessary to fully preserve and protect the interest of the Issuer and the Indenture Trustee in the Transferred Assets, or (2) stating that, in the opinion of such counsel, no such action shall be necessary to preserve and protect such interest.

(b) The Issuer shall not maintain a place of business within the United States of America.

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Section 603. Corporate Existence.

The Issuer will keep in full effect its existence, rights and franchises as a company organized under the laws of Bermuda, and will obtain and preserve its qualification in each jurisdiction in which such qualification is necessary to protect the validity and enforceability of this Indenture, any Supplements issued hereunder and the Notes.

Section 604. Protection of Collateral.

The Issuer, at its expense, will cause this Indenture and any Supplement to be registered under Section 55 of the Companies Act of 1981 Bermuda in the Register of Charges kept at the Office of the Registrar of Companies of Bermuda (or under any statute enacted in lieu thereof and for the time being in force, or under any law of general application relating to the registration of mortgages of or charges upon personal property for the time being in force in the Islands of Bermuda). In addition, the Issuer will from time to time execute and deliver all amendments thereto and all such financing statements, continuation statements, instruments of further assurance and other instruments, and will, upon the reasonable request of the Manager, the Indenture Trustee, the Administrative Agent, any Interest Rate Hedge Provider or any Series Enhancer, take such other action necessary or advisable to:

- (a) grant more effectively the security interest in all or any portion of the Collateral;
- (b) maintain or preserve the Lien of this Indenture (and the priority thereof) or carry out more effectively the purposes hereof including executing and filing such documents, as may be required under any international convention for the perfection of interests in containers that may be adopted subsequent to the date of this Indenture;
- (c) perfect, publish notice of, or protect the validity of the security interest in the Collateral created pursuant to this Indenture;
- (d) enforce any of the items of the Collateral;
- (e) preserve and defend its right, title and interest to the Collateral and the rights of the Indenture Trustee in such Collateral against the claims of all Persons (other than the Noteholders or any Person claiming through the Noteholders);
- (f) pay any and all taxes levied or assessed upon all or any part of the Collateral;
- (g) pay any and all fees, taxes and other charges payable in connection with the registration of this Indenture and any Supplement with the Office of the Registrar of Companies of Bermuda or any other Governmental Authority; or
- (h) notify such parties of any Commercial Tort Claims in which the Issuer has rights that arise after the Closing Date and exceed \$250,000 and take such actions necessary to create and perfect the Indenture Trustee's Lien therein.

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In furtherance of clauses (b) and (c) above, the Issuer hereby agrees that if at any time subsequent to a Closing Date there is a change in Applicable Law (or a change in the interpretation of Applicable Law as in effect on such Closing Date) which, in the reasonable judgment of the Requisite Global Majority, may affect the perfection of the Indenture Trustee's security interest in the Collateral, then the Issuer shall, within thirty (30) days after written request from the Requisite Global Majority, furnish to the Indenture Trustee, the Administrative Agent and each Series Enhancer, an Opinion of Counsel either (i) stating that, in the opinion of such counsel, such action has been taken with respect to the recording, filing, re-recording and refiling of this Indenture, any Supplements hereto and any other requisite documents, and with respect to the execution and filing of any financing statements and continuation statements, as are necessary to maintain the Lien created by this Indenture and reciting the details of such action, or (ii) stating that, in the opinion of such counsel, no such action is necessary to maintain such Lien. Such Opinion of Counsel shall also describe the recording, filing, re-recording and refiling of this Indenture, any Supplements hereto and any other requisite documents and the execution and filing of any financing statements and continuation statements that, in the opinion of such counsel, are required to maintain the Lien and security interest of this Indenture.

Section 605. Performance of Obligations.

Except as otherwise permitted by this Indenture, the Management Agreement, the Container Sale Agreement or the Container Transfer Agreement, the Issuer will not take, or fail to take, any action, and will use its best efforts not to permit any action to be taken by others, which would release any Person from any of such Person's covenants or obligations under any agreement or instrument included in the Collateral (excluding any Interest Rate Hedge Agreement), or which would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any such agreement or instrument (excluding any Interest Rate Hedge Agreement).

Section 606. Negative Covenants. The Issuer will not, without the prior written consent of the Requisite Global Majority :

(a) at any time sell, transfer, exchange or otherwise dispose of any of the Collateral, except as follows:

- (i) in connection with a sale following the occurrence of an Event of Default pursuant to Section 816 hereof;
- (ii) sales of Managed Containers in the ordinary course of business (including any such sales resulting from the sell/repair decision of the Manager) regardless of the sales proceeds realized from such sales so long as neither an Early Amortization Event nor an Event of Default is then continuing or would result from such sale of Managed Containers;
- (iii) if an Early Amortization Event but no Event of Default is then continuing or would result from such sale of Managed Containers, sales of Managed Containers in the normal course of business (including any such sales resulting from the sell/repair decision of the Manager) so long as the sum of the

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Net Book Values of all Managed Containers that were sold for less than Net Book Value during the four (4) immediately preceding Collection Periods shall not exceed an amount equal to the product of (x) five percent (5%) and (y) an amount equal to the quotient of (i) the sum of the aggregate Net Book Value as of the last day of each of the four (4) immediately preceding Collection Periods, divided by (ii) four (4);

(iv) any other sales of Managed Containers not covered by clauses (i), (ii) or (iii), *provided* that each such sale must be specifically approved in writing by the Requisite Global Majority;

(v) in connection with a repurchase or substitution by any Seller to remedy a breach of the Container Representations and Warranties;

(vi) [reserved];

(vii) sales to an Affiliate of the Issuer of one or more Managed Containers which are not then classified as Eligible Containers and which are not included in the calculation of the Asset Base, so long as (x) neither an Early Amortization Event nor an Event of Default is then continuing or would result from a sale of such Managed Containers, (y) the cash sales proceeds realized by the Issuer from a sale of such Managed Containers shall equal or exceed an amount equal to the sum of the Net Book Values of all such sold Managed Containers, and (z) the sum of the Net Book Values of all such sold Managed Containers shall not exceed \$15,000,000;

(viii) sales to an Affiliate of the Issuer of one or more Managed Containers included in the calculation of the Asset Base not otherwise addressed in clause (vii), so long as (w) neither an Early Amortization Event nor an Event of Default is then continuing or would result from a sale of such Managed Containers, (x) the cash sales proceeds realized by the Issuer from such sale of Managed Containers shall equal or exceed an amount equal to the greater of (A) the sum of the then Net Book Values of all such sold Managed Containers and (B) the sum of the then fair market values of all such sold Managed Containers, (y) the Indenture Trustee shall have received a written confirmation from counsel to the Issuer confirming that sales shall not change the conclusions set forth in its previously delivered Opinions of Counsel regarding true sale and nonconsolidation, and (z) in the case of any sale of Managed Containers pursuant to this clause (viii) or (ix) of this Section 606(a) to an Affiliate of the Issuer that is not a bankruptcy-remote, special purpose entity, (i) in any calendar year beginning with calendar year 2013, such sales under this subclause (z), which shall be limited to not more than two sales transactions a year, may not occur with respect to Managed Containers representing greater than 3% of the aggregate Net Book Value of all Managed Containers, as measured based on the average aggregate Net Book Value of all Managed Containers for the prior calendar year, and (ii) the Issuer may make such sale so long as the aggregate Net Book Value of all such sales of Managed Containers (inclusive of such sale) shall be less than



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10% of the greater of (A) the aggregate Net Book Value of all Managed Containers, as measured on the date of such sale, and (B) in the case of sales occurring during or after calendar year 2013, the average aggregate Net Book Value of all Managed Containers for the prior calendar year;

(ix) sales of one or more Managed Containers to an Affiliate of the Issuer or an unaffiliated third party, for a purchase price greater than or equal to the then aggregate Net Book Value of all such sold Managed Containers (the "*Purchase Price*"); *provided* that (A) in any calendar year beginning with calendar year 2013, such sales may not occur with respect to Managed Containers representing greater than 7% of the aggregate Net Book Value of all Managed Containers, as measured at the beginning of such calendar year, and (B) no Asset Base Deficiency, Early Amortization Event or Event of Default is then continuing or would result from such sale; *provided further* that, in the case of any such sale of Managed Containers to an Affiliate of the Issuer that is not a bankruptcy-remote, special purpose entity, (x) the purchase price therefor shall be greater than or equal to the then fair market value of all such sold Managed Containers, (y) the Indenture Trustee shall have received a written confirmation from counsel to the Issuer confirming that such sale shall not change the conclusions set forth in its previously delivered Opinions of Counsel regarding true sale and nonconsolidation; *provided further* that, in the case of any sale of Managed Containers pursuant to clause (viii) or (ix) of this Section 606(a) to an Affiliate of the Issuer that is not a bankruptcy-remote, special purpose entity, (i) in any calendar year beginning with calendar year 2013, such sales under this proviso, which shall be limited to not more than two sales transactions a year, may not occur with respect to Managed Containers representing greater than 3% of the aggregate Net Book Value of all Managed Containers, as measured based on the average aggregate Net Book Value of all Managed Containers for the prior calendar year, and (ii) the Issuer may make such sale so long as the aggregate Net Book Value of all such sales of Managed Containers (inclusive of such sale) shall be less than 10% of the greater of (A) the aggregate Net Book Value of all Managed Containers, as measured on the date of such sale, and (B) in the case of sales occurring during or after calendar year 2013, the average aggregate Net Book Value of all Managed Containers for the prior calendar year; *provided* that, as between the Containers sold by the Issuer in such sale and the Containers received by the Issuer in such sale (in the aggregate, on average), both such pools of Containers shall (i) be of comparable equipment type composition and (ii) be subject to Leases. In the case of any such sale to TMCL, the Purchase Price need not be paid in cash, but may be paid by TMCL in the form of Containers the aggregate Net Book Value of which equals the Purchase Price; or

(x) sales, to an Affiliate of the Issuer that is a bankruptcy-remote, special purpose entity, of one or more Managed Containers and related assets, so long as (x) neither an Early Amortization Event nor an Event of Default is then continuing or would result from a sale of such Managed Containers, and (y) the cash sales proceeds realized by the Issuer from such sale of Managed Containers shall equal or exceed an amount equal to or greater than the sum of the then Net

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Book Values of all such sold Managed Containers. For purposes of clarification, no true sale or nonconsolidation legal opinion shall be required with respect to any sale pursuant to this clause (x).

(b) claim any credit on, make any deduction from the principal, premium, if any, or interest payable in respect of the Notes (other than amounts properly withheld from such payments under any Applicable Law) or assert any claim against any present or former Noteholder by reason of the payment of any taxes levied or assessed upon any of the Collateral;

(c) (i) permit the validity or effectiveness of this Indenture to be impaired, or (ii) permit the Lien of this Indenture with respect to the Collateral (excluding any Interest Rate Hedge Agreement) to be subordinated, terminated or discharged, except as permitted with respect to a sale of such Collateral made in accordance with Section 404, this Section 606 or Article VII hereof or upon payment in full of all Aggregate Outstanding Obligations, or (iii) permit any Person to be released from any covenants or obligations with respect to such Collateral (excluding any Interest Rate Hedge Agreement), except as may be expressly permitted by the Management Agreement, the Container Transfer Agreement or the Container Sale Agreement;

(d) permit any Lien (except any Permitted Encumbrance) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the Proceeds thereof other than the Lien created pursuant to this Indenture;

(e) permit the Lien of this Indenture not to constitute a valid first priority perfected security interest in the Collateral;

(f) fail to maintain the registration of this Indenture or any Supplement with the Office of the Registrar of Companies of Bermuda or fail to maintain the effectiveness of any required UCC financing statements filed in the applicable jurisdictions;

(g) engage in any activities within the United States; *provided* that containers owned by the Issuer may be leased by the Issuer to Persons in the United States or for use in the United States; or

(h) for purposes of the Asset Base calculation, revise the Depreciation Policy with respect to the Managed Containers in such a way as to reduce the amount of depreciation expense that would be recorded in any year from that which would have been recorded pursuant to the Depreciation Policy without obtaining in each such instance the prior written consent of the Requisite Global Majority.

Section 607. Non-Consolidation of Issuer.

(a) The Issuer shall be operated in such a manner that it shall not be substantively consolidated with the estate of any other Person in the event of the bankruptcy or insolvency of the Issuer or such other Person. Without limiting the foregoing, the Issuer shall (1) conduct its business in its own name, (2) maintain its books, records and bank accounts separate from those of any other Person, (3) not commingle its funds with those of any other Person (except for any commingling of monies attributable to the Managed Containers that are on

deposit in the Master Account until such time as such monies are transferred to the Trust Account in accordance with the terms of the Management Agreement), (4) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person and, to the extent that the Issuer's assets, liabilities, expenses, revenues, and other financial information are required to be included in any consolidated financial statement, a note will be included in such financial statements that indicates that the Issuer is a separate legal entity from the other members of the consolidated group, its assets are not assets of any other member of the consolidated group, and its assets are not available to the creditors of any other member of the consolidated group, (5) other than with respect to Manager Advances, pay its own liabilities and expenses out of its own funds, (6) enter into a transaction with an Affiliate only if such transaction is intrinsically fair, commercially reasonable and on the same terms as would be available in an arm's length transaction with a Person or entity that is not an Affiliate (provided, any transaction between the Issuer and an Affiliate pursuant to the Management Agreement, the Container Transfer Agreement or the Container Sale Agreement shall be deemed to have satisfied this clause (6)), (7) allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, (8) hold itself out as a separate entity and maintain adequate capital in light of its contemplated business operations, (9) correct any known misunderstanding regarding its separate identity, (10) use separate stationary, invoices and checks from those of any other Person and (11) observe all other organizational formalities.

(b) Notwithstanding any provision of law which otherwise empowers the Issuer, the Issuer shall not (1) hold itself out as being liable for the debts of any other Person, (2) act other than in its corporate name and through its duly authorized officers or agents, (3) engage in any joint activity or transaction of any kind with or for the benefit of any Affiliate including any of the transactions described in Section 611 hereof, except (i) payment of lawful distributions to its members and (ii) the execution, delivery and performance of the Management Agreement, (4) enter into any transaction that is prohibited pursuant to the provisions of Section 610 herein or (5) take any other action that would be inconsistent with maintaining the separate legal identity of the Issuer or engage in any other activity not contemplated by this Indenture and the Related Documents.

Section 608. No Bankruptcy Petition.

The Issuer shall not (1) commence any Insolvency Proceeding seeking to have an order for relief entered with respect to it, or seeking reorganization, arrangement, adjustment, wind-up, liquidation, dissolution, composition or other relief with respect to it or its debts, (2) seek appointment of a receiver, trustee, custodian or other similar official for it or any part of its assets, (3) make a general assignment for the benefit of creditors, or (4) take any action in furtherance of, or consenting or acquiescing in, any of the foregoing.

Section 609. Liens.

The Issuer shall not (i) permit any Lien (except any Permitted Encumbrance) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the Proceeds thereof; or (ii) permit the Lien of this Indenture not to constitute a valid first priority security interest in the Collateral.

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Section 610. Other Indebtedness.

The Issuer shall not contract for, create, incur, assume or suffer to exist any Indebtedness except (i) any Notes issued pursuant to this Indenture or any Supplement issued hereunder, (ii) obligations incurred in accordance with the terms of the Related Documents including, without limitation, Manager Advances and Management Fees incurred in accordance with the terms of the Management Agreement, (iii) trade payables and expense accruals incurred in the ordinary course and which are incidental to the purposes permitted pursuant to the Issuer's charter documents and (iv) Interest Rate Hedge Agreements required or permitted pursuant to the terms of Section 627 hereof. For the avoidance of doubt, the Issuer shall not incur any Indebtedness for borrowed money other than pursuant to clauses (i) and (iv) of this Section 610.

Section 611. Guarantees, Loans, Advances and Other Liabilities.

The Issuer will not make any loan, advance or credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing, or otherwise), endorse (except for the endorsement of checks for collection or deposit) or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stock or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations or securities of, or any other interest in, or make any capital contribution to, any other Person.

Section 612. Consolidation, Amalgamation, Merger and Sale of Assets; Ownership of the Issuer.

(a) The Issuer shall not consolidate with, amalgamate or merge with or into any other Person or sell, convey, transfer or lease all or substantially all of its assets, whether in a single transaction or a series of transactions, to any Person, except for (i) any such sale, conveyance or transfer contemplated in this Indenture or any Supplement issued hereunder and (ii) any Lease of a container in accordance with the terms of the Management Agreement.

(b) The obligations of the Issuer hereunder shall not be assignable nor shall any Person succeed to the obligations of the Issuer hereunder except in each case in accordance with the provisions of this Indenture.

(c) The Issuer shall give prior written notice to the Control Party for each Series of Notes and to each Interest Rate Hedge Provider of any action pursuant to this Section 612; provided, that such notice shall also be given to each Noteholder of any Warehouse Notes.

(d) All of the authorized and issued shares of the Issuer (other than the Class B Shares) shall at all times collectively be owned by Textainer Limited and/or its Affiliates.

Section 613. Other Agreements.

The Issuer will not after the date of the issuance of the Notes enter into or become a party to any agreements or instruments other than (i) this Indenture, the Supplements, the Container Sale Agreement, the Container Transfer Agreement, the Management Agreement, the Note Purchase Agreement, the other Related Documents for any Series of Notes and any

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agreements or instruments contemplated under the foregoing agreements listed in this Section 613(i), (ii) any agreement pursuant to which the Issuer issues additional shares to any other Person, (iii) any indemnification agreements with officers and directors of the Issuer *provided* that any payments owing by the Issuer thereunder shall be payable only to the extent set forth in Section 302 hereof, (iv) any agreement among the Issuer and one or more Affiliates with respect to the payment and accounting treatment of routine administrative expenses incurred by or on behalf of the Issuer in the normal course of its business, (v) any Interest Rate Hedge Agreement required or permitted pursuant to the terms of Section 627 hereof, and (vi) any other agreement(s) contemplated by any Related Document, including, without limitation, any agreement(s) for disposition of the Transferred Assets permitted by Sections 404, 606(a), 804 or 816 hereof and any agreement(s) for the sale, repurchase, lease or re-lease of a container made in accordance with the provisions of the Container Transfer Agreement, the Container Sale Agreement or the Management Agreement. In addition, the Issuer will not amend, modify or waive any provision of the Container Sale Agreement, the Management Agreement or any other Related Documents or give any approval or consent or permission provided for therein without the prior written consent of the requisite Persons set forth in the Container Sale Agreement, the Management Agreement or such other Related Documents, respectively, except to the extent such waiver, modification or amendment is permitted pursuant to the terms of such agreement.

Section 614. Charter Documents.

The Issuer will not amend or modify its memorandum of association or bye-laws without (i) the vote of 75% of the directors and 70% of the shareholders of the Issuer; (ii) the prior written consent of the Requisite Global Majority and (iii) the prior written notice to the Control Party for each Series of Notes.

Section 615. Capital Expenditures.

The Issuer will not make any expenditure (by long-term or operating lease or otherwise) for capital assets (both realty and personality), except for (a) acquisition of additional containers made in accordance with the terms of the Management Agreement or (b) capital improvements to the containers in the ordinary course of its business and in accordance with the Management Agreement.

Section 616. Permitted Activities.

The Issuer will not engage in any activity or enter into any transaction except as permitted under its memorandum of association or bye-laws. The Issuer will observe all organizational and managerial procedures required by its constitutional documents and Applicable Law. The Issuer shall (i) keep complete minutes of the meetings and other proceedings of the Issuer and (ii) continuously maintain the resolutions, agreements and other instruments underlying the transaction contemplated by the Related Documents.

Section 617. Investment Company.

The Issuer will conduct its operations in a manner which will not subject it to registration as an “investment company” under the Investment Company Act of 1940, as amended.

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Section 618. Payments of Collateral.

If the Issuer shall receive from any Person any payments with respect to the Collateral (to the extent such Collateral has not been released from the Lien of this Indenture in accordance with Section 404 hereof), the Issuer shall receive such payment in trust for the Indenture Trustee, as secured party hereunder, and subject to the Indenture Trustee's security interest and shall, by not later than one Business Day after receipt thereof, deposit such payment in the Trust Account.

Section 619. Notices.

The Issuer shall notify the Indenture Trustee, the Administrative Agent, each Series Enhancer, each Interest Rate Hedge Provider and the Manager Transfer Facilitator (but only with respect to the occurrence of a Manager Default) in writing of any of the following immediately upon learning of the occurrence thereof, describing the same and, if applicable, the steps being taken by the Person(s) affected with respect thereto:

(a) Event of Default. The occurrence of an Event of Default and any acceleration of any Notes hereunder;

(b) Litigation. The institution of any litigation, arbitration proceeding or Proceeding before any Governmental Authority which might have or result in a Material Adverse Change;

(c) Material Adverse Change. The occurrence of a Material Adverse Change;

(d) Other Events. The occurrence of an Early Amortization Event or such other events that may, with the giving of notice or the passage of time or both, constitute an Event of Default.

Section 620. Books and Records. The Issuer shall, and shall cause the Manager to, maintain complete and accurate books and records in which full and correct entries in conformity with GAAP shall be made of all dealings and transactions in relation to its business and activities. In connection with each transfer of Transferred Assets, the Issuer shall report, or cause to be reported, on its financial records the transfer of the Transferred Assets as a purchase under GAAP. The Issuer will ensure that no financial statement, nor any consolidated financial statements of the Issuer, suggests that the assets of the Issuer are available to pay the debts of either of the Sellers, the Manager, or any of their Affiliates.

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Section 621. Taxes. The Issuer shall, or shall cause the Manager to, pay when due, all of its taxes, unless and only to the extent that Issuer is contesting such taxes in good faith and by appropriate Proceedings and Issuer has set aside on its books such reserves or other appropriate provisions therefor as may be required by GAAP.

Section 622. Subsidiaries. The Issuer shall not create any Subsidiaries.

Section 623. Investments. The Issuer shall not make or permit to exist any Investment in any Person except for Investments in Eligible Investments made in accordance with the terms of this Indenture.

Section 624. Use of Proceeds. The Issuer shall use the proceeds of the Notes only for general corporate purposes, including the distribution of dividends, the repayment of other indebtedness and paying the costs of the issuance of the Notes. In addition, Issuer shall not permit any proceeds of the Notes to be used, either directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of "purchasing or carrying any margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, as amended from time to time, and shall furnish to each Holder, upon its request, a statement in conformity with the requirements of Regulation U.

Section 625. Asset Base Report.

The Issuer shall prepare and deliver to the Indenture Trustee, each Series Enhancer, each Interest Rate Hedge Provider and the Administrative Agent on each Determination Date, an Asset Base Report.

Section 626. Financial Statements.

The Issuer shall prepare and deliver to the Indenture Trustee, each Series Enhancer, each Interest Rate Hedge Provider and the Administrative Agent, or shall cause the Manager to prepare and deliver to such parties pursuant to the Management Agreement, quarterly financial statements of the Issuer, the Manager, Textainer Group Holdings Limited and Textainer Limited within sixty (60) days after the end of each of the first three (3) fiscal quarters of each fiscal year (beginning with the fiscal quarter ending on March 31, 2012) and separate annual financial statements of the Issuer and the Manager, audited by their regular Independent Accountants, within one hundred twenty (120) days after the end of each fiscal year ending on and after December 31, 2012. All financial statements shall be prepared in accordance with GAAP. Delivery of such reports, information and documents to the Indenture Trustee is for informational purposes only and the Indenture Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Indenture Trustee is entitled to rely exclusively on Officer's Certificates).

Section 627. Interest Rate Hedge Agreements.

(a) On or about the date of this Indenture, the Issuer shall enter into Interest Rate Hedge Agreements pursuant to one or more novation agreements among TMCL, as transferor, the Issuer, as transferee, and, in each case, an Eligible Interest Rate Hedge Provider.

Upon the earliest to occur of (w) the eight month anniversary of the Hedging Reference Date, (x) the first day after the date on which one month LIBOR (as determined by the Administrative Agent in accordance with its standard practices) shall exceed or equal two and three quarters of one percent (2.75%), (y) the first day after the date on which the 5-year swap rate (as set forth in The Wall Street Journal) shall equal or exceed four percent (4.00%), and (z) the date on which an Event of Default, Early Amortization Event or Manager Default has occurred, the Issuer shall (or shall cause the Manager on its behalf), to the extent commercially practicable, enter into and maintain transactions under Interest Rate Hedge Agreements with respect to (i) Managed Containers that are then subject to Long-Term Leases and Finance Leases and (ii) Managed Containers that are then subject to Master Leases, in the amounts required by the hedging policy set forth in Exhibit F hereto; *provided* that, except with respect to the initial entry by the Issuer into the required Interest Rate Hedge Agreements under the preceding clause (z) (if such clause is applicable), so long as an Early Amortization Event or an Event of Default is continuing, neither the Issuer (nor the Manager on its behalf) shall enter into any additional transactions under Interest Rate Hedge Agreements other than by terminating existing transactions or by entering into reverse or mirror swap transactions.

(b) In the event that the application of the formulas set forth in Exhibit F hereto indicates that either (i) the Issuer is required to enter into additional transactions under Interest Rate Hedge Agreements, with a total notional balance in excess of Ten Million Dollars (\$10,000,000) or (ii) the aggregate notional balance of all outstanding transactions under Interest Rate Hedge Agreements then in effect exceeds the aggregate required notional amount (as determined by application of the formulas set forth in Exhibit F hereto) by the lesser of (A) Twenty Million Dollars (\$20,000,000) or (B) one hundred and five percent (105%) of the then Aggregate Principal Balance (excluding, in such calculation, the unpaid principal balance of any Note of any Series upon which interest is paid at a fixed rate pursuant to the terms of the related Supplement), then the Issuer shall provide notice of such event to the Indenture Trustee, each Interest Rate Hedge Provider and each Series Enhancer within 5 Business Days after such condition is determined to exist. The Issuer (or the Manager on behalf of the Issuer) shall within thirty (30) days after the date on which such condition is determined to exist, remedy such imbalance (x) under circumstances described in the preceding clause (i), by entering into one or more transactions under Interest Rate Hedge Agreements in order to comply with the requirements of Section 627(a) and not exceed such requirements by more than the amounts set forth in clause (ii) above, or (y) under circumstances described in the preceding clause (ii) by terminating or entering into reverse or mirror swap transactions for all, or a portion, of one or more transactions under Interest Rate Hedge Agreements then in effect so that the remaining notional amounts for all future calculation periods under all transactions outstanding under the Interest Rate Hedge Agreements then in effect, shall comply with the requirements of Section 627(a) and not exceed such requirements by more than the amounts set forth in clause (ii) above. The calculations to be made under this Section 627(b) shall (x) exclude all transactions where the Issuer is not required to make any scheduled periodic payments other than premium payments or fees, and the Net Book Value of the containers hedged by such transactions and (y) offset the notional amounts for each relevant calculation period by any reverse or mirror swapped transactions ( *i.e.*, transactions with an Interest Rate Hedge Provider that have floating payment rates mirroring or reverse swapping those of another transaction (or part thereof) with the same Interest Rate Hedge Provider, such that the rate for floating amounts payable by the Issuer to the Interest Rate Hedge Provider under one transaction for the relevant calculation period matches



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the rate for floating amounts payable by the Interest Rate Hedge Provider to the Issuer in the other transaction for such calculation period and the fixed amounts payable under such transactions totally or partially offset each other). So long as no Early Amortization Event or Event of Default is then continuing, the Issuer (or the Manager on its behalf) may exercise its discretion in selecting the specific transactions and notional amounts thereof to be terminated or reverse or mirror swapped. If an Early Amortization Event or Event of Default is then continuing, termination or reverse or mirror swaps shall be effected over all outstanding transactions under Interest Rate Hedge Agreements then in effect on a *pro rata* basis, based on the respective notional amounts for each remaining calculation period, so that the remaining notional amounts for each remaining calculation period will comply with the requirements of Section 627(a) hereof and not exceed the amounts set forth in Section 627(b)(ii) hereof.

(c) In the event the Issuer, or Manager on behalf of Issuer, fails to enter into or terminate or reverse or mirror swap transactions as required under Section 627(b) within the 30 day time period provided in Section 627(b), the Requisite Global Majority (A) will have the right, in its sole discretion, to direct the Indenture Trustee to enter into additional transactions under Interest Rate Hedge Agreements on the Issuer's behalf in order to comply with the requirements of Section 627(a) hereof or (B) within 5 Business Days after the 30 day period provided in Section 627(b) will have the right, in its sole discretion, to direct the Indenture Trustee to terminate or reverse or mirror swap, in whole or in part, all outstanding transactions under Interest Rate Hedge Agreements then in effect on a *pro rata* basis, based on the respective notional amounts for each remaining calculation period, so that the remaining notional amounts for each remaining calculation period will comply with the requirements of Section 627(a) hereof and not exceed the amounts set forth in Section 627(b)(ii) hereof. In the event the Requisite Global Majority directs the Indenture Trustee to enter into an Interest Rate Hedge Agreement on the Issuer's behalf, the Requisite Global Majority shall promptly send a copy of any such agreement to the Issuer and may provide the Indenture Trustee and Manager with a written direction to deposit in the Trust Account certain amounts to purchase, or reimburse the Requisite Global Majority or a third-party for purchasing, such Interest Rate Hedge Agreement. All payments received from an Interest Rate Hedge Provider shall be deposited by the Issuer directly into the Trust Account.

(d) With respect to any transaction which is to be terminated in accordance with the terms of this Section 627, the Issuer (or the Manager or Requisite Global Majority) will give the Interest Rate Hedge Provider not less than three Business Days notice of such termination, specifying the relevant transaction, the notional amount thereof to be terminated for each remaining calculation period and the effective date of such termination. An "Additional Termination Event" and an "Early Termination Date" (as such terms are used in the 1992 ISDA Master Agreement Multicurrency–Cross Border form agreement) shall be deemed to have occurred under the transaction on the specified termination date with respect to the notional amounts so terminated. For purposes of such Early Termination Date and Section 6(e) of the applicable Interest Rate Hedge Agreement, the "Terminated Transaction" shall be only that portion relating to the terminated notional amounts and the remainder of the transaction will continue in full force and effect and the Issuer will be the "Affected Party" for purposes of such termination. The amount payable under Section 6(e) of the applicable Interest Rate Hedge Agreement shall be determined by the Interest Rate Hedge Provider and shall be due and payable in accordance with the terms of such Section 6(e), provided that "Market Quotation" under the

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Interest Rate Hedge Agreement shall be determined on the basis of the quotation of one Reference Market-maker selected by the Interest Rate Hedge Provider, which may be such Interest Rate Hedge Provider to the extent its quotation is reasonably determined in good faith. The provisions of this Section 627(d) shall be incorporated by reference in each Interest Rate Hedge Agreement.

(e) On each Determination Date, Issuer shall provide or cause to be provided to the Indenture Trustee, each Interest Rate Hedge Provider and each Series Enhancer, a monthly report reflecting the hedging policy calculations (including, without limitation, the calculation of the formulas set forth in Exhibit F hereto) as of the end of the preceding calendar month based on all transactions outstanding as of the end of such month under Interest Rate Hedge Agreements then in effect, including transactions which are scheduled to commence on a future date.

(f) The termination provisions provided for in this Indenture relating to the Interest Rate Hedge Agreements are in addition to, and not to the exclusion of, any termination provisions contained in the Interest Rate Hedge Agreements.

(g) Any changes made after the Closing Date in the hedging policy set forth in Exhibit F must be approved in advance by each Control Party. Each Series Enhancer shall have the right to approve any new Interest Rate Hedge Agreements (or any amendments of existing or new Interest Rate Hedge Agreements) entered into or made after the Closing Date which are materially different from the Interest Rate Hedge Agreements existing on the Closing Date (as such agreements may have been amended through such date).

(h) The Issuer shall enter into each Interest Rate Hedge Agreement only with an Eligible Interest Rate Hedge Provider. Each Interest Rate Hedge Agreement shall provide that if the Eligible Interest Rate Hedge Provider or any party providing credit support on its behalf suffers an Interest Rate Hedge Provider Required Rating Downgrade Event, such Interest Rate Hedge Provider will be required (i) to post, within ten (10) Business Days (or such other period of time as may be set forth in the related Interest Rate Hedge Agreement not to exceed thirty (30) days) after such Interest Rate Hedge Provider Required Rating Downgrade Event, collateral set forth in the applicable Interest Rate Hedge Agreement and execute a credit support annex in connection therewith or (ii) otherwise remedy such Interest Rate Hedge Provider Required Rating Downgrade Event in accordance with the terms of the related Interest Rate Hedge Agreement. Failure to post collateral or so otherwise remedy such Interest Rate Hedge Provider Required Rating Downgrade Event within the applicable period of time shall constitute a termination event under the terms of the applicable Interest Rate Hedge Agreement. Such Interest Rate Hedge Provider may transfer (at its own cost), with the cooperation of the Issuer and the Manager, all of its rights and obligations under its Interest Rate Hedge Agreement to an Eligible Interest Rate Hedge Provider in accordance with the terms of its Interest Rate Hedge Agreement. Each Interest Rate Hedge Agreement shall also provide that if the Interest Rate Hedge Provider (or any party providing credit support identified in the Interest Rate Hedge Agreement or any credit support annex thereto on its behalf) suffers an Interest Rate Hedge Provider Required Rating Replacement Event, such Interest Rate Hedge Provider will be required to transfer (at its own cost) all of its rights and obligations under its Interest Rate Hedge Agreement to an Eligible Interest Rate Hedge Provider not later than thirty (30) Business Days (or such other period of time as may be set forth in the related Interest Rate Hedge Agreement)

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after the occurrence of the Interest Rate Hedge Provider Required Rating Replacement Event. Upon the occurrence of an Interest Rate Hedge Provider Required Rating Replacement Event, and the failure of the Interest Rate Hedge Provider to transfer (at its own cost) all of its rights and obligations under its Interest Rate Hedge Agreement to an Eligible Interest Rate Hedge Provider within the applicable period of time, any Series Enhancer shall have the right to direct the Issuer to terminate the applicable Interest Rate Hedge Agreement. The Issuer may, with the prior written consent of each Series Enhancer and the Administrative Agent, or shall, at the direction of any Series Enhancer or the Administrative Agent, terminate an Interest Rate Hedge Agreement and simultaneously enter into a replacement Interest Rate Hedge Agreement in the event an Interest Rate Hedge Provider fails to post collateral or transfer its rights and interests under an Interest Rate Hedge Agreement in accordance with the terms of the Interest Rate Hedge Agreement as required in relation to an Interest Rate Hedge Provider Required Rating Downgrade Event or an Interest Rate Hedge Provider Required Rating Replacement Event, as applicable.

(i) The Indenture Trustee shall, promptly after the Closing Date, establish a single segregated trust account (with separate subaccounts for each financial institution acting as an Interest Rate Hedge Provider) in the name of the Indenture Trustee (collectively, the “Counterparty Collateral Account”), which shall be held in trust in the name of the Indenture Trustee for the benefit of the Noteholders and any Series Enhancer under this Indenture and over which the Indenture Trustee shall have exclusive control and the sole right of withdrawal. Notwithstanding anything to the contrary in this section, investment earnings on amounts held in the Counterparty Collateral Account shall be remitted to the applicable Interest Rate Hedge Provider upon its written request in accordance with the terms of the applicable Interest Rate Hedge Agreement. The Indenture Trustee shall deposit all collateral received from an Interest Rate Hedge Provider under an Interest Rate Hedge Agreement in the Counterparty Collateral Account. Any and all funds at any time on deposit in, or otherwise held to the credit of, the Counterparty Collateral Account shall be held in trust by the Indenture Trustee for the benefit of the Noteholders and any Series Enhancer under this Indenture. The only permitted withdrawal from or application of funds on deposit in, or otherwise to the credit of the Counterparty Collateral Account shall be (i) for application to obligations of the applicable Interest Rate Hedge Provider to the Issuer under its Interest Rate Hedge Agreement if such Interest Rate Hedge Agreement becomes subject to early termination, or (ii) to return collateral or investment earnings to such Interest Rate Hedge Provider when and as required by such Interest Rate Hedge Agreement. Wells Fargo Bank, National Association as Indenture Trustee and as Securities Intermediary shall take all actions necessary to return collateral to any Interest Rate Hedge Provider as described in the preceding sentence including, without limitation, issuance of entitlement orders to any Securities Intermediary. All actions to be taken by an Interest Rate Hedge Provider under this Section 627 shall be at the expense of such Interest Rate Hedge Provider.

Section 628. UNIDROIT Convention.

The Issuer shall comply with the terms and provisions of the UNIDROIT Convention or any other internationally recognized system for recording interests in or liens against shipping containers at the time that such convention is adopted by the container leasing industry.

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Section 629. Other Information.

For so long as any of the Notes are “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act and the Issuer is not subject to Section 13 or 15(d) of the Exchange Act, the Issuer will, and shall cause Manager to, (i) provide or cause to be provided to any Holder of Notes and any prospective purchaser thereof designated by such a Holder, upon the request of such Holder or prospective purchaser, the information required to be provided to such Holder or prospective purchaser by Rule 144A(d)(4) under the Securities Act; and (ii) update such information to prevent such information from becoming materially false and materially misleading in a manner adverse to any Noteholder.

Section 630. Separate Identity.

The Issuer will be operated, or will cause itself to be operated, so that the Issuer will not be substantively consolidated with Textainer Limited, TMCL, the Manager or any of their respective Affiliates.

Section 631. Purchase of Additional Containers.

The Issuer shall not use funds to be classified as an Issuer Expense to purchase additional Containers.

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ARTICLE VII

DISCHARGE OF INDENTURE; PREPAYMENTS

Section 701. Full Discharge.

Upon payment in full of the Aggregate Outstanding Obligations, the Indenture Trustee shall, at the request and at the expense of the Issuer, execute and deliver to the Issuer such deeds or other instruments as shall be requisite to evidence the satisfaction and discharge of this Indenture and the security hereby created with respect to the applicable Series, and to release the Issuer from its covenants contained in this Indenture and the related Supplement with respect to such Series. In connection with the satisfaction and discharge of the Indenture the Indenture Trustee shall be provided with and shall be entitled to conclusively rely upon an Opinion of Counsel stating that such satisfaction and discharge is authorized and permitted.

Section 702. Prepayment of Notes.

(a) Mandatory Prepayments. Unless otherwise specified in a Supplement for a Senior Series of Notes, the Issuer shall be required to prepay the then unpaid principal balance of all, or a portion, of one or more Senior Series of Notes then Outstanding if, on any Payment Date, the then unpaid principal balance of all Senior Series of Notes exceeds the Senior Asset Base. Unless otherwise specified in a Supplement for a Subordinate Series of Notes, the Issuer shall be required to prepay the then unpaid principal balance of all, or a portion of, one or more Subordinate Series of Notes then Outstanding if, on any Payment Date, the then unpaid principal balance of all Subordinate Series of Notes exceeds the Subordinate Asset Base. Such Prepayment shall be in the amount of the applicable Asset Base Deficiency and shall be paid in accordance with the priority of payments set forth in Section 302 hereof. The calculations referred to herein shall be evidenced by the Asset Base Report received by the Indenture Trustee on any Determination Date. Any such Prepayment shall be allocated, first, to each Senior Series or Subordinate Series, as the case may be, of Warehouse Notes then Outstanding on a *pro rata* basis, in proportion to the then unpaid principal balance of such Warehouse Notes, until the principal balances of such Warehouse Notes have been paid in full, and then to all Senior Series or Subordinate Series, as the case may be, of Term Notes then Outstanding on a *pro rata* basis, in proportion to the then unpaid principal balance of each such Series of Term Notes. Notwithstanding the foregoing, if sufficient funds are not available to allow the Issuer to prepay the principal balance of the Senior Series of Warehouse Notes or the Subordinate Series of Warehouse Notes, as the case may be, on such Payment Date in an amount equal to the applicable Asset Base Deficiency, then the amount of any such Supplemental Principal Payment Amount or Subordinate Supplemental Principal Payment Amount, as the case may be, to be actually paid on such Payment Date shall be applied among the Warehouse Notes and the Term Notes in accordance with Section 302(e) hereof.

(b) Voluntary Prepayments. So long as no Early Amortization Event is then continuing, the Issuer may, from time to time, make an optional Prepayment of principal of the Notes of a Series at the times, in the amounts and subject to the conditions and limitations set forth in the Supplement for the Series of Notes to be prepaid. If an Early Amortization Event is then continuing, all optional Prepayments made in accordance with the provisions of this Section

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702(b) shall be applied in accordance with the applicable provisions of Section 302 hereof. The Issuer shall promptly confirm any telephonic notice of prepayment in writing. Any optional Prepayment of principal made by the Issuer pursuant to this Section 702(b) shall also include accrued interest to the date of the prepayment on the amount being prepaid. Any optional Prepayment made pursuant to the provisions of this Section 702(b) shall be accomplished by a deposit of funds directly into the Trust Account and, unless otherwise specified in the Supplement for any Series of Notes then Outstanding, may be applied by the Issuer to reduce the unpaid principal balance of one or more Series of Notes then Outstanding, such Series to be selected in the sole discretion of the Issuer. Notice of any voluntary prepayment of a Series of Term Notes to be made by the Issuer pursuant to the provisions of this Section 702(b) shall be given by the Issuer to the Indenture Trustee and, if applicable, the Series of Notes to be prepaid, not later than the tenth (10<sup>th</sup>) day prior to the date of such prepayment and not earlier than the Payment Date immediately preceding the date of such Prepayment.

(c) Repayment of Eligible Interest Rate Hedge Providers. If the Issuer has elected to make a voluntary Prepayment in accordance with the provisions of Section 702(b) above or is required to make a Prepayment in accordance with the provisions of Section 702(a) above, then in addition to such Prepayment, the Issuer shall pay such amount, including any termination payments, necessary (in each case as determined by the Administrative Agent and after taking account of payment priorities set forth in Section 302 hereunder) to reduce the aggregate notional balance of all outstanding transactions under the Interest Rate Hedge Agreements then in effect to the level required under Section 627(b) and not in excess of such requirements by more than the amounts set forth in Section 627(a) hereof. So long as no Early Amortization Event or Event of Default is then continuing, the Issuer (or the Manager on its behalf) may exercise its discretion in selecting the specific transactions and the notional amounts thereof to be terminated. If an Early Amortization Event or Event of Default is then continuing the outstanding transactions will be terminated on a *pro rata* basis, based on the respective notional amounts for each remaining calculation period so that the remaining notional amounts for all future calculation periods under such transactions shall comply with the requirements of Section 627(b) and not exceed such requirements by more than the amounts set forth in Section 627(a) hereof.

(d) Adjustment of Prospective Minimum Principal Payment Amounts and Scheduled Principal Payment Amounts. In the event that the Issuer makes a prepayment of less than all of the aggregate unpaid principal balance of any Series of Term Notes in accordance with the provisions of Section 702(a) or Section 702(b), then the Issuer shall promptly (but in any event within five (5) Business Days after the date on which such Prepayment is made) thereafter recalculate (subject to verification by the Indenture Trustee) the Minimum Principal Payment Amount and Scheduled Principal Payment Amount for each future Payment Date for each such Series of Notes being prepaid by an amount equal to the quotient of (i) the aggregate amount of the prepayment received by such Series divided by (ii) the number of remaining Payment Dates to and including, (A) the Legal Final Payment Date (with respect to the Minimum Principal Payment Amount) or (B) the Expected Final Payment Date (with respect to the Scheduled Principal Payment Amount), for such Series of Notes.

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Section 703. Unclaimed Funds.

In the event that any amount due to any Noteholder remains unclaimed, the Issuer shall, at its expense, cause to be published once, in the eastern edition of The Wall Street Journal notice that such money remains unclaimed. Any such unclaimed amounts shall not be invested by the Indenture Trustee (notwithstanding the provisions of Section 303 hereof) and no additional interest shall accrue on the related Note subsequent to the date on which such funds were available for distribution to such Noteholder. Any such unclaimed amounts shall be held by the Indenture Trustee in trust until the latest of (i) two (2) years after the date of the publication described in the second preceding sentence, (ii) the date all other registered Noteholders of such Series shall have received full payment of all principal, interest, premium, if any, and other sums payable to them on such Notes or the Indenture Trustee shall hold (and shall have notified the registered Noteholders that it holds) in trust for that purpose an amount sufficient to make full payment thereof when due and (iii) the date the Issuer shall have fully performed and observed all its covenants and obligations contained in this Indenture and the related Supplement with respect to such Series of Notes. Thereafter, any such unclaimed amounts shall be paid to the Issuer by the Indenture Trustee on written demand; and thereupon each of the Indenture Trustee and the Issuer shall be released from all further liability with respect to such monies, and thereafter the registered Noteholders in respect of which such monies were so paid to the Issuer shall have no rights in respect thereof; *provided*, that if such money or any portion thereof had been previously deposited by the Series Enhancer with the Indenture Trustee for the payment of principal or interest on the Notes, to the extent any amounts are owing to the Series Enhancer, such amounts shall be paid promptly to the Series Enhancer.

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ARTICLE VIII

DEFAULT PROVISIONS AND REMEDIES

Section 801. Event of Default.

“Event of Default”, wherever used herein with respect to any Series of Notes, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority):

(i) default in (A) the payment on any Payment Date of any interest or premium, if any, then due and payable on any Series of Notes or (B) the payment on the Legal Final Payment Date of the then unpaid principal balance of any Series of Notes;

(ii) default in the payment of (A) any Indenture Trustee’s Fees then due and payable, or (B) other amounts not dealt with in clause (i) above owing to the Noteholders of any Series or any Series Enhancer, and the continuation of such default for more than three (3) Business Days after the same shall have become due and payable in accordance with the terms of such Notes, this Indenture, the related Supplement or any other Related Documents;

(iii) default in the performance, or breach, of any covenant of the Issuer or any Seller in any Related Document (to the extent such breach is not otherwise addressed in this Section 801) which breach materially and adversely affects the interest of any Noteholder, any Interest Rate Hedge Provider or any Series Enhancer and continues for a period of sixty (60) days after the earliest of (i) any Authorized Officer of the Issuer or such Seller, as the case may be, first acquiring knowledge thereof, (ii) the Indenture Trustee’s giving written notice thereof to the Issuer or such Seller, as the case may be, or (iii) any Noteholder or any Series Enhancer giving written notice thereof to the Issuer or such Seller, as the case may be, and the Indenture Trustee; *provided, however*, that if the Issuer or the Sellers, as the case may be, is or are diligently attempting to effect such cure at the end of such sixty (60) day period, the Issuer or such Sellers, as the case may be, shall be entitled to an additional sixty (60) day period in which to complete such cure; *provided, further*, that, no notice whatsoever shall be required with respect to any default in the due observance or performance of Section 603 hereof or of any negative covenant set forth in Sections 606, 607 (except clause (a)(4) thereof), 608, 609, 610, 611, 612, 613, 614, 615, 616, 622, 623, 630 or 631 hereof, Section 4.01(a)(iii) or 4.01(f) of the Container Transfer Agreement or Section 4.01(a)(iii) or 4.01(f) of the Container Sale Agreement; *provided, further*, that no waiver by a Series Enhancer of an Event of Default of the type described in Section 801(viii) shall constitute a waiver of an Event of Default under this clause (iii) with respect to the default in the due observance or performance of the negative covenant set forth in Section 609 hereof.



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(iv) any representation or warranty of the Issuer or the Sellers made in any Related Document shall prove to be incorrect in any material respect as of the time when the same shall have been made which breach materially and adversely affects the interest of any Noteholder, any Interest Rate Hedge Provider or any Series Enhancer and continues and, if capable of cure, the continuance of such condition for a period of 30 days after the earliest of (i) any Authorized Officer of the Issuer or the Sellers, as the case may be, first acquiring knowledge thereof, (ii) the Indenture Trustee's giving written notice thereof to the Issuer or the Sellers, as the case may be, or (iii) any Noteholder or Series Enhancer giving written notice thereof to the Issuer or the Sellers, as the case may be, and the Indenture Trustee; *provided, however*, that if the Issuer or the Sellers, as the case may be, is diligently attempting to effect such cure at the end of such thirty (30) day period, the Issuer or the Sellers, as the case may be, shall be entitled to an additional thirty (30) day period in which to complete such cure;

(v) the entry of a decree or order for relief by a court having jurisdiction in respect of the Issuer in any involuntary case under any applicable Insolvency Law, or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, or sequestrator (or other similar official) for the Issuer or for any substantial part of its properties, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days;

(vi) the commencement by the Issuer of a voluntary case under any applicable Insolvency Law, or other similar law now or hereafter in effect, or the consent by the Issuer to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or sequestrator (or other similar official) of the Issuer or any substantial part of its properties, or the making by the Issuer of any general assignment for the benefit of creditors, or the failure by the Issuer generally to pay its debts as they become due, or the taking of any action by the Issuer in furtherance of any such action;

(vii) all of the following conditions shall have occurred: (A) a Manager Default shall have occurred and shall not have been remedied, waived or cured, (B) the Indenture Trustee (acting at the direction of the Requisite Global Majority) shall have directed the Issuer in writing, with a copy of such written direction delivered to the Manager (the "Replacement Request"), to appoint a Replacement Manager for the Terminated Managed Containers in accordance with the terms of the Management Agreement, and (C) a Replacement Manager shall not have been appointed and assumed the management of all Terminated Managed Containers pursuant to a management agreement reasonably acceptable to the Requisite Global Majority by the date which is ninety (90) days after the date on which such Manager Default initially occurred;

(viii) the Indenture Trustee shall fail to have a first priority perfected security interest in the Collateral (unless waived by each Series Enhancer);

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(ix) the occurrence of a default by the Issuer under the terms of any Related Document not otherwise addressed in this Section 801, and the continuation of such default for two (2) consecutive Payment Dates;

(x) The earlier to occur of the following conditions or events:

(A) as of any Payment Date, an Asset Base Deficiency exists, and such condition continues unremedied for a period of ninety (90) consecutive days; or

(B) as of any date of determination, the Aggregate Principal Balance shall exceed the sum of (A) the product of (i) one hundred percent (100%) and (ii) the Aggregate Net Book Value, plus (B) the product of (i) one hundred percent (100%) and (ii) an amount equal to the then current balance of the Restricted Cash Account and any Pre-Funding Account;

(xi) any payment is made by a Series Enhancer under any Enhancement Agreement;

(xii) the Issuer is required to register as an Investment Company under the Investment Company Act of 1940, as amended; or

(xiii) the occurrence of a reportable event (within the meaning of Section 4043 of ERISA) with respect to any Plan maintained by the Issuer as to which the Pension Benefit Guaranty Corporation has not by regulation waived the requirement that it be notified thereof, or the occurrence of any event or condition with respect to a Plan which reasonably could be expected to result in any liability in excess of \$250,000 or which actually results in the imposition of a Lien on the assets of the Issuer.

The occurrence of an Event of Default with respect to one Series of Notes, except to the extent waived in accordance with Section 813 hereof, shall constitute an Event of Default with respect to all other Series of Notes then Outstanding unless the related Supplement with respect to each such Series of Notes shall specifically provide to the contrary.

Section 802. Acceleration of Stated Maturity; Rescission and Annulment.

(a) Upon the occurrence of an Event of Default of type described in paragraph (v) or (vi) of Section 801, the unpaid principal balance of, and accrued interest on, all Series of Notes, together with all other amounts then due and owing to the Noteholders, each Series Enhancer and each Interest Rate Hedge Provider shall become immediately due and payable without further action by any Person. Except as set forth in the immediately preceding sentence, if an Event of Default under Section 801 occurs and is continuing, then and in every such case the Indenture Trustee may, and shall at the direction of any of (A) any affected Noteholder in the case of the occurrence of an Event of Default of the type described in Section 801(i), (B) the respective Series Enhancer in the case of the occurrence of an Event of Default of the type described in Section 801(xi), or (C) the Requisite Global Majority in these and all other

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instances, declare the principal of and accrued interest on all Notes of all Series then Outstanding to be due and payable immediately, by a notice in writing to the Issuer and to the Indenture Trustee given by the Requisite Global Majority, and upon any such declaration such principal and accrued interest shall become immediately due and payable.

(b) At any time after such a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Indenture Trustee as hereinafter in this Article provided, the Requisite Global Majority, by written notice to the Issuer and the Indenture Trustee, may rescind and annul such declaration and its consequences if:

(i) the Issuer has paid or deposited with the Indenture Trustee a sum sufficient to pay:

(A) all of the installments of interest and premium on and, if the Legal Final Payment Date has occurred with respect to any Series, principal of all Notes of such Series which were overdue prior to the date of such acceleration;

(B) to the extent that payment of such interest is lawful, interest at the applicable Overdue Rate on the amounts set forth in clause (A) above;

(C) all sums paid or advanced by the Indenture Trustee hereunder or the Manager and the reasonable compensation, out-of-pocket expenses, disbursements and advances of the Indenture Trustee, its agents and counsel incurred in connection with the enforcement of this Indenture;

(D) all amounts due to each Series Enhancer;

(E) all payments due under any Interest Rate Hedge Agreement, together with interest thereon in accordance with the terms thereof, and

(ii) all Events of Default, other than the nonpayment of the principal of or interest on Notes which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 813 hereof.

No such rescission with respect to any Event of Default shall affect any subsequent Event of Default or impair any right consequent thereon, nor shall any such rescission affect any Interest Rate Hedge Agreement which has been terminated in accordance with its terms.

Section 803. Collection of Indebtedness.

The Issuer covenants that, if an Event of Default occurs and is continuing and a declaration of acceleration has been made under Section 802 and not rescinded, the Issuer will, upon demand of the Indenture Trustee, pay to the Indenture Trustee, for the benefit of the

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Noteholders of all Series then Outstanding and each Series Enhancer and each Interest Rate Hedge Provider, an amount equal to the sum of (i) the sum of (A) the whole amount then due and payable for all Series of Notes then Outstanding, (B) all amounts owing by the Issuer under any Interest Rate Hedge Agreement, and (C) such further amounts as shall be required to pay in full all of the Outstanding Obligations, including in each case, the costs and out-of-pocket expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Indenture Trustee the Requisite Global Majority, their agents and counsel incurred in connection with the enforcement of this Indenture, and (ii) to the extent that the payment of such interest is lawful, interest on the amount set forth in clause (i) at the applicable Overdue Rate with respect to the Notes and at the applicable default rate as set forth in the related Interest Rate Hedge Agreements or other Related Documents.

Section 804. Remedies.

If an Event of Default shall occur and be continuing, the Indenture Trustee, by such officer or agent as it may appoint, shall notify each Noteholder, the Administrative Agent, each Series Enhancer and each Interest Rate Hedge Provider, if any, of such Event of Default. So long as an Event of Default is continuing, the Indenture Trustee may, and shall if instructed by any of (A) any affected Noteholder in the case of the occurrence of an Event of Default of the type described in Section 801(i), (B) the respective Series Enhancer in the case of the occurrence of an Event of Default of the type described in Section 801(xi), or (C) the Requisite Global Majority in these and all other instances:

(i) institute any Proceedings, in its own name and as trustee of an express trust, for the collection of all amounts then due and payable on the Notes of all Series or under this Indenture or the related Supplement with respect thereto, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Collateral and any other assets of the Issuer any monies adjudged due;

(ii) subject to the quiet enjoyment rights of any lessee of a Managed Container, sell (including any sale made in accordance with Section 816 hereof), hold or lease the Collateral or any portion thereof or rights or interest therein, at one or more public or private transactions conducted in any manner permitted by law;

(iii) institute any Proceedings from time to time for the complete or partial foreclosure of the Lien created by this Indenture with respect to the Collateral;

(iv) institute such other appropriate Proceedings to protect and enforce any other rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy;

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(v) exercise any remedies of a secured party under the UCC or any Applicable Law and take any other appropriate action to protect and enforce the rights and remedies of the Indenture Trustee or the Noteholders hereunder;

(vi) appoint a receiver or a manager over the Issuer or its assets; and

(vii) if a Manager Default is then continuing, terminate the Management Agreement in accordance with its terms;

*provided*, however, that the prior consent of the Requisite Global Majority shall be required in order to take the actions set forth in clauses (ii), (iii), (v), (vi) and (vii) above.

Section 805. Indenture Trustee May Enforce Claims Without Possession of Notes.

(a) In all Proceedings brought by the Indenture Trustee (and also any Proceedings involving the interpretation of any provision of this Indenture to which the Indenture Trustee shall be a party), the Indenture Trustee shall be held to represent all of the Noteholders, and it shall not be necessary to make any Noteholder a party to any such Proceedings.

(b) All rights of action and claims under this Indenture, the related Supplement or any of the Notes may be prosecuted and enforced by the Indenture Trustee without the possession of such Notes or the production thereof in any Proceeding relating thereto, and any such Proceeding instituted by the Indenture Trustee shall be brought in its own name as trustee of an express trust, and any recovery whether by judgment, settlement or otherwise shall, after provision for the payment of the compensation, expenses, and disbursements incurred and advances made, by the Indenture Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes, subject to the subordination of payments among Classes of a particular Series as set forth in the related Supplement.

Section 806. Allocation of Money Collected. If the Notes of all Series have been declared due and payable following an Event of Default and such declaration and its consequences have not been rescinded or annulled, any money collected by the Indenture Trustee pursuant to this Article or otherwise and any other monies that may be held or thereafter received by the Indenture Trustee as security for such Notes shall be applied, to the extent permitted by law, in the following order, at the date or dates fixed by the Indenture Trustee:

FIRST: To the payment of all amounts due the Indenture Trustee under Section 905 hereof; and

SECOND: Any remaining amounts shall be distributed in accordance with Section 302(c)(III) hereof.

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Section 807. Limitation on Suits.

Except with respect to an Event of Default of the type described in Section 801(i) hereof and solely to the extent permitted under clause (A) of Section 804 hereof, no Noteholder shall have the right to institute any Proceeding, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

- (i) such Holder has previously given written notice to the Indenture Trustee and the Requisite Global Majority of a continuing Event of Default;
- (ii) the Requisite Global Majority shall have made written request to the Indenture Trustee to institute Proceedings in respect of such Event of Default in its own name as Indenture Trustee hereunder;
- (iii) such Holder or Holders have offered to the Indenture Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request (the unsecured indemnity of a Rated Institutional Noteholder being deemed satisfactory for such purpose);
- (iv) the Indenture Trustee has, for thirty (30) days after its receipt by a Corporate Trust Officer of such notice, request and offer of security or indemnity, failed to institute any such Proceeding; and
- (v) no direction inconsistent with such written request has been given to the Indenture Trustee during such thirty (30) day period by the Requisite Global Majority;

it being understood and intended that no one or more Noteholders shall have any right in any manner whatsoever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Noteholder, or to obtain or to seek to obtain priority or preference over any other Noteholder (except to the extent provided in the related Supplement) or to enforce any right under this Indenture, except in the manner herein provided and for the benefit of all Noteholders.

Section 808. Unconditional Right of Holders to Receive Principal, Interest and Commitment Fees.

Notwithstanding any other provision of this Indenture, each Noteholder (including any Series Enhancer with respect to a Note) shall have the right, which is absolute and unconditional, to receive payment of the principal of, and interest, commitment fees and premiums in respect of such Note as such principal, interest and commitment fees becomes due and payable in accordance with the provisions of this Indenture and the related Supplement and to institute any Proceeding for the enforcement of such payment, and such rights shall not be impaired without the consent of such Holder or Series Enhancer.

Section 809. Restoration of Rights and Remedies.

If the Indenture Trustee, any Series Enhancer or any Holder has instituted any Proceeding to enforce any right or remedy under this Indenture or the related Supplement and such Proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Indenture Trustee, any Series Enhancer or to such Holder, then and in every such case, subject to any determination in such Proceeding, the Issuer, the Indenture Trustee,

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such Series Enhancer and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Indenture Trustee, such Series Enhancer and the Holders shall continue as though no such Proceeding had been instituted.

Section 810. Rights and Remedies Cumulative.

No right or remedy conferred upon or reserved to the Indenture Trustee, any Series Enhancer, any Interest Rate Hedge Provider or to the Holders pursuant to this Indenture or any Supplement is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 811. Delay or Omission Not Waiver.

No delay or omission of the Indenture Trustee, any Series Enhancer, any Interest Rate Hedge Provider or any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Indenture Trustee, any Series Enhancer, any Interest Rate Hedge Provider, or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Indenture Trustee, by any Series Enhancer, by any Interest Rate Hedge Provider, or by the Holders, as the case may be.

Section 812. Control by Requisite Global Majority.

(a) Upon the occurrence of an Event of Default, the Requisite Global Majority shall have the right to direct in writing the time, method and place of conducting any Proceeding for any remedy available to the Indenture Trustee or exercising any trust or power conferred on the Indenture Trustee, *provided* that (i) such direction shall not be in conflict with any rule of law or with this Indenture, including, without limitation, Section 804 hereof and (ii) the Indenture Trustee may take any other action deemed proper by the Indenture Trustee which is not inconsistent with such direction.

(b) Notwithstanding the grant of a security interest to secure the Outstanding Obligations owing to the Indenture Trustee, for the benefit of the Noteholders, each Series Enhancer and each Interest Rate Hedge Provider, all rights to direct actions or to exercise rights or remedies under this Indenture or the UCC (including those set forth in Section 804 hereof) shall be vested solely in the Requisite Global Majority and, by accepting the benefits of this Indenture, each Noteholder and Interest Rate Hedge Provider acknowledges such statement; *provided, however*, that nothing contained herein shall constitute a modification of Section 808, Section 813(b) or Section 816(d) hereof.

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Section 813. Waiver of Past Defaults.

(a) The Requisite Global Majority may, on behalf of all Noteholders of all Series, waive any past Event of Default and its consequences, except an Event of Default

(i) in the payment of (x) the principal balance of any Note on the Legal Final Payment Date, (y) interest on any Note of any Series on any Payment Date, or (z) commitment fees or any Premium owed to any Series Enhancer in respect of any Note of any Series on any Payment Date, all of which defaults can be waived solely by the affected Noteholder or Series Enhancer, as the case may be, or

(ii) in respect of a covenant or provision hereof which cannot be modified or amended without the consent of all the Noteholders of all Series pursuant to Section 1002 of this Indenture.

(b) Upon any such waiver, such Event of Default shall cease to exist and shall be deemed to have been cured and not to have occurred for every purpose of this Indenture; *provided, however*, that no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon nor affect any Interest Rate Hedge Agreement which has been terminated in accordance with its terms.

Section 814. Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Note by acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Indenture Trustee for any action taken, suffered or omitted by it as Indenture Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided, however*, that the provisions of this Section shall not apply to any suit instituted by the Indenture Trustee or any Holder or group of Holders, holding in the aggregate more than ten percent (10%) of the aggregate principal balance of the Notes of all Series then Outstanding, or (ii) to any suit instituted by any Holder for the enforcement of (x) the payment of interest on any Notes on any Payment Date or (y) the payment of the principal of any Note on or after the Legal Final Payment Date of such Note.

Section 815. Waiver of Stay or Extension Laws.

The Issuer covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Indenture Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 816. Sale of Collateral.

(a) The power to effect any sale (a "Sale") of any portion of the Collateral pursuant to Section 804 hereof shall not be exhausted by any one or more Sales as to any portion



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of the Collateral remaining unsold, but shall continue unimpaired until the entire Collateral shall have been sold or the Aggregate Outstanding Obligations shall have been paid in full. The Indenture Trustee at the written direction of the Requisite Global Majority may from time to time postpone any Sale by public announcement made at the time and place of such Sale.

(b) Upon any Sale, whether made under the power of sale hereby given or under judgment, order or decree in any Proceeding for the foreclosure or involving the enforcement of this Indenture: (i) the Indenture Trustee, at the written direction of the Requisite Global Majority, may bid for and purchase the property being sold, and upon compliance with the terms of such Sale may hold, retain and possess and dispose of such property in accordance with the terms of this Indenture; and (ii) the receipt of the Indenture Trustee or of any officer thereof making such Sale shall be a sufficient discharge to the purchaser or purchasers at such Sale for its or their purchase money, and such purchaser or purchasers, and its or their assigns or personal representatives, shall not, after paying such purchase money and receiving such receipt of the Indenture Trustee or of such officer therefor, be obliged to see to the application of such purchase money or be in any way answerable for any loss, misappropriation or non-application thereof.

(c) The Indenture Trustee shall execute and deliver an appropriate instrument of conveyance provided to it transferring its interest in any portion of the Collateral in connection with a Sale thereof. In addition, the Indenture Trustee is hereby irrevocably appointed the agent and attorney-in-fact of the Issuer to transfer and convey its interest (subject to lessee's rights of quiet enjoyment) in any portion of the Collateral in connection with a Sale thereof, and to take all action necessary to effect such Sale. No purchaser or transferee at such a Sale shall be bound to ascertain the Indenture Trustee's authority, inquire into the satisfaction of any conditions precedent or see to the application of any monies.

(d) The right of the Indenture Trustee to sell, transfer or otherwise convey any Interest Rate Hedge Agreement or any transaction outstanding thereunder, or to exercise foreclosure rights with respect thereto shall be subject to compliance with the provisions of the applicable Interest Rate Hedge Agreement.

(e) The Indenture Trustee shall provide prior written notice to the Issuer, to the Administrative Agent and to each Interest Rate Hedge Provider of any Sale of any portion of the Collateral under this Section 816.

Section 817. Action on Notes.

The Indenture Trustee's right to seek and recover judgment on the Notes under this Indenture or any Supplement shall not be affected by the seeking, obtaining or application of any other relief under or with respect to this Indenture or any Supplement. Neither the Lien of this Indenture nor any rights or remedies of the Indenture Trustee, any Series Enhancer, any Interest Rate Hedge Provider or the Noteholders shall be impaired by the recovery of any judgment by the Indenture Trustee against the Issuer or by the levy of any execution under such judgment upon any portion of the Collateral or upon any of the assets of the Issuer.

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ARTICLE IX

CONCERNING THE INDENTURE TRUSTEE

Section 901. Duties of Indenture Trustee.

The Indenture Trustee, prior to the occurrence of an Event of Default with respect to any Series or after the cure or waiver of any Event of Default with respect to any Series which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and the related Supplement and no duties shall be inferred or implied. If an Event of Default with respect to any Series has occurred and is continuing, the Indenture Trustee, at the written direction of the Requisite Global Majority, shall exercise such of the rights and powers vested in it by this Indenture and the related Supplement, and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs.

The Indenture Trustee, upon receipt of all resolutions, certificates, statements, opinions, reports, documents, orders or other instruments furnished to the Indenture Trustee which are specifically required to be furnished pursuant to any provisions of this Indenture and any applicable Supplement, shall determine whether they are substantially in the form required by this Indenture and any applicable Supplement; *provided, however*, that the Indenture Trustee shall not be responsible for the accuracy or content of any such resolution, certificate, statement, opinion, report, document, order or other instrument furnished pursuant to this Indenture and any applicable Supplement.

No provision of this Indenture or any Supplement shall be construed to relieve the Indenture Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct; *provided, however*, that:

(i) Prior to the occurrence of an Event of Default and after the cure or waiver of any Event of Default which may have occurred, the duties and obligations of the Indenture Trustee shall be determined solely by the express provisions of this Indenture and any Supplements issued pursuant to the terms hereof. The Indenture Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and any Supplements issued pursuant to the terms hereof, and no implied covenants or obligations shall be read into this Indenture against the Indenture Trustee and, in the absence of bad faith on the part of the Indenture Trustee, the Indenture Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates, statements, reports, documents, orders, opinions or other instruments (whether in their original or facsimile form) furnished to the Indenture Trustee and conforming to the requirements of this Indenture and any Supplements issued pursuant to the terms hereof;

(ii) The Indenture Trustee shall not be liable for an error of judgment made in good faith by a Corporate Trust Officer or Corporate Trust Officers, unless it shall be proved that the Indenture Trustee was negligent in ascertaining the pertinent facts; and

(iii) The Indenture Trustee shall not be personally liable with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with the direction of the Requisite Global Majority relating to the time, method and place of conducting any Proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred upon the Indenture Trustee, under this Indenture.

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No provision of this Indenture shall require the Indenture Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate security or indemnity against such risk or liability is not reasonably assured to it (the unsecured indemnity of (A) a Rated Institutional Noteholder being deemed satisfactory for such purpose, unless the Indenture Trustee provides prior written notice to the contrary or (B) each Series Enhancer (so long as its claims paying ability is rated “AAA” or “Aaa”, as applicable) upon such terms as may be reasonably acceptable to the Indenture Trustee being deemed satisfactory for such purpose).

Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Indenture Trustee shall be subject to the provisions of this Section 901.

Section 902. Certain Matters Affecting the Indenture Trustee.

Except as otherwise provided in Section 901 hereof:

(i) The Indenture Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any Opinion of Counsel, certificate of an officer of the Issuer or the Manager, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond or other paper or document (whether in its original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(ii) The Indenture Trustee may consult with counsel of its selection and any advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in accordance in reliance thereof;

(iii) The Indenture Trustee shall be under no obligation to institute, conduct or defend any litigation or Proceeding hereunder or in relation hereto at the request, order or direction of the Requisite Global Majority, pursuant to the provisions of this Indenture, unless the Indenture Trustee shall have reasonable grounds for believing that it has security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby (the unsecured indemnity of (A) a Rated Institutional Noteholder being

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deemed satisfactory for such purpose, unless the Indenture Trustee provides prior written notice to the contrary or (B) each Series Enhancer (so long as its claims paying ability is rated “AAA” or “Aaa”, as applicable) being deemed satisfactory for such purpose);

(iv) The Indenture Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(v) The Indenture Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document, unless requested in writing to do so by the Requisite Global Majority; *provided, however*, that the Indenture Trustee may require reasonable security or indemnity satisfactory to it against any cost, expense or liability likely to be incurred in making such investigation as a condition to so proceeding (the unsecured indemnity of (A) a Rated Institutional Noteholder being deemed satisfactory for such purposes unless the Indenture Trustee provides prior written notice to the contrary) or (B) any Series Enhancer (so long as its claims paying ability is rated “AAA” or “Aaa,” as applicable,) being deemed satisfactory for such purpose). The expense of any such examination shall be paid, on a *pro rata* basis, by the Noteholders of the applicable Series requesting such examination or, if paid by the Indenture Trustee, shall be reimbursed by such Noteholders upon demand;

(vi) The Indenture Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys, and the Indenture Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it with due care hereunder;

(vii) The Indenture Trustee shall not be charged with knowledge of any Event of Default unless either a Corporate Trust Officer shall have actual knowledge or written notice of such shall have been given to a Corporate Trust Officer of the Indenture Trustee; and

(viii) The rights, privileges, protections, immunities and benefits given to the Indenture Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Indenture Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

The provisions of this Section 902 shall be applicable to the Indenture Trustee in its capacity as Indenture Trustee under this Indenture.

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Section 903. Indenture Trustee Not Liable.

(a) The recitals contained herein (other than the representations and warranties contained in Section 911 hereof), in any Supplement and in the Notes (other than the certificate of authentication on the Notes) shall be taken as the statements of the Issuer, and the Indenture Trustee assumes no responsibility for their correctness. The Indenture Trustee makes no representations as to the validity or sufficiency of this Indenture, any Supplement, the Notes, the Collateral or of any Related Document. The Indenture Trustee shall not be accountable for (i) the use or application by the Issuer of the proceeds of any Series or Class of Notes, and (ii) the use or application of any funds paid to the Issuer or the Manager in respect of the Collateral except for any payment in accordance with the Manager Report of amounts on deposit in any of the Trust Accounts.

(b) The Indenture Trustee shall have no responsibility or liability for or with respect to the existence or validity of any Managed Container, the perfection of any security interest (whether as of the date hereof or at any future time), the maintenance of or the taking of any action to maintain such perfection, the validity of the assignment of any portion of the Collateral to the Indenture Trustee or of any intervening assignment, the compliance by the Sellers or the Manager with any covenant or the breach by the Sellers or the Manager of any warranty or representation made hereunder, in any Supplement or in any Related Document or the accuracy of such warranty or representation, any investment of monies in the Trust Account, the Restricted Cash Account or any Series Account or any loss resulting therefrom (*provided* that such investments are made in accordance with the provisions of Section 303 hereof), or the acts or omissions of the Sellers or the Manager taken in the name of the Indenture Trustee.

(c) The Indenture Trustee shall not have any obligation or liability under any Contract by reason of or arising out of this Indenture or the granting of a security interest in such Contract hereunder or the receipt by the Indenture Trustee of any payment relating to any Contract pursuant hereto, nor shall the Indenture Trustee be required or obligated in any manner to perform or fulfill any of the obligations of the Issuer, the Sellers or the Manager under or pursuant to any Contract, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it, or the sufficiency of any performance by any party, under any Contract.

Section 904. Indenture Trustee May Own Notes.

The Indenture Trustee in its individual or any other capacity may become the owner or pledgee of Notes with the same rights it would have if it were not Indenture Trustee; *provided* that such transaction shall not result in the disqualification of the Indenture Trustee for purposes of Rule 3a-7 under the Investment Company Act of 1940.

Section 905. Indenture Trustee's Fees, Expenses and Indemnities.

(a) The Indenture Trustee Fees shall be paid by the Issuer in accordance with Section 302 hereof; *provided however*, that the Indenture Trustee Fees of the Indenture Trustee payable pursuant to Section 302 or 806 hereof shall not exceed Twenty Thousand Dollars (\$20,000) annually for each Series of Notes then Outstanding at any time Wells Fargo Bank,

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National Association, is acting as Indenture Trustee. The Issuer shall indemnify the Indenture Trustee (and any predecessor Indenture Trustee) and each of its officers, directors and employees for, and hold them harmless against, any and all loss, liability, damage claim or expense incurred without negligence or willful misconduct on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself both individually and in its representative capacity against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder (the "Indenture Trustee Indemnified Amounts").

(b) The obligations of the Issuer under this Section 905 to compensate the Indenture Trustee, to pay or reimburse the Indenture Trustee for expenses, disbursements and advances and to indemnify and hold harmless the Indenture Trustee, shall constitute Outstanding Obligations hereunder and shall survive the resignation or removal of the Indenture Trustee and the satisfaction and discharge of this Indenture.

(c) When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 801(iii) or Section 801(iv), the expenses and the compensation for the services are intended to constitute expenses of administration under Insolvency Law.

Section 906. Eligibility Requirements for Indenture Trustee.

The Indenture Trustee hereunder shall at all times be a national banking association or a corporation, organized and doing business under the laws of the United States of America or any State, and authorized under such laws to exercise corporate trust powers. In addition, the Indenture Trustee or its parent corporation shall at all times (i) have a combined capital and surplus of at least Two Hundred Fifty Million Dollars (\$250,000,000), (ii) be subject to supervision or examination by Federal or state authority and (iii) have a long-term unsecured senior debt rating of "A2" or better by Moody's and a long-term unsecured senior debt rating of "A" by Standard & Poor's and short-term unsecured senior debt rating of "P-1" or better by Moody's and a short-term unsecured senior debt rating of "A-2" by Standard & Poor's. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then, for the purposes of this Section 906, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Indenture Trustee shall cease to be eligible in accordance with the provisions of this Section, the Indenture Trustee shall resign immediately in the manner and with the effect specified in Section 907 hereof.

Section 907. Resignation and Removal of Indenture Trustee.

The Indenture Trustee may at any time resign and be discharged from the trusts hereby created by giving written notice thereof to the Issuer, the Manager, the Administrative Agent, each Series Enhancer, each Interest Rate Hedge Provider and the Noteholders. Upon receiving such notice of resignation, the Issuer at the direction and subject to the consent of the Requisite Global Majority shall promptly appoint a successor Indenture Trustee by written instrument, in duplicate, one copy of which instrument shall be delivered to the resigning

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Indenture Trustee, the Administrative Agent, each Series Enhancer, each Interest Rate Hedge Provider and one copy to the successor Indenture Trustee. If no successor Indenture Trustee shall have been so appointed by the Issuer or the proposed successor Indenture Trustee has not accepted its appointment within thirty (30) days after the giving of such notice of resignation or removal, the Requisite Global Majority may appoint a successor trustee or, if it does not do so within thirty (30) days thereafter, the resigning Indenture Trustee, with the consent of the Administrative Agent and each Series Enhancer, may petition at the expense of the Issuer any court of competent jurisdiction for the appointment of a successor Indenture Trustee, which successor trustee shall meet the eligibility standards set forth in Section 906.

If at any time the Indenture Trustee shall cease to be eligible in accordance with the provisions of Section 906 hereof and shall fail to resign after written request therefor by the Issuer at the direction of the Requisite Global Majority, any Series Enhancer or the Administrative Agent, or if at any time the Indenture Trustee shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or a receiver of the Indenture Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Indenture Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the Issuer at the direction of the Requisite Global Majority shall remove the Indenture Trustee and appoint a successor Indenture Trustee by written instrument, in duplicate, one copy of which instrument shall be delivered to the Indenture Trustee so removed and one copy to the successor Indenture Trustee.

Any resignation or removal of the Indenture Trustee and appointment of a successor Indenture Trustee pursuant to any of the provisions of this Section shall become effective upon acceptance of appointment by the successor Indenture Trustee as provided in Section 908 hereof.

Section 908. Successor Indenture Trustee.

Any successor Indenture Trustee appointed as provided in Section 907 hereof shall execute, acknowledge and deliver to the Issuer and to its predecessor Indenture Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Indenture Trustee shall become effective and such successor Indenture Trustee, without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Indenture Trustee herein. The predecessor Indenture Trustee shall deliver to the successor Indenture Trustee all documents relating to the Collateral, if any, delivered to it, together with any amount remaining in the Trust Account, Restricted Cash Account and any other Series Accounts. In addition, the predecessor Indenture Trustee and, upon request of the successor Indenture Trustee, the Issuer shall execute and deliver such instruments and do such other things as may reasonably be required for more fully and certainly vesting and confirming in the successor Indenture Trustee all such rights, powers, duties and obligations.

No successor Indenture Trustee shall accept appointment as provided in this Section unless at the time of such acceptance such successor Indenture Trustee shall be eligible under the provisions of Section 906 hereof and shall be acceptable to the Requisite Global Majority and each Interest Rate Hedge Provider.

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Upon acceptance of appointment by a successor Indenture Trustee as provided in this Section, the Issuer shall mail notice of the succession of such Indenture Trustee hereunder to all Noteholders at their addresses as shown in the registration books maintained by the Indenture Trustee and to each Interest Rate Hedge Provider. If the Issuer fails to mail such notice within ten (10) days after acceptance of appointment by the successor Indenture Trustee, the successor Indenture Trustee shall cause such notice to be mailed at the expense of the Issuer.

Section 909. Merger or Consolidation of Indenture Trustee.

Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation succeeding to all or substantially all of the business of the Indenture Trustee, shall be the successor of the Indenture Trustee hereunder, *provided* such corporation shall be eligible under the provisions of Section 906 hereof, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 910. Separate Indenture Trustees, Co-Indenture Trustees and Custodians.

If the Indenture Trustee is not capable of acting outside the United States or of exercising trust powers within the United States, it shall have the power from time to time to appoint (subject to the prior approval of the Administrative Agent) one or more Persons or corporations to act either as co-trustees jointly with the Indenture Trustee, or as separate trustees, or as custodians, for the purpose of holding title to, foreclosing or otherwise taking action with respect to any of the Collateral, when such separate trustee or co-trustee is necessary or advisable under any Applicable Laws or for the purpose of otherwise conforming to any legal requirement, restriction or condition in any applicable jurisdiction. The separate trustees, co-trustees, or custodians so appointed shall be trustees, co-trustees, or custodians for the benefit of all Noteholders and shall have such powers, rights and remedies as shall be specified in the instrument of appointment; *provided, however*, that no such appointment shall, or shall be deemed to, constitute the appointee an agent of the Indenture Trustee. The Issuer shall join in any such appointment, but such joining shall not be necessary for the effectiveness of such appointment.

Every separate trustee, co-trustee and custodian shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

(i) all powers, duties, obligations and rights conferred upon the Indenture Trustee in respect of the receipt, custody and payment of moneys shall be exercised solely by the Indenture Trustee;

(ii) all other rights, powers, duties and obligations conferred or imposed upon the Indenture Trustee shall be conferred or imposed upon and exercised or performed by the Indenture Trustee and such separate trustee, co-trustee, or custodian jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed the Indenture



Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Collateral or any portion thereof in any such jurisdiction) shall be exercised and performed by such separate trustee, co-trustee or custodian;

(iii) the Indenture Trustee shall not be personally liable for any act or omission of any separate trustee, co-trustee or custodian appointed by the Indenture Trustee; and

(iv) the Issuer or the Indenture Trustee may at any time accept the resignation of or remove any separate trustee, co-trustee or custodian so appointed by it or them if such resignation or removal does not violate the other terms of this Indenture.

Any notice, request or other writing given to the Indenture Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee, co-trustee, or custodian shall refer to this Indenture and the conditions of this Article. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Indenture Trustee or separately, as may be provided therein, subject to all the provisions of this Indenture, specifically including every provision of this Indenture relating to the conduct of, affecting the liability of, or affording protection to, the Indenture Trustee. Every such instrument shall be furnished to the Indenture Trustee, each Interest Rate Hedge Provider and each Series Enhancer.

Any separate trustee, co-trustees, or custodian may, at any time, constitute the Indenture Trustee, its agent or attorney-in-fact, with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Indenture on its behalf and in its name. If any separate trustee, co-trustee, or custodian shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Indenture Trustee, to the extent permitted by law, without the appointment of a new or successor trustee or custodian.

No separate trustee, co-trustee or custodian hereunder shall be required to meet the terms of eligibility as a successor Indenture Trustee under Section 906 hereof and no notice to Noteholders of the appointment thereof shall be required under Section 908 hereof.

The Indenture Trustee agrees to instruct the co-trustees, if any, to the extent necessary to fulfill the Indenture Trustee's obligations hereunder.

Section 911. Representations and Warranties.

The Indenture Trustee hereby represents and warrants as of each Series Issuance Date that:

(a) Organization and Good Standing. The Indenture Trustee is a national banking association duly organized, validly existing and in good standing under the laws of the United States, and has the power to own its assets and to transact the business in which it is presently engaged;

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(b) Authorization. The Indenture Trustee has the power, authority and legal right to execute, deliver and perform this Indenture and each Supplement and to authenticate the Notes, and the execution, delivery and performance of this Indenture and each Supplement and the authentication of the Notes has been duly authorized by the Indenture Trustee by all necessary corporate action;

(c) Binding Obligations. This Indenture and each Supplement, assuming due authorization, execution and delivery by the Issuer, constitutes the legal, valid and binding obligations of the Indenture Trustee, enforceable against the Indenture Trustee in accordance with its terms, except that (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws (whether statutory, regulatory or decisional) now or hereafter in effect relating to creditors' rights generally and the rights of trust companies in particular and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to certain equitable defenses and to the discretion of the court before which any Proceeding therefor may be brought, whether in a Proceeding at law or in equity;

(d) No Violation. The performance by the Indenture Trustee of its obligations under this Indenture and each Supplement will not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice, lapse of time or both) a default under, the charter documents or bylaws of the Indenture Trustee;

(e) No Proceedings. There are no Proceedings or investigations to which the Indenture Trustee is a party pending, or, to the best of its knowledge without independent investigation, threatened, before any court, regulatory body, administrative agency or other tribunal or Governmental Authority (A) asserting the invalidity of this Indenture or the Notes, (B) seeking to prevent the issuance of the Notes or the consummation of any of the transactions contemplated by this Indenture or (C) seeking any determination or ruling that would materially and adversely affect the performance by the Indenture Trustee of its obligations under, or the validity or enforceability of, this Indenture or the Notes; and

(f) Approvals. Neither the execution or delivery by the Indenture Trustee of this Indenture nor the consummation of the transactions by the Indenture Trustee contemplated hereby requires the consent or approval of, the giving of notice to, the registration with or the taking of any other action with respect to any Governmental Authority under any existing federal or State of Minnesota law governing the banking or trust powers of the Indenture Trustee.

#### Section 912. Indenture Trustee Offices.

The Indenture Trustee shall maintain in the State of New York an office or offices or agency or agencies where Notes may be surrendered for registration of transfer or exchange, which office is currently located at Sixth Street and Marquette Avenue, MAC N9311-161, Minneapolis, MN 55479, and shall promptly notify the Issuer, the Manager, each Interest Rate Hedge Provider, each Series Enhancer and the Noteholders of any change of such location.

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Section 913. Notice of Event of Default.

If a Corporate Trust Officer shall have actual knowledge that an Event of Default with respect to any Series has occurred and be continuing, the Indenture Trustee shall promptly (but in any event within five (5) Business Days) give written notice thereof to the Noteholders, the Administrative Agent, each Interest Rate Hedge Provider and the Series Enhancer of such Series. For all purposes of this Indenture, in the absence of actual knowledge by a Corporate Trust Officer, the Indenture Trustee shall not be deemed to have actual knowledge of any Event of Default unless notified in writing thereof by the Issuer, any Seller, the Manager, any Series Enhancer, the Administrative Agent, any Interest Rate Hedge Provider or any Noteholder, and such notice references the applicable Series of Notes generally, the Issuer, this Indenture or the applicable Supplement.

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ARTICLE X

SUPPLEMENTAL INDENTURES

Section 1001. Supplemental Indentures Not Creating a New Series Without Consent of Holders.

(a) Without the consent of any Holder and based on an Opinion of Counsel to the effect that such Supplement is for one of the purposes set forth in clauses (i) through (viii) below, the Issuer and the Indenture Trustee, at any time and from time to time, may, in the case of clauses (i) through (viii) below with the consent of each affected Interest Rate Hedge Provider (if such proposed amendment would adversely affect the rights, duties or immunities of such Interest Rate Hedge Provider under this Indenture or otherwise), enter into one or more Supplements in form satisfactory to the Indenture Trustee, for any of the following purposes:

(i) to add to the covenants of the Issuer in this Indenture for the benefit of the Holders of all Series then Outstanding or of any Series Enhancer, or to surrender any right or power conferred upon the Issuer in this Indenture;

(ii) to cure any ambiguity, to correct or supplement any provision in this Indenture which may be inconsistent with any other provision in this Indenture, or to make any other provisions with respect to matters or questions arising under this Indenture;

(iii) to correct or amplify the description of any property at any time subject to the Lien of this Indenture, or better to assure, convey and confirm unto the Indenture Trustee any property subject or required to be subjected to the Lien of this Indenture, or to subject additional property to the Lien of this Indenture;

(iv) to add to the conditions, limitations and restrictions on the authorized amount, terms and purposes of issue, authentication and delivery of the Notes, as herein set forth, or additional conditions, limitations and restrictions thereafter to be observed by the Issuer;

(v) to convey, transfer, assign, mortgage or pledge any additional property to or with the Indenture Trustee;

(vi) to evidence the succession of the Indenture Trustee pursuant to Article IX; or

(vii) to add any additional Early Amortization Events or Events of Default.

(b) Promptly after the execution by the Issuer and the Indenture Trustee of any Supplement pursuant to this Section, the Issuer shall mail to the Holders of all Notes then Outstanding, the Administrative Agent, each Interest Rate Hedge Provider and Series Enhancer related to such Series, a notice setting forth in general terms the substance of such Supplement, together with a copy of such Supplement. Any failure of the Issuer to mail any such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplement.

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Section 1002. Supplemental Indentures Not Creating a New Series with Consent of Holders.

(a) With the consent of the Requisite Global Majority, each affected Series Enhancer and each affected Interest Rate Hedge Provider (if such proposed amendment would adversely affect such Interest Rate Hedge Provider's rights, duties or immunities under this Indenture or otherwise), the Issuer and the Indenture Trustee may enter into a Supplement hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture (other than any such additions, changes, eliminations or modifications described in Section 1001); *provided, however*, that no such Supplement shall, without the consent of the Holder of each Outstanding Note affected thereby:

(i) reduce the principal amount of any Note or the rate of interest thereon, change the priority of any such payments (other than to increase the priority thereof) required pursuant to this Indenture or any Supplement in a manner adverse to any Noteholder, or the date on which, or the amount of which, or the place of payment where, or the coin or currency in which, any Note or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Expected Final Payment Date thereof,

(ii) reduce the percentage of Outstanding Notes or Existing Commitments required for (a) the consent of any Supplement to this Indenture, (b) the consent required for any waiver of compliance with certain provisions of this Indenture or certain Events of Default hereunder and their consequences as provided for in this Indenture or (c) the consent required to waive any payment default on the Notes;

(iii) modify any provision of this Indenture or any Supplement which specifies that such provision cannot be modified or waived without the consent of the Holder of each Outstanding Note affected thereby;

(iv) modify or alter the definition of the terms "Outstanding", "Requisite Global Majority", "Existing Commitment" or "Initial Commitment";

(v) impair or adversely affect the Collateral in any material respect as a whole except as otherwise permitted herein;

(vi) modify or alter Section 702(a) of this Indenture; or

(vii) permit the creation of any Lien ranking prior to or on a parity with the Lien of this Indenture with respect to any part of the Collateral or terminate the Lien of this Indenture on any property at any time subject hereto or deprive the Holder of any Note of the security afforded by the Lien of this Indenture.

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Prior to the execution of any Supplement issued pursuant to this Section 1002, the Issuer shall provide written notice to each Interest Rate Hedge Provider and each Series Enhancer setting forth in general terms the substance of any such Supplement and the proposed form of such Supplement.

(b) Promptly after the execution by the Issuer and the Indenture Trustee of any Supplement pursuant to this Section, the Issuer shall mail to the Holders of the Notes, the Administrative Agent, each Interest Rate Hedge Provider and Series Enhancer related to such Series, a notice setting forth in general terms the substance of such Supplement, together with a copy of such Supplement. Any failure of the Issuer to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplement.

Section 1003. Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by, a Supplement permitted by this Article or the modification thereby of the trusts created by this Indenture, the Indenture Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such Supplement is authorized or permitted by this Indenture. The Indenture Trustee may, but shall not be obligated to, enter into any such Supplement which affects the Indenture Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 1004. Effect of Supplemental Indentures.

Upon the execution of any Supplement under this Article, this Indenture shall be modified in accordance therewith, and such Supplement shall form a part of this Indenture for all purposes, and every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 1005. Reference in Notes to Supplemental Indentures.

Notes authenticated and delivered after the execution of any Supplement pursuant to this Article may, and shall if required by the Issuer, bear a notation in form approved by the Indenture Trustee as to any matter provided for in such Supplement. If the Issuer shall so determine, new Notes so modified as to conform, in the opinion of the Indenture Trustee, may be prepared and executed by the Issuer and authenticated and delivered by the Indenture Trustee in exchange for Outstanding Notes.

Section 1006. Issuance of Series of Notes.

(a) The Issuer may from time to time direct the Indenture Trustee to execute and authenticate one or more Series of Notes as long as (i) the Rating Agency Condition shall have been satisfied with respect to the issuance of such Series of Notes, (ii) no Early Amortization Event or Event of Default (or event or condition which with the passage of time or giving of notice or both would become an Early Amortization Event or an Event of Default) is then continuing (nor would occur as a result of the issuance of such additional Series) and (iii) all of the applicable conditions set forth Section 1006(b) of this Indenture have been satisfied.

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(b) On or before the Series Issuance Date relating to any Series, the parties hereto will execute and deliver a Supplement which will specify the Principal Terms of such Series. The terms of such Supplement may modify or amend the terms of this Indenture solely as applied to such Series, and, with the consent of the Control Party for any other Series and each affected Interest Rate Hedge Provider, may amend this Indenture as applicable to such other Series, in accordance with Section 1001 or 1002 hereof. The obligation of the Indenture Trustee to authenticate, execute and deliver the Notes of such Series and to execute and deliver the related Supplement is subject to the satisfaction of the following conditions:

(i) on or before the fifth (5<sup>th</sup>) Business Day immediately preceding the Series Issuance Date (unless the parties to be notified agree to a shorter notice period), the Issuer shall have given the Indenture Trustee, the Manager, the Administrative Agent, each Interest Rate Hedge Provider and each Series Enhancer entitled thereto pursuant to the relevant Supplement notice of the Series and the Series Issuance Date;

(ii) the Issuer shall have delivered to the Indenture Trustee the related Supplement, in form satisfactory to the Indenture Trustee, executed by each party hereto other than the Indenture Trustee;

(iii) the Issuer shall have delivered to the Indenture Trustee any related Enhancement Agreement executed by each of the parties thereto and the Series Enhancer under such Enhancement Agreement shall have acknowledged in writing the terms of the Administration Agreement;

(iv) the Rating Agency Condition shall have been satisfied with respect to the issuance of such Series of Notes;

(v) the Issuer shall have delivered to the Indenture Trustee, each Interest Rate Hedge Provider, each Series Enhancer and, if required, any Noteholder, any Opinions of Counsel required by the related Supplement, including without limitation with respect to true sale, enforceability, non-consolidation and security interest perfection issues;

(vi) the Issuer shall have delivered to the Indenture Trustee an Officer's Certificate stating that no Early Amortization Event or Event of Default (or event or condition which with the passage of time or giving of notice or both would become an Early Amortization Event or an Event of Default) has occurred and is then continuing (or would result from the issuance of such additional Series);

(vii) no additional Series of Notes shall (A) have a Legal Final Payment Date that is earlier than the Legal Final Payment Date for any Series of Notes then Outstanding (immediately prior to the issuance of such additional Series), or (B) include more restrictive provisions regarding Early Amortization Events or Events of Default than the equivalent provisions contained in any Series of Notes then Outstanding (immediately prior to the issuance of such additional Series);

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(viii) written confirmation from an officer of the Manager that after giving effect to such proposed issuance, the aggregate unpaid principal balance of all Series of Notes then Outstanding does not exceed the Asset Base, as evidenced by the Asset Base Report most recently received by the Indenture Trustee (but not earlier than the preceding Payment Date);

(ix) such other conditions as shall be specified in the related Supplement; and

(x) the Issuer shall have delivered to the Indenture Trustee an Officer's Certificate that all of the conditions specified in clauses (i) through (viii) have been satisfied.

Upon satisfaction of the above conditions, the Indenture Trustee shall execute the Supplement and authenticate, execute and deliver the Notes of such Series.



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ARTICLE XI

HOLDERS LISTS

Section 1101. Indenture Trustee to Furnish Names and Addresses of Holders. Unless otherwise provided in the related Supplement, the Indenture Trustee will furnish or cause to be furnished to the Manager and each Series Enhancer not more than ten (10) days after receipt of a request, a list, in such form as the Indenture Trustee generally maintains, of the names, addresses and tax identification numbers of the Holders of Notes as of such date.

Section 1102. Preservation of Information; Communications to Holders. The Indenture Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Indenture Trustee as provided in Section 1101 and the names and addresses of Holders received by the Indenture Trustee in its capacity as Note Registrar. The Indenture Trustee may destroy any list furnished to it as provided in Section 1101 upon receipt of a new list so furnished.

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ARTICLE XII

EARLY AMORTIZATION EVENT

Section 1201. Early Amortization Event.

As of any date of determination, the existence of any one of the following events or conditions:

- (1) An “event of default” or a material “default” by TL, TEMPL or the Issuer under any Related Document (including an Event of Default hereunder) shall have occurred and then be continuing;
- (2) A Manager Default shall have occurred and then be continuing;
- (3) If on any Payment Date an Asset Base Deficiency with respect to the Senior Notes exists, and such condition remains unremedied for a period of ten (10) consecutive Business Days without having been cured;
- (4) The amount of any scheduled payment of interest then due and owing on the Notes of any Series then Outstanding is not paid in full;
- (5) The EBIT Ratio of the Issuer shall be less than 1.25:1.00;
- (6) As of any Payment Date, the Weighted Average Age of the Eligible Container is greater than nine (9) years;
- (7) Any payment shall be made by a Series Enhancer under any Enhancement Agreement;
- (8) The occurrence of an additional Early Amortization Event as specified in the related Supplement for any Series; or
- (9) (A) a breach of any financial covenant of TGH set forth in the documents governing any Indebtedness of TGH in an aggregate principal amount of \$10,000,000 or greater (the “Funded Debt Documents”) shall have occurred and shall not have been permanently waived within sixty (60) days thereafter by the applicable lenders, or (B) any default, not described in clause (A), under any Funded Debt Document shall have occurred and as a result the required lenders under the affected financing transaction have accelerated all or part of such Indebtedness.

If the Early Amortization Event described in clause (5) has occurred, such breach shall be deemed cured and such Early Amortization Event shall be deemed no longer continuing if such condition does not exist on any two consecutive subsequent Payment Dates. In addition, if the Early Amortization Event described in clause (9)(A) has occurred, such Early Amortization Event shall be deemed no longer continuing immediately upon the permanent waiver within sixty (60) days thereafter by the required lenders under the affected financing transaction(s) of the event(s) or condition(s) described in such clause (A). Except as set forth in the two

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immediately preceding sentences, if an Early Amortization Event exists on any Payment Date, then such Early Amortization Event shall be deemed to continue until the Business Day on which the Requisite Global Majority waives, in writing, such Early Amortization Event.

Promptly following any occurrence of and, if applicable, any cure of an Early Amortization Event, the Issuer shall notify each Interest Rate Hedge Provider thereof.

Section 1202. Remedies. Upon the occurrence of an Early Amortization Event, the Indenture Trustee shall have in addition to the rights provided in the Related Documents, all rights and remedies provided under all Applicable Laws.

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ARTICLE XIII

MISCELLANEOUS PROVISIONS

Section 1301. Compliance Certificates and Opinions.

(a) Upon any application or request by the Issuer to the Indenture Trustee to take any action under any provision of this Indenture or any Supplement, the Issuer shall furnish to the Indenture Trustee a certificate stating that all conditions precedent, if any, provided for in this Indenture and any relevant Supplement relating to the proposed action have been complied with and, if deemed reasonably necessary by the Indenture Trustee or if required pursuant to the terms of this Indenture, an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(i) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether such covenant or condition has been complied with; and

(iv) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1302. Form of Documents Delivered to Indenture Trustee.

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous.

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(c) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 1303. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture or any Supplement to be given or taken by Holders may be (i) embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing, (ii) evidenced by the written consent or direction of Holders of the specified percentage of the principal amount of the Notes, or (iii) evidenced by a combination of such instrument or instruments; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments and record are delivered to the Indenture Trustee and, where it is hereby expressly required, to the Issuer. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Indenture Trustee and the Issuer, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Indenture Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the Note Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Indenture Trustee or the Issuer in reliance thereon, whether or not notation of such action is made upon such Note.

Section 1304. Inspection.

(a) Upon reasonable request, the Issuer agrees that it shall make available to any representative of the Indenture Trustee, Administrative Agent, any Interest Rate Hedge Provider, any Holder of a Warehouse Note or any Series Enhancer and their duly authorized representatives, attorneys or accountants, for inspection and copying its books of account, records and reports relating to the Managed Containers and copies of all Leases or other documents relating thereto, all in the format which the Manager uses for its own operations. Such inspections shall be conducted during normal business hours and shall not unreasonably disrupt the business of the Manager. The Indenture Trustee, each Series Enhancer, each Interest Rate Hedge Provider and each Noteholder shall, and shall cause their respective representatives

to, hold in confidence all such information except to the extent disclosure may be required by law (and all reasonable applications for confidential treatment are unavailing); *provided* that, if no Event of Default shall have occurred and then be continuing, the Issuer shall not be required to provide such access to any such Person more than once per calendar year. Each Noteholder, the Administrative Agent, each Series Enhancer, each Interest Rate Hedge Provider, each Holder of a Warehouse Note and the Indenture Trustee agrees that it and its Affiliates and their respective shareholders, directors, agents, representatives, accountants and attorneys shall keep confidential any matter of which any of them becomes aware through such inspections or discussions (unless readily available from public sources), except as may be otherwise required by regulation, law or court order or required by appropriate Governmental Authorities (and all reasonable applications for confidential treatment are unavailing) or as necessary to preserve their rights or security under or to enforce the Related Documents, *provided* that the foregoing shall not limit the right of any Series Enhancer or any Interest Rate Hedge Provider, as the case may be, to make such information available to its regulators, securities rating agencies, reinsurers and credit and liquidity providers whom such Series Enhancer or Interest Rate Hedge Provider, as the case may be, reasonably believes will respect the confidential nature of such information. Any expense incident to the reasonable exercise by the Indenture Trustee, any Series Enhancer, any Interest Rate Hedge Provider or any Noteholder of any right under this Section shall be borne by the Person exercising such right unless an Event of Default shall have occurred and then be continuing in which case such expenses shall be borne by the Issuer.

(b) The Issuer also agrees (i) to make available a Managing Officer on a reasonable basis to the Indenture Trustee, Administrative Agent, each Interest Rate Hedge Provider, each Series Enhancer, any Noteholder or any Prospective Owner of a Note for the purpose of answering reasonable questions respecting recent developments affecting the Issuer and (ii) to allow the Indenture Trustee, Administrative Agent, Interest Rate Hedge Provider, Series Enhancer or any Prospective Owner of a Note to inspect the Manager's facilities during normal business hours.

Section 1305. Limitation of Rights.

Except as expressly set forth in this Indenture, this Indenture shall be binding upon the Issuer, the Noteholders and their respective successors and permitted assigns and shall not inure to the benefit of any Person other than the parties hereto, the Noteholders and the Manager as provided herein. Notwithstanding the previous sentence, the parties hereto acknowledge that each Interest Rate Hedge Provider and the Series Enhancer for a Series of Notes is an express third party beneficiary hereof entitled to enforce its rights hereunder as if actually a party hereto.

Section 1306. Severability.

If any provision of this Indenture is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever.

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The invalidity of any one or more phrases, sentences, clauses or Sections of this Indenture, shall not affect the remaining portions of this Indenture, or any part thereof.

Section 1307. Notices.

All demands, notices and communications hereunder shall be in writing, personally delivered, or by facsimile (with subsequent telephone confirmation of receipt thereof), or sent by internationally recognized overnight courier service, (a) in the case of the Indenture Trustee, at the following address: Sixth Street and Marquette Avenue, MAC N9311-161, Minneapolis, Minnesota 55479, Attention: Corporate Trust Services/Asset-Backed Administration (b) in the case of the Issuer, at the following address: Century House, 16 Par-la-Ville Road, Hamilton HM HX, Bermuda, Telephone: (441) 292-2487, Facsimile: (441) 295-4164, Attention: Senior Vice President - Asset Management, with a copy to each: (i) Textainer Equipment Management Limited at its address at Century House, 16 Par-la-Ville Road, Hamilton HM HX, Bermuda, Telephone: (441) 292-2487, Facsimile: (441) 295-4164, Attention: Senior Vice President - Asset Management, and (ii) Textainer Equipment Management (U.S.) Limited at its address at 650 California Street, 16th floor, San Francisco, CA 94108, Telephone: (415) 658-8363, Facsimile: (415) 434-0599, Attention: Senior Vice President - Asset Management, (c) in the case of a Series Enhancer, at its address set forth in the related Supplement, or at such other address as shall be designated by such party in a written notice to the other parties, and (d) in the case of an Interest Rate Hedge Provider, at its address set forth in the related Interest Rate Hedge Agreement, or at such other address as shall be designated by such party in a written notice to the other parties. Any notice required or permitted to be given to a Noteholder shall be given by certified first class mail, postage prepaid (return receipt requested), or by courier, or by facsimile, with subsequent telephone confirmation of receipt thereof, in each case at the address of such Holder as shown in the Note Register or to the telephone and fax number furnished by such Noteholder. Notice shall be effective and deemed received (a) two (2) days after being delivered to the courier service, if sent by courier, (b) upon receipt of confirmation of transmission, if sent by telecopy, or (c) when delivered, if delivered by hand.

Section 1308. Consent to Jurisdiction.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST THE ISSUER ARISING OUT OF OR RELATING TO THIS INDENTURE, OR ANY TRANSACTION CONTEMPLATED HEREBY, MAY BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, STATE OF NEW YORK AND THE ISSUER HEREBY WAIVES ANY OBJECTION WHICH 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 INDENTURE, THE ISSUER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING. THE ISSUER HEREBY IRREVOCABLY APPOINTS AND DESIGNATES NATIONAL CORPORATE RESEARCH LTD., HAVING AN ADDRESS AT 10 E. 40TH STREET, 10TH FLOOR, NEW YORK, NY 10016, ITS TRUE AND LAWFUL ATTORNEY-IN-FACT AND DULY AUTHORIZED AGENT FOR THE LIMITED PURPOSE OF ACCEPTING SERVICING OF LEGAL PROCESS AND THE ISSUER AGREES THAT SERVICE OF PROCESS UPON SUCH PARTY SHALL

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CONSTITUTE PERSONAL SERVICE OF SUCH PROCESS ON SUCH PERSON. THE ISSUER SHALL MAINTAIN THE DESIGNATION AND APPOINTMENT OF SUCH AUTHORIZED AGENT UNTIL ALL AMOUNTS PAYABLE UNDER THIS INDENTURE SHALL HAVE BEEN PAID IN FULL. IF SUCH AGENT SHALL CEASE TO SO ACT, THE ISSUER SHALL IMMEDIATELY DESIGNATE AND APPOINT ANOTHER SUCH AGENT SATISFACTORY TO THE INDENTURE TRUSTEE AND SHALL PROMPTLY DELIVER TO THE INDENTURE TRUSTEE EVIDENCE IN WRITING OF SUCH OTHER AGENT'S ACCEPTANCE OF SUCH APPOINTMENT.

Section 1309. Captions.

The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

Section 1310. Governing Law.

THIS INDENTURE SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK INCLUDING SECTION 5-1401 AND SECTION 5-1402 OF NEW YORK GENERAL OBLIGATIONS LAW, BUT WITHOUT GIVING EFFECT TO ANY OTHER PRINCIPLES OF CONFLICTS OF LAW, AND THE RIGHTS, OBLIGATIONS AND REMEDIES OF THE PARTIES HERETO SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 1311. No Petition.

The Indenture Trustee, on its own behalf, hereby covenants and agrees, and each Noteholder by its acquisition of a Note shall be deemed to covenant and agree, that it will not institute against the Issuer any bankruptcy, reorganization, arrangement insolvency or liquidation Proceedings, or other Proceedings under any federal or state bankruptcy or similar law, at any time other than on a date which is at least one (1) year and one (1) day after the later of (a) the last date on which any Note of any Series was Outstanding and (b) the date on which all amounts owing to each Series Enhancer pursuant to the terms of this Indenture and the related Insurance Agreements have been paid in full.

Section 1312. General Interpretive Principles.

For purposes of this Indenture except as otherwise expressly provided or unless the context otherwise requires:

(a) the defined terms in this Indenture shall include the plural as well as the singular, and the use of any gender herein shall be deemed to include any other gender;

(b) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date hereof;



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(c) references herein to “Articles”, “Sections”, “Subsections”, “paragraphs”, and other subdivisions without reference to a document are to designated Articles, Sections, Subsections, paragraphs and other subdivisions of this Indenture;

(d) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall also apply to paragraphs and other subdivisions;

(e) the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular provision;

(f) the term “include” or “including” shall mean without limitation by reason of enumeration; and

(g) When referring to Section 302 or Section 806 of this Indenture, the term “or” shall be additive and not exclusive.

Section 1313. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, AS AGAINST THE OTHER PARTIES 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 OR ANY OTHER OPERATIVE DOCUMENT, INCLUDING IN RESPECT OF THE NEGOTIATION, ADMINISTRATION OR ENFORCEMENT HEREOF OR THEREOF.

Section 1314. Waiver of Immunity. To the extent that any party hereto or any of its property is or becomes entitled at any time to any immunity on the grounds of sovereignty or otherwise from any legal actions, suits or Proceedings, from set-off or counterclaim, from the jurisdiction or judgment of any competent court, from service of process, from execution of a judgment, from attachment prior to judgment, from attachment in aid of execution, or from execution prior to judgment, or other legal process in any jurisdiction, such party, for itself and its successors and assigns and its property, does hereby irrevocably and unconditionally waive, and agrees not to plead or claim, any such immunity with respect to its obligations, liabilities or any other matter under or arising out of or in connection with this Indenture, the other Related Documents or the subject matter hereof or thereof, subject, in each case, to the provisions of the Related Documents and mandatory requirements of Applicable Law.

Section 1315. Judgment Currency. The parties hereto (A) acknowledge that the matters contemplated by this Indenture are part of an international financing transaction and (B) hereby agree that (i) specification and payment of Dollars is of the essence, (ii) Dollars shall be the currency of account in the case of all obligations under the Related Documents unless otherwise expressly provided herein or therein, (iii) the payment obligations of the parties under the Related Documents shall not be discharged by an amount paid in a currency or in a place other than that specified with respect to such obligations, whether pursuant to a judgment or otherwise, except to the extent actually received by the Person entitled thereto and converted into Dollars by such Person (it being understood and agreed that, if any transaction party shall so

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receive an amount in a currency other than Dollars, it shall (A) if it is not the Person entitled to receive payment, promptly return the same (in the currency in which received) to the Person from whom it was received or (B) if it is the Person entitled to receive payment, either, in its sole discretion, (x) promptly return the same (in the currency in which received) to the Person from whom it was received or (y) subject to reasonable commercial practices, promptly cause the conversion of the same into Dollars), (iv) to the extent that the amount so paid on prompt conversion to Dollars under normal commercial practices does not yield the requisite amount of Dollars, the obligee of such payment shall have a separate cause of action against the party obligated to make the relevant payment for the additional amount necessary to yield the amount due and owing under the Related Documents, (v) if, for the purpose of obtaining a judgment in any court with respect to any obligation under any of the Related Documents, it shall be necessary to convert to any other currency any amount in Dollars due thereunder and a change shall occur between the rate of exchange applied in making such conversion and the rate of exchange prevailing on the date of payment of such judgment, the obligor in respect of such obligation will pay such additional amounts (if any) as may be necessary to insure that the amount paid on the date of payment is the amount in such other currency which, when converted into Dollars and transferred to New York City, New York, in accordance with normal banking procedures, will result in realization of the amount then due in Dollars and (vi) any amount due under this paragraph shall be due as a separate debt and shall not be affected by or merged into any judgment being obtained for any other sum due under or in respect of the Related Documents.

Section 1316. Statutory References. References in this Indenture and each other Related Document for any Series to any section of the Uniform Commercial Code or the UCC shall mean, on or after the effective date of adoption of any revision to the Uniform Commercial Code or the UCC in the State of New York, such revised or successor section thereto.

Section 1317. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF, the Issuer and the Indenture Trustee have caused this Indenture to be duly executed and delivered by their respective officers thereunto duly authorized as of the day and year first above written.

TEXTAINER MARINE CONTAINERS II LIMITED

By Continental Management Limited, its Assistant Secretary

By: /s/ Christopher C. Morris

Name: Christopher C. Morris

Title: Director

WELLS FARGO BANK, NATIONAL ASSOCIATION, as  
Indenture Trustee

By: /s/ Kristen L. Puttin

Name: Kristen L. Puttin

Title: Vice President

Indenture

TEXTAINER MARINE CONTAINERS II LIMITED

Issuer

and

WELLS FARGO BANK, NATIONAL ASSOCIATION

Indenture Trustee

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SERIES 2012-1 SUPPLEMENT

Dated as of May 1, 2012

to

INDENTURE

Dated as of May 1, 2012

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SERIES 2012-1 NOTES

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## EXHIBITS

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## SCHEDULES

Schedule 1 - Minimum Targeted Principal Balance Percentage

Schedule 2 - Scheduled Targeted Principal Balance Percentage

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SERIES 2012-1 SUPPLEMENT, dated as of May 1, 2012 (as amended, modified and supplemented from time to time in accordance with the terms hereof, this “**Supplement**”), between TEXTAINER MARINE CONTAINERS II LIMITED, an exempted company organized and existing under the laws of Bermuda (the “**Issuer**”), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Indenture Trustee (the “**Indenture Trustee**”).

WHEREAS, pursuant to the Indenture, dated as of May 1, 2012 (as amended and supplemented from time to time in accordance with its terms, the “**Indenture**”), between the Issuer and the Indenture Trustee, the Issuer may from time to time direct the Indenture Trustee to authenticate one or more new Series of Notes. The Principal Terms of any new Series are to be set forth in a Supplement to the Indenture; and

WHEREAS, pursuant to this Supplement, the Issuer and the Indenture Trustee shall create a new Series of Notes (“**Series 2012-1**”) and specify the Principal Terms thereof;

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

## ARTICLE I

### Definitions; Calculation Guidelines

Section 101. Definitions. Whenever used in this Supplement, the following words and phrases shall have the following meanings, and the definitions of such terms are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

“**Aggregate Series 2012-1 Note Principal Balance**” means, as of any date of determination, an amount equal to the sum of the then Series 2012-1 Note Principal Balances of all Series 2012-1 Notes then Outstanding.

“**Alternative Rate**” means on any day for any Series 2012-1 Advance allocated to an Interest Accrual Period, an interest rate per annum equal to the Base Rate if, on or before the first day of such Interest Accrual Period, a Series 2012-1 Noteholder (or an agent thereof) or its Deal Agent shall have notified the Issuer that a Eurodollar Disruption Event has occurred with respect to such Series 2012-1 Noteholder or, if applicable, a member of its Related Group.

“**Applicable Margin**” means, with respect to each day during an Interest Accrual Period on which a Series 2012-1 Advance by a Series 2012-1 Noteholder is outstanding, one of the following amounts for such Series 2012-1 Advance:

- (A) for each date occurring prior to the Conversion Date, two and five-eighths of one percent (2.625%) per annum; and
- (B) for each date on or subsequent to the Conversion Date, three and five-eighths of one percent (3.625%) per annum.

“**Availability**” shall have the meaning set forth in the Series 2012-1 Note Purchase Agreement.

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**“Base Rate”** means, on any date, a fluctuating rate of interest per annum equal to the higher of (i) the Federal Funds Effective Rate in effect on such date plus one half of one percent (0.50%), and (ii) the Prime Rate in effect on such date. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the opening of business on the date of such change.

**“Breakage Costs”** means any amount or amounts as shall compensate a Series 2012-1 Noteholder for any loss, cost or expense incurred by such Series 2012-1 Noteholder or a member of its Related Group in connection with funding obtained by it with respect to a Series 2012-1 Advance (as reasonably determined by the related Deal Agent in its sole discretion on behalf of such Series 2012-1 Noteholder) as a result of (i) the failure of the Issuer to accept funding of a Series 2012-1 Advance in accordance with a Funding Notice submitted by Issuer, or (ii) the failure of the Issuer to make a prepayment in accordance with the terms of any of the Indenture, this Supplement or the Series 2012-1 Note Purchase Agreement, or (iii) the Issuer making a payment of principal on a Series 2012-1 Note on a day other than a Payment Date. Nothing contained herein shall obligate the Issuer to pay Breakage Costs with respect to any prepayment actually made by the Issuer on the last day of an Interest Accrual Period.

**“Closing Date”** shall mean May 1, 2012.

**“Control Party”** means, with respect to Series 2012-1 Notes, the Majority of Holders of the Series 2012-1 Notes.

**“Conversion Date”** means the earlier to occur of (i) the date on which a Conversion Event occurs, and (ii) the date set forth in **Section 2.5** of the Series 2012-1 Note Purchase Agreement, as such date in this clause (ii) may be extended from time to time in accordance with the terms, and subject to the conditions, of **Section 2.5** of the Series 2012-1 Note Purchase Agreement.

**“Conversion Event”** means the earlier to occur of (x) the date on which an Early Amortization Event occurs and (y) any Payment Date on which the then aggregate unpaid principal balance of any other Series of Notes issued by the Issuer exceeds the Minimum Targeted Principal Balance of such Series (determined after giving effect to any Minimum Principal Payment Amount actually paid on such Payment Date).

**“Default Interest”** means, for any Payment Date, the incremental amount of interest payable on the Notes in accordance with **Section 202(b)** hereof.

**“Defaulting Noteholder”** means any Series 2012-1 Noteholder (or, if applicable, any member of its Related Group) that (i) fails to fund any portion of any Series 2012-1 Advance required to be funded hereunder within two Business Days after the date on which such funding is required or (ii) has notified the Issuer or any Affiliate thereof, or the Indenture Trustee or any other Series 2012-1 Noteholder, that it (or, if applicable, any member of its Related Group) does not intend to comply with its funding obligations under the Series 2012-1 Related Documents, or has made a public statement to that effect with respect to its funding obligations under the Series 2012-1 Related Documents.

**“Dollars”** and the sign “\$” mean lawful money of the United States of America.



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**“Existing Law”** means (i) the final rule titled “Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues,” adopted by the United States bank regulatory agencies on December 15, 2009 (the “Capital Guidelines”); (ii) the Basel Accords prepared by the Basel Committee on Banking Supervision as set out in the publications entitled “International Convergence of Capital Measurements and Capital Standards: a Revised Framework,” (“Basel II”) and “International Framework for Liquidity Risk Measurement, Standards and Monitoring” (“Basel III,” with Basel II, collectively the “Basel Accords”) as updated from time to time; (c) the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd Frank Act”); and (d) any rules, regulations, guidance, requests, interpretations or directives from any Governmental Authority relating to, or implementing, the Capital Guidelines, the Basel Accords or the Dodd Frank Act (whether or not having the force of law).

**“Eurodollar Disruption Event”** means with respect to all Series 2012-1 Advances allocated to any Interest Accrual Period, any of the following events or conditions: (a) a determination by a Series 2012-1 Noteholder or its Deal Agent that it would be contrary to law or to the directive of any central bank or other Governmental Authority (whether or not having the force of law) to obtain Dollars in the London interbank market to make, fund or maintain any Loan for such Interest Accrual Period, (b) a determination by a Series 2012-1 Noteholder or its Deal Agent that the LIBOR Rate applicable for such Interest Accrual Period does not accurately reflect the cost to the Series 2012-1 Noteholder (or, if applicable, any member of its Related Group) of making, funding or maintaining any Loan for such Interest Accrual Period, or (c) the inability of a Series 2012-1 Noteholder (or, if applicable, any member of its Related Group) to obtain Dollars in the London interbank market to make, fund or maintain any Loan for such Interest Accrual Period.

**“Federal Funds Effective Rate”** means for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, and determined by the applicable Deal Agent or, if such rate is not so published on the next succeeding Business Day, the average of the quotations for the day of such transactions received by the applicable Deal Agent from three federal funds brokers of recognized standing selected by it.

**“Federal Reserve Board”** means the Board of Governors of the Federal Reserve System or any successor thereto.

**“Fee Letter”** means each fee letter, dated on or about the Closing Date, between the Issuer and each Deal Agent.

**“Increased Costs”** means any fee, expense, increased cost or reduction in rate of return on capital charged to or incurred by an Indemnified Party on account of the occurrences set forth in Sections 206 and 207 hereof.

**“Indemnified Party”** shall have the meaning set forth in **Section 205(a)** hereof.

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**“Interest Accrual Period”** means the period commencing on, and including, a Payment Date and ending on but excluding the next succeeding Payment Date (or, with respect to the initial Interest Accrual Period, commencing on and including the Closing Date and ending on but excluding June 15, 2012). When switching from LIBOR Rate to Alternative Rate funding, the first such Interest Accrual Period shall be at the discretion of the applicable Deal Agent.

**“LIBOR Rate”** means for any Interest Accrual Period and any Series 2012-1 Advance, an interest rate per annum equal to the average per annum rate of interest determined by the Indenture Trustee (and notified to each of the Issuer, the Manager and the Administrative Agent) on the basis of the offered rates for deposits in Dollars for an amount equal to the requested advance of funds and for a term equal to either (i) with respect to any Series 2012-1 Advance made on the first day of such Interest Accrual Period, the applicable Interest Accrual Period or (ii) with respect to any Series 2012-1 Advance not made on the first day of such Interest Accrual Period, a term equal to the period remaining in the applicable Interest Accrual Period (*provided*, if no offered rate exists for such remaining period, the LIBOR Rate shall be interpolated on a straight-line basis based upon the LIBOR Rate for each of (i) the closest quoted period greater than such remaining period and (ii) the closest quoted period shorter than such remaining period), and commencing on the first day of such Interest Accrual Period, displayed on the Reuters screen “LIBOR01”, or any successor service for the purpose of displaying the London Interbank rates of major banks for Dollars (or such other page as may replace the Reuters screen “LIBOR01” on that service or such other service or services as may be denominated by the British Bankers’ Association for the purpose of displaying London Interbank offered rates for Dollar deposits), as of 11:00 A.M. (London time) on the Business Day which is the LIBOR Determination Date. If the Reuters Screen LIBO Page is not available, then “**LIBOR Rate**” shall mean the rate per annum equal to the average rate at which the principal London offices of Wells Fargo Bank, National Association, and Bank of America, N.A. (or their respective successors) are offered dollar deposits at or about 10:00 a.m., New York City time, two Business Days prior to the first Business Day of such Interest Accrual Period in the London eurodollar interbank market for delivery on the first day of such Interest Accrual Period for one month and in a principal amount equal to an amount of not less than \$1,000,000.

**“LIBOR Determination Date”** shall mean the date that is two (2) Business Days prior to the first day of any Interest Accrual Period.

**“Loan”** means an extension of credit made by a Series 2012-1 Advance pursuant to **Section 204** hereof.

**“Majority of Holders”** means, with respect to the Series 2012-1 Notes as of any date of determination, one or more Series 2012-1 Noteholders representing more than fifty percent (50%) of the then aggregate Series 2012-1 Note Commitments of all Series 2012-1 Noteholders (or, if the Conversion Date has occurred, the then Aggregate Series 2012-1 Note Principal Balance); *provided however*, that the Series 2012-1 Note Commitments (or, if applicable, Series 2012-1 Note Principal Balance) of any Person classified as a Defaulting Noteholder on such date of determination shall be excluded for purposes of determining the Majority of Holders for Series 2012-1.

**“Manager Advance”** shall have the meaning set forth in the Management Agreement.

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“**Manager Report**” shall have the meaning set forth in the Management Agreement.

“**Minimum Principal Payment Amount**” means, for the Series 2012-1 Notes on any Payment Date, one of the following:

- (1) for any Payment Date on or prior to the Conversion Date, zero;
- (2) for any Payment Date following the Conversion Date, the excess, if any, of (x) the Aggregate Series 2012-1 Note Principal Balance, over (y) the Minimum Targeted Principal Balance for the Series 2012-1 Notes for such Payment Date.

“**Minimum Targeted Principal Balance**” means for the Series 2012-1 Notes for each Payment Date subsequent to the Conversion Date, an amount equal to the product of (x) the Aggregate Series 2012-1 Note Principal Balance on the Conversion Date and (y) the percentage set forth opposite such Payment Date (based on the number of months elapsed from the Conversion Date; it being agreed that if the Conversion Date does not occur on a Payment Date, the number of months calculation shall commence with the Payment Date immediately following the Conversion Date) on **Schedule 1** hereto under the column entitled “Minimum Targeted Principal Balance”.

“**Note**” means any Series 2012-1 Note.

“**Other Taxes**” shall have the meaning set forth in **Section 205(b)** hereof.

“**Overdue Rate**” means an interest rate per annum equal to the sum of (i) the interest rate otherwise in effect hereunder plus (ii) two percent (2%).

“**Payment Date**” shall have the meaning set forth in **Section 201(b)** hereof.

“**Permitted Interest Withdrawal**” shall have the meaning set forth in **Section 302(a)** hereof.

“**Permitted Payment Date Withdrawal**” means, with respect to Series 2012-1, either or both of the Permitted Interest Withdrawal and/or the Permitted Principal Withdrawal.

“**Permitted Principal Withdrawal**” shall have the meaning set forth in **Section 302(b)** hereof.

“**Prime Rate**” means the rate announced by Wells Fargo Bank, National Association (or any successor thereto), from time to time as its “**prime rate**” or “**base rate**” in the United States, such rate to change as and when such designated rate changes. The Prime Rate is not intended to be the lowest rate of interest charged by Wells Fargo Bank, National Association (or any successor thereto) in connection with extensions of credit to debtors. For sake of clarity, the references to Wells Fargo Bank, National Association in the two preceding sentences are not intended to refer to the initial Indenture Trustee.

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**“Pro Rata”** means in accordance with the Pro Rata Share of each Series 2012-1 Noteholder.

**“Pro Rata Share”** means, with respect to each Series 2012-1 Noteholder as of any date of determination, a ratio (expressed as a percentage) the numerator of which is equal to the Series 2012-1 Note Commitment (or, if the Conversion Date has occurred, the Series 2012-1 Note Principal Balance) of such Series 2012-1 Noteholder and the denominator of which is equal to the sum of the Series 2012-1 Note Commitments of all Series 2012-1 Noteholders (or, if the Conversion Date has occurred, the Aggregate Series 2012-1 Note Principal Balance).

**“Purchaser”** shall have the meaning set forth in the Series 2012-1 Note Purchase Agreement.

**“Rating Agency Condition”** means, in addition to the meaning set forth in the Indenture, the following: So long as the Series 2012-1 Notes shall remain unrated, the Rating Agency Condition shall mean that the Control Party for the Series 2012-1 Notes shall also have consented to the applicable action or decision.

**“Scheduled Principal Payment Amount”** means, for the Series 2012-1 Notes for any Payment Date, one of the following:

- (1) for any Payment Date on or prior to the Conversion Date, zero (0); or
- (2) for any Payment Date following the Conversion Date, the excess, if any, of (x) the then Aggregate Series 2012-1 Note Principal Balance (determined after giving effect to any payment of the Minimum Principal Payment Amount for the Series 2012-1 Notes on such Payment Date), over (y) the Scheduled Targeted Principal Balance for the Series 2012-1 Notes for such Payment Date.

**“Scheduled Targeted Principal Balance”** means, for the Series 2012-1 Notes for each Payment Date subsequent to the Conversion Date, an amount equal to the product of (x) the Aggregate Series 2012-1 Note Principal Balance on the Conversion Date and (y) the percentage set forth opposite such Payment Date (based on the number of months elapsed from the Conversion Date; it being agreed that if the Conversion Date does not occur on a Payment Date, the number of months calculation shall commence with the Payment Date immediately following the Conversion Date) on **Schedule 2** hereto under the column entitled “Scheduled Targeted Principal Balance”.

**“Security Entitlement”** means, any “security entitlement” as defined in Section 8-102(a)(17) of the UCC, arising out of or in any way related to the Managed Containers.

**“Series 2012-1”** means the Series of Notes the terms of which are specified in this Supplement.

**“Series 2012-1 Advance”** means any advance of funds made by, or on behalf of, a Series 2012-1 Noteholder pursuant to **Section 204(b)** hereof.

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**“Series 2012-1 Legal Final Payment Date”** means, with respect to the Series 2012-1 Notes, the Payment Date immediately succeeding the date which is the fifth (5<sup>th</sup>) annual anniversary of the Conversion Date.

**“Series 2012-1 Note”** means any one of the notes issued pursuant to the terms hereof, substantially in the form of Exhibit A hereto, and shall include any and all replacements or substitutions of such notes.

**“Series 2012-1 Note Commitment”** means, for each Series 2012-1 Noteholder (excluding, however, any Series 2012-1 Noteholder which is a CP Purchaser), the commitment of such Series 2012-1 Noteholder to fund Series 2012-1 Advances in an aggregate amount outstanding at any point in time not to exceed the amount set forth opposite such Series 2012-1 Noteholder name on the signature pages of the Series 2012-1 Note Purchase Agreement, as such amount may be modified in accordance with the terms thereof. After the Conversion Date, the Series 2012-1 Note Commitment for each Series 2012-1 Noteholder shall be equal to the then Series 2012-1 Note Principal Balance of the Series 2012-1 Note owned by such Series 2012-1 Noteholder.

**“Series 2012-1 Note Interest Payment”** means for each Payment Date, an amount equal to the sum, for each Series 2012-1 Advance outstanding for each day during the related Interest Accrual Period, of the product of (i) if the Alternative Rate shall then be in effect, (A) the principal amount of such Series 2012-1 Advance, (B) an interest rate equal to the sum of (x) the Base Rate in effect and (y) the Applicable Margin, and (C) 1/365 or 1/366, as applicable, or (ii) if clause (i) above shall not apply, (A) the principal amount of such Series 2012-1 Advance, (B) an interest rate equal to the sum of (x) the LIBOR Rate for such Interest Accrual Period and (y) the Applicable Margin, and (C) 1/360.

**“Series 2012-1 Note Principal Balance”** means, with respect to any Series 2012-1 Note as of any date of determination, an amount equal to the excess of (x) all Series 2012-1 Advances made by or on behalf of the related Series 2012-1 Noteholder on or subsequent to the Closing Date, over (y) the cumulative amount of all Minimum Principal Payment Amounts, Scheduled Principal Payment Amounts, Supplemental Principal Payment Amounts and any other Prepayments actually paid to the related Series 2012-1 Noteholder subsequent to the Closing Date.

**“Series 2012-1 Note Purchase Agreement”** means the Series 2012-1 Note Purchase Agreement, dated as of May 1, 2012, among the Issuer, the Purchasers, and the Deal Agents named therein pursuant to which document the Purchasers agreed to purchase the Series 2012-1 Notes and make Series 2012-1 Advances, as amended, supplemented or otherwise modified from time to time in accordance with its terms.

**“Series 2012-1 Noteholder”** means, at any time of determination for the Series 2012-1 Notes, any Person in whose name a Series 2012-1 Note is registered in the Note Register, and shall be deemed to include each Purchaser and each related CP Purchaser.

**“Series 2012-1 Related Documents”** means any and all of the Indenture, this Supplement, the Series 2012-1 Notes, the Management Agreement, the Container Sale Agreement, the Container Transfer Agreement, the Series 2012-1 Note Purchase Agreement, the

Administration Agreement, the Manager Transfer Facilitator Agreement, each Interest Rate Hedge Agreement (upon execution thereof), each Fee Letter and any and all other agreements, documents and instruments executed and delivered by or on behalf of the Issuer with respect to the issuance and sale of the Series 2012-1 Notes, as any of the foregoing may from time to time be amended, modified, supplemented or renewed. “ **Series 2012-1 Scheduled Maturity Date**” means with respect to the Series 2012-1 Notes, the Payment Date immediately succeeding the date which is the fifth (5<sup>th</sup>) annual anniversary of the Conversion Date.

“**Series 2012-1 Series Account**” means the account established by the Issuer with the Indenture Trustee into which funds are deposited from the Trust Account pursuant to **Section 303** of the Indenture.

“**Step Up Warehouse Fee**” means, for the Series 2012-1 Notes, for each Payment Date, an amount equal to zero.

“**Supplemental Principal Payment Amount**” means the amount of any Prepayment made in accordance with the provisions of **Section 702(a)** of the Indenture that is allocated to the Series 2012-1 Notes in accordance with each provision of the Indenture.

“**Taxes**” shall have the meaning set forth in **Section 205(a)** hereof.

“**Unused Commitment**” means, with respect to each Series 2012-1 Noteholder as of any date of determination, the excess of (i) the Series 2012-1 Note Commitment then in effect for such Series 2012-1 Noteholder, over (ii) the Series 2012-1 Note Principal Balance of the Series 2012-1 Note owned by such Series 2012-1 Noteholder as of such date of determination, measured after giving effect to all Series 2012-1 Advances made and all principal payments to be received by such Series 2012-1 Noteholder on such date of determination.

“**Unused Fee**” shall have the meaning set forth in **Section 204(c)** hereof.

“**Unused Fee Percentage**” means three-quarters of one percent (0.75%) per annum.

“**Warehouse Note Increased Interest**” means the incremental interest payable by the Issuer on the Series 2012-1 Notes upon the occurrence of a Conversion Event.

(b) Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Indenture or, if not defined therein, as defined in the Series 2012-1 Note Purchase Agreement.

## **ARTICLE II**

### **Creation of the Series 2012-1 Notes**

#### **Section 201. Designation.**

(a) There is hereby created a Series of Notes to be issued in one Class pursuant to the Indenture and this Supplement to be known respectively as “Textainer Marine Containers II Limited Floating Rate Asset-Backed Notes, Series 2012-1”. The Series 2012-1 Notes will be issued in the initial maximum principal balance of One Billion Two Hundred Million Dollars (\$1,200,000,000) and will not have priority over any other Series, except to the extent set forth in the Supplement for such other Series.

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(b) The Payment Date with respect to the Series 2012-1 Notes shall be the fifteenth (15<sup>th</sup>) calendar day of each month (or, if such day is not a Business Day, the immediately following Business Day), commencing June 15, 2012.

(c) Payments of principal on the Series 2012-1 Notes shall be payable from funds on deposit in the Series 2012-1 Series Account or otherwise at the times and in the amounts set forth in Article III of the Indenture and Article III hereof.

(d) Each Series 2012-1 Note is classified as a “Senior Note” and “Warehouse Note”, as such term is used in the Indenture.

(e) The Series 2012-1 Notes are issued on the Closing Date without the benefit of an Enhancement Agreement.

(f) The Series 2012-1 Notes will not be rated on the Closing Date by any Rating Agency.

(g) The Series 2012-1 Legal Final Maturity Date shall also constitute the Expected Final Payment Date for the purposes of this Supplement and the Series 2012-1 Notes.

(h) In the event that any term or provision contained herein shall conflict with or be inconsistent with any term or provision contained in the Indenture, the terms and provisions hereof shall govern.

Section 201A Authentication and Delivery.

(a) On the Closing Date, the Issuer shall sign, and shall direct the Indenture Trustee in writing pursuant to **Section 204** of the Indenture to duly authenticate, and the Indenture Trustee, upon receiving such direction, shall (i) authenticate (by manual, electronic (PDF) or facsimile signature, including by separate counterparts) the Series 2012-1 Notes, subject to compliance with the conditions precedent set forth in **Section 501** hereof and the Series 2012-1 Note Purchase Agreement, in accordance with such written directions and (ii) subject to compliance with the conditions precedent set forth in **Section 501** hereof and the Series 2012-1 Note Purchase Agreement, deliver such Series 2012-1 Notes to the Series 2012-1 Noteholders in accordance with such written directions.

(b) In accordance with **Section 202** of the Indenture, the Series 2012-1 Notes shall be represented by one or more Definitive Notes.

(c) The Series 2012-1 Notes shall be executed by manual, electronic (PDF) or facsimile signature on behalf of the Issuer by any officer of the Issuer and shall be substantially in the form of Exhibit A hereto.

(d) The Series 2012-1 Notes shall be issued in minimum denominations of \$250,000 and in integral multiples of \$100,000 in excess thereof.

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Section 202. Interest Payments on the Series 2012-1 Notes.

(a) Interest on Series 2012-1 Notes. Interest will be payable on the Series 2012-1 Notes on each Payment Date in an amount equal to the Series 2012-1 Note Interest Payment. Such interest shall be payable on each Payment Date from amounts on deposit in the Series 2012-1 Series Account in accordance with **Section 302** of the Indenture and **Section 303** hereof.

(b) Interest on Overdue Amounts. If the Issuer shall default in the payment of (i) the Series 2012-1 Note Principal Balance of any Series 2012-1 Note on the Series 2012-1 Legal Final Payment Date, or (ii) the Series 2012-1 Note Interest Payment on any Series 2012-1 Note on any Payment Date, or (iii) any other amount becoming due under this Supplement, the Issuer shall, from time to time, pay interest on such unpaid amounts, to the extent permitted by Applicable Law, at a rate per annum equal to the Overdue Rate, for the period during which such principal, interest or other amount shall be unpaid from the due date of such payment to the date of actual payment thereof (after as well as before judgment). Default Interest shall be payable at the times and subject to the priorities set forth in **Section 303** hereof.

(c) Maximum Interest Rate. In no event shall the interest charged with respect to a Series 2012-1 Note exceed the maximum amount permitted by Applicable Law. If at any time the interest rate charged with respect to the Series 2012-1 Notes exceeds the maximum rate permitted by Applicable Law, the rate of interest to accrue pursuant to this Supplement and such Series 2012-1 Note shall be limited to the maximum rate permitted by Applicable Law, but any subsequent reductions in the LIBOR Rate or Alternative Rate, as the case may be, shall not reduce the interest to accrue on such Series 2012-1 Note below the maximum amount permitted by Applicable Law until the total amount of interest accrued on such Series 2012-1 Note equals the amount of interest that would have accrued if a varying rate per annum equal to the interest rate had at all times been in effect. If the total amount of interest paid or accrued on the Series 2012-1 Note under the foregoing provisions is less than the total amount of interest that would have accrued if the interest rate had at all times been in effect, the Issuer agrees to pay to the Series 2012-1 Noteholders an amount equal to the difference between (a) the lesser of (i) the amount of interest that would have accrued if the maximum rate permitted by Applicable Law had at all times been in effect, or (ii) the amount of interest that would have accrued if the interest rate had at all times been in effect, and (b) the amount of interest actually paid in accordance with the other provisions hereof.

Section 203. Principal Payments on the Series 2012-1 Notes; Prepayment of Principal on the Series 2012-1 Notes.

(a) The principal balance of the Series 2012-1 Notes shall be payable on each Payment Date from amounts on deposit in the Series 2012-1 Series Account in an amount equal to (i) so long as no Early Amortization Event is continuing, the sum of the Minimum Principal Payment Amount, the Scheduled Principal Payment Amount and Supplemental Principal Payment Amount for such Payment Date, or (ii) if an Early Amortization Event is then continuing, the then Aggregate Series 2012-1 Note Principal Balance shall be payable in full to the extent that funds are available for such purposes in accordance with the provisions of clause (4) of Part (II) of **Section 303** hereof. The unpaid principal amount of each Series 2012-1 Note, together with all unpaid interest (including all Default Interest), fees, expenses, costs and other



amounts payable by the Issuer to the Series 2012-1 Noteholders and the Indenture Trustee pursuant to the terms of the Indenture and this Supplement, shall be due and payable in full on the earlier to occur of (x) the date on which an Event of Default shall occur and the Series 2012-1 Notes have been accelerated in accordance with the provisions of **Section 802** of the Indenture and (y) the Series 2012-1 Legal Final Payment Date.

(b) The Issuer will have the option to prepay, without premium, all, or a portion of, the Aggregate Series 2012-1 Note Principal Balance, in a minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000). Any such Prepayment of the Aggregate Series 2012-1 Note Principal Balance shall also include accrued interest to the date of Prepayment on the principal balance being prepaid, and, if such prepayment is made on a Business Day other than a Payment Date, any Breakage Costs attributable to such Prepayment. The Issuer may not make such Prepayment from funds in the Trust Account, the Series 2012-1 Series Account or the Restricted Cash Account, except to the extent that funds in any such account would otherwise be payable to the Issuer in accordance with the terms hereof and the Indenture. In the event of any Prepayment of the Series 2012-1 Notes in accordance with this **Section 203(b)** or any other provision of the Indenture, the Issuer shall pay any termination, notional reduction, breakage or other fees or costs assessed by any Interest Rate Hedge Provider. The Issuer must provide advance notice of at least two Business Days to the Series 2012-1 Noteholders and each Interest Rate Hedge Provider of any such optional Prepayment, which notice shall be irrevocable when delivered.

(c) Any Prepayment of less than the entire Aggregate Series 2012-1 Note Principal Balance, made in accordance with the provisions of **Section 203** hereof and occurring after the Conversion Date, shall be applied to reduce the Minimum Principal Payment Amounts and Scheduled Principal Payment Amounts of the Series 2012-1 Notes in respect of each subsequent Payment Date in equal amounts such that, after giving effect to such adjustment, the Minimum Principal Payment Amounts and Scheduled Principal Payment Amounts for each subsequent Payment Date shall be reduced by an amount equal to the quotient of (x) the aggregate amount of such Prepayment actually received by the Series 2012-1 Noteholders, divided by (y) the number of remaining Payment Dates to and including the Series 2012-1 Legal Final Payment Date.

**Section 204. Amounts and Terms of Series 2012-1 Noteholder Commitments; Payments.**

(a) Subject to the terms and conditions hereof and the Series 2012-1 Note Purchase Agreement, each Series 2012-1 Noteholder agrees to make its Series 2012-1 Note Commitment available to the Issuer on the Closing Date.

(b) (i) Prior to the Conversion Date, each Series 2012-1 Note shall be a revolving note with a maximum principal amount equal to the then Series 2012-1 Note Commitment of such Series 2012-1 Noteholder. Each Deal Agent shall maintain records of all Series 2012-1 Advances and repayments made on each Series 2012-1 Note, which records shall, absent manifest error, be conclusive. On any Business Day requested by the Issuer in an irrevocable writing delivered by not later than 5:00 p.m. (New York City time) on the third (3<sup>rd</sup>) preceding Business Day and presuming that the Issuer shall have satisfied all applicable conditions precedent set forth in **Section 502** (and, in the case of the initial Series 2012-1

Advance, **Section 501**), each Series 2012-1 Noteholder shall, subject to the terms and conditions of the Series 2012-1 Note Purchase Agreement, deposit in the account designated by the Issuer by wire transfer of same day funds an amount equal to its Pro Rata Share of the requested Series 2012-1 Advance; *provided, however*, that (i) each Series 2012-1 Advance by a Series 2012-1 Noteholder shall be in an amount (A) not less than the least of \$100,000 and the lesser of the amounts described in the following **clauses (B)(x) and (B)(y)**, (B) not greater than the lesser of (x) the then Unused Commitment of such Series 2012-1 Noteholder and (y) such Series 2012-1 Noteholder's ratable share (determined based on the then aggregate unused Series 2012-1 Note Commitments of all Series 2012-1 Noteholders) of the Availability on such Business Day and (ii) in the event that any Series 2012-1 Noteholder fails to make a Series 2012-1 Advance in accordance with its Series 2012-1 Note Commitment, then the other Series 2012-1 Noteholder(s) shall not be obligated to fund the Pro Rata Share of the Series 2012-1 Advance of the defaulted Series 2012-1 Noteholder(s). The Issuer shall pay interest on the Series 2012-1 Notes at the rates and in the manner set forth in **Section 202** hereof. The unpaid principal amount of the Series 2012-1 Notes and all unpaid interest accrued thereon, together with any unpaid Unused Fees and, without duplication of the amounts set forth in **Section 203**, all other fees, expenses, costs and other sums chargeable to Issuer incurred in connection therewith, shall be due and payable on the Series 2012-1 Legal Final Payment Date.

(ii) Each request for a Series 2012-1 Advance shall constitute an affirmation by Issuer that all of the conditions precedent set forth in **Section 502** of the Supplement and the Series 2012-1 Note Purchase Agreement are true, correct and complete in all material respects to the same extent as though made on and as of the date of the request, except to the extent such representations and warranties specifically relate to an earlier date, in which event they shall be true, correct and complete in all material respects as of such earlier date.

(iii) If a Series 2012-1 Noteholder fails to fund a requested Series 2012-1 Advance pursuant to a valid request made in accordance with **Section 204(b)**, the Issuer shall promptly notify the Indenture Trustee that such Person should be classified as a Defaulting Noteholder. Thereafter, the Issuer shall promptly notify the Indenture Trustee of any subsequent change in such classification.

(c) Subject to **Section 209(a)(iii)**, on each Payment Date, the Issuer shall pay an unused fee (the "**Unused Fee**") to each Series 2012-1 Noteholder in an amount equal to the sum for each day during the immediately preceding Interest Accrual Period of the product of (x) the applicable Unused Fee Percentage on such date, (y) 1/360 and (z) the Unused Commitment of such Series 2012-1 Noteholder on such date. Such Unused Fee shall be payable from amounts then on deposit in the Series 2012-1 Series Account in accordance with **Section 303** hereof.

(d) All payments of principal and interest on the Series 2012-1 Notes and fees with respect to the Series 2012-1 Notes shall be paid to the Series 2012-1 Noteholders reflected in the Note Register as of the related Record Date on a Pro Rata basis by wire transfer of immediately available funds for receipt prior to 11:00 a.m. (New York City time) on the related Payment Date. Any payments received by a Series 2012-1 Noteholder after 11:00 a.m. (New York City time) on any day shall be considered to have been received on the next succeeding Business Day.

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Section 205. Taxes.

(a) In addition to payments of principal and interest on the Series 2012-1 Notes when due, the Issuer shall pay, but only in accordance with the priorities for distributions set forth in **Section 303** hereof, to each affected Series 2012-1 Noteholder, any member of its Related Group or any other Person that has advanced funds to, sold, committed to advance funds to, or committed to purchase from a Series 2012-1 Noteholder, an interest in the Series 2012-1 Note owned by such Series 2012-1 Noteholder (such Series 2012-1 Noteholder, any member of its Related Group and any such Person being an “**Indemnified Party**”), any and all present or future taxes, fees, duties, levies, imposts, or charges, or any other similar deduction or withholding, imposed by any Governmental Authority on payments owing by the Issuer to such Indemnified Party, and all liabilities with respect thereto, excluding (i) taxes imposed by the jurisdiction in which that Indemnified Party’s principal office is located (and/or the office where such Indemnified Party books its investment in its Series 2012-1 Note) on all or part of the net income, profits or gains of such Indemnified Party and (ii) interest, penalties, and additions thereto arising out of such Indemnified Party’s gross negligence (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as “**Taxes**”).

(b) In addition, the Issuer shall pay, subject to the priorities set forth in **Section 303**, any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Supplement or any other documents related to the issuance of the Series 2012-1 Notes (hereinafter referred to as “**Other Taxes**”).

(c) If any Taxes or Other Taxes are directly asserted or imposed against any Indemnified Party, the Issuer shall indemnify and hold harmless such Indemnified Party, subject to the priorities for distribution set forth in **Section 303**, for the full amount of the Taxes or Other Taxes (including any Taxes or Other Taxes asserted or imposed by any jurisdiction on amounts payable under this **Section 205**) paid by the Indemnified Party and any liability (including penalties, interest, additions to tax and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted or imposed. If the Issuer fails to pay any Taxes or Other Taxes when due to the appropriate taxing authority or fails to remit to the Indemnified Party the required receipts or other required documentary evidence, the Issuer shall indemnify the Indemnified Party for any incremental Taxes or Other Taxes, interest or penalties that may become payable by the Indemnified Party as a result of any such failure. Payment under this indemnification shall be made in accordance with the priorities for distributions set forth in **Section 303** hereof after the Indemnified Party makes written demand therefor. The Indemnified Party shall give prompt notice to Issuer of any assertion of Taxes or Other Taxes so that Issuer may, at its option, contest such assertion.

(d) Within thirty (30) days after the date of any payment by the Issuer of Taxes or Other Taxes, the Issuer shall furnish to each of the Series 2012-1 Noteholders the original or a certified copy of a receipt evidencing payment thereof, or other evidence of payment satisfactory to the Series 2012-1 Noteholders.

(e) Taxes and Other Taxes shall not constitute a “**claim**” (as defined in Section 101(5) of the Bankruptcy Code) against the Issuer or the Collateral in the event there are insufficient funds to make such payments in accordance with the payment priorities set forth in **Section 303** hereof.

(f) On or before the date it acquires a Series 2012-1 Note (and, so long as it may properly do so, periodically thereafter, as requested by Issuer, to keep forms up to date), each Indemnified Party that is organized under the laws of a jurisdiction outside the United States of America shall deliver to the Indenture Trustee any certificates, documents or other evidence that shall be required by the Code (or any regulations issued pursuant thereto) to establish that, assuming the Series 2012-1 Notes are properly characterized as indebtedness, it is exempt from existing United States Federal withholding requirements, including (i) two original copies of Internal Revenue Service Form 1001 or Form 4224 or successor applicable form, properly completed and duly executed by the Series 2012-1 Noteholder certifying that it is entitled to receive payments under this Supplement without deduction or withholding of any United States Federal income taxes, and (ii) an original copy of Internal Revenue Service Form W-8 or W-9 or applicable successor form, properly completed and duly executed; provided, that if any Series 2012-1 Noteholder does not comply with this **Section 205(f)**, amounts payable to such Series 2012-1 Noteholder under this **Section 205** shall be limited to amounts that would have been payable under this **Section 205** if such Series 2012-1 Noteholder had so complied.

Section 206. Increased Costs. If any Indemnified Party shall determine that, due to (a) the adoption of, or of any change in, any applicable law, rule or regulation after the Closing Date ("Applicable Law") (other than any change by way of imposition of or increase in reserve requirements included in the calculation of the LIBOR Rate), (b) any change after the Closing Date in the interpretation or administration by any Governmental Authority of any Applicable Law or compliance with any guideline or request issued after the Closing Date from any central bank or other Governmental Authority (whether or not having the force of law) and (c) the compliance, application or implementation by any Indemnified Party with the foregoing subclauses (a) or (b) or any Existing Law, there shall be any increase in the cost to such Indemnified Party of agreeing to maintain its investment in any Note, then the Issuer shall be liable for, and shall from time to time, pay to such Indemnified Party such additional amounts as are sufficient to compensate such Indemnified Party for such Increased Costs; *provided, however*, that such Indemnified Party shall (i) use reasonable efforts in good faith to mitigate any such Increased Costs and (ii) provide to Issuer in writing the basis for such Increased Costs. Payment under this indemnification shall be made in accordance with the priorities for distributions set forth in **Section 303** hereof after the Indemnified Party makes written demand therefor. Amounts payable pursuant to this **Section 206** shall not constitute a claim against the Issuer or the Collateral in the event that such amounts are not paid in accordance with **Section 303** hereof.

Section 207. Capital Requirements. If any Indemnified Party shall determine that (a) the adoption of, or change in, after the Closing Date, any law, rule, regulation or guideline adopted by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or any foreign regulatory authorities, in each case pursuant to or arising out of Basel II or Basel III, (b) the adoption after the Closing Date of any law, governmental rule, regulation, guideline or directive regarding capital adequacy (whether or not having the force of law), (c) any change after the Closing Date in the enforcement or interpretation or administration of any of the foregoing by any Governmental

Authority charged with the enforcement or interpretation or administration thereof, including any guidance or request made a Governmental Authority (whether or not having the force of law), or (d) the compliance, application or implementation by any Indemnified Party (or any business office of the Indemnified Party) or the Indemnified Party's holding company with any of the foregoing subclauses (a), (b) or (c) or any Existing Law has or would have the effect of reducing the rate of return on the Indemnified Party's capital or on the capital of the Indemnified Party's holding company, if any, as a consequence of maintaining its commitment to purchase Notes or maintain its investment in a Note to a level below that which the Indemnified Party or the Indemnified Party's holding company could have achieved but for the occurrences set out in the foregoing subclauses (a), (b), (c) or (d) (taking into consideration the Indemnified Party's policies and the policies of the Indemnified Party's holding company with respect to capital adequacy) by an amount reasonably deemed by the Indemnified Party to be material, then upon written demand by the Indemnified Party, the Issuer shall be liable for such additional amount or amounts as will compensate the Indemnified Party or the Indemnified Party's holding company for any such reduction suffered. Payment of this indemnification shall be made in accordance with the priorities for distributions set forth in **Section 303** hereof after the Indemnified Party makes written demand therefor. Indemnification amounts shall not constitute a claim against the Issuer or the Collateral in the event such amounts are not paid in accordance with **Section 303** hereof. Without affecting its rights under this **Section 207** or any other provision hereof or the Indenture, the Indemnified Party agrees that if there is an increase in any cost to or reduction in any amount receivable by the Indemnified Party with respect to which the Issuer would be obligated to compensate the Indemnified Party pursuant to this **Section 207**, the Indemnified Party shall use reasonable efforts to select an alternative business office which would not result in any such increase in any cost to or reduction in any amount receivable by the Indemnified Party; *provided, however*, that the Indemnified Party shall not be obligated to select an alternative business office if the Indemnified Party determines that (i) as a result of such selection the Indemnified Party would be in violation of any applicable law, governmental rule or regulation or would incur material, additional costs or expenses, or (ii) such selection would be unavailable for regulatory reasons.

Section 208. Affected Parties.

(a) A certificate of an Indemnified Party setting forth the amount or amounts necessary to compensate such an Indemnified Party or its holding company, as the case may be, as specified in **Section 206** and/or **Section 207** and delivered to the Issuer shall be conclusive absent manifest error; provided that such certificate (i) sets forth in reasonable detail the amount or amounts payable to such Indemnified Party pursuant to such **Section 206** or **207**, (ii) explains the methodology used to determine such amount, (iii) states that the applicable increased costs or reductions were suffered no more than ninety (90) days (or, if the circumstances giving rise to such increased costs or reductions were retroactive, such period in excess of ninety (90) days as includes the period of retroactive effect) prior to the date of such certificate, and (iv) states that such amount is consistent with amounts that such Indemnified Party has required other similarly situated borrowers or obligors to pay with respect to such increased costs or reductions.

(b) Failure or delay on the part of any Indemnified Party to demand compensation pursuant to **Section 206** and/or **Section 207** shall not constitute a waiver of such Indemnified Party's right to demand such compensation, provided that the Issuer shall not be

required to compensate an Indemnified Party pursuant to such Sections (i) to the extent that such increased costs or reductions were suffered more than ninety (90) days prior to the date on which such Indemnified Party notifies the Issuer of the circumstances giving rise to such increased costs or reductions and of such Indemnified Party's intention to claim compensation therefor (except that, if the circumstances giving rise to such increased costs or reductions is retroactive, then the ninety (90) day period referred to above shall be extended to include the period of retroactive effect thereof) or (ii) if such Indemnified Party has not required other similarly situated borrowers or obligors to pay comparable amounts with respect to such increased costs or reductions.

(c) The Issuer may, at its sole expense and effort, upon not less than three Business Days prior written notice to any Indemnified Party that makes a demand pursuant to **Section 206** or **207** (each an "Affected Party"), require such Affected Party to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in the Indenture), all of its interests, rights and obligations under its Series 2012-1 Note to an assignee that shall assume such assigned obligations (which assignee may or may not be another Series 2012-1 Noteholder, if a Series 2012-1 Noteholder accepts such assignment, but is not required to be another Series 2012-1 Noteholder); *provided that* (A) such Affected Party shall have received payment of an amount equal to the outstanding principal of its Series 2012-1 Note, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (including any amounts that have been accrued pursuant to **Section 206** and/or **Section 207**, as applicable) and under the other Series 2012-1 Related Documents from the Issuer or the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Issuer (in the case of all other amounts); and (B) such assignment does not conflict with Applicable Law.

#### Section 209. Defaulting Noteholders.

(a) Adjustments. Notwithstanding anything to the contrary contained in any Series 2012-1 Related Document, if any Series 2012-1 Noteholder becomes a Defaulting Noteholder, then, until such time as that Series 2012-1 Noteholder is no longer a Defaulting Noteholder, to the extent permitted by applicable law:

(i) Waivers and Amendments. Notwithstanding anything to the contrary in any Series 2012-1 Related Document, a Series 2012-1 Noteholder that is then classified as Defaulting Noteholder shall not have any right to approve or disapprove any amendment, waiver or consent under any Series 2012-1 Related Document (and any amendment, waiver or consent which by its terms requires the consent of all Series 2012-1 Noteholders or each affected Series 2012-1 Noteholder may be effected with the consent of the applicable Series 2012-1 Noteholders other than Defaulting Noteholders), except that (A) the Series 2012-1 Note Commitment of any Defaulting Noteholder may not be increased or extended without the consent of such Series 2012-1 Noteholder and (B) any waiver, amendment or modification requiring the consent of all Series 2012-1 Noteholders or each affected Series 2012-1 Noteholder that by its terms affects any Defaulting Noteholder more adversely than other affected Series 2012-1 Noteholders shall require the consent of such Defaulting Noteholder.

(ii) Limited Right of Set-off. During the period from the Closing Date to the Conversion Date, any amounts on deposit in the Series 2012-1 Series Account which would otherwise be payable as principal, interest, fees or other amounts (whether payable

pursuant to **Section 303** or otherwise) to a Series 2012-1 Noteholder that is then classified as a Defaulting Noteholder, shall, in accordance with the written direction of the Issuer, be applied to fund to the Issuer any previously requested Series 2012-1 Advance in respect of which such Defaulting Noteholder has failed to fund its portion thereof as required by the terms of the Series 2012-1 Related Documents. Any payments, prepayments or other amounts paid or payable to a Defaulting Noteholder that are so applied shall be deemed paid to and redirected by such Defaulting Noteholder, and each Series 2012-1 Noteholder is hereby deemed to have irrevocably consented to this treatment.

(iii) **Unused Fees.** A Defaulting Noteholder shall not be entitled to receive any Unused Fee accrued during any period in which such Series 2012-1 Noteholder is a Defaulting Noteholder (and the Issuer shall not be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Noteholder).

(b) **Replacement of Defaulting Noteholder.** The Issuer may, at its sole expense and effort, upon not less than three Business Days prior written notice to a Defaulting Noteholder, require such Defaulting Noteholder to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in the Indenture), all of its interests, rights and obligations under its Series 2012-1 Note to an assignee that shall assume such assigned obligations (which assignee may or may not be another Series 2012-1 Noteholder, if a Series 2012-1 Noteholder accepts such assignment, but is not required to be another Series 2012-1 Noteholder); *provided that* (A) such Defaulting Noteholder shall have received payment of an amount equal to the outstanding principal of its Series 2012-1 Note, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Series 2012-1 Related Documents, excluding Breakage Costs, from the Issuer or the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Issuer (in the case of all other amounts), except to the extent that any Unused Fees are not due and payable to such Defaulting Noteholder pursuant to **Section 209(a)(iii)**; and (B) such assignment does not conflict with Applicable Law.

(c) **Defaulting Noteholder Cure.** If through the application of the provisions of **Section 209(a)(ii)** hereof or otherwise by the Defaulting Noteholder, a Defaulting Noteholder shall have fully funded all Series 2012-1 Advances that it has previously failed to fund, such Person shall cease to be classified as a Defaulting Noteholder.

### **ARTICLE III**

#### **Series 2012-1 Series Account and**

#### **Allocation and Application of Amounts Therein**

Section 301. **Series 2012-1 Series Account.** The Issuer shall establish on the Closing Date and maintain, so long as any Series 2012-1 Note is Outstanding, an Eligible Account with the Indenture Trustee which shall be designated as the Series 2012-1 Series Account, which account shall be held by the Indenture Trustee for the benefit of the Series 2012-1 Noteholders. All deposits of funds by or for the benefit of the Series 2012-1 Noteholders from the Trust Account and the Restricted Cash Account shall be accumulated in, and withdrawn from, the Series 2012-1 Series Account in accordance with the provisions of the Indenture and this Supplement. The Issuer hereby grants to the Indenture Trustee, for the benefit of the Series 2012-1 Noteholders, a security interest in the Series 2012-1 Series Account, all cash and Eligible Investments on deposit therein, all securities entitlement credited thereto, and income and proceeds of the foregoing.

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Section 302. Drawing Funds from the Restricted Cash Account.

(a) In the event that the Manager Report with respect to any Determination Date shall state that (or the Administrative Agent shall, pursuant to **Section 302(c)** of the Indenture, determine that) the funds on deposit in the Series 2012-1 Series Account will not be sufficient to make payment in full on the related Payment Date of the related Interest Payment then due for the Series 2012-1 Notes (the amount of such deficiency, the “**Permitted Interest Withdrawal**”), then the Indenture Trustee shall on such Determination Date draw on the Restricted Cash Account in an amount equal to the lesser of (x) the Permitted Interest Withdrawal, and (y) the amount then on deposit in the Restricted Cash Account.

(b) In the event that the Manager Report delivered with respect to the Determination Date immediately preceding the Series 2012-1 Legal Final Payment Date shall state that (or the Administrative Agent shall, pursuant to **Section 302(c)** of the Indenture, determine that) the funds on deposit in the Series 2012-1 Series Account will not be sufficient to make payment in full on the Series 2012-1 Legal Final Payment Date of the then Aggregate Series 2012-1 Note Principal Balance (the amount of such deficiency, the “**Permitted Principal Withdrawal**”), then the Indenture Trustee shall on such Determination Date draw on the Restricted Cash Account in an amount equal to the least of (w) the Aggregate Series 2012-1 Note Principal Balance, (x) the Permitted Principal Withdrawal, (y) the Maximum Principal Withdrawal Amount as calculated for Series 2012-1 and (z) the amount then on deposit in the Restricted Cash Account.

(c) Drawings will be made pursuant to **Section 302(a)** before any drawing is made on such date pursuant to **Section 302(b)**, and notice of each such drawing will be delivered to the Manager, by hand delivery or facsimile transmission. Any such funds actually received by the Indenture Trustee pursuant to **Section 302(a)** or **Section 302(b)** shall be used solely to make payments of the Series 2012-1 Note Interest Payment or the Aggregate Series 2012-1 Note Principal Balance, as the case may be.

Section 303. Distribution from Series 2012-1 Series Account. On each Payment Date, the Indenture Trustee shall distribute funds then on deposit in the Series 2012-1 Series Account in accordance with the provisions of either Part (I), (II) or (III) of this **Section 303**, in each case, subject to **Section 209**:

(I) If neither an Early Amortization Event nor an Event of Default shall have occurred and be continuing with respect to any Series of Notes:

(1) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its Pro Rata portion of the Interest Payment allocated to Series 2012-1, as follows: (A) such Holder’s Pro Rata portion of the Series 2012-1 Note Interest Payment (exclusive of Default Interest, Warehouse Note Increased Interest and Step Up Warehouse Fees) for such Payment Date, plus (B) such Holder’s Pro Rata portion of the Unused Fee for such Payment Date;



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(2) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its Pro Rata portion of the Minimum Principal Payment Amount then due and payable to Series 2012-1 Noteholders on such Payment Date;

(3) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its Pro Rata portion of the Scheduled Principal Payment Amount then due and payable to Series 2012-1 Noteholders on such Payment Date;

(4) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its Pro Rata portion (if any) of the Supplemental Principal Payment Amount then due and payable to Series 2012-1 Noteholders on such Payment Date;

(5) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date and each other Indemnified Party, its *pari passu* and *pro rata* portion of an amount equal to Taxes, Other Taxes, Increased Costs, Breakage Costs, Step Up Warehouse Fee, Warehouse Note Increased Interest, indemnities and other amounts (including Default Interest) then due and payable to the Series 2012-1 Noteholders and each other Indemnified Party pursuant to the Series 2012-1 Related Documents; and

(6) To the Issuer, any remaining amounts then on deposit in the Series 2012-1 Series Account.

(II) If an Early Amortization Event shall have occurred and be continuing with respect to any Series but no Event of Default shall have occurred and be continuing with respect to any Series:

(1) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its Pro Rata portion of the Interest Payment allocated to Series 2012-1, as follows: (A) such Holder's Pro Rata portion of the Series 2012-1 Note Interest Payment (exclusive of Default Interest, Warehouse Note Increased Interest and Step Up Warehouse Fees) for such Payment Date, plus (B) such Holder's Pro Rata portion of the Unused Fee for such Payment Date;

(2) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its Pro Rata portion of the Minimum Principal Payment Amount then due and payable to Series 2012-1 on such Payment Date;

(3) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its Pro Rata portion of the Scheduled Principal Payment Amount then due and payable to Series 2012-1 on such Payment Date;

(4) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its Pro Rata portion of the then Aggregate Series 2012-1 Note Principal Balance until the Aggregate Series 2012-1 Note Principal Balance has been reduced to zero;

(5) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date and each other Indemnified Party, its Pro Rata portion of an amount equal to Taxes, Other Taxes, Increased Costs, Breakage Costs, Step Up Warehouse Fee, Warehouse Note Increased Interest, indemnities and other amounts (including Default Interest) then due and payable to Series 2012-1 Noteholders and each Indemnified Party pursuant to the Series 2012-1 Related Documents; and

(6) After application of the amounts required to be paid pursuant to **Section 302** of the Indenture, to the Issuer, any remaining amounts then on deposit in the Series 2012-1 Series Account.

(III) If an Event of Default shall have occurred and be continuing with respect to any Series:

(1) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date, an amount equal to its Pro Rata portion of the Interest Payment allocated to Series 2012-1, as follows: (A) such Holder's Pro Rata portion of the Series 2012-1 Note Interest Payment (exclusive of Default Interest, Warehouse Note Increased Interest and Step Up Warehouse Fees) for such Payment Date, plus (B) such Holder's Pro Rata portion of the Unused Fee for such Payment Date;

(2) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date its Pro Rata portion of an amount equal to the then Aggregate Series 2012-1 Note Principal Balance until the Series 2012-1 Notes are paid in full;

(3) To each Holder of a Series 2012-1 Note on the immediately preceding Record Date and each other Indemnified Party, its Pro Rata portion of an amount equal to Taxes, Other Taxes, Increased Costs, Breakage Costs, Step Up Warehouse Fee, Warehouse Note Increased Interest, indemnities and other amounts (including Default Interest) then due and payable to the Series 2012-1 Noteholders and each other Indemnified Party pursuant to the Series 2012-1 Related Documents; and

(4) After application of the amounts required to be paid pursuant to **Section 302** of the Indenture, to the Issuer, any remaining amounts then on deposit in the Series 2012-1 Series Account.

#### **ARTICLE IV** **Additional Covenants and Agreements**

In addition to the covenants set forth in Article VI of the Indenture, the Issuer hereby makes the following additional covenants for the benefit of the Series 2012-1 Noteholders:

Section 401. Rule 144A. So long as any of the Series 2012-1 Notes are "**restricted securities**" within the meaning of Rule 144(a)(3) under the Securities Act, the Issuer shall, unless it becomes subject to and complies with the reporting requirements of Section 13 and 15(d) of the Exchange Act, or Rule 12g3-2(b) thereunder, provide to any Series 2012-1 Noteholder of such restricted securities, or to any prospective Series 2012-1 Noteholder of such

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restricted securities designated by a Series 2012-1 Noteholder, upon the request of such Series 2012-1 Noteholder or prospective Series 2012-1 Noteholder, any information required to be provided by Rule 144A(d)(4) under the Securities Act.

Section 402. Depreciation Policy. For purposes of the calculation of the Asset Base, the Issuer will not, without obtaining in each such instance the prior written consent of all of the Series 2012-1 Noteholders (other than any Defaulting Noteholders), (i) increase the assumed useful life of a Managed Container to more than twelve (12) years, (ii) increase the residual value of a type of Managed Container to an amount in excess of the Residual Value for such type of Managed Container that is set forth on Exhibit B to the Indenture, or (iii) otherwise revise the Depreciation Policy with respect to the Managed Containers in such a way as to reduce the amount of depreciation expense that would be recorded in any year from that which would have been recorded pursuant to the Depreciation Policy.

Section 403. Perfection Requirements. The Issuer will not (a) change any of (i) its corporate name or (ii) the name under which it does business or (b) amend any provision of its certificate of formation or operating agreement or become organized under the laws of any other jurisdiction without the prior written consent of the Control Party.

Section 404. United States Federal Income Tax Election. The Issuer shall not make an election to be classified as an association taxable as a corporation pursuant to Section 301.7701-3 of the United States Treasury Regulations.

Section 405. OFAC Matters. The Issuer shall not in a manner which would violate the laws of the United States, other than pursuant to a license issued by OFAC (i) lease, or consent to any sublease of, any of the Containers to any Person that is a Prohibited Person or (ii) derive any of its assets or operating income from investments in or transactions with any such Prohibited Person. If the Issuer obtains knowledge that a Container is subleased to a Prohibited Person or located or used in a Prohibited Jurisdiction in a manner which would violate the laws of the United States (other than pursuant to a license issued by OFAC), then the Issuer shall, within ten (10) Business Days after obtaining knowledge thereof, remove such Container from the Asset Base for so long as such condition continues.

Section 406. Consent to Series Issuance. The Issuer shall not issue any additional Series of Notes without obtaining the prior written consent of, with respect to any Series of Senior Notes, the Majority of Holders and, with respect to any Series of Subordinate Notes, the Holders of all of the Series 2012-1 Notes.

## **ARTICLE V**

### **Conditions of Effectiveness and Future Lending**

Section 501. Effectiveness of Supplement. The effectiveness hereof is subject to the condition precedent that the Indenture Trustee shall have received all of the following, each duly executed and dated as of the Closing Date, in form and substance satisfactory to all of the initial Series 2012-1 Noteholders and each (except for the Series 2012-1 Notes, of which only the originals shall be signed) in sufficient number of signed counterparts to provide one for each Series 2012-1 Noteholder:

(a) Series 2012-1 Notes. Separate Series 2012-1 Notes executed by the Issuer in favor of each Series 2012-1 Noteholder in the stated maximum principal amount equal to the Series 2012-1 Note Commitment of such Series 2012-1 Noteholder.

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(b) Certificate(s) of Secretary or Assistant Secretary or Officer. Separate certificates executed by the corporate secretary, assistant secretary or authorized officer of each of the Manager and the Issuer, dated the Closing Date, certifying (i) that the respective company has the authority to execute and deliver, and perform its respective obligations under each of the Series 2012-1 Related Documents to which it is a party, and (ii) that attached are true, correct and complete copies of the Memorandum of Association, Certificate of Incorporation, bye-laws, board resolutions and incumbency certificates of the related company in form and substance satisfactory to each Deal Agent as to such matters as the Deal Agent shall reasonably require.

(c) Security Documents. This Supplement and a control agreement with respect to the Series 2012-1 Series Account, each in form and substance satisfactory to all of the initial Series 2012-1 Noteholders, shall have been executed and delivered by the Issuer, and all other parties thereto, together with all UCC financing statements, documents of similar import in other jurisdictions, and other documents reasonably requested by any Deal Agent.

(d) Opinions of Counsel. Opinions from counsel to the Issuer and counsel to the Manager (and reliance letters regarding existing opinions for Series 2012-1 Noteholders that require such reliance letters) each in form and in substance satisfactory to each Deal Agent as to such matters as it shall reasonably require including, without limitation, that the Issuer has granted a first priority perfected security interest in the Collateral to the Indenture Trustee.

(e) Certificate as to Containers. A certificate from the Manager certifying that it is managing all of the Containers in accordance with the Management Agreement in satisfactory form shall have been duly executed and delivered.

(f) Enforceability, True Sale and Nonconsolidation Opinions. Each of Conyers Dill & Pearman Limited and Morrison & Foerster LLP shall have delivered its opinions as to enforceability, true sale and non-consolidation in form and substance acceptable to the Deal Agents.

(g) Fees. The Issuer shall have (A) paid all fees to each Deal Agent in accordance with its respective Fee Letter or (B) authorized each Deal Agent to offset and retain the amount of such fees from the Series 2012-1 Advance made on the Closing Date.

(h) Termination of Funding Commitments under Series 2010-1 Notes. All funding commitments of each Series 2010-1 Noteholders and its Related Group under the Series 2010-1 Supplement issued by TMCL shall have been terminated.

(i) Opinion of Counsel to the Indenture Trustee. An opinion of counsel to the Indenture Trustee as to the due organization of the Indenture Trustee, the enforceability of the Indenture and as to such other matters as each Deal Agent may reasonably request.

Section 502. Subsequent Advances on Series 2012-1 Notes. The obligation of a Series 2012-1 Noteholder to make any Series 2012-1 Advance on the Series 2012-1 Note pursuant to its Series 2012-1 Note Commitment under this Supplement and the Series 2012-1 Note Purchase Agreement is subject to the following further conditions precedent:

(a) Default. Before and after giving effect to such Series 2012-1 Advance, no Event of Default shall have occurred and be continuing (or would occur with the giving of notice or the passage of time or both).

(b) Early Amortization Event. Before and after giving effect to such advance, no Early Amortization Event shall have occurred and be continuing (or would occur with the giving of notice or the passage of time or both) unless such Series 2012-1 Advance has been approved by each Series 2012-1 Noteholder (other than a then Defaulting Noteholder).

(c) Certification. The Issuer shall have delivered to the Deal Agents a compliance certificate, signed by an officer of Issuer, certifying that (A) the Issuer has complied with all of the conditions precedent set forth in **Sections 501 and 502** hereof; (B) all of the representations and warranties of the Issuer, the Seller and the Manager contained in any of the Series 2012-1 Related Documents are true and correct in all material respects as of the date of such Series 2012-1 Advance, except to the extent such representations and warranties specifically relate to an earlier date, in which event they shall be true, correct and complete in all material respects as of such earlier date; and (C) all of the conditions precedent to the making of such Series 2012-1 Advance have been satisfied.

(d) Asset Base Report. The Issuer shall have delivered to each Deal Agent a duly completed and executed Asset Base Report, determined after giving effect to any Eligible Containers to be acquired with the proceeds of such Series 2012-1 Advance, which demonstrates that, after giving effect to such Series 2012-1 Advance, the sum of the then unpaid principal balance of all Series of Notes then Outstanding (calculated after giving effect to the requested Series 2012-1 Advance) does not exceed the Asset Base.

(e) Conversion Date. The Conversion Date shall not have occurred, unless such Series 2012-1 Advance has been approved by each Series 2012-1 Noteholder (other than a then Defaulting Noteholder).

## **ARTICLE VI**

### **Representations and Warranties**

To induce the Series 2012-1 Noteholders to purchase the Series 2012-1 Notes hereunder, the Issuer hereby represents and warrants to the Series 2012-1 Noteholders that:

Section 601. Existence. The Issuer is a company duly organized, validly existing and in compliance under the laws of Bermuda. The Issuer is in good standing and is duly qualified to do business in each jurisdiction where the failure to do so would have a material adverse effect upon the Issuer and in each jurisdiction in which a failure to so qualify would materially and adversely effect the ability of the Indenture Trustee to enforce its security interest in the Collateral.

Section 602. Authorization. The Issuer has the power and is duly authorized to execute and deliver this Supplement and the other Series 2012-1 Related Documents to which it is a

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party. The Issuer is and will continue to be duly authorized to borrow monies hereunder; and the Issuer is and will continue to be authorized to perform its obligations under this Supplement and under the other Series 2012-1 Related Documents. The execution, delivery and performance by the Issuer hereof and the other Series 2012-1 Related Documents to which it is a party and the borrowings hereunder do not and will not require any consent or approval of any Governmental Authority, stockholder or any other Person which has not already been obtained.

Section 603. No Conflict, Legal Compliance. The execution, delivery and performance hereof and each of the other Series 2012-1 Related Documents and the execution, delivery and payment of the Series 2012-1 Notes will not: (a) contravene any provision of Issuer's memorandum of association or bye-laws; (b) contravene, conflict with or violate any Applicable Law or regulation, or any order, writ, judgment, injunction, decree, determination or award of any Governmental Authority; or (c) violate or result in the breach of, or constitute a default under the Indenture, the Series 2012-1 Related Documents, any other indenture or other loan or credit agreement, or other agreement or instrument to which the Issuer is a party or by which the Issuer, or its property and assets may be bound or affected. Issuer is not in violation or breach of or default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any contract, agreement, lease, license, indenture or other instrument to which it is a party.

Section 604. Validity and Binding Effect. This Supplement is, and each Series 2012-1 Related Document to which Issuer is a party, when duly executed and delivered, will be, the legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or by general principles of equity limiting the availability of equitable remedies.

Section 605. Financial Statements. Since the date of the most recent audited financial statements delivered pursuant to Section 626 of the Indenture, there has been no Material Adverse Change in the financial condition of any of the Issuer, either Seller or the Manager.

Section 606. Executive Offices. The Issuer's only "**place of business**" (within the meaning of 9-307 of the UCC) is located at Century House, 16 Par-la-Ville Road, Hamilton HM HX, Bermuda. The Issuer does not maintain an office or assets in the United States, other than (i) the Trust Account, the Restricted Cash Account and the Series Accounts and (ii) off-hire containers located in depots in the United States and containers described in **Section 606(g)** of the Indenture.

Section 607. No Agreements or Contracts. The Issuer is not now and has not been a party to any contract or agreement (whether written or oral) other than the Related Documents.

Section 608. Consents and Approvals. No approval, authorization or consent of any trustee or holder of any Indebtedness or obligation of Issuer or of any other Person under any agreement, contract, lease or license or similar document or instrument to which Issuer is a party or by which Issuer is bound, is required to be obtained by Issuer in order to make or consummate the transactions contemplated under the Series 2012-1 Related Documents, except for those approvals, authorizations and consents that have been obtained on or prior to the Closing Date. All consents and approvals of, filings and registrations with, and other actions in respect of, all

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Governmental Authorities required to be obtained by Issuer in order to make or consummate the transactions contemplated under the Series 2012-1 Related Documents have been, or prior to the time when required will have been, obtained, given, filed or taken and are or will be in full force and effect.

Section 609. Margin Regulations. Issuer does not own any “**margin security**”, as that term is defined in Regulation U of the Federal Reserve Board, and the proceeds of the Series 2012-1 Notes issued under this Supplement will be used only for the purposes contemplated hereunder. None of such proceeds will be used, directly or indirectly, for the purpose of purchasing or carrying any margin security, for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry any margin security or for any other purpose which might cause any of the loans under this Supplement to be considered a “**purpose credit**” within the meaning of Regulations T, U and X. Issuer will not take or permit any agent acting on its behalf to take any action which might cause this Supplement or any document or instrument delivered pursuant hereto to violate any regulation of the Federal Reserve Board.

Section 610. Taxes. All federal, state, local and foreign tax returns, reports and statements required to be filed by Issuer have been filed with the appropriate Governmental Authorities, and all Taxes, Other Taxes and other impositions shown thereon to be due and payable by Issuer have been paid prior to the date on which any fine, penalty, interest or late charge may be added thereto for nonpayment thereof, or any such fine, penalty, interest, late charge or loss has been paid, or Issuer is contesting its liability therefor in good faith and has fully reserved all such amounts according to GAAP in the financial statements provided to the Noteholders pursuant to **Section 626** of the Indenture. Issuer has paid when due and payable all material charges upon the books of Issuer and no Governmental Authority has asserted any Lien against Issuer with respect to unpaid Taxes or Other Taxes. Proper and accurate amounts have been withheld by Issuer from its employees for all periods in full and complete compliance with the tax, social security and unemployment withholding provisions of applicable federal, state, local and foreign law and such withholdings have been timely paid to the respective Governmental Authorities.

Section 611. Other Regulations. Issuer is not an “**investment company**,” or an “**affiliated person**” of, or a “**promoter**” or “**principal underwriter**” for, an “**investment company**,” as such terms are defined in the Investment Company Act of 1940, as amended. The issuance of the Series 2012-1 Notes hereunder and the application of the proceeds and repayment thereof by Issuer and the performance of the transactions contemplated by this Supplement and the other Series 2012-1 Related Documents will not violate any provision of the Investment Company Act, or any rule, regulation or order issued by the SEC thereunder.

Section 612. Solvency and Separateness.

- (i) The capital of the Issuer is adequate for the business and undertakings of the Issuer.
- (ii) Other than with respect to the transactions contemplated hereby, the Issuer is not engaged in any business transactions with the Sellers or the Manager except as permitted by the Management Agreement, the Container Transfer Agreement or the Container Sale Agreement.

(iii) The Bye-laws of Issuer provide that Issuer shall have seven directors, one of which must be an Independent Director (as defined therein). Issuer's Bye-laws further require the affirmative vote of all its members and directors (including the Independent Director) for (a) the amalgamation, consolidation or merger of Issuer with or into any other entity, (b) the sale of all or substantially all of Issuer's assets, (c) the discontinuance of Issuer in Bermuda and continuance of Issuer in a jurisdiction outside Bermuda, (d) the institution of any proceeding by Issuer seeking liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property, (e) the authorization by Issuer of, or consent by Issuer to, any such proceeding, and (f) the winding up or termination of Issuer's corporate existence.

(iv) The Issuer's funds and assets are not, and will not be, commingled with those of the Sellers or the Manager, except as permitted by the Management Agreement.

(v) The bye-laws of the Issuer require it to maintain correct and complete books and records of account, and Bermuda law requires it to maintain minutes of the meetings and other proceedings of its members.

(vi) The Issuer is not insolvent under the Insolvency Law and will not be rendered insolvent by the transactions contemplated by the Series 2012-1 Related Documents and after giving effect to such transactions, the Issuer will not be left with an unreasonably small amount of capital with which to engage in its business nor will the Issuer have intended to incur, or believe that it has incurred, debts beyond its ability to pay such debts as they mature. The Issuer does not contemplate the commencement of insolvency, bankruptcy, liquidation or consolidation Proceedings or the appointment of a receiver, liquidator, trustee or similar official in respect of the Issuer or any of its assets.

Section 613. Survival of Representations and Warranties. So long as any of the Series 2012-1 Notes shall be Outstanding and until payment and performance in full of the Aggregate Outstanding Obligations, the representations and warranties contained herein shall have a continuing effect as having been true when made.

Section 614. No Default. No Event of Default or Early Amortization Event (or event or condition which with the giving of notice or passage of time or both would become an Event of Default or Early Amortization Event) has occurred and is continuing.

Section 615. Litigation and Contingent Liabilities. No claims, litigation, arbitration Proceedings or governmental Proceedings by any Governmental Authority are pending or threatened against or are affecting the Issuer or any of its Affiliates the results of which might interfere with the consummation of any of the transactions contemplated by this Supplement or any document issued or delivered in connection herewith.



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Section 616. Subsidiaries. Issuer has had no subsidiaries.

Section 617. No Partnership. Issuer is not a partner or joint venturer in any partnership or joint venture.

Section 618. Pension and Welfare Plans. No accumulated funding deficiency (as defined in Section 412 of the Code or Section 302 of ERISA) or reportable event (within the meaning of Section 4043 of ERISA), has occurred with respect to any Plan of the Issuer or any ERISA Affiliate. The present value of all benefit liabilities under all Plans of the Issuer or any ERISA Affiliate subject to Title IV of ERISA, as defined in Section 4001(a)(16) of ERISA, exceeds the fair market value of all assets of Plans subject to Title IV of ERISA (determined as of the most recent valuation date for such Plan on the basis of assumptions prescribed by the Pension Benefit Guaranty Corporation for the purpose of Section 4044 of ERISA), by no more than \$1.9 million. Neither Issuer nor any ERISA Affiliate is subject to any present or potential withdrawal liability pursuant to Title IV of ERISA and no multiemployer plan (with the meaning of Section 4001(a)(3) of ERISA) to which the Issuer or any ERISA Affiliate has an obligation to contribute or any liability, is or is likely to be disqualified for tax purposes, in reorganization within the meaning of Section 4241 of ERISA or Section 418 of the Code) or is insolvent (as defined in Section 4245 of ERISA). No liability (other than liability to make periodic contributions to fund benefits) with respect to any Plan of Issuer, or Plan subject to Title IV of ERISA or any ERISA Affiliate, has been, or is expected to be, incurred by Issuer or an ERISA Affiliate, either directly or indirectly. All Plans of Issuer are in material compliance with ERISA and the Code. No lien under Section 412 of the Code or 302(f) of ERISA or requirement to provide security under the Code or ERISA has been or is reasonably expected by Issuer to be imposed on its assets. The Issuer does not have any obligation under any collective bargaining agreement. As of the Closing Date, the Issuer is not an “**employee benefit plan**” with the meaning of ERISA or a “**plan**” within the meaning of Section 4975 of the Code and assets of the Issuer do not constitute “**plan assets**” within the meaning of Section 2510.3-101 of the regulations of the Department of Labor.

Section 619. Ownership of Issuer. The Issuer was formed by TMCL as a direct, wholly-owned subsidiary of TMCL. On the Closing Date, following the issuance of the Series 2012-1 Notes, the Issuer will be a wholly-owned subsidiary of TL.

Section 620. Use of Proceeds. The Issuer shall use the proceeds from the issuance of the Series 2012-1 Notes (i) to acquire Containers and other Collateral including the acquisition on the Closing Date of Containers from TMCL for a cash purchase price sufficient to repay in full the Series 2010-1 Notes issued by TMCL, (ii) to pay the costs of issuance of the Series 2012-1 Notes, (iii) to repay other indebtedness, and (iv) for general corporate purposes. For avoidance of doubt, the Issuer may use the proceeds of any Series 2012-1 Advance to make payments on, or in respect of, any other Series of Notes.

Section 621. Security Interest Representations.

(a) The Indenture creates a valid and continuing security interest (as defined in the applicable UCC) in the Containers and the proceeds thereof in favor of the Indenture Trustee, which security interest is prior to all other Liens, and is enforceable as such against creditors of and purchasers from the Issuer.

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(b) The Containers constitutes “goods” within the meaning of the applicable UCC.

(c) The Issuer owns and has good and marketable title to the Containers free and clear of any Lien, claim, or encumbrance of any Person.

(d) The Issuer has caused or will have caused, within ten days, the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under applicable law in order to perfect the security interest in the Containers and the proceeds thereof granted to the Indenture Trustee under the Indenture.

(e) Other than the security interest granted to the Indenture Trustee pursuant to the Indenture, the Issuer has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Containers or the proceeds thereof. The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Containers or the proceeds thereof other than any financing statement relating to the security interest granted to the Indenture Trustee under the Indenture or that has been terminated. The Issuer is not aware of any judgment or tax lien filings against the Issuer.

(f) No creditor of the Issuer other than Indenture Trustee has in its possession any goods that constitute or evidence the Containers or the proceeds thereof.

(g) The Indenture creates a valid and continuing security interest (as defined in the applicable UCC) in the Trust Account, the Restricted Cash Account and the Series 2012-1 Series Account in favor of the Indenture Trustee, which security interest is prior to all other Liens, and is enforceable as such against creditors of and purchasers from Issuer.

(h) All Eligible Investments have been and will have been credited to one of the Trust Account, the Restricted Cash Account and the Series 2012-1 Series Account. The securities intermediary for each Trust Account, the Restricted Cash Account and the Series 2012-1 Series Account has agreed to treat all assets credited to the Trust Account, the Restricted Cash Account and the Series 2012-1 Series Account as “financial assets” within the meaning of the UCC.

(i) The Issuer owns and has good and marketable title to each of the Trust Account, the Restricted Cash Account, the Series 2012-1 Series Account and the Eligible Investments credited thereto (collectively, the “Securities Entitlements Collateral”) free and clear of any Lien, claim, or encumbrance of any Person.

(j) The Issuer has received all consents and approvals required by the terms of the Eligible Investments to the transfer to the Indenture Trustee all of its interest and rights in the Eligible Investments.

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(k) The Issuer has delivered to Indenture Trustee a fully executed agreement pursuant to which the securities intermediary has agreed to comply with all instructions originated by the Indenture Trustee relating to the Trust Account, the Restricted Cash Account and the Series 2012-1 Series Account without further consent by the Issuer; or:

(l) Other than the security interest granted to the Indenture Trustee pursuant to the Indenture, the Issuer has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the Securities Entitlement Collateral. The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the Securities Entitlement Collateral other than any financing statement relating to the security interest granted to the Indenture Trustee hereunder or that has been terminated.

(m) The Trust Account, the Restricted Cash Account and the Series 2012-1 Series Account are not in the name of any person other than the Issuer or the Indenture Trustee. The Issuer has not consented to the securities intermediary of any Trust Account, the Restricted Cash Account and the Series 2012-1 Series Account to comply with entitlement orders of any person other than the Indenture Trustee.

(n) The Indenture creates a valid and continuing security interest (as defined in the applicable UCC) in the Issuer's contractual rights under any Interest Rate Hedge Agreement, the Contribution and Sale Agreement and the Management Agreement (collectively, the "General Intangible Collateral") in favor of the Indenture Trustee, which security interest is prior to all other Liens, and is enforceable as such against creditors of and purchasers from the Issuer.

(o) The Issuer's contractual rights under any Interest Rate Hedge Agreement, the Contribution and Sale Agreement and the Management Agreement constitutes "general intangibles" within the meaning of the applicable UCC.

(p) The Issuer owns and has good and marketable title to the General Intangible Collateral free and clear of any Lien, claim, or encumbrance of any Person.

(q) The Issuer has received all consents and approvals required by the terms of the General Intangible Collateral to pledge such General Intangibles Collateral to the Indenture Trustee.

(r) The Issuer has caused or will have caused, within ten days, the filing of all appropriate financing statements in the proper filing office in the appropriate jurisdictions under applicable law in order to perfect the security interest in the General Intangible Collateral granted to the Indenture Trustee.

(s) Other than the security interest granted to the Indenture Trustee pursuant to the Indenture, the Issuer has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any of the General Intangible Collateral. The Issuer has not authorized the filing of and is not aware of any financing statements against the Issuer that include a description of collateral covering the General Intangible Collateral other than any financing statement relating to the security interest granted to the Indenture Trustee hereunder or that has been terminated. The Issuer is not aware of any judgment or tax lien filings against the Issuer.

The representations and warranties set forth in this **Section 621** shall survive until this Supplement is terminated in accordance with its terms and the terms of the Indenture. Any breaches of the representations and warranties set forth in this **Section 621** may be waived by the Indenture Trustee, only with the prior written consent of the Control Party, and satisfaction of the Rating Agency Condition.

**ARTICLE VII**  
**Miscellaneous Provisions**

Section 701. Ratification of Indenture. As supplemented by this Supplement, the Indenture is in all respects ratified and confirmed and the Indenture as so supplemented by this Supplement shall be read, taken and construed as one and the same instrument.

Section 702. Counterparts. This Supplement may be executed in two or more counterparts, and by different parties on separate counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Delivery of an executed counterpart hereof by facsimile or by electronic means shall be equally effective as the delivery of an originally executed counterpart.

Section 703. Governing Law. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT OTHERWISE WITHOUT REFERENCE TO ITS CONFLICTS OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

Section 704. Notices. All demands, notices and communications hereunder shall be in writing, personally delivered, or by facsimile (with subsequent telephone confirmation of receipt thereof), or sent by internationally recognized overnight courier service, (a) in the case of the Indenture Trustee, at the following address: Sixth Street and Marquette Avenue, MAC N9311-161, Minneapolis, Minnesota, 55479, Attention: Corporate Trust Services/Asset-Backed Administration, and (b) in the case of the Issuer, at the following address: Century House, 16 Par-la-Ville Road, Hamilton HM HX, Bermuda, Telephone: (441) 292-2487, Facsimile: (441) 295-4164, Attention: Executive Vice President - Asset Management, with a copy to each: (i) Textainer Equipment Management Limited at its address at Century House, 16 Par-la-Ville Road, Hamilton HM HX, Bermuda, Telephone: (441) 292-2487, Facsimile: (441) 295-4164, Attention: Executive Vice President - Asset Management, and (ii) Textainer Equipment Management (U.S.) Limited at its address at 650 California Street, 16th floor, San Francisco, CA 94108, Telephone: (415) 658-8363, Facsimile: (415) 434-0599, Attention: Executive Vice President - Asset Management, or at such other address as shall be designated by such party in a written notice to the other parties. Any notice required or permitted to be given to a Noteholder shall be given by certified first class mail, postage prepaid (return receipt requested), or by courier, or by facsimile, with subsequent telephone confirmation of receipt thereof, in each case at the address of such Holder as shown in the Note Register or to the telephone and fax number

furnished by such Noteholder. Notice shall be effective and deemed received (a) upon receipt, if sent by courier or U.S. mail, (b) upon receipt of confirmation of transmission, if sent by facsimile, or (c) when delivered, if delivered by hand.

Section 705. Amendments and Modifications.

(a) Subject to **Section 209(a)(i)**, the terms hereof may be waived, modified, or amended only in a written instrument signed by each of the Issuer, the Control Party and the Indenture Trustee (except with respect to the matters set forth in **Section 1001(a)** of the Indenture, in the case of which any such waiver, modification or amendment shall be made subject to the terms of such **Section 1001**). Any amendment to or modification or waiver hereof shall be deemed a supplemental indenture subject to **Sections 1001** or **1002** of the Indenture. Subject to **Section 209(a)(i)**, the Series 2012-1 Note Commitment of an individual Series 2012-1 Noteholder may only be increased and the Conversion Date may only be extended, and the Series 2012-1 Note Purchase Agreement may only be amended, in accordance with the provisions of **Section 9.1** of the Series 2012-1 Note Purchase Agreement. In addition, subject to **Section 209(a)(i)**, any waiver of any conditions precedent set forth in **Article V** hereof or a reduction, modification or amendment of any indemnification or Breakage Costs or amounts under **Sections 205, 206** and **207** owing to any Series 2012-1 Noteholder shall require the consent of each affected Series 2012-1 Noteholder.

(b) Promptly after the execution by the Issuer and the Indenture Trustee of any written instrument pursuant to this Section, the Indenture Trustee shall mail to the Noteholders, Deal Agents, the Administrative Agent, and each Interest Rate Hedge Provider, a copy of such Supplement. Any failure of the Indenture Trustee to mail such copy, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplement.

Section 706. Consent to Jurisdiction. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST THE ISSUER ARISING OUT OF OR RELATING TO THIS SUPPLEMENT, OR ANY TRANSACTION CONTEMPLATED HEREBY, MAY BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, STATE OF NEW YORK AND THE ISSUER HEREBY WAIVES ANY OBJECTION WHICH 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 SUPPLEMENT, THE ISSUER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING. THE ISSUER HEREBY IRREVOCABLY APPOINTS AND DESIGNATES NATIONAL CORPORATE RESEARCH LTD. HAVING AN ADDRESS AT 10 E. 40TH STREET, 10TH FLOOR, NEW YORK, NY 10016, ITS TRUE AND LAWFUL ATTORNEY-IN-FACT AND DULY AUTHORIZED AGENT FOR THE LIMITED PURPOSE OF ACCEPTING SERVICE OF LEGAL PROCESS AND THE ISSUER AGREES THAT SERVICE OF PROCESS UPON SUCH PARTY SHALL CONSTITUTE PERSONAL SERVICE OF SUCH PROCESS ON SUCH PERSON. THE ISSUER SHALL MAINTAIN THE DESIGNATION AND APPOINTMENT OF SUCH AUTHORIZED AGENT UNTIL ALL AMOUNTS PAYABLE UNDER THIS SUPPLEMENT SHALL HAVE BEEN PAID IN FULL. IF SUCH AGENT SHALL CEASE TO SO ACT, THE ISSUER SHALL IMMEDIATELY DESIGNATE AND APPOINT ANOTHER SUCH AGENT SATISFACTORY TO THE INDENTURE TRUSTEE AND SHALL PROMPTLY DELIVER TO THE INDENTURE TRUSTEE EVIDENCE IN WRITING OF SUCH OTHER AGENT'S ACCEPTANCE OF SUCH APPOINTMENT.

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Section 707. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, AS AGAINST THE OTHER PARTIES 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 SUPPLEMENT OR ANY OTHER SERIES 2012-1 RELATED DOCUMENT, INCLUDING IN RESPECT OF THE NEGOTIATION, ADMINISTRATION OR ENFORCEMENT HEREOF OR THEREOF.

Section 708. Successors. This Supplement shall inure to the benefit of and be binding upon the Issuer, the Indenture Trustee and, by its acceptance of any Series 2012-1 Note or any legal or beneficial interest therein, each Series 2012-1 Noteholder and each of such Person's successors and assigns.

Section 709. Nonpetition Covenant. Each Series 2012-1 Noteholder by its acquisition of a Series 2012-1 Note shall be deemed to covenant and agree, that it will not institute against the Issuer any bankruptcy, reorganization, arrangement insolvency or liquidation Proceedings, or other Proceedings under any federal or state bankruptcy or similar law, at any time other than on a date which is at least one (1) year and one (1) day after the last date on which any Note of any Series was Outstanding.

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IN WITNESS WHEREOF, the Issuer and the Indenture Trustee have caused this Supplement to be duly executed and delivered by their respective officers thereunto duly authorized, all as of the day and year first above written.

TEXTAINER MARINE CONTAINERS II LIMITED

By Continental Management Limited, its Assistant Secretary

By: /s/ Christopher C. Morris

Name: Christopher C. Morris

Title: Director

**Series 2012-1 Supplement**

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WELLS FARGO BANK, NATIONAL ASSOCIATION, as  
Indenture Trustee

By: /s/ Kristen L. Puttin

Name: Kristen L. Puttin

Title: Vice President

**Series 2012-1 Supplement**



**CREDIT AGREEMENT**

**Dated as of September 24, 2012**

**among**

**TEXTAINER LIMITED,**

**as the Borrower,**

**TEXTAINER GROUP HOLDINGS LIMITED,**

**as the Guarantor,**

**BANK OF AMERICA, N.A.,**

**as Administrative Agent and L/C Issuer,**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**

**as Syndication Agent,**

**ROYAL BANK OF CANADA and UNION BANK, N.A.,**

**as Co-Documentation Agents**

**and**

**THE OTHER LENDERS PARTY HERETO**

**Arranged By:**

**BANK OF AMERICA MERRILL LYNCH**

**And**

**WELLS FARGO SECURITIES, LLC**

**As Joint Lead Arrangers and Joint Book Managers**

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## CREDIT AGREEMENT

This CREDIT AGREEMENT (this “*Credit Agreement*” or “*Agreement*”) is entered into as of September 24, 2012, among TEXTAINER LIMITED, an exempted company with limited liability incorporated under the laws of Bermuda (the “*Borrower*”), TEXTAINER GROUP HOLDINGS LIMITED, an exempted company with limited liability incorporated under the laws of Bermuda (the “*Guarantor*”), each lender from time to time party hereto (collectively, the “*Lenders*” and individually, a “*Lender*”), and BANK OF AMERICA, N.A., as Administrative Agent and L/C Issuer.

The Borrower has requested that the Lenders provide a revolving credit facility, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

### ARTICLE I

#### DEFINITIONS AND ACCOUNTING TERMS

**1.01 Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

“*Administrative Agent*” means Bank of America, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“*Administrative Agent’s Office*” means the Administrative Agent’s address and, as appropriate, account as set forth on **Schedule 11.02**, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“*Administrative Questionnaire*” means an Administrative Questionnaire in substantially the form of **Exhibit E-2** or any other form approved by the Administrative Agent.

“*Affiliate*” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“*Aggregate Commitments*” means the Commitments of all the Lenders.

“*Agreement*” means this Credit Agreement, as amended, modified and supplemented in accordance with the terms hereof.

“*Applicable Percentage*” means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender’s Commitment at such time. If the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to **Section 8.02** or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on **Schedule 2.01** or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“**Applicable Rate**” means, from time to time, the following percentages per annum, based upon the Consolidated Leverage Ratio of the Guarantor as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to **Section 6.02(b)**:

Pricing Level	Consolidated Leverage Ratio of Guarantor	Applicable Rate		
		Commitment Fee	Eurodollar Rate + Letters of Credit	Base Rate
1	≤ 2.50:1	0.30%	1.50%	1.00%
2	> 2.50:1 but ≤ 3.00:1	0.35%	1.75%	1.25%
3	> 3.00:1	0.40%	2.00%	1.50%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Leverage Ratio of the Guarantor shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to **Section 6.02(b)**; *provided, however, that* if a Compliance Certificate is not delivered when due in accordance with such Section, then Pricing Level 3 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and in each case shall remain in effect until the date on which such Compliance Certificate is delivered. The Applicable Rate in effect from the Closing Date through the date on which the first Compliance Certificate is delivered pursuant to **Section 6.02(b)** shall be determined based upon Pricing Level 1.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of **Section 2.10(b)**.

“**Approved Fund**” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“**Arranger**” means each of (i) Bank of America Merrill Lynch, in its capacity as joint lead arranger and joint book manager, and (ii) Wells Fargo Securities, LLC, in its capacity as joint lead arranger and joint book manager.

“**Assignee Group**” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by **Section 11.06(b)**), and accepted by the Administrative Agent, in substantially the form of **Exhibit E-1** or any other form (including electronic documentation generated by MarkitClear or other electronic platform) approved by the Administrative Agent.

“**Audited Financial Statements**” means the audited consolidated balance sheet of the Guarantor and its Subsidiaries for the fiscal year ended December 31, 2011, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Guarantor and its Subsidiaries, including the notes thereto.

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“**Availability Period**” means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to **Section 2.06**, and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to **Section 8.02**.

“**Bank of America**” means Bank of America, N.A. and its successors.

“**Base Rate**” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate” and (c) the Eurodollar Rate plus 1%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“**Base Rate Loan**” means a Loan that bears interest based on the Base Rate.

“**Borrower**” has the meaning specified in the introductory paragraph hereto.

“**Borrower Materials**” has the meaning specified in **Section 6.02**.

“**Borrowing**” means a borrowing consisting of simultaneous Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Lenders pursuant to **Section 2.01**.

“**Borrowing Base**” means, as at any date of determination, an amount equal to:

- (a) 85% of the sum of the Net Book Values on such date of all Eligible Marine Containers, minus
- (b) 85% of the aggregate amount on such date of unpaid Vendor Debt incurred with respect to Eligible Marine Containers that is permitted pursuant to **Section 7.02**, plus
- (c) 85% of the Vendor Debt described in **clause (b)** above that will be repaid with the proceeds of a Loan within five (5) Business Days of the funding date for such Loan, plus
- (d) 85% of the least of (x) the sum of the Net Book Values on such date of all Eligible Trading Marine Containers, (y) an amount equal to the product of (i) fifteen percent (15%) and (ii) the sum of the Net Book Values on such date of all Eligible Marine Containers and (z) Twenty-Five Million Dollars (\$25,000,000), minus
- (e) 85% of the aggregate amount on such date of unpaid Vendor Debt (for the avoidance of doubt, not to exceed Twenty-Five Million Dollars (\$25,000,000)) incurred with respect to Eligible Trading Marine Containers that is permitted pursuant to **Section 7.02**, plus
- (f) 85% of the Vendor Debt described in **clause (e)** above that will be repaid with the proceeds of a Loan within five (5) Business Days of the funding date for such Loan;



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*provided, however*, that the total amount of Vendor Debt added to the Borrowing Base pursuant to **clauses (c) and (f)** above shall not at any time exceed Thirty Million Dollars (\$30,000,000) in the aggregate.

**“Borrowing Base Certificate”** means a certificate with appropriate insertions setting forth the components of the Borrowing Base as of the last day of the month for which such certificate is submitted, or as of a requested Loan funding date or applicable Collateral release date, as the case may be, which certificate shall be substantially in the form of **Exhibit G** and shall be certified by an Authorized Signatory of Borrower.

**“Business Day”** means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

**“Capitalized Leases”** means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

**“Cash Collateralize”** has the meaning specified in **Section 2.03(g)**.

**“Cash Equivalents”** means, in the case of Borrower, any of the following which are free and clear of all Liens (other than Liens created under the Collateral Documents and customary Liens in favor of financial institutions holding such assets) and, in the case of Guarantor, any of the following:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; *provided that* the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, or is organized under the laws of Canada, any province thereof or is the principal banking subsidiary of a bank holding company organized under the laws of Canada or any province thereof, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than 90 days from the date of acquisition thereof;

(c) commercial paper in an aggregate amount of no more than \$10,000,000 per issuer outstanding at any time issued by any Person organized under the laws of any state of the United States of America or any province of Canada and rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof; and

(d) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody’s or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition.

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**“Casualty Event”** means any of the following events with respect to any Marine Container: (a) the actual total loss or compromised total loss thereof, (b) such Marine Container shall become lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever, (c) the seizure thereof for a period exceeding sixty (60) days or the condemnation or confiscation thereof or (d) if such Marine Container is subject to a Lease, such Marine Container shall be deemed under its Lease to have suffered a casualty loss as to the entire Marine Container.

**“Change in Law”** means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided that* notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

**“Change of Control”** means, with respect to any Person, an event or series of events after the date hereof by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of thirty percent (30%) or more of the equity securities of such Person entitled to vote for members of the board of directors or equivalent governing body of such Person on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right);

(b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of such Person cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or

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nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); or

(c) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of such Person, or control over the equity securities of such Person entitled to vote for members of the board of directors or equivalent governing body of such Person on a fully-diluted basis (and taking into account all such securities that such Person or group has the right to acquire pursuant to any option right) representing thirty percent (30%) or more of the combined voting power of such securities.

**“Closing Date”** means the first date all the conditions precedent in **Section 4.01** are satisfied or waived in accordance with **Section 11.01**.

**“Code”** means the Internal Revenue Code of 1986.

**“Collateral”** means all of the “Collateral” referred to in the Collateral Documents and all of the other property in which a Lien is purported to be granted under the terms of the Collateral Documents in favor of the Administrative Agent for the benefit of the Secured Parties.

**“Collateral Documents”** means, collectively, the Security Agreement, the Pledge Agreement, any Intercreditor Agreement and any other security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to **Section 6.13**.

**“Commitment”** means, as to each Lender, its obligation to (a) make Loans to the Borrower pursuant to **Section 2.01**, and (b) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on **Schedule 2.01** or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

**“Competitor”** means any Person engaged and competing with either the Borrower or the Manager in the container leasing business; *provided, however, that* in no event shall any insurance company, bank, bank holding company, savings institution or trust company, fraternal benefit society, pension, retirement or profit sharing trust or fund, or any collateralized bond obligation fund or similar fund (or any trustee of any such fund) or any holder of any obligations of any such fund (solely as a result of being such a holder) be deemed to be a Competitor unless such Person or any of its Affiliates are directly and actively engaged in the operation of a container leasing business.

**“Compliance Certificate”** means a certificate substantially in the form of **Exhibit D**.

**“Connection Income Taxes”** means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

**“Consolidated Funded Debt”** means for any Person, on a consolidated basis, as of any date of determination, the total amount of the Indebtedness of such Person and its Subsidiaries described in **clauses (a)** through **(g)** and **clause (i)** of the definition thereof; *provided that*, with respect to **clause (c)** of the definition thereof, any Swap Contracts entered into by such Person to hedge interest rate risk and which are not entered into for speculative purposes shall not be included in the calculation of Consolidated Funded Debt. For purposes of **Section 7.11**, the Consolidated Funded Debt of each Loan Party shall be calculated to exclude the Consolidated Funded Debt of TWC shown in the most recent consolidating financial statements of the Guarantor delivered pursuant to **Section 6.01**.

**“Consolidated Intangible Assets”** means for any Person, on a consolidated basis, as of any date of determination, all of the assets of such Person and its Subsidiaries that are considered to be intangible assets under GAAP, including customer lists, goodwill, computer software, copyrights, trade names, trademarks, patents, franchises, licenses, unamortized deferred charges, unamortized debt discount, the unamortized purchase price of acquired servicing or management rights and capitalized research and development costs.

**“Consolidated Interest Coverage Ratio”** means for any Person during any Measurement Period, the ratio of (A) the sum of (i) Consolidated Net Income of such Person (or, in the case of the Borrower, such Person without giving effect to any of its Receivables Subsidiaries (except as set forth in the proviso in this clause (i)) for such Measurement Period; *provided, however*, that with respect to the Consolidated Net Income of the Borrower, dividends paid by any Receivables Subsidiary of the Borrower or TWC shall be included in the calculation of the Consolidated Net Income of the Borrower, but only to the extent such dividends are actually paid in cash to the Borrower during such Measurement Period, (ii) income tax expense of such Person and its Subsidiaries (or, in the case of the Borrower, such Person without giving effect to any of its Receivables Subsidiaries) during such Measurement Period, (iii) Consolidated Interest Expense of such Person and its Subsidiaries (or, in the case of the Borrower, such Person without giving effect to any of its Receivables Subsidiaries) during such Measurement Period, and (iv) rental expense of such Person and its Subsidiaries (or, in the case of the Borrower, such Person without giving effect to any of its Receivables Subsidiaries) during such Measurement Period relating to any lease of Marine Containers or transportation equipment under which such Person or Subsidiary is lessee, to (B) the sum of (1) Consolidated Interest Expense of such Person and its Subsidiaries during such Measurement Period (to the extent that such amount is actually paid in cash by such Person during such Measurement Period) and (2) rental expense of such Person and its Subsidiaries during such Measurement Period relating to any lease of Marine Containers or transportation equipment under which such Person or any Subsidiary thereof is lessee. For purposes of **Section 7.11** of this Agreement, the Consolidated Interest Coverage Ratio of each Loan Party shall be calculated to exclude the net income of TWC (except as set forth in the proviso in clause (i) above) shown in the most recent consolidating financial statements of the Guarantor delivered pursuant to Section 6.01 hereof.

**“Consolidated Interest Expense”** means for any Person on a consolidated basis during any Measurement Period, the aggregate amount of the interest expense during such Measurement Period in respect of Indebtedness of such Person and its Subsidiaries, as determined in accordance with GAAP. For purposes of determining the amount of interest expense paid in connection with Indebtedness described in (i) clause (c) of the definition thereof, net cash costs (or gains) under such Indebtedness (including amortization of fees) shall be included in the foregoing calculation, and (ii) clause (f) of the definition thereof, the interest component of payments on such Indebtedness paid, accrued and/or scheduled to be paid or accrued by such Person and its Subsidiaries during such Measurement Period shall be included in the foregoing calculation. For purposes of **Section 7.11**, the Consolidated Interest Expense shall be calculated to exclude the interest expense of TWC shown in the most recent consolidating financial statement of the Guarantor delivered pursuant to **Section 6.01**.

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**“Consolidated Leverage Ratio”** means for any Person, as of any date of determination, the ratio of (a) Consolidated Funded Debt of such Person to (b) Consolidated Tangible Net Worth of such Person on such date.

**“Consolidated Net Income”** means for any Person, on a consolidated basis, as calculated for any Measurement Period, the net income (or loss) of such Person and its Subsidiaries for such Measurement Period; *provided, however, that* Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses for such Measurement Period, and (b) any unrealized adjustments, whether positive or negative, to such net income (or loss) arising from the implementation of Statement of Financial Accounting Standards No. 133 issued by the Financial Accounting Standards Board with respect to any interest rate hedge arrangement entered into by such Person for non-speculative purposes in order to mitigate interest rate exposure.

**“Consolidated Net Worth”** means, for any Person, on a consolidated basis, as of any date of determination, the consolidated shareholders’ equity of such Person and its Subsidiaries as of that date determined in accordance with GAAP; *provided that* Consolidated Net Worth shall exclude any unrealized adjustments, whether positive or negative, arising from the implementation of Statement of Financial Accounting Standards No. 133 issued by the Financial Accounting Standards Board.

**“Consolidated Tangible Assets”** means, for any Person, as of any date of determination, the difference between (i) the Consolidated Total Assets of such Person and (ii) the Consolidated Intangible Assets of such Person.

**“Consolidated Tangible Net Worth”** means, for any Person, as of any date of determination, the difference between the Consolidated Net Worth of such Person and the Consolidated Intangible Assets of such Person. For purposes of **Section 7.11**, the Consolidated Tangible Net Worth of any Loan Party shall be calculated without giving effect to the tangible assets of TWC (other than the Investment of the Borrower in TWC) or the Indebtedness of TWC, in each case, shown in the most recent consolidating financial statements of the Guarantor delivered pursuant to **Section 6.01**.

**“Consolidated Total Assets”** means for any Person, on a consolidated basis, as of any date of determination, all assets of such Person and its Subsidiaries on such date; *provided, however, that* Consolidated Total Assets shall exclude any unrealized adjustments, whether positive or negative, to the value of any asset consisting of an interest rate hedge arrangement, arising from the implementation of Statement of Financial Accounting Standards No. 133 issued by the Financial Accounting Standards Board, if such interest rate hedge arrangement was entered into by such Person for non-speculative purposes in order to mitigate interest rate exposure.

**“Contractual Obligation”** means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

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**“Credit Extension”** means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

**“Debtor Relief Laws”** means the Bankruptcy Code of the United States, the Companies Act of Bermuda and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

**“Default”** means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

**“Default Rate”** means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; *provided, however, that* with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

**“Defaulting Lender”** means any Lender that (a) has failed to fund any portion of the Loans or participations in L/C Obligations required to be funded by it hereunder within one Business Day of the date required to be funded by it hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, (c) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, the L/C Issuer and each other Lender promptly following such determination.

**“Designated Jurisdiction”** means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

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**“Disposition”** or **“Dispose”** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

**“Dollar”** and **“\$”** mean lawful money of the United States.

**“Eligible Assignee”** means any Person that meets the requirements to be an assignee under **Sections 11.06(b)(iii), (v) and (vi)** (subject to such consents, if any, as may be required under **Section 11.06(b)(iii)**).

**“Eligible Marine Container”** means any Marine Container (including those subject to a Finance Lease, but excluding Trading Marine Containers) which is owned by the Borrower and either (i) in which the Administrative Agent has a first priority perfected security interest or (ii) in which the Administrative Agent has a perfected security interest and which is subject to a Lien securing the Vendor Debt associated with such Marine Container; *provided, however*, that (A) no Marine Container which has been the subject of a Casualty Event shall be an Eligible Marine Container, (B) no Marine Container which has previously been classified as an Eligible Trading Marine Container shall be an Eligible Marine Container and (C) no Marine Container which is leased or subleased to a Sanctioned Person or a Sanctioned Entity (other than by the United States government, or pursuant to a license issued by the appropriate authority) shall be an Eligible Marine Container.

**“Eligible Trading Marine Container”** means any Trading Marine Container (a) which is owned by the Borrower and in which the Administrative Agent has a first priority perfected security interest (or which shall, immediately following purchase thereof with the proceeds of a Borrowing, be owned by the Borrower and in which the Administrative Agent shall have a first priority perfected security interest), and (b) that has been included in the calculation of the Borrowing Base for no longer than six (6) months; *provided, however, that* (A) no Marine Container which has been the subject of a Casualty Event shall be an Eligible Trading Marine Container and (B) no Trading Marine Container which is leased or subleased to a Sanctioned Person or a Sanctioned Entity (other than by the United States government, or pursuant to a license issued by the appropriate authority) shall be an Eligible Trading Marine Container.

**“Environmental Laws”** means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

**“Environmental Liability”** means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**“Equity Interests”** means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the

purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“**ERISA**” means the Employee Retirement Income Security Act of 1974.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“**ERISA Event**” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

“**Eurodollar Base Rate**” has the meaning specified in the definition of Eurodollar Rate.

“**Eurodollar Rate**” means,

(a) for any Interest Period with respect to a Eurodollar Rate Loan, a rate per annum determined by the Administrative Agent pursuant to the following formula:

$$\text{Eurodollar Rate} = \frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

Where,

“**Eurodollar Base Rate**” means the rate per annum equal to (i) the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or such other commercially available source providing quotations of BBA LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or, (ii) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued



or converted and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two (2) Business Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, a rate per annum determined by the Administrative Agent pursuant to the following formula:

$$\text{Eurodollar Rate} = \frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

Where, "**Eurodollar Base Rate**" means the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., London time determined two (2) Business Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one month would be offered by Bank of America's London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination.

"**Eurodollar Rate Loan**" means a Loan that bears interest at a rate based on the Eurodollar Rate.

"**Eurodollar Reserve Percentage**" means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as "Eurocurrency liabilities"). The Eurodollar Rate for each outstanding Eurodollar Rate Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

"**Event of Default**" has the meaning specified in **Section 8.01**.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under **Section 11.13**) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to **Section 3.01(a)(ii)**, **(a)(iii)** or **(c)**, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with **Section 3.01(e)** and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

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**“Existing Credit Agreement”** means that certain Credit Agreement, dated as of April 22, 2008, as amended, among the Borrower, TGH, as guarantor, the lenders party thereto, Bank of America, as agent, and Banc of America Securities LLC, as sole lead arranger and sole book manager.

**“FATCA”** means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

**“Federal Funds Rate”** means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

**“Fee Letter”** means each fee letter agreement among the Borrower, an Arranger and any other parties thereto.

**“Finance Lease”** means any Lease of a Marine Container that (i) provides the lessee with the right to purchase for nominal value such Marine Container at the expiration of the term of such Lease or (ii) otherwise satisfies the criteria for classification as a direct financing lease pursuant to GAAP.

**“Foreign Lender”** means any Lender that is organized under the Laws of a jurisdiction other than that in which the Borrower is resident for tax purposes (including such a Lender when acting in the capacity of the L/C Issuer). For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

**“FRB”** means the Board of Governors of the Federal Reserve System of the United States.

**“Fund”** means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

**“GAAP”** means, subject to **Section 1.03(b)**, generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

**“Governmental Authority”** means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

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**“Guarantee”** means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

**“Guarantor”** has the meaning specified in the introductory paragraph hereto.

**“Guaranty”** means the Guaranty made by the Guarantor under **Article X** in favor of the Secured Parties.

**“Hazardous Materials”** means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

**“IFRS”** means International Financial Reporting Standards (as published by the International Accounting Standards Board).

**“Increase Effective Date”** has the meaning set forth in Section 2.14(d).

**“Indebtedness”** means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable and Vendor Debt in the ordinary course of business and, in each case, not past due based on the terms that were applicable to such trade account payable or Vendor Debt when such trade account payable or Vendor Debt was created);

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(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) (i) the capitalized amount of any Capitalized Lease and (ii) the capitalized amount of the remaining payments under any Synthetic Lease, in each case, that would appear on the balance sheet of such Person prepared at such time in accordance with GAAP;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends;

(h) all Guarantees of such Person in respect of any of the foregoing; and

(i) any of the foregoing of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person.

**“Indemnified Taxes”** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

**“Indemnitee”** has the meaning specified in **Section 11.04(b)**.

**“Information”** has the meaning specified in **Section 11.07**.

**“Intercreditor Agreement”** means each Intercreditor Agreement between the Administrative Agent, the Borrower and the other parties thereto, as amended, restated, supplemented or otherwise modified from time to time in accordance with its terms.

**“Interest Payment Date”** means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; *provided, however, that* if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date.

**“Interest Period”** means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months thereafter, as selected by the Borrower in its Loan Notice or such other period that is twelve months or less requested by the Borrower and consented to by all the Lenders; *provided that*:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

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(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

**“Inventory”** means all goods (as defined in the UCC) of Borrower held for sale, lease or rental consisting of intermodal containers, trailers, Marine Containers, and other container related transportation goods.

**“Investment”** means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of, such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

**“IRS”** means the United States Internal Revenue Service.

**“ISP”** means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

**“Issuer Documents”** means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower, or the Borrower in favor of the L/C Issuer, relating to such Letter of Credit.

**“Laws”** means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

**“L/C Advance”** means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

**“L/C Borrowing”** means an extension of credit by the L/C Issuer resulting from a drawing under any Letter of Credit which has not been reimbursed by the Borrower on the date when made or refinanced as a Borrowing, in each case, pursuant to **Section 2.03(c)**.

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**“L/C Credit Extension”** means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

**“L/C Issuer”** means Bank of America in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

**“L/C Obligations”** means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts minus the amount by which any Letters of Credit have been Cash Collateralized. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with **Section 1.06**. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

**“Lease”** means each and every item of chattel paper, installment sales agreement, lease or rental agreement (including progress payment authorizations) to the extent relating to a Marine Container owned by Borrower, and includes, with respect to the foregoing, (a) all payments to be made thereunder, (b) all rights of Borrower therein, and (c) any and all amendments, renewals, extensions or guaranties thereof.

**“Lender”** has the meaning specified in the introductory paragraph hereto.

**“Lending Office”** means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

**“Letter of Credit”** means any letter of credit issued hereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit.

**“Letter of Credit Application”** means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

**“Letter of Credit Expiration Date”** means the day that is seven days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

**“Letter of Credit Fee”** has the meaning specified in **Section 2.03(i)**.

**“Letter of Credit Sublimit”** means an amount equal to Fifty Million Dollars (\$50,000,000). The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Commitments.

**“Lien”** means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

**“Loan”** has the meaning specified in **Section 2.01**.

**“Loan Documents”** collectively, (a) this Agreement (including the Guaranty), (b) the Notes, (c) the Collateral Documents, (d) the Fee Letter and (e) each Issuer Document.

**“Loan Notice”** means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, pursuant to **Section 2.02(a)**, which, if in writing, shall be substantially in the form of **Exhibit A**.

**“Loan Parties”** means, collectively, the Borrower and the Guarantor.

**“Manager”** means TEML, in its capacity as Manager under the TEML Management Agreement.

**“Marine Container”** means any dry cargo, refrigerated, open top, flat rack, tank, high cube or other type of marine container which is held for lease or rental or sale, including those used as land-based storage containers (including without limitation any Trading Marine Container).

**“Material Adverse Effect”** means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Guarantor, the Borrower or their Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

**“Material Subsidiary”** means, with respect to any Loan Party, any Subsidiary of such Loan Party (other than a Receivables Subsidiary) that owns assets in excess of ten percent (10%) of the book value of the total assets of TGH and its Subsidiaries.

**“Maturity Date”** means September 24, 2017.

**“Measurement Period”** means, at any date of determination for any Person, the most recently completed four fiscal quarters of such Person.

**“Moody’s”** means Moody’s Investors Service, Inc. and any successor thereto.

**“Multiemployer Plan”** means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

**“Net Book Value”** means, as of any date of determination with respect to (a) a Marine Container (other than a Trading Marine Container) that is not subject to a Finance Lease, an amount equal to the Original Equipment Cost of such Marine Container, less any accumulated depreciation as of such date of determination, calculated utilizing the Borrower’s depreciation policy as set forth on **Exhibit H**, (b) a Marine Container (other than a Trading Marine Container) that is subject to a Finance Lease, the then net investment value in such Finance Lease, as determined in accordance with GAAP, and (c) a Trading Marine Container, the lower of the purchase price therefor and the fair market value thereof.

**“Note”** means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of **Exhibit C**.

**“Obligations”** means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any (i) Loan, (ii) Letter of

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Credit and (iii) Swap Contract entered into by the Borrower with any Lender (or Affiliate thereof) to hedge interest rate risk with respect to the Loans, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“**OFAC**” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“**Ordinary Course of Business**” means, in respect of any transaction involving the Borrower, the Guarantor or any of its Subsidiaries, in accordance with the customary practice of operators of container fleets or similar businesses, and undertaken by the Borrower, the Guarantor or any of its Subsidiaries, in good faith and not for purposes of evading any covenant or restriction in any Loan Document, including, without limitation, any transfer of Receivables Program Assets from Borrower to any Receivables Subsidiary that is permitted pursuant to Section 7.05(c) or Disposition of Trading Marine Containers permitted pursuant to **Section 7.05(d)**.

“**Organization Documents**” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Original Equipment Cost**” means, with respect to each Marine Container, an amount equal to the sum of (i) the vendor’s or manufacturer’s invoice price of such Marine Container, and (ii) all reasonable and customary inspection, transport, and initial positioning costs necessary to put such Marine Container in service.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 3.06**).

“**Outstanding Amount**” means (i) with respect to Loans on any date, the aggregate unpaid principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date; and (ii) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.



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**“Participant”** has the meaning specified in **Section 11.06(d)**.

**“PBGC”** means the Pension Benefit Guaranty Corporation.

**“Pension Plan”** means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA, but excluding any Multiemployer Plan) that is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code and is sponsored or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, including any such plan that is a multiple employer or other plan described in Section 4064(a) of ERISA.

**“Person”** means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

**“Plan”** means (i) any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower (or, in the case of any such Plan that is a Pension Plan, maintained for employees of any ERISA Affiliate), or (ii) any such Plan to which the Borrower (or, in the case of any such Plan that is a Pension Plan, to which an ERISA Affiliate), is required to contribute on behalf of any of its employees.

**“Platform”** has the meaning specified in **Section 6.02**.

**“Pledge Agreement”** means the Pledge Agreement, dated as of September 24, 2012, executed by the Guarantor, substantially in the form of **Exhibit I**, as such agreement may be amended, modified or supplemented from time to time in accordance with the terms of the Loan Documents.

**“Pro Rata”** means, with respect to the Lenders, in accordance with their respective aggregate Loans and risk participations in Letters of Credit outstanding at any given time, or if no Loans or Letters of Credit are outstanding, in accordance with their respective shares of the Aggregate Commitments.

**“Qualified Receivables Transaction”** means any transaction, or series of transactions, that may be entered into by the Borrower or any Seller pursuant to which the Borrower or any Seller may sell, convey or otherwise transfer to a Receivables Subsidiary (in the case of a transfer by the Borrower or any other Seller) and any other Person (in the case of a transfer by a Receivables Subsidiary), or may grant a security interest in, any Receivables Program Assets (whether now existing or arising in the future); *provided that*:

(a) no portion of the indebtedness or any other obligations (contingent or otherwise) of a Receivables Subsidiary (i) is guaranteed by the Borrower, the Guarantor or other Seller (excluding guarantees of obligations pursuant to Standard Securitization Undertakings), (ii) is recourse to or obligates the Borrower, the Guarantor or any other Seller in any way other than pursuant to Standard Securitization Undertakings or (iii) subjects any property or asset of the Borrower, the Guarantor or any other Seller, directly or indirectly, contingently or otherwise, to the satisfaction of obligations incurred in such transactions, other than pursuant to Standard Securitization Undertakings;

(b) none of the Borrower, the Guarantor or any other Seller has any material contract, agreement, arrangement or understanding with a Receivables Subsidiary (except in connection with a Qualified Receivables Transaction) other than on terms no less favorable to the Borrower or such Seller than those that might be obtained at the time from Persons that are not affiliates of the Borrower, other than fees payable in the ordinary course of business in connection with servicing accounts receivable; *provided that* a sale of Marine Containers at net book value shall be deemed to comply with this paragraph (b);

(c) any such sale, conveyance or transfer to a Receivables Subsidiary or other Person of Receivables Program Assets shall be in exchange for consideration not less than the sum of (x) with respect to any Inventory, the sum of the net book value of such Inventory, plus (y) with respect to any other assets constituting Receivables Program Assets, the fair market value thereof; and

(d) none of the Borrower, the Guarantor and any other Seller has any obligation to maintain or preserve the financial condition of a Receivables Subsidiary or cause such entity to achieve certain levels of operating results.

**“Receivables”** means all rights of the Borrower or any Seller to payments (whether constituting accounts, chattel paper, instruments, general intangibles or otherwise, and including the right to payment of any interest or finance charges), which rights are identified in the accounting records of the Borrower or such Seller as accounts receivable.

**“Receivables Document”** means each (x) receivables purchase agreement, pooling and servicing agreement, credit agreement, agreement to acquire undivided interests or any other agreement to transfer, or create a security interest in, Receivables Program Assets, in each case as amended, modified, supplemented or restated and in effect from time to time entered into by the Borrower, another Seller and/or a Receivables Subsidiary, and (y) other instrument, agreement or document entered into by the Borrower, any other Seller or a Receivables Subsidiary relating to the transactions contemplated by the items referred to in clause (x) above, in each case as amended, modified, supplemented or restated and in effect from time to time. Each of (i) the Second Amended and Restated Contribution and Sale Agreement, dated as of June 8, 2006 (as amended, restated, supplemented or modified from time to time), between the Borrower and TMCL and (ii) the Container Sale Agreement, dated as of May 1, 2012 (as amended, restated, supplemented or modified from time to time), between the Borrower and TMCL II, shall be deemed a Receivables Document.

**“Receivables Program Assets”** means (a) all Inventory and Receivables which are purported to be transferred by the Borrower, another Seller or a Receivables Subsidiary pursuant to the Receivables Documents, (b) all Receivables Related Assets, and (c) all collections (including recoveries) and other proceeds of the assets described in the foregoing clauses (a) and (b).

**“Receivables Related Assets”** means (i) any rights arising under the documentation governing or relating to Inventory or Receivables (including rights in respect of liens securing such Receivables and other credit support in respect of such Receivables), (ii) any proceeds of such Inventory or Receivables and any lockboxes or accounts in which such proceeds are deposited, (iii) spread accounts and other similar accounts (and any amounts on deposit therein) established in connection with a Qualified Receivables Transaction, (iv) any warranty, indemnity, dilution and other intercompany claim arising out of Receivables Documents and (v) other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving goods (as defined in the UCC) and Receivables.

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**“Receivables Subsidiary”** means a Special Purpose Vehicle that is a Subsidiary of the Borrower created in connection with the transactions contemplated by a Qualified Receivables Transaction, which subsidiary engages in no activities other than those incidental to such Qualified Receivables Transaction. Each of TMCL, TMCL II and TWC shall be deemed a Receivables Subsidiary.

**“Recipient”** means the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any Obligation.

**“Register”** has the meaning specified in **Section 11.06(c)**.

**“Related Documents”** means (i) the TMCL Indenture, and each “Related Document” (as defined in the TMCL Indenture), (ii) the TMCL II Indenture, and each “Related Document” (as defined in the TMCL II Indenture), and (iii) the transaction documents governing any Qualified Receivables Transaction.

**“Related Parties”** means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

**“Reportable Event”** means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

**“Request for Credit Extension”** means (a) with respect to a Borrowing, conversion or continuation of Loans, a Loan Notice and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

**“Required Lenders”** means, as of any date of determination, two or more Lenders having more than 50% of the Aggregate Commitments or, if the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to **Section 8.02**, two or more Lenders holding in the aggregate more than 50% of the Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Lender for purposes of this definition); *provided that* the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

**“Responsible Officer”** means the chief executive officer, president, executive vice president, chief financial officer, director, secretary (or, with respect to the Guarantor, any assistant secretary) or treasurer of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

**“Restricted Payment”** means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of

any such capital stock or other Equity Interest, or on account of any return of capital to the Borrower's stockholders, partners or members (or the equivalent Person thereof; *provided, however, that* with respect to the Borrower, any loan made by the Borrower to the Guarantor the proceeds of which will be used by the Guarantor to pay dividends to the shareholders of the Guarantor shall also be subject to the limitations contained in **Section 7.03(h)**).

**"S&P"** means Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

**"Sanction(s)"** means any international economic sanction administered or enforced by OFAC, the United Nations Security Council, the European Union, Her Majesty's Treasury or other sanctions authority with authority over a Loan Party.

**"Sanctioned Entity"** means (i) an agency of the government of, (ii) an organization directly or indirectly controlled by or (iii) a natural person resident in a country that is subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html>, or as otherwise published from time to time as such program may be applicable to such agency, organization or person.

**"Sanctioned Person"** means a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/eotffc/ofac/sdn/index.html>, or as otherwise published from time to time.

**"SEC"** means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

**"Secured Parties"** means, collectively, (i) the Administrative Agent, (ii) the Lenders, (iii) the L/C Issuer and (iv) any counterparty to a Swap Contract entered into by the Borrower with any Lender (or Affiliate thereof) to hedge interest rate risk with respect to the Loans.

**"Security Agreement"** means the Security Agreement, dated as of September 24, 2012, executed by the Borrower, substantially in the form of **Exhibit B**, as such agreement may be amended, modified and supplemented in accordance with the terms of the Loan Documents.

**"Segregated Collateral Pool"** means (i) one or more groups of Marine Containers, designated by Borrower, that are at least six years old, and (ii) solely to the extent arising out of or relating to the Marine Containers in such group or groups, (a) all accounts (as defined in the UCC), (b) all chattel paper (as defined in the UCC), and all Leases and all schedules, supplements, amendments, modifications, renewals, extensions and all guaranties and other credit support with respect to the foregoing and all rentals, payments and monies due and to become due in respect of the foregoing, and all rights to terminate or compel performance thereof, (c) all contracts, undertakings, franchise agreements or other agreements (other than rights evidenced by chattel paper, documents or instruments), arising out of or in any way related to the Marine Containers, in or under which Borrower may now or hereafter have any right, title or interest, and any related agreements, security interests or UCC or other financing statements and, with respect to an account, any agreement relating to the terms of payment or the terms of performance thereof, (d) all documents (as defined in the UCC), (e) all general intangibles (as defined in the UCC), (f) all instruments (as defined in the UCC), (g) all inventory (as defined in the UCC), (h) all supporting obligations (as defined in the UCC), (i) all equipment (as defined in the UCC), (j) all letter of credit rights (as defined in the UCC) and (k) all commercial tort claims (as defined in the UCC).

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**“Seller”** means the Borrower and any Subsidiary or other affiliate of the Borrower (other than a Receivables Subsidiary) which is a party to a Receivables Document.

**“Solvent”** and **“Solvency”** mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

**“Special Purpose Vehicle”** means a trust, partnership or other special purpose entity established by the Borrower and/or its Subsidiaries to implement a Qualified Receivables Transaction.

**“Standard Securitization Undertakings”** means the representations, warranties, covenants and indemnities of the Borrower or any Subsidiary that are reasonably customary in a securitization or sale of receivables transaction.

**“Subsidiary”** of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

**“Swap Contract”** means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

**“Swap Termination Value”** means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s)

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determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“**Synthetic Lease**” or “**Synthetic Lease Obligation**” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**TEML**” means Textainer Equipment Management Limited, an exempted company with limited liability incorporated under the laws of Bermuda, and its successors and assigns.

“**TEML Management Agreement**” means the Amended and Restated Equipment Management Services Agreement, dated as of November 1, 2002, between TEML and Borrower, as the same may be amended, restated, supplemented or otherwise modified from time to time. The term “TEML Management Agreement” shall also be deemed to include any and all other written agreements which Borrower and TEML may enter into from time to time under which TEML has a right to hold, manage, lease or rent property (including without limitation Marine Containers) of Borrower.

“**Term Facility**” means up to Two Hundred Million Dollars (\$200,000,000) of term Indebtedness (whether in the form of a loan or a sale-leaseback) of the Borrower under one or more facilities secured by one or more Segregated Collateral Pools.

“**TGH**” means Textainer Group Holdings Limited, an exempted company with limited liability incorporated under the laws of Bermuda, and its successors and assigns.

“**TMCL**” means Textainer Marine Containers Limited, an exempted company with limited liability incorporated under the laws of Bermuda, and its successors and assigns.

“**TMCL Indenture**” means the Second Amended and Restated Indenture, dated as of May 26, 2005, between TMCL and Wells Fargo Bank, National Association, as indenture trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with its terms, including refinancings thereof.

“**TMCL II**” means Textainer Marine Containers II Limited, an exempted company with limited liability incorporated under the laws of Bermuda, and its successors and assigns.

“**TMCL II Indenture**” means the Indenture, dated as of May 1, 2012, between TMCL II and Wells Fargo Bank, National Association, as indenture trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with its terms, including refinancings thereof.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“**Trading Marine Container**” means a Marine Container acquired (or to be acquired with the proceeds of a Borrowing) by the Borrower for purpose of the future sale thereof to a third party, and which is not subject to a Lease.

“**TWC**” means TW Container Leasing, Ltd., a company with limited liability organized under the laws of Bermuda, and its successors and assigns.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“**UCC**” means the Uniform Commercial Code as in effect in the State of New York; *provided that*, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“**UCP**” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“**United States**” and “**U.S.**” mean the United States of America.

“**Unreimbursed Amount**” has the meaning specified in **Section 2.03(c)(i)**.

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“**Vendor Debt**” means all vendor debt and trade payables of Borrower in connection with the acquisition by the Borrower of a Marine Container (including a Marine Container subject to a Finance Lease).

“**Withholding Agent**” means the Borrower, any Loan Party, and the Administrative Agent or any agent of the Borrower, any Loan Party, and the Administrative Agent.

**1.02 Other Interpretive Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv)

all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

**1.03 Accounting Terms.** (a) **Generally.** All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared (unless otherwise specified herein) in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) **Changes in GAAP.** If at any time any change in GAAP (including the adoption of IFRS, if applicable) would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided that*, until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

(c) **Consolidation of Variable Interest Entities.** All references herein to consolidated financial statements of the Borrower or the Guarantor and its respective Subsidiaries or to the determination of any amount for the Borrower or the Guarantor and its respective Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Borrower or the Guarantor is required to consolidate pursuant to FASB Interpretation No. 46 – Consolidation of Variable Interest Entities: an interpretation of ARB No. 51 (January 2003) as if such variable interest entity were a Subsidiary as defined herein.



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**1.04 Rounding.** Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**1.05 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

**1.06 Letter of Credit Amounts.** Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided, however, that* with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

**1.07 Currency Equivalents Generally.** Any amount specified in this Agreement (other than in **Articles II, IX and X**) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this **Section 1.07**, the "Spot Rate" for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two (2) Business Days prior to the date of such determination; *provided that* the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

## ARTICLE II

### THE COMMITMENTS AND CREDIT EXTENSIONS

**2.01 Loans.** Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a "**Loan**") to the Borrower from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the lesser of (x) the amount of such Lender's Commitment and (y) such Lender's Pro Rata share of the Borrowing Base; *provided, however, that* after giving effect to any Borrowing, (i) the Total Outstandings shall not exceed the lesser of (x) the Aggregate Commitments and (y) the Borrowing Base, and (ii) the aggregate Outstanding Amount of the Loans of any Lender plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed the lesser of (x) such Lender's Commitment and (y) such Lender's Pro Rata share of the Borrowing Base. Within the limits of each Lender's Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this **Section 2.01**, prepay under **Section 2.05**, and reborrow under this **Section 2.01**. Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

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## 2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans; *provided, however, that* if the Borrower wishes to request Eurodollar Rate Loans having an Interest Period other than one, two, three or six months in duration as provided in the definition of "Interest Period", the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days prior to the requested date of such Borrowing, conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 a.m., three Business Days before the requested date of such Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each telephonic notice by the Borrower pursuant to this **Section 2.02(a)** must be confirmed promptly by delivery to the Administrative Agent of a written Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$3,000,000 or a whole multiple of \$1,000,000 in excess thereof. Except as provided in **Section 2.03(c)**, each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in **Section 2.02(a)**. In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in **Section 4.02** (and, if such Borrowing is the initial Credit Extension, **Section 4.01**), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; *provided, however, that* if, on the date the Loan Notice with respect to such Borrowing is given by the Borrower, there are Unreimbursed Amounts outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such Unreimbursed Amounts, and second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as, Eurodollar Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than twenty (20) Interest Periods in effect with respect to Loans.

(f) Notwithstanding anything in this **Section 2.02** to the contrary, the Borrower may not select the Eurodollar Rate for the initial Credit Extension unless such Credit Extension is made at least three (3) Business Days after the date hereof.

### **2.03 Letters of Credit.**

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this **Section 2.03**, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Borrower, and to amend or extend Letters of Credit previously issued by it, in accordance with **Section 2.03(b)**, and (2) to honor drawings under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower and any drawings thereunder; *provided that* after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Outstandings shall not exceed the lesser of (1) the Aggregate Commitments and (2) the Borrowing Base, (y) the aggregate Outstanding Amount of the Loans of any Lender plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed the lesser of (1) such Lender's Commitment and (2) such Lender's Pro Rata share of the Borrowing Base, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

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(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(A) the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date.

(iii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is in an initial stated amount less than \$100,000, in the case of a commercial Letter of Credit, or \$500,000, in the case of a standby Letter of Credit;

(D) such Letter of Credit is to be denominated in a currency other than Dollars; or

(E) a default of any Lender's obligations to fund under **Section 2.03(c)** exists or any Lender is at such time a Defaulting Lender hereunder, unless the L/C Issuer has entered into satisfactory arrangements with the Borrower or such Lender to eliminate the L/C Issuer's risk with respect to such Lender.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

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**(b) Procedures for Issuance and Amendment of Letters of Credit .**

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may require. Additionally, the Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Lender, the Administrative Agent or Borrower, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

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**(c) Drawings and Reimbursements; Funding of Participations .**

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the Borrower and the Administrative Agent thereof. Not later than 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit (each such date, an "Honor Date"), the Borrower shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If the Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Lender's Applicable Percentage thereof. In such event, the Borrower shall be deemed to have requested a Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in **Section 2.02** for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Commitments and the conditions set forth in **Section 4.02** (other than the delivery of a Loan Notice or Borrowing Base Certificate). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this **Section 2.03(c)(i)** may be given by telephone if immediately confirmed in writing; *provided that* the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice pursuant to **Section 2.03(c)(i)** make funds available to the Administrative Agent for the account of the L/C Issuer at the Administrative Agent's Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of **Section 2.03(c)(iii)**, each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing of Base Rate Loans because the conditions set forth in **Section 4.02** cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which Unreimbursed Amount shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to **Section 2.03(c)(ii)** shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this **Section 2.03**.

(iv) Until each Lender funds its Loan or L/C Advance pursuant to this **Section 2.03(c)** to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Lender's obligation to make Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this **Section 2.03(c)**, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however, that* each Lender's obligation to make Loans pursuant to this **Section 2.03(c)** is subject to the conditions set forth in **Section 4.02** (other than delivery by the Borrower of a Loan Notice or a Borrowing Base Certificate). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this **Section 2.03(c)** by the time specified in **Section 2.03(c)(ii)**, the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Loan included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this **Section 2.03(c)(vi)** shall be conclusive absent manifest error.

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**(d) Repayment of Participations.**

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with **Section 2.03(c)**, if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to **Section 2.03(c)(i)** is required to be returned under any of the circumstances described in **Section 11.05** (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this **Section 2.03(d)(ii)** shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) **Obligations Absolute.** The obligation of the Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

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(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any Subsidiary.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) **Role of L/C Issuer.** Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however, that* this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in **Sections 2.03(e)(i) through (viii)**; *provided, however, that* anything in such Sections to the contrary notwithstanding, the Borrower may have a claim against the L/C



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Issuer, and the L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) **Cash Collateral.** Upon the request of the Administrative Agent, (i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations. **Sections 2.05 and 8.02(c)** set forth certain additional requirements to deliver Cash Collateral hereunder. For purposes of this **Section 2.03**, **Section 2.05** and **Section 8.02(c)**, "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the L/C Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Administrative Agent and the L/C Issuer (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the L/C Issuer and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, interest bearing deposit accounts at Bank of America. If at any time the Administrative Agent determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than the Administrative Agent or that the total amount of such funds is less than the aggregate Outstanding Amount of all L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited as Cash Collateral, an amount equal to the excess of (x) such aggregate Outstanding Amount over (y) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the L/C Issuer.

(h) **Applicability of ISP and UCP; Limitation of Liability.** Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrower for, and the L/C Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the L/C Issuer required under (x) any law, order, or practice that is required to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, (y) the practice stated in the ISP or UCP, as applicable, or (z) the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(i) **Letter of Credit Fees.** The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage a Letter of Credit fee (the “**Letter of Credit Fee**”) for each Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with **Section 1.06**. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(j) **Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer .** The Borrower shall pay directly to the L/C Issuer for its own account a fronting fee (i) with respect to each commercial Letter of Credit, at the rate specified in the Fee Letter, computed on the amount of such Letter of Credit, and payable upon the issuance thereof, (ii) with respect to any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between the Borrower and the L/C Issuer, computed on the amount of such increase, and payable upon the effectiveness of such amendment, and (iii) with respect to each Letter of Credit, at the rate per annum specified in the Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with **Section 1.06**. In addition, the Borrower shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(k) **Conflict with Issuer Documents.** In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

#### **2.04 [Intentionally Omitted].**

#### **2.05 Prepayments.**

(a) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; *provided that* (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (A) three (3) Business Days prior to any date of prepayment of Eurodollar Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$3,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount

of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to **Section 3.05**. Each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) If for any reason the Total Outstandings at any time exceed the Aggregate Commitments then in effect, the Borrower shall immediately prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; *provided, however, that* the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this **Section 2.05(b)** unless after the prepayment in full of the Loans the Total Outstandings exceed the Aggregate Commitments then in effect.

(c) If for any reason the Total Outstandings at any time exceed the Borrowing Base as evidenced by the Borrowing Base Certificate most recently received by the Administrative Agent, Borrower shall immediately prepay the outstanding principal amount of the Loans in an amount equal to such excess. Any mandatory prepayment of the Loans made pursuant to this **Section 2.05(c)** shall be applied: first, to accrued and unpaid fees; second, to accrued and unpaid interest; and third, to the unpaid principal balance of such Loans.

**2.06 Termination or Reduction of Commitments.** The Borrower may, upon notice to the Administrative Agent, terminate the Aggregate Commitments or the Letter of Credit Sublimit, or from time to time permanently reduce the Aggregate Commitments or the Letter of Credit Sublimit; *provided that* (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Borrower shall not terminate or reduce (A) the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Aggregate Commitments, or (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations that are not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit.

**2.07 Repayment of Loans.** The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of Loans outstanding on such date.

**2.08 Interest.**

(a) Subject to the provisions of **Section 2.08(b)**, (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists (other than as set forth in **Sections 2.08(b)(i)** and **(ii)** above), the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

**2.09 Fees.** In addition to certain fees described in **Section 2.03**:

(a) **Commitment Fee.** The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage, a commitment fee equal to the Applicable Rate times the actual daily amount by which the Aggregate Commitments exceed the Total Outstandings. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) **Other Fees.** (i) The Borrower shall pay to the Arrangers and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

**2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate.**

(a) All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided that* any Loan that is repaid on the same day on which it is made shall, subject to **Section 2.12(a)**, bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Guarantor or for any other reason, the Guarantor or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Guarantor as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher (or lower) pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to (or receive a refund from) the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or Borrower, as applicable) (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower or the Guarantor under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess (or deficiency) of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period; *provided, however*, that no Lender or the L/C Issuer shall be required to refund to the Borrower any amount under this sentence with respect to any Interest Period if the Borrower shall request a refund of such amount 180 days or more after the end of such Interest Period. This **Section 2.10(b)** shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under **Section 2.03(c)(iii)**, **2.03(i)** or **2.08(b)** or under **Article VIII**. The Borrower's obligations under this **Section 2.10(b)** shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

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## 2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in **Section 2.11**, each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

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## 2.12 Payments Generally; Administrative Agent's Clawback.

(a) **General.** All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) **Funding by Lenders; Presumption by Administrative Agent** . Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with **Section 2.02** (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by **Section 2.02**) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) **Payments by Borrower; Presumptions by Administrative Agent** . Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

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A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this **Section 2.12(b)** shall be conclusive, absent manifest error.

(c) **Failure to Satisfy Conditions Precedent.** If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) **Obligations of Lenders Several.** The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and to make payments pursuant to **Section 11.04(c)** are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under **Section 11.04(c)** on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under **Section 11.04(c)**.

(e) **Funding Source.** Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) **Insufficient Funds.** If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, Unreimbursed Amounts, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal and Unreimbursed Amounts then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and Unreimbursed Amounts then due to such parties.

**2.13 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it, or the participations in L/C Obligations held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, *provided that*:

(a) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(b) the provisions of this **Section 2.13** shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this **Section 2.13** shall apply).

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Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of Borrower in the amount of such participation.

#### **2.14 Increase in Commitments.**

(a) **Request for Increase.** Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrower may, from time to time, request an increase in the Aggregate Commitments by an amount (for all such requests) not exceeding One Hundred Million Dollars (\$100,000,000) in the aggregate; *provided that* (i) any such request for an increase shall be in a minimum amount of \$5,000,000, (ii) the Borrower may make a maximum of two such requests and (iii) any incremental commitments of the Lenders in connection with such increase shall be on terms and pursuant to documentation consistent with the terms and documentation applicable to the existing Loans, except with respect to any upfront or similar fees that may be agreed to among the Borrower and the Lenders providing any additional commitments. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Lenders).

(b) **Lender Elections to Increase.** Each Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Commitment.

(c) **Notification by Administrative Agent; Additional Lenders .** The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Administrative Agent and the L/C Issuer (which approvals shall not be unreasonably withheld), the Borrower may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel. Any requested increase in the Aggregate Commitments need not be achieved in full in order for such requested increase to take effect with respect to the Commitments of any such Lenders who agree to such increase.

(d) **Effective Date and Allocations .** If the Aggregate Commitments are increased in accordance with this **Section 2.14**, the Administrative Agent and the Borrower shall determine the effective date (the "**Increase Effective Date**") and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such increase and the Increase Effective Date. The parties hereto authorize the Administrative Agent to amend **Schedule 2.01** hereto as of each Increase Effective Date to reflect any increase in the Aggregate Commitments pursuant to this **Section 2.14**.



(e) **Conditions to Effectiveness of Increase**. As a condition precedent to such increase, the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (ii) in the case of the Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in **Article V** and the other Loan Documents are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this **Section 2.14**, the representations and warranties contained in **Sections 5.05(a)** and **(b)** shall be deemed to refer to the most recent statements furnished pursuant to **Sections 6.01(a)** and **(b)**, respectively, and (B) no Default exists or would exist after giving effect to such increase. The Borrower shall prepay any Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to **Section 3.05**) to the extent necessary to keep the outstanding Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Commitments under this **Section 2.14**.

(f) **Conflicting Provisions**. This **Section 2.14** shall supersede any provisions in **Section 2.13** or **11.01** to the contrary.

## ARTICLE III

### TAXES, YIELD PROTECTION AND ILLEGALITY

#### 3.01 Taxes.

##### (a) **Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.**

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the applicable Withholding Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to **Section 3.01(e)**.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to **Section 3.01(e)**, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this **Section 3.01**) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Loan Party or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to **Section 3.01(e)**, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this **Section 3.01**) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

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(b) **Payment of Other Taxes by the Borrower and the Guarantor.** Without limiting the provisions of **Section 3.01(a)**, the Borrower and the Guarantor shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) **Tax Indemnifications.** (i) The Borrower shall, and does hereby, indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 3.01**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by or on behalf of a Recipient, shall be conclusive absent manifest error. The Borrower shall, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to **Section 3.01(c)(ii)**.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (y) the Administrative Agent and the Borrower, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of **Section 11.06(d)** relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Borrower, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Administrative Agent or the Borrower in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this **Section 3.01(c)(ii)**.

(d) **Evidence of Payments.** Upon request by the Borrower, the Guarantor or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower, the Guarantor or

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the Administrative Agent to a Governmental Authority as provided in this **Section 3.01**, the Borrower and the Guarantor shall each deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower and the Guarantor, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower, the Guarantor or the Administrative Agent, as the case may be.

(c) **Status of Lenders; Tax Documentation.** (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Sections 3.01(e)(ii)(A), (B) and (D)**) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed originals of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit J-1** to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN; or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of **Exhibit J-2** or **Exhibit J-3**, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; *provided that* if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit J-4** on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this **Section 3.01(e)(ii)(D)**, “**FATCA**” shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this **Section 3.01** expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) **Treatment of Certain Refunds.** Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If the Administrative Agent, any Lender or the L/C Issuer determines, in its sole discretion, that it has received a credit or refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or the Guarantor, as the case may be or with respect to which the Borrower or the

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Guarantor, as the case may be has paid additional amounts pursuant to this **Section 3.01**, it shall pay to the Borrower or the Guarantor, as the case may be, an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or the Guarantor, as the case may be, under this **Section 3.01** with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses incurred by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower or the Guarantor, as the case may be, upon the request of the Administrative Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to the Borrower or the Guarantor, as the case may be (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the L/C Issuer in the event the Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 3.01(f)**, in no event will the applicable indemnifying party be required to pay any amount to the indemnified party pursuant to this **Section 3.01(f)** the payment of which would place the indemnifying party in a less favorable net after-Tax position than such indemnifying party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This **Section 3.01(f)** shall not be construed to require the Administrative Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower, the Guarantor or any other Person.

**3.02 Illegality.** If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

**3.03 Inability to Determine Rates.** If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

**3.04 Increased Costs; Reserves on Eurodollar Rate Loans.**

(a) **Increased Costs Generally.** If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by **Section 3.04(e)**) or the L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in **clauses (b)** through **(d)** of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the Eurodollar Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) **Capital Requirements.** If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the

capital or liquidity of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy or liquidity (other than a change solely in such policy)), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in **Section 3.04(a)** or **(b)** and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this **Section 3.04** shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation; *provided that* the Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this **Section 3.04** for any increased costs incurred or reductions (i) suffered more than six (6) months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six (6) month period referred to above shall be extended to include the period of retroactive effect thereof) or (ii) if such Lender or L/C Issuer has not required other similarly situated borrowers or obligors to pay comparable amounts with respect to such increased costs or reductions.

(e) **Reserves on Eurodollar Rate Loans.** The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

**3.05 Compensation for Losses.** Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

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(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to **Section 11.13**;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this **Section 3.05**, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Base Rate used in determining the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

### **3.06 Mitigation Obligations; Replacement of Lenders.**

(a) **Designation of a Different Lending Office.** If any Lender requests compensation under **Section 3.04**, or the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to **Section 3.01**, or if any Lender gives a notice pursuant to **Section 3.02**, then such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 3.01** or **3.04**, as the case may be, in the future, or eliminate the need for the notice pursuant to **Section 3.02**, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender requests compensation under **Section 3.04**, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 3.01** and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with **Section 3.06(a)**, the Borrower may replace such Lender in accordance with **Section 11.13**.

(c) **Survival.** All of the Borrower's obligations under this **Article III** shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent.



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## ARTICLE IV

### CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

**4.01 Conditions of Initial Credit Extension.** The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) executed counterparts of the Security Agreement, duly executed by the Borrower, together with:

(A) copies of (1) Uniform Commercial Code financing statements in proper form for filing with the office of the District of Columbia Recorder of Deeds and the California Secretary of State and (2) Form No. 9 in proper form for filing with the Registrar of Companies of Bermuda, each covering the Collateral described in the Security Agreement,

(B) results of lien searches for filings in the jurisdictions referred to in **Section 4.01(a)(iii)(A)** that name the Borrower as debtor, and

(C) evidence that all other action that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Security Agreement has been taken (including receipt of duly executed payoff letters, UCC-3 termination statements and landlords' and bailees' waiver and consent agreements);

(iv) the Pledge Agreement, duly executed by Guarantor, together with the original share certificates evidencing all of the shares of the Borrower owned by the Guarantor, and corresponding share transfer forms duly executed in blank;

(v) certified copies of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(vi) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed and in good standing in Bermuda, including without limitation certificates of compliance issued by the Registrar of Companies of

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the Islands of Bermuda for each Loan Party, dated a date close to the date of this Agreement, stating that each Loan Party is duly incorporated and in good standing under the Companies Act 1981 of the Islands of Bermuda;

(vii) favorable opinions of (1) Morrison & Foerster LLP, counsel to the Loan Parties, (2) Conyers Dill & Pearman LLP, special Bermuda counsel to the Loan Parties, and (3) appropriate local counsel to the Loan Parties, in each case addressed to the Administrative Agent and each Lender, as to the matters set forth in **Exhibit F** and such other matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request;

(viii) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(ix) a certificate signed by a Responsible Officer of the Borrower and the Guarantor certifying (A) that the conditions specified in **Sections 4.02(a) and (b)** have been satisfied, and (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(x) a duly completed Compliance Certificate as of the last day of the respective fiscal quarters of the Borrower and the Guarantor ended on June 30, 2012, signed by Responsible Officers of the Borrower and the Guarantor;

(xi) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained, is in effect and contains endorsements naming the Administrative Agent, on behalf of the Lenders, as a joint assured and/or co-loss payee, as the case may be, under such insurance;

(xii) evidence that all filings, recordations and searches necessary or desirable to perfect the Lien on any property granted to or held by the Administrative Agent under any Loan Document shall have been completed, and that all related filing and recording fees and taxes shall have been duly paid;

(xiii) a Borrowing Base Certificate duly certified by a Responsible Officer of the Borrower relating to the initial Credit Extension;

(xiv) evidence that the Existing Credit Agreement has been, or concurrently with such Credit Extension is being, terminated, all amounts owing by the Borrower under the Existing Credit Agreement shall have been, or concurrently with such Credit Extension are being, repaid, and all Liens securing obligations under the Existing Credit Agreement have been, or concurrently with such Credit Extension are being, released or assigned; and

(xv) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuer or the Required Lenders reasonably may require.

(b) (i) All fees required to be paid to the Administrative Agent and the Arrangers on or before the Closing Date shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Closing Date shall have been paid.

(c) Unless waived by the Administrative Agent, the Borrower shall have paid all fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (*provided that* such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

(d) The Administrative Agent shall have completed a due diligence investigation of the Guarantor, the Borrower and their respective Subsidiaries in scope, and with results, satisfactory to the Administrative Agent and shall have been given such access to the management, records, books of account, contracts and properties of the Guarantor, the Borrower and their respective Subsidiaries and shall have received such financial, business and other information regarding each of the foregoing persons and businesses as they shall have requested, including, without limitation, information as to possible contingent liabilities, tax matters, collective bargaining agreements and other arrangements with employees, the annual (or other audited) financial statements of the Guarantor, the Borrower and their respective Subsidiaries for the fiscal years ended 2009, 2010 and 2011, interim financial statements of the Guarantor, the Borrower and their respective Subsidiaries dated the end of the most recent fiscal quarter for which financial statements are available (or, in the event the Administrative Agent's due diligence review reveals material changes since such financial statements, as of a later date within 45 days of the Closing Date); and no changes or developments shall have occurred, and no new or additional information, shall have been received or discovered by the Administrative Agent or the Lenders regarding the Guarantor, the Borrower or their respective Subsidiaries or the transactions contemplated hereby after June 30, 2012 that either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, and nothing shall have come to the attention of the Administrative Agent or the Lenders to lead them to believe that the transactions contemplated hereby will have a Material Adverse Effect.

(e) No action, suit, investigation or proceeding is pending or, to the knowledge of the Guarantor or the Borrower, threatened in any court or before any arbitrator or governmental authority that could reasonably be expected to have a Material Adverse Effect.

Without limiting the generality of the provisions of the last paragraph of **Section 9.03**, for purposes of determining compliance with the conditions specified in this **Section 4.01**, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender.

**4.02 Conditions to all Credit Extensions.** The obligation of each Lender to honor any Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in **Article V** or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of

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such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this **Section 4.02**, the representations and warranties contained in **Sections 5.05(a)** and **(b)** shall be deemed to refer to the most recent statements furnished pursuant to **Sections 6.01(a)** and **(b)**, respectively.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer, shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) The Borrowing Base exceeds the Total Outstandings at such time, after giving effect to such Credit Extension, and the Borrower shall have delivered to the Administrative Agent a duly completed and executed Borrowing Base Certificate demonstrating the same.

(e) The Borrower and the Guarantor shall be in compliance with the financial covenants set forth in **Section 7.11**.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in **Sections 4.02(a), (b) and (e)** have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

Each Loan Party, for itself and, where applicable, its Subsidiaries, represents and warrants, to the Administrative Agent, the Issuing Bank and the Lenders that:

**5.01 Existence, Qualification and Power.** Each Loan Party (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in **clause (b)(i)** or **(c)**, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.02 Authorization; No Contravention.** The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law, the violation of which could be reasonably expected to result in a Material Adverse Effect.

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**5.03 Governmental Authorization; Other Consents.** Each approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Loan Documents, (c) the perfection or maintenance of the Liens created under the Loan Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, has been satisfied or obtained, except for the authorizations, approvals, actions, notices and filings set forth on **Schedule 5.03**.

**5.04 Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms.

**5.05 Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Persons set forth therein and their respective Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Persons set forth therein and their respective Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited consolidated and consolidating balance sheets of the Borrower and its Subsidiaries dated June 30, 2012, and the related consolidated and consolidating statements of income or operations and consolidated statements of shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of **clauses (i) and (ii)**, to the absence of footnotes and to normal year-end audit adjustments.

(c) **Schedule 5.05** sets forth all material indebtedness and other liabilities, direct or contingent, of the each of Borrower, TEMPL, TMCL, TMCL II, TWC and the Guarantor, and their respective Subsidiaries as of the Closing Date, including liabilities for taxes, material commitments and Indebtedness.

(d) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

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**5.06 Litigation.** There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of each Loan Party after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against such Loan Party or any of its Subsidiaries or against any of their properties or revenues (a) that purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) as of the date hereof, except as specifically disclosed in **Schedule 5.06**, either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect, and there has been no adverse change in the status, or financial effect on any Loan Party or any Subsidiary thereof, of the matters described on **Schedule 5.06**.

**5.07 No Default.** Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

**5.08 Ownership of Property; Liens; Investments.**

(a) Each Loan Party and each Subsidiary thereof has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Loan Parties and their Subsidiaries is subject to no Liens, other than Liens permitted by **Section 7.01**.

(b) **Schedule 5.08(b)** sets forth a complete and accurate (as of the date hereof) list of all Liens on the property or assets of each Loan Party and each of its Subsidiaries. The property of each Loan Party is subject to no Liens, other than Liens set forth on **Schedule 5.08(b)**, and as otherwise permitted by **Section 7.01**.

(c) **Schedule 5.08(c)** sets forth a complete and accurate list of each Investment held by any Loan Party on the date hereof which is in excess (individually) of \$1,000,000, showing as of the date hereof the amount, obligor or issuer and maturity, if any, thereof.

**5.09 Environmental Compliance.** Except as specifically disclosed in **Schedule 5.09**, to the Loan Parties' knowledge, there exist no claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.10 Insurance.** The properties of each Loan Party and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where each Loan Party or the applicable Subsidiary operates (*provided that* the possession by Lessees of property owned by the Borrower or any of its Subsidiaries in any locality shall not be deemed to constitute the engagement in business or owning of property by the Borrower or such Subsidiary in such locality).

**5.11 Taxes.** Each Loan Party and its Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material

taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Loan Party or its respective Subsidiaries that would, if made, have a Material Adverse Effect. No Loan Party is party to any tax sharing agreement (and a “check-the-box” tax election shall not be deemed to constitute a “tax sharing agreement”).

#### **5.12 ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or opinion from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither the Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) neither the Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Neither the Borrower nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than, on the Closing Date, those listed on **Schedule 5.12(d)**.

**5.13 Subsidiaries; Equity Interests.** No Loan Party has any Subsidiaries other than those specifically disclosed in **Schedule 5.13**, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party in the amounts specified on **Schedule 5.13** free and clear of all Liens except those created under the Collateral

Documents. All of the outstanding Equity Interests in the Borrower have been validly issued, are fully paid and non-assessable and are owned by the Guarantor in the amounts specified on **Part (a) of Schedule 5.13** free and clear of all Liens except those created under the Collateral Documents. Set forth on **Part (b) of Schedule 5.13** is a complete and accurate list of all Loan Parties, showing as of the Closing Date (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation. The copy of the charter of each Loan Party and each amendment thereto provided pursuant to **Section 4.01(a)(vi)** is a true and correct copy of each such document, each of which is valid and in full force and effect as of the date hereof.

**5.14 Margin Regulations; Investment Company Act.**

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) Neither the Borrower nor the Guarantor is, nor is required to be, registered as an “investment company” under the Investment Company Act of 1940.

**5.15 Disclosure.** Each Loan Party has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, in each case that (individually or in the aggregate) could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided that*, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

**5.16 Compliance with Laws.** Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**5.17 Solvency.** Each Loan Party is Solvent.

**5.18 Casualty, Etc.** Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.



**5.19 Collateral Matters.** The provisions of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Liens permitted by **Section 7.01**) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings completed prior to the Closing Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.

**5.20 Foreign Assets Control Regulations, Etc.** No Loan Party or Subsidiary thereof (i) is currently the subject of any Sanctions or (ii) is located, organized or residing in any Designated Jurisdiction. To the Loan Parties' knowledge, no Loan, nor the proceeds from any Loan, has been used, directly or indirectly, to fund any activity or business in any Designated Jurisdiction, or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including any Lender, the Arranger, the Administrative Agent, the L/C Issuer) of Sanctions.

**5.21 Update of Schedules.** Any Schedule referenced in **Article V** may be periodically updated by any Loan Party as often as is necessary to insure the continued accuracy of such Schedule, by such Loan Party providing to the Administrative Agent, in writing or via electronic means, a revised version of such Schedule in accordance with the provisions of **Section 11.02**. Each such updated Schedule shall be effective immediately upon the receipt thereof by the Administrative Agent.

## ARTICLE VI

### AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, each of the Borrower and the Guarantor shall:

**6.01 Financial Statements.** Deliver to the Administrative Agent, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) as soon as available, but in any event within 120 days after the end of each fiscal year of each Receivables Subsidiary (other than TWC), the Borrower, TEMPL and the Guarantor (commencing with the fiscal year ended December 31, 2012), a consolidated and, with respect to the Guarantor and the Borrower, consolidating balance sheet of such Person and its Subsidiaries as at the end of such fiscal year, the related consolidated and, with respect to the Guarantor and the Borrower, consolidating statements of income or operations for such fiscal year, and the related consolidated changes in shareholders' equity, and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit; *provided, however, that* the Borrower's annual financial statements may be unaudited; and

(b) as soon as available, but in any event within 60 days after the end of each of the first three fiscal quarters of each fiscal year of each of the Borrower and the Guarantor (commencing with

the fiscal year ended December 31, 2012), a consolidated and, with respect to the Guarantor and the Borrower, consolidating balance sheet of such Person and its Subsidiaries as at the end of such fiscal quarter, the related consolidated and, with respect to the Guarantor and the Borrower, consolidating statements of income or operations for such fiscal quarter, and the related consolidated changes in shareholders' equity, and cash flows for such fiscal quarter and for the portion of such Person's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by a Responsible Officer of Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of such Person and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

**6.02 Certificates; Other Information.** In the case of the Borrower, deliver to the Administrative Agent, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in **Section 6.01(a)**, a certificate of its independent certified public accountants certifying such financial statements;

(b) concurrently with the delivery of the financial statements referred to in **Sections 6.01(a) and (b)** (commencing with the delivery of the financial statements for the fiscal quarter ended September 30, 2012), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower;

(c) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Borrower by independent accountants in connection with the accounts or books of the Borrower or any Subsidiary, or any audit of any of them;

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) a Borrowing Base Certificate duly executed by a Responsible Officer of Borrower, with appropriate insertions, (i) not later than thirty (30) days following the end of each calendar month, dated as of the last day of such month (unless any certificate required by (ii) or (iii) below has already been delivered to the Administrative Agent for such calendar month or as of a later date), (ii) in connection with each Loan Notice, dated as of the requested Loan funding date (but delivered to the Administrative Agent on the date Borrower delivers the Loan Notice to the Administrative Agent pursuant to **Section 2.02(a)**), and (iii) in connection with each release of Collateral which is permitted under **Section 9.10(a)**, dated as of the applicable date of release (but delivered to the Administrative Agent at least one (1) Business Day prior to such date);

(f) upon Administrative Agent's request, or, if the sum of the Net Book Values of all Marine Containers owned by the Borrower exceeds Thirty Million Dollars (\$30,000,000), within thirty (30) days after the end of each quarter of each fiscal year of Borrower, a summary setting forth (i) the number and type of Marine Containers then owned by Borrower and included in the Collateral, (ii) their aggregate

net book value, and (iii) their aggregate original cost (or, upon the Administrative Agent's request, a detailed report as of the end of such month, setting forth with respect to each unit of Marine Container then owned by Borrower its (1) serial or other identifying number, (2) in-service date, (3) net book value (including totals thereof), and (4) original cost (including totals thereof));

(g) upon the Administrative Agent's request, as soon as practicable, and in any event not later than thirty (30) days after the end of each fiscal quarter, a Responsible Officer of the Guarantor, relating to all inventory and fleets managed by TEML, dated as of the end of the quarter, setting forth: (i) a breakout of inventory by type, (ii) utilization by inventory type, (iii) average per diem rates by inventory type, and (iv) a list of the ten (10) largest (in terms of cost equivalent unit on hire) customers of the TEML fleet, with detailed accounts receivable aging reports (listing receivables of 30, 60, 90, and over 90 days duration) for each and a summarized aging report for all other customers giving the same aging information, in each case, in form and substance satisfactory to, and with such additional information as may be from time to time reasonably requested by, the Required Lenders;

(h) promptly following receipt thereof, copies of (x) each Asset Base Report and Manager Report (each, as defined in the TMCL Indenture) and each Equipment and Lease Report (as defined in Section 7.1 of the Management Agreement (as such term is defined in the TMCL Indenture)), (y) each Asset Base Report and Manager Report (each, as defined in the TMCL II Indenture) and each Equipment and Lease Report (as defined in Section 7.1 of the Management Agreement (as such term is defined in the TMCL II Indenture)) and (z) the equivalent of the items described in clauses (x) and (y) with respect to any other Receivables Subsidiary (other than TWC);

(i) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to **Section 6.01** or any other provision of this **Section 6.02**;

(j) as soon as available, but in any event within 30 days after the end of each fiscal year of the Borrower, a report summarizing the insurance coverage (specifying type, amount and carrier) in effect for the Borrower and containing such additional information as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably specify;

(k) promptly, and in any event within five Business Days after receipt thereof by any Loan Party, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party, which, if pursued through a determination adverse to such Loan Party, could reasonably be expected to have a Material Adverse Effect;

(l) at least 15 days prior to the commencement of each fiscal year of each of the Borrower and the Guarantor, a reasonably detailed consolidated budget for each such Person for such fiscal year (including a projected consolidated balance sheet and related statements of projected operations and cash flow as of the end of and for each fiscal quarter during such fiscal year and setting forth the assumptions used for purposes of preparing each such budget) and, promptly when available and from time to time, any significant revisions of each such budget (including, without limitation, any amounts to be paid to any pension plan), which need not be prepared in accordance with GAAP, but which, in any event, shall be in a form acceptable to the Administrative Agent; and

(m) promptly, such additional information regarding the business, financial or corporate affairs of the Borrower or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to **Section 6.01(a)** or **(b)** or **Section 6.02(b)** or **(d)** (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which made available on EDGAR following filing with the SEC; *provided that* (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions ( *i.e.*, soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers may, but shall not be obligated to, make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “ *Borrower Materials*”) by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the “ *Platform*”) and (b) certain of the Lenders (each, a “ *Public Lender*”) may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Borrower hereby agrees that, so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities, (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (*provided, however, that* to the extent such Borrower Materials constitute Information, they shall be treated as set forth in **Section 11.07**); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.” Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials “PUBLIC.”

**6.03 Notices.** Promptly notify the Administrative Agent:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including any such matter consisting of (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower; (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower and any Governmental Authority; (iii) the

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commencement of, or any material development in, any litigation or proceeding affecting the Borrower, including pursuant to any applicable Environmental Laws; or (iv) the occurrence of (x) any Early Amortization Event or Event of Default (as each such term is defined in the TMCL Indenture), (y) any Early Amortization Event or Event of Default (as each such term is defined in the TMCL II Indenture) or (z) the equivalent of the events described in clauses (x) and (y) with respect to any other Receivables Subsidiary (other than TWC);

(c) of the occurrence of any ERISA Event;

(d) of any material change in accounting policies or financial reporting practices by the Borrower, including any determination by the Guarantor referred to in **Section 2.10(b)**; and

(e) following publication of a long-term debt rating of the Guarantor, of any notification from either Moody's or S&P that such rating has (x) been placed on watch for a possible downgrade or (y) been downgraded.

Each notice pursuant to this **Section 6.03** shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to **Section 6.03(a)** shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04 Payment of Obligations.** Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property not permitted under the Loan Documents; and (c) all Indebtedness, as and when due and payable, but subject to any applicable terms of subordination.

**6.05 Preservation of Existence, Etc.** (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by **Section 7.04** or **7.05**; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06 Maintenance of Properties.** (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

**6.07 Maintenance of Insurance.** Maintain, to the extent commercially practicable, with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect

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to any self-insurance compatible with the following standards) as are customarily carried under similar circumstances by such other Persons and providing for not less than 30 days' (or 10 days', in the case of cancellation for nonpayment of premium) prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance.

**6.08 Compliance with Laws.** Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.09 Books and Records.** Maintain (a) proper books of record and account, in which full, true and correct entries in conformity with GAAP shall be made of all financial transactions and matters involving the assets and business of such Loan Party; and (b) such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Loan Party.

**6.10 Inspection Rights.** Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors and officers, all at the expense of the Borrower and at all at such reasonable times (but no more frequently than twice per year) during normal business hours, upon reasonable advance notice to the Borrower; *provided that*, so long as no Default is continuing, the Borrower and the Guarantor shall, notwithstanding any other provision of this Agreement, only be required to reimburse the Administrative Agent for costs and expenses incurred in connection with one such inspection per year; *provided, further, that* when a Default or an Event of Default exists the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time (without limitation regarding frequency) during normal business hours and without advance notice.

**6.11 Use of Proceeds.** Use the proceeds of the Credit Extensions (i) to refinance existing indebtedness of the Borrower (including without limitation all amounts owing under the Existing Agreement), (ii) for working capital, capital expenditures and other corporate purposes of the Borrower which are not in contravention of any Law or of any Loan Document, (iii) for the issuance of Letters of Credit and/or (iv) to make Investments in Subsidiaries.

**6.12 Compliance with Environmental Laws.** Comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action ordered by any Governmental Authority as necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws; *provided, however, that* neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

**6.13 Further Assurances.** Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any

Loan Document or in the execution, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's properties, assets, rights or interests (excluding (i) in the case of the Borrower, any Equity Interests in any Receivables Subsidiary and any property not related to the Marine Containers owned by Borrower and (ii) in the case of the Guarantor, any property other than Equity Interests in the Borrower) to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

**6.14 Compliance with Terms of Leaseholds.** Make all payments and otherwise perform all obligations in respect of all leases of real property to which the Borrower or any of its Subsidiaries is a party, keep such leases in full force and effect and not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify the Administrative Agent of any default by any party with respect to such leases and cooperate with the Administrative Agent in all respects to cure any such default, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, would not be reasonably likely to have a Material Adverse Effect.

**6.15 Lien Searches.** Promptly following receipt by the Loan Parties of the acknowledgment copy of any financing statement filed under the Uniform Commercial Code in any jurisdiction by or on behalf of the Secured Parties, deliver to the Administrative Agent completed lien search results listing such financing statement and all other effective financing statements filed in such jurisdiction that name any Loan Party as debtor.

**6.16 Material Contracts.** Materially perform and observe all the terms and provisions of its Contractual Obligations and maintain its material rights and obligations thereunder, except, in any case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

## ARTICLE VII

### NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, neither the Borrower nor the Guarantor shall, nor shall they, if so indicated, permit their respective Subsidiaries to:

**7.01 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens pursuant to any Loan Document;

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(b) (i) Liens existing on the date hereof and listed on **Schedule 5.08(b)** and (ii) Liens securing Indebtedness permitted under **Section 7.02(b)(ii)** *(provided that the scope of the collateral securing such Indebtedness is not expanded)*;

(c) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens securing judgments for the payment of money not constituting an Event of Default under **Section 8.01(h)**;

(i) Liens on Receivables Program Assets incurred in connection with Qualified Receivables Transactions;

(j) Liens securing Indebtedness permitted under **Section 7.02(e)** *(provided that* (x) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (y) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition);

(k) Liens securing Indebtedness permitted under **Section 7.02 (g), (h) or (j)**;

(l) Liens, on Segregated Collateral Pools, securing the Term Facility;

(m) rights under Leases, held by (i) any lessee or sublessee thereunder or (ii) any owner (other than any Loan Party) of a Marine Container subject thereto;

(n) bankers' Liens, rights of setoff and other similar Liens existing on property on deposit in one or more accounts maintained by such Loan Party; and

(o) Liens arising from or related to precautionary UCC or like personal property financing statements filed in connection with leases entered into in the Ordinary Course of Business.



**7.02 Indebtedness.** Create, incur, assume or suffer to exist any Indebtedness, or permit any of its Subsidiaries to do so, except (subject to the proviso at the end of this **Section 7.02**):

(a) Indebtedness under the Loan Documents;

(b) (i) Indebtedness listed on **Schedule 5.05** and (ii) any refinancings, renewals, refundings or replacements thereof; *provided*, that the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate;

(c) Guarantees of (x) the Borrower in respect of Indebtedness not otherwise prohibited hereunder of any of its Subsidiaries, or (y) the Guarantor in respect of Indebtedness not otherwise prohibited hereunder of any of its Subsidiaries;

(d) obligations (contingent or otherwise) of the Borrower, the Guarantor or any of their respective Subsidiaries existing or arising under any Swap Contract, *provided that* (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a “market view;” and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party (other than by way of setoff);

(e) Vendor Debt incurred in connection with the acquisition by the Borrower of Marine Containers; *provided that* (A) such Vendor Debt represents the purchase price of Marine Containers, (B) the amount of such Vendor Debt does not exceed 100% of the purchase price (including any fees or other expenses incurred in connection therewith, such as repositioning costs) of the applicable Marine Containers and (C) such Vendor Debt is not overdue in accordance with the payment terms thereof; and

(f) for the Guarantor, unsecured Indebtedness (either directly or through the issuance by the Guarantor of a Guarantee with respect to Indebtedness of the Borrower) such that, before and after giving effect to the incurrence of such additional Indebtedness (when considered with all other outstanding Indebtedness of the Guarantor permitted or incurred hereunder), no Default shall occur;

(g) for TEML, Indebtedness in the maximum aggregate principal amount not to exceed Two Million Dollars (\$2,000,000);

(h) Indebtedness incurred by any Receivables Subsidiary in connection with a Qualified Receivables Transaction;

(i) Indebtedness of such Person incurred as a result of an Investment in such Person not prohibited under **Section 7.03**; and

(j) for the Borrower or any of its Subsidiaries, Indebtedness (other than Guarantees by Borrower of Indebtedness of Guarantor) in an aggregate principal amount such that, before and after giving effect to the incurrence of such additional Indebtedness (when considered with all other outstanding Indebtedness of the Borrower permitted or incurred hereunder), no Default shall occur;

*provided, however, that*, notwithstanding the foregoing, Indebtedness otherwise permitted pursuant to the foregoing paragraphs of this **Section 7.02** shall not be permitted if the incurrence thereof, when considered with all other outstanding Indebtedness of any Loan Party (or any Subsidiary thereof) permitted or incurred under this Agreement, would cause a violation of any financial covenant set forth in **Section 7.11**.

**7.03 Investments.** Make or hold any Investments, except:

- (a) Investments in the form of Cash Equivalents;
- (b) advances to officers, directors and employees of the Borrower and Subsidiaries in an aggregate amount not to exceed \$5,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;
- (c) Investments by the Borrower in Subsidiaries; provided, however, that with respect to any Receivables Subsidiary, (i) Investments by the Borrower permitted under this Section 7.03(c) in such Receivables Subsidiary to cure an “early amortization event” or similar event for such Receivables Subsidiary shall be limited to two such Investments during any twelve month period and (ii) the amount thereof shall not exceed an amount equal to the lesser of (A) \$20 million and (B) the total dividend payments actually received by the Borrower from all Receivables Subsidiaries (other than TWC) during such twelve month period;
- (d) Investments by the Borrower in TWC in an amount not to exceed Forty Million Dollars (\$40,000,000);
- (e) Investments by the Guarantor in either the Borrower or TEMPL; *provided that*, both before and after each such Investment, no Default shall have occurred;
- (f) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;
- (g) Guarantees permitted by **Section 7.02**;
- (h) any Investment consisting of a loan by the Borrower to the Guarantor, the proceeds of which will be used by the Guarantor solely for the payment of dividends to holders of its Equity Interests; *provided that* the aggregate amount of such Investments made in any fiscal year, when added to the amount of Restricted Payments made by Borrower in compliance with **Section 7.06** during such fiscal year, shall not exceed the amount of such Restricted Payments permitted to be made in such fiscal year pursuant to **Section 7.06**;
- (i) Investments listed on **Schedule 5.08(c)**; and
- (j) other Investments by the Borrower made in the Ordinary Course of Business.

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**7.04 Fundamental Changes.** Merge, dissolve, liquidate, amalgamate, consolidate with or into another Person, except that, so long as no Default exists or would result therefrom, any Person may merge with such Loan Party, *provided that* such Loan Party shall be the continuing or surviving Person.

**7.05 Dispositions.** Dispose of (whether in one transaction or in a series of transactions) all, or substantially, all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, or enter into any agreement to do so, except:

(a) Leases of Marine Containers entered into in the Ordinary Course of Business;

(b) Dispositions of inventory (including Marine Containers) in the Ordinary Course of Business, so long as, both before and after giving effect to each such Disposition, the Borrowing Base exceeds the Total Outstandings at such time;

(c) So long as (i) no Default exists or would exist as a result of such sale, conveyance or transfer and (ii) Borrower has delivered a completed Borrowing Base Certificate to the Administrative Agent in connection with such sale, conveyance or transfer, sales of Receivables Program Assets in connection with any Qualified Receivables Transaction; and

(d) So long as no Default exists or would exist as a result of such sale, conveyance or transfer, Dispositions of Trading Marine Containers in the Ordinary Course of Business;

*provided, however, that* any Disposition to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries shall be for the fair market value of the asset(s) Disposed.

**7.06 Restricted Payments.** Declare or make any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, if, after giving effect to such Restricted Payment, (i) a Default would exist or (ii) in the case of the Borrower, the amount of such Restricted Payment made in any fiscal year, when aggregated with the amounts of all other such Restricted Payments made by Borrower in such fiscal year, would exceed seventy percent (70%) of Consolidated Net Income of the Borrower for the immediately preceding four fiscal quarters.

**7.07 Change in Nature of Business.** Engage in any material line of business substantially different from those lines of business conducted by it on the date hereof or any business substantially related or incidental thereto, or any business engaged in by container lessors generally.

**7.08 Transactions with Affiliates.** Enter into any transaction of any kind with any Affiliate of such Loan Party, whether or not in the ordinary course of business, other than (a) on fair and reasonable terms substantially as favorable to such Loan Party as would be obtainable by such Loan Party at the time in a comparable arm's length transaction with a Person other than an Affiliate, (b) transactions otherwise not prohibited under this **Article VII** or (c) as described on **Schedule 7.08**.

**7.09 Negative Pledge with respect to TMCL Shares, TMCL II Shares, TWC Shares and Shares of Other Receivable Subsidiaries.** In the case of Borrower sell, pledge, transfer or otherwise encumber (i) the 10,500 issued and outstanding Class A Shares of TMCL owned by the Borrower, (ii) the 1,000 issued and outstanding ordinary shares of TMCL II owned by the Borrower, (iii) the Equity Interests in TWC owned by the Borrower or (iv) the Equity Interests in any other Receivables Subsidiary owned by the Borrower.

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**7.10 Use of Proceeds.** Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

**7.11 Financial Covenants.**

(a) **Maximum Consolidated Leverage Ratio of Guarantor** . In the case of the Guarantor, permit the Consolidated Leverage Ratio of the Guarantor to exceed 3:5 to 1.

(b) **Minimum Consolidated Interest Coverage Ratio of Guarantor** . In the case of the Guarantor, permit the Consolidated Interest Coverage Ratio of the Guarantor as of the end of any fiscal quarter to be less than 1.5 to 1.

(c) **Maximum Consolidated Leverage Ratio of Borrower** . In the case of the Borrower, permit the Consolidated Leverage Ratio of the Borrower to exceed 3:5 to 1.

(d) **Minimum Consolidated Interest Coverage Ratio of Borrower** . In the case of the Borrower, permit the ratio of Consolidated Interest Coverage Ratio of Borrower to be less than 1.5:1.

(e) **Revised Financial Ratios** . If at any time any Loan Party shall enter into or be a party to any agreement governing Indebtedness for borrowed money which singularly or in the aggregate exceeds Eighty Million Dollars (\$80,000,000), including all such instruments or agreements in existence as of the Closing Date and all such instruments or agreements entered into after the Closing Date (each, a “Principal Lending Agreement”), and any such Principal Lending Agreement at any time includes a Consolidated Leverage Ratio or a Consolidated Interest Coverage Ratio (or, in each case, any substantially comparable financial ratio) which is more restrictive on such Loan Party than the applicable Consolidated Leverage Ratio or Consolidated Interest Coverage Ratio requirements set forth in Sections 7.11(a) through (d), or such Principal Lending Agreement subsequently loosens or further restricts any such financial ratio (each such loosened or further restricted ratio, a “Revised Financial Ratio”), then and in any such event such Loan Party shall give written notice thereof to the Administrative Agent not later than thirty (30) days following the date of execution of such Principal Lending Agreement or amendment or termination thereof, as the case may be. Effective on the date of execution, amendment, modification or termination of such Principal Lending Agreement, as the case may be, the applicable provisions of Sections 7.11(a) through (d) shall automatically be deemed to be amended to include such Revised Financial Ratio; *provided* that in no event shall the level of any such Revised Financial Ratio be less restrictive on such Loan Party than the corresponding financial ratio in Sections 7.11(a) through (d) in effect on the Closing Date. Each Loan Party further covenants to promptly execute and deliver at its expense each and every amendment to this Agreement in form and substance satisfactory to the Administrative Agent evidencing the amendment of this Agreement to include, modify or exclude, as the case may be, the effect of such Revised Financial Ratio, provided that the execution and delivery of any such amendment shall not be a precondition to the effectiveness of such amendment, but shall merely be for the convenience of the parties hereto.

**7.12 Amendments of Organization Documents or TEML Management Agreement.** Amend any of its Organization Documents or the TEML Management Agreement in a way that could cause a Material Adverse Effect.

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**7.13 Accounting Changes.** Subject to **Section 1.03**, make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year.

**7.14 Prepayments, Etc. of Indebtedness.** Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Indebtedness with a stated maturity later than the Maturity Date, except (a) the prepayment of the Credit Extensions in accordance with the terms of this Agreement and (b) regularly scheduled or required repayments, prepayments or redemptions of Indebtedness set forth in **Schedule 5.05**.

**7.15 Container Management System.** Create, incur, assume or grant or suffer to exist, directly or indirectly, in favor of any Person, any Lien on the container management system (or similar software package and/or computer system designed to manage and track the Containers under management by the Manager) used by the Manager in the ordinary course of its business. Each Loan Party shall promptly take, or cause to be taken, such actions as may be necessary to discharge any such Lien.

**7.16 Lease Obligations.** Enter into any arrangement, directly or indirectly, whereby such Loan Party or any of their respective Subsidiaries shall sell or transfer any property owned by it in order then or thereafter to lease such property or lease other property that such Loan Party or any of their respective Subsidiaries intends to use for substantially the same purpose as the property being sold or transferred, other than any Capitalized Lease or Synthetic Lease.

**7.17 Amendment, Etc. of Related Documents and Indebtedness.** (a) Cancel or terminate any Related Document or consent to or accept any cancellation or termination thereof, (b) amend, modify, or change in any manner any term or condition of any Related Document or give any consent, waiver or approval thereunder, (c) waive any default under or any breach of any term or condition of any Related Document, (d) take any other action in connection with any Related Document or (e) add additional events of default to any such Related Document, in the case of each of the foregoing clauses (a) through (e), in such a manner as would result in a Material Adverse Effect.

**7.18 OFAC.**

(a) Lease, sublease or sell, or consent to the lease, sublease or sale of, a Marine Container owned by such Loan Party to a person or jurisdiction prohibited to such Loan Party under applicable law.

(b) If any Loan Party obtains knowledge that a Marine Container then included in the most recent calculation of the Borrowing Base submitted to the Administrative Agent hereunder is leased or subleased to a Sanctioned Person or a Sanctioned Entity (other than by the United States government, or pursuant to a license issued by the appropriate authority), then such Loan Party shall, within five (5) Business Days after obtaining knowledge thereof, remove such Marine Container from the calculation of the Borrowing Base for so long as such condition continues. No Trading Marine Container included in the Borrowing Base will be sold to a Sanctioned Person or a Sanctioned Entity.

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## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

**8.01 Events of Default.** Any of the following shall constitute an Event of Default:

(a) **Non-Payment.** The Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation or deposit any funds as Cash Collateral in respect of L/C Obligations, or (ii) pay within three days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) pay within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants.** Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of **Sections 6.01, 6.02, 6.03, 6.05, 6.07, 6.10, 6.11, 6.12**, or **Article VII**, or the Borrower fails to perform or observe any term, covenant or agreement contained in **Sections 2, 5.7, 5.11** or **5.16** of the Security Agreement; or

(c) **Other Defaults.** Any Loan Party fails to perform or observe any other covenant or agreement (not specified in **Section 8.01(a)** or **(b)**) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(d) **Representations and Warranties.** Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document shall be incorrect or misleading when made or deemed made; or

(e) **Cross-Default.** (i) Any Loan Party or any Material Subsidiary of a Loan Party (other than a Receivables Subsidiary) (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$15,000,000, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by a Loan Party or any Subsidiary thereof as a result thereof is greater than \$5,000,000; or

(f) **Insolvency Proceedings, Etc.** Any Loan Party or any Subsidiary thereof institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) **Inability to Pay Debts; Attachment.** (i) Any Loan Party or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) **Judgments.** There is entered against any Loan Party or any Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding \$15,000,000 (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) **ERISA.** (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$10,000,000, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$10,000,000; or

(j) **Invalidity of Loan Documents.** Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any Affiliate thereof contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(k) **Change of Control.** There occurs any Change of Control with respect to the Guarantor; or

(l) **Ownership of Equity Interests.** The occurrence of any of the following: (i) the Guarantor shall cease, directly, to own and control legally and beneficially all of the Equity Interests in the Borrower, (ii) the Guarantor shall cease, directly, to own and control legally and beneficially all of the Equity Interests in TEMPL, or (iii) the Borrower shall cease, directly, to own and control legally and beneficially all of the Equity Interests in each Receivables Subsidiary (other than TWC); or

(m) **Collateral Documents.** Any Collateral Document after delivery thereof pursuant to **Section 4.01** shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority Lien (subject to Liens permitted by **Section 7.01** (other than Liens securing Indebtedness permitted under **Section 7.02(j)**)) on the Collateral purported to be covered thereby.

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**8.02 Remedies upon Event of Default.** If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents;

*provided, however, that* upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

### **8.03 Application of Funds.**

(a) After the exercise of remedies provided for in **Section 8.02** (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to **Section 8.02**), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

*First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under **Article III**) payable to the Administrative Agent in its capacity as such;

*Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer (including fees and time charges for attorneys who may be employees of any Lender or the L/C Issuer arising under the Loan Documents) and amounts payable under **Article III**, ratably among them in proportion to the respective amounts described in this clause Second payable to them;



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*Third*, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

*Fourth*, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fourth held by them;

*Fifth*, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit; and

*Last*, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

(b) Subject to **Section 2.03(c)**, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

## ARTICLE IX

### ADMINISTRATIVE AGENT

#### 9.01 Appointment and Authority.

(a) Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-

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in-fact appointed by the Administrative Agent pursuant to **Section 9.05** for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this **Article IX** and **Article XI** (including **Section 11.04(c)**), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

**9.02 Rights as a Lender.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**9.03 Exculpatory Provisions.** The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided that* the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Sections 11.01** and **8.02**) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower, a Lender or the L/C Issuer.

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The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in **Article IV** or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.04 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

**9.06 Resignation of Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “**Resignation Effective Date**”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to **clause (d)** of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor from among the other Lenders. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “ **Removal Effective Date**”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in **Section 3.01(g)** and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this **Section 9.06**). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this **Article IX** and **Section 11.04** shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(d) Any resignation by Bank of America as Administrative Agent pursuant to this **Section 9.06** shall also constitute its resignation as L/C Issuer. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to **Section 2.03(c)**. Upon the appointment by the Borrower of a successor L/C Issuer hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (b) the retiring L/C Issuer shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

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**9.07 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Bookrunners or Arrangers listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

**9.09 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under **Sections 2.03(i) and (j), 2.09 and 11.04**) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under **Sections 2.09 and 11.04**.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

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## 9.10 Collateral Matters.

(a) The Lenders and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion:

(i) to release any Lien on any Collateral (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) subject to **Section 11.01**, if approved, authorized or ratified in writing by the Required Lenders; and

(ii) to subordinate any Lien on any Collateral to the holder of any Lien on such property that is permitted by **Section 7.01(i)**;

(b) In the event of (i) any Disposition of Collateral permitted pursuant to **Section 7.05(c)** or **(d)** or (ii) the granting of Liens, on Collateral consisting of Segregated Collateral Pool, to secure the Term Facility, the Lenders, the Administrative Agent and the L/C Issuer agree that the Secured Parties' Lien on such Collateral automatically shall be released so long as the Borrower shall have submitted to the Administrative Agent a Borrowing Base Report demonstrating that, after giving pro forma effect to any such requested release of Collateral, the Total Outstandings shall not exceed the lesser of (x) the Aggregate Commitments and (y) the Borrowing Base. In such event, the Administrative Agent, on behalf of the Secured Parties, shall be deemed to have released such Collateral from the Lien of the Collateral Documents, and the Administrative Agent shall, at Borrower's request, within three (3) Business Days execute any documentation reasonably required to evidence such release.

(c) Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular Collateral pursuant to this **Section 9.10**. In each case as specified in this **Section 9.10**, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such Collateral from the Lien of the Collateral Documents or to subordinate its interest in such item, in accordance with the terms of the Loan Documents and this **Section 9.10**. The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(d) Each of Lenders and the L/C Issuer irrevocably authorizes the Administrative Agent, for and on behalf of the Secured Parties, to be the representative of the Secured Parties in connection with, and to enter into on behalf of the Secured Parties (i) any Intercreditor Agreement; *provided* that (x) the form and substance thereof is acceptable to Lenders having more than sixty-six and two-thirds percent (66 2/3%) of the Aggregate Commitments or, if the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to **Section 8.02**, Lenders holding in the aggregate more than sixty-six and two-thirds percent (66 2/3%) of the Total Outstandings and (y) any Intercreditor Agreement shall include a requirement that

any enforcement actions under such Intercreditor Agreement will require the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of total Indebtedness subject to such Intercreditor Agreement (measured by commitments for revolving credit agreements (if such commitments are outstanding and, if not, by unpaid principal) and unpaid principal for all other facilities), and (ii) upon the request of the Borrower with reasonable advance notice to the Administrative Agent and so long as no Default or Event of Default exists, any collateral agency arrangements (including any agreements, certificates, documents and instruments relating thereto or to the transactions contemplated thereby) with a collateral agent or collateral trustee and the issuer(s) of any Indebtedness (and holders of Liens in respect thereof) permitted hereunder for the purposes of, among other things, administering the Liens held for the benefit of the Secured Parties in the Collateral, such collateral agency arrangements and related documentation to be in form and substance satisfactory to the Administrative Agent. Upon the reasonable request of the Borrower, the Administrative Agent shall cooperate in good faith with the Borrower in its efforts to coordinate the intercreditor and collateral agency arrangements described above. Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority pursuant to this paragraph to enter into the transactions contemplated by the first sentence of this paragraph and any and all agreements, documents and instruments relating thereto.

## ARTICLE X

### CONTINUING GUARANTY

**10.01 Guaranty.** The Guarantor hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrower to the Secured Parties, and whether arising hereunder or under any other Loan Document (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof). The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall, absent manifest error, be binding upon the Guarantor and conclusive for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of the Guarantor under this Guaranty, and the Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

**10.02 Rights of Lenders.** The Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof, in each case, in accordance with the terms of the applicable Loan Documents; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Obligations; (c) apply such security and direct the order or manner of sale thereof as the Secured Parties in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Obligations. Without limiting the generality of the foregoing, the Guarantor

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consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of the Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of the Guarantor.

**10.03 Certain Waivers.** The Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrower; (b) any defense based on any claim that the Guarantor's obligations exceed or are more burdensome than those of the Borrower; (c) the benefit of any statute of limitations affecting the Guarantor's liability hereunder; (d) any right to proceed against the Borrower, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties. The Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Obligations. As provided below, this Guaranty shall be governed by, and construed in accordance with, the laws of the State of New York.

**10.04 Obligations Independent.** The obligations of the Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against the Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

**10.05 Subrogation.** The Guarantor shall not exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full and the Commitments are terminated. If any amounts are paid to the Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Obligations, whether matured or unmatured.

**10.06 Termination; Reinstatement.** This Guaranty is a continuing and irrevocable guaranty of all Obligations now or hereafter existing and shall remain in full force and effect until all Obligations and any other amounts payable under this Guaranty are indefeasibly paid in full in cash and the Commitments and the Obligations are terminated. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or the Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of the Guarantor under this **Section 10.06** shall survive termination of this Guaranty.



**10.07 Subordination.** The Guarantor hereby subordinates the payment of all obligations and indebtedness of the Borrower owing to the Guarantor, whether now existing or hereafter arising, including but not limited to any obligation of the Borrower to the Guarantor as subrogee of the Secured Parties or resulting from the Guarantor's performance under this Guaranty, to the Obligations. If the Secured Parties so request, any such obligation or indebtedness of the Borrower to the Guarantor shall be enforced and performance received by the Guarantor as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Obligations, but without reducing or affecting in any manner the liability of the Guarantor under this Guaranty.

**10.08 Stay of Acceleration.** If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against the Guarantor or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by the Guarantor immediately upon demand by the Secured Parties.

**10.09 Condition of Borrower.** The Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower and any other guarantor such information concerning the financial condition, business and operations of the Borrower and any such other guarantor as the Guarantor requires, and that none of the Secured Parties has any duty, and the Guarantor is not relying on the Secured Parties at any time, to disclose to the Guarantor any information relating to the business, operations or financial condition of the Borrower or any other guarantor (the Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

## ARTICLE XI

### MISCELLANEOUS

**11.01 Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however, that:*

(a) no such amendment, waiver or consent shall:

(i) waive any condition set forth in **Section 4.01** (other than **Section 4.01(b)(i)** or (c)), or, in the case of the initial Credit Extension, **Section 4.02**, without the written consent of each Lender;

(ii) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to **Section 8.02**) without the written consent of such Lender;

(iii) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;

(iv) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to **Section 11.01(b)(iii)**) any fees or other amounts payable hereunder or under any other Loan Document, or change the manner of computation of any financial ratio (including any change in any applicable defined term) used in determining the Applicable Rate that would result in a reduction of any interest rate on any Loan or any fee payable hereunder without the written consent of each Lender entitled to such amount; *provided, however, that* only the consent of the Required Lenders shall be necessary (i) to amend the definition of “Default Rate” or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(v) change **Section 2.13** or **Section 8.03** in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(vi) change any provision of this **Section 11.01** or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender;

(vii) subject to **Section 9.10**, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(viii) release the Guarantor from the Guaranty without the written consent of each Lender;

(ix) impose any greater restriction on the ability of any Lender to assign any of its rights or obligations hereunder without the written consent of the Required Lenders; or

(x) amend **Section 8.03** in any manner that would alter the priority of payments set forth in such Section without the written consent of each Lender; and

(b) (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it;

(ii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and

(iii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

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## 11.02 Notices; Effectiveness; Electronic Communication.

(a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in **Section 11.02(b)** and the penultimate paragraph of **Section 6.02**), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Guarantor, the Administrative Agent or the L/C Issuer, to the address, facsimile number, electronic mail address or telephone number specified for such Person on **Schedule 11.02**; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by facsimile, hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when sent. Notices and other communications delivered through electronic communications to the extent provided in **Section 11.02(b)**, shall be effective as provided in **Section 11.02(b)**.

(b) **Electronic Communications.** Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent (which include those set forth in the penultimate paragraph of **Section 6.02**), *provided that* the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to **Article II** if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided that* approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; *provided that*, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) **The Platform.** THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-

INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “**Agent Parties**”) have any liability to the Borrower, the Guarantor, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided, however, that* in no event shall any Agent Party have any liability to the Borrower, the Guarantor, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) **Change of Address, Etc.** Each of the Borrower, the Administrative Agent and the L/C Issuer may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto (or, in the case of Borrower, to the Administrative Agent). Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and the L/C Issuer. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) **Reliance by Administrative Agent, L/C Issuer and Lenders** . The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Loan Notices) purportedly given by or on behalf of the Borrower even if such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein. The Borrower shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**11.03 No Waiver; Cumulative Remedies.** No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate 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. The rights, remedies, powers and privileges herein provided or under any other Loan Document are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with **Section 8.02** for the benefit of all the Lenders and the L/C Issuer; *provided, however, that* the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with **Section 11.08** (subject to the terms of **Section 2.13**), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to **Section 8.02** and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to **Section 2.13**, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### **11.04 Expenses; Indemnity; Damage Waiver.**

(a) **Costs and Expenses.** The Borrower shall pay (i) all reasonable out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out of pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out of pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the L/C Issuer), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this **Section 11.04(a)**, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) **Indemnification by the Borrower.** The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnatee**”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities, penalties and related expenses (including the fees, charges and disbursements of any counsel for any Indemnatee), and shall indemnify and hold harmless each Indemnatee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnatee, incurred by any Indemnatee or asserted against any Indemnatee by any Person (including the Borrower or any other Loan Party) other than such Indemnatee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the

Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in **Section 3.01**), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, (iv) any civil penalty or fine assessed by OFAC against, and all reasonable costs and expenses (including reasonable counsel fees and disbursements) incurred in connection with defense thereof by, an Indemnitee as a result of conduct of any Loan Party or any Subsidiary thereof that violates a sanction enforced by OFAC, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party or any of the Borrower's or such Loan Party's directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto; *provided that* such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of **Section 3.01(c)**, this **Section 11.04(b)** shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) **Reimbursement by Lenders**. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under **Section 11.04(a)** or **(b)** to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, *provided that* the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this **Section 11.04(c)** are subject to the provisions of **Section 2.12(d)**.

(d) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in **Section 11.04(b)** shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission

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systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, unless such distribution was made as a result of the gross negligence or willful misconduct of such Indemnitee or in violation by such Indemnitee of **Section 11.07**, other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) **Payments.** All amounts due under this **Section 11.04** shall be payable not later than ten Business Days after demand therefor.

(f) **Survival.** The agreements in this **Section 11.04** and the indemnity provisions of **Section 11.02(e)** shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**11.05 Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under **clause (b)** of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### **11.06 Successors and Assigns.**

(a) **Successors and Assigns Generally.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of **Section 11.06(b)**, (ii) by way of participation in accordance with the provisions of **Section 11.06(d)**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 11.06(f)** (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 11.06(d)** and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders.** Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its

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Commitment and the Loans (including for purposes of this **Section 11.06(b)**), participations in L/C Obligations) at the time owing to it); *provided that* any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts.**

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in **Section 11.06(b)(i)(A)**, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); *provided, however, that* concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) **Proportionate Amounts.** Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned.

(iii) **Required Consents.** No consent shall be required for any assignment except to the extent required by **Section 11.06(b)(i)(B)** and, in addition:

(A) the consent of the Borrower (which, except in the case of an assignee that is considered by the Borrower to be a Competitor of any Loan Party or Affiliate thereof, shall not unreasonably be withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided that* the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; and provided, further, that the Borrower's consent shall not be required during the primary syndication of the credit facility provided herein;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding).



(iv) **Assignment and Assumption**. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; *provided, however, that* the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment; provided, further, that in no event shall the Borrower be required to pay such fee. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) **No Assignment to Borrower**. No such assignment shall be made to the Borrower or any of the Borrower's Affiliates or Subsidiaries.

(vi) **No Assignment to Natural Persons**. No such assignment shall be made to a natural person.

(vii) **Certain Additional Payments**. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this **Section 11.06(b)(vii)**, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to **Section 11.06(c)**, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Sections 3.01, 3.04, 3.05, and 11.04** with respect to facts and circumstances occurring prior to the effective date of such assignment; *provided that* except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this **Section 11.06(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 11.06(d)**.

(c) **Register**. The Administrative Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative

Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) **Participations.** Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations) owing to it); *provided that* (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under **Section 11.04(c)** without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided that* such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in **Section 11.01(a)** that affects such Participant. Subject to **Section 11.06(e)**, the Borrower agrees that each Participant shall be entitled to the benefits of **Sections 3.01, 3.04 and 3.05** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 11.06(b)** (it being understood that the documentation required under **Section 3.01(e)** shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 11.06(b)**; *provided that* such Participant (A) agrees to be subject to the provisions of **Sections 3.06 and 11.13** as if it were an assignee under **Section 11.06(b)** and (B) shall not be entitled to receive any greater payment under **Section 3.01 or 3.04**, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of **Section 3.06** with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 11.08** as though it were a Lender, provided such Participant agrees to be subject to **Section 2.13** as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided that* no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is

necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) **Limitations upon Participant Rights**. A Participant shall not be entitled to receive any greater payment under **Section 3.01** or **3.04** than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of **Section 3.01** unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with **Section 3.01(e)** as though it were a Lender.

(f) **Certain Pledges**. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided that* no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) **Resignation as L/C Issuer after Assignment**. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to **Section 11.06(b)**, Bank of America may, upon 30 days' notice to the Borrower and the Lenders, resign as L/C Issuer. In the event of any such resignation as L/C Issuer, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer hereunder; *provided, however, that* no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to **Section 2.03(c)**). Upon the appointment of a successor L/C Issuer, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

**11.07 Treatment of Certain Information; Confidentiality**. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and agree to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement

containing provisions substantially the same as those of this **Section 11.07**, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to **Section 11.01** or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this **Section 11.07** or (y) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this **Section 11.07**, “**Information**” means all information received from any Loan Party or any Subsidiary relating to any Loan Party or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary, *provided that*, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this **Section 11.07** shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

**11.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; *provided that* in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of **Section 2.17** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this **Section 11.08** are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and

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the L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, *provided that* the failure to give such notice shall not affect the validity of such setoff and application.

**11.09 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “*Maximum Rate*”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**11.10 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in **Section 11.07**, this Agreement shall become effective when it shall have been executed by the parties listed in the caption hereto and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

**11.11 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

**11.12 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this **Section 11.12**, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent or the L/C Issuer, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**11.13 Replacement of Lenders.** If the Borrower is entitled to replace a Lender pursuant to the provisions of **Section 3.06**, or if any Lender is a Defaulting Lender or if any other circumstance exists hereunder that gives the Borrower the right to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **Section 11.06**), all of its interests, rights (other than its existing rights to payments pursuant to **Sections 3.01** and **3.04**) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided that*:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in **Section 11.06(b)(iv)**;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under **Section 3.05**) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under **Section 11.07** or payments required to be made pursuant to **Section 11.07**, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

**11.14 Governing Law; Jurisdiction; Etc.**

(a) **GOVERNING LAW.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) **SUBMISSION TO JURISDICTION.** THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND

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UNCONDITIONALLY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE.** THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN **SECTION 11.14(b)**. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS.** EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN **SECTION 11.02**. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**11.15 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, ADMINISTRATIVE AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 11.15**.

**11.16 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and the Guarantor acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Arrangers are arm's-length commercial transactions between the Borrower, the Guarantor and their respective Affiliates, on the one hand, and the Administrative Agent and the Arranger, on the other hand, (B) each of the Borrower and the Guarantor has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrower and the Guarantor is capable of

evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and each Arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, the Guarantor or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent nor the Arrangers have any obligation to the Borrower, the Guarantor or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the Guarantor and their respective Affiliates, and neither the Administrative Agent nor the Arrangers have any obligation to disclose any of such interests to the Borrower, the Guarantor or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and the Guarantor hereby waives and releases any claims that it may have against the Administrative Agent and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**11.17 Electronic Execution of Assignments.** The words “execute,” “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**11.18 USA PATRIOT Act.** Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” an anti-money laundering rules and regulations, including the Act.

**11.19 Time of the Essence.** Time is of the essence of the Loan Documents.

**11.20 Judgment Currency.** The parties hereto hereby agree that (i) specification and payment of Dollars is of the essence, (ii) Dollars shall be the currency of account in the case of all obligations under the Loan Documents unless otherwise expressly provided herein or therein, (iii) the payment obligations of the parties under the Loan Documents shall not be discharged by an amount paid in a currency or in a place other than that specified with respect to such obligations, whether pursuant to a judgment or otherwise, except to the extent actually received by the Person entitled thereto and converted into Dollars by such Person (it being understood and agreed that, if any transaction party shall so receive an amount in a currency other than Dollars, it shall (A) if it is not the Person entitled to receive payment, promptly return the same (in the currency in which received) to the Person from whom it was



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received or (B) if it is the Person entitled to receive payment, either, in its sole discretion, (x) promptly return the same (in the currency in which received) to the Person from whom it was received or (y) subject to reasonable commercial practices, promptly cause the conversion of the same into Dollars), (iv) to the extent that the amount so paid on prompt conversion to Dollars under normal commercial practices does not yield the requisite amount of Dollars, the obligee of such payment shall have a separate cause of action against the party obligated to make the relevant payment for the additional amount necessary to yield the amount due and owing under the Loan Documents, (v) if, for the purpose of obtaining a judgment in any court with respect to any obligation under any of the Loan Documents, it shall be necessary to convert to any other currency any amount in Dollars due thereunder and a change shall occur between the rate of exchange applied in making such conversion and the rate of exchange prevailing on the date of payment of such judgment, the obligor in respect of such obligation will pay such additional amounts (if any) as may be necessary to insure that the amount paid on the date of payment is the amount in such other currency which, when converted into Dollars and transferred to New York City, New York, in accordance with normal banking procedures, will result in realization of the amount then due in Dollars and (vi) any amount due under this paragraph shall be due as a separate debt and shall not be affected by or merged into any judgment being obtained for any other sum due under or in respect of the Loan Documents.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

TEXTAINER LIMITED

By: Continental Management Limited, its Assistant Secretary

By /S/ Adam Hopkin

Name: Adam Hopkin

Title: Director

TEXTAINER GROUP HOLDINGS LIMITED

By: Continental Management Limited, its Assistant Secretary

By /S/ Adam Hopkin

Name: Adam Hopkin

Title: Director

BANK OF AMERICA, N.A., as Administrative Agent

By /s/ Robert Rittelmeyer

Name: Robert Rittelmeyer

Title: Vice President

BANK OF AMERICA, N.A., as a Lender and as L/C Issuer

By /s/ David Meehan

Name: David Meehan

Title: Director

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a  
Lender

By /s/ Jerri Kallam

Name: Jerri Kallam

Title: Director

ROYAL BANK OF CANADA, as a Lender

By /s/ Scott Umbs

Name: Scott Umbs

Title: Authorized Signatory

UNION BANK, N.A., as a Lender

By /s/ Michael McCauley

Name: Michael McCauley

Title: Vice President

[Signature Page to TL Credit Agreement]

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HSBC BANK USA, NATIONAL ASSOCIATION, as a  
Lender

By /s/ Katherine Wolfe  
Name: Katherine Wolfe  
Title: Vice President

HSBC BANK CANADA, as a Lender

By /s/ Shane Klein  
Name: Shane Klein  
Title: Senior Account Manager

By /s/ Todd Patchell  
Name: Todd Patchell  
Title: AVP

KEYBANK NATIONAL ASSOCIATION, as a Lender

By /s/ Thomas A. Crandell  
Name: Thomas A. Crandell  
Title: SR VP

JPMORGAN CHASE BANK, N.A., as a Lender

By /s/ Alex Rogin  
Name: Alex Rogin  
Title: Vice President

CITIBANK, NATIONAL ASSOCIATION, as a Lender

By /s/ Nanci Dias  
Name: Nanci Dias  
Title: SR VP

DBS BANK LTD., LOS ANGELES AGENCY, as a Lender

By /s/ James McWalters  
Name: James McWalters  
Title: General Manager

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SOVEREIGN BANK, N.A., as a Lender

By /s/ Daniel O’Conner  
Name: Daniel O’Conner  
Title: Market Director

FIRST HAWAIIAN BANK, as a Lender

By /s/ Susan Takeda  
Name: Susan Takeda  
Title: Vice President

BRANCH BANKING AND TRUST COMPANY, as a  
Lender

By /s/ Brian R. Jones  
Name: Brian R. Jones  
Title: Vice President

UMPQUA BANK, as a Lender

By /s/ John Brennan  
Name: John Brennan  
Title: Sr VP

[Signature Page to TL Credit Agreement]

**AMENDMENT NUMBER 2  
TO CREDIT AGREEMENT**

THIS AMENDMENT NUMBER 2, dated as of October 1, 2012 (this “*Amendment*”), by and among TW CONTAINER LEASING, LTD., a company with limited liability organized under the laws of Bermuda (the “*Borrower*”), the financial institutions listed on the signature pages hereof under the heading “LENDERS” (each a “*Lender*” and, collectively, the “*Lenders*”), and WELLS FARGO SECURITIES LLC., as administrative agent for the Lenders (in such capacity, the “*Administrative Agent*”), is made to the Credit Agreement (as defined below).

WITNESSETH:

WHEREAS, the Borrower, the Lenders and the Administrative Agent are parties to a Credit Agreement, dated as of August 5, 2011 (the “*Credit Agreement*”);

WHEREAS, the parties desire to amend the Credit Agreement in order to modify certain provisions of the Credit Agreement; and

WHEREAS, the Majority Lenders have agreed to such amendment of the Credit Agreement, subject to the terms and conditions hereof;

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto agree as follows:

**SECTION 1 Definitions; Interpretation.**

(a) **Terms Defined in Credit Agreement.** All capitalized terms used in this Amendment (including in the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

(b) **Interpretation.** The rules of interpretation set forth in **Section 1.2** of the Credit Agreement shall be applicable to this Amendment and are incorporated herein by this reference.

**SECTION 2 Amendments to the Credit Agreement .**

(a) **Amendments.** Pursuant to **Section 15.12** of the Credit Agreement, the Credit Agreement is hereby amended as follows:

(i) The Borrower desires to terminate One Hundred Seventy Five Million Dollars (\$175,000,000) of the Commitments under the Credit Agreement effective as of the Effective Date (as defined in Section 3 hereof). The execution and delivery of this Amendment shall satisfy any notice requirement for any such reduction in the Aggregate Commitment set forth in Section 2.4 of the Credit Agreement.

(ii) Schedule 4 to the Credit Agreement is amended to add or update the Maximum Allowed Exposure for the entities noted in Schedule 1 to this Amendment.

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(b) **References Within Credit Agreement.** Each reference in the Credit Agreement to “this Agreement” and the words “hereof,” “herein,” “hereunder,” or words of like import, shall mean and be a reference to the Credit Agreement as amended by this Amendment.

**SECTION 3 Conditions of Effectiveness.** The effectiveness of **Section 2** of this Amendment shall become effective as of the date first above written (the “Effective Date”), upon receipt by the Administrative Agent of this Amendment duly executed and delivered by the Borrower, the Administrative Agent and Lenders representing in aggregate the Majority Lenders.

**SECTION 4 Representations and Warranties.** To induce the Lenders to enter into this Amendment, the Borrower hereby confirms and restates, as of the date hereof, the representations and warranties made by it in **Section 7** of the Credit Agreement and in the other Loan Documents; provided that any representations and warranties which relate solely to an earlier date shall not be deemed confirmed and restated as of the date hereof ( *provided* that such representations and warranties shall be true, correct and complete as of such earlier date).

**SECTION 5 Miscellaneous.**

(a) **Notice.** The Administrative Agent shall notify the Borrower and the Lenders of the occurrence of the Effective Date and promptly thereafter distribute to the Borrower and the Lenders copies of all documents delivered under **Section 3** of this Amendment.

(b) **Credit Agreement Otherwise Not Affected.** Except as expressly amended pursuant hereto, the Credit Agreement thereof shall remain unchanged and in full force and effect and is hereby ratified and confirmed in all respects. The Lenders’ and the Administrative Agent’s execution and delivery of, or acceptance of, this Amendment shall not be deemed to create a course of dealing or otherwise create any express or implied duty by any of them to provide any other or further amendments, consents or waivers in the future.

(c) **No Reliance.** The Borrower hereby acknowledges and confirms to the Administrative Agent and the Lenders that the Borrower is executing this Amendment on the basis of its own investigation and for its own reasons without reliance upon any agreement, representation, understanding or communication by or on behalf of any other Person.

(d) **Costs and Expenses.** The Borrower agrees to pay to the Administrative Agent on demand the reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel to the Administrative Agent, in connection with the preparation, negotiation, execution and delivery of this Amendment.

(e) **Binding Effect.** This Amendment shall be binding upon, inure to the benefit of and be enforceable by the Borrower, the Administrative Agent and each Lender and their respective successors and assigns.

(f) **Governing Law.** **THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

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(g) **Complete Agreement; Amendments**. This Amendment, together with the other Loan Documents, contains the entire and exclusive agreement of the parties hereto and thereto with reference to the matters discussed herein and therein. This Amendment supersedes all prior commitments, drafts, communications, discussions and understandings, oral or written, with respect thereto. This Amendment may not be modified, amended or otherwise altered except in accordance with the terms of **Section 15.12** of the Credit Agreement.

(h) **Severability**. Whenever possible, each provision of this Amendment shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Amendment shall be prohibited by or invalid under any such law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Amendment, or the validity or effectiveness of such provision in any other jurisdiction.

(i) **Counterparts**. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

(j) **Loan Documents**. This Amendment shall constitute a Loan Document.

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment, as of the date first above written.

**THE BORROWER**

TW CONTAINER LEASING, LTD.

By /s/ Christopher C. Morris

Name: Christopher C. Morris

Title: Vice President

By /s/ Laks Swaminathan

Name: Laks Swaminathan

Title: Vice President

**THE ADMINISTRATIVE AGENT**

WELLS FARGO SECURITIES LLC

By /s/ William Eustis

Name: William Eustis

Title: Director



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**CONSENTED TO AND ACKNOWLEDGED BY:**

**THE LENDERS**

WELLS FARGO BANK, NATIONAL ASSOCIATION

By /s/ Hatesh Singh  
Director

**AMENDMENT NUMBER 3  
TO CREDIT AGREEMENT**

THIS AMENDMENT NUMBER 3, dated as of December 12, 2012 (this “*Amendment*”), by and among TW CONTAINER LEASING, LTD., a company with limited liability organized under the laws of Bermuda (the “*Borrower*”), the financial institutions listed on the signature pages hereof under the heading “LENDERS” (each a “*Lender*” and, collectively, the “*Lenders*”), and WELLS FARGO SECURITIES LLC., as administrative agent for the Lenders (in such capacity, the “*Administrative Agent*”), is made to the Credit Agreement (as defined below).

WITNESSETH:

WHEREAS, the Borrower, the Lenders and the Administrative Agent are parties to a Credit Agreement, dated as of August 5, 2011 (the “*Credit Agreement*”);

WHEREAS, the parties desire to amend the Credit Agreement in order to modify certain provisions of the Credit Agreement; and

WHEREAS, the Majority Lenders have agreed to such amendment of the Credit Agreement, subject to the terms and conditions hereof;

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto agree as follows:

**SECTION 1 Definitions; Interpretation.**

(a) **Terms Defined in Credit Agreement.** All capitalized terms used in this Amendment (including in the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

(b) **Interpretation.** The rules of interpretation set forth in **Section 1.2** of the Credit Agreement shall be applicable to this Amendment and are incorporated herein by this reference.

**SECTION 2 Amendments to the Credit Agreement .**

(a) **Amendments.** Pursuant to **Section 15.12** of the Credit Agreement, the Credit Agreement is hereby amended as follows:

(i) Schedule 4 to the Credit Agreement is amended to add or update the Maximum Allowed Exposure for the entities noted in Schedule 1 to this Amendment.

(ii) Clause (a)(2) of the definition of “Eligible Lessee” is hereby amended to read as follows:

“(2) For each of the sixth through tenth, inclusive, Lessees under Finance Leases as to which Loans are advanced, each of the following: (A) each Person not addressed in **clause (B)** below,

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that has been approved by the Majority Lenders (in their sole discretion) to be a Lessee under a Finance Lease, and (B) so long as no Bankruptcy Event is continuing with respect to such Person, each of the Persons set forth in **clause (A)**, so long as the aggregate Credit Exposure related to such Person and its Affiliates (calculated after giving effect to the Finance Lease then under consideration) shall not exceed Thirty Five Million Dollars (\$35,000,000) or such higher Dollar amount that shall be set forth opposite the name of such Person on Schedule 4 under the column entitled "Maximum Allowed Exposure" (as such amounts may be amended from time to time in a written instrument signed by each of the Borrower and the Administrative Agent acting at the direction of the Majority Lenders)"

(b) **References Within Credit Agreement.** Each reference in the Credit Agreement to "this Agreement" and the words "hereof," "herein," "hereunder," or words of like import, shall mean and be a reference to the Credit Agreement as amended by this Amendment.

**SECTION 3 Conditions of Effectiveness.** The effectiveness of **Section 2** of this Amendment shall become effective as of the date first above written (the "Effective Date"), upon receipt by the Administrative Agent of this Amendment duly executed and delivered by the Borrower, the Administrative Agent and Lenders representing in aggregate the Majority Lenders.

**SECTION 4 Representations and Warranties.** To induce the Lenders to enter into this Amendment, the Borrower hereby confirms and restates, as of the date hereof, the representations and warranties made by it in **Section 7** of the Credit Agreement and in the other Loan Documents; provided that any representations and warranties which relate solely to an earlier date shall not be deemed confirmed and restated as of the date hereof ( *provided* that such representations and warranties shall be true, correct and complete as of such earlier date).

**SECTION 5 Miscellaneous.**

(a) **Notice.** The Administrative Agent shall notify the Borrower and the Lenders of the occurrence of the Effective Date and promptly thereafter distribute to the Borrower and the Lenders copies of all documents delivered under **Section 3** of this Amendment.

(b) **Credit Agreement Otherwise Not Affected.** Except as expressly amended pursuant hereto, the Credit Agreement thereof shall remain unchanged and in full force and effect and is hereby ratified and confirmed in all respects. The Lenders' and the Administrative Agent's execution and delivery of, or acceptance of, this Amendment shall not be deemed to create a course of dealing or otherwise create any express or implied duty by any of them to provide any other or further amendments, consents or waivers in the future.

(c) **No Reliance.** The Borrower hereby acknowledges and confirms to the Administrative Agent and the Lenders that the Borrower is executing this Amendment on the basis of its own investigation and for its own reasons without reliance upon any agreement, representation, understanding or communication by or on behalf of any other Person.

(d) **Costs and Expenses.** The Borrower agrees to pay to the Administrative Agent on demand the reasonable out-of-pocket expenses incurred by the Administrative Agent and its

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Affiliates, including the reasonable fees, charges and disbursements of counsel to the Administrative Agent, in connection with the preparation, negotiation, execution and delivery of this Amendment.

(e) **Binding Effect.** This Amendment shall be binding upon, inure to the benefit of and be enforceable by the Borrower, the Administrative Agent and each Lender and their respective successors and assigns.

(f) **Governing Law.** **THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

(g) **Complete Agreement; Amendments.** This Amendment, together with the other Loan Documents, contains the entire and exclusive agreement of the parties hereto and thereto with reference to the matters discussed herein and therein. This Amendment supersedes all prior commitments, drafts, communications, discussions and understandings, oral or written, with respect thereto. This Amendment may not be modified, amended or otherwise altered except in accordance with the terms of **Section 15.12** of the Credit Agreement.

(h) **Severability.** Whenever possible, each provision of this Amendment shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Amendment shall be prohibited by or invalid under any such law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Amendment, or the validity or effectiveness of such provision in any other jurisdiction.

(i) **Counterparts.** This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

(j) **Loan Documents.** This Amendment shall constitute a Loan Document.

---

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment, as of the date first above written.

**THE BORROWER**

TW CONTAINER LEASING, LTD.

By /s/ Christopher C. Morris  
Name: Christopher C. Morris  
Title: Vice President

By /s/ Laks Swaminathan  
Name: Laks Swaminathan  
Title: Vice President

**THE ADMINISTRATIVE AGENT**

WELLS FARGO SECURITIES LLC

By /s/ Peter C. Rodgers  
Name: Peter C. Rodgers  
Title: Director

---

**CONSENTED TO AND ACKNOWLEDGED BY:**

**THE LENDERS**

WELLS FARGO BANK, NATIONAL ASSOCIATION

By /s/ William Eustis

Name: William Eustis

Title: Director

CREDIT AGREEMENT

Dated as of April 30, 2012

Among

TAP FUNDING LTD.,  
as Borrower,

THE LENDERS FROM TIME TO TIME PARTY HERETO,  
as Lenders,

and

WELLS FARGO SECURITIES LLC,  
as Administrative Agent

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## CREDIT AGREEMENT

This CREDIT AGREEMENT is made as of April 30, 2012, by and among TAP FUNDING LTD., an exempted company with limited liability organized under the laws of Bermuda (together with its successors and permitted assigns, the “Borrower”), each lender from time to time party hereto (collectively, the “Lenders” and individually, a “Lender”), and WELLS FARGO SECURITIES, LLC, a limited liability company organized under the laws of the State of Delaware, as administrative agent for the Lenders (together with its successors and permitted assigns, the “Administrative Agent”).

### RECITALS:

WHEREAS, subject to and upon the terms and conditions set forth herein, the Lenders are willing to make available to the Borrower the credit facility provided for herein; and

WHEREAS, the Borrower shall use the proceeds of the credit facility provided for herein in order to finance the investment in or acquisition of one or more portfolios of Containers;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements set forth herein below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **1. DEFINITIONS AND RULES OF INTERPRETATION.**

**1.1 Definitions.** The following terms shall have the meanings set forth in this **Section 1.1** or elsewhere in the provisions of this Credit Agreement referred to below:

“Acquisition Fee”. As contemplated by Section 3.4 of the Management Agreement.

“Administrative Agent”. As defined in the caption to this Credit Agreement.

“Administrative Agent Fee”. This term shall have the meaning set forth in the Administrative Agent Fee Letter.

“Administrative Agent Fee Letter”. The Administrative Agent Fee Letter, dated as of the date hereof, between the Borrower and the Administrative Agent.

“Administrative Agent’s Office”. The Administrative Agent’s office located at 301 South College Street, MAC 010153-082, Charlotte, North Carolina 28288, or at such other location as the Administrative Agent may designate from time to time.

“Administrative Questionnaire”. An administrative questionnaire in a form supplied by the Administrative Agent.

“Advance Rate”. One of the following:

- (a) for the period from the Closing to April 30, 2013 inclusive, seventy-eight percent (78%);
- (b) for the period from May 1, 2013 to April 30, 2014 inclusive, seventy-six percent (76%);
- (c) for all times subsequent to May 1, 2014, seventy-four percent (74%).

“Affiliate”. With respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

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“Aggregate Commitments”. An amount equal to the sum of the Commitments of all the Lenders.

“Aggregate Loan Principal Balance”. As of any date of determination, an amount equal to the sum of the then unpaid principal balance of all Loans.

“Aggregate Net Book Value”. As of any date of determination, an amount equal to the sum of the Net Book Values of all Eligible Owner Containers.

“Aggregate Original Equipment Cost”. As of any date of determination, an amount equal to the sum of the Original Equipment Cost of all Owner Containers then owned by the Borrower including Owner Containers then subject to a Finance Lease.

“Applicable Margin”. With respect to each Loan for each Interest Period, three and three-fourths percent (3.75%) per annum.

“Applicable Pension Legislation”. At any time, any pension or retirement benefits legislation (be it national, federal, provincial, territorial or otherwise) then applicable to the Borrower.

“Approved Fund”. Any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender; *provided, however, that* the Borrower shall not constitute an Approved Fund.

“Asset Base”. As of any date of determination, an amount equal to the sum (without duplication) of the following:

(a) the product of (i) the Advance Rate in effect on such date of determination, and (ii) an amount equal to the excess of (1) the Aggregate Net Book Value (measured as of such date of determination) over (2) an amount equal to the sum of (A) the then Lease Concentration Excess, and (B) the then Container Type Concentration Excess; plus

(b) an amount equal to the cash and Eligible Investments then on deposit in the Cash Reserve Account.

“Asset Base Deficiency”. As of any Payment Date, the condition that exists if (i) the Aggregate Loan Principal Balance (calculated after giving effect to all principal payments to be paid on such Payment Date) exceeds (ii) the Asset Base. If such term is used in a quantitative context, the amount of the Asset Base Deficiency shall be equal to the amount of such excess.

“Asset Base Report”. The report called for by Section 7.5 of the Management Agreement, substantially in the form of Exhibit H hereto.

“Assignment and Acceptance”. An assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by **Section 14.2**), and accepted by the Administrative Agent (acting at the direction of the Majority Lenders), in substantially the form of **Exhibit A** or any other form approved by the Administrative Agent (acting at the direction of the Majority Lenders).

“Authorized Officer”. With respect to (i) delivering Loan Requests and similar notices, any person or persons that has or have been authorized by the Board of Directors of the Borrower to deliver such notices pursuant to this Credit Agreement and that has or have appropriate signature cards on file with the Administrative Agent, (ii) delivering financial information and officer’s certificates pursuant to this Credit Agreement, any Senior Designated Officer of the Borrower, and (iii) any other matter in connection with this Credit Agreement or any other Loan Document, any officer (or a person or persons so designated by any two officers) of the Borrower.

“Available Distribution Amount”. With respect to any Payment Date, means the sum (without duplication) of (i) all cash collected and applied by, or on behalf of, the Borrower in respect of all Owner Containers and all Leases of Owner Containers, minus any allocated Operating Expenses in respect of such Owner Containers and Leases (such difference, “Collections”) received during the most recently ended Collection Period, less the amount of the Management Fee and the Management Fee Arrearage (if any) deducted by Manager prior to deposit of Collections into the Trust Account in accordance with this Agreement and the Management Agreement for the most recently ended Collection Period, (ii) all amounts received by the Borrower during the most recently ended Collection Period pursuant to any Interest Rate Hedging Agreement, (iii) any earnings on Eligible Investments in the Trust Account, to the extent that such earnings were credited to such account during the most recently ended Collection Period, (iv) any amounts transferred from the Cash Reserve Account, and (v) other payments required by the Loan Documents to be deposited in the Trust Account.

“Bankruptcy Event”. For any Person, any of the following events:

(a) a case or other proceeding shall be commenced, without the application or consent of such Person, in any court, seeking the liquidation, reorganization, debt arrangement, dissolution, winding up or composition or readjustment of debts of such Person, the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for such Person or any substantial part of its assets, or any similar action with respect to such Person under any law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and such case or proceeding shall continue undismissed, or unstayed and in effect, for a period of 60 days; or an order for relief in respect of such Person shall be entered in an involuntary case under the federal bankruptcy laws or other similar laws now or hereafter in effect; or

(b) such Person shall commence a voluntary case or other proceeding under any applicable bankruptcy, insolvency, reorganization, debt arrangement, dissolution or other similar law now or hereafter in effect, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestration or the like, for such Person or any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall fail to, or admit in writing its inability to, pay its debts generally as they become due.

“Bankruptcy Laws”. Collectively, (a) the Federal Bankruptcy Code and (b) all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States, Bermuda or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Base Rate”. The higher of (a) the variable annual rate of interest so designated from time to time by Wells Fargo Bank, N.A. as its “prime rate”, such rate being a reference rate and not necessarily representing the lowest or best rate being charged to any customer, and (b) one-half of one percent (0.5%) above the Federal Funds Effective Rate; provided, however, that in no event shall the Base Rate exceed an interest rate *per annum* equal to one percent (1%) above the Federal Funds Effective Rate then in effect. For the purposes of this definition, “Federal Funds Effective Rate” shall mean for any day, the rate *per annum* equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three (3) funds brokers of recognized standing selected by the Administrative Agent. Changes in the Base Rate resulting from any publicly announced changes in the Administrative Agent’s “prime rate” shall take place immediately without notice or demand of any kind.

“Base Rate Loan”. A Loan bearing interest calculated by reference to the Base Rate.

“Borrower”. As defined in the caption to this Credit Agreement.

**“Borrower Expenses”**. For any Collection Period, all out-of-pocket, reasonable costs and expenses of the Borrower payable to third parties during such Collection Period (including costs and expenses permitted to be paid to, or by, the Manager, in connection with the conduct of the Borrower’s business), in each case determined on an accrual basis, including but not limited to the following:

- (a) administrative expenses;
- (b) accounting and audit expenses of the Borrower;
- (c) premiums for liability, casualty, fidelity, directors and officers and other insurance;
- (d) directors’ fees and expenses (including the fees, expenses and indemnities of AMACAR Group, L.L.C. and the Independent Director);
- (e) legal and other professional fees and expenses; and
- (f) taxes (including personal or other property taxes and all sales, value added, use and similar taxes;

provided, however, that Borrower Expenses shall not include (1) Operating Expenses with respect to the Owner Containers paid by the Manager pursuant to the terms of the Management Agreement, (2) any Management Fee, (3) overhead expenses of the Manager and other costs and expenses required to be paid by the Manager under the Management Agreement, (4) depreciation or amortization on the Owner Containers, (5) principal and interest payments on the Loans or (6) costs (exclusive of any Acquisition Fee) incurred by Borrower in connection with the Acquisition Functions performed by Manager (as defined in the Management Agreement).

**“Breakage Cost”**. For any Lender with respect to any Breakage Event, any costs actually incurred by such Lender in connection with such Breakage Event, which shall be calculated as the difference (as reasonably determined by such Lender and set forth in a certificate of such Lender delivered to the Borrower) of (a) such Lender’s cost of obtaining funds for the LIBOR Rate Loan that is the subject of such Breakage Event for the period from the date of such Breakage Event to the last day of the Interest Period in effect (or that would have been in effect) for such LIBOR Rate Loan, minus (b) the amount of interest realized by such Lender in redeploying the funds returned or not utilized by reason of such Breakage Event for such period (or, if such funds are not so redeployed, the amount of interest likely to have been realized in the eurodollar interbank market).

**“Breakage Event”**. Any of (a) failure by the Borrower to repay any LIBOR Rate Loan as and when due and payable (including, without limitation, the prepayment of any LIBOR Rate Loan at any time other than the end of an Interest Period applicable thereto), (b) failure of the Borrower to borrow after the Borrower has given a Loan Request relating thereto in accordance with **Section 2.2**, for any reason other than failure of any Lender to make a Loan as and when requested in such Loan Request, (c) failure of the Borrower to prepay any Loan after the Borrower has given notice of such prepayment in accordance with **Section 4.2.2**, and (d) the conversion of a LIBOR Rate Loan to a Base Rate Loan at any time other than the end of an Interest Period applicable thereto, pursuant to **Section 5.5**.

**“Business Day”**. One of the following: (i) for all purposes other than as covered by **clause (ii)** below, any day excluding Saturday, Sunday and any day which shall be in New York, New York or the city in which the Administrative Agent’s Office is located, a legal holiday or a day on which banking institutions are authorized by law or other governmental actions to close and (ii) with respect to all notices and determinations in connection with, and payments of principal and interest on or with respect to, LIBOR Rate Loans, any day which is a Business Day described in **clause (i)** above and which is also a day for trading by and between banks in U.S. dollar deposits in the Eurodollar interbank market.

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“Capitalized Lease”. Any Lease under which the Borrower is the lessee or obligor, the discounted remaining rental payment Obligations which are required to be capitalized on the balance sheet of the lessee or obligor in accordance with GAAP.

“Capital Stock”. Any and all shares, interests, participations or other equivalents (however designated) of capital stock or shares of a corporation or company, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

“Cash Reserve Account”. As defined in **Section 3.3**.

“Cash Reserve Amount”. As of each Funding Date or any Payment Date, an amount equal to the product of (i) three (3), (ii) one-twelfth, (iii) the interest rate *per annum* payable by the Borrower then in effect, *plus* the Applicable Margin then in effect, and (iv) the Aggregate Loan Principal Balance, calculated after giving effect to all advances of principal and principal payments made on such Funding Date or Payment Date.

“Casualty Loss”. As defined in the Management Agreement.

“CEU”. As defined in the Management Agreement.

“Change in Law”. Any of the following:

- (i) any change after the date of this Credit Agreement arising from the enactment or enforcement of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (including any change in the administration, interpretation or application thereof after the date of this Credit Agreement or the issuance after the date of this Agreement of regulations, interpretation of the provisions of such Act), or any rules, regulations, interpretations, guidelines or directives promulgated thereunder by any Governmental Authority, or
- (ii) the occurrence, after the date of this Credit Agreement, of any of the following: (x) the adoption or taking effect of any law, rule, regulation or treaty; (y) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (z) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

“Change of Control”. The occurrence of any of the following conditions or events:

(a) any event, or series of events, by which either (x) the Parent shall cease to own (directly or indirectly) one hundred percent (100%) of the Capital Stock of the Borrower, or (y) the Parent shall otherwise fail to have the ability to Control the Borrower;

(b) any event, or series of events, by which either (x) TCG, the members and/or partners of TCG on the Closing Date and/or other Persons Controlled by TCG, collectively, shall cease to own (directly or indirectly) at least forty percent (40%) of the Capital Stock of the Parent, as such Capital Stock may be adjusted pursuant to any stock split, stock dividend or recapitalization or reclassification of the capital of the Parent, or (y) TCG, the members and/or partners of TCG on the Closing Date and/or other Persons Controlled by TCG, collectively, shall otherwise fail to have the ability to Control the Parent; or

(c) at any time, the Borrower ceasing to have at least one member (other than the Independent Director) on its board of directors (or similar governing body) appointed, directly or indirectly, by Parent, the members or partners of TCG on the Closing Date and/or other Persons Controlled by TCG, collectively; provided, that, in the event that the Borrower shall cease to have at least one member (other than the Independent Director) on its board of directors (or similar governing body) appointed by Parent,



the members or partners of TCG on the Closing Date and/or other Persons Controlled by TCG, collectively, by reason of the death, resignation or removal of such member, a Change of Control of the type specified in this clause (c) shall not be deemed to have occurred if (x) Parent, the members or partners of TCG on the Closing Date and/or other Persons Controlled by TCG, collectively, shall continue to have the right, by contract or otherwise, to, directly or indirectly, appoint a replacement member of the Borrower's board of directors (or similar governing body), and (y) Parent, the members or partners of TCG on the Closing Date and/or other Persons Controlled by TCG, collectively, shall, directly or indirectly, appoint a replacement member of the Borrower's board of directors (or similar governing body) within 30 days following the occurrence of such death, resignation or removal.

**"Closing Date"**. The date on which all conditions precedent set forth in **Section 10** have been fulfilled or waived; for purposes of the Loan Documents, the Closing Date shall be deemed to have occurred on May 1, 2012.

**"Code"**. The United States Internal Revenue Code of 1986, as amended from time to time (and any successor statute thereto), and the regulations promulgated and rulings issued thereunder. Section references to the Code are to the Code as in effect on the date hereof, and any subsequent provisions of the Code, amendments thereto or substituted therefrom.

**"Collateral"**. All of the property, rights and interests of the Borrower that are or are intended to be subject to the Liens created by the Security Documents. Notwithstanding the foregoing, no account, instrument, chattel paper or other obligation or property of any kind due from, owed by, or belonging to, a Sanctioned Person and no Lease under which the Lessee is a Sanctioned Person, shall, in either instance, constitute Collateral.

**"Collateral Assignment Agreement"**. The Collateral Assignment Agreement, dated as of the date hereof, entered into by and among the Borrower, the Administrative Agent and the Manager, as such agreement shall be amended, supplemented or modified from time to time in accordance with its terms, which agreement shall initially be in the form of **Exhibit F** hereto.

**"Collection Period"**. The period commencing on (and including) a Determination Date to (but excluding) the immediately following Determination Date; provided, however, that the initial Collection Period shall commence on the Closing Date and end on May 8, 2012.

**"Commitment"**. With respect to each Lender, the amounts set forth on **Schedule 1** as the amounts of such Lender's commitment to make Loans to the Borrower pursuant to this Credit Agreement, as the same may be increased or reduced from time to time pursuant to the provisions hereof; or if such commitments are terminated pursuant to the provisions hereof, zero.

**"Commitment Fee"**. This term shall have the meaning set forth in **Section 5.1.1**.

**"Commitment Fee Percentage"**. Five eighths of one percent (0.625%) *per annum*.

**"Commitment Percentage"**. With respect to any Lender, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender's Commitment at such time. If the commitment of each Lender to make Loans has been terminated pursuant to this Credit Agreement or if the Aggregate Commitments have expired, then the Commitment Percentage of each Lender shall be determined based on the outstanding Loans owing to such Lender at such time. The initial Commitment Percentage of each Lender is set forth opposite the name of such Lender on **Schedule 1** hereto or on the Assignment and Acceptance pursuant to which such Lender becomes a party hereto, as applicable.

**"Company"**. Any corporation, limited liability company, partnership or other business entity (or the adjectival form thereof, where appropriate).

“Competitor”. Any Person, other than Borrower, engaged in the container leasing business; provided that in no event shall Wells Fargo Bank, National Association, or any Affiliate or Approved Fund thereof, be deemed to be a “Competitor”.

“Consolidated” or “consolidated”. With reference to any term defined herein, shall mean that term as applied to the accounts of the applicable Person and its Subsidiaries, consolidated in accordance with GAAP.

“Container”. Any dry freight cargo, high cube refrigerated or other type of marine or intermodal container.

“Container Sale Agreement”. The Contribution and Sale Agreement, dated as of April 30, 2012, between the Parent and the Borrower.

“Container Type Concentration Excess”. As of any date of determination an amount equal to the sum of the following:

(a) Specialized Containers. The amount by which the sum of the then Net Book Values of all Specialized Containers exceeds an amount equal to the product of (i) fifteen percent (15%) and (ii) the Aggregate Net Book Value;

(b) Refrigerated Containers. The amount by which the sum of the then Net Book Values of all refrigerated containers exceeds an amount equal to the product of (i) fifty percent (50%) and (ii) the Aggregate Net Book Value; and

(c) Initial Finance Lease. The amount by which the sum of the Net Investment Values of all Initial Finance Leases exceeds an amount equal to the product of (i) ten percent (10%) and (ii) the Aggregate Net Book Value.

“Contingent Obligation”. As to any Person, means any obligation of such Person as a result of such Person being a general partner of any other Person, unless the underlying obligation is expressly made non-recourse as to such general partner, and any obligation of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the lesser of (x) the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith and (y) the stated amount of such Contingent Obligation.

“Control”. The possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Control Agreement”. The Securities Account Control Agreement, dated as of the date hereof, by and among the Borrower, the Administrative Agent and Wells Fargo Bank, National Association, as amended, modified or supplemented from time to time in accordance with its terms.

“Credit Agreement”. This Credit Agreement, including the Schedules and Exhibits hereto, as amended, supplemented or otherwise modified in accordance with the terms hereof.

“Default”. Any event that would, with the giving of notice or the lapse of time or both, constitute an “Event of Default”.

“Defaulted Lease”. Any Lease for which:

(a) a regularly scheduled rental payment or other material payment owing by the Lessee thereunder is more than 180 days past due (measured from its invoice due date); or

(b) an “event of default” thereunder, not dealt with in **clause (a)** (including a default occasioned by a Bankruptcy Event of the Lessee), has occurred, and the Manager has repossessed the related Owner Containers or is otherwise exercising remedies in accordance with its normal procedures; or

(c) the Borrower or Manager has otherwise determined that the remaining amounts owing by the Lessee under such Lease are expected to be uncollectible; or

(d) the related Lessee is the subject of a Bankruptcy Event.

“Defaulting Lender”. Subject to **Section 15.13.2**, any Lender that, as determined by Administrative Agent, (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans, within two (2) Business Days of the date required to be funded by it hereunder, or (b) has notified the Borrower or Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations under this Credit Agreement or under other agreements generally in which it commits to extend credit (it being agreed that a failure or refusal by a Lender to honor funding requests as a result of a good faith dispute regarding the continuing obligation of such lender to provide requested funds under such other agreement shall not serve as the basis for classification of such Lender as a Defaulting Lender).

“Depreciation Policy”. One of the following:

(i) For purposes of calculating the Asset Base, a depreciation policy under which Owner Containers are depreciated (x) in the case of a new Owner Container, using the straight-line method over a twelve (12) year useful life, to an estimated residual value not to exceed the dollar amount set forth on Schedule 2 hereto for such type of Owner Container, and (y) in the case of used Owner Containers, the remaining useful life thereof at the date of acquisition by the Borrower thereof (based upon a total useful life of 12 years) to an estimated residual value not to exceed the dollar amount set forth on Schedule 2 hereto for such type of Owner Container and

(ii) for purposes of preparing and maintaining the financial statements and financial records of the Borrower and all other purposes not addressed in clause (i), the depreciation policy of the Borrower, which may from time to time be revised by Borrower with the approval of Borrower’s independent auditors.

“Determination Date”. The fourth (4<sup>th</sup>) Business Day prior to a Payment Date.

“Distribution”. By any Person, (i) the declaration or payment of any dividend on or in respect of any shares of any class of Capital Stock of such Person, other than dividends payable solely in shares of Capital Stock of such Person; (ii) the purchase, redemption, defeasance, retirement or other acquisition of

any shares of any class of Capital Stock of such Person, directly or indirectly through a Subsidiary of such Person or otherwise (including the setting apart of assets for a sinking or other analogous fund to be used for such purpose); (iii) the return of capital by such Person to its shareholders as such; or (iv) any other distribution on or in respect of any shares of any class of Capital Stock of a Person.

“Dollars” or “\$”. Dollars in lawful currency of the United States of America.

“Early Amortization Event”. The occurrence of any of the following events or conditions:

- (a) An Event of Default;
- (b) A Manager Default;
- (c) An Asset Base Deficiency exists on any Payment Date and such condition remains unremedied for a period of ten (10) consecutive Business Days without being cured;
- (d) The most recent Asset Base Report indicates that as of the end of the most recently completed month the mathematical average of NOI of the Owner Containers for such month and the two immediately preceding calendar months is less than \$0.50 per CEU per day;
- (e) The most recent Asset Base Report indicates as of the most recently completed month the average of the Sales Proceeds of the Owner Containers sold during such month and the two immediately preceding calendar months is less than Seven Hundred Fifty Dollars (\$750) per CEU; or
- (f) The most recent Asset Base Report indicates that the Weighted Average Age of the Owner Containers exceeds nine (9) years.

If an Early Amortization Event shall have occurred, then such Early Amortization Event will be deemed to continue until waived by the Majority Lenders, and shall not be deemed to have been cured by the subsequent delivery of an Asset Base Report that indicates that the condition or event giving rise to such Early Amortization Event no longer exists.

“Eligible Assignee”. Any of (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person approved by (i) the Administrative Agent (such approval not to be unreasonably withheld or delayed), and (ii) the Borrower (such approval not to be unreasonably withheld or delayed); provided, however, that the Borrower will not have an approval right if a Default or an Event of Default is then continuing; provided that an “Eligible Assignee” shall not include (1) a Competitor, (2) the Borrower, (3) a natural person or (4) any Person then classified as a Defaulting Lender.

“Eligible Investments”. Book-entry securities, negotiable instruments or securities represented by instruments in bearer or registered form, which evidence:

- (a) direct obligations of, and obligations fully guaranteed as to the full and timely payment by, the United States of America;
- (b) demand deposits, time deposits or certificates of deposit of any depository institution or trust company incorporated under the laws of the United States of America or any State thereof and subject to supervision and examination by Federal or State banking or depository institution authorities; provided, however, that at the time of the investment or contractual commitment to invest therein, the commercial paper or other short-term unsecured debt obligations (other than such obligations the rating of which is based on the credit of a Person other than such depository institution or trust company) thereof shall be rated “A-1+” by S&P and “Prime 1” by Moody’s;

(c) commercial paper that, at the time of the investment or contractual commitment to invest therein, is rated “A-1+” by S&P and “Prime 1” by Moody’s;

(d) bankers’ acceptances issued by any depository institution or trust company referred to in **clause (b)** above;

(e) repurchase obligations with respect to any security pursuant to a written agreement that is a direct obligation of, or fully guaranteed as to the full and timely payment by, the United States of America or any agency or instrumentality thereof the obligations of which are backed by the full faith and credit of the United States of America, in either case entered into with (i) a depository institution or trust company (acting as principal) described in **clause (b)** or (ii) a depository institution or trust company the deposits of which are insured by the Federal Deposit Insurance Corporation and whose commercial paper or other short-term unsecured debt obligations are rated “A-1+” by S&P and “Prime 1” by Moody’s and whose long-term unsecured debt obligations are rated “AA” by S&P and “Aa3” by Moody’s;

(f) money market mutual funds registered under the Investment Company Act having a rating, at the time of such investment, from each of S&P and Moody’s in the highest investment category granted thereby; and

(g) any other investment as may be acceptable to the Administrative Agent (acting at the direction of the Majority Lenders), as evidenced by the Administrative Agent’s prior written consent to that effect.

“Eligible Owner Container”. As of any date of determination, any Owner Container that complies with all of the following:

(a) *Good Title*. The Borrower has good and marketable title to such container;

(b) *Specifications*. To the knowledge of the Borrower, such container conforms to the standard specifications used by the Manager for containers purchased by, and on behalf of container owners other than the Borrower, for that category of container and to any applicable standards promulgated by applicable international standards organizations;

(c) *Defaulted Lease*. To the knowledge of the Borrower, such Owner Container(s) is not then subject to a Defaulted Lease (or Defaulted Leases) with a Lessee that currently leases Owner Containers having an aggregate Net Book Value representing more than two and one half of one percent (2.5%) of the then Aggregate Net Book Value; provided, however, that if the sum of the Net Book Values of all Owner Containers then subject to a Defaulted Lease exceeds Ten Million Dollars (\$10,000,000) as of such date of determination, then any incremental Owner Container subject to a Defaulted Lease shall not be an Eligible Owner Container;

(d) *Registration*. Such container’s registration mark (four letter prefix) has been registered in the name of the Lessee and/or the Manager in the official register of the Bureau International des Containers (Paris);

(e) *Compliance with Law*. Each Lease of such container complied in all material respects at the time it was originated with all legal requirements of the jurisdiction in which it was originated;

(f) *Casualty Loss*. To the knowledge of the Borrower, such container is not the subject of a Casualty Loss;

(g) *Liens*. Such container is (i) subject to a perfected security interest in favor of the Administrative Agent for the benefit of the Secured Parties, and (ii) free and clear of all Liens other than Permitted Liens;

(h) *Purchase Price*. The Original Equipment Cost for such container did not exceed its Fair Market Value at the time of acquisition by the Borrower;

(i) *No Sanctioned Person or Sanctioned Country*. Such container is then (i) not on lease to a Sanctioned Person, and (ii) (A) not subleased to or used by a Sanctioned Person or (B) not located, operated or used in a Sanctioned Country unless otherwise authorized pursuant to OFAC Sanctions or by a license granted by OFAC;

(j) *Assignability of Leases*. If such container is then subject to a Lease, the rights of the lessor/owner under such Lease with respect to such container (other than the U.S. Lease Contract) are freely assignable without the consent of the Lessee or any other Person;

(k) *No Manager or Affiliate as Lessee*. To the knowledge of the Borrower, such container is not subject to a lease under which the Manager, the Borrower or any of their respective Affiliates is the lessee; *provided however* that a container is permitted to be subject to a Head Lease Agreement;

(l) *Lessee Not Subject to Bankruptcy Event*. To the knowledge of the Borrower, such Owner Container(s) is not then subject to a Lease with a Lessee that is then subject to a Bankruptcy Event and that leases Owner Containers representing in aggregate more than two and one half of one percent (2.5%) of the then Aggregate Net Book Value; provided, however, that if the sum of the Net Book Values of all Owner Containers for which the related Lessee is subject to a Bankruptcy Event exceeds Ten Million Dollars (\$10,000,000), then any Owner Container subject to a Lease for which the related Lessee is subject to a Bankruptcy Event shall not be classified as an Eligible Owner Container;

(m) *Positive Asset Value*. The Net Book Value of such container is greater than zero; and

(n) *Delinquent Lease*. Either: (A) if such Owner Container is then subject to a Lease, the Lessee under such Lease is (1) not CMA CGM and (2) the obligor on Leases related to Owner Containers representing in aggregate more than five percent (5%) of the then Aggregate Net Book Value, then such Lessee is, and has been, for the last three months less than or equal to one hundred twenty (120) days past due (measured from its invoice date) on all regularly scheduled rental payments owing under all Leases with such Lessee and its Affiliates, or (B) if such Owner Container is then subject to a Lease with CMA CGM and CMA CGM is the obligor on Leases related to Owner Containers representing in aggregate more than five percent (5%) of the then Aggregate Net Book Value, then CMA CGM is, and has been, for the last three months less than or equal to one hundred fifty (150) days past due (measured from its invoice date) on all regularly scheduled rental payments owing by CMA CGM on such Leases.

Upon the Borrower obtaining actual knowledge of any of the events or conditions in clauses (b), (f), (k) or (l) above, such Owner Container will no longer constitute an Eligible Owner Container. Upon the recovery by the Borrower (or the Manager on behalf of the Owner) of any Owner Container subject to a Lease described in clause (c) or (l) above, if all of the other above clauses are then complied with such Owner Container may be classified as an Eligible Owner Container. An Owner Container that is classified as an Eligible Owner Container pursuant to the Dollar tolerances set forth in clause (c), (l) or (n) shall be counted against only one such Dollar tolerance.

**“Environmental Law”**. Any applicable local, state, federal, or other laws in the United States of America, or any other laws relating to the environment or natural resources or the regulation of releases or threatened releases of Hazardous Substances into ambient air, water, or land, or otherwise relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Hazardous Substances, and all rules, orders and regulations currently promulgated thereunder.

**“Environmental Claim”**. Any and all administrative, regulatory or judicial actions, suits, orders, claims or proceedings against the Borrower under any Environmental Law or any permit issued to the Borrower under any such Environmental Law (for purposes of this definition, **“Claims”**), including, without limitation, (a) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

**“ERISA”**. The Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Credit Agreement and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

**“ERISA Event”**. Means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the incurrence by the Borrower of any liability under Title IV of ERISA with respect to the termination of any Plan or the withdrawal or partial withdrawal of the Borrower from any Plan or Multiemployer Plan; (c) the receipt by the Borrower from the PBGC or a plan administrator of any notice relating to the intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (d) the adoption of any amendment to a Plan that would require the provision of security pursuant to Section 307 of ERISA; (e) the receipt by the Borrower of any notice, or the receipt by any Multiemployer Plan from the Borrower of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; or (f) the occurrence of a nonexempt “prohibited transaction” with respect to which the Borrower is a “disqualified person” (within the meaning of Section 4975 of the Code).

**“Event of Default”**. This term shall have the meaning set forth in **Section 12.1**.

**“Fair Market Value”**. With respect to any asset (including any Owner Container) to be purchased or sold by, or on behalf of, the Borrower, shall mean the price at which a willing buyer, not an Affiliate of the seller, and a willing seller who does not have to sell, would agree to purchase and sell such asset, as determined in good faith by, or on behalf of, the Borrower.

**“Federal Bankruptcy Code”**. Title 11, United States Code as in effect from time to time (and any successor thereto).

**“Fees”**. Collectively, the Administrative Agent Fee and the Commitment Fee.

**“Finance Lease”**. Any Lease that (x) is classified as a “direct financing lease” pursuant to GAAP and (y) provides the Lessee thereunder with the right or option to (i) purchase the Owner Containers subject thereto at the expiration of such lease or (ii) extend the term of such lease for an additional period, and, in either such instance, such Lease satisfies the criteria for classification as a capital lease pursuant to GAAP, including Accounting Standards Codification (“ASC”) Topic § 840-30 (“Leases – Capital Leases”).

**“Fund”**. Any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

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“Funding Date”. Each date on which a Loan is made to the Borrower pursuant to the terms of this Credit Agreement.

“GAAP”. Generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority”. Any foreign, federal, state, regional, local, municipal or other government, including any regulatory authority (including any self-regulatory authority claiming jurisdiction) or any bank examiner, or any department, commission, board, bureau, agency, public authority or instrumentality thereof, or any court or arbitrator.

“Guaranteed Pension Plan”. Any employee pension benefit plan within the meaning of Section 3(2) of ERISA maintained or contributed to by the Borrower the benefits of which are guaranteed on termination in full or in part by the PBGC pursuant to Title IV of ERISA, other than a Multiemployer Plan.

“Hazardous Substances”. Those substances or materials that are prohibited, limited or regulated by any Environmental Law.

Head Lease Agreement: A Lease between TEMPL, as lessor, and TEM-US, as lessee, that possesses all of the following attributes:

(a) the rent payable by TEM-US under such Lease with respect to Owner Containers equals at least 98.5% of the amount of rent received by TEM-US from the applicable TEM-US Sublessee;

(b) the obligations of TEM-US under such Lease are secured by a first priority security interest granted by TEM-US to TEMPL in all TEM(US) Subleases, and the proceeds of such TEM-US Subleases, in each case, to the extent but only to the extent related to the Owner Containers subject to the head lease agreement;

(c) such Lease requires that all rental payments payable under the TEM-(US) Subleases shall be remitted directly to a lease collection account owed by TEMPL or TEM-US;

(d) such Lease requires that an Owner Container not be subleased by TEM-US to a Sanctioned Person and, to the actual knowledge of TEM-US, shall not be subleased by a TEM(US) Sublessee to a Sanctioned Person or located, operated or used in a Sanctioned Country unless it is used pursuant to a license granted by the Office of Foreign Assets Control of the United States Treasury Department; and

(e) the term of such head lease agreement with respect to an Owner Container shall expire upon the expiration or earlier termination of the TEM(US) Sublease of such Owner Container.

“Hedge Termination Payment”. Any payment due under an Interest Rate Hedging Agreement as a result of the termination (in whole or in part) of such Interest Rate Hedging Agreement for whatever reason.

“Hedging Agreement”. Any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate futures contract, interest rate option agreement, interest rate exchange agreement, forward currency exchange agreement, forward rate currency agreement, forward commodity contract, commodity swap, commodity option or other similar agreement or arrangement to which the Borrower at that time is a party, designed to protect the Borrower against fluctuations in those interest rates, exchange rates, forward rates or commodity prices that normally arise in connection with the Borrower’s ordinary course of business or as otherwise required to be entered into by the Borrower pursuant to, and in accordance with, the terms of this Credit Agreement.



**“Indebtedness”**. As to any Person, without duplication, means (i) all indebtedness (including principal, interest, fees and charges) of such Person for borrowed money, (ii) all obligations of such Person in respect of letters of credit, bankers’ acceptances, and bank guaranties issued for the account of such Person, (iii) all indebtedness of the types described in **clause (i), (ii), (iv), (v) or (vi)** of this definition secured by any Lien on any property owned by such Person, whether or not such indebtedness has been assumed by such Person (provided that, if the Person has not assumed or otherwise become liable in respect of such indebtedness, such indebtedness shall be deemed to be in an amount equal to the lesser of (A) the outstanding amount of such Indebtedness and (B) the fair market value of the property to which such Lien relates as determined in good faith by such Person), (iv) the aggregate amount of all obligations of such Person under Capitalized Leases and Synthetic Leases, (v) all Contingent Obligations of such Person, (vi) as of any date of determination, all obligations under any interest rate hedging or under any similar type of agreement to the extent of the amount due if such agreement were to be terminated on such date of determination, and (vii) all obligations of such Person issued or assumed as the deferred purchase price of property or services, all conditional sale obligations and all obligations under any title retention agreement (but excluding trade accounts payable and other accrued liabilities arising in the ordinary course of business that are either (x) not overdue by 90 days or more or (y) being contested in good faith by appropriate proceedings promptly instituted and diligently conducted).

**“Indemnified Party”**. This term shall have the meaning set forth in **Section 15.3**.

**“Independent Accountant”**. KPMG LLP or any “Big 4” or other nationally or regionally recognized accounting firm that is reasonably acceptable to the Administrative Agent (acting at the direction of the Majority Lenders) and that is independent with respect to the Borrower within the meaning of the Securities Act of 1933, as amended, and the applicable published rules and regulations thereunder.

**“Independent Director”**. This term shall have the meaning set forth in the bye-laws of the Borrower as in effect on the Closing Date.

**“Initial Finance Lease”**. The initial lease of any Owner Container after the date of its acquisition by the Borrower if such Lease is a Finance Lease.

**“Interest Period”**. With respect to all or any relevant portion of any Loan, (a) initially, the period commencing on the Funding Date of such Loan and ending on the day immediately preceding the Payment Date first occurring after the Funding Date of such Loan, and (b) thereafter, each period commencing on a Payment Date and ending on the day immediately preceding the next Payment Date; provided, that any Interest Period that would otherwise extend beyond the Maturity Date shall end on the Maturity Date.

**“Interest Rate Hedge Counterparty”**. Each Person that is a counterparty to an Interest Rate Hedging Agreement with the Borrower.

**“Interest Rate Hedging Agreement”**. A Hedging Agreement with one or more Interest Rate Hedge Counterparties that protects the Borrower against fluctuations in interest rates.

**“Investments”**. Any direct or indirect advance, loan (other than advances to customers in the ordinary course of business that are recorded as accounts receivable on the balance sheet of the lender) or other extensions of credit (including by way of guarantee or similar arrangement) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition for value of Capital Stock, Indebtedness or other similar instruments issued by any Person.

“Lease or Lease Agreement”. Any lease for one or more Owner Containers entered into with a Lessee, which Lease may cover both Owner Containers and other marine or intermodal cargo containers in Manager’s fleet. A Lease may name as lessor the Manager or in the name of a third-party lessor from whom Manager has acquired management rights. A Lease may be classified as an Operating Lease or a Finance Lease.

“Lease Concentration Excess”. As of any date of determination, an amount equal to the sum of the following:

(a) *Maximum Concentration to a Single Lessee*. The amount by which (x) the sum of the Net Book Values of all Owner Containers that are in aggregate on lease to any single Lessee and its Affiliates, exceeds (y) an amount equal to the product of (A) fifteen percent (15%) and (B) the then Aggregate Net Book Value;

(b) *Maximum Concentration to U.S. Government*. The amount by which (x) the sum of the Net Book Values of all Owner Containers subject to leases under which the lessee is the government of the United States of America or one of its agencies, exceeds (y) an amount equal to the product of (A) four percent (4%) and (B) an amount equal to the then Aggregate Net Book Value; *provided*, however then any Owner Container subject to any such Lease shall not count against the limitation contained in this paragraph (b) following the execution by the appropriate U.S. governmental official(s) of a consent to assignment with respect thereto;

(c) *Maximum Concentration to any Two Lessees*. The amount by which (x) the sum of the Net Book Values of all Owner Containers that are in aggregate on lease with any two Lessees and their respective Affiliates, exceeds (y) an amount equal to the product of (A) twenty seven percent (27%) and (B) the then Aggregate Net Book Value;

(d) *Maximum Concentration to any Ten Lessees*. The amount by which (x) the Net Book Values of all Owner Containers that are in aggregate on lease with any ten Lessees and their respective Affiliates, exceeds (y) an amount equal to the product of (A) seventy-five percent (75%) and (B) the then Aggregate Net Book Value;

(e) *Maximum Concentration of Finance Leases to any Single Lessee*. The amount by which (x) the sum of the then Net Investment Values of all Finance Leases with any single Lessee and its Affiliates, exceeds (y) an amount to the product of (i) five percent (5%) and (B) the then Aggregate Net Book Value;

provided, however, that in the event that any Lessee for which any of the conditions set forth in any of clauses (a), (c), (d) or (e) (collectively, the “Applicable Clauses”) would be applicable (such Lessee, the “Reference Lessee”) shall engage in any transaction (whether through merger, consolidation, stock sale, asset sale or otherwise) (such transaction, the “Reference Transaction”) pursuant to which such Reference Lessee shall become the owner of, or interest holder in, any other Lessee’s leasehold interests in one or more Owner Containers and the effect of such Reference Transaction is to cause a Lease Concentration Excess to occur under any of the Applicable Clauses, then:

(A) all Owner Containers on lease to such Reference Lessee and, if applicable, all other Lessees for which any of the conditions set forth in such Applicable Clause (any such other applicable Lessees, the “Other Applicable Lessees”), in each case, as of immediately following the consummation of the Reference Transaction, shall thereafter be excluded for the purposes of calculating the Lease Concentration Excess under such Applicable Clause (and, for the avoidance of doubt, the Lease Concentration Excess under such Applicable Clause shall equal zero as of immediately following the consummation of the Reference Transaction); and

(B) until such time as the Lease Concentration Excess under such Applicable Clause (which, for purposes of this clause (B), shall be determined without giving effect to the exclusion of the Owner Containers on lease to the Reference Lessee and, if applicable, the Other Applicable Lessees as of immediately following the consummation of the Reference Transaction

as contemplated by clause (A) above) would otherwise cease to exist, the Lease Concentration Excess under such Applicable Clause shall instead equal, as of any date of determination, the sum of the Net Book Values of all Owner Containers (the “Reference Transaction Excluded Value”), if any, put on lease to the Reference Lessee and, if applicable, the Other Applicable Lessees subsequent to the consummation of such Reference Transaction (and, for the avoidance of doubt, the sum of the Aggregate Reference Transaction Excluded Values for all Applicable Clauses as of any date of determination shall be (without duplication) included in the calculation of Lease Concentration Excess of the definition of Asset Base as of such date of determination).

In applying the concentration limits set forth in clauses (a), (b), (c), (d) and (e) above, TEM-US, in its capacity as Lessee under the Head Lease Agreement, shall be excluded from such calculations, and each sublessee under each end user lease pledged under the Head Lease Agreement shall be included in such calculations.

“Lender Affiliate”. With respect to any Lender, an Affiliate of such Lender.

“Lenders”. Wells Fargo Bank, National Association and the other lending institutions listed on **Schedule 1** hereto and any other Person who becomes an assignee of any rights and obligations of a Lender pursuant to **Section 14**.

“Lessee”. Any entity that leases one or more Owner Containers.

“Lessee Bankruptcy Event Excess”. As of any date of determination, the amount by which (x) the sum of the Net Book Value of all Eligible Owner Containers then subject to a Lease for which the Lessee is then subject to a Bankruptcy Event, exceeds (y) Ten Million Dollars (\$10,000,000).

“LIBOR Business Day”. Any day on which commercial banks are open for international business (including dealings in Dollar deposits) in London or such other eurodollar interbank market as may be selected by the Administrative Agent (acting at the direction of the Majority Lenders).

“LIBOR Rate”. For any Interest Period with respect to a LIBOR Rate Loan, the rate of interest equal to (i) the rate determined by the Administrative Agent at which Dollar deposits for such Interest Period are offered based on information presented on Page LIBOR01 of the Reuters Service as of 11:00 a.m. London time on the second (2nd) LIBOR Business Day prior to the first day of such Interest Period, divided by (ii) a number equal to 1.00 minus the Mandatory Reserve Rate. If rates are not available or quoted for a period that directly corresponds to the duration of the Interest Period, the rate shall be determined by the Administrative Agent utilizing straight line interpolation of the available rate for the closest period shorter than the Interest Period and the available rate for the closest period longer than the Interest Period. If the rate described above does not appear on the Dow Jones Market Service on any applicable interest determination date, the LIBOR Rate shall be the rate (rounded upward, if necessary, to the nearest one hundred-thousandth of a percentage point), determined on the basis of the offered rates for deposits in Dollars for a period of time comparable to such LIBOR Rate Loan which are offered by four major banks in the London interbank market at approximately 11:00 a.m. London time, on the second (2nd) LIBOR Business Day prior to the first day of such Interest Period as selected by the Administrative Agent. The principal London office of each of the four major London banks will be requested to provide a quotation of its Dollar deposit offered rate. If at least two such quotations are provided, the rate for that date will be the arithmetic mean of the quotations. If fewer than two quotations are provided as requested, the rate for that date will be determined on the basis of the rates quoted for loans in Dollars to leading European banks for a period of time comparable to such Interest Period offered by major banks in New York City at approximately 11:00 a.m. New York City time, on the second LIBOR Business Day prior to the first day of such Interest Period. In the event that the Administrative Agent is unable to obtain any such quotation as provided above, it will be considered that the LIBOR Rate pursuant to a LIBOR Rate Loan cannot be determined.

“LIBOR Rate Loan”. A Loan bearing interest calculated by reference to the LIBOR Rate.

“Lien”. Any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or other), charge, preference, priority or other security agreement of any kind or nature whatsoever (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the UCC or any similar recording or notice statute (other than any unauthorized notice filing for which there is not otherwise any underlying Lien or obligation), and any lease having substantially the same effect as the foregoing).

“Loan”. Any loan made or to be made by the Lenders to the Borrower pursuant to **Section 2.1**.

“Loan Documents”. This Credit Agreement, the Management Agreement, the Container Sale Agreement, any Interest Rate Hedging Agreement, the Revolving Credit Notes (if issued), the Administrative Agent Fee Letter and the Security Documents.

“Loan Request”. This term shall have the meaning set forth in **Section 2.2**.

“Majority Lenders”. As of any date of determination, one of the following:

(A) if any Loans are then outstanding or Commitments are then in effect, any single Lender or multiple Lenders collectively having more than fifty percent (50%) of the sum of the portion of the Aggregate Commitments unfunded at such date plus the Aggregate Loan Principal Balance or, if the Commitment of each Lender to make Loans has been terminated pursuant to **Section 12.2(b)**, any single or multiple Lenders collectively holding in the aggregate more than fifty percent (50%) of the Aggregate Loan Principal Balance; provided that the Commitment of, and the portion of the Aggregate Loan Principal Balance held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Majority Lenders; or

(B) at all times not addressed in clause (A), one or more Interest Rate Hedge Counterparties that would be owed more than fifty percent (50%) of the aggregate amount of all Hedge Termination Payments that would be payable on such date if all Interest Rate Hedging Agreements were terminated on such date of determination.

“Management Agreement”. The Management Agreement, dated as of June 30, 2011, entered into by and between the Manager and the Borrower (as assignee of the Parent), as such agreement shall be amended, supplemented, or modified from time to time in accordance with its terms, which agreement shall be in the form attached as **Exhibit B** hereto and otherwise in form and substance satisfactory to the Administrative Agent and the Lenders.

“Management Fee”. This term shall have the meaning set forth in the Management Agreement.

“Management Fee Arrearage”. For any Payment Date, an amount equal to any unpaid Management Fee from all prior Collection Periods.

“Manager”. TEML, as manager under the Management Agreement.

“Manager Default”. As defined in the Management Agreement.

“Manager Report”. A report substantially in the form of Exhibit G hereto.

“Mandatory Reserve Rate”. For any day with respect to a LIBOR Rate Loan, the maximum rate (expressed as a decimal) at which any bank subject thereto would be required to maintain reserves under any applicable regulatory authority (including without limitation any reserves required by (i) the regulations of the European Central Bank or (ii) Regulation D of the Board of Governors of the Federal Reserve System against “Eurocurrency Liabilities” (as that term is used in Regulation D) (or any successor or similar regulations relating to such reserve requirements), if such liabilities were outstanding). The Mandatory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in the Mandatory Reserve Rate.

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“Margin Stock”. The term shall have the meaning provided in Regulation U.

“Material Adverse Effect”. With respect to any event or occurrence of whatever nature (including any adverse determination in any litigation, arbitration or governmental investigation or proceeding):

(a) a material adverse effect on the business, financial condition or operations of the Borrower; or

(b) a material adverse effect on the ability of the Borrower to perform any of its monetary obligations under any of the Loan Documents to which it is a party.

“Maturity Date”. The earlier to occur of (i) the date on which the Obligations have been accelerated in accordance with **Section 12.2(a)** and (ii) the date that is thirty (30) months after the Closing Date, as such date may be extended from time to time in accordance with Section 15.12.

“Maximum Required Hedge Amount”. As of any date of determination, an amount equal to the product of (a) one hundred five percent (105%) and (b) the Aggregate Loan Principal Balance as of such date of determination.

“Measurement Period”. As of any date of determination, the most recently completed twelve (12) calendar months or, if shorter, the number of calendar months that elapsed since the Closing Date.

“Minimum Required Hedge Amount”. As of any date of determination, an amount equal to the product of (a) seventy five percent (75%) and (b) the Aggregate Loan Principal Balance as of such date of determination.

“Moody’s”. Moody’s Investor Service, Inc., or any successor thereto.

“Multiemployer Plan”. Any multiemployer plan, as defined in Section 4001(a)(3) of ERISA with respect to which the Borrower shall have any liability.

“Net Book Value”. For each Owner Container as of any date of determination, one of the following amounts:

(A) with respect to any Owner Container not then subject to a Finance Lease, the Original Equipment Cost less the then accumulated depreciation, based on the Depreciation Policy, for such Owner Container, or

(B) with respect to any Owner Container then subject to a Finance Lease, the then Net Investment Value of such Finance Lease.

“Net Income”. As of any date of determination, the net income (or loss) of the Borrower, as determined in accordance with GAAP, for the most recently completed Measurement Period.

“Net Investment Value”. With respect to any Finance Lease, as of any date of determination, an amount equal to the “net investment in finance lease” with respect to such Finance Lease and reflected on the books and records of the Borrower and determined in accordance with GAAP; provided, however, that the Net Investment Value of a Finance Lease that is classified as a Defaulted Lease shall be deemed to be zero.

“NOI”. This term shall have the meaning set forth in the Management Agreement.

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**“Non-Excluded Taxes”**. Any taxes other than:

(a) income taxes, branch profits taxes, franchise taxes or any other tax imposed on the net income of a Lender or the Administrative Agent under the laws of the jurisdiction (or any political subdivision of taxing authority thereof or therein) in which such Lender or the Administrative Agent is organized or in which the principal office or funding office of such Lender or the Administrative Agent is located or in which it is otherwise conducting business, but excluding any such taxes which would not have been imposed but for such Lender’s or the Administrative Agent’s participation in the transactions under this Credit Agreement;

(b) any deduction, withholding or other imposition of taxes that arises as a result of a present or former connection between a Lender or the Administrative Agent and the relevant jurisdiction imposing such tax, including carrying on business in, having a branch, agency or permanent establishment in, or being resident in such jurisdiction but excluding any such connection which arises solely as a result of such Lender or the Administrative Agent having executed, performed its obligations under or received payment under any of the Loan Documents or otherwise solely by virtue of the Loan Documents;

(c) any taxes imposed as a result of failure to comply with **Section 5.2.2(g)**; and

(d) any withholding tax imposed by a law in effect at the time a Lender becomes a party hereto (or designates a new lending office), with respect to any interest payment made by or on account of any obligation of the Borrower to such Lender, except to the extent that such Lender (or its assignor, if any) was entitled, at the time of the assignment (or designation of a new lending office), to receive additional amounts with respect to such withholding Tax pursuant to **Section 5.2.2**.

**“Obligations”**. All of the following:

(i) all obligations, liabilities and indebtedness (including, without limitation, principal, premium, interest (including, without limitation, all interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency, reorganization or similar proceeding of Borrower at the rate provided for in the respective documentation, whether or not a claim for post-petition interest is allowed in any such proceeding), reimbursement obligations for fees, costs and indemnities) of Borrower to the Lenders, the Administrative Agent and the Collateral Agent, whether now existing or hereafter incurred under, arising out of, or in connection with, this Credit Agreement and the other Loan Documents (other than Interest Rate Hedging Agreements) and the due performance and compliance by Borrower with all of the terms, conditions and agreements contained in this Credit Agreement and in such other Loan Documents (other than Interest Rate Hedging Agreements); and

(ii) all obligations, liabilities and indebtedness (including, without limitation, all interest that accrues after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency, reorganization or similar proceeding of Borrower at the rate provided for in the respective documentation, whether or not a claim for post-petition interest is allowed in any such proceeding) owing by Borrower to the Interest Rate Hedge Counterparties, whether now existing or hereafter incurred under, arising out of or in connection with any Interest Rate Hedging Agreement, whether such Interest Rate Hedging Agreement is now in existence or hereinafter arising, and the due performance and compliance by Borrower with all of the terms, conditions and agreements contained in each such Hedging Agreement.

**“OFAC”**. The U.S. Department of the Treasury’s Office of Foreign Assets Control.

**“OFAC Sanctions”**. This term shall have the meaning set forth in **Section 7.20**.

**“Operating Expenses”**. As defined in the Management Agreement.

**“Operating Lease”**. A Lease that is not a Finance Lease.

**“Original Equipment Cost”**. With respect to any Owner Container, one of the following:

(a) for a new container acquired by the Borrower directly from the manufacturer of such container, an amount equal to the sum of (i) the vendor’s or manufacturer’s invoice price plus (ii) reasonable and customary inspection, transport, and initial positioning costs necessary to put such Container in service, plus (iii) reasonable acquisition fees and other fees not to exceed 2.5% of the amount described in clauses (i) and (ii);

(b) for the Owner Containers acquired by Borrower from Parent pursuant to the Container Sale Agreement, an amount determined for such Owner Containers under clause (a) above as reflected on the books and records of Parent and made available to the Administrative Agent; and

(c) for all containers not addressed in clauses (a) or (b) above, an amount equal to the lesser of (i) an amount determined for any such container under clause (a) above, if such information is available to the Borrower and (ii) a value for any such container that is equal to the purchase price of such container at the time of its sale to the Borrower.

**“Other Taxes”**. This term shall have the meaning set forth in **Section 5.2.2(b)**.

**“Owner Container”**. Each Container owned by the Borrower from time to time, including any Container that is subject to a Finance Lease.

**“Owner Proceeds”**. As defined in the Management Agreement.

**“Parent”**. TAP Ltd., an exempted company with limited liability organized under the laws of Bermuda.

**“Participant”**. This term shall have the meaning set forth in **Section 14.4**.

**“Payment Date”**. The fifteenth (15<sup>th</sup>) calendar day of each month or, if such day is not a Business Day, the immediately succeeding Business Day; the initial Payment Date shall be May 15, 2012.

**“PBGC”**. The Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

**“Periodic Hedge Payment”**. Any payment under an Interest Rate Hedging Agreement other than a Hedge Termination Payment.

**Permitted Audit Qualification**: An exception or qualification contained in the certification or report of the Independent Accountants accompanying the financial statements of the Borrower delivered pursuant to Section 8.1(b) of this Credit Agreement to the extent (but only to the extent) that such exception or qualification relates to either or both of the following items:

(i) the decision by Borrower to record on its books and records the Containers and Container leases previously acquired by Parent from Textainer Marine Containers Limited (“TMCL”) on June 30, 2011 at the then net book value of such Containers and leases as reflected on the books and records of TMCL; or

(ii) the decision by Borrower to record leases associated with approximately 1,850 Containers as operating leases rather than as sales type leases.

**“Permitted Principal Withdrawal”**. On the Maturity Date, an amount equal to the lesser of (x) the excess of (i) the Aggregate Loan Principal Balance on such date, over (ii) the funds on deposit in the Trust Account on the Maturity Date available to make principal payments on the Loans in accordance with the priority of any payments set forth in **Section 3.2(a)(vii)** or **Section 3.2(b)(vii)**, and (y) the amount then on deposit in the Cash Reserve Account.

**“Permitted Interest Withdrawal”**. For any Payment Date, an amount equal to the lesser of:

- (x) the excess of (i) all interest (other than any incremental interest payable pursuant to the provisions of **Section 5.8**) on all Loans payable on such Payment Date, over (ii) the funds on deposit in the Trust Account on such Payment Date available to make interest payments in accordance with the priority of payments set forth in **Section 3.2(a)(iii)** or **3.2(b)(iii)** hereof, and
- (y) the amount of funds and Eligible Investments then on deposit in the Cash Reserve Account.

**“Permitted Lien”**. Any Lien permitted under **Section 9.2**.

**“Person”**. An individual, any partnership, a limited liability company, a corporation, a joint venture, a trust, an unincorporated organization, or a government or any agency or political subdivision thereof.

**“Plan”**. Any employee pension plan (other than a Multiemployer Plan) as defined in Section 3(35) of ERISA subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 307 of ERISA, and in respect of which the Borrower is an “employer” as defined in Section 3(5) of ERISA.

**“Pledged Owner Container”**. This term shall have the meaning set forth in the Security Agreement.

**“Receivable”**. With respect to any Lease as of any date of determination, any expected future rental or other (e.g., purchase option) payment with respect to such Lease which has not yet become due.

**“Register”**. This term shall have the meaning set forth in **Section 14.3**.

**“Related Parties”**. With respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

**“Restricted Payment”**. In relation to the Borrower, any (a) Distribution, (b) payment or prepayment by the Borrower of Indebtedness owing to the Borrower’s shareholders (or other equity holders), or (c) cash payments under derivatives or other transactions with any financial institution, commodities or stock exchange or clearinghouse (a **“Derivatives Counterparty”**) obligating the Borrower to make payments to such Derivatives Counterparty as a result of any change in market value of any Capital Stock of the Borrower. For purposes of clarification only, “Restricted Payments” shall not include any amounts owing by the Borrower to Parent pursuant to the terms of the Contribution and Sale Agreement and shall not include any amounts owing by the Borrower to any Interest Rate Hedge Counterparty.

**“Returns”**. This term shall have the meaning set forth in **Section 7.17**.

**“Revolving Credit Period”**. The period commencing on the Closing Date and ending on the earliest to occur of (a) the date that is thirty (30) months after the Closing Date, as such date may be extended from time to time in accordance with **Section 15.12**, (b) the date on which the Aggregate Commitments have been terminated pursuant to **Section 12.2(b)** and (c) the date on which an Early Amortization Event occurs. The cure of an Early Amortization Event will not result in an automatic reinstatement of the Revolving Credit Period.



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“S&P”. Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto.

“Sales Proceeds”. As defined in the Management Agreement.

“Sanctioned Country”. A country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs>, or as otherwise published from time to time.

“Sanctioned Person”. Any of the following currently or in the future: (i) an individual, entity, or vessel named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/eotffc/ofac/sdn/index.html>, and any entity in which such individual, entity, or vessel owns, directly or indirectly, a fifty percent or greater interest, or (ii) (A) an agency or instrumentality of, or an entity owned or controlled by the government of a Sanctioned Country, (B) an entity located in or organized under the laws of a Sanctioned Country, or (C) a national or permanent resident of a Sanctioned Country, or a person located in a Sanctioned Country, to the extent such agency, instrumentality, entity, or person is subject to OFAC Sanctions.

“Scheduled Principal Payment Amount”. One of the following:

(a) on any Payment Date (other than the Maturity Date) on which no Early Amortization Event is continuing, the amount (if any) by which (1) the Aggregate Loan Principal Balance on such date (determined prior to giving effect to any principal payments to be made on such Payment Date), exceeds (2) the Asset Base on such Payment Date; and

(b) on the Maturity Date, the Aggregate Loan Principal Balance on such date.

“Secured Party”. Each of the Administrative Agent, each Lender and each Interest Rate Hedge Counterparty.

“Security Agreement”. That certain Security Agreement in the form of **Exhibit C** hereto, dated as of the date hereof, by Borrower in favor of the Collateral Agent, for the benefit of the Secured Parties.

“Security Documents”. The Security Agreement, the Control Agreement, the Collateral Assignment Agreement and other instruments and documents executed or delivered pursuant to any Security Document.

“Senior Designated Officer”. With respect to any Person, the Chief Executive Officer, the President, the Chief Financial Officer or any Vice President of such Person.

“Specialized Containers”: Any type of Container other than twenty foot (20’) dry freight, forty foot (40’) dry freight, forty foot (40’) high cube dry freight cargo and refrigerated containers.

“State”. Any state of the United States of America.

“Subsidiary”. With respect to any Person, shall mean and include any corporation, partnership, association, limited liability company, joint venture or other entity more than 50% of whose Voting Stock is at the time owned by such Person directly or indirectly through one or more Subsidiaries of such Person.

“Synthetic Lease”. Any lease of goods or other property, whether real or personal, (x) which is treated as an operating lease under GAAP and (y) in respect of which the Lessee retains or obtains ownership of the property so leased for U.S. Federal income tax purposes.

“TCG”. TCG Fund I, L.P., a limited partnership organized under the laws of the Cayman Islands.

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“TEML”. Textainer Equipment Management Limited, a Bermuda exempted company.

“TEM-US”. Textainer Equipment Management (U.S.) Limited, a Delaware corporation.

“TEM-US Sublease”. A sublease of an Owner Container by TEM-US as sublessor pursuant to its rights as lessee under a Head Lease Agreement.

“TEM-US Subleased Container”. Each Owner Container that is subject to both (i) a Head Lease Agreement with TEM-US as lessee and (ii) a TEM-US Sublease.

“TEU”. A twenty (20) foot equivalent unit, an industry standard measure based on the physical dimensions of a Container.

“Terminated Managed Container”. As defined in the Management Agreement.

“Trust Account”. As defined in **Section 3.2**.

“Type”. As to all or any portion of any Loan, its nature as a Base Rate Loan or a LIBOR Rate Loan.

UCC”. The Uniform Commercial Code as in effect from time to time in the applicable jurisdiction.

“U.S. Lease Contract”. The Container Management Streamlining Contract (Contract No. DAMTO1-03-D-0173) effective as of June 24, 2003, between TEML (US) and The Surface Deployment and Distribution Command (f/k/a The Military Traffic Management Command), as such agreement may be further amended, supplemented or modified from time to time in accordance with its terms.

“Voting Stock”. Stock or similar interests, of any class or classes (however designated), the holders of which are at the time entitled, as such holders, to vote for the election of a majority of the directors (or persons performing similar functions) of the corporation, association, trust or other business entity involved, whether or not the right to so vote exists by reason of the happening of a contingency.

“Weighted Average Age”. For any date of determination shall be equal to the quotient of (A) the sum of the products of (i) the age in years (determined from the date of the initial sale thereof by the manufacturer) of each Owner Container being evaluated, multiplied by (ii) the CEU value of such Owner Container being evaluated, divided by (B) the sum of the CEU values of all Owner Containers being evaluated.

“Withdrawal Liability”. Liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

## **1.2 Rules of Interpretation.**

(a) A reference to any document or agreement shall include such document or agreement as amended, modified or supplemented from time to time in accordance with its terms and the terms of this Credit Agreement.

(b) The singular includes the plural and the plural includes the singular.

(c) A reference to any law includes any amendment or modification to such law.

(d) A reference to any Person includes its permitted successors and permitted assigns.

(e) The words “include”, “includes”, and “including” are not limiting.

(f) All terms not specifically defined in this Credit Agreement or in the Management Agreement, which terms are defined in the UCC as in effect in the State of California, have the meanings assigned to them therein, with the terms “instrument” and “chattel paper” being that defined under Article 9 of the UCC.

(g) Reference to a particular “§” or Section refers to that section of this Credit Agreement unless otherwise indicated.

(h) The words “herein”, “hereof”, “hereunder” and words of like import shall refer to this Credit Agreement as a whole and not to any particular section or subdivision of this Credit Agreement.

(i) Unless otherwise expressly indicated, in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(j) This Credit Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are, however, cumulative and are to be performed in accordance with the terms thereof.

(k) This Credit Agreement and the other Loan Documents are the result of negotiation among, and have been reviewed by counsel to, among others, the Administrative Agent, the Lenders and the Borrower and are the product of discussions and negotiations among all parties. Accordingly, this Credit Agreement and the other Loan Documents are not intended to be construed against the Administrative Agent or any of the Lenders merely on account of the Administrative Agent’s or any Lender’s involvement in the preparation of such documents.

**1.3 Use of Defined Terms.** Unless otherwise defined or the context otherwise requires, terms for which meanings are provided in this Credit Agreement shall have such meanings when used in each Schedule and in each other Loan Document, notice and other communication delivered from time to time in connection with this Credit Agreement or any other Loan Document.

**1.4 Accounting and Financial Determinations.** (a) Unless otherwise specified, all accounting terms used herein or in any other Loan Document shall be interpreted, all accounting determinations and computations hereunder or thereunder shall be made, and all financial statements required to be delivered hereunder or thereunder shall be prepared in accordance with GAAP consistently applied.

(a) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Majority Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Majority Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Credit Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(b) If the Borrower shall elect as of the end of any financial reporting period to prepare its financial statements in accordance with International Financial Reporting Standards (as published by the International Accounting Standards Board) (“IFRS”) rather than GAAP, then, following delivery to the Administrative Agent the information required to be delivered for such

financial reporting period, the parties hereto shall use their best efforts to amend (in a manner mutually satisfactory to the Administrative Agent, the Borrower and the Majority Lenders) the thresholds or methods of calculation required under the Credit Agreement and the other Loan Documents such that compliance therewith is neither more nor less burdensome (as determined by the Majority Lenders in their sole discretion) to Borrower as a result of such conversion to IFRS and, thereafter, all references in the Loan Documents to GAAP shall be deemed references to IFRS.

## **2. COMMITMENTS OF LENDER.**

**2.1 Commitments to Make Loans.** Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a “Loan”) to the Borrower from time to time, on any Business Day during the Revolving Credit Period; *provided, however, that* (x) the principal amount of each Loan shall not exceed an amount equal to the product of (1) the Advance Rate then in effect and (2) the sum of the Net Book Values of the Owner Containers to be acquired with the proceeds of such Loan, and (y) after giving effect to the requested Loan, the Aggregate Loan Principal Balance shall not exceed the lesser of (i) the Aggregate Commitments and (ii) the Asset Base, calculated (in the case of **clause (ii)**) after giving effect to the origination or acquisition of the Owner Containers to be originated or acquired with the proceeds of such Loan. Loans shall be LIBOR Rate Loans or, under the circumstances set forth in **Section 5.4 or 5.5**, a Base Rate Loan.

**2.2 Requests for Loan.** The Borrower shall give to the Administrative Agent written notice in the form of **Exhibit D** hereto (or telephonic notice confirmed in a writing in the form of **Exhibit D** hereto) of each Loan requested hereunder (a “Loan Request”) no later than 10:00 a.m. (New York time) two (2) LIBOR Business Days prior to any proposed Funding Date (or such shorter timeframe as the Administrative Agent and all of the Lenders shall agree). Any Loan Request received by the Administrative Agent after 10:00 a.m. (New York time) shall be considered to have been received on the following LIBOR Business Day. Each such Loan Request shall specify (i) the principal amount of the Loan requested, (ii) the proposed Funding Date of such Loan and (iii) the Interest Period for such Loan. The Administrative Agent shall promptly notify each of the Lenders of such Loan Request. Each Loan Request shall be irrevocable and binding on the Borrower and shall obligate the Borrower to accept the Loan requested from the Lenders on the proposed Funding Date. The Borrower shall not be permitted to request any Loan at any time when the Revolving Credit Period is not in effect; upon the expiration or termination of the Revolving Credit Period, any unfunded portion of the Commitments shall terminate, automatically and without notice or action of any kind.

**2.3 Evidence of Loan.** The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a promissory note substantially in the form of **Exhibit E** hereto, which shall evidence such Lender’s Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, type, amount and maturity of its Loans and payments with respect thereto.

**2.4 Termination or Reduction of Commitments.** The Borrower may, upon notice to the Administrative Agent, terminate the Aggregate Commitments, or from time to time permanently reduce the Aggregate Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 10:00 a.m. (New York time) two (2) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole

multiple of \$1,000,000 in excess thereof, and (iii) the Borrower shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Aggregate Loan Principal Balance would exceed the Aggregate Commitments (unless the Borrower simultaneously (x) prepays the Loans in the amount necessary to cause the Aggregate Commitments to equal or exceed the Aggregate Loan Principal Balance, and (y) pays all amounts payable to any Interest Rate Hedge Counterparty related to such reduction). The Administrative Agent shall promptly notify the Lenders and each Interest Rate Hedge Counterparty of any such notice of termination or reduction of the Aggregate Commitments. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Commitment Percentage. All Fees accrued until the effective date of any termination or reduction of the Aggregate Commitments shall be paid on the effective date of such termination or reduction.

**2.5 Funding by Lenders; Presumption by Administrative Agent.** Unless the Administrative Agent shall have received notice from a Lender prior to the proposed Funding Date that such Lender will not make available to the Administrative Agent such Lender's Commitment Percentage of such requested Loan, the Administrative Agent may assume that such Lender has made such amount available on such date in accordance with **Section 2.1**, and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its Commitment Percentage of the applicable requested Loan available to the Administrative Agent, then the applicable Lender agrees to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to, but excluding, the date of payment to the Administrative Agent, at, in the case of a payment to be made by such Lender, the greater of the Base Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. If such Lender pays its Commitment Percentage of the applicable Loan to the Administrative Agent, then the amount so paid shall constitute such Lender's Commitment Percentage of the requested Loan.

**2.6 Failure to Satisfy Conditions Precedent.** If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the provisions of this Credit Agreement, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Loan set forth in **Section 10** or **11** are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

**2.7 Obligations of Lenders Several.** The obligations of the Lenders hereunder to make Loans and to make payments pursuant to this Credit Agreement are several and not joint. The failure of any Lender to make any Loan or to make any payment under this Credit Agreement on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date. No Lender shall be responsible for the failure of any other Lender to so make its Loan or to make its payment under this Credit Agreement and no Lender shall be required to fund more than its Commitment Percentage of any Loan.

**2.8 Revolving Credit Facility.** The credit facility evidenced by this Credit Agreement is a revolving credit facility. Accordingly, the Borrower will, subject to compliance with the terms of this Credit Agreement, have the right during the Revolving Credit Period to reborrow any amounts repaid to the Lenders in accordance with the terms of this Credit Agreement. Subsequent to the expiration or termination of the Revolving Credit Period, the credit facility evidenced by this Credit Agreement is a term facility and the Borrower will not be entitled to reborrow amounts repaid to the Lenders in accordance with this Credit Agreement.

### **3. TRUST ACCOUNT; CASH RESERVE ACCOUNT.**

#### **3.1 Trust Account.**

(a) On or about the Closing Date, the Borrower shall establish a deposit account, in the name of the Borrower for the benefit of the Administrative Agent, with Wells Fargo Bank, National Association (the "Trust Account"). The Administrative Agent, for the benefit of the Secured Parties, shall at all times have a first priority Lien in the Trust Account and all funds and Eligible Investments therein.

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(b) The Borrower shall instruct the Manager to deposit all Owner Proceeds (as defined in the Management Agreement) into the Trust Account, at the times and in the amounts required pursuant to the terms of the Management Agreement. Notwithstanding the foregoing, the Manager shall be permitted to withhold, from amounts otherwise required to be deposited into the Trust Account, the amount of any Management Fee and Management Fee Arrearage then due and payable.

**3.2 Disbursement of Funds From Trust Account.** On each Payment Date, after distribution of amounts from the Cash Reserve Account pursuant to **Section 3.3**, the Borrower, based on the Manager Report, shall distribute funds on deposit in the Trust Account in an amount equal to the Available Distribution Amount. Such Available Distribution Amount shall be distributed to the following Persons in the following order of priority, with no payment being made toward any item unless and until all prior items have been fully satisfied:

(a) On each Payment Date on which no Early Amortization Event or Event of Default is continuing, to the following Persons and in the following order of priority:

(i) To the Manager, the Management Fee and any Management Fee Arrearage, in each case to the extent not previously withheld or withdrawn by, or distributed to, the Manager in accordance with the terms of the Loan Documents;

(ii) To such Persons as the Borrower shall direct, an amount equal to Borrower Expenses then due and payable or that are scheduled to be paid prior to the next succeeding Payment Date; *provided, however, that* the amount payable pursuant to this **clause (ii)** in any twelve month period shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000);

(iii) To each of the following on a pro rata basis determined in accordance with the amounts referenced in clause (A) and (B):

(A) To each Interest Rate Hedge Counterparty, on a *pro rata* basis based on the amounts then owing pursuant to this **clause (A)**, the amount of any Periodic Hedge Payment (but not Hedge Termination Payments) then due and payable to it pursuant to the terms of any Interest Rate Hedging Agreement then in effect, together with any unpaid Periodic Hedge Payments from prior Payment Dates and any interest thereon as specified in such Interest Rate Hedging Agreement;

(B) To the Lenders, on a *pro rata* basis based on the amounts then owing pursuant to this **clause (B)**, all unpaid interest (other than any incremental interest owing pursuant to **Section 5.8**) then due and owing on all unpaid Loans;

(iv) To the Lenders, on a *pro rata* basis, any Commitment Fee then due and payable and any unpaid Commitment Fees from prior Payment Dates;

(v) To the Administrative Agent, the Administrative Agent Fee then due and owing;

(vi) To the Cash Reserve Account, the amount (if any) necessary to restore the balance on deposit therein to the Cash Reserve Amount for such Payment Date;

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(vii) To each of the following on a *pro rata* basis determined in accordance with the amounts referenced in clauses (A) and (B):

(A) To each Lender, on a *pro rata* basis (calculated based on the then unpaid principal balance of their respective unpaid Loans), an amount equal to its Commitment Percentage of the Scheduled Principal Payment Amount for such Payment Date;

(B) To each Interest Rate Hedge Counterparty, on a *pro rata* basis based on the amounts then owing pursuant to this **clause (B)**, the amount of any unpaid payments then due and payable (including Hedge Termination Payments) pursuant to the terms of any Interest Rate Hedging Agreement then in effect;

(viii) To each Lender, on a *pro rata* basis based on amounts then owing to each such Lender pursuant to this **clause (viii)**, all taxes, increased costs, indemnification, expenses, incremental interest owing pursuant to **Section 5.8** hereof and any other amounts due and owing to such Lender pursuant to the terms of the Loan Documents; and

(ix) To the Borrower, any remaining Available Distribution Amount on deposit in the Trust Account after giving effect to the payments set forth in the foregoing **clauses (i) through (viii)** of this **Section 3.2(a)**.

(b) On each Payment Date on which an Early Amortization Event is continuing but no Event of Default is continuing, to the following Persons and in the following order of priority:

(i) To the Manager, the Management Fee and any Management Fee Arrearage, in each case to the extent not previously withheld or withdrawn by, or distributed to, the Manager in accordance with the terms of the Loan Documents;

(ii) To such Persons as the Borrower shall direct, an amount equal to Borrower Expenses then due and payable or that are scheduled to be paid prior to the immediately succeeding Payment Date; *provided, however, that* the amount payable pursuant to this **clause (ii)** in any twelve month period shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000);

(iii) To each of the following on a *pro rata* basis determined in accordance with the amounts referenced in clauses (A) and (B):

(A) To each Interest Rate Hedge Counterparty, on a *pro rata* basis based on the amounts then owing pursuant to this **clause (A)**, the amount of any Periodic Hedge Payment (but not Hedge Termination Payments) then due and payable pursuant to the terms of any Interest Rate Hedging Agreement then in effect, together with any unpaid Periodic Hedge Payments from prior Payment Dates and any such amounts past due and any interest thereon;

(B) To the Lenders, on a *pro rata* basis based on the amounts then owing pursuant to this **clause (B)**, all unpaid interest (other than any incremental interest owing pursuant to **Section 5.8**) then due and owing on all unpaid Loans;

(iv) To the Lenders, on a *pro rata* basis, any Commitment Fee then due and payable and any unpaid Commitment Fees from prior Payment Dates;

(v) To the Administrative Agent, the Administrative Agent Fee then due and owing;

(vi) To the Cash Reserve Account, the amount (if any) necessary to restore the balance on deposit therein to the Cash Reserve Amount for such Payment Date;

(vii) Each of the following on a *pro rata* basis in accordance with the amounts referenced in **clauses (A) and (B)**:

(A) To each Lender, on a *pro rata* basis (calculated based on the then unpaid principal balance of their respective Loans), an amount equal to its Commitment Percentage of the Aggregate Loan Principal Balance; and

(B) To each Interest Rate Hedge Counterparty, on a *pro rata* basis based on the amounts then owing pursuant to this **clause (B)**, the amount of any unpaid payments then due and payable (including Hedge Termination Payments) pursuant to the terms of any Interest Rate Hedging Agreement then in effect;

(viii) To each Lender, on a *pro rata* basis based on amounts then owing to each such Lender pursuant to this **clause (viii)**, all taxes, increased costs, indemnification, expenses, incremental interest owing pursuant to **Section 5.8** hereof, and any other amounts due and owing to such Lender pursuant to the terms of the Loan Documents;

(ix) To the Borrower, any remaining Available Distribution Amount on deposit in the Trust Account after giving effect to the payments set forth in **clauses (i) through (viii)** of this **Section 3.2(b)**.

(c) On each Payment Date on which an Event of Default is continuing, to such Persons, and in the order of priority, as set forth in **Section 12.3**.

### **3.3 Cash Reserve Account.**

(a) On or about the Closing Date, the Borrower shall establish a deposit account (the “Cash Reserve Account”), in the name of the Borrower for the benefit of the Administrative Agent with Wells Fargo Bank National Association. The Administrative Agent, for the benefit of the Secured Parties, shall at all times have a first priority Lien in the Cash Reserve Account and all funds and Eligible Investments therein. The Borrower shall not establish any additional cash reserve account without prior written notice to, and the prior written consent of, the Administrative Agent in each instance.

(b) On each Funding Date, the Borrower will deposit, or cause to be deposited, into the Cash Reserve Account, funds in an amount necessary to restore the amount on deposit in the Cash Reserve Account to the Cash Reserve Amount. Amounts shall also be deposited in the Cash Reserve Account at the times and in the amounts set forth in **Section 3.2**.

(c) On each Payment Date, the Borrower shall, in accordance with the Manager Report or, absent a Manager Report, pursuant to written instructions from the Administrative Agent, withdraw from the Cash Reserve Account and remit directly to each Lender its Commitment Percentage of an amount equal to the Permitted Interest Withdrawal. On the Maturity Date, the Manager shall, in accordance with the Manager Report or, absent a Manager Report, pursuant to instructions from the Majority Lenders, withdraw from the Cash Reserve Account and remit to each Lender its Commitment Percentage of the Permitted Principal Withdrawal for such date.

(d) On each Payment Date, prior to any distribution of Available Distribution Amount pursuant to **Section 3.2**, the Manager shall, in accordance with the Manager Report, or absent a Manager Report, pursuant to written instructions from the Administrative Agent, withdraw from the



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Cash Reserve Account and deposit in the Trust Account, the excess (if any) of (A) amounts then on deposit in the Cash Reserve Account (after giving effect to any withdrawals therefrom on such Payment Date) over (B) the Cash Reserve Amount. On the Maturity Date, any remaining funds in the Cash Reserve Account shall be deposited in the Trust Account and distributed in accordance with the provisions of **Section 3.2** of this Credit Agreement.

### **3.4 Investments.**

(a) Funds at any time held in the Trust Account or the Cash Reserve Account shall be invested and reinvested in one or more Eligible Investments, as directed by (i) so long as no Event of Default is then continuing, the Borrower or its designee, or (ii) so long as an Event of Default has occurred and is continuing, the Administrative Agent or its designee.

(b) Each investment made pursuant to this **Section 3.4** on any date shall mature not later than the Business Day immediately preceding the Payment Date next succeeding the day such investment is made, except that any investment made on the day preceding a Payment Date shall mature on such Payment Date.

(c) Pursuant to the Security Agreement, all monies on deposit in the Trust Account and the Cash Reserve Account, together with any deposits or securities in which such moneys may be invested or reinvested, and any gains from such investments, constitute Collateral.

## **4. PROVISIONS APPLICABLE TO ALL LOANS.**

### **4.1 Interest on Loans.**

(a) Except as otherwise provided in **Section 5.8**, each Loan shall bear interest during each Interest Period relating to all, or any portion of, such Loan at the following rates:

(i) To the extent that all or any portion of a Loan bears interest during such Interest Period at the Base Rate, such Loan (or such portion thereof) shall bear interest during such Interest Period at the rate *per annum* equal to the sum of (i) the Applicable Margin and (ii) the Base Rate in effect from time to time.

(ii) To the extent that all or any portion of a Loan bears interest during such Interest Period at the LIBOR Rate, such Loan or such portion shall bear interest during such Interest Period at a rate *per annum* equal to the sum of (i) the LIBOR Rate and (ii) the Applicable Margin.

The Borrower promises to pay interest at the applicable interest rate set forth above on all Loans or any portion thereof outstanding during each Interest Period monthly in arrears on each Payment Date. Such interest shall be calculated in accordance with **Section 5.3**.

(b) In no event shall the interest charged with respect to a Loan exceed the maximum amount permitted by applicable law. If at any time the interest rate charged with respect to a Loan exceeds the maximum rate permitted by applicable law, the rate of interest to accrue pursuant to such Loan shall be limited to the maximum rate permitted by applicable law.

(c) No Interest Period relating to a Loan or any portion thereof shall extend beyond the Maturity Date.

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## **4.2 Repayments and Prepayments of the Loans.**

**4.2.1 Repayment of Loans.** On each Payment Date (other than the Maturity Date), the Aggregate Loan Principal Balance shall be payable in an amount equal to (i) if no Early Amortization Event is then continuing, the Scheduled Principal Payment Amount for such Payment Date, or (ii) if an Early Amortization Event is then continuing, the Aggregate Loan Principal Balance to the extent that funds are available for such purpose in accordance with the priority of payments set forth in **Section 3.2(b)(vii)(A)** on such Payment Date. The Aggregate Loan Principal Balance, and all accrued interest and other amounts owing on, or with respect to, the Loans shall be payable in full on the earlier to occur of (a) the Maturity Date and (b) the date on which the Loans and the other Obligations have been declared due and payable in accordance with the provisions of **Section 12.2(a)**.

**4.2.2 Optional Prepayment of Loans.** The Borrower shall have the right at any time to prepay one or more of the Loans on or before the Maturity Date, as a whole, or in part, upon delivery of written notice to the Administrative Agent not later than 1:00 p.m. (New York City time) on the Business Day prior to such prepayment, without premium or penalty, provided that (a) each partial prepayment shall be in the principal amount of \$50,000 and multiples of \$10,000 in excess thereof and (b) simultaneously with such prepayment, the Borrower shall pay to (i) each Lender, an amount equal to such Lender's Breakage Cost (if any) related to such prepayment, and (ii) each Interest Rate Hedge Counterparty, an amount equal to all amounts (including termination payments) payable (if any) pursuant to the terms of the related Interest Rate Hedging Agreement in connection with such prepayment. The Administrative Agent will promptly notify each Lender and each Interest Rate Hedge Counterparty of its receipt of each such notice, and of the amount of such Lender's Commitment Percentage of such prepayment. Any prepayment of principal of a Loan shall include all interest accrued to the date of prepayment.

**4.2.3 Application of Payments.** All payments of principal made pursuant to **Section 4.2.1** or **4.2.2** shall be applied to the Loans of the Lenders in accordance with their respective Commitment Percentages. Any principal payment received by a Lender pursuant to **Section 4.2.1** or **4.2.2** shall be applied to reduce the principal balance of all unpaid Loans owing to such Lender on a *pro rata* basis (based on the unpaid principal balance of each such Loan).

**4.3 Payments by Borrower; Presumptions by Administrative Agent.** Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Base Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this **Section 4.3** shall be conclusive, absent manifest error.

**4.4 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of, or interest on, any of the Loans made by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or any accrued interest thereon greater than its Commitment Percentage thereof, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with their respective Commitment Percentages, provided that:

(a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(b) the provisions of this **Section 4.4** shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Credit Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower, or any Affiliate (as to which the provisions of this **Section 4.4** shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

**4.5 Funding Source.** Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

## **5. CERTAIN GENERAL PROVISIONS.**

### **5.1 Fees.**

**5.1.1 Commitment Fee.** The Borrower agrees to pay on each Payment Date during the Revolving Credit Period to the Administrative Agent, for the accounts of the Lenders in accordance with their respective Commitment Percentages, a commitment fee (the “Commitment Fee”) calculated at the Commitment Fee Percentage on the average daily amount, during the most recently ended Collection Period, by which the Aggregate Commitment exceeds the Aggregate Loan Principal Balance; provided, however, that a Lender shall not be entitled to receive a Commitment Fee for such period as such Lender is classified as a Defaulting Lender. The Commitment Fee shall be payable in arrears on each Payment Date for the most recently ended Collection Period commencing on the first such date following the date hereof, with a final payment on the expiration or termination of the Revolving Credit Period.

**5.1.2 Other Fees.** The Borrower shall pay to the Administrative Agent and the Lenders the fees in the amounts and at the times specified in the Administrative Agent Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever. The Borrower shall also pay to the Administrative Agent and the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

### **5.2 Funds for Payments.**

**5.2.1 Payments to Administrative Agent.** All payments of principal, interest, Fees and any other amounts due hereunder or under any of the other Loan Documents shall be made on the due date thereof to the Administrative Agent in Dollars, for the accounts of the Lenders and the Administrative Agent, at the Administrative Agent’s Office or at such other place that the Administrative Agent may from time to time designate, in each case at or about 1:00 p.m. (New York time or other local time at the place of payment) and in immediately available funds.

#### **5.2.2 No Offset, etc.**

(a) Subject to **Section 5.2**, all payments by the Borrower hereunder and under any of the other Loan Documents shall be made without recoupment, setoff or counterclaim and free and clear of and without deduction for any taxes (including interest, penalties and additions to tax), levies, imposts, duties, charges, fees, deductions, withholdings, now or hereafter imposed or levied by any jurisdiction or any political subdivision thereof or taxing or other authority therein unless the Borrower is compelled by law to make such deduction or withholding. If any Non-Excluded Taxes are imposed under applicable law upon the Borrower with respect to any amount

payable by it hereunder or under any of the other Loan Documents, the Borrower will pay to the Administrative Agent, for the account of the Lenders or the Administrative Agent (as the case may be) in accordance with the priority of payments set forth in **Section 3.2(a)** or **3.2(b)** hereof, as applicable, such additional amount in Dollars as shall be necessary to enable the Lenders or the Administrative Agent to receive the same net amount which the Lenders or the Administrative Agent would have received on such due date had no such Non-Excluded Taxes been imposed upon the Borrower. The Borrower will deliver promptly to the Administrative Agent certificates or other valid vouchers for all taxes or other charges deducted from or paid with respect to payments made by the Borrower under such other Loan Document.

(b) In addition, the Borrower agrees to pay to the relevant Governmental Authority in accordance with applicable law (or to reimburse the Administrative Agent or Lender for amounts paid by such Person), any current or future stamp or documentary taxes, excise tax, charges or similar levies (including, without limitation, mortgage recording taxes, transfer taxes and similar fees) imposed by the United States or any taxing authority thereof or therein that arise from any payment made hereunder (“Other Taxes”).

(c) Subject to **Section 5.2**, the Borrower agrees to indemnify the Lenders and the Administrative Agent for the full amount of Non-Excluded Taxes (including additional amounts with respect thereto) and Other Taxes paid by Lender or Administrative Agent, and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto (other than amounts arising from the gross negligence or willful misconduct of the Lenders or the Administrative Agent, as the case may be), provided that the Lenders or the Administrative Agent, as the case may be, shall have provided the Borrower with evidence, reasonably satisfactory to the Borrower, of payment of Non-Excluded Taxes or Other Taxes, as the case may be.

(d) Any Lender or the Administrative Agent that becomes entitled to the payment of additional amounts pursuant to **Section 5.2.2(a)** or indemnification pursuant to **Section 5.2.2(c)**, shall use reasonable efforts (consistent with applicable law) to file any document reasonably requested by the Borrower or, with respect to a Lender, to change the jurisdiction of its applicable lending office if the making of such a filing or change of office, as the case may be, would avoid the need for or reduce the amount of any payment of such additional amounts that may thereafter accrue and would not, in the good faith determination of such Lender or the Administrative Agent, as applicable, be disadvantageous to it.

(e) If a Lender or the Administrative Agent receives any refund or credit with respect to taxes for which the Borrower has paid any additional amounts pursuant to **Section 5.2.2(a)**, then such Lender or the Administrative Agent, as applicable, shall promptly pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section) with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, however, that (i) the Borrower agrees to promptly return any amount paid to the Borrower pursuant to this **Section 5.2.2(e)** upon notice from such Lender or the Administrative Agent, as applicable, that such refund or any portion thereof is required to be repaid to the relevant taxing authority, (ii) nothing in this **Section 5.2.2(e)** shall require a Lender to disclose any confidential information to the Borrower (including, without limitation, its tax returns), and (iii) no Lender shall be required to pay any amounts pursuant to this **Section 5.2.2(e)** at any time while a Default or Event of Default exists (provided, that, upon the waiver or cure of any such Default or Event of Default, all such amounts that would otherwise be required to be paid pursuant to this **Section 5.2.2(e)** but for the effect of this **clause (iii)** shall be promptly so paid).

(f) If the Borrower determines in good faith that a reasonable basis exists for contesting any Non-Excluded Taxes for which additional amounts have been paid pursuant to **Section 5.2.2(a)**, the relevant Lender or Administrative Agent (to the extent such Person reasonably determines in good faith that it will not suffer any adverse effect as a result thereof) shall cooperate with the Borrower in challenging such Non-Excluded Taxes, at the Borrower's expense, if so requested by the Borrower in writing.

(g) Any Lender that is entitled to an exemption from, or reduction of, withholding tax with respect to payments made under this Credit Agreement or any other Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

**5.3 Computations.** All computations of interest on the Loans and of Fees shall be based on a 360-day year and paid for the actual number of days elapsed. Except as otherwise provided in the definition of the term "Interest Period" with respect to LIBOR Rate Loans, whenever a payment hereunder or under any of the other Loan Documents becomes due on a day that is not a Business Day, the due date for such payment shall be extended to the next succeeding Business Day, and interest shall accrue during such extension.

**5.4 Inability to Determine LIBOR Rate.** In the event, prior to the commencement of any Interest Period relating to any LIBOR Rate Loan, any Lender shall determine that (a) adequate and reasonable methods do not exist for ascertaining the LIBOR Rate that would otherwise determine the rate of interest to be applicable to any LIBOR Rate Loan during any Interest Period or (b) the LIBOR Rate determined, or to be determined, for such Interest Period will not adequately and fairly reflect the cost to such Lender of making or maintaining their LIBOR Rate Loans during such period, such Lender shall forthwith give notice of such determination (which shall be conclusive and binding on the Borrower) to the Borrower and the Administrative Agent. In such event (i) any Loan Request with respect to LIBOR Rate Loans shall be automatically withdrawn and shall be deemed a request for Base Rate Loans, (ii) each LIBOR Rate Loan will automatically, on the last day of the then current Interest Period relating thereto, become a Base Rate Loan, and (iii) the obligations of the Lenders to make LIBOR Rate Loans shall be suspended until the affected Lenders determine that the circumstances giving rise to such suspension no longer exist, whereupon the Administrative Agent shall so notify the Borrower and the Administrative Agent and each Base Rate Loan shall automatically convert to a LIBOR Rate Loan on the last day of the then current Interest Period.

**5.5 Illegality.** Notwithstanding any other provisions herein, if any present or future law, regulation, treaty or directive or the interpretation or application thereof shall make it unlawful for any Lender to make or maintain LIBOR Rate Loans, such Lender shall forthwith give notice of such circumstances to the Borrower and the other Lenders and thereupon (a) the commitment of such Lender to make LIBOR Rate Loans shall forthwith be suspended and (b) such Lender's Loans then outstanding as LIBOR Rate Loans, if any, shall be converted automatically to Base Rate Loans on the last day of each Interest Period applicable to such LIBOR Rate Loans or within such earlier period as may be required by law. The Borrower hereby agrees promptly to pay within forty five (45) days following demand, to the applicable Lender, all Breakage Costs associated with such Breakage Event.

**5.6 Additional Costs; Capital Adequacy.**

**5.6.1 Changes in Law.** If any Change in Law, other than changes in the rate of tax on the overall net income of a Lender or taxes other than Non-Excluded Taxes, shall:

(a) impose, modify, increase or render applicable (other than to the extent specifically provided for elsewhere in this Credit Agreement, including without limitation, to the extent considered in the calculation of the LIBOR Rate) any special deposit, reserve, assessment, liquidity, capital adequacy, insurance charge or other similar requirements (whether or not having the force of law) against assets held by, or deposits in or for the account of, or loans by, or letters of credit issued by, or commitments of an office of any Lender, or

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(b) impose on any Lender or the Administrative Agent any other conditions, requirements, cost or expense with respect to this Credit Agreement, the other Loan Documents, the LIBOR Rate Loans, such Lender's Commitment to make LIBOR Rate Loans, or any class of loans or commitments of which any of the LIBOR Rate Loans or such Lender's Commitment to make LIBOR Rate Loans forms a part,

and the result of any of the foregoing is:

(i) to increase the cost to any Lender of making, funding, issuing, renewing, extending or maintaining any of the LIBOR Rate Loans or such Lender's Commitment to make LIBOR Rate Loans, or

(ii) to reduce the amount of principal, interest, or other amount payable to such Lender or the Administrative Agent hereunder on account of such Lender's Commitment to make LIBOR Rate Loans, or any of the LIBOR Rate Loans, or

(iii) to require such Lender or the Administrative Agent to make any payment or to forego any interest or other sum payable hereunder in respect of any LIBOR Rate Loans, the amount of which payment or foregone interest or other sum is calculated by reference to the gross amount of any sum receivable or deemed received by such Lender or the Administrative Agent from the Borrower hereunder in respect thereof,

then, subject to **Section 5.6.3**, Borrower shall pay, as set forth in **Section 5.6.4**, such additional amounts to compensate such Lender for such increased cost or such reduction.

**5.6.2 Capital Adequacy.** If, after the date hereof, any Lender or the Administrative Agent determines that any Change in Law has the effect of reducing the return on such Lender's Commitment to a level below that which such Lender or the Administrative Agent could have achieved but for such Change in Law (taking into consideration such Lender's or the Administrative Agent's then existing policies with respect to capital adequacy and assuming full utilization of such entity's capital) by any amount deemed by such Lender or the Administrative Agent (as the case may be) to be material, then such Lender or the Administrative Agent may notify the Borrower of such fact. To the extent that the amount of such reduction in the return on capital is not reflected in the Base Rate or LIBOR Rate, the Borrower agrees to pay, subject to **Section 5.6.3**, such Lender or the Administrative Agent (as the case may be), in accordance with **Section 5.6.4**, for the amount of such reduction.

**5.6.3 Lookback; Nondiscrimination.** Borrower shall only be liable for amounts in respect of increased costs or reduced returns for the period of up to ninety (90) days prior to the date on which such demand was made, and (y) such Lender shall have required similarly situated borrowers or obligors to pay similar amounts with respect to such increased costs or reduced returns.

**5.6.4 Certificates for Reimbursement.** A certificate of the applicable Lender claiming compensation under **Section 5.6.1** or **5.6.2** shall be sent to Borrower and shall be conclusive absent manifest error; provided that such certificate (i) sets forth in reasonable detail the amount or amounts payable to such Lender pursuant to **Section 5.6.1** or **5.6.2** (as applicable), (ii) explains the methodology used to determine such amount and (iii) states that such Lender has required similarly situated borrowers or obligors to pay similar amounts with respect to such increased costs or reduced returns. The Borrower shall pay to the applicable Lender the amount as due on any such certificate on the following Payment Date in accordance with the priority of payments set forth in **Section 3.2(a)** or **(b)**, as applicable.

**5.7 Indemnity.** The Borrower agrees to indemnify each Lender and to hold each Lender harmless from and against any Breakage Costs arising out of, or related to, a Breakage Event.

**5.8 Interest After Default.** (a) Overdue principal and (to the extent permitted by applicable law) overdue interest on the Loans and all other overdue amounts payable hereunder or under any of the other Loan Documents shall bear interest compounded monthly and payable on demand at a rate *per annum* equal to two percent (2%) above the then applicable rate of interest under this Credit Agreement or the other Loan Documents until such amount shall be paid in full (after as well as before judgment).

(b) Without duplication of **Section 5.8(a)**, during any period during which an Event of Default has occurred and is continuing, the principal amount of the Loans shall bear interest compounded monthly and payable on demand at a rate *per annum* equal to two percent (2%) above the rate of interest then applicable to the Loans until such amount shall be paid in full (after as well as before judgment).

## **6. COLLATERAL SECURITY.**

**6.1 Security of Borrower.** Subject to the Security Documents, the Obligations are and shall continue to be secured by a first priority (subject only to Permitted Liens), perfected security interest in the Collateral specified in the Security Documents, whether now owned or hereafter acquired, pursuant to the terms of the Security Documents to which the Borrower is a party.

## **7. REPRESENTATIONS AND WARRANTIES.**

In order to induce the Lenders to enter into this Credit Agreement and to make the Loans as provided for herein and to induce the Interest Rate Hedge Counterparties to enter into the Interest Rate Hedging Agreements, Borrower makes the following representations and warranties to the Administrative Agent, Lenders and the Interest Rate Hedge Counterparties, all of which shall survive the execution and delivery of this Credit Agreement and the making of the Loans (with the occurrence of each Funding Date being deemed to constitute a representation and warranty that the matters specified in this **Section 7** are true and correct in all material respects on and as of such Funding Date, unless stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date):

**7.1 Company Status.** Borrower (i) is a duly organized and validly existing Company in good standing (or its equivalent) under the laws of the jurisdiction of its organization except where the failure to be so duly organized, validly existing and in good standing, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, (ii) has the Company power and authority to own its property and assets and to transact the business in which it is presently engaged, except where the failure to have such power and authority, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect and (iii) is duly qualified and is authorized to do business and is in good standing (or its equivalent) in all jurisdictions where it is required to be so qualified (or its equivalent) and where the failure to be so qualified, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

**7.2 Company Power and Authority.** Borrower has the Company power and authority to execute, deliver and carry out the terms and provisions of the Loan Documents to which it is a party and has taken all necessary Company action to authorize the execution, delivery and performance of the Loan Documents to which it is a party. Borrower has duly executed and delivered each Loan Document to which it is a party and each such Loan Document constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws generally affecting creditors' rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

**7.3 No Violation.** Neither the execution, delivery or performance by the Borrower of the Loan Documents to which it is a party, nor compliance by the Borrower with the terms and provisions thereof, nor the consummation of the transactions contemplated herein or therein, (i) will contravene any material provision of any applicable law, statute, rule or regulation, or any order, writ, injunction or decree of any court or governmental instrumentality, (ii) will conflict with or be inconsistent with or result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute an “event of default” under, or (other than pursuant to the Security Documents) result in the creation or imposition of (or the obligation to create or impose) any Lien upon any of the property or assets of the Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, credit agreement or any other agreement, contract or instrument to which the Borrower is a party or by which it or any of its material property or assets are bound or to which it may be subject, or (iii) will violate any provision of the certificate of incorporation, memorandum of association, bye-laws or equivalent organizational document, as the case may be, of the Borrower.

**7.4 Litigation.** There are no actions, suits, proceedings or investigations pending or, to the knowledge of the Borrower, threatened in writing (i) with respect to any Loan Document or (ii) with respect to any other matter, as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

**7.5 Margin Regulations.** No part of any Loan (or the proceeds thereof) will be used (i) to purchase or carry any Margin Stock in contravention of Regulation T, U or X of the Board of Governors of the Federal Reserve System as from to time in effect (or any successor to all or any portion thereof), or (ii) to extend credit for the purpose of purchasing or carrying any Margin Stock in contravention of such regulations.

**7.6 Governmental Approvals.** Except as may have been obtained or made on or prior to the date hereof, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by, any Governmental Authority, is required to authorize, in respect of the Borrower, or is required to be obtained by the Borrower in connection with (i) the execution, delivery and performance by the Borrower of any Loan Document or (ii) the legality, validity, binding effect or enforceability of any Loan Document with respect to the Borrower, in each case, except for (A) the filing or recordation of any Security Documents or (B) to the extent that the failure to make or obtain, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

**7.7 Investment Company Act.** Borrower is not an “investment company” or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended.

**7.8 Activities of Borrower.** The Borrower was formed as a company with limited liability on March 21, 2012. At all times since the date of its formation, the Borrower has not engaged in any activities or business other than entering into the Loan Documents.

**7.9 True and Complete Disclosure.** All factual information (taken as a whole) furnished by or on behalf of the Borrower in writing to the Administrative Agent, any Lender or any Interest Rate Hedge Counterparty (including, without limitation, all information contained in the Loan Documents) for purposes of or in connection with this Credit Agreement is, and all other such factual information (taken as a whole) hereafter furnished by, or on behalf of, the Borrower in writing to the Administrative Agent, any Lender or any Interest Rate Hedge Counterparty in connection with this Credit Agreement will be, true and accurate in all material respects on the date as of which such information is dated and not incomplete by omitting to state any material fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided; provided, however, that (i) no representation is made regarding whether any Owner Container is subleased to or used by a Sanctioned Person, or located, operated or used in a Sanctioned Country, except to the extent of the knowledge of the Person making any such representation, and (ii) to the extent that any such information was based upon or constitutes a forecast or projection, Borrower represents only that it acted in good faith and utilized assumptions believed by the management of the Borrower to



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be reasonable at the time made in the preparation of such information (it being understood by the Administrative Agent and the Lenders that any financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered thereby may differ from the projected results set forth therein).

**7.10 Solvency.** On a pro forma basis after giving effect to all Obligations incurred, and to be incurred, and Liens created, and to be created, in connection with the Loan Documents, (x) the sum of the assets, at a fair valuation, of the Borrower will exceed its or its debts, (y) the Borrower has not incurred nor intended to, nor believes that it will, incur debts beyond its ability to pay such debts as such debts mature and (z) the Borrower will not have unreasonably small capital with which to conduct its business in the manner such business is now conducted. For purposes of this **Section 7.10**, “debt” means any liability on a claim, and “claim” means (i) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (ii) right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

**7.11 Security Interests.** Each of the Security Documents creates, as security for the Obligations, a valid and enforceable security interest in and Lien on all of the Collateral subject thereto, superior to and prior to the rights of all third Persons (other than pursuant to statutory priority rights), and subject to no other Liens except Permitted Liens. The Borrower has filed or caused to be filed all UCC financing statements (or documents of similar import) in the appropriate offices therefor (or has delivered to the Administrative Agent UCC financing statements (or documents of similar import) suitable for filing in such offices) and has taken all of the actions necessary in the United States and Bermuda to create perfected security interests in the Collateral which the Security Documents require the Borrower to create perfected security interests and which can be perfected by filing in the United States and Bermuda.

**7.12 ERISA.** (a) The Borrower is in compliance in all material respects with the applicable provisions of ERISA and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, could reasonably be expected to result in any liability of the Borrower in excess of \$250,000. The present value of all benefit liabilities under each Plan (based on the assumptions used for purposes of ASC Topic 715 (“Expenses—Compensation—Retirement Benefits”)) did not, as of the last annual valuation date applicable thereto, exceed by more than \$250,000 the fair market value of the assets of such Plan, and the present value of all benefit liabilities of all underfunded Plans (based on the assumptions used for purposes of ASC Topic 715) did not, as of the last annual valuation date applicable thereto, exceed by more than \$250,000 the fair market value of the assets of all such underfunded Plans.

(b) The Borrower has not received notice that any Lien arising under ERISA has been filed against the assets of the Borrower.

**7.13 Subsidiaries.** The Borrower has no Subsidiaries.

**7.14 Compliance with Statutes; Agreements, etc.** The Borrower is in compliance with (i) all applicable statutes, regulations, rules and orders of, and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of its business (including the origination of Finance Leases) and the ownership of its property (excluding applicable statutes, regulations, orders and restrictions relating to environmental standards and controls, which matters are covered under **Section 7.15**) and (ii) all contracts and agreements to which it is a party, except, in each case, such non-compliances as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

**7.15 Environmental Matters.** Except as would not reasonably be expected to result in, either individually or in the aggregate, a Material Adverse Effect: (i) the Borrower has complied with all applicable Environmental Laws and the requirements of any permits issued under such Environmental Laws and the Borrower is not liable for any penalties, fines or forfeitures for failure to comply with any of the foregoing; (ii) there are no pending Environmental Claims or, to the knowledge of any Senior Designated Officer of the Borrower, Environmental Claims threatened in writing against the Borrower or any property (real or personal) owned, leased or operated by the Borrower (including, to the knowledge of any Senior Designated Officer of the Borrower, any such claim arising out of the ownership, lease or operation by the Borrower of any property (real or personal) formerly owned, leased or operated by the Borrower but no longer owned, leased or operated by the Borrower); and (iii) to the knowledge of any Senior Designated Officer of the Borrower, there are no facts, circumstances, conditions or occurrences on or arising from any property (real or personal) owned, leased or operated by the Borrower (including any property (real or personal) formerly owned, leased or operated by the Borrower but no longer owned, leased or operated by the Borrower) or relating to the past or present operations of the Borrower that could reasonably be expected to form the basis of an Environmental Claim against the Borrower or any such property (real or personal).

**7.16 Labor Relations.** As of the date hereof, there are no strikes, lockouts or slowdowns against the Borrower pending, or to the knowledge of the Borrower, threatened. The hours worked by and payments made to employees of the Borrower have not been in violation of the Fair Labor Standards Act or any other applicable federal, state or local law dealing with such matters, except for such violations that would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

**7.17 Tax Returns and Payments.** Borrower has timely filed (including applicable extensions) with the appropriate taxing authority, all federal and other material returns, statements, forms and reports for taxes (the “Returns”) required to be filed by or with respect to the income, properties or operations of the Borrower. The Returns accurately reflect in all material respects all liability for taxes of the Borrower for the periods covered thereby. The Borrower has paid all material taxes payable by them other than those contested in good faith and for which adequate reserves have been established in accordance with GAAP.

**7.18 Existing Indebtedness.** The Borrower has no Indebtedness other than the Indebtedness evidenced by this Credit Agreement and the other Loan Documents.

**7.19 Insurance.** Schedule 7.19 sets forth a summary of all insurance maintained by Manager for and on behalf of Borrower with respect to the Owner Containers on and as of the date hereof, with the amounts insured (and any deductibles) set forth therein.

**7.20 OFAC Sanctions.** None of the requesting or borrowing of any Loan or the use of the proceeds of such will violate any of the OFAC sanctions programs, laws, rules, and regulations of the Office of Foreign Assets Control of the United States Department of the Treasury (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, (the “OFAC Sanctions”). Furthermore, neither the Borrower nor any of its Affiliates (a) is or will become a Sanctioned Person; (b) is or will become a “blocked person” as described in the OFAC Sanctions; or (c) engages or will engage in any dealings or transactions, or be otherwise associated, with any such Sanctioned Person in violation of the OFAC Sanctions.

**7.21 No Default.** No Event of Default, Manager Default or Early Amortization Event has occurred and is continuing and no event has occurred that with the giving of notice or the passage of time or both would become an Event of Default, Manager Default or Early Amortization Event.

**7.22 Use of Proceeds.** The Borrower shall use the proceeds of each Loan as follows: (i) to fund the acquisition or origination of the Owner Containers or Finance Leases to be acquired or originated with the proceeds of such Loan and (ii) for other general business purposes to the extent not prohibited to the terms of this Credit Agreement and the other Loan Documents.

**7.23 Place of Business.** The Borrower's sole "place of business" (within the meaning of 9-307 of the UCC) is located at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda.

**7.24 Bank Accounts.** The Borrower maintains the deposit accounts listed on **Schedule 7.24** (as such Schedule may be updated from time to time by Borrower upon written notice to Administrative Agent) hereto and no other deposit accounts.

**7.25 Tax Election of Parent and Borrower.** Parent has elected, or agreed to elect, to be treated as an association taxable as a corporation for United States federal income tax purposes. Borrower has elected to be treated as a disregarded entity for United States federal income tax purposes.

**7.26 OFAC Compliance.** The Borrower (i) conducts its operations as if it is a "U.S. Person" and a "Person Subject to the Jurisdiction of the United States", within the meaning of the OFAC Sanctions and (ii) does not derive any of its assets or revenues from investments in, or transactions with, Sanctioned Persons or Sanctioned Countries in violation of the OFAC Sanctions.

## **8. AFFIRMATIVE COVENANTS.**

Borrower hereby covenants and agrees that, for so long as any Commitment remains outstanding, and until the Loans, together with interest, Fees and all other Obligations, are paid in full:

**8.1 Information Covenants.** Borrower will furnish, or will cause to be furnished, to the Administrative Agent for distribution to each Lender and each Interest Rate Hedge Counterparty:

(a) **Quarterly Financial Statements.** Within ninety (90) days after the close of the first three fiscal quarters in each fiscal year of the Borrower, the (i) consolidated balance sheets of the Borrower and its Consolidated Subsidiaries and the related statements of income for such fiscal quarter and for the elapsed portion of the fiscal year ended with the last day of such fiscal quarter and the related statements of cash flows for the elapsed portion of the fiscal year ended with the last day of such fiscal quarter, all of which shall be certified by the chief financial officer or other Authorized Officer of the Borrower that they fairly present in all material respects in accordance with GAAP the financial condition of the Borrower as of the dates indicated and the results of their operations and/or changes in their cash flows for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes.

(b) **Annual Financial Statements.** No later than one hundred twenty (120) days after the end of each fiscal year of Borrower, the consolidated balance sheet of the Borrower and its Consolidated Subsidiaries and the related consolidated statements of income and statement of cash flows for such fiscal year and, with respect to each fiscal year commencing after the completion of the first full fiscal year following the Closing Date, setting forth consolidated comparative figures for the preceding fiscal year (or, if shorter since inception), together with a certification by an Independent Accountant reasonably acceptable to the Administrative Agent (acting at the direction of the Majority Lenders) to the effect that such statements fairly present in all material respects the consolidated financial condition of the Borrower as of the dates indicated and the results of their operations and changes in financial position for the periods indicated in conformity with GAAP applied on a basis consistent with prior years except as disclosed therein (which report shall be without a "going concern" or other qualification or exception other than a Permitted Audit Qualification and without any qualification or exception as to the scope of such audit).

(c) **Officer's Certificates.** At the time of the delivery of the financial statements of the Borrower provided for in **Sections 8.1(a) and (b)**, a certificate of the chief financial officer or other Authorized Officer of the Borrower to the effect that no Default, Early Amortization Event or Event of Default has occurred and is continuing or, if any Default, Early Amortization Event or Event of Default has occurred and is continuing, specifying the nature and extent thereof.

(d) Notice of Default, Event of Default or Litigation. Promptly, and in any event within five (5) Business Days after any Senior Designated Officer of the Borrower obtains knowledge thereof, notice of (i) the occurrence of any event which constitutes a Default, Early Amortization Event or an Event of Default, which notice shall specify the nature and period of existence thereof and what action the Borrower proposes to take with respect thereto, (ii) any litigation or proceeding pending or, to the knowledge of Senior Designated Officer of the Borrower, threatened in writing against the Borrower which, either individually or in the aggregate, would reasonably be expected to have, a Material Adverse Effect, or (iii) any governmental investigation pending or, to the knowledge of Senior Designated Officer of the Borrower, threatened in writing against the Borrower which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(e) Management Letters. At the request of the Administrative Agent (acting at the direction of the Majority Lenders), a copy of any “management letter” submitted to the Borrower by its independent accountants in connection with any annual, interim or special audit made by them of the financial statements of the Borrower and management’s responses thereto.

(f) Manager Reports, Asset Base Report, Owner Container Performance Reports and Owner Container Lists. (i) On each Determination Date and each Funding Date, an Asset Base Report, and on each Determination Date a Manager Report, (ii) within thirty (30) days after the end of each fiscal quarter, an equipment and lease report setting forth (A) by equipment type, the number of units, the number of CEU, Original Equipment Cost, and Net Book Value, and (B) a receivables aging schedule for the top 20 Lessees of Owner Containers (measured by the number of Owner Containers under lease), and (iii) at the request of the Administrative Agent, but in any case no more than once per calendar quarter, an updated summary listing of all Owner Containers as of the last day of the preceding calendar quarter.

(g) Evidence of Payment. Evidence of payment in full of the purchase price of any Owner Container purchased or otherwise acquired with the proceeds of a Loan.

(h) Reports under Management Agreement. As soon as practicable (but in any event within ten (10) Business Days) after receipt thereof, copies of all financial statements, reports and notices delivered by the Manager to the Borrower pursuant to the terms of the Management Agreement.

(i) Other Information. From time to time, such other information or documents (financial or otherwise) in the form utilized by the Borrower in its own operations with respect to the Borrower as the Administrative Agent may reasonably request and which is reasonably available to the Borrower.

**8.2 Books, Records and Inspections.** Borrower shall permit the Administrative Agent, or any of its designated representatives:

(a) at the expense of the Borrower and at such reasonable times as the Administrative Agent or any Lender may reasonably request in writing (but limited, if no Default or Event of Default then exists, to once per year for the Administrative Agent and the Lenders collectively), to visit and inspect any of the properties of the Borrower, to examine and audit the books of account of the Borrower (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Borrower with, and to be advised as to the same by, the Borrower and its officers, and to conduct examinations and verifications (whether by internal commercial finance examiners or independent auditors) of all components included in the Asset Base; and

(b) if a Default or Event of Default then exists, at the expense of the Borrower at such reasonable times and as often as the Administrative Agent or any Lender reasonably requests, to visit and inspect any of the properties of the Borrower, to examine the books of account of the Borrower (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Borrower with, and to be advised as to the same by, its and their officers, and to conduct examinations and verifications (whether by internal commercial finance examiners or independent auditors) of all components included in the Asset Base.

**8.3 Maintenance of Office.** The Borrower will maintain its sole “place of business” (within the meaning of 9-307 of the UCC) at the address set forth in Section 7.23.

**8.4 Payment of Taxes.** Borrower will pay and discharge all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, in each case on a timely basis, and all lawful claims which, if unpaid, could reasonably be expected to become a Lien upon any properties of the Borrower (other than a Permitted Lien); provided that the Borrower shall not be required to pay any such tax, assessment, charge, levy or claim which is immaterial or is being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP.

**8.5 Existence; Franchises.** Except as otherwise permitted by Section 9.5, Borrower will do, or cause to be done, all things necessary to preserve and keep in full force and effect its existence and its rights, franchises, authorities to do business, licenses, permits, certifications, accreditations and patents; provided, however, that nothing in this Section 8.5 shall (x) prevent the withdrawal by the Borrower of its qualification as a foreign company in any jurisdiction where such withdrawal would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or (y) require the preservation of any such right, franchise, authorities to do business, license, permit, certification, accreditation or patent to the extent that the lapse thereof, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

**8.6 Compliance with Statutes; etc.** Borrower will comply with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of its business and the ownership of its property, except for such instances of noncompliance as, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

**8.7 End of Fiscal Years; Fiscal Quarters.** Borrower will cause (i) each of its fiscal years to end on December 31 of each calendar year and (ii) each of its fiscal quarters to end on March 31, June 30, September 30 and December 31 of each year.

**8.8 Further Assurances.** Borrower will, at its own expense, make, execute, endorse, acknowledge, file and/or deliver to the Lenders from time to time such vouchers, invoices, schedules, confirmatory assignments, confirmatory conveyances, financing statements, transfer endorsements, confirmatory powers of attorney, certificates, reports and other assurances or confirmatory instruments and take such further steps relating to the Collateral as the Administrative Agent may reasonably require.

**8.9 Performance of Obligations.** The Borrower will perform all of its obligations under the terms of each mortgage, deed of trust, indenture, loan agreement or credit agreement and each other agreement, contract or instrument by which it is bound, except such non-performances as, either individually or in the aggregate, would not reasonably be expected to cause a Material Adverse Effect.

**8.10 Maintenance of Owner Containers.** The Borrower will, or will cause the Manager to:

(a) keep, or require the related Lessee to keep, the Owner Containers in good repair and working order (reasonable wear and tear and causes beyond the Borrower’s control excepted);

(b) at all times require the related Lessee to use the Owner Containers, in accordance with good operating practices and at all times comply with all loading limitations, handling procedures and operating instructions prescribed by the manufacturer;

(c) not knowingly permit the Lessees to use the Owner Containers for storage of transportation of hazardous substances or other unsuitable contents in violation of applicable United States environmental law; and

(d) require the related Lessee to comply with the International Convention for Safe Containers (CSC) in all material respects with respect to Owner Containers.

**8.11 Insurance.** The Borrower shall instruct the Manager to comply with, and monitor compliance by the Manager with, the provisions of Section 9 (Insurance) of the Management Agreement. The Administrative Agent and each Lender reserves the right (but shall not have the obligation) to obtain (i) at Borrower's expense, insurance with respect to any or all of the risks required under the Management Agreement to be insured by the Manager on behalf of the Borrower if the Manager shall fail to obtain such coverage in the specified amounts, and (ii) at the Lenders' expense, additional insurance on its own behalf with respect to any or all of such risks (or any other risk). However, the Administrative Agent and the Lenders will notify the Borrower prior to obtaining any such insurance.

**8.12 Interest Rate Hedging Agreements.** The Borrower will maintain one or more Interest Rate Hedging Agreements that will obligate the Borrower or the applicable Interest Rate Hedge Counterparty to make a Periodic Hedge Payment on each Payment Date. Each Interest Rate Hedge Counterparty shall be, on the date on which the related Interest Rate Hedging Agreement is entered into, (i) a bank that has both (A) a long term unsecured debt rating of at least "A" or better from S&P and "A2" or better from Moody's and (B) a short term unsecured debt rating of "A-1" or better from S&P are rated and "P-1" or better from Moody's, or (ii) a bank or other financial institution that is otherwise acceptable to the Majority Lenders. Any Periodic Hedge Payment or Hedge Termination Payment shall be deposited by, or on behalf of, the Borrower directly into the Trust Account and shall be distributed in accordance with **Section 3.2** and **Section 12.3**. The Borrower shall maintain Interest Rate Hedging Agreements with respect to a notional principal amount that is at least the Minimum Required Hedge Amount and not more than the Maximum Required Hedge Amount. If the actual notional principal amount of the Interest Rate Hedging Agreements is less than the Minimum Required Hedge Amount or more than the Maximum Required Hedge Amount, the Borrower shall have up to (i) sixty (60) days after the Closing Date or (ii) thirty (30) days thereafter to (x) terminate, in part or in whole, any Interest Rate Hedging Agreements with one or more of the counterparties to such agreements, to the extent necessary to reduce the notional principal amount of the Interest Rate Hedging Agreements below the Maximum Required Hedge Amount or (y) enter into Interest Rate Hedging Agreements to the extent necessary to increase the notional principal amount of the Interest Rate Hedging Agreements above the Minimum Required Hedge Amount as the circumstances require.

**8.13 UNIDROIT Convention.** The Borrower will comply with the terms and provisions of the UNIDROIT Convention on International Interests in Mobile Equipment or any other internationally recognized system for recording interests in or liens against shipping containers at the time that such convention is adopted.

**8.14 Compliance with United States Laws.**

(a) The Borrower will conduct its operations as if it is a "U.S. Person" and a "Person Subject to the Jurisdiction of the United States," within the meaning of OFAC Sanctions.

(b) No part of the proceeds of any Loan or of the revenue derived from any Lease or Container will be used, directly or indirectly, to engage in any activity, practice, or conduct that would constitute a violation of the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, or any other applicable anti-corruption laws. Specifically, no part of the proceeds of any Loan or of the revenue derived from any Lease or Owner Container

will be used, directly or indirectly, to make, offer, authorize, or receive any financial or other advantage or anything of value to or from any third party (including any government official, employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity) to induce, secure or reward the improper performance of a duty or obligation to which that third party is subject in order to obtain or retain business or a business advantage.

#### **8.15 Non-Consolidation of the Borrower.**

(a) The Borrower shall be operated in such a manner to minimize the likelihood that it would be substantively consolidated with the trust estate of any other Person in the event of the bankruptcy or insolvency of the Borrower or such other Person. Without limiting the foregoing the Borrower shall (1) conduct its business in its own name, (2) maintain its books and records separate from those of any other Person (except as otherwise permitted under the Loan Documents), (3) maintain its bank accounts separate from those of any other Person (except to the extent otherwise permitted under any Loan Document), (4) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person, (5) pay its own liabilities and expenses only out of its own funds, (6) enter into a transaction with an Affiliate only if such transaction is intrinsically fair, commercially reasonable and on the same terms as would be available in an arm's length transaction with a Person or entity that is not an Affiliate (it being understood that the Container Sale Agreement fulfills such requirements), (7) allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, (8) hold itself out as a separate entity and maintain adequate capital in light of its contemplated business operations and (9) observe all other appropriate organizational formalities.

(b) Notwithstanding any provision of law which otherwise empowers the Borrower, the Borrower shall not (1) hold itself out as being liable for the debts of any other Person, (2) act other than in its company name and through its duly authorized officers, directors or agents, (3) engage in any joint activity or transaction of any kind (except as otherwise permitted under the Loan Documents) with or for the benefit of any Affiliate including any loan to or from or guarantee of the indebtedness of any Affiliate, except payment of lawful distributions to its shareholders and except for the Loans, (4) except as permitted under the Management Agreement, commingle its funds or other assets with those of any other Person, (5) create, incur, assume, guarantee or in any manner become liable in respect of any indebtedness (except as permitted under **Section 9.1**) or (6) take any other action that would be inconsistent with maintaining the separate legal identity of the Borrower or engage in any other activity not contemplated by the Loan Documents and related documents.

#### **9. NEGATIVE COVENANTS.**

Borrower hereby covenants and agrees that, for so long as any Commitment remains outstanding, and until the Loans, together with interest, Fees and all other Obligations, are paid in full:

**9.1 Restrictions on Indebtedness.** The Borrower will not create, incur, assume, guarantee or be or remain liable, contingently or otherwise, with respect to any Indebtedness other than:

(a) Indebtedness to one or more Secured Parties arising under any of the Loan Documents;

(b) endorsements for collection, deposit or negotiation and warranties of products or services, in each case incurred in the ordinary course of business; and

(c) purchase money indebtedness or obligations in connection with the acquisition of Owner Containers by Borrower; *provided* that such indebtedness or obligation (i) represents the vendor's or manufacturer's invoice price of such Owner Containers, (ii) does not exceed 100% of

the vendor's or manufacturer's invoice price of the Owner Containers being purchased at the time of the incurrence of such indebtedness or obligations, (iii) is not overdue in accordance with its terms and (iv) does not exceed Ten Million Dollars (\$10,000,000) in aggregate at any point in time.

**9.2 Restrictions on Liens.** The Borrower will not create or incur or suffer to be created or incurred or to exist any Lien upon any of its property or assets of any character whether now owned or hereafter acquired, or upon the income or profits therefrom, except:

(a) Liens to secure taxes, assessments and other government charges in respect of obligations not overdue or that are being contested in good faith by appropriate proceedings that are not reasonably likely to result in any civil or criminal penalty to the Administrative Agent or any Lender and for the payment of which adequate reserves are maintained in accordance with GAAP;

(b) Liens of carriers, warehousemen, mechanics and materialmen, and other like Liens on properties, in existence less than 60 days after the Borrower or the Manager has knowledge thereof or that are being contested in good faith by appropriate proceedings that are not reasonably likely to result in any civil or criminal penalty to the Administrative Agent or the Lender and for the payment of which adequate reserves are maintained in accordance with GAAP;

(c) Liens in favor of any of the Secured Parties under the Loan Documents;

(d) Liens securing purchase money indebtedness or obligations permitted pursuant to **Section 9.1(c)**;

(e) rights of a Lessee in Owner Containers subject to the terms of a Lease;

(f) rights of the Manager under the Management Agreement; and

(g) Liens (i) in favor of banks on items in collection (and the documents related thereto) arising in the ordinary course of business of the Borrower under Article 4 of the UCC or (ii) on deposit accounts or securities accounts (and the contents thereof), in favor of the financial institution at which such account is located, arising pursuant to such financial institution's standard terms and conditions governing such account.

**9.3 Restrictions on Investments.** The Borrower will not make or permit to exist or to remain outstanding any Investment except:

(a) Eligible Investments with respect to funds on deposit in the Trust Account and the Cash Reserve Account;

(b) Investments consisting of accounts receivable owing to the Borrower in the ordinary course of business and payable or dischargeable in accordance with customary terms;

(c) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with Lessees arising in the ordinary course of business; or

(d) Finance Leases originated or acquired by the Borrower in accordance with the terms of the Loan Documents.

**9.4 Restricted Payments.** The Borrower will not make any Restricted Payments if a Default or an Event of Default is then continuing or would result from such payment.



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## **9.5 Merger, Consolidation and Disposition of Assets.**

**9.5.1 Mergers and Acquisitions.** The Borrower will not become a party to any merger, amalgamation or consolidation, or agree to or effect any asset acquisition of a facility, division or line or business or acquisition of a majority of the Voting Stock of any Person.

**9.5.2 Disposition of Assets.** The Borrower will not become a party to or agree to or effect any sale, transfer, conveyance, lease or other disposition of any of its assets, other than that comply with the terms and limitations set forth in this Credit Agreement, the Management Agreement and the other Loan Documents; *provided that* this **Section 9.5.2** shall not restrict (a) the sale of Investments permitted pursuant to **Section 9.3**, (b) the sale of one or more Owner Container(s) subject to a Finance Lease to the related Lessee in accordance with the terms of such Finance Lease, (c) the sale of Owner Containers not subject to a Finance Lease to Persons that are not Sanctioned Persons made in the ordinary course of business (including any such sales resulting from the sell/repair decision of the Manager) so long as (i) no Asset Base Deficiency is then continuing or would result from such sale, and (ii) such sale is otherwise permitted pursuant to the terms of the Management Agreement and (d) sales of Owner Containers in connection with repurchases or substitutions to effect compliance with the representations and warranties made by a seller under a Container Sale Agreement.

**9.6 Sale and Leaseback.** The Borrower will not enter into any arrangement, directly or indirectly, whereby the Borrower shall sell or transfer any property owned by it in order then or thereafter to lease back such property or lease other property that the Borrower intends to use for substantially the same purpose as the property being sold or transferred.

**9.7 Compliance with Environmental Laws.** The Borrower will not (a) use any Owner Container for the handling, processing, storage or disposal of Hazardous Substances, (b) otherwise use any Owner Container in any manner that would violate in any material respect any Environmental Law or bring such Owner Container (with respect to each of the foregoing **clauses (a) and (b)**), in material violation of any Environmental Law.

**9.8 Employee Benefit Plans.** The Borrower shall not do any of the following to the extent such act or failure to act would result individually or in the aggregate, after taking into account all other such acts or failures to act under this **Section 9.8**, in a Material Adverse Effect:

- (a) engage in any nonexempt “prohibited transaction” within the meaning of Section 406 of ERISA or Section 4975 of the Code which could result in a material liability for the Borrower; or
- (b) fail to contribute to any Guaranteed Pension Plan to an extent which, or terminate any Guaranteed Pension Plan in a manner which, could result in the imposition of a lien or encumbrance on the assets of the Borrower pursuant to Section 302(f) or Section 4068 of ERISA; or
- (c) amend any Guaranteed Pension Plan resulting in an increase in current liability for the Plan year such that the Borrower is required to post a security pursuant to Section 307 of ERISA;
- (d) permit or take any action which would result in the aggregate benefit liabilities (with the meaning of Section 4001 of ERISA) of all Guaranteed Pension Plans exceeding the value of the aggregate assets of such Plans, disregarding for this purpose the benefit liabilities and assets of any such Plan with assets in excess of benefit liabilities; or
- (e) permit or take any action which would contravene any Applicable Pension Legislation and would have a Material Adverse Effect.

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**9.9 Fiscal Year.** The Borrower will not change the date of the end of its fiscal year from that set forth in **Section 8.7**.

**9.10 Transactions with Affiliates.** Except for the Loan Documents and except as expressly permitted under **Sections 9.1, 9.2, 9.3, 9.4 and 9.5**, the Borrower will not engage in any transaction with any Affiliate, including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such Affiliate or, to the knowledge of the Borrower, any corporation, partnership, trust or other entity in which any such Affiliate has a substantial interest or is an officer, director, trustee or partner, on terms more favorable to such Person than would have been obtainable on an arm's-length basis in the ordinary course of business.

**9.11 Other Agreements.** The Borrower will not enter into, or become a party to, any agreements or instruments other than (i) the Loan Documents and any other agreement(s) contemplated hereby or thereby or related hereto or thereto, (ii) any agreement(s) for disposition of the Owner Containers and Leases permitted by the terms of this Credit Agreement and made in accordance with all applicable provisions of the Management Agreement and (iii) any other documents contemplated by a Container Sale Agreement or the Management Agreement.

**9.12 Charter Documents.** The Borrower will not amend or modify its articles of association.

**9.13 Capital Expenditures.** The Borrower will not make any expenditure (by long-term or operating lease or otherwise) for capital assets (both realty and personalty), except for the acquisition of containers made in the ordinary course of its business and in accordance with the terms of the Management Agreement and this Credit Agreement.

**9.14 Permitted Activities; Compliance with Organizational Documents.** The Borrower will not engage in any activity or enter into any transaction except as permitted under its organizational documents as in effect on the date on which this Credit Agreement is executed. The Borrower will observe all company, organizational and managerial procedures required by its organizational documents and applicable law.

**9.15 Subsidiaries.** The Borrower shall not create any Subsidiaries.

**9.16 OFAC.** The Borrower shall not in a manner which would violate OFAC Sanctions, (i) lease, consent to any sublease, or permit the use or carriage of any of the Owner Containers to or by any Person that is a Sanctioned Person, (ii) lease, sublease, use, or locate, or permit the lease, sublease, use, or location of any of the Owner Containers in any Sanctioned Country; or (iii) derive any of its assets or operating income from investments in, or transactions with, any Sanctioned Person or Sanctioned Country. If the Borrower obtains knowledge that any Owner Container is subleased to, or used by, a Sanctioned Person or located or used in a Sanctioned Country in a manner which would violate OFAC Sanctions, then the Borrower shall, within ten (10) Business Days after obtaining knowledge thereof, exclude such Owner Container from all calculations of the Asset Base for so long as such condition continues.

**9.17 No Termination, Waivers or Amendments to Management Agreement.**

**9.17.1** The Borrower will not agree to any waiver of a default by the Manager under, or permit the amendment of, the Management Agreement that would materially and adversely affect the rights or interests of the Administrative Agent, the Lenders or any Interest Rate Hedge Provider.

**9.17.2** The Borrower will not, without the prior written consent of the Administrative Agent (acting at the direction of the Majority Lenders), (i) consent to any voluntary termination by the Manager of the Management Agreement, or (ii) terminate the Manager under the Management Agreement.

**9.18 Payables for Owner Containers.** The Borrower shall not incur, and shall instruct the Manager to not incur on its behalf, obligations to manufacturers or other third parties to purchase or otherwise acquire containers unless the Borrower has funds or committed financing available in an amount sufficient to pay the acquisition price for such Container.

**9.19 Bank Accounts.** Aside from the Trust Account and the Cash Reserve Account, the Borrower shall not establish any other bank accounts, trust accounts or other deposit accounts without prior written notice to, and the prior written consent of, the Administrative Agent (acting at the direction of the Majority Lenders), in each instance.

## **10. CLOSING CONDITIONS.**

The obligation of each Lender to make its initial Loan hereunder is subject to the satisfaction of the following conditions (or the written waiver of such conditions by the Administrative Agent (acting at the direction of the Majority Lenders)):

**10.1 Execution of Loan Documents.** On or prior to the Closing Date, the following shall have been executed and delivered and shall be in full force and effect:

- (a) this Credit Agreement,
- (b) the Container Sale Agreement,
- (c) the Management Agreement,
- (d) the Administrative Agent Fee Letter,
- (e) the Security Agreement, and
- (f) the Collateral Assignment Agreement.

**10.2 Officer's Certificate.** On the Closing Date, the Administrative Agent shall have received a certificate from the Borrower, dated the Closing Date and signed by an Authorized Officer of the Borrower, certifying that (i) all of the applicable conditions set forth in **Section 10** (other than such conditions as are expressly subject to the satisfaction of the Administrative Agent and/or the Majority Lenders), have been satisfied on such date, (ii) there exists no Default or Event of Default and (iii) all representations and warranties contained herein and in each other Loan Document are true and correct in all material respects with the same effect as though such representations and warranties were made on such date (except with respect to any representation or warranty which by its terms is made as of a specified earlier date).

**10.3 Opinions of Counsel.** On the Closing Date, the Administrative Agent shall have received from counsel to the Borrower, an opinion addressed to the Administrative Agent, each Lender and each Interest Rate Hedge Counterparty and dated the Closing Date, which opinion shall (x) cover the enforceability of the Loan Documents and the creation and perfection of the security interests and/or liens granted pursuant to the relevant Security Documents and such other matters incident to the transactions contemplated herein as the Administrative Agent may reasonably request and (y) be in form and substance reasonably satisfactory to the Administrative Agent (acting at the direction of the Majority Lenders). In addition, the Administrative Agent shall have received, an opinion letter (in form and substance satisfactory to the Administrative Agent) addressed to the Administrative Agent and each of the Lenders regarding "non-consolidation" and "true sale" matters.

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**10.4 Company Documents; Proceedings.**

(a) On the Closing Date, the Administrative Agent shall have received from Borrower a certificate of the Borrower, signed on the Borrower's behalf by the secretary, any assistant secretary or other senior officer of the Borrower, attaching and certifying as to true and correct copies of the certificate of incorporation, memorandum of association, bye-laws or equivalent organizational documents of the Borrower and the resolutions of the board of directors of the Borrower referred to in such certificate, and all of the foregoing shall be reasonably satisfactory to the Majority Lenders.

(b) On the Closing Date, all instruments and agreements in connection with the transactions contemplated by this Credit Agreement and the other Loan Documents shall be reasonably satisfactory in form and substance to the Majority Lenders, and the Administrative Agent shall have received all information and copies of all certificates, documents and papers, including good standing certificates, bring-down certificates and any other records of Company proceedings and governmental approvals, if any, which the Administrative Agent (acting at the direction of the Majority Lenders) reasonably may have requested in connection therewith, such documents and papers, where appropriate, to be certified by proper company or governmental authorities.

**10.5 Approvals.** On or prior to the Closing Date, all necessary governmental (domestic and foreign), regulatory and material third party approvals and/or consents in connection with this Credit Agreement and the other Loan Documents shall have been obtained and remain in full force and effect and evidence thereof shall have been provided to the Administrative Agent; except for any such approval or consent the failure to obtain would not reasonably be expected to have a Material Adverse Effect. Additionally, on the Closing Date, there shall not exist any judgment, order, injunction or other restraint issued or filed or a hearing seeking injunctive relief or other restraint pending or notified prohibiting or imposing materially adverse conditions upon, or materially delaying, or making economically unfeasible, the consummation of the making of the Loans or the other transactions contemplated by the Loan Documents or otherwise referred to herein or therein.

**10.6 Lien Filings.** On the Closing Date, Administrative Agent shall have received:

(a) proper financing statements (Form UCC-1 or the equivalent) for filing under the UCC or other appropriate filing offices of each jurisdiction (including Bermuda) as may be necessary or, in the reasonable opinion of the Lenders desirable, to perfect the security interests purported to be created by the Security Agreement;

(b) certified copies of Requests for Information or Copies (Form UCC-11), or equivalent reports, each of a recent date, listing all effective financing statements that name the Borrower as debtor and that are filed in the jurisdictions referred to in **clause (i)** above (none of which shall cover any of the Collateral, except to the extent evidencing Permitted Liens or in respect of which the Administrative Agent shall have received termination statements (Form UCC-3) or such other termination statements as shall be required by local law fully executed (where required) for filing);

(c) evidence of the completion of (or adequate provision for) all other recordings and filings of, or with respect to, the Security Agreement as may be necessary or, in the reasonable opinion of the Majority Lenders desirable, to perfect the security interests intended to be created by the Security Agreement; and

(d) evidence that all other actions necessary or, in the reasonable opinion of the Majority Lenders desirable, to create, maintain, effect, perfect, preserve, maintain and protect the security interests purported to be created by the Security Agreement have been taken and the Security Agreement shall be in full force and effect.

**10.7 Insurance Certificates; etc.** On the Closing Date, the Administrative Agent shall have received evidence of insurance complying with the requirements of **Section 8.11** for the business and properties of the Borrower, in scope, form and substance reasonably satisfactory to the Majority Lenders and naming the Administrative Agent as an additional insured and/or loss payee, and stating that such insurance shall not be canceled or materially revised without at least 30 days' (or 10 days', in the case of cancellation for nonpayment of premium) prior written notice by the respective insurer to the Administrative Agent.

**10.8 Payment of Fees.** On the Closing Date, all costs, fees and expenses, and all other compensation due to the Administrative Agent and the Lenders (including, without limitation, reasonable and documented legal fees and expenses) shall have been paid to the extent then due.

**11. CONDITIONS PRECEDENT TO ALL LOANS.**

The obligation of each Lender to make Loans (including its initial Loan hereunder) is subject, on the Funding Date of each such Loan (except as hereinafter indicated), to the satisfaction of the following conditions:

**11.1 Closing Date and Revolving Credit Period.** The Closing Date shall have occurred and the Revolving Credit Period shall be in effect.

**11.2 No Default or Event of Default; Representations and Warranties.** At the time of each such Loan and immediately after giving effect thereto (i) there shall exist no Default or Event of Default and (ii) all representations and warranties contained herein and in each other Loan Document shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on such Funding Date (it being understood and agreed that any representation or warranty which by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date).

**11.3 Loan Request.** At least two (2) LIBOR Business Days prior to such Funding Date, the Administrative Agent shall have received a Loan Request. Each Loan Request, and acceptance by the Borrower of the proceeds of any Loan, shall constitute a certification that on the applicable Funding Date (both immediately before and after giving effect to such Loan) all of the conditions precedent set forth in this **Section 11** (including without limitation those set forth in **Section 11.2**) have been satisfied.

**11.4 Early Amortization Event.** No Early Amortization Event shall have occurred or would result from such Loan; provided, however, that notwithstanding the occurrence of an Early Amortization Event (other than an Event of Default), Borrower may request, and the Lenders shall make, Loans in an aggregate amount of up to Ten Million Dollars (\$10,000,000) if all of the other conditions of this **Section 11** are satisfied, to enable Borrower to purchase Eligible Owner Containers under one or more "Reservation Notices" accepted by Borrower prior to the occurrence of such Early Amortization Event under that certain Container Purchase Agreement, dated as of June 30, 2011, by and between Textainer Group Holdings Limited and TCG Fund I, L.P., as amended on or prior to the date of this Credit Agreement.

**11.5 No Asset Base Deficiency.** After giving effect to such Loan, no Asset Base Deficiency will exist.

**11.6 Cash Reserve Amount.** The Borrower shall have complied with its obligations under **Section 3.3(b)**.

**12. EVENTS OF DEFAULT; ACCELERATION; ETC.**

**12.1 Events of Default and Acceleration.** Any of the following events shall constitute an "Event of Default":

(a) the Borrower shall fail to pay the then unpaid principal of the Loans when the same shall become due and payable, whether at the Maturity Date or any accelerated date of maturity or at any other date fixed for payment (other than failure to pay any Scheduled Principal Payment Amount described in **clause (a)** of the definition thereof, which is dealt with exclusively in **Section 12.1(c)**);

(b) the Borrower shall fail to pay (i) on any Payment Date any interest on the Loans or any Fees then due and payable, or (ii) other sums due hereunder or under any of the other Loan Documents, in each case, within three (3) Business Days of the date the same shall become due and payable, whether at the stated date of maturity or any accelerated date of maturity or at any other date fixed for payment (other than any failure to pay that is dealt with in **Section 12.1(a)**) or any failure to pay any Scheduled Principal Payment Amount described in **clause (a)** of the definition thereof, which is dealt with exclusively in **Section 12.1(c)**;

(c) the Aggregate Loan Principal Balance exceeds the Asset Base on any Payment Date and the Borrower does not remedy such situation within ninety (90) days following the occurrence of such condition, provided, however, that, for purposes of determining any Event of Default under this **Section 12.1(c)**, the Asset Base shall not be reduced by reason of any Owner Container that does not satisfy the provision of clause (n) of the definition of Eligible Owner Container;

(d) the Borrower shall (i) fail to deliver when due any report set forth in clause (i) Section 8.1(f) and such condition continues unremedied for five Business Days, (ii) fail to deliver when due any report set forth in clause (ii) of Section 8.1(f) or Section 8.1(h) and, in either case, such condition continues unremedied for ten Business Days, or (iii) breach any other covenant or agreement (not otherwise covered by this **Section 12.1**) of the Borrower set forth in this Credit Agreement or other Loan Document, which breach materially and adversely affects the Lenders and/or the Interest Rate Hedge Counterparties and which continues for a period of sixty (60) days after the earliest of (x) any Senior Designated Officer of the Borrower first acquiring knowledge thereof, (y) the Administrative Agent's giving written notice thereof to the Borrower, and (z) any Lender giving written notice thereof to the Borrower and the Administrative Agent; provided, that the Borrower shall have an additional 60-day cure period following the 60-day period described above if the Borrower is diligently attempting to cure any such default;

(e) any representation or warranty of the Borrower made in any Loan Document shall prove to be incorrect in any material respect as of the time when the same shall have been made, which continues and which materially and adversely affects the Lenders and/or the Interest Rate Hedge Counterparties and the continuance of such condition for a period of thirty (30) days after the earliest of (i) any Senior Designated Officer of the Borrower first acquiring knowledge thereof, (ii) the Administrative Agent's giving written notice thereof to the Borrower, and (iii) any Lender giving written notice thereof to the Borrower and the Administrative Agent; provided, that the Borrower shall have an additional 30-day cure period following the 30-day period described above if the Borrower is diligently attempting to cure any such condition);

(f) all of the following shall have occurred (i) a Manager Default shall have occurred and shall have not been remedied, waived or cured, (ii) the Administrative Agent (acting at the direction of the Majority Lenders) shall have directed the Borrower in writing (with a copy to the Manager) to appoint a replacement manager for the Terminated Managed Containers in accordance with the terms of the Management Agreement, and (iii) a replacement manager shall not have been appointed and assumed the management of all Terminated Managed Containers pursuant to a management agreement reasonably acceptable to the Majority Lenders by the date which is 90 days after the date on which such Manager Default initially occurred;

(g) (i) the Borrower shall (A) make an assignment for the benefit of creditors, (B) admit in writing its inability to pay or generally fail to pay its debts as they mature or become due, (C) petition or apply for the appointment of a trustee or other custodian, liquidator or receiver of the Borrower or of any substantial part of the assets of the Borrower (D) commence any case or other proceeding relating to the Borrower under any bankruptcy, reorganization, arrangement,

insolvency, readjustment of debt, dissolution or liquidation or similar law of any jurisdiction, now or hereafter in effect, or (E) take any action to authorize or in furtherance of any of the foregoing, or (ii) if any such petition or application shall be filed or any such case or other proceeding shall be commenced against the Borrower, (A) the Borrower shall indicate its approval thereof, consent thereto or acquiescence therein, or (B) such petition or application shall not have been dismissed within sixty (60) days following the filing thereof;

(h) a decree or order is entered (i) appointing any trustee, custodian, liquidator or receiver of the Borrower or adjudicating the Borrower bankrupt or insolvent, or (ii) approving a petition in any such case or other proceeding, or a decree or order for relief is entered in respect of the Borrower in an involuntary case under any Insolvency Law as now or hereafter constituted;

(i) There shall remain in force, undischarged, unsatisfied and unstayed, for more than thirty (30) consecutive days, any final judgment against the Borrower not covered by insurance or a bond that, with other outstanding final judgments, undischarged, against the Borrower not covered by insurance or a bond exceeds in the aggregate \$1,000,000;

(j) If (i) any of the Loan Documents shall be cancelled, terminated, revoked or rescinded or if the Liens on the Collateral shall cease to be perfected, or shall cease to have the priority contemplated by the Security Documents, in each case other than in accordance with the terms thereof or with the express prior written agreement, consent or approval of the Lenders, (ii) any action at law, suit or in equity or other legal proceeding to cancel, revoke or rescind any of the Loan Documents shall be commenced by or on behalf of the Borrower or any of its members or shareholders, or (iii) any court of competent jurisdiction or any other Governmental Authority of competent jurisdiction shall make a determination that, or issue a judgment, order, decree or ruling to the effect that, any one or more of the Loan Documents is illegal, invalid or unenforceable in accordance with the terms thereof;

(k) the Borrower incurs any liability to the PBGC or a Guaranteed Pension Plan pursuant to Title IV of ERISA which would result in a Material Adverse Effect, or any of the following occurs with respect to a Guaranteed Pension Plan: (i) a "reportable event" as defined in Section 4043 of ERISA or the regulations issued thereunder (other than an event for which the 30 day notice period is waived), or a failure to make a required installment or other payment (within the meaning of Section 302(f)(1) of ERISA), provided, that the Administrative Agent determines in its reasonable discretion that such event could be expected to result in (i) a Material Adverse Effect on the Borrower; (ii) the appointment by a United States District Court of a trustee to administer such Guaranteed Pension Plan; or (iii) the institution by the PBGC of proceedings to terminate such Guaranteed Pension Plan;

(l) the Borrower is required to register as an Investment Company under the Investment Company Act of 1940, as amended; or

(m) a Change of Control occurs.

**12.2 Remedies.** (a) **Acceleration.** Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent may, and, upon the request of the Majority Lenders, shall, by notice in writing to the Borrower (with a copy to each Interest Rate Hedge Counterparty) declare all amounts owing with respect to this Credit Agreement and the other Loan Documents to be, and they shall thereupon forthwith become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; provided, that in the event of any Event of Default specified in **Section 12.1(g)** or **(h)**, all such amounts shall become immediately due and payable automatically and without any requirement of notice from the Administrative Agent or any Lender.

(b) **Termination of Commitments.** If an Event of Default specified in **Section 12.1(g)** or **(h)** shall occur, the Commitments shall forthwith terminate and each of the Lenders shall be relieved of all further obligations to make Loans to the Borrower. If any other Event of Default shall have occurred and be continuing, the Administrative Agent may, and, upon the request of the Majority Lenders, shall, by notice to the Borrower, terminate the Commitments hereunder, and upon such notice being given the Commitments hereunder shall terminate immediately and each of the Lenders shall be relieved of all further obligations to make Loans. No termination of the Commitments hereunder shall relieve the Borrower of any of the Obligations.

(c) **Remedies.** In case any one or more of the Events of Default shall have occurred and be continuing, and whether or not the Administrative Agent (acting at the direction of the Majority Lenders) shall have accelerated the maturity of the Loans pursuant to **Section 12.2(a)**, the Administrative Agent may, and, upon the direction of the Majority Lenders, shall proceed to protect and enforce on behalf of the Secured Parties rights by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Credit Agreement and the other Loan Documents, including, as permitted by applicable law, the obtaining of the ex part appointment of a receiver, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right.

(d) **Generally.** No remedy herein conferred upon the Administrative Agent (acting for the benefit of the Secured Parties) is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of law.

**12.3 Distribution of Collateral Proceeds.** In the event that, following the occurrence or during the continuance of any Event of Default, the Administrative Agent or any Lender, as the case may be, receives any monies in connection with the enforcement of any of the Security Documents, or otherwise with respect to the realization upon any of the Collateral, such monies shall be distributed for application as follows:

(a) First, to the payment of, or (as the case may be) the reimbursement of the Administrative Agent for, or in respect of, all reasonable costs, expenses, disbursements and losses which shall have been incurred or sustained by the Administrative Agent in connection with the collection of such monies by the Administrative Agent, for the exercise, protection or enforcement by the Administrative Agent of all or any of the rights, remedies, powers and privileges of the Administrative Agent under this Credit Agreement or any of the other Loan Documents or in respect of the Collateral;

(b) Second, to the Persons in the amounts and relative priority set forth in **clauses (i) through (viii) inclusive of Section 3.2(b)**;

(c) Third, upon payment and satisfaction in full or other provisions for payment in full satisfactory to the Secured Parties and the Administrative Agent of all of the Obligations, to the payment of any obligations required to be paid pursuant to Section 9-608(a)(1)(C) or 9 -615(a)(3) of the UCC of the State of California; and

(d) Fourth, the excess, if any, shall be returned to the Borrower or to such other Persons as are entitled thereto.

**12.4 Quiet Enjoyment.** The Liens under the Security Documents on the Owner Containers and related Leases are subject to the right to the quiet enjoyment of the related Owner Containers by the applicable Lessee, so long as no "event of default" has occurred and is continuing under the applicable Lease. The Lenders and the Administrative Agent shall not take or cause to be taken any action contrary to such right of quiet enjoyment.



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### **13. ADMINISTRATIVE AGENT.**

**13.1 Appointment and Authority.** Each of the Lenders hereby irrevocably appoints Wells Fargo Securities LLC to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents, and as collateral agent under the Security Agreement, and authorizes the Administrative Agent to enter into the Loan Documents on behalf of the Lenders take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this **Section 13.1** are solely for the benefit of the Administrative Agent and the Lenders, and the Borrower shall not have rights as a third party beneficiary of any of such provisions.

**13.2 Rights as a Lender.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any of its Affiliates as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**13.3 Exculpatory Provisions.** The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or an Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Sections 15.12** and **12.2(a) or (b)**) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent by the Borrower or a Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Credit Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity,

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enforceability, effectiveness or genuineness of this Credit Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in **Section 10** or **11** or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**13.4 Reliance by Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**13.5 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through its respective Related Parties. The exculpatory provisions of this **Section 13** shall apply to any such sub agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to its respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**13.6 Resignation of Administrative Agent.** The Administrative Agent may at any time give notice of its resignation to each Lender, each Interest Rate Hedge Counterparty and the Borrower. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right, with the consent of the Borrower, to appoint a successor. If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Majority Lenders appoint a successor Administrative Agent as provided for above in this **Section 13.6**. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this **Section 13.6**). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this **Section 13.6** and **Section 15.3** shall continue in effect for the benefit of such retiring Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

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In the event that (i) the Administrative Agent, whether in its capacity as the Administrative Agent or a Lender, does not consent (or fails to respond) to a proposed amendment, modification or waiver to any provision of this Credit Agreement or any other Loan Document requested by the Borrower and (ii) such proposed amendment, modification or waiver has been approved by the Majority Lenders, the Borrower may, upon (x) delivery of written notice thereof to the Administrative Agent, and (y) receipt by the Administrative Agent of the amount calculated in accordance with **Section 15.14** in connection with a transfer of the Loans by the Administrative Agent, require that the Administrative Agent promptly resign from such position, such resignation, and the appointment of a successor Administrative Agent to be consummated in accordance with the first paragraph of this **Section 13.6**.

**13.7 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Credit Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Credit Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**13.8 Administrative Agent May File Proofs of Claim.** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel) and all other amounts due the Lenders and the Administrative Agent under **Sections 5.1** and **15.3** allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under **Sections 5.1** and **15.3**.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

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### **13.9 Collateral Matters.**

(a) Each Lender hereby designates Wells Fargo Securities LLC as Collateral Agent under the Security Agreement and the other Security Documents, and each Interest Rate Hedge Counterparty in accepting the benefits available to it under the Security Documents is hereby deemed to consent to the appointment of Wells Fargo Securities LLC as Collateral Agent. All of the indemnifications, protections or other rights under the provisions of this **Section 13** applicable to the Administrative Agent shall be equally applicable to the Person acting as the Collateral Agent.

(b) The Secured Parties irrevocably authorize the Administrative Agent and/or the Collateral Agent, at its option and in its discretion,

(i) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) subject to **Section 15.12**, if approved, authorized or ratified in writing by the Majority Lenders;

(ii) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Permitted Lien; and

(iii) to take the actions with respect to the Collateral as are set forth in the Security Documents.

(c) The Secured Parties hereby agree that the Security Documents may be enforced only by the Administrative Agent or the Collateral Agent and that no Secured Party shall have any right individually to seek to enforce or to enforce the Security Documents to realize upon the security to be granted thereby, it being understood and agreed that such rights and remedies may be exercised by the Administrative Agent and/or the Collateral Agent upon the terms of this Credit Agreement and the Security Documents.

(d) Upon request by the Administrative Agent at any time, the Majority Lenders and each Interest Rate Hedge Counterparty will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property.

**13.10 Delivery of Documents.** The Administrative Agent shall promptly forward to a Person the original or a copy of any document which is delivered to the Administrative Agent for such Person by any other Person.

### **14. SUCCESSORS AND ASSIGNS.**

**14.1 General Conditions.** The provisions of this Credit Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (a) to an Eligible Assignee in accordance with the provisions of **Section 14.2**, (b) by way of participation in accordance with the provisions of **Section 14.4**, or (c) by way of pledge or assignment of a security interest subject to the restrictions of **Section 14.5** (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Credit Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 14.4** and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Credit Agreement or any of the other Loan Documents.

**14.2 Assignments.** Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Credit Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); *provided that*:

(a) except in the cases of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it, or of an assignment to a Lender, an Affiliate of a Lender (other than the Borrower) or an Approved Fund, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder), or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loan of the assigning Lender subject to each such assignment (determined as of the date on which the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower, otherwise consent (each such consent not to be unreasonably withheld or delayed);

(b) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Credit Agreement with respect to the Loan or the Commitment assigned;

(c) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500, and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to **Section 14.3**, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Credit Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Credit Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Credit Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Credit Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of (i) **Sections 5.2, 5.5 and 5.6**, with respect to facts and circumstances occurring prior to the effective date of such assignment and (ii) **Section 15.3** notwithstanding such assignment. Any assignment or transfer by a Lender of rights or obligations under this Credit Agreement that does not comply with this **Section 14.2** shall be null and void.

**14.3 Register.** The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). In addition, Administrative Agent will maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Credit Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

**14.4 Participations.** Any Lender may at any time sell participations to any Person (other than a natural person, the Borrower, a Competitor, or any Affiliate) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Credit Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (a) such Lender's obligations under this Credit Agreement shall remain unchanged, (b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (c) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Credit Agreement.

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Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Credit Agreement and to approve any amendment, modification or waiver of any provision of this Credit Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver of the type described in **Section 15.12(a)** or **(b)**, that in each case, affects such Participant. Subject to the last paragraph of this **Section 14.4**, the Borrower agrees that each Participant shall be entitled to the benefits of **Sections 5.2, 5.5 and 5.6** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 14.2**. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 15.1** as though it were a Lender, provided such Participant agrees to be subject to **Section 15.1** as though it were a Lender.

A Participant shall not be entitled to receive any greater payment under **Sections 5.2.2 and 5.6** than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent (not to be unreasonably withheld or delayed).

**14.5 Certain Pledges.** A Lender may at any time grant a security interest in all or any portion of its rights under this Credit Agreement to secure obligations of such Lender, including without limitation (a) any pledge or assignment to secure obligations to any of the twelve Federal Reserve Banks organized under §4 of the Federal Reserve Act, 12 U.S.C. §341 and (b) with respect to any Lender that is a Fund, to any lender or any trustee for, or any other representative of, holders of obligations owed or securities issued by such Fund as security for such obligations or securities or any institutional custodian for such Fund or for such lender; provided that no such grant shall release such Lender from any of its obligations hereunder or substitute any such secured party for such Lender as a party hereto.

## **15. PROVISIONS OF GENERAL APPLICATION.**

**15.1 Setoff.** Borrower hereby grants to the Administrative Agent and each Lender and Interest Rate Hedge Counterparty a continuing lien, security interest and right of setoff as security for all Obligations, whether now existing or hereafter arising, upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of the Administrative Agent, such Lender (or any Lender Affiliate) and such Interest Rate Hedge Counterparty and their successors and assigns or in transit to any of them. Regardless of the adequacy of any collateral, if any of the Obligations are due and payable and have not been paid or any Event of Default shall have occurred, any deposits or other sums credited by or due from any such Secured Party to the Borrower and any securities or other property of the Borrower in the possession of such Secured Party may be applied to or set off by such Lender against the payment of Obligations, subject to **Section 4.4**; *provided, that* in the event that any Defaulting Lender will exercise any such right of setoff, (a) all amounts so set off will be paid over immediately to Administrative Agent for further application in accordance with the provisions of **Section 15.13** and, pending such payment, will be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent and the other Lenders, and (b) the Defaulting Lender will provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. ANY AND ALL RIGHTS TO REQUIRE ANY SECURED PARTY TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF THE BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

**15.2 Expenses.** The Borrower agrees to pay (a) the reasonable costs of the Administrative Agent and its Affiliates, including without limitation the reasonable fees, expenses and disbursements of counsel to the Administrative Agent, incurred in connection with the preparation, syndication, administration or interpretation of the Loan Documents and other instruments mentioned herein, any amendments, modifications, approvals, consents or waivers hereto or hereunder requested by the Borrower, or the cancellation of any Loan Document upon payment in full in cash of all of the Obligations or pursuant to any terms of such Loan Document for providing for such cancellation, (b) the cost and expenses of inspections and visits to be paid by the Borrower pursuant to **Section 8.2** hereof, (c) all reasonable out-of-pocket expenses (including without limitation reasonable attorneys' fees and costs and reasonable consulting, accounting, appraisal, commercial finance examination, investment banking and similar professional fees and charges) incurred by any Lender or the Administrative Agent in connection with (i) the enforcement of or preservation of rights under any of the Loan Documents against the Borrower after the occurrence of an Event of Default and (ii) any litigation, proceeding or dispute whether arising hereunder or otherwise, in any way related to any Lender's or the Administrative Agent's role as a Lender or Administrative Agent and (d) all reasonable fees, expenses and disbursements of the Administrative Agent incurred in connection with UCC searches or UCC or other lien filings relating to the Loan Documents. The covenants contained in this **Section 15.2** shall survive payment or satisfaction in full of all other Obligations.

**15.3 Indemnification.** The Borrower agrees to indemnify and hold harmless the Administrative Agent, its Affiliates, its sub-agents, each Secured Party, and each Related Party of any of the foregoing (each, an "**Indemnified Party**") from and against any and all claims, actions and suits whether groundless or otherwise, and from and against any and all liabilities, losses, damages and related expenses of every nature and character, other than taxes (collectively, "**Claims**"), arising out of this Credit Agreement or any of the other Loan Documents, the performance by the respective parties of their obligations hereunder or thereunder, or the consummation of the transactions contemplated hereby including, without limitation, (a) any actual or proposed use by the Borrower of the proceeds of any of the Loans, (b) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort, or any other theory, and regardless of whether any Indemnified Party is a party thereto, (c) any civil penalty or fine assessed by OFAC against, and all reasonable costs and expenses (including reasonable counsel fees and disbursements) incurred in connection with defense thereof by, the Administrative Agent or any Lender as a result of conduct of the Borrower that violates a sanction enforced by OFAC or (d) with respect to the Borrower and its properties and assets, the violation of any Environmental Law, the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release or threatened release of any Hazardous Substances or any action, suit, proceeding or investigation brought or threatened with respect to any Hazardous Substances (including, but not limited to, claims with respect to wrongful death, personal injury or damage to property), in each case including, without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceeding; provided, however, the Borrower shall not be responsible for any Claims under this **Section 15.3** to the extent (i) caused by such Indemnified Party's own gross negligence or willful misconduct or (ii) brought by (x) any Indemnified Party against another Indemnified Party or (y) the Borrower or any of its Affiliates against any Indemnified Party. In litigation, or the preparation therefor, the Lenders and the Administrative Agent and its affiliates shall be entitled to select their own counsel. To the extent that the respective interests of the Lenders and the Administrative Agent in such litigation do not, and reasonably could not be expected to, conflict (such determination of existing or potential conflict to be made by the Lenders and the Administrative Agent using their reasonable good faith judgment), the Lenders and the Administrative Agent shall use common counsel in connection with such litigation and the preparation therefor. If, and to the extent that the obligations of the Borrower under this **Section 15.3** are unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment in satisfaction of such obligations which is permissible under applicable law. The covenants contained in this **Section 15.3** shall survive payment or satisfaction in full of all other Obligations.

**15.4 Treatment of Certain Confidential Information.**

**15.4.1 Confidentiality.** Each of the Lenders and the Administrative Agent agrees, on behalf of itself and each of its Affiliates, directors, officers, employees and representatives (each, a "**Recipient**"), to use reasonable precautions to keep confidential, in accordance with their customary procedures for handling confidential information of the same nature and in accordance with safe and sound banking

practices, any information supplied to it by, or on behalf of, the Borrower, or any Affiliate in connection with any Loan Document (collectively, “Information”); *provided that* nothing herein shall limit the disclosure of any Information (a) (i) after such Information shall have become public other than through a violation of this **Section 15.4**, or (ii) becomes available to any of the Lenders or the Administrative Agent from a source other than the Borrower, or any of its Affiliate and, to such Recipient’s knowledge, not in breach of any obligation of confidentiality, (b) to the extent required by statute, rule, regulation or judicial process (provided that, unless prohibited by applicable law, such Recipient shall provide to Borrower prompt notice of any such requirement so that Borrower may, at its sole expense, seek a protective order or take other appropriate legal action), (c) to counsel for any of the Lenders or the Administrative Agent, or to auditors or accountants who are under an obligation to keep such Information confidential, (d) to bank examiners or any other regulatory authority having jurisdiction over any Lender or the Administrative Agent, (e) to any party hereto, (f) in connection with the enforcement of rights or remedies hereunder or under any other Loan Document, (g) to a Lender Affiliate or an Affiliate of the Administrative Agent (so long as such Person agrees to be bound by the provisions of this **Section 15.4**) who has a need to know the Information for purposes of evaluating or administering the Loan Documents or the Obligations, (h) to any actual or prospective assignee or participant that is not a Competitor, or any actual or prospective Interest Rate Hedge Counterparty that is not a Competitor, or its advisors (so long as such Person agrees to be bound by the provisions of this **Section 15.4**) who has a need to know the Information for purposes of evaluating or administering the Loan Documents or the Obligations or (i) with the prior written consent of the Borrower. Each Recipient agrees not to use any Information for any purpose or in any manner other than evaluating the performance of the Borrower under the Loan Documents and enforcing the rights, remedies and obligations hereunder and under the other Loan Documents. Without the prior written consent of the Borrower, no Recipient shall be permitted to refer to the Borrower, or any Affiliate in connection with any advertising, promotion or marketing undertaken by such Recipient.

**15.5 Survival of Covenants, etc.** All covenants, agreements, representations and warranties made herein, in any of the other Loan Documents or in any documents or other papers delivered by or on behalf of the Borrower pursuant hereto shall be deemed to have been relied upon by the Lenders and the Administrative Agent, notwithstanding any investigation heretofore or hereafter made by any of them, and shall survive the making by the Lenders of any Loans as herein contemplated, and shall continue in full force and effect so long as any amount due under this Credit Agreement or any of the other Loan Documents remains outstanding or any Lender has any Commitment.

**15.6 Notices.** Except as otherwise expressly provided in this Credit Agreement, all notices and other communications made or required to be given pursuant to this Credit Agreement shall be in writing and shall be delivered in hand, mailed by United States registered or certified first class mail, postage prepaid, sent by overnight courier, or sent by facsimile or email as follows:

(a) if to the Borrower, at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda, attention: Secretary, with a copy to Transportation Capital Group, 100 Temple Street, No. 315, New Haven, Connecticut 06510, attention: Milton J. Anderson, fax: (303) 410-4571, email: milt.anderson@tcgfund.com, and Adam DiMartino, fax: (303) 410-4571, email: adam.dimartino@tcgfund.com; or at such other addresses for notice as the Borrower shall last have furnished in writing to the Person giving the notice;

(b) if to the Administrative Agent, at Wells Fargo Securities, LLC, 301 South College Street, MAC 010153-082, Charlotte, NC 28288, Attention: Jessica Gray, or such other address for notices as the Administrative Agent shall last have furnished in writing to the Person giving the notice;

(c) if to any Lender, at such Lender’s address set forth on **Schedule 1** hereto, or such other address for notice as such Lender shall have last furnished in writing to the Person giving the notice; and

(d) if to any Interest Rate Hedge Counterparty, at the address set forth in the related Interest Rate Hedging Agreement.



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Any such notice or demand shall be deemed to have been duly given or made and to have become effective (i) if delivered by hand, overnight courier, registered or certified first-class mail, postage prepaid, on the date of receipt thereof, and (ii) if delivered by electronic means, on the date when sent (provided that, if not given during the recipient's normal business hours, it will be deemed to have been given on the following Business Day).

**15.7 Governing Law; Jurisdiction.** (a) This Credit Agreement and, except as otherwise specifically provided therein, each of the other Loan Documents shall for all purposes be construed in accordance with and governed by the laws of the State of California but excluding the laws applicable to conflicts or choice of law).

(b) Borrower agrees that any suit for the enforcement of this Credit Agreement or any of the other Loan Documents may be brought in the courts of the State of California located in the City and County of San Francisco or any Federal court sitting therein and consents to the nonexclusive jurisdiction of such court and service of process in any such suit being made upon the Borrower by mail at the address specified in **Section 15.6**. The Borrower hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court. The Borrower hereby appoints and designates CT Corporation System, having an address at 818 West Seventh Street, Los Angeles, CA 90017, its true and lawful attorney-in-fact and duly authorized agent for the limited purpose of receiving and forwarding service of legal process and the Borrower agrees that service of process upon such party shall constitute personal service of such process on the Borrower.

**15.8 Headings.** The captions in this Credit Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

**15.9 Counterparts.** This Credit Agreement and any amendment hereof may be executed in several counterparts and by each party on a separate counterpart, each of which when executed and delivered shall be an original, and all of which together shall constitute one instrument. In proving this Credit Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. Delivery by facsimile or PDF file by any of the parties hereto of an executed counterpart hereof or of any amendment or waiver hereto shall be as effective as an original executed counterpart hereof or of such amendment or waiver and shall be considered a representation that an original executed counterpart hereof or such amendment or waiver, as the case may be, will be delivered.

**15.10 Entire Agreement, etc.** The Loan Documents and any other documents executed in connection herewith or therewith express the entire understanding of the parties with respect to the transactions contemplated hereby. Neither this Credit Agreement nor any term hereof may be changed, waived, discharged or terminated, except as provided in **Section 15.12**.

**15.11 Waiver of Jury Trial.** Each of the parties hereto hereby waives its rights to a jury trial with respect to any action or claim arising out of any dispute in connection with this Credit Agreement or any of the other Loan Documents, any rights or obligations hereunder or thereunder or the performance of such rights and obligations or any course of conduct, course of dealings, statements (whether verbal or written) or actions of any party, including any course of conduct, course of dealings, statements or actions of the Administrative Agent or any Lender relating to the administration of the loans or enforcement of the Loan Documents and agrees that it will not seek to consolidate any such action with any other action in which a jury trial cannot be or has not been waived. Except as prohibited by law, Borrower hereby waives any right it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. Borrower (a) certifies that no representative, agent or attorney of any Lender or the Administrative Agent has represented, expressly or otherwise, that the Administrative Agent would not, in the event of litigation, seek to enforce the foregoing waivers and (b) acknowledges that the Administrative Agent and the Lenders have been induced to enter into this Credit Agreement and the other Loan Documents to which it is a party by, among other things, the waivers and certifications contained herein.

**15.12 Consents, Amendments, Waivers, Etc.** Any consent or approval required or permitted by this Credit Agreement to be given by the Lenders may be given, and any term of this Credit Agreement, the other Loan Documents may be amended, and the performance or observance by the Borrower of any terms of this Credit Agreement, the other Loan Documents or the occurrence of any breach or Event of Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Borrower and the written consent of the Majority Lenders. Notwithstanding the foregoing, no amendment, modification or waiver shall:

(a) without the written consent of the Borrower and each Lender:

(i) reduce or forgive the principal amount of the Loans of such Lender, or reduce the rate of interest on the Loans of such Lender or the priority thereof or the amount of any Fees owing to such Lender (other than (A) interest on the Loans accruing pursuant to **Section 5.8** following the effective date of any waiver by the Majority Lenders of the Event of Default relating thereto and (B) waiver of the application of such default interest as contemplated by the parenthetical phrase in **clause (iii)** below);

(ii) increase the amount of such Lender's Commitment or extend the expiration date of such Lender's Commitment;

(iii) postpone or extend the Maturity Date or any other regularly scheduled dates for payments of principal of, or interest on, such Lender's Loans or any Fees or other amounts payable to such Lender (it being understood that (A) a waiver of the application of the default rate of interest pursuant to **Section 5.8**, and (B) any vote to rescind any acceleration made pursuant to **Section 12.2(a)** of amounts owing with respect to the Loans and other Obligations, shall require only the approval of the Majority Lenders);

(iv) other than as contemplated by **Section 13.9** or any transaction permitted by the terms of this Credit Agreement, release any of the Collateral (excluding, if the Borrower becomes a debtor under the Federal Bankruptcy Code or other applicable insolvency laws, the release of "cash collateral", as defined in Section 363(a) of the federal Bankruptcy Code or any analogous provision of any applicable insolvency law pursuant to a cash collateral stipulation with the debtor, which shall require only the approval of the Majority Lenders); or

(v) amend or waive this **Section 15.12** or the definition of "Majority Lenders";

(b) without the written consent of the Administrative Agent, amend or waive **Section 13** or any other provision applicable to the Administrative Agent; or

(c) without the consent of any affected Interest Rate Hedge Counterparty, reduce, delay, forgive or change the relative priority of any amounts owing to such Person in accordance with the terms hereof or modify any other provision of this Credit Agreement in a manner that would adversely affect such Interest Rate Hedge Counterparty.

Notwithstanding anything to the contrary herein, no Defaulting Lender will have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (1) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender, (2) the amount of principal and accrued fees and interest owing to any Defaulting Lender may not be reduced without the consent of such Lender, and (3) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders will require the consent of such Defaulting Lender.

No waiver shall extend to or affect any obligation not expressly waived therein, or impair any right consequent thereto. No course of dealing or delay or omission on the part of the Administrative Agent or any Lender in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. No notice to or demand upon the Borrower shall entitle the Borrower to other or further notice or demand in similar or other circumstances.

### **15.13 Defaulting Lenders.**

**15.13.1 Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(a) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement will be restricted as set forth in **Section 15.12**.

(b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article XII or otherwise, and including any amounts made available to Administrative Agent by that Defaulting Lender pursuant to **Section 15.1**), will be applied at such time or times as may be determined by Administrative Agent as follows: FIRST, to the payment of any amounts owing by that Defaulting Lender to Administrative Agent hereunder; SECOND, as the Borrower may request (so long as no Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its Commitment Percentage thereof at a time when all of the conditions precedent set forth in **Sections 10** and **11** were satisfied with respect to such Loan, as determined by Administrative Agent; THIRD, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Credit Agreement; FOURTH, so long as no Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Credit Agreement; and FIFTH, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction provided that if (1) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its Commitment Percentage and (2) such Loans were made at a time when the conditions set forth in **Sections 10** and **11** were satisfied or waived, such payment will be applied solely to pay the Loans of all non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this **Section 15.13.1(b)** will be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(c) Certain Fees. That Defaulting Lender will not be entitled to receive any Commitment Fee pursuant to **Section 5.1** for any period during which that Lender is a Defaulting Lender (and the Borrower will not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

**15.13.2 Defaulting Lender Cure.** If (x) a Defaulted Lender shall have fully funded its Commitment Percentage of all Loans and other amounts it has previously failed to fund or (y) the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, then the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein,

that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the funded Loans to be held on a *pro rata* basis by the Lenders in accordance with their Commitment Percentages, whereupon that Lender will cease to be a Defaulting Lender; *provided that* no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

#### **15.14 Replacement of Lenders.**

(a) In the event that any Lender (i) delivers a certificate requesting compensation pursuant to **Section 5.6**, (ii) delivers a notice described in **Section 5.4** or **5.5**, (iii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority on account of any Lender pursuant to **Section 5.2.2**, (iv) does not consent (or fails to respond) to a proposed amendment, modification or waiver to any provision of this Credit Agreement or any other Loan Document requested by the Borrower or (v) is a Defaulting Lender, the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in **Section 14.2**), all of its interests, rights and obligations under this Credit Agreement to an assignee that shall assume such assigned obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in **Section 14.2**;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under **Section 5.7**) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under **Section 5.6** or payments required to be made pursuant to **Section 5.2.2**, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with applicable laws.

In connection with any such replacement, if the replaced Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Acceptance reflecting such replacement within five Business Days of the date on which the replacement Lender executes and delivers such Assignment and Acceptance to the replaced Lender, then such replaced Lender shall be deemed to have executed and delivered such Assignment and Acceptance. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

(b) If (i) any Lender shall request compensation under **Section 5.6**, (ii) any Lender delivers a notice described in **Section 5.4** or **5.5**, or (iii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority on account of any Lender pursuant to **Section 5.2.2**, then such Lender shall use reasonable efforts (which shall not require such Lender to incur an unreimbursed loss or unreimbursed cost or expense or otherwise take any action inconsistent with its internal policies or legal or regulatory restrictions or suffer any

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disadvantage or burden deemed by it to be significant) (x) to file any certificate or document reasonably requested in writing by the Borrower or (y) to assign its rights and delegate and transfer its obligations hereunder to another of its offices, branches or affiliates, if such filing or assignment would reduce its claims for compensation under **Section 5.6**, enable it to withdraw its notice pursuant to **Section 5.4** or **5.5**, or would reduce amounts payable pursuant to **Section 5.2.2**, as the case may be, in the future. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such filing or assignment, delegation and transfer.

**15.15 Severability.** The provisions of this Credit Agreement are severable and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Credit Agreement in any jurisdiction. Without limiting the foregoing provisions of this **Section 15.15**, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders will be limited by Bankruptcy Laws, as determined in good faith by Administrative Agent, then such provisions will be deemed to be in effect only to the extent not so limited.

**15.16 USA Patriot Act.** Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Improvement and Reauthorization Act of 2005 (H.R. 3199) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act.

**15.17 Third Party Beneficiary.** Each Interest Rate Hedge Counterparty shall be an express third party beneficiary with respect to the rights afforded to such Interest Rate Hedge Counterparty under this Credit Agreement and the other Loan Documents.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, the undersigned have duly executed this Credit Agreement as of the date first set forth above.

TAP FUNDING LTD.,  
as Borrower

By: /s/ Milt J. Anderson  
Name: Milt J. Anderson  
Title: CEO

By: /s/ Adam T. DiMartino  
Name: Adam T. DiMartino  
Title: Sr VP

WELLS FARGO SECURITIES, LLC,  
as Administrative Agent

By: /s/ Jerri Kallam  
Name: Jerri Kallam  
Title: Director

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Lender

By: /s/ Daniel Miller  
Name: Daniel Miller  
Title: Managing Director

**Credit Agreement**

AMENDMENT NUMBER 1 TO  
CREDIT AGREEMENT

THIS AMENDMENT NUMBER 1, dated as of June 29, 2012 (this "Amendment"), to the Credit Agreement, dated as of April 30, 2012 (as amended, modified, supplemented or restated from time to time, the "Credit Agreement", by and among TAP FUNDING LTD., an exempted company with limited liability organized under the laws of Bermuda (the "Borrower"), the lenders from time to time party thereto (collectively the "Lenders"), and WELLS FARGO SECURITIES, LLC, as Administrative Agent.

WITNESSETH:

WHEREAS, the Borrower, the Administrative Agent and the Lenders have previously entered into the Credit Agreement;

WHEREAS, the Borrower, the Administrative Agent and the Lenders desire to amend the date referenced in clause (i) of the last sentence of Section 8.12 of the Credit Agreement to extend such date by thirty (30) days, upon the terms, and subject to the conditions, hereinafter set forth, and in reliance on the representations and warranties of Borrower set forth herein;

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Defined Terms. Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings assigned in the Credit Agreement.

SECTION 2. Full Force and Effect. Other than as specifically modified hereby, the Credit Agreement shall remain in full force and effect in accordance with the terms and provisions thereof and is hereby ratified and confirmed by the parties hereto.

SECTION 3. Amendment to the Credit Agreement. Effective upon the date hereof, following the execution and delivery hereof, the date referenced in clause (i) of the last sentence of Section 8.12 of the Credit Agreement is hereby amended to read as follows: "ninety (90) days after the Closing Date".

SECTION 4. Representations and Warranties.

The Borrower hereby confirms that each of the representations and warranties set forth in Section 7 of the Credit Agreement are true and correct as of the date first written above with the same effect as though each had been made as of such date, except to the extent that any of such representations and warranties expressly relate to earlier dates.

SECTION 5. Effectiveness of Amendment; Terms of this Amendment.

(a) This Amendment shall become effective as of the date the Administrative Agent shall have received this Amendment, duly executed by the Borrower, each of the Lenders and the Administrative Agent and dated as of the date of this Amendment, in form and substance satisfactory to the Agent.

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(b) This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(c) On and after the execution and delivery hereof, (i) this Amendment shall be a part of the Credit Agreement, and (ii) each reference in the Credit Agreement to "this Agreement" or "hereof", "hereunder" or words of like import, and each reference in any other document to the Credit Agreement shall mean and be a reference to the Credit Agreement as amended or modified hereby.

(d) Except as expressly amended or modified hereby, the Credit Agreement shall remain in full force and effect and is hereby ratified and confirmed by the parties hereto.

SECTION 6. Execution in Counterparts. This Amendment may be executed by the parties hereto in separate counterparts (including by facsimile and/or email), each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement.

SECTION 7. Governing Law. **THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES; *PROVIDED* THAT SECTION 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW SHALL APPLY, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

SECTION 8. No Novation. Notwithstanding that the Credit Agreement is hereby amended by this Amendment as of the date hereof, nothing contained herein shall be deemed to cause a novation or discharge of any existing indebtedness of the Borrower under the Credit Agreement, or the security interest in the Collateral created thereby.

[Signature pages follow]



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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment on the date first above written.

TAP FUNDING LTD.,  
as Borrower

By: /s/ Milt J. Anderson  
Name: Milt J. Anderson  
Title: CEO

By: /s/ Adam T. DiMartino  
Name: Adam T. DiMartino  
Title: Sr VP

WELLS FARGO SECURITIES, LLC,  
as Administrative Agent

By: /s/ Kevin C. Ryan  
Name: Kevin C. Ryan  
Title: Director

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Lender

By: /s/ Daniel Miller  
Name: Daniel Miller  
Title: Managing Director

**Amendment No. 1 to Credit Agreement**

AMENDMENT NUMBER 2 TO  
CREDIT AGREEMENT

THIS AMENDMENT NUMBER 2, dated as of December 19, 2012 (this "Amendment"), to the Credit Agreement, dated as of April 30, 2012 (as amended, modified, supplemented or restated from time to time, the "Credit Agreement", by and among TAP FUNDING LTD., an exempted company with limited liability organized under the laws of Bermuda (the "Borrower"), the lenders from time to time party thereto (collectively the "Lenders"), and WELLS FARGO SECURITIES, LLC, as Administrative Agent.

WITNESSETH:

WHEREAS, the Borrower, the Administrative Agent and the Lenders have previously entered into the Credit Agreement;

WHEREAS, the Borrower, the Administrative Agent and the Lenders desire to amend (i) the definition of Change of Control, (ii) modify certain lessee concentration limits and (iii) make certain additional changes to the Credit Agreement, and in reliance on the representations and warranties of Borrower set forth herein;

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Defined Terms. Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings assigned in the Credit Agreement.

SECTION 2. Full Force and Effect. Other than as specifically modified hereby, the Credit Agreement shall remain in full force and effect in accordance with the terms and provisions thereof and is hereby ratified and confirmed by the parties hereto.

SECTION 3. Amendment to the Credit Agreement. Effective upon the date hereof, following the execution and delivery hereof, following amendments are made to the Credit Agreement:

(1) The definition of "Change of Control" in Section 1.1 is hereby amended to read as follows:

Change of Control. The occurrence of any event, or series of events, by which either (x) the Permitted Holders shall cease to own (directly or indirectly) one hundred percent (100%) of the Capital Stock of the Borrower, or (y) the Permitted Holders shall otherwise fail to have the ability to Control the Borrower.

(2) The definition of “Lease Concentration Excess” in Section 1.1 is hereby amended to read as follows:

“Lease Concentration Excess”. As of any date of determination, an amount equal to the sum of the following:

(a) *Maximum Concentration to a Single Lessee*. The amount by which (x) the sum of the Net Book Values of all Owner Containers that are in aggregate on lease to any single Lessee and its Affiliates, exceeds (y) an amount equal to the product of (A) either (i) if the Lessee is MSC then (x) seventeen and one half of one percent (17.5%) until November 30, 2014 and (y) fifteen percent (15%) thereafter, or (ii) in the case of all Lessees other than MSC, fifteen percent (15%), and (B) the then Aggregate Net Book Value;

(b) *Maximum Concentration to U.S. Government*. The amount by which (x) the sum of the Net Book Values of all Owner Containers subject to leases under which the lessee is the government of the United States of America or one of its agencies, exceeds (y) an amount equal to the product of (A) four percent (4%) and (B) an amount equal to the then Aggregate Net Book Value; provided, however then any Owner Container subject to any such Lease shall not count against the limitation contained in this paragraph (b) following the execution by the appropriate U.S. governmental official(s) of a consent to assignment with respect thereto;

(c) *Maximum Concentration to any Two Lessees*. The amount by which (x) the sum of the Net Book Values of all Owner Containers that are in aggregate on lease with any two Lessees and their respective Affiliates, exceeds (y) an amount equal to the product of (A) twenty seven percent (27%) and (B) the then Aggregate Net Book Value;

(d) *Maximum Concentration to any Ten Lessees*. The amount by which (x) the Net Book Values of all Owner Containers that are in aggregate on lease with any ten Lessees and their respective Affiliates, exceeds (y) an amount equal to the product of (A) seventy-five percent (75%) and (B) the then Aggregate Net Book Value;

(e) *Maximum Concentration of Finance Leases to any Single Lessee*. The amount by which (x) the sum of the then Net Investment Values of all Finance Leases with any single Lessee and its Affiliates, exceeds (y) an amount to the product of (i) five percent (5%) (or, seven and one half of one percent if the Lessee under such Finance Leases is MSC) and (B) the then Aggregate Net Book Value.

(3) The definition of “Maturity Date” is amended to change the words “thirty (30) months” to “forty two (42) months”.

(4) The definition of “Scheduled Principal Payment Amount” is amended to read as follows:

(a) on any Payment Date occurring on or prior to the end of the Revolving Credit Period, the amount (if any) by which (1) the Aggregate Loan Principal Balance on such date (determined prior to giving effect to any principal payments to be made on such Payment Date), exceeds (2) the Asset Base on such Payment Date; or

(b) on any Payment Date occurring subsequent to the expiration of the Revolving Credit Period for reason not related to the occurrence of an Early Amortization Event and prior to the Maturity Date, a *pro rata* portion (with the amounts payable to the Interest Rate Hedge Counterparties pursuant to Section 3.2(a)(vii)(B)) of the Available Distribution Amount available on such Payment Date after payment of the amount set forth on clauses (i) through (vi) of Section 3.2(a) hereof; or

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(c) on the Maturity Date, the Aggregate Loan Principal Balance on such date.

(5) The following definition of "Permitted Holders" is added to Section 1.1 in the appropriate alphabetical order that reads as follows:

Permitted Holders: TAP Ltd., and Textainer Limited, each of which is a company organized under the laws of Bermuda.

SECTION 4. Representations and Warranties.

The Borrower hereby confirms that each of the representations and warranties set forth in Section 7 of the Credit Agreement are true and correct as of the date first written above with the same effect as though each had been made as of such date, except to the extent that any of such representations and warranties expressly relate to earlier dates.

SECTION 5. Effectiveness of Amendment; Terms of this Amendment.

(a) This Amendment shall become effective as of the date the Administrative Agent shall have received this Amendment, duly executed by the Borrower, each of the Lenders and the Administrative Agent and dated as of the date of this Amendment, in form and substance satisfactory to the Agent.

(b) This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(c) On and after the execution and delivery hereof, (i) this Amendment shall be a part of the Credit Agreement, and (ii) each reference in the Credit Agreement to "this Agreement" or "hereof", "hereunder" or words of like import, and each reference in any other document to the Credit Agreement shall mean and be a reference to the Credit Agreement as amended or modified hereby.

(d) Except as expressly amended or modified hereby, the Credit Agreement shall remain in full force and effect and is hereby ratified and confirmed by the parties hereto.

SECTION 6. Execution in Counterparts. This Amendment may be executed by the parties hereto in separate counterparts (including by facsimile and/or email), each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement.

SECTION 7. Governing Law. **THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES; PROVIDED THAT SECTION 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW SHALL APPLY, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

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SECTION 8. No Novation. Notwithstanding that the Credit Agreement is hereby amended by this Amendment as of the date hereof, nothing contained herein shall be deemed to cause a novation or discharge of any existing indebtedness of the Borrower under the Credit Agreement, or the security interest in the Collateral created thereby.

[Signature pages follow]

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment on the date first above written.

TAP FUNDING LTD.,  
as Borrower

By: /s/ Milt J. Anderson  
Name: Milt J. Anderson  
Title: CEO

By: /s/ Adam T. DiMartino  
Name: Adam T. DiMartino  
Title: Sr VP

WELLS FARGO SECURITIES, LLC,  
as Administrative Agent

By: /s/ Jerri Kallam  
Name: Jerri Kallam  
Title: Director

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Lender

By: /s/ Daniel Miller  
Name: Daniel Miller  
Title: Managing Director

**Amendment No. 2 to Credit Agreement**

## SHARE PURCHASE AGREEMENT

This SHARE PURCHASE AGREEMENT (this “*Agreement*”), dated December 20, 2012, is entered into by and among TAP Ltd., an exempted company with limited liability incorporated and existing under the laws of Bermuda (the “*Seller*”), and Textainer Limited, an exempted company with limited liability incorporated and existing under the laws of Bermuda (the “*Purchaser*”).

### Preliminary Statements

WHEREAS, the Seller is the sole owner of all 1,000 issued and outstanding common shares (the “*Shares*”) of TAP Funding Ltd., an exempted company with limited liability incorporated and existing under the laws of Bermuda (the “*Company*”);

WHEREAS, the Seller desires to sell to the Purchaser, and the Purchaser desires to purchase from the Seller, 501 Shares in the Company currently owned by the Seller (the “*Purchased Shares*”). This Agreement is entered into by the parties to set forth the terms and conditions upon which the Purchaser will purchase the Purchased Shares from the Seller.

NOW THEREFORE, in consideration of the facts set forth above and the mutual covenants contained in this Agreement, the parties agree as follows:

### Agreement

### ARTICLE 1

#### Defined Terms; Purchase and Sale of Purchased Shares

**1.1 Defined Terms.** For purposes of this Agreement, the following terms shall have the meanings ascribed to them below:

“*Closing Date*” means the date on which the closing conditions set forth in **Section 1.4** are satisfied.

“*Lien*” shall mean any security interest, lien, pledge or other claim or encumbrance of any kind.

“*Losses*” shall mean any and all liabilities, obligations, duties, claims, actions, causes of action, assessments, losses (including diminution in value), costs, damages, deficiencies, taxes, fines, or expenses, including, without limitation, interest, penalties, reasonable attorney fees, and all amounts paid in investigation, defense, or settlement of any of the foregoing.

“*Purchase Price*” shall mean an amount equal to the sum of (i) Twenty Million Four Hundred Eighty Two Thousand Three Hundred Eighty Three Dollars (U.S. \$20,482,383) and (ii) Fifty Thousand Dollars (U.S. \$50,000).

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**1.2 Purchase and Sale of Purchased Shares.** Subject to satisfaction of the conditions precedent set forth in **Section 1.4**, the Seller hereby sells, assigns, transfers and conveys to the Purchaser the Purchased Shares, including all rights of the Seller with respect to such Purchased Shares, free and clear of all Liens, and the Purchaser hereby purchases from the Seller, the Purchased Shares and all such rights, in each case, effective on the Closing Date.

**1.3 Payment of Purchase Price.** In consideration of the sale of the Purchased Shares by the Seller to the Purchaser hereunder, the Purchaser shall pay to the Seller or to its designee on the Closing Date, in cash, in immediately available funds, the Purchase Price. The Seller hereby instructs the Purchaser to pay all but Fifty Thousand Dollars (U.S. \$50,000) of the Purchase Price to Seller's designee, TCG Fund I, L.P., as follows:

Silicon Valley Bank  
3003 Tasman Drive  
Santa Clara, CA 95054, USA  
Routing & Transit #: 121140399  
Swift Code: SVBKUS6S  
  
For Credit of:  
TCG Fund I, L.P.  
10955 Westmoor Drive  
Westminster, CO 80021  
  
Final Credit Account #: 3300702040

The Seller hereby further instructs Purchaser to pay Fifty Thousand Dollars (U.S. \$50,000) of the Purchase Price to Seller in accordance with the following instructions:

BNP Paribas  
New York  
  
ABA No. 026-007-689  
Swift Code: BNPAUS3N  
  
For Credit of:  
TAP Ltd.  
Account No. 0200 622 097 00125

**1.4 Closing Conditions.**

(a) Seller's obligation to sell the Purchased Shares to Purchaser hereunder shall be conditioned upon receipt by Seller (or Seller's designee, if applicable) of:

(i) the Purchase Price;



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(ii) Counterparts of:

(A) the Container Purchase Agreement, dated the date hereof (the “**Container Purchase Agreement**”), between Textainer Group Holdings Limited, an exempted company with limited liability incorporated and existing under the laws of Bermuda (“**TGH**”), and the Company, signed by TGH;

(B) the Amended and Restated Management Agreement, dated the date hereof (the “**Management Agreement**”), between Company and Textainer Equipment Management Limited, an exempted company continued and existing under the laws of Bermuda, signed by Textainer Equipment Management Limited (“**TEML**”);

(C) the Members Agreement, dated the date hereof (the “**Members Agreement**”), between Purchaser and Seller, signed by Purchaser; and

(D) A Secretary’s Certificate of Purchaser evidencing (1) resolutions of the Purchaser’s Board of Directors authorizing the transactions contemplated by this Agreement, (2) providing true and correct copies of Purchaser’s memorandum of association and bye-laws, and (3) evidencing the incumbency of its authorized signatories and officers.

(b) Purchaser’s obligation to purchase the Purchased Shares and to pay the Purchase Price for the Purchased Shares hereunder shall be conditioned upon receipt by Purchaser of:

(i) A list of the Containers owned by the Company as of November 30;

(ii) Counterparts of:

(A) the Container Purchase Agreement, signed by the Company;

(B) the Management Agreement, signed by the Company;

(C) the Members Agreement, signed by Seller; and

(D) the letter agreement regarding confidentiality, dated the date hereof, between Seller and TEML, signed by Seller; and

(iii) All certificates (if any) representing the Purchased Shares, together with duly executed instruments of transfer related thereto;

(iv) A Secretary’s Certificate of Seller evidencing (1) resolutions of the Seller’s Board of Directors authorizing the transactions contemplated by this Agreement, (2) providing true and correct copies of Seller’s memorandum of association and bye-laws, (3) true and correct signatures and incumbency of its authorized signatories and officers and (4) a true and correct copy of the register of members of Seller.

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(v) The Share Repurchase Letter Agreement in respect of the repurchase of all of TCG Fund I, L.P.'s interests in Seller and ownership by the TCG Investors of 100% of the equity interests in Seller, signed by Seller and TCG Fund I, L.P.;

(vi) A Secretary's Certificate of Company evidencing (1) resolutions of the Company's Board of Directors authorizing the entry by the Company into the Management Agreement and the Container Purchase Agreement, (2) providing true and correct copies of Company's memorandum of association and bye-laws, and (3) true and correct signatures and incumbency of its authorized signatories and officers;

(vii) The written consent of Seller, in its capacity as a Member of the Company, to the amendment of the Bye-Laws of Company in form and substance satisfactory to Purchaser;

(viii) An instrument of share transfer with respect to the Purchased Shares, signed by Seller;

(ix) Evidence of any consents or waivers required for the transaction from the lenders to the Company;

(x) Evidence that the Company has duly filed with the United States Internal Revenue Service a form 8832 electing to become a disregarded entity for U. S. Federal income tax purposes; and

(xi) Evidence that the Bermuda Monetary Authority has granted approval for the transfer of the Purchased Shares from Seller to Purchaser.

**1.5 Allocation of Purchase Price.** With respect to the acquisition of the Purchased Shares, within 60 days after the Closing Date, Seller shall prepare and Purchaser shall review an allocation of the Purchase Price among the assets of the Company in accordance with Section 1060 of the Code (and any similar provision of state, local or foreign law, as appropriate) (the "**Allocation**"). Purchaser and Seller shall (i) act in accordance with the Allocation in the preparation of all financial statements and the filing of all tax Returns (including in the filing of Form 8594 with their United States federal income tax return for the taxable year that includes the Closing Date) and in the course of any tax audit, tax review or tax litigation relating thereto and (ii) take no position and cause their affiliates to take no position inconsistent with the Allocation for all tax purposes, unless otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code. Not later than thirty calendar days prior to the filing of their respective Forms 8594 relating to this transaction, each Party shall deliver to the other Party a copy of its Form 8594.

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## ARTICLE 2

### Representations and Warranties

2.1 The Seller represents and warrants to the Purchaser on and as of the date hereof and the Closing Date, as follows:

(a) **Existence, Power and Authority**. Seller is an exempted company duly incorporated, validly existing and in good standing under the laws of the Bermuda and has all requisite authority to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) **Authorization**. The execution and delivery of this Agreement and the performance by Seller hereunder have been duly authorized by all requisite action and proceedings of Seller, and in accordance with applicable provisions of its organizational documents and applicable law. This Agreement has been duly executed and delivered by Seller, and this Agreement is the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally.

(c) **No Conflicts**. The execution, delivery and performance of this Agreement by Seller and the consummation by the Seller of the transactions contemplated herein do not and will not (i) violate, conflict with or constitute a default under any provision of its memorandum of association or bye-laws or other applicable constitutional documents, (ii) conflict with or result in a breach of any indenture or other agreement to which Seller is a party or by which Seller or its properties are bound, (iii) violate any judgment, order, injunction, decree or award of any court, administrative agency or governmental body against, or binding upon, Seller or its properties, or (iv) constitute a violation by Seller of any law or regulation applicable to it or its properties, except in any case where such violation would not have a material adverse effect on the financial condition of Seller or its ability to perform its obligations under this Agreement.

(d) **Consents**. Except as otherwise stated herein, the execution, delivery and performance by Seller of, and the consummation of the transactions contemplated by this Agreement do not require (i) any approval or notice to or consent of any person or entity, or any holder of any indebtedness or obligation of Seller or any other party to any agreement binding on the Seller, or (ii) any notice to or filing or recording with, or any consent or approval of, any governmental body, except for approvals, consents, notices, filings and recordings that will have been obtained or given or made on or prior to the Closing Date.

(e) **Legal Proceedings**. There are no actions, suits or proceedings pending, or to Seller's knowledge, threatened, against Seller or the Purchased Shares before any court, arbitrator, administrative or governmental body that, if adversely determined, would hinder or prevent Seller's ability to carry out the transactions contemplated by this Agreement or affect the right, title or interest of Seller in the Purchased Shares, and, to Seller's knowledge, there is no basis for any such suits or proceedings.

(f) **Title**. Seller is the lawful and rightful sole owner of the Purchased Shares as of the date hereof and as of the Closing Date and has good right and title to sell the same to Purchaser as of the date hereof and as of the Closing Date. On the date hereof and the Closing Date (prior to conveyance of the Purchased Shares to Purchaser), Seller holds title to the Purchased Shares, free and clear of all Liens.

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(g) **Brokers and Finders.** No person or entity is entitled to a finder's fee or any type of brokerage commission in relation to or in connection with the transactions contemplated by this Agreement as a result of any agreement or understanding with Seller.

(h) **Exclusive Warranties.** The provisions of this **Section 2.1** state the sole and exclusive warranties made by Seller to Purchaser with respect to the subject matter of this Agreement and are in lieu of any and all other warranties, express or implied (except for the implied warranty of good faith and fair dealing).

2.2 The Purchaser represents and warrants to the Seller on and as of the date hereof and the Closing Date as follows:

(a) **Existence, Power and Authority.** Purchaser is a company with limited liability duly incorporated, validly existing and in good standing under the laws of Bermuda, and has all requisite organizational authority to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) **Authorization.** The execution and delivery by Purchaser of this Agreement, and the performance by Purchaser hereunder and thereunder, have been duly authorized by all requisite organizational action and proceedings of Purchaser and in accordance with applicable provisions of its organizational documents and applicable law. This Agreement has been duly executed and delivered by Purchaser, and this Agreement is the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally.

(c) **No Conflicts.** The execution, delivery and performance of this Agreement by Purchaser and the consummation by the Purchaser of the transactions contemplated hereby, do not and will not (i) violate, conflict with or constitute a default under any provision of Purchaser's memorandum of association or bye-laws or other constitutional documents, (ii) conflict with or result in a breach of any indenture or other agreement to which Purchaser is a party or by which Purchaser or its properties are bound, (iii) violate any judgment, order, injunction, decree or award of any court, administrative agency or governmental body against, or binding upon, Purchaser or its properties, or (iv) constitute a violation by Purchaser of any law or regulation applicable to Purchaser or its properties, except in any case where such violation would not have a material adverse effect on the financial condition of Purchaser or its ability to perform its obligations under this Agreement.

(d) **Consents.** Except as otherwise stated herein, the execution, delivery and performance by Purchaser of this Agreement do not require (i) the approval or consent of or notice to any person or entity, or any holder of any indebtedness or obligation of Purchaser or any other party to any agreement binding on the Purchaser, or (ii) any notice to or filing or recording with, or any consent or approval of, any governmental body, except for approvals, consents, notices, filings and recordings that have been obtained or given or made on or prior to the Closing Date.

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(e) **Legal Proceedings.** There are no actions, suits or proceedings pending, or to Purchaser's knowledge, threatened, against Purchaser before any court, arbitrator or administrative or governmental body that, if adversely determined, would hinder or prevent Purchaser's ability to carry out the transactions contemplated by this Agreement, and, to Purchaser's knowledge, there is no basis for any such suits or proceedings.

(f) **Brokers and Finders.** No person or entity is entitled to a finder's fee or any type of brokerage commission in relation to or in connection with the transactions contemplated by this Agreement as a result of any agreement or understanding with Purchaser.

(g) **Exclusive Warranties.** The provisions of this **Section 2.2** state the sole and exclusive warranties made by Purchaser to Seller with respect to the subject matter of this Agreement and are in lieu of any and all other warranties, express or implied (except for the implied warranty of good faith and fair dealing).

## ARTICLE 3

### Taxes; Indemnification; Expenses

**3.1 Tax Treatment of Purchase of Shares.** The purchase and sale of the Purchased Shares shall be treated as the purchase by the Purchaser and a sale by the Seller of 50.1% of all of the assets of the Company subject to the liabilities of the Company on the Closing Date. The Purchaser and Seller agree not to take any position contrary to this treatment of the purchase and sale unless required by law.

**3.2 Sales Tax.** It is the expectation of the parties that the transfer of the Purchased Shares contemplated by this Agreement shall be exempt from state and local sales, use, transfer or similar taxes. If, however, any such sales, use, transfer or similar tax is imposed by any state or local authority on the transfer of the Purchased Shares as contemplated herein, other than taxes based on income of Seller, Purchaser shall bear and be responsible for the payment of the amount of such tax (including any related interest or penalties). Upon receipt of notice of any such tax or imposition, the party receiving the notice shall promptly provide a copy to the other party. Either party may, at its own cost and expense, commence and participate in a contest of the validity, applicability or amount of any such tax or other imposition.

### 3.3 Indemnification.

(a) **Indemnity by Seller.** Without limitation of any other provision of this Agreement or any other rights and remedies available to Purchaser at law or in equity, Seller covenants and agrees to protect, indemnify, defend, and hold harmless the Company and the Purchaser and to promptly reimburse each of such parties for, all Losses arising out of, in connection with or relating to any breach of any covenant, representation, or warranty of Seller under this Agreement or the other documents to which Seller is a party delivered in connection with this Agreement.

(b) **Indemnity by Purchaser.** Without limitation of any other provision of this Agreement or any other rights and remedies available to Seller at law or in equity, Purchaser covenants and agrees to protect, indemnify, defend and hold harmless Seller from, and to promptly reimburse Seller for, Losses arising out of, or in connection with, or relating to any breach of any covenant, representation or warranty of Purchaser under this Agreement or other documents to which Purchaser is a party delivered in connection with this Agreement.

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(c) **Limitation.** Except for Losses resulting from the fraud of an indemnifying party, Seller's representation set forth in **Section 2.1(f)**, or Purchaser's covenant set forth in **Section 3.2**, (i) all of the representations, warranties, covenants and obligations made by Seller and Purchaser herein shall survive the closing only for a period expiring at midnight on December 19, 2013 (the "**Claim Period**"), and (ii) the obligations of Seller to indemnify Purchaser and the Company, on the one hand, and Purchaser to indemnify Seller, on the other hand, under this **Section 3.3** shall survive the closing only with respect to claims made during the Claim Period. The term "**Claim**" shall mean any matter with respect to which indemnification is sought by Purchaser or Seller hereunder, respectively. Any Claim not made during the Claim Period shall be the sole responsibility of Purchaser or Seller, as the case may be, and Purchaser or Seller, as the case may be, shall have no recourse against the other party with respect thereto.

**3.4 Expenses.** Each party shall be responsible for its own expenses incurred in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and any amendments, modifications or waivers, and (ii) the enforcement or protection of each party's rights in connection with this Agreement.

## **ARTICLE 4**

### **General Provisions**

**4.1 Specific Performance.** Upon the occurrence of any breach of this Agreement by Seller, Purchaser shall be entitled, as its exclusive remedy, to enforcement of this Agreement by a decree of specific performance requiring the Seller to fulfill its obligations under this Agreement; Seller hereby waives, in any action for specific performance, the defense that there is an adequate remedy at law or in equity and agrees that the Purchaser shall be entitled to obtain specific performance without being required to prove actual damages. Upon the occurrence of any breach of this Agreement by Purchaser, Seller shall be entitled to all of its remedies at law and in equity, including, without limitation, its actual damages and reimbursement of all of Seller's expenses (including, without limitation, attorney's, accounting and solicitation fees and costs) incurred in connection with this Agreement.

**4.2 Further Assurances.** Each of Seller and Purchaser agrees to execute, acknowledge, deliver, file and record, or cause to be executed, acknowledged, delivered, filed and recorded, such further documents or other papers, and to do all such things and acts, as the other party may reasonably request in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby.

**4.3 Notices.** All notices hereunder shall be in writing and shall be sufficiently given if delivered personally or sent by overnight delivery service, by registered or certified mail, first class, postage prepaid, or by telecopy or similar written means of communication, to the receiving party at the address shown below or such other address of which the receiving party has given notice hereunder. Any notice shall be deemed to have been given and received if: (a)

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sent by registered or certified mail, as of the close of the third (3rd) business day following the date so mailed; (b) if personally delivered, on the date delivered; (c) on the date sent if sent by telecopy or by electronic mail on a business day; and (d) on the next business day after the date sent in all other cases. Addresses for notices are as follows:

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Purchaser: Textainer Limited  
c/o Textainer Equipment Management (U.S.) Ltd.  
650 California Street, 16th floor  
San Francisco, CA 94108  
Attention: General Counsel  
Facsimile: (415) 434-0599

Seller: TAP Ltd.  
c/o Transportation Capital Group, LLC  
10955 Westmoor Drive  
Suite 400  
Westminster, CO 80021  
Attention: Adam DiMartino  
Email: [adam.dimartino@tcgfund.com](mailto:adam.dimartino@tcgfund.com)  
Attention: Milton J. Anderson  
Email: [milt.anderson@tcgfund.com](mailto:milt.anderson@tcgfund.com)

**4.4 Waivers and Amendments.** This Agreement may be amended, superseded, modified, supplemented or terminated, and the terms hereof may be waived, only by written instrument signed by the parties or, in the case of a waiver, by the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof. No waiver on the part of any party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, shall preclude any further exercise thereof or the exercise of any other such right, power or privilege.

**4.5 Assignment, Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs and administrators, and permitted assigns. No party shall assign any of its rights or obligations hereunder without the prior written consent of the other parties.

**4.6 Arbitration.** Any controversy or claim arising out of or relating to this Agreement, any of its Exhibits, or the breach thereof (including, without limitation, a claim for which injunctive or other equitable relief is sought or the determination of the scope or applicability of this Agreement to arbitrate) shall be settled by arbitration in San Francisco, California, by one (1) arbitrator (unless the parties mutually agree to accept multiple arbitrators) in accordance with the Commercial Arbitration Rules of JAMS, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The cost of any such arbitration shall be borne equally by the parties involved unless the arbitrator(s) deem such division of costs to be inequitable, in which event the arbitrator(s) may allocate the costs of arbitration among the parties thereto as they deem just and equitable under the circumstances.

**4.7 Entire Agreement.** This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement among the parties hereto, and no party hereto shall be bound by any communications between them on the subject matter hereof unless such communications are in writing and bear a date contemporaneous with or subsequent to the date hereof. Any prior written agreements or letters of intent among the parties relating to the subject matter hereof shall, upon the execution of this Agreement, be null and void.



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**4.8 Severability.** Any provision of this Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof, and any such unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law now or hereafter in effect which renders any provision hereof unenforceable in any respect.

**4.9 Headings.** The headings in the sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect the meaning or interpretation hereof.

**4.10 Construction.** No provision of this Agreement shall be construed against any party on the ground that such party or such party's counsel drafted the provision.

**4.11 Counterparts.** This Agreement may be executed in two (2) or more facsimile counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

**4.12 No Third Party Beneficiaries.** This Agreement is solely for the benefit of Seller and Purchaser and shall create no rights of any nature in any person or entity not a party hereto.

**4.13 Governing Law.** THIS AGREEMENT SHALL BE CONSTRUED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAWS BUT OTHERWISE WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAW, THAT WOULD RESULT IN APPLICATION OF LAWS OTHER THAN NEW YORK, AND THE RIGHTS, OBLIGATIONS AND REMEDIES OF THE PARTIES HERETO SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

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IN WITNESS WHEREOF, the parties have executed this Share Purchase Agreement as of the date set forth above.

SELLER:

TAP LTD.

By: /s/ Milton J. Anderson

Name: Milton J. Anderson

Title: Chief Executive Officer and Director

By: /s/ Adam T. DiMartino

Name: Adam T. DiMartino

Title: Senior Vice President and Director

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PURCHASER:

TEXTAINER LIMITED

By: /s/ Christopher C. Morris

Name: Christopher C. Morris

Title: Executive Vice President

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**MEMBERS AGREEMENT  
OF  
TAP FUNDING LTD.**

MEMBERS AGREEMENT (this “**Agreement**”) of TAP Funding Ltd., an exempted company with limited liability incorporated and existing under the laws of Bermuda (the “**Company**”), dated December 20, 2012, by and between the Members (as defined below).

The Members are executing this Agreement to ensure the treatment of the Company as a partnership for U.S. Federal income tax purposes and to provide for the allocations of Profits and Losses, distributions, the general conduct of the business of the Company and agree as follows:

**1. Definitions.**

“**Adjusted Capital Account Deficit**” shall mean, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant allocation period, after giving effect to the following adjustments: (i) increasing such Capital Account by the amount which such Member is obligated to restore pursuant to this Agreement, or is deemed obligated to restore calculated as described in the next to last sentence of Treasury Regulations Section 1.704-2(g)(1) and the next to last sentence of Treasury Regulations Section 1.704-2(i)(5), and (b) decreasing such Capital Account by the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704 1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“**Affiliate**” of a Person (a “**primary person**”) or other entity shall mean any other Person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with, such primary person, as applicable.

“**Book Value**” means, with respect to any asset of the Company, such asset’s adjusted basis for federal income tax purposes, except that the Manager in its sole discretion may adjust the Book Values of all Company assets to equal their respective gross fair market values determined by the Manager as of the following times: (A) a Capital Contribution (other than a *de minimis* Capital Contribution) to the Company by a new or existing Member in return for an additional interest in the Company; (B) the distribution by the Company to a Member of more than a *de minimis* amount of Company property as consideration for an interest in the Company; or (C) upon the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g).

“**Capital Account**” shall mean with respect to any Member the capital account which the Company establishes and maintains for such Member pursuant to **Section 3.3**.

“**Capital Contribution**” shall mean, with respect to any Member, the amount of any cash or the fair market value of any property (net of liabilities the Company assumes or takes subject to) contributed or deemed contributed to the Company by a Member in its capacity as a Member, as reflected on **Schedule A**, as the same may be amended from time to time in accordance with the terms of this Agreement.

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“**Code**” shall mean the Internal Revenue Code of 1986, as amended, the Treasury Regulations promulgated thereunder and any interpretations or guidance regarding the foregoing.

“**Distribution**” shall mean a transfer of money or property by the Company to its Members without consideration.

“**Fiscal Year**” shall mean the Company’s fiscal year ending December 31.

“**Management Agreement**” means that certain Amended and Restated Management Agreement, dated as of December 20, 2012, between the Company and Textainer Equipment Management Limited, a Bermuda exempted company, as amended, restated, supplemented or otherwise modified, renewed or replaced.

“**Manager**” shall mean Textainer Equipment Management Limited, a Bermuda exempted company, or any successor Manager party to the Management Agreement.

“**Member**” shall mean each Person who holds Shares of the Company or who may hold Shares of the Company and is an initial signatory to this Agreement, has been admitted to the Company as a Member in accordance with this Agreement.

“**Member Nonrecourse Debt**” has the meaning given to the term “Partner Nonrecourse Debt” in Regulation §1.704-2(b)(4).

“**Member Nonrecourse Debt Minimum Gain**” means the aggregate amount of gain (of whatever character), determined for each Member Nonrecourse Debt, that would be realized by the Company if it disposed of the Company assets subject to such Member Nonrecourse Debt in a taxable transaction in full satisfaction thereof (and for no other consideration), determined in accordance with Regulation §1.704-2(i)(3) and (k), and the determination of a Member’s share of minimum gain attributable to a Member Nonrecourse Debt in accordance with Regulation §1.704-2(i)(5).

“**Member Nonrecourse Deductions**” means the excess, if any, of (i) the net increase, if any, in the amount of Member Nonrecourse Debt Minimum Gain during any Fiscal Year over (ii) the aggregate amount of any distributions during such Fiscal Year of proceeds of a Member Nonrecourse Debt that are allocable to an increase in Member Nonrecourse Debt Minimum Gain, determined in accordance with Regulation §1.704-2(i)(2).

“**Minimum Gain**” means the partnership minimum gain determined pursuant to Regulation § 1.704-2(d).

“**Nonrecourse Liability**” has the meaning set forth in Regulation §1.704-2(b)(3).

“**Partnership Minimum Gain**” means the aggregate amount of gain (of whatever character), determined for each Nonrecourse Liability of the Company, that would be realized by the Company if it disposed of Company assets subject to such Nonrecourse Liability in a taxable transaction in full satisfaction thereof (and for no other consideration), determined in accordance with Regulation §1.704-2(d) and (k), and the determination of a Member’s share of Partnership Minimum Gain in accordance with Regulation §1.704-2(g).

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**“Percentage Interest”** of any Member shall equal (i) the number of Shares the Company owned by such Member divided by the total number of Shares outstanding owned by all Members, (ii) multiplied by 100%.

**“Person”** shall mean an individual, partnership, limited partnership, limited liability company, corporation, trust, estate, association, or any other entity.

**“Profits”** and **“Losses”** shall mean, for each Fiscal Year or other period, an amount equal to the Company’s taxable income or loss for such year or other period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments: (i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss; (ii) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) shall be subtracted from such taxable income or loss; (iii) any expenditure of the Company that shall be deductible for Federal income tax purposes subject to the application of a limitation based on a taxpayer’s gross income or adjusted gross income shall be deemed to be allowable as a deduction without regard to such limitation; (iv) gain or loss resulting from any disposition of a property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the fair market of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its fair market value; and (v) if the value of all of the Company’s assets shall be adjusted to equal their respective gross fair market values upon any revaluation of the Members’ Capital Accounts, then the amount of such adjustment shall be treated as an item of gain or loss and included in the computation of Profits and Losses.

**“Share”** shall mean an equity interest acquired by a Member in the capital and profits of the Company. Initially, there shall be 1,000 Shares. No additional Shares shall be issued except as authorized by the Members.

**“TAP”** shall mean TAP Ltd., an exempted company with limited liability incorporated and existing under the laws of Bermuda, and its permitted successors and assigns.

**“TL”** shall mean Textainer Limited, an exempted company with limited liability incorporated and existing under the laws of Bermuda, and its permitted successors and assigns.

**2. Treatment of Election and Purchase of Shares.** Prior to the purchase of Shares by TL, the Company and TAP shall have elected under Treasury Regulations Section 301.7701-3(c)(1) to cause the Company to be classified as a disregarded entity for U.S. Federal income tax purposes which will result in a deemed liquidation of the Company in which TAP receives all of the assets of the Company subject to all of its liabilities. The Company will be treated as a partnership for U.S. federal income tax purposes when TL purchases the Shares. The purchase of the Shares by TL for cash will be treated as a purchase of 50.1% of the net assets of the Company followed by a contribution of such assets to the Company in accordance with Revenue Ruling 99-6, 1999-1 C.B. 432 and an assumption of 50.1% of the Company’s liabilities. Simultaneously, TAP will be treated as contributing 49.9% of the assets to the Company and assuming 49.9% of the liabilities of the Company.

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### 3. Initial Capital Contributions; Capital Accounts.

**3.1 Capital Contributions.** (a) The Members have agreed that the value of the book equity of the Company is the amount so identified on **Schedule B** (the “**Stated Book Equity**”). The Members agree that the amount of the Capital Contributions set forth on **Schedule A** made by TL and TAP on December 20, 2012 reflects the fair market value of the assets contributed by TL and TAP, Ltd. for U.S. federal income tax purposes, notwithstanding that the value of such assets for GAAP or other accounting purposes may be different. The Members agree that the relative values of the assets contributed by TAP and TL equal the amounts set forth on the balance sheet attached hereto as **Exhibit A**.

(b) The purchase of the Shares by TL and the deemed contribution described in **Section 2** shall be treated as a Capital Contribution by TL of the amount so identified on **Schedule B** (50.1% of the Company’s Stated Book Equity) and an assumption of the amount of liabilities so identified on **Schedule B** (50.1% of the Company’s Stated Liabilities (as defined on **Schedule B**)).

(c) The sale of Shares by TAP and the deemed contribution described in **Section 2** shall be treated as a Capital Contribution by TAP of the amount so identified on **Schedule B** (49.9% of the Company’s Stated Book Equity) and an assumption of the amount of liabilities so identified on **Schedule B** (49.9% of the Company’s Stated Liabilities). The Capital Contributions will be credited to the Capital Account of each Member as set forth on **Schedule A**.

#### **3.2 Capital Contributions for Purchase of Eligible Containers .**

(a) The Company may purchase marine cargo containers pursuant to that certain Container Purchase Agreement, dated December 20, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the “**Container Purchase Agreement**”), between Textainer Group Holdings Limited, an exempted company with limited liability incorporated and existing under the laws of Bermuda (“**TGH**”), and the Company, or otherwise (each such purchase, an “**Investment Opportunity**”). Investment Opportunities may be funded from available cash and/or from the proceeds of Capital Contributions by the Members, subject to this **Section 3.2**.

(b) In the case of any Investment Opportunities to be funded with the proceeds of Capital Contributions, such Capital Contributions shall be made *pro rata* in accordance with each Member’s Percentage Interest of the aggregate purchase price to be paid with the proceeds of Capital Contributions (such Member’s “**Additional Contribution Amount**”); *provided that* no Member shall be required to make any Capital Contribution in order to fund any Investment Opportunity. Notwithstanding the foregoing, no Member shall have the right or obligation to make its additional Capital Contribution with respect to an Investment Opportunity if any other Member fails to contribute all or any portion of its Additional Contribution Amount for such Investment Opportunity.

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(c) No Member's additional Capital Contribution shall become the property of the Company unless and until each other Member shall have contributed its own Additional Contribution Amount. Notwithstanding any contrary provision of this Agreement or the Company's Bye-Laws, in the event that any Member shall fail to contribute all or any portion of its Additional Contribution Amount for any Investment Opportunity as and when required, then the other Member shall withdraw or otherwise be immediately repaid the additional Capital Contribution made by such Member for the subject Investment Opportunity and shall have no further right or obligation as a Member to make any Capital Contributions to fund the purchase of the Containers comprising such Investment Opportunity.

**3.3 Establishment and Determination of Capital Accounts** . A capital account shall be established for each Member. The Capital Account of each Member shall initially consist of its initial Capital Contribution and shall be (a) increased by (i) any additional Capital Contributions made by such Member pursuant to the terms of this Agreement and (ii) such Member's share of Profits allocated to such Member pursuant to **Sections 7.2 and 7.3**, (b) decreased by (i) such Member's share of Losses allocated to such Member pursuant to **Sections 7.2 and 7.3** and (ii) any Distributions to such Member of cash or the fair market value of any other property (net of liabilities assumed by such Member and liabilities to which such property is subject) distributed to such Member and (c) adjusted as otherwise required by the Code and the regulations thereunder, including the rules of Treasury Regulations Section 1.704-1(b)(2)(iv). Any references in this Agreement to the Capital Account of a Member shall be deemed to refer to such Capital Account as the same may be increased or decreased from time to time as set forth above.

**3.4 Capital Account of Transferee.** The Capital Account of a transferee of a Share shall be a proportional amount of the Capital Account of the Member transferring the Share with no adjustment as a result of the transfer.

**3.5 No Interest.** No Member shall be entitled to receive any interest on its Capital Contributions.

#### **4. Transfer and Redemption of Shares.**

**4.1 Transfers.** Subject to **Sections 4.2 and 4.3**, no Member may transfer or assign (including as a collateral assignment or pledge) in whole or in part its interests in the Company without the consent of the other Members, which consent may be withheld for any reason or for no reason.

##### **4.2 TL Purchase Options.**

(a) TAP agrees to use commercially reasonable efforts to cause all of its shareholders to sell all of their respective interests in TAP to TL during the period beginning January 1, 2019 and through December 1, 2020 (the "**Option Period**"), if so requested by TL, for a purchase price (the "**TAP Purchase Price**") equal to:

- (i) the equity book value of TAP; plus



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(ii) 6% of TAP's Percentage Interest of the aggregate depreciated book value of the Company's container assets; minus

(iii) the sum of any and all U.S. federal, state and local taxes of any nature (including, without limitation, any taxes resulting from the recapture of depreciation previously taken on various assets of TAP at ordinary income instead of capital gain rates) that would be recognized by TL if TAP were liquidated by TL immediately after TL purchased its shares (to the extent not already reflected as a liability on the books of TAP).

For the avoidance of doubt, the option under this **Section 4.2(a)(i)** is not expected to be exercised by TL and is exercisable by TL in its sole discretion. In no event is such option required to be exercised by TL, and it shall not be exercised by TL, if its exercise would adversely affect its classification as a corporation which is not a passive foreign investment company within the meaning of Section 1297 of the Code. TAP shall use commercially reasonable efforts to resolve the issues that make purchase by TL of all of TAP's Shares unfavorable to TAP so as to facilitate a purchase by TL of all of TAP's Shares pursuant to **Section 4.2(b)**.

(b) In the event that (i) TAP has not caused all of its shareholders to deliver all of their interests in TAP in exchange for the TAP Purchase Price within thirty (30) days of TL's notice to TAP that it wishes to exercise its purchase option under **Section 4.2(a)**, or (ii) TAP shall have notified TL, prior to the end of the Option Period, that TAP has resolved the issues that make purchase by TL of all of TAP's Shares of the Company unfavorable to TAP (each of (i) and (ii), a "**Company Purchase Right Trigger**"), then TL may purchase all of TAP's Shares for a purchase price (the "**Company Purchase Price**") equal to:

(A) the equity book value of the Shares of the Company owned by TAP; plus

(B) 6% of TAP's Percentage Interest of the aggregate depreciated book value of the Company's container assets.

(c) In the event that (i) TL shall not have made the election under **Section 4.2(a)** during the Option Period, or (ii) TL shall have had the option to purchase all of TAP's Shares of the Company pursuant to **Section 4.2(b)** but shall not have elected within 30 days to exercise such option, or (iii) TL shall have made an election pursuant to **Section 4.2(a)** or **(b)** but such purchase shall not have closed within 30 days, then, subject to the following sentence, TL and TAP promptly shall agree to take one of the following actions: (a) to continue the Company's business without any of the recapitalization events specified in any of the following **clauses (b)** or **(c)**, (b) to sell all of each of their Shares to a third party, subject to the Management Agreement (provided that TL shall have a right to match the highest bid offered in any such sale and purchase TAP's Shares for TAP's Percentage Interest of such amount), or (c) to cause the Company to sell all of its assets to a third party, subject to the Management Agreement (provided that TL shall have a right to match the highest bid offered in any such sale and purchase all such assets for such amount). Notwithstanding the foregoing, if TL and TAP cannot promptly agree to any of the options described in the foregoing **clauses (a)** through **(c)**, then TL and TAP shall cause the Company to distribute in liquidation all of its assets to the Members (subject to the terms of the Management Agreement), *pro rata* in accordance with their respective Percentage Interests.

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**4.3 PFIC Purchase Option.** If, at any time, any Member (or any Affiliate of any Member) determines that its status as a shareholder of the Company and as a Member under this Agreement adversely affects its classification as a corporation which is not a passive foreign investment company within the meaning of Section 1297 of the Code, the Member which is adversely affected Member shall so notify the other Member, then, subject to the following sentence, TL and TAP promptly shall agree to take one of the following actions: (a) to continue the Company's business without any of the recapitalization events specified in any of the following **clauses (b) or (c)**, (b) to sell all of each of their Shares to a third party, subject to the Management Agreement (provided that TL shall have a right to match the highest bid offered in any such sale and purchase TAP's Shares for TAP's Percentage Interest of such amount), or (c) to cause the Company to sell all of its assets to a third party, subject to the Management Agreement (provided that TL shall have a right to match the highest bid offered in any such sale and purchase all such assets for such amount). Notwithstanding the foregoing, if TL and TAP cannot promptly agree to any of the options described in the foregoing **clauses (a) through (c)**, then TL and TAP shall cause the Company to distribute in liquidation all of its assets to the Members (subject to the terms of the Management Agreement), *pro rata* in accordance with their respective Percentage Interests.

## **5. Members.**

**5.1 Limited Liability.** No Member shall be personally liable under any judgment of a court or in any other manner for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise. No Member shall be required to lend any funds to the Company.

**5.2 Resignation or Withdrawal of Member.** A Member shall not resign or withdraw as a Member except as a result of a transaction not prohibited by **Section 4**.

**5.3 Fiduciary Duties.** Except as provided and subject to the terms of the Container Purchase Agreement, no Member shall have any obligations (fiduciary or otherwise) with respect to the Company or to the other Members insofar as making other investment opportunities available to the Company or to the other Members. Each Member may engage in whatever activities such Member may choose, whether the same are competitive with the Company or otherwise, without having or incurring any obligation to offer any interest in such activities to the Company or to the other Members. Except as set forth in the foregoing provisions of this **Section 5.3**, neither this Agreement nor any activities undertaken pursuant hereto shall prevent any Member from engaging in such activities, and the fiduciary duties of the Members to each other and to the Company shall be limited solely to those arising from the purposes of the Company.

**5.4 Members are not Agents.** Pursuant to **Section 6**, the day-to-day management of the Company is vested in the Manager. The Members shall have no power, as Members, to participate in the management of the Company except as expressly authorized by this Agreement, or as expressly required by the Companies Act 1981 of Bermuda. No Member, acting solely in the capacity of a Member, is an agent of the Company nor does any Member, unless expressly and duly authorized in writing to do so by the Manager (provided that, subject to **Sections 18.5 and 18.6**, TL may negotiate the Company's debt financing arrangements), have any power or authority to bind or act on behalf of the Company in any way, to pledge its credit, to execute any instrument on its behalf, or to render it liable for any purpose.

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**6. Manager.** The Manager shall manage the Company in accordance with, and to the extent set forth in, this Agreement and the Management Agreement.

**7. Allocations of Profits and Losses.**

**7.1 Profits.** For each Fiscal Year or other applicable period of the Company, except as otherwise provided in **Section 7.2**, all Profits or Losses of the Company shall be allocated to among the Members in accordance with their Percentage Interests.

**7.2 Special Allocations.** Notwithstanding the general allocation rules set forth in **Section 7.1**, the following special allocation rules and limitations shall apply with respect to maintaining the books and records and computing the Members' Capital Accounts or shares of Profits, Losses, other items or distributions pursuant to this Agreement, in each case as required for United States federal income tax purposes under Code §704(b) and the Regulations thereunder.

(a) **Limitations on Loss Allocations.** The losses allocated to either Member pursuant to **Section 7.1** with respect to any Fiscal Year shall not exceed the maximum amount of losses that can be so allocated without causing such Member to have an Adjusted Capital Account Deficit at the end of such Fiscal Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of losses pursuant to **Section 7.1**, the limitation set forth in this **Section 7.2(a)** shall be applied on a Member-by-Member basis and any such losses not allocable to a Member as a result of such limitation shall be allocated to the other Member in accordance with their positive Capital Account balances so as to allocate the maximum possible losses to each Member under Regulation §1.704-1(b)(2)(ii)(d).

(b) **Qualified Income Offset.** If in any Fiscal Year a Member unexpectedly receives an adjustment, allocation or distribution described in Regulation §1.704-1(b)(2)(ii)(d)(4), (5), or (6), and such adjustment, allocation, or distribution causes or increases an Adjusted Capital Account Deficit for such Member, then, before any other allocations are made under this **Section 7.2** or otherwise, such Member shall be allocated items of income and gain (consisting of a pro rata portion of each item of Company income, including gross income and gain) in an amount and manner sufficient to eliminate such Adjusted Capital Account Deficit as quickly as possible, provided that an allocation pursuant to this **Section 7.2(b)** shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this **Section 7.2(b)** have been made as if this **Section 7.2(b)** were not in this Agreement. This **Section 7.2(b)** is intended to constitute a "qualified income offset" as provided in Regulation §1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(c) **Partnership Minimum Gain Chargeback.** If there is a net decrease in Partnership Minimum Gain during any Fiscal Year, then, except as provided in Regulation §1.704-2(f)(2), (3), or (5), each Member shall be allocated items of income and gain for such Fiscal Year (and, if necessary, for subsequent Fiscal Years) in proportion to, and to the extent of, such Member's share of the net decrease in Partnership Minimum Gain during such Fiscal Year. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto and the items to be so allocated shall be determined in accordance with Regulation §1.704-2(f)(6) and §1.704-2(j)(2). To the extent that this **Section 7.2(c)** is inconsistent with Regulation §1.704-2(f) or incomplete with respect to such Regulations, the Partnership Minimum Gain chargeback provided for herein shall be applied and interpreted in accordance with such Regulation.

(d) **Member Nonrecourse Debt Minimum Gain Chargeback.** If there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Fiscal Year, then, except as provided in Regulation §1.704-2(i)(4), each Member with a share of Member Nonrecourse Debt Minimum Gain shall be allocated items of income and gain for such Fiscal Year (and, if necessary, for subsequent Fiscal Years) in proportion to, and to the extent of, such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain during such Fiscal Year. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto and the items to be so allocated shall be determined in accordance with Regulation §1.704-2(i)(4) and §1.704-2(j)(2). To the extent that this **Section 7.2(d)** is inconsistent with Regulation §1.704-2(i) or incomplete with respect to such Regulation, the Member Nonrecourse Debt Minimum Gain chargeback provided for herein shall be applied and interpreted in accordance with such Regulation.

(e) **Nonrecourse Deductions.** Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members in proportion to each of their respective Membership Interests. This **Section 7.2(e)** is to be interpreted in a manner consistent with Regulation §1.704-2(b)(1) and §1.704-2(e).

(f) **Member Nonrecourse Deductions.** Member Nonrecourse Deductions shall be allocated among the Members in accordance with the ratios in which the Members share the economic risk of loss for the Member Nonrecourse Debt that gave rise to those deductions. This allocation is intended to comply with the requirements of Regulation §1.704-2(i) and shall be interpreted and applied consistently therewith.

(g) **Offsetting Allocations.** The Regulatory Allocations may not be consistent with the manner in which the Members intend to divide Company Profits, Losses, and other similar items. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this **Section 7.2(g)**. Therefore, notwithstanding any other provision of this **Article IV** (other than the Regulatory Allocations), the Company shall make such offsetting special allocations of Company income, gain, loss or deduction in a manner such that, after the offsetting allocations are made, each Member's Capital Account Balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to **Section 7.2**.

**7.3 Tax Allocations.** The income, gains, losses and deductions of the Company for federal, state and local income tax purposes will be allocated among the Members to reflect as nearly as possible the allocation of Profits and Losses to the Members under **Sections 7.1** and **7.2**.

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#### **7.4 Section 704(c) Allocations .**

(a) In accordance with Code §704(c) and the Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company (or any subsidiary thereof that is treated as a partnership or disregarded entity for United States federal income tax purposes) shall, solely for United States federal income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted tax basis of such property to the Company for United States federal income tax purposes and its Book Value (computed in accordance with the definition of Book Value) using the remedial method unless the Manager in its sole discretion determines that a different method would be more appropriate.

(b) In the event the Book Value of any asset of the Company (or any subsidiary thereof that is treated as a partnership or disregarded entity for United States federal income tax purposes) is adjusted pursuant to the definition of Book Value or otherwise pursuant to Code §704(b) and the Regulations thereunder, subsequent allocations of income, gain, loss and deduction with respect to any such asset so adjusted shall take account of any variation between the adjusted tax basis of such asset for United States federal income tax purposes and the Book Value in the same manner as under Code §704(c), the Regulations thereunder and this **Section 7.4**.

(c) Allocations pursuant to this **Section 7.4** are solely for purposes of United States federal income taxes and shall not affect, or in any way be taken into account in computing, either Member's Capital Account or share of Profits, Losses or other items allocated under **Section 7.1** or **7.2**.

**7.5 Tax Matters Member.** TL is hereby designated as the Tax Matters Member of the Company ("***Tax Matters Member***") for all purposes hereof, to serve so long as such entity is a Member of the Company. The Tax Matters Member shall be deemed to be the "tax matters partner" as defined in Section 6231(a)(7) of the Code. Except to the extent specifically provided in the Code or the Treasury Regulations (or the laws of other relevant taxing jurisdictions) to the contrary, the Tax Matters Member (with the consent of the other Members, which shall not be unreasonably withheld) shall have exclusive authority to act for or on behalf of the Company with regard to tax matters, including but not limited to the authority to make (or decline to make) any available tax elections.

#### **8. Distributions.**

**8.1 Distributions.** Subject to applicable law and any limitations contained elsewhere in this Agreement, all Distributions shall be distributed to the Members in accordance with the provisions of this **Section 8**.

**8.2 Distributions.** The Company shall make Distributions to the Members in proportion to their Percentage Interests.

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**8.3 Distributions in Liquidation.** In the event the Company is “liquidated” within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g), then any Distributions shall be made in proportion to the Percentage Interests of the Members and the Capital Accounts of the Members shall be adjusted to the extent possible, so that those Distributions to the Members are in accordance with their positive Capital Account balances as provided in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2), but only after taking into account any allocations of Profits and Losses and other partnership items to such Capital Accounts for the Fiscal Year of liquidation. For this purpose, the Manager may make adjustments for all open tax years or tax years for which a return has not yet been filed to allocations of Profits and Losses or gross income and deductions to (or, if necessary, allocate items of gross income, gain, loss or deduction of the Company among) the Members such that each Member’s Capital Account shall, to the extent possible, be equal to the amount it is entitled to receive under this **Section 8**.

**9. Term; Dissolution.** The term of the Company shall be perpetual unless the Company is dissolved and terminated in accordance with this **Section 9**. The Company shall dissolve, and its affairs shall be wound up, upon the agreement of the Members. Upon dissolution of the Company, the Manager shall sell or distribute all or a portion of the assets of the Company and distribute to the Members *pro rata* in accordance with their respective Percentage Interests and/or distribute the assets of the Company (subject to the terms of the Management Agreement), subject to the liabilities, to the Members *pro rata* in accordance with their respective Percentage Interests.

**10. Accounting, records.**

**10.1 Books and Records.** The books and records of the Company shall be kept on the cash basis method followed for federal income tax purposes and shall be held in Bermuda or other location outside of the United States as determined by the Company.

**10.2 Filings.** The Manager, at Company expense, shall cause the income and other tax returns for the Company to be prepared and timely filed with the appropriate authorities.

**10.3 Bank Accounts.** The funds of the Company shall be maintained in one or more separate bank accounts in the name of the Company, and shall not be commingled in any fashion with the funds of any other Person.

**11. Exculpation and Indemnification.**

**11.1 Indemnification.** The Manager shall not be liable to the Company for any loss, damage or claim incurred by reason of any act or omission (whether or not constituting negligence) performed or omitted by the Manager in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on the Manager by this Agreement or the Management Agreement.

**12. Partnership Not Engaged in U.S. Trade or Business.** The Members intend the Company to be classified and treated as a partnership for U.S. federal and state income taxation purposes which is not engaged in a trade or business in the United States. Prior to TL’s acquisition of any interest in the Company, TAP shall have timely elected on IRS Form 8832 to treat the Company as a disregarded entity for U.S. Federal income tax purposes (and TAP

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represents that it has validly elected, or caused the Company to validly elect, to be treated as a disregarded entity for U.S. Federal income tax purposes). Each Member agrees to act consistently with the foregoing provisions of this **Section 12** for all purposes, including for purposes of reporting the transactions contemplated herein to the Internal Revenue Service and all state and local taxing authorities. The Members agree not to take any action on behalf of the Company, including the execution of any contracts on behalf of the Company, in the United States.

**13. Amendment.** This Agreement may be amended or modified only by a written instrument signed by the Members.

**14. Governing Law.** This Agreement shall be governed by, and construed under, the laws of the State of New York, without regard to the rules of conflict of laws thereof or of any other jurisdiction that would call for the application of the substantive laws of a jurisdiction other than the State of New York; provided that Section 5-1401 of the New York General Obligations Law shall apply.

**15. Entire Agreement.** This Agreement constitutes the entire agreement with the Members with regard to the subject matter hereof.

**16. Benefits.** Except as expressly provided herein, this Agreement is entered into for the sole and exclusive benefit of the Members and the Manager and will not be interpreted in such a manner as to give rise to or create any rights or benefits of or for any Person or entity not a party hereto.

**17. Severability.** If any provision of this Agreement, or the application of such provision to any Person or circumstances, is held invalid or unenforceable, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall continue in full force without being impaired or invalidated.

**18. Certain Supermajority Matters.** Each of the Members agrees to cause the Directors appointed by such Member to vote on any of the following matters solely in unanimity with the Directors appointed by the other Member:

**18.1** authorization of a Bankruptcy Matter (for purposes of this **Section 18.1**, “*Bankruptcy Matter*” means the institution of any proceeding (the “*Proceedings*”) by the Company seeking liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property; and in the case of any Proceedings being instituted against the Company (but not instituted by the Company), authorizing or consenting to such Proceedings (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for it, or any substantial part of its property, or that of any subsidiary));

**18.2** amending Bye-law 44, 45, 74 or 75 of the Company;

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**18.3** the taking of any Material Action (for purposes of this **Section 18.1**, “**Material Action**” means to consolidate or merge the Company with or into any Person, or sell all or substantially all of the assets of the Company, or to institute proceedings to have the Company be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company or file a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property, or make any assignment for the benefit of creditors of the Company, or admit in writing the Company’s inability to pay its debts generally as they become due, or take action in furtherance of any such action, or, to the fullest extent permitted by law, dissolve or liquidate the Company);

**18.4** amending the definition of “Independent Director” set out in Bye-law 1.1 of the Company;

**18.5** the incurrence by the Company of any indebtedness for borrowed money, or amendment of any loan or credit agreement reflecting such indebtedness;

**18.6** the establishment or amendment of any interest rate hedging policy; and

**18.7** any amendment to the Management Agreement or Container Purchase Agreement.

**19. Conflicts.** To the extent that any of the provisions of this Agreement conflicts with any of the provisions of the Company’s Bye-Laws, the provisions of this Agreement shall control.

*[Remainder of page left intentionally blank.]*



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IN WITNESS WHEREOF, the undersigned has duly executed this Members Agreement as of the date first written above.

TAP LTD.

By: /s/ Milton J. Anderson

Name: Milton J. Anderson

Title: Chief Executive Officer and Director

By: /s/ Adam T. DiMartino

Name: Adam T. DiMartino

Title: Senior Vice President and Director

TEXTAINER LIMITED

By: /s/ Christopher C. Morris

Name: Christopher C. Morris

Title: Executive Vice President

**AMENDED AND RESTATED MANAGEMENT AGREEMENT**

between

TEXTAINER EQUIPMENT MANAGEMENT LIMITED

and

TAP FUNDING LTD.

Dated as of December 20, 2012

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THIS AMENDED AND RESTATED MANAGEMENT AGREEMENT (as amended, modified and supplemented from time to time in accordance with the terms hereof, the “**Agreement**”) is dated as of December 20, 2012 between TAP Funding Ltd., an exempted company with limited liability incorporated and existing under the laws of Bermuda (the “**Owner**”) and Textainer Equipment Management Limited, an exempted company with limited liability continued and existing under the laws of Bermuda (“**TEML**”), as manager (the “**Manager**”).

## RECITALS

The Manager and TAP Ltd. entered into a management agreement on June 30, 2011. On April 30, 2012, (i) TAP Ltd. sold or contributed all of its containers and related assets to TAP Funding Ltd., and (ii) the Manager agreed with TAP Ltd. to assign such management agreement to TAP Funding Ltd. as “Owner.” Manager and Owner now hereby agree to amend and restate such management agreement in its entirety on the terms herein set forth.

This Agreement sets forth the terms and conditions on which Manager will acquire marine cargo containers for and/or manage marine cargo containers owned by Owner on Owner’s behalf. The containers subject to this Agreement as of the date hereof are set forth on **Schedule 2**.

## AGREEMENT

### 1. DEFINITIONS.

Capitalized terms used in this Agreement and not defined in their context shall have the meanings set forth in this **Section 1**.

“**Acquisition Functions**” shall mean the functions performed by the Manager under **Section 3.4**.

“**Administrative Agent**” shall mean the lenders (or, if any, the agent therefor) under the Loan Agreement.

“**Administrative Function**” shall have the meaning set forth in **Section 3.2(a)** hereof.

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

“**Agreement Termination Date**” means the date TEML receives notice that a Replacement Manager has been appointed, and this Agreement has been terminated with respect to Terminated Managed Containers, in each case pursuant to the provisions of **Section 11.2** hereof.

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“**Business**” means the acquisition, ownership, leasing and other disposition of the Managed Containers.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which banking institutions in San Francisco, California are authorized or are obligated by law, executive order or governmental decree to be closed.

“**Casualty Loss**” means any of the following events with respect to any Managed Container: (a) the actual total loss or compromised total loss of such Managed Container, (b) loss, theft or destruction of such Managed Container, (c) thirty (30) days following a determination by, or on behalf of, the Owner that such Managed Container is damaged beyond repair or permanently rendered unfit for use for any reason whatsoever, (d) the seizure, condemnation or confiscation of such Managed Container for a period exceeding sixty (60) days or (e) if such Managed Container is subject to a Lease, such Managed Container shall have been deemed under its Lease to have suffered a casualty loss as to the entire Managed Container. In determining the date on which a Casualty Loss occurred, the application of the time frames set forth in clauses (a) through (e) above shall in no event result in the deemed occurrence of a Casualty Loss prior to the date on which an officer of the Owner or the Manager obtains actual knowledge of such Casualty Loss.

“**Casualty Proceeds**” means, for any accounting period, all proceeds due to Owner, from: (i) a Lessee, (ii) the insurance specified in **Sections 9.1** and **9.2**, and (iii) any other source, to compensate the Owner for a Casualty Loss with respect to a Managed Container.

“**CEU**” means a cost-equivalent unit which is a fixed unit of measurement based on the cost of a Container relative to the cost of a twenty-foot standard dry freight Container. The CEU for each type of Container is shown on **Schedule 1** to this Agreement (as such Schedule may be amended from time to time upon notice by Manager).

“**Change of Control**” means the occurrence of any of the following events with respect to the Manager: (i) the Manager amalgamates or consolidates with, or merges with or into, another Person or (ii) the Manager sells, assigns, conveys, transfers, leases or otherwise disposes of (in each case, whether in one transaction or a series of transactions) all, or substantially all, of its assets to any Person, (iii) any Person amalgamates or consolidates with, or merges with or into, the Manager, or (iv) TGH shall fail to own, directly or indirectly, a majority of the equity interests in the Manager.

“**Container**” or “**Container**” means any dry freight cargo, high cube or other type of marine or intermodal Container.

“**Container Identification Number**” means the unique alpha-numeric reference assigned to a Container which is painted on or affixed to such Container.

“**Finance Lease**” means any Lease of a Container whose initial lease agreement provides the Lessee the right or option to purchase the Container at the expiration of the Lease and whose initial lease agreement satisfies the criteria for classification as a capital lease pursuant to GAAP, including Statement of Financial Accounting Standards No. 13, as amended.

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**“Finance Lease Payments”** means, for any period of determination, all amounts due Owner in connection with the ownership, use and/or operation of a Managed Container subject to a Finance Lease, including, but not limited to, principal and interest, balloon payments, rental, handling, Location Revenue and other rental-related charges arising from the leasing of such Managed Container, but excluding Casualty Proceeds, Indemnification Proceeds, Miscellaneous Owner Proceeds and Sales Proceeds.

**“Fleet”** means, as of any date of determination, the entire fleet of Containers (including the Managed Containers) then managed by Manager.

**“GAAP”** means those generally accepted accounting principles and practices which are recognized as such by (i) the American Institute of Certified Public Accountants acting through its Accounting Principles Board or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof consistently applied as to the party in question or (ii) such other equivalent entity(ies) that has or have authority for promulgating accounting principles and practices applicable to such Person.

**“Governmental Authority”** means shall mean (a) any national, state or other sovereign government, and any federal, regional, state, provincial, local, city government or other political subdivision, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, (c) any court or administrative tribunal or (d) with respect to any Person, any arbitration tribunal or other non-governmental authority to whose jurisdiction that Person has consented.

**“Gross Revenue”** means all income (without reduction for expenses or costs), calculated on an accrual basis in accordance with GAAP, earned in connection with the ownership, use and/or operation of a Container, including, but not limited to, rental, handling, Location Revenue, damage protection plan and other rental-related charges arising from the leasing of such Container, but excluding Casualty Proceeds, Indemnification Proceeds, Miscellaneous Owner Proceeds and Sales Proceeds.

**“Indemnification Proceeds”** means, for any accounting period, all proceeds due to Manager, on its own behalf, or as agent of Owner, from Lessees pursuant to the Leases, insurance or other sources, including proceeds from the insurance specified in **Sections 9.1** and **9.2**, as payment for indemnification of Manager and/or Owner against liability and loss (other than a Casualty Loss to the extent that Casualty Proceeds compensate Owner for such Casualty Loss) with respect to the Managed Containers.

**“Insolvency Proceeding”** means any proceeding under the United States Bankruptcy Code or the Bermuda Companies Act 1981 or similar applicable law in any other applicable jurisdiction.

**“Lease”** means a lease relating to one or more Managed Containers entered into on behalf of the Owner (which lease may relate to both Managed Containers and other Containers). Leases may be in the name of Manager or in the name of a third-party lessor from whom Manager has acquired management rights.

**“Lessee”** means any entity that leases one or more Containers pursuant to a Lease.



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**“Lien”** means any security interest, lien, charge, pledge or encumbrance of any kind.

**“Loan Agreement”** means such credit or similar agreement, secured by the Managed Containers, as may be identified by Owner to Manager from time to time during the term of this Agreement, among the Owner, as borrower, the lenders party thereto, the administrative and/or collateral agent for such lenders, and such other Persons as may be parties thereto (including without limitation that certain Credit Agreement, dated as of April 30, 2012, among Owner, as borrower, Wells Fargo Securities, LLC, as administrative agent, and the lenders party thereto), as such credit or similar agreement may be amended, restated, supplemented or otherwise modified, refinanced or replaced from time to time.

**“Location Revenue”** means the net amount (which can be a positive or negative number) of charges and credits to Lessees related to delivery and return of Containers in geographic locations.

**“Long-Term Lease Fleet”** means, as of any date of determination, all Managed Containers that are then (a) subject to a Lease, other than a Finance Lease, having an initial term of twenty-four (24) months or more or (b) off-lease if their Leases in effect immediately before they went off-lease were Leases of the type described in clause (a) of this definition.

**“Managed Containers”** means all of the Containers which are owned by Owner and subject to management by Manager under this Agreement, including without limitation Containers that are subject to Finance Leases or other Leases that are not true leases.

**“Management Fee”** shall have the meaning set forth in **Section 5.1** hereof.

**“Management Functions”** shall have the meaning set forth in **Section 2.1** hereof.

**“Manager Default”** shall have the meaning set forth in **Section 11.1** hereof.

**“Master Lease Fleet”** means, as of any date of determination, all Managed Containers that are then (a) (i) subject to a Lease other than a Finance Lease or (ii) not part of the Long-Term Lease Fleet or (b) off-lease if their Leases in effect immediately before they went off-lease were Leases of the type described in clause (a) of this definition.

**“Miscellaneous Owner Proceeds”** means amounts, other than Casualty Proceeds, Indemnification Proceeds and Sales Proceeds due to Owner: (i) from the manufacturers or sellers of Managed Containers for breach of sale warranties relating thereto, (ii) from Lessees for repair rebill proceeds on Managed Containers which are designated for sale, and (iii) in payment or settlement of any claims, losses, disputes or proceedings relating to such Managed Containers, including proceeds from the insurance specified in **Sections 9.1** and **9.2** for damage to such Managed Containers.

**“NOI”** means, for any accounting period, Gross Revenue for such period minus Operating Expenses for such period.

**“OFAC”** means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

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**“OFAC Sanctions”** means any of the OFAC sanctions programs, laws, rules, and regulations of the Office of Foreign Assets Control of the United States Department of the Treasury (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

**“Operating Expenses”** means all expenses and costs, calculated on an accrual basis in accordance with GAAP, incurred in connection with the ownership, use and/or operation of Containers, including, but not limited to: (i) agency costs and expenses; (ii) depot fees, handling, and storage costs and expenses; (iii) maintenance and repairs; (iv) repositioning; (v) inspecting, marking and remarking such Containers, except for factory inspection costs associated with the acquisition of new Containers pursuant to **Section 3.4**; (vi) bankruptcy recovery; (vii) bad debts; (viii) audit fees (shared on a CEU basis by all Containers managed by Manager); (ix) legal fees incurred in connection with enforcing rights under a Lease of such Containers or repossessing such Containers; (x) insurance (including, without limitation, insurance obtained by Manager pursuant to the provisions of **Sections 3.1(h)** and **9.2**); (xi) taxes, levies, duties, charges, assessments, fees, penalties, deductions or withholdings assessed, charged or imposed upon or against such Containers; (xii) expenses, liabilities, claims and costs (including, without limitation, reasonable attorneys’ fees and costs) incurred by Manager or made against Manager by any third party arising directly or indirectly (whether wholly or in part) out of the state, condition, operation, use, storage, possession, repair, maintenance or transportation of such Containers; (xiii) expenses and costs (including attorneys’ fees and costs) of pursuing claims against manufacturers or sellers of such Containers; and (xiv) non-recoverable sales and value-added taxes on such expenses and costs.

**“Owner Bank Account”** means a bank account identified by Owner to Manager as the account to which all Owner Proceeds are to be deposited in the name of the Owner.

**“Owner Proceeds”** means, for the period in question (a) the sum of Gross Revenue attributable to the Managed Containers to the extent collected by Manager during such period; plus (b) the sum of (i) Sales Proceeds, (ii) Casualty Proceeds, and (iii) Miscellaneous Owner Proceeds, in each case to the extent collected by Manager during the period in question; minus (c) Operating Expenses attributable to the Managed Containers paid by Manager during the period in question.

**“Permitted Encumbrances”** means (i) Liens created by or through Owner or its successors and assigns, (ii) rights of Lessees under Leases, (iii) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings, (iv) Liens of materialmen, mechanics, warehousemen, depots, carriers or employees or other similar Liens arising by operation of law and securing obligations either not delinquent or being contested in good faith by appropriate proceedings, and (v) other Liens arising in the ordinary course of business through the exercise of Manager’s duties hereunder (including without limitation pursuant to **Section 3.1(g)**).

**“Person”** means an individual, a partnership, a limited liability company, a corporation, a joint venture, an unincorporated association, a joint stock company, a trust, or other entity or a Governmental Authority.

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**“Replacement Manager”** means any Person appointed to replace Manager as manager of the Managed Containers pursuant to the provisions of **Section 11.2** hereof.

**“Sales Proceeds”** means the gross proceeds (including but not limited to cash sales price, but excluding repair rebill proceeds from Lessees) due to Owner from the sale or other disposition (other than the leasing thereof pursuant to a Finance Lease) of a Managed Container, less commissions, administrative fees, handling charges or other amounts paid or to be paid to unaffiliated third parties in connection with the sale or other disposition of such Managed Container, as determined in the sole discretion of Manager.

**“Sanctioned Country”** means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs>, or as otherwise published from time to time.

**“Sanctioned Person”** means any of the following currently or in the future: (i) an individual, entity, or vessel named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/eotffc/ofac/sdn/index.html>, and any entity in which such individual, entity, or vessel owns, directly or indirectly, a fifty percent or greater interest, or (ii) (A) an agency or instrumentality of, or an entity owned or controlled by the government of a Sanctioned Country, (B) an entity located in or organized under the laws of a Sanctioned Country, or (C) a national or permanent resident of a Sanctioned Country, or a person located in a Sanctioned Country, to the extent such agency, instrumentality, entity, or person is subject to a sanctions program promulgated or administered by OFAC.

**“TAP”** means TAP Ltd., an exempted company with limited liability incorporated and existing under the laws of Bermuda.

**“Terminated Managed Container”** means a Managed Container which: (i) prior to the Agreement Termination Date, (A) shall have been sold by Manager pursuant to this Agreement (provided that, for purposes of this **clause (A)**, being subject to a Finance Lease shall not constitute having been sold), (B) shall have been the subject of a Casualty Loss and for which all Casualty Proceeds and any other amounts payable in connection therewith have been paid, or (C) shall have been purchased by the Lessee thereof at the end of the term of the Finance Lease to which it is subject, or (ii) on the Agreement Termination Date is (A) off-hire and in a depot, or (B) subject to a Finance Lease, or (iii) after the Agreement Termination Date is (a) off-hire and returned to a depot, or (b) declared lost or unrecoverable by a Lessee in accordance with the terms of the applicable Lease or the Manager in accordance with the documented policy of the Manager.

**“TGH”** means Textainer Group Holdings Limited, an exempted company with limited liability incorporated and existing under the laws of Bermuda.

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## 2. APPOINTMENT/AGENCY.

**2.1 Appointment.** Upon the terms and conditions hereinafter provided, Owner hereby appoints TEMPL, and assigns to TEMPL the exclusive right, for the term set forth in **Section 10** hereof, to (A) perform the Administrative Functions and (B) operate, lease and manage the Managed Containers on behalf of Owner (the functions described in this **clause (B)** collectively, the “**Management Functions**”). In furtherance of the foregoing, the Owner hereby grants to Manager exclusive authority to enter into, administer and terminate Leases, to sell, transfer or otherwise dispose of the Managed Containers, to collect monies and make disbursements on behalf of Owner, and to manage its finances. Manager hereby accepts such appointment and agrees to perform the Management Functions and the Administrative Functions upon the terms and conditions herein. Subject to **Sections 10** and **11**, this appointment is irrevocable and non-cancelable. As a result of such assignment, Owner has no legal or equitable interest in the right to manage the Managed Containers during the Term, or in any revenue or income stream payable to Manager in connection with the performance of its services under this Agreement or in connection with any otherwise permitted assignment of its rights under this Agreement, or otherwise to perform any of the Management Functions, Administrative Functions or Acquisition Functions, and the Manager is the sole owner of such rights during the Term.

**2.2 No Disclosure to Lessees.** The Manager shall not be required to disclose to any Lessee the interest of Owner in and to any Managed Container.

**2.3 Title in Owner.** The Owner shall at all times retain full legal and equitable title to, and beneficial ownership of, the Managed Containers, notwithstanding the management thereof by Manager hereunder. The Owner shall at all times be treated as the owner of the Managed Containers for all tax purposes. Manager shall not make reference to or otherwise deal with or treat the Managed Containers in any manner except in conformity with this **Section 2.3**. Any transfer of a Managed Container by Owner (i) shall be subject to Manager’s rights under this Agreement and (ii) may only be made with Manager’s consent (which consent shall not unreasonably be withheld).

## 3. DUTIES/RIGHTS OF MANAGER.

**3.1 Management Functions.** Subject to **Section 20.2**, Manager shall, as agent for and on behalf of Owner, operate, manage, lease and administer the Managed Containers as part of its Fleet and shall perform all managerial and administrative functions and provide or arrange for the provision of all services of any nature which it considers necessary or desirable to fulfill the Management Functions. Without prejudice to the generality of the foregoing, Manager shall:

(a) seek Lessees, arrange for the leasing and enter into Leases as lessor as an independent agent of Owner as such term is used in **Section 4**, and decide the identity of each Lessee, the period of the Lease, the rental or other sums payable thereunder, and the form and content of the Lease;

(b) perform on behalf of Owner the obligations of the lessor under the Leases;

(c) exercise all rights of the lessor under the Leases, including, without limitation, the invoicing and collection of rental and other payments due from Lessees;

(d) take any actions Manager deems necessary to ensure compliance by Lessees with the terms of their Leases;

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(e) log interchanges of the Managed Containers including the return and re-lease of Managed Containers from depots;

(f) inspect, repair, maintain, service and store the Managed Containers to the extent Manager deems necessary for the purposes of this Agreement, to comply with the Leases and in accordance with Manager's maintenance and repair standards for its Fleet (including without limitation bringing and settling warranty claims and defective container settlements with the applicable vendor);

(g) arrange for the sale of Managed Containers, outright or through a lease/purchase arrangement, in the ordinary course of business consistent with past practice, including in accordance with Manager's sell/repair decision-making procedures that are from time to time in effect, and which sell/repair decision-making procedures have been approved by Owner, and will report to the Owner all such sales in a timely manner; *provided, however*, that no such sale shall be to a Sanctioned Person;

(h) obtain insurance in accordance with the provisions of **Section 9** hereof and in respect of any matters which Manager considers necessary or prudent, including, without limitation, public liability insurance, and settle claims with the applicable insurance companies on such terms as Manager shall, in its sole discretion, determine;

(i) follow such credit policies with respect to the leasing of the Managed Containers as it follows from time to time with respect to its Fleet and, subject to such credit policies, Manager may, in its sole discretion, (a) determine and approve the creditworthiness of any Lessee (but Manager makes no representation and warranty to Owner or any other Person as to the solvency or financial stability of any Lessee or the ability of any Lessee to pay rent), (b) determine that any amount due from any Lessee is not collectible, (c) institute and prosecute legal proceedings against a Lessee as permitted by applicable law, (d) terminate or cancel any Lease, (e) recover possession of Managed Containers from any Lessee, (f) settle, compromise or release any proceeding or claim against a Lessee in the name of Manager or, if appropriate, in the name of Owner, or (g) reinstate any Lease; *provided, however*, that in no event shall Manager lease a Managed Container to a Sanctioned Person (provided that (i) no lease of a Managed Container to a Sanctioned Person shall breach this **Section 3.1(i)** if, at the time at which Manager entered into such Lease, such lessee was not a Sanctioned Person, and (ii) no unpermitted sublease of a Managed Container by a Lessee to a Sanctioned Person shall breach this **Section 3.1(i)** unless Manager provided its consent to such sublease);

(j) ensure that each Managed Container carries its Container Identification Number and other markings as may be required for its operation in marine and intermodal shipping;

(k) institute and prosecute claims against the manufacturers of the Managed Containers as Manager may consider advisable for breach of warranty, any defect in condition, design, operation or fitness or any other non-conformity with the terms of manufacture and/or the related sale agreement; and

(l) pay, on behalf of Owner and subject to reimbursement by Owner either as Operating Expenses or under **Section 6.2**, out-of-pocket expenses incurred in connection with the Managed Containers.

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**3.2 Administrative Functions.** (a) Subject to **Section 20.2**, Manager shall perform the following tasks in connection with the Business (collectively, the “*Administrative Functions*”):

(i) (A) cause the income and other tax returns for the Owner to be prepared and timely filed with the appropriate authorities, and (B) provide to Owner all information available to Manager that is reasonably necessary for Owner or its equityholders to prepare and file all tax returns required to be filed by Owner;

(ii) assist Owner in structuring, negotiating, procuring and administering sources of financing, including debt financing on a secured, unsecured or structured basis and including identifying and arranging the engagement of financial institutions, rating agencies, trustees, legal counsel or other parties necessary for the financing of Owner’s assets (provided however that fees and expenses of third parties engaged by Manager hereunder shall be Operating Expenses reimbursable by Owner to Manager);

(iii) maintain Owner’s financial books and records, prepare Owner’s financial statements and prepare and maintain compliance and other reporting required by Owner’s financing arrangements;

(iv) perform administrative and procedural services necessary to reserve and purchase Containers under the Container Purchase Agreement, including coordination and collection of funds among the shareholders of the Owner;

(v) assist the Owner in entering into and monitoring interest rate hedge agreements; and

(vi) arrange for such secretarial, accounting, administrative, financial, technical, research, consulting and legal services (other than legal services which would be an Operating Expense) as the Owner may require from time to time.

Nothing contained in this **Section 3.2(a)** shall be construed as an obligation of the Manager to pay any overhead or other costs, expenses or liabilities of Owner from its own funds.

(b) In consideration of the performance of the Administrative Functions under this **Section 3.2**, Manager shall be entitled to receive an annual fee in the amount of \$100,000. Such fee shall be earned and payable monthly on a *pro rata* basis.

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**3.3 Standards; Discretion.** In performing its Management Functions pursuant to this Agreement, Manager shall operate the Fleet in accordance with its reasonable business practice and without preference to ownership thereof, and no preference will be afforded for or against the Managed Containers. Subject to the provisions of this **Section 3.3**, Manager shall have absolute discretion as to the manner of performance of its duties and the exercise of its rights under this Agreement.

**3.4 Acquisition Functions.** Pursuant to the Container Purchase Agreement, dated December 20, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the “**Container Purchase Agreement**”), between TGH and the Company, TGH (the direct holder of all of the equity interests in the Manager) has agreed to set aside and reserve (and to cause its Affiliates to set aside and reserve) from time to time, for purchase by Owner during each Purchase Period (as defined in the Container Purchase Agreement), Containers (as defined in the Container Purchase Agreement) representing five percent (5%) of the Aggregate Container Order (as defined in the Container Purchase Agreement) during each Purchase Period. For each Managed Container acquired under this **Section 3.4**, Manager shall be entitled to receive a fee as set forth in the applicable Container Purchase Agreement. Manager will not acquire any Managed Containers on behalf of Owner other than pursuant to the Container Purchase Agreement, unless otherwise agreed by Owner, Textainer Limited and TAP.

**3.5 Minimum Fleet Size.** If, on any date of determination, all of the Managed Containers represent fewer than five hundred (500) CEU, then Manager or an Affiliate of Manager shall have the right (but not the obligation) to purchase all of the Managed Containers at their net book value as determined in this **Section 3.5**. The net book value of each Managed Container that is not subject to a Finance Lease shall equal, as of the date of determination, an amount equal to the Original Equipment Cost of such Container, less accumulated depreciation at the rate of six percent (6%) per year to a residual value of twenty eight percent (28%) at the end of a Container’s 12th year. If neither Manager nor Owner knows the Original Equipment Cost of such Container, Manager shall estimate the Original Equipment Cost based on Manager’s knowledge of the Original Equipment Cost of other containers of similar age and type in Manager’s fleet. The net book value of each Managed Container that is subject to a Finance Lease shall be determined in accordance with GAAP.

#### **4. INDEPENDENT AGENT.**

In performing the Management Functions, the Administrative Functions and the Acquisition Functions pursuant to this Agreement, Manager and, as applicable, each of its Affiliates shall be an independent agent of Owner, and neither Manager nor any of its Affiliates shall be deemed for any purpose to be a dependent agent, servant, employee or representative of Owner. Except for the execution of Leases and the sale of Managed Containers as expressly set forth in this Agreement, the Manager shall not have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of Owner or to bind Owner in contract or otherwise. Manager shall have full responsibility, legal charge and sole control of its employees, agents and equipment engaged in the performance of the Management Functions, the Administrative Functions and the Acquisition Functions, including its Affiliates, subcontractors and consultants and their respective employees, agents and equipment and, except as expressly provided in this Agreement, shall be solely responsible for any acts or omissions of any of them in such performance. Manager shall have sole control over and be responsible for the method or means by which the Management Functions, the Administrative Functions and the Acquisition Functions are to be performed.

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## 5. FEES, COMMISSIONS AND OTHER PAYMENTS TO MANAGER.

**5.1 Management Fee.** In consideration of Manager providing the Management Functions and the Administrative Functions, the Owner shall pay to Manager a monthly fee (the “**Management Fee**”) equal to the sum of:

- (a) the product of (i) the NOI for the Master Lease Fleet for such month, *multiplied by* (ii) the applicable percentage set forth on **Schedule 3**; *plus*
- (b) the product of (i) the sum of the NOI for such month of (A) the Long-Term Lease Fleet plus (B) any Managed Containers then subject to purchase-leasebacks, *multiplied by* (ii) the applicable percentage set forth on **Schedule 3**; *plus*
- (c) the product of (i) the Finance Lease Payments (excluding any payments relating to Managed Containers then subject to purchase-leasebacks), *multiplied by* (ii) the applicable percentage set forth on **Schedule 3**; *plus*
- (d) an amount equal to the following percentage of the Sales Proceeds from the sale or other disposition of any Managed Container (except for any sale or disposition (i) to Manager or any Affiliate of Manager, (ii) pursuant to the exercise of a purchase option contained in a Lease, (iii) that is due to a Casualty Loss, or (iv) by the Owner in accordance with **clause (ii)** of the last sentence of **Section 2.3**): (x) from the date hereof through and December 1, 2020, the applicable percentage set forth on **Schedule 3** and (y) after December 1, 2020, the applicable percentage set forth on **Schedule 3**; *plus*
- (e) fees due to Manager under **Section 3.4** in respect of Managed Containers acquired during such month; *plus*
- (f) fees due to Manager under **Section 3.2(b)** in respect of Administrative Functions performed during such month.

The Manager shall be entitled to withhold such Management Fee and all other amounts due to Manager under this Agreement from amounts required to be deposited into the Owner Bank Account.

## 6. PAYMENTS.

**6.1 Distribution, Reconciliation and Adjustment of Owner Proceeds.** All revenues from all Containers managed by Manager, other than Indemnification Proceeds, will be paid by obligors (or in the case of payment by checks or drafts, will be promptly deposited by Manager) into one or more bank accounts maintained by Manager in Manager’s name (provided that Owner shall be treated, for U.S. tax and other purposes, as the owner of all such amounts that are the property of Owner), in accordance with the following procedures:



(a) At the end of each week, based on its records of cash receipts and disbursements, Manager will calculate the Owner Proceeds for such week ( "**Pre-Adjustment Owner Proceeds**" ), all of which Pre-Adjustment Owner Proceeds shall be subject to adjustment (based on actual cash receipts and disbursements during such month) when Manager closes its books for the month in which such week occurs.

(b) Subject to the last sentence of **Section 5.1**, Manager shall, no later than seven (7) days after the last Business Day of each week, deposit into the Owner Bank Account an amount equal to the Pre-Adjustment Owner Proceeds for such week , net of expenses (other than Operating Expenses), if any, to be reimbursed to Manager pursuant to **Section 6.2**.

(c) In the last week of each calendar month the Manager will deduct from the Pre-Adjustment Owner Proceeds to be deposited into the Owner Bank Account an amount equal to the actual Management Fee earned in the prior month as an estimate of the Management Fee ( "**Estimated Management Fee**" ) for such calendar month.

(d) When the Manager closes its books for a calendar month (such closure to be completed within a reasonable time not to exceed thirty (30) days (the "**Monthly Adjustment Period**")), it will make a final determination of the Owner Proceeds and the actual Management Fee. If (a) the Pre-Adjustment Owner Proceeds less the Estimated Management Fee for such month is less than (b) the Owner Proceeds less the actual Management Fee for such month, Manager will pay the difference to Owner within a reasonable period and in any event within the Monthly Adjustment Period. If (a) the Pre-Adjustment Owner Proceeds less the Estimated Management Fee for such month is more than (b) the Owner Proceeds less the actual Management Fee for such month, then Manager will deduct the difference from future payments to be made to Owner.

**6.2 Reimbursements of Expenses to Manager** . Owner shall be responsible for the payment of, and shall reimburse Manager for all expenses, liabilities, claims and costs (including, without limitation, reasonable attorneys fees) incurred by or asserted against Manager as a result of Owner's failure to comply with or perform its obligations under this Agreement. Any amounts and expenses to be paid or reimbursed to Manager pursuant to this **Section 6.2** shall be deducted by Manager from the weekly distribution of Pre-Adjustment Owner Proceeds.

**6.3 Indemnification Proceeds** . When Manager receives Indemnification Proceeds, Manager shall retain for its own account, and shall not be required to deposit into the Owner Bank Account, Indemnification Proceeds to the extent Manager has not been reimbursed for the costs incurred by Manager to which such Indemnification Proceeds apply, and shall, within seven (7) days after receipt, deposit the balance of such Indemnification Proceeds into the Owner Bank Account.

**6.4 Absolute Obligation** . Except as permitted in this **Section 6**, Manager's obligation under this **Section 6** to deposit any amount to the Owner Bank Account shall be absolute and unconditional and all payments thereof shall be made free and clear of and without any deduction for or on account of any set-off or counterclaim or any circumstance, recoupment, defense or other right which Manager may have against Owner or any other Person for any reason whatsoever (whether in connection with the transactions contemplated hereby or any

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other transactions), including without limitation, (i) any defect in title, condition, design or fitness for use, or any damage to or loss or destruction, of any Managed Container, (ii) any insolvency, bankruptcy, moratorium, reorganization or similar proceeding by or against Manager or any other Person, or (iii) any other circumstance, happening or event whatsoever, whether or not unforeseen or similar to any of the foregoing. All amounts held by the Manager in any bank account maintained by Manager in Manager's name and which are the property of the Owner shall be held in trust for the benefit of the Owner, and the Owner and its owners shall be treated as owners of such amounts for U.S. tax and other purposes.

## **7. REPORTS/BOOKS AND RECORDS/INSPECTION.**

**7.1 Monthly Reports.** Manager shall, no later than thirty (30) days after the end of each calendar month during the term of this Agreement, deliver to Owner and TAP financial reports with respect to performance of the Managed Containers similar in form and content to reports provided by Manager to other owners of Containers managed by Manager. Manager reserves the right to limit the provision of data in Owner and TAP financial reports (monthly, annual or otherwise) or other data reports to exclude competitively sensitive information regarding container level or customer level data. If Manager agrees to disclose such data, Manager may require Owner personnel and TAP personnel who request access to such data to execute confidentiality and non-disclosure agreements directly with Manager. Owner agrees that, without the Manager's prior written consent, each of Owner and TAP shall not share any reports or data provided to Owner or TAP by Manager under this **Section 7** with any Person other than Owner's or TAP's officers.

**7.2 Managed Container Financial Reports.** Manager shall, no later than the 30th of April of each year during the term of this Agreement, deliver to Owner and TAP a financial report with respect to the Managed Containers for the year ended on the preceding 31st of December, and, if requested by Owner, arrange for its auditors, at the expense of Owner, to certify to Owner that such report is in accordance with: (i) the books and records of Manager relating to the Managed Containers, and (ii) GAAP.

**7.3 Owner Financial Statements.** Manager shall deliver (or cause to be delivered) to Owner, TAP and the Administrative Agent, (i) within sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year, unaudited financial statements of Owner (which shall include no footnotes), and (ii) within one hundred twenty (120) days after the end of each fiscal year of Owner, a copy of the annual audited financial statement of Owner prepared on a consistent basis, in conformity with GAAP and certified by an independent certified public account of recognized national standing.

**7.4 Manager's Financial Statements.** Manager shall, as soon as practicable and in any event within one hundred twenty (120) days after the end of each fiscal year of Manager during the term of this Agreement, deliver to Owner and TAP a copy of the annual audited financial statements of Manager prepared on a basis in conformity with GAAP and certified by an independent certified public accountant of recognized national standing.

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**7.5 Asset Base Report.** If and for so long as a Loan Agreement is in effect, within ten (10) Business Days after the end of each calendar month, Manager will deliver to Owner, TAP and the Administrative Agent a report in form reasonably satisfactory to Owner, Manager and the Administrative Agent, setting forth the asset base under the Loan Agreement, calculated using the data available to Manager as of the end of such month.

**7.6 Insurance Confirmation.** Manager shall provide annual confirmation of the renewal of insurance required by **Section 9.2** hereof before November 30 each year and shall forward copies of all certificates evidencing renewal to the Owner, TAP and the Administrative Agent promptly after receipt.

**7.7 Other Reports.** Manager shall provide, in the form which Manager uses for its own operations, any other reports and information available with respect to the Managed Containers reasonably requested by the Owner or TAP.

**7.8 Maintenance and Location of Books and Records .** Manager shall cause to be maintained at 650 California Street, 16<sup>th</sup> Floor, San Francisco, California, U.S.A., such books and records (including computer records) with respect to the Managed Containers as it maintains for the Fleet and the leasing thereof, including a computer database including the Managed Containers, any Leases relating thereto and the Lessees (if on-hire) or location (if off-hire). Manager shall notify the Owner, TAP and the Administrative Agent of any change in the location of Manager's books and records.

**7.9 OFAC Audit.** Manager will allow each of the Owner, the Administrative Agent and the lenders under the Loan Agreement to conduct, at the expense of such Person, on not more than one occasion (for all such lenders, collectively with the Administrative Agent and the Owner) during any twelve month period, an audit of the screening and monitoring process employed by Manager to ensure compliance with OFAC Sanctions.

**7.10 Inspection of Books and Records .**

(a) Upon reasonable request, Manager shall make available to Owner, TAP and the Administrative Agent, for inspection (but not copying), its books, records and reports relating to the Managed Containers and copies of all Leases or other documents relating thereto, all in the format which Manager uses for the Fleet. Such inspections shall be conducted during normal business hours and shall not unreasonably disrupt Manager's business. The Owner, TAP and the Administrative Agent shall use reasonable efforts to coordinate, to the extent possible, the timing of each of their inspections and shall collectively have the right to one (1) such inspection per calendar year, to be conducted at the sole expense of the Owner.

(b) The Owner, TAP and the Administrative Agent shall have the right, upon reasonable request, to inspect the Managed Containers at any time, upon reasonable notice and to the extent Manager has access thereto, subject to the Leases, and provided such inspection does not interfere with utilization of the Managed Containers in the ordinary course of business.

**7.11 Notices.** The Manager will deliver to the Owner, TAP and the Administrative Agent:

(a) Immediately upon becoming aware of the existence of any condition or event which constitutes a Manager Default or which, with notice and lapse of time, would become a Manager Default, a written notice describing its nature and period of existence and what action the Manager is taking or proposes to take with respect thereto;

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(b) Promptly upon the Manager's becoming aware of:

(i) any threatened or pending investigation of it by any Governmental Authority or agency, or

(ii) any threatened or pending court or administrative proceeding which individually or in the aggregate involves the possibility of materially and adversely affecting a material portion of the Managed Containers or the business or financial conditions of the Manager,

a written notice specifying the nature of such investigation or proceeding and what action the Manager is taking or proposes to take with respect thereto and evaluating its merits; and

(c) Promptly after its becoming available, written notice of any material (as determined by Manager in its reasonable discretion) change in Manager's credit and collection policy.

**7.12 Confidentiality.** By accepting its rights under this Agreement, each of the Owner, the Administrative Agent and each lender under the Loan Agreement is deemed to have agreed that it and its Affiliates and its respective shareholders, directors, agents, representatives, accountants and attorneys shall keep confidential any matter of which any of them becomes aware through this **Section 7** (unless (i) readily available from public sources; (ii) was rightfully known to the recipient or was rightfully in the recipient's possession prior to the date of its disclosure and which was not disclosed to the recipient by the disclosing party under confidentiality obligations still binding on the disclosing party; (iii) becomes available to the recipient from a third party unless to the recipient's knowledge such third party acquired such information from the disclosing party in breach of an obligation of confidentiality to the disclosing party; (iv) has been approved for release by written authorization of the disclosing party; or (v) has been independently developed or acquired by the recipient without violating restrictions on confidentiality known to the recipient), except (A) as may be otherwise required by regulation, law or court order or required by appropriate governmental authorities or (B) to the extent that the Administrative Agent or any lender under the Loan Agreement is required to make such information available to such Person's regulators or credit or liquidity providers who are bound by obligations of confidentiality no less strict than those applicable to such Administrative Agent or lender; *provided* that any Person receiving information through this **Section 7** may disclose (x) any information with respect to the U.S. federal and state income tax treatment applicable to such Person of the transactions contemplated hereby ("**tax treatment**") or any facts that may be relevant to understanding such tax treatment, which facts shall not include for this purpose the names of the parties or any other Person named herein, or information that would permit identification of the parties or such other Persons, or any pricing terms or other nonpublic business or financial information that is unrelated to such tax treatment or facts and (y) all materials of any kind (including opinions or other tax analyses) that are provided to any of the Persons referred to above relating to such tax treatment and facts.

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**7.13 Compliance with Law and Lessor Obligations**. In the performance of its obligations under this Agreement, Manager will comply with applicable law and its obligations as lessor under the Leases.

## **8. WARRANTY.**

**8.1 NO OWNER WARRANTIES.** THE MANAGED CONTAINERS ARE BEING DELIVERED BY OWNER TO MANAGER "AS IS". OWNER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE MANAGED CONTAINERS, THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.

**8.2 LIMITATIONS ON MANAGER WARRANTIES.** MANAGER WARRANTS THAT IT WILL CARRY OUT ITS SERVICES WITH REASONABLE CARE AND SKILL. THIS EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED. UNDER NO CIRCUMSTANCES SHALL MANAGER HAVE ANY LIABILITY TO OWNER FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND.

## **9. INSURANCE.**

**9.1 Lessee/Depot Insurance.** Manager shall require that all Lessees and Container depots insure (via third-party insurance, or self-insurance when acceptable to Manager) the Managed Containers against all normally insurable risks (including, but not limited to, liability, loss, damage and recovery cost) while the Managed Containers are under the control of such Person.

**9.2 Contingency Insurance.** Manager, to the extent commercially reasonable and obtained and maintained by Manager for the Fleet as a whole, shall obtain from financially sound and reputable insurers and maintain in force contingency insurance (the "**Contingency Insurance**") with respect to the Managed Containers upon such terms, in such amounts, against such risks and with such deductibles as is maintained by Manager for the Fleet as a whole. Such insurance may provide coverage when: (i) recoveries are not effected under any policies in force pursuant to **Section 9.1** hereof, and/or (ii) any Managed Container is not returned to Manager by a defaulting Lessee (including costs of recovering such Managed Containers), or (iii) the Lessee or Container depot fails to obtain insurance as provided under **Section 9.1** hereof. Such insurance may be effected by a policy which covers the entire Fleet, and shall include an additional insured and loss payee endorsement in favor of the Administrative Agent with respect to the Managed Containers. Manager will notify the Owner and the Administrative Agent if it does not carry such insurance within thirty (30) days after ceasing to carry the same.

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**9.3 Receipt of Insurance Proceeds.** Subject to **Section 6.3** of this Agreement, Manager shall receive and remit to Owner all monies payable under such policy or policies of insurance as described in **Sections 9.1** and **9.2** hereof, whether effected by Manager, depots or Lessees.

**9.4 No Liability of Manager.** Manager shall have no liability for any loss, damage, recovery cost or other cost or expense whatsoever with respect to such lost or destroyed Managed Containers, whether or not covered by insurance.

## **10. TERM; RESIGNATION BY MANAGER.**

**10.1 Term.** The term of this Agreement shall commence on the date first above written and continue in force with respect to a Managed Container until the date on which such Managed Container becomes a Terminated Managed Container. Notwithstanding the foregoing, Owner may terminate Manager's appointment to fulfill the Administrative Functions, at any time after Manager or an Affiliate of Manager no longer maintains an equity ownership interest in Owner, upon at least thirty days' prior written notice. Upon the effectiveness of any such termination of the Administrative Functions, Manager shall no longer be entitled to the fees described in **Section 5.1(f)** with respect to periods after such effectiveness, and Manager shall no longer be required to perform any of the duties described in **Section 7.3** or **7.5** or any of the Administrative Functions.

**10.2 Manager Resignation.** No resignation of the Manager from its obligations hereunder shall, to the extent consistent with applicable law, become effective until a Replacement Manager has assumed the responsibilities of the resigning Manager in accordance with the terms of this Agreement.

## **11. MANAGER DEFAULT.**

**11.1 Manager Default Defined.** Any of the following events or conditions is a "**Manager Default**":

(a) Manager shall fail to (i) make any deposit to the Owner Bank Account within five (5) Business Days after such deposit becomes due hereunder, or (ii) deliver a report required under **Section 7.5** within five (5) Business Days after the due date thereof;

(b) Manager shall commit a material breach of this Agreement not addressed in **Section 11.1(a)**, and such breach shall continue unremedied for a period of thirty (30) days after the earlier to occur of (i) an officer of Manager has actual knowledge thereof or (ii) Manager receives notice thereof;

(c) Manager shall cease to be engaged in the Container management business;

(d) Manager shall be adjudicated or found bankrupt or insolvent by any competent court in an involuntary Insolvency Proceeding or an order shall be made by a competent court or a resolution shall be passed for the winding-up or dissolution of Manager or a petition shall be presented to, or an order shall be made by, a competent court for the appointment of an administrator of Manager, and, in the case of such involuntary Insolvency Proceeding, such adjudication, finding, order or petition shall not have been stayed, vacated or dismissed within sixty (60) days after the making of such adjudication, finding, or order, or the presentation of such petition;

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(e) Manager shall suspend payment of its debts generally or shall be unable to, or shall admit inability to, pay its debts as they fall due, or shall commence an Insolvency Proceeding or shall take any company action in furtherance of any such action; or

(f) Except as permitted by **Sections 13 and 22.5**, Manager assigns its interest under this Agreement;

(g) A Change of Control shall occur with respect to the Manager, unless, after giving effect to such Change of Control, TEML is the surviving entity of such sale, conveyance, contribution, transfer or lease of all, or substantially all, of its assets to any Person; or

**11.2 Termination.** If a Manager Default shall have occurred and be continuing, the Owner or the Administrative Agent shall have the right, in addition to other rights or remedies that the Owner or its assignee may have under any applicable law or in equity to: (i) terminate this Agreement with respect to Terminated Managed Containers and (ii) appoint a Replacement Manager to manage the Terminated Managed Containers. Notwithstanding anything contained herein to the contrary, (A) this Agreement shall continue in full force and effect with respect to a Managed Container until such time as such Managed Container becomes a Terminated Managed Container, and Manager shall continue to manage such Managed Container pursuant to the terms and conditions of this Agreement, until the date such Managed Container becomes a Terminated Managed Container, and (B) Owner or the Administrative Agent shall have no right to recover possession or control of any Managed Container prior to the date such Managed Container becomes a Terminated Managed Container. Promptly after a Managed Container becomes a Terminated Managed Container, unless such Terminated Managed Container is lost or unrecoverable, Manager shall: (1) deliver to the Owner and the Administrative Agent a report of the location of such Terminated Managed Container, and (2) unless such Terminated Managed Container is subject to a Finance Lease, procure the return of such Terminated Managed Container to Owner in the depot where such Terminated Managed Container is located. In the case of a Terminated Managed Container which is subject to a Finance Lease under which all subject Containers are Managed Containers, Manager shall promptly assign Manager's interest in such Finance Lease to Owner or such other party as Owner shall designate in writing to Manager (which assignee the Owner hereby agrees shall be the Administrative Agent or its designee). Each of Owner and the Administrative Agent shall also have the right in its sole discretion to waive any Manager Default and the remedies available as a consequence thereof.

**11.3 Replacement Manager.** Upon the appointment of a Replacement Manager, Manager shall cooperate with Owner and the Administrative Agent in transferring to such Replacement Manager the management of the Terminated Managed Containers, including, but not limited to making available all books and records (including data contained in Manager's computer systems, but not software) pertaining to the Terminated Managed Containers, providing access to, and cooperating in the transfer of, information pertaining to the Terminated Managed Containers from Manager's computer system to Owner's or its designee's system, and taking any other action as may be reasonably requested by Owner or its assignee to ensure the orderly assumption of management of the Terminated Managed Containers by such Replacement Manager. Such data shall include the locations and serial numbers of all Terminated Managed

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Containers, which shall be provided in an Microsoft Excel file or similar other computer readable format, and originals (other than Leases which are not Finance Leases) of all documents pertaining solely to the Terminated Managed Containers. Subject to the immediately preceding sentence, in no event shall Manager be required to, and the Administrative Agent shall not, deliver or disclose to any Replacement Manager any information, data, document or agreement which is proprietary to Manager, including but not limited to the terms and conditions of Leases other than Finance Leases.

**11.4 Lessee Rights.** In no event shall Manager be required to act in any manner inconsistent with the rights of Lessees under any Leases related to the Managed Containers.

**11.5 Rights Cumulative; Owner Costs.** Termination of this Agreement shall be without prejudice to the rights and obligations of the parties which have accrued prior to such termination; *provided, however*, that any amount then due to Manager shall be reduced by the reasonable and necessary out-of-pocket costs incurred by Owner and the Administrative Agent (excluding management fees and any other costs incurred within the ordinary scope of management and operation of the Terminated Managed Containers) in connection with the removal and replacement of Manager as manager of the Terminated Managed Containers.

**11.6 Waiver of Manager Default.** Upon any waiver of any Manager Default or the remedies or consequences thereof, such default shall cease to exist, and any default arising therefrom shall be deemed to have been remedied for every purpose of this Agreement. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon except to the extent expressly so waived. No delay by the Owner or the Administrative Agent or any of its assigns, shall constitute any such waiver or prejudice the Owner or the Administrative Agent in exercising any right, power or privilege arising out of such Manager Default.

**11.7 Manager's Cooperation.** The Manager agrees to cooperate with any Replacement Manager in effecting the termination and transfer of the responsibilities and rights of the Manager pursuant to **Section 11**, and the transfer thereof to the successor Manager, including, without limitation, the preparation, execution and delivery of any and all documents and other instruments, the execution and delivery of assignments of financing statements, and the transfer to the successor Manager for administration by it of all cash amounts which shall at the time be held by the Manager or thereafter received with respect to the Managed Containers. Subject to the provisions of **Section 11.3** hereof, the Manager hereby agrees to transfer to any Replacement Manager copies of its electronic records and all other records, correspondence and documents relating to the Managed Containers in the manner and at such times as the Manager Transfer Facilitator and any Replacement Manager shall reasonably request and do any and all other acts or things necessary or appropriate to effect the purposes of termination; provided, however, that the Manager shall not be required to transfer or otherwise make available any Leases (or terms thereof) relating to the Terminated Managed Containers.

## **12. NON-EXCLUSIVITY.**

During the term of this Agreement, Manager may provide services (similar or dissimilar) directly or indirectly to any other Person or on behalf of any other Person.



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### 13. SUB-CONTRACTORS.

Owner hereby consents to and agrees that, in performing its duties hereunder, Manager may further contract with its Affiliates to provide any or all services to be provided by Manager, provided that Manager shall remain primarily liable for all services which its Affiliates have contracted to perform. Owner further consents to and agrees that Manager shall be entitled to appoint subcontractors who are not its Affiliates to carry out any portion of its duties hereunder; *provided, however*, that (i) Manager shall remain primarily liable for all such services and (ii) Manager shall not subcontract all or a substantial portion of its duties hereunder to any Person that is not an Affiliate of Manager without the prior written consent of Owner and the Administrative Agent.

### 14. LIENS.

**14.1 Liens.** Manager agrees not to create, incur, assume or grant, or suffer to exist, directly or indirectly, any Lien of any kind on or concerning the Managed Containers other than Permitted Encumbrances. Manager shall promptly take or cause to be taken such action as may be necessary to discharge any such Lien.

**14.2 Leases.** Manager or an Affiliate thereof is holding the Leases (to the extent, but only to the extent, that such Lease relate to the Managed Containers) on behalf of, and for the benefit of Owner and the Administrative Agent. None of such Leases shall have any marks or notations indicating that it has been pledged, assigned or otherwise conveyed to any named Person.

### 15. NO PARTNERSHIP.

Nothing in the Agreement shall be deemed to constitute a partnership or joint venture for U.S. tax or other purposes between the parties hereto. Under no circumstances may this Agreement be interpreted to provide for a sharing of benefits between Owner and Manager or among Owner and the owners of other Containers managed by Manager.

### 16. FORCE MAJEURE.

Neither party shall be deemed to be in breach of its obligations hereunder nor shall it be liable to the other for any loss or damage which may be suffered as a direct or indirect result of the performance of any of its obligations being prevented, hindered or delayed by reason of any Force Majeure circumstances. “*Force Majeure circumstances*” shall mean any act of God, war, riot, terrorist act, civil commotion, strike, lock-out, trade dispute or labor disturbance, accident, breakdown of plant or machinery, explosion, fire, flood, difficulty in obtaining workmen, materials or transport, government action, epidemic, difficulty or impossibility in obtaining access to any of the Managed Containers, or other circumstances whatsoever outside the control of such party affecting the performance of such party’s duties hereunder.

### 17. CURRENCY/BUSINESS DAY.

**17.1 Currency.** All sums payable under this Agreement shall be paid in the lawful currency of the United States of America.

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**17.2 Business Day.** Notwithstanding anything to the contrary contained herein, if any date on which a payment becomes due hereunder is not a Business Day, then such payment may be made on the next succeeding Business Day with the same force and effect as if made on such scheduled date.

## **18. INDEMNIFICATION.**

**18.1 By Owner.** Owner shall defend, indemnify and hold Manager and its Affiliates and their respective shareholders, officers, directors, agents and employees (collectively, “**Manager Indemnified Parties**”) harmless from and against any and all third-party claims, actions, damages, expenses, losses or liabilities, including, without limitation, reasonable attorneys’ fees and other out-of-pocket expenses, incurred in defending against the same (“**Claims or Losses**”) asserted against, or incurred by, any Manager Indemnified Party and arising with respect to the Managed Containers or the services rendered by the Manager to the Owner (including Acquisition Functions, Administrative Functions and Management Functions) pursuant to the terms of this Agreement; *provided, however*, that the foregoing indemnity shall not apply to any Claims or Losses to the extent caused by, or arising from, (i) the gross negligence or the willful misconduct of the Manager in the case of the Administrative Functions, (ii) the negligence, gross negligence or willful misconduct of Manager in the case of the Management Functions or Acquisition Functions, (iii) a breach by the Manager of its contractual obligations hereunder (other than with respect to the Administrative Functions) or (iv) any material misrepresentation made by the Manager herein.

**18.2 By Manager.** Manager agrees to, and hereby does, indemnify and hold harmless the Owner, its assignees and their respective officers, directors, employees and agents (each of the foregoing, an “**Indemnified Party**”) against any and all Claims or Losses which may be incurred or suffered by any Indemnified Party (except to the extent caused by the negligence or willful misconduct of any Indemnified Party) as a result of claims, actions, suits or judgments asserted or imposed against an Indemnified Party and arising out of (i) breach by the Manager of its covenants and obligations hereunder related to the Management Functions or the Acquisition Function or (ii) a material breach by the Manager of its representations and warranties set forth in this Agreement; *provided, however*, that the indemnity obligation of TEML pursuant to this **Section 18.2** shall not extend to any consequential, indirect or special damages incurred by any Indemnified Party.

**18.3 Survival of Obligations.** The obligations of the Owner and the Manager under **Sections 18.1** and **18.2** hereof, respectively, shall survive the termination of this Agreement.

## **19. REPRESENTATIONS AND WARRANTIES.**

**19.1 By Manager.** Manager represents and warrants to Owner that:

- (a) The Manager is a company duly continued into Bermuda and validly existing and in compliance under the laws of Bermuda;

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(b) The Manager has the requisite power and authority to enter into and perform its obligations under this Agreement, and all requisite corporate authorizations have been given for it to enter into this Agreement and to perform all the matters envisaged hereby. Upon due execution and delivery hereof this Agreement will constitute the valid, legally binding and enforceable obligation of Manager, subject to bankruptcy, insolvency, moratorium, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles;

(c) The Manager has not breached its memorandum of continuance or bye-laws or any other agreement to which it is a party or by which it is bound in the course of conduct of its business and corporate affairs or any applicable laws and regulations of Bermuda in such manner as would in any such case have a materially adverse effect on its ability to perform its obligations under this Agreement;

(d) The consummation of the transactions contemplated by and the fulfillment of the terms of this Agreement will not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time or both) a default under, the memorandum of continuance or bye-laws of Manager, or any material term of any indenture, agreement, mortgage, deed of trust, or other instrument to which Manager is a party or by which it is bound, or result in the creation or imposition of any Lien upon any of its properties pursuant to the terms of any such indenture, agreement, mortgage, deed of trust, or other instrument, or violate any law or any order, rule, or regulation applicable to Manager of any court or of any federal or state regulatory body, administrative agency, or other Governmental Authority having jurisdiction over Manager or any of its properties;

(e) There are (i) no proceedings or investigations pending, or, to the knowledge of Manager, threatened, before any court, regulatory body, administrative agency, or other tribunal or Governmental Authority (A) asserting the invalidity of this Agreement, (B) seeking to prevent the consummation of any of the transactions contemplated by this Agreement, or (C) seeking any determination or ruling that might materially and adversely affect the performance by Manager of its obligations under, or the validity or enforceability of, this Agreement; and (ii) no injunctions, writs, restraining orders or other orders in effect against Manager that would adversely affect its ability to perform under this Agreement; and

(f) Manager shall have control over and be responsible for the method or means by which the Management Functions, Administrative Functions and Acquisition Functions are performed.

**19.2 By Owner.** Owner represents and warrants to Manager that:

(a) Owner is a company duly organized, validly existing and in compliance under the laws of Bermuda;

(b) Owner has the requisite power and authority to enter into and perform its obligations under this Agreement, and all requisite corporate authorizations have been given for it to enter into this Agreement and to perform all the matters envisaged hereby. Upon due execution and delivery hereof this Agreement will constitute the valid, legally binding and enforceable obligation of Owner, subject to bankruptcy, insolvency, moratorium, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles;

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(c) Owner has not breached its memorandum of association or bye-laws or any other agreement to which it is a party or by which it is bound in the course of conduct of its business and corporate affairs or any applicable laws and regulations of Bermuda in such manner as would in any such case have a materially adverse effect on its ability to perform its obligations under this Agreement;

(d) The consummation of the transactions contemplated by and the fulfillment of the terms of this Agreement will not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time or both) a default under, the memorandum of association or bye-laws of Owner, or any material term of any indenture, agreement, mortgage, deed of trust, or other instrument to which Owner is a party or by which it is bound, or result in the creation or imposition of any Lien upon any of its properties pursuant to the terms of any such indenture, agreement, mortgage, deed of trust, or other instrument, or violate any law or any order, rule, or regulation applicable to Owner of any court or of any federal or state regulatory body, administrative agency, or other Governmental Authority having jurisdiction over Owner or any of its properties;

(e) There are (i) no proceedings or investigations pending, or, to the knowledge of Owner, threatened, before any court, regulatory body, administrative agency, or other tribunal or Governmental Authority (A) asserting the invalidity of this Agreement, (B) seeking to prevent the consummation of any of the transactions contemplated by this Agreement, or (C) seeking any determination or ruling that might materially and adversely affect the performance by Owner of its obligations under, or the validity or enforceability of, this Agreement, and (ii) no injunctions, writs, restraining orders or other orders in effect against Owner that would adversely affect its ability to perform under this Agreement; and

(f) Owner shall not have control over and shall not be responsible for the method or means by which the Management Functions and Acquisition Functions are performed.

## **20. COVENANTS**

### **20.1 Covenants of Manager.** Manager agrees that:

#### **(a) Tax.**

(i) Manager will not hold itself out as a dependent agent or employee of Owner;

(ii) Except for the execution of Leases and the sale of Managed Containers as expressly set forth in this Agreement, Manager will not bind Owner through its activities pursuant to this Agreement contractually or otherwise; and

(iii) Manager shall not take any action that would cause it to be characterized as a dependent agent or employee for U.S. tax purposes.

(b) **OFAC.** Manager shall not derive more than ten percent (10%) of its assets or operating income from investments in or transactions with any Sanctioned Person, unless otherwise authorized by OFAC Sanctions or by a license issued by OFAC.

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**20.2 Covenants of Owner** . Owner agrees that:

(a) **Tax**.

(i) Owner shall not hold Manager out as a dependent agent or employee of Owner;

(ii) Except for the execution of Leases and the sale of Managed Containers as expressly set forth in this Agreement, Owner shall not give Manager the right to bind Owner through its activities pursuant to this Agreement contractually or otherwise;

(iii) Owner shall not take or cause Manager to take any action that would cause Manager to be characterized as a dependent agent or employee for U.S. tax purposes; and

(iv) Manager shall perform all of its Management and Administrative Functions outside of the United States.

(b) **No Liens on Third-Party Containers** . Notwithstanding anything herein to the contrary, Owner shall not create any Lien, or suffer to exist any Lien created by or through the Owner (other than by Manager), on any Lease to the extent that such Lease relates to any Containers which are not Managed Containers.

**21. LOAN AGREEMENT.**

**21.1 Loan Agreement** . In order to secure the indebtedness evidenced by the Loan Agreement, the Owner may agree to create a Lien on the Managed Containers in favor of the Administrative Agent. Manager acknowledges the potential for, and agrees to consent in writing to, such Lien (but solely to the extent that such Lien on any Lease is restricted to the Managed Containers subject to such Lease and the related rent, and no Container other than any such Managed Container is encumbered by such Lien). If such Lien has been created and Manager has been so notified, Owner hereby directs, and Manager acknowledges, that, until Manager receives written notice from Administrative Agent that all obligations due under the Loan Agreement are satisfied, all rights of Owner under this Agreement with respect to the Managed Containers, including the right of Owner to execute any election or option or to give any notice, consent, waiver or approval, to receive copies of all notices and other instruments or communications, to accept surrender or redelivery of any Managed Container or any part thereof, as well as all the rights, powers and remedies on the part of the Owner under this Agreement to take such action upon the occurrence and during the continuance of a Manager Default, including the commencement, conduct and consummation of legal, administrative or other proceedings as shall be permitted by this Agreement or by law, and to do any and all other things whatsoever to which Owner is or may be entitled under or in respect of this Agreement and any right to restitution from Manager or any other Person in respect of any determination of invalidity of this Agreement, shall be exercised only by Administrative Agent, as collateral assignee of the Owner's rights with respect to the Managed Containers.

**21.2 Nondisturbance Agreement.** Owner hereby agrees to cause the Administrative Agent (on behalf of the lenders under the Loan Agreement) to enter into a Nondisturbance Agreement (defined below) with Manager. “**Nondisturbance Agreement**” means an agreement, in form and substance reasonably satisfactory to Manager, providing, among other things, that: (i) the payment in full of all amounts due and payable to Manager under this Agreement shall be prior to the payment of any amount due in respect of the Loan Agreement and related documents; (ii) in the event of any exercise of remedies under the Loan Agreement or related documents (a “**Foreclosure**”), Administrative Agent and the lenders under the Loan Agreement shall assume all obligations of the Owner under this Agreement and cause any purchaser in a Foreclosure to assume all obligations of Owner hereunder; and (iii) in the event of any bankruptcy or insolvency proceeding by or against Owner, Administrative Agent (on behalf of the lenders under the Loan Agreement) shall: (A) authorize Manager to request adequate protection in the form of an assumption by the debtor or estate representative of this Agreement and use reasonable efforts to cause the debtor in bankruptcy to assume this Agreement and (B) not initiate, prosecute or participate in any claim or action in such insolvency proceeding directly or indirectly challenging the enforceability, validity or priority of this Agreement, or propose or vote in support of any plan unless such plan provides that the payment of amounts due under this Agreement occurs before payments or distributions (whether in cash, property or securities) are made in respect of the Loan Agreement and related documents.

## **22. GENERAL.**

**22.1 Notices.** All notices, demands or requests given pursuant to this Agreement shall be in writing, sent by internationally-recognized, overnight courier service or by facsimile or hand delivery to the following addresses:

To Manager:

Textainer Equipment Management Limited  
c/o Century House  
16 Par-la-Ville Road  
Hamilton HM HX, Bermuda  
Telephone: +1-441-292-2487  
Facsimile: +1-441-295-4164  
Attention: Executive Vice President—Asset Management

with a copy to:

Textainer Equipment Management (U.S.) Limited  
650 California St., 16th Floor  
San Francisco, CA 94108  
Attention: Chief Financial Officer  
Telephone: 415-434-0551  
Facsimile: 415-434-0599

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To Owner:

TAP Funding Ltd.  
c/o Textainer Equipment Management Limited  
c/o Century House  
16 Par-la-Ville Road  
Hamilton HM HX, Bermuda  
Telephone: +1-441-292-2487  
Facsimile: +1-441-295-4164  
Attention: Executive Vice President—Asset Management

with a copy to:

Textainer Equipment Management (U.S.) Limited  
650 California St., 16th Floor  
San Francisco, CA 94108  
Attention: Chief Financial Officer  
Telephone: 415-434-0551  
Facsimile: 415-434-0599

Notice shall be effective and deemed received (a) two (2) days after being delivered to the courier service, if sent by courier, (b) upon receipt of confirmation of transmission, if sent by telecopy, or (c) when delivered, if delivered by hand.

**22.2 Attorneys' Fees.** If any proceeding is brought for enforcement of this Agreement or because of an alleged dispute, breach, default, in connection with any provision of this Agreement, the prevailing party shall be entitled to recover, in addition to other relief to which it may be entitled, reasonable attorney fees and other costs incurred in connection therewith.

**22.3 Further Assurances.** Owner and Manager shall each perform such further acts and execute such further documents as may be necessary to implement the intent of, and consummate the transactions contemplated by, this Agreement.

**22.4 Severability.** If any term or provision of this Agreement or the performance thereof shall to any extent be or become invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement and this Agreement shall continue to be valid and enforceable to the fullest extent permitted by law.

**22.5 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, Owner and Manager, and their respective successors in interest or permitted assigns; *provided, however*, that this Agreement and the rights and duties of Manager hereunder may be assigned to an Affiliate of Manager. The Manager hereby acknowledges and agrees that Owner shall assign as collateral all of its rights, title and interest under this Agreement to the Administrative Agent, and Manager hereby consents to such assignment. Owner may not otherwise assign or transfer its interest (whether by operation of law, a Change of Control or otherwise) under this Agreement without the prior written consent of Manager.

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**22.6 Waiver.** Subject to **Section 22.8**, waiver of any term or condition of this Agreement (including any extension of time required for performance) shall be effective only if in writing and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition or a waiver of any other term or condition of this Agreement. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver hereof.

**22.7 Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**22.8 Entire Agreement; Amendment.** This Agreement represents the entire agreement between the parties with respect to the subject matter hereof. The terms of this Agreement may be amended, modified or waived only by a written instrument signed by the Manager and the Owner and only with the prior written consent of the Administrative Agent.

**22.9 Counterparts.** This Agreement may be signed in two or more counterparts each of which shall constitute an original instrument, but all of which together shall constitute but one and the same instrument.

**22.10 Facsimile Signatures.** Any signature required with respect to this Agreement may be provided via facsimile or by electronic means and shall in either case be equally effective as the delivery of an originally executed counterpart.

**22.11 Governing Law, Venue, Agent for Service of Process.** This Agreement shall be construed in accordance with the laws of the State of New York without regard to conflict of law principles; provided that Sections 5-1401 and 5-1402 of the New York General Obligations Law shall apply, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with the laws of the State of New York. Any legal suit, action or proceeding against Owner or Manager arising out of or relating to this Agreement, or any transaction contemplated hereby, may be instituted in any federal or state court in the City of New York, State of New York and Owner and Manager each hereby waives any objection which 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, Owner and Manager each hereby irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding. Each of Owner and Manager hereby irrevocably appoints and designates National Corporate Research Ltd. having an address at 225 W. 34th Street, New York, NY 10122 its true and lawful attorney-in-fact and duly authorized agent for the limited purpose of accepting service of legal process and each of Owner and Manager agrees that service of process upon such party shall constitute personal service of such process on such Person. Each of Owner and Manager shall maintain the designation and appointment of such authorized agent until the termination of this Agreement; provided, however, if such agent shall cease to so act, each of Owner and Manager shall immediately designate and appoint another such agent and each shall promptly deliver to the other evidence in writing of such other agent's acceptance of such appointment.



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**22.12 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 OR ANY OTHER OPERATIVE DOCUMENT, INCLUDING IN RESPECT OF THE NEGOTIATION, ADMINISTRATION OR ENFORCEMENT HEREOF OR THEREOF.

**22.13 Third-Party Beneficiaries.** The Administrative Agent is an express third-party beneficiary of this Agreement and, as such, shall have full power and authority to enforce the provisions of this Agreement on behalf of the Owner against the Manager.

[Signature pages follow]

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

**TEXTAINER EQUIPMENT MANAGEMENT  
LIMITED**

By: /s/ Christopher C. Morris

Name: Christopher C. Morris

Title: Executive Vice President

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**TAP FUNDING LTD.**

By: /s/ Milton J. Anderson

Name: Milton J. Anderson

Title: Chief Executive Officer and Director

By: /s/ Adam T. DiMartino

Name: Adam T. DiMartino

Title: Senior Vice President and Director

## CONTAINER PURCHASE AGREEMENT

This CONTAINER PURCHASE AGREEMENT, dated December 20, 2012 (this “**Agreement**”) is made between Textainer Group Holdings Limited, an exempted company with limited liability incorporated and existing under the laws of Bermuda (together with its successors and permitted assigns, “**TGH**”), and TAP Funding Ltd., an exempted company with limited liability incorporated and existing under the laws of Bermuda (together with its successors and permitted assigns, “**Buyer**”).

### RECITALS

WHEREAS, TGH’s wholly-owned direct subsidiary, Textainer Equipment Management Limited, an exempted company with limited liability continued and existing under the laws of Bermuda (“**TEML**”), is party to an Equipment Management Services Agreement (the “**Management Agreement**”) between TAP Ltd., an exempted company with limited liability incorporated and existing under the laws of Bermuda (“**TAP**”), as owner, and TEML, as manager (“**Manager**”), dated June 30, 2011, and the Management Agreement was assigned by TAP to Buyer on April 30, 2012 pursuant to a Contribution and Sale Agreement between Buyer and TAP;

WHEREAS, TGH entered into a Container Purchase Agreement dated June 30, 2011 with TCG Fund I, L.P. (“**TCG**”) and such Container Purchase Agreement was amended on May 1, 2012 (the “**TCG CPA**”);

WHEREAS, effective upon Textainer Limited’s purchase of 50.1% of the shares of Buyer, TGH and TCG wish to terminate the TCG CPA and have this Agreement become effective;

WHEREAS, TGH and Buyer have further discussed TGH’s and its Affiliates’ purchase of marine cargo containers (each, a “**Container**”) and the possible reservation of a portion of such Containers for purchase by Buyer and, upon such purchase by Buyer, the management of such Containers by Manager under the Management Agreement;

NOW, THEREFORE, the parties hereto agree as follows:

### AGREEMENT

**1. Definitions.** The following terms shall have the following meanings:

“**Affiliate**” means, with respect to any Person, another Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Aggregate Container Order**” means, for each Purchase Period, the aggregate of the manufacturers’ invoice prices for all new Container production ordered during such period of time by TGH and its Affiliates for purchase by TGH, any Affiliate of TGH or any third party Container owner on whose behalf TGH or any Affiliate of TGH manages containers.

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**“Authorized Transfer”** means the acquisition of any equity interest in Buyer by any person or entity (an **“Acquiror”**); *provided that* (i) such acquisition is permitted by and in accordance with the Members’ Agreement entered into by the members of Buyer on the date hereof (as such agreement may be amended by the parties), and (ii) following such acquisition, an Affiliate of TGH maintains an ownership interest in the majority of the Buyer’s outstanding equity.

**“Code”** means the Internal Revenue Code of 1986, as amended, or any successor statute, Treasury Regulations promulgated thereunder or any implementations thereof.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlled by”** has the correlative meaning.

**“Purchase Period”** shall mean, for purposes of this Agreement, each one year period during the Term, beginning and including November 1 of one calendar year through and including October 31 of the next succeeding calendar year.

**“Purchase Price”** shall have the meaning set forth in **Section 4**.

**“Reservation Expiry Date”** shall mean the earliest to occur of (i) the date on which a transfer of ownership in the Buyer that is not considered an Authorized Transfer occurs, and (ii) the end date of the Term occurs.

**“Reserved Container”** shall mean all Containers set aside or reserved by an Acquirer (as defined in **Section 3(a)**) pursuant to **Section 2(a)** for purchase by Buyer.

**“Term”** shall mean the period beginning on the date hereof and ending December 1, 2018 (as such latter date may be extended or shortened pursuant to the terms of this Agreement).

**2. Commitment to Set Aside or Reserve and Purchase .** (a) Subject to **Section 2(b)**, until the Reservation Expiry Date, TGH agrees to set aside or reserve (or cause its Affiliates to set aside or reserve), for purchase by Buyer, during each Purchase Period, Containers in an amount equal to five percent (5%) of the Aggregate Container Order during such Purchase Period, determined on the basis of the applicable manufacturer’s invoice price for each Container (such amount of Containers, the **“Reservation”**). This Agreement shall terminate, and there shall be no further obligation to reserve Containers for purchase by the Buyer, when Containers with manufacturers’ invoice prices in an aggregate amount of at least the amount set forth on **Schedule A** have been included in all Reservations during the Term of this Agreement. With respect to each Purchase Period, TGH shall use good faith efforts to offer Buyer a consistent 5% percent of the Aggregate Container Order for such Purchase Period.

(b) TGH has no obligation to sell any Container to Buyer under this Agreement to the extent that TGH determines, in its absolute discretion, that a sale of Containers would adversely affect its status as a foreign operation which is not a passive foreign investment company within the meaning of Section 1297 of the Code.

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(c) No reservation of Containers for purchase by Buyer shall constitute a contractual obligation of the Buyer to purchase such Reserved Containers unless and until Buyer executes and delivers to TGH a written notice of its agreement to purchase the Reserved Containers described in any Reservation Notice. If the Buyer delivers such a written notice of agreement, then the Buyer shall be contractually obligated to purchase in accordance with the terms of this Agreement the Reserved Containers set forth in the related Reservation Notice.

(d) If Buyer (i) declines to purchase the Reserved Containers set forth in a Reservation Notice, or (ii) does not respond to a Reservation Notice within 30 days after receipt by Buyer of such Reservation Notice, and the cause of either occurrence described in the foregoing clause (i) or (ii) is the inability of a non-TGH Affiliated shareholder of Buyer to fund its portion of the Containers included in the Reservation Notice, then TGH shall not be required to offer to Buyer any additional Reserved Containers for a six month period commencing from the date of the applicable Reservation Notice. If the event noted in the preceding sentence occurs twice during the Term, upon the second occurrence TGH may elect to terminate the Agreement and end the Term with immediate effect and without any further liability to make Reservations for Buyer under **Section 2**.

**3. Mechanics of Reservation and Purchase.** (a) TGH or its acquiring Affiliate, if applicable (such acquirer being the “**Acquirer**”), shall notify Buyer, Manager and TAP of each reservation of Containers pursuant to **Section 2(a)** as soon as practical after the Reserved Containers have been ordered ( “**Reservation Notice**”). Each Reservation Notice shall include, but not be limited to, the following information: Container type, estimated quantities, estimated prices, estimated delivery and inspection costs, expected manufacturing locations, expected delivery dates, estimated Acquisition Fee (as defined in **Section 4**) and estimated Purchase Price of the Reserved Containers.

(b) Within 30 days after receipt of each Reservation Notice (each, a “**Decision Period**”), Buyer shall notify Acquirer and Manager in writing of Buyer’s acceptance of all or a portion of such Reserved Containers. Any failure by Buyer to respond to a Reservation Notice within the related Decision Period shall constitute an acceptance by Buyer of the opportunity to purchase the Reserved Containers set forth in such Reservation Notice.

(c) Manager shall notify Buyer and Acquirer of the date on which each Reserved Container is accepted by Manager and thereby becomes as an “Owner Container” under and as defined in the Management Agreement (such date being the “**Acceptance Date**” for such Reserved Container); each Reserved Container shall become a “**Purchased Container**” on its Acceptance Date.

(d) The Acquirer shall notify Buyer of the date on which payment is due to the applicable manufacturer or to the Acquirer for each Purchased Container (each, a “**Payment Date**”). The Payment Date for each Purchased Container is anticipated to be at least fifteen (15) days after the applicable Acceptance Date (pursuant to payment terms to be negotiated with each manufacturer).

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(e) Not later than three (3) Business Days prior to the Payment Date for each Purchased Container, Buyer shall pay the Purchase Price therefor to Manager.

(f) Each purchase of Purchased Containers shall be on the same terms at which such purchases are made by the Acquirer, and the Purchase Price payable by Buyer for the Purchased Containers shall be without any mark-up, increase or modification.

**4. Management Agreement; Acquisition Fee.** All Containers purchased in connection with this Agreement will be subject to the Management Agreement. The acquisition fee payable pursuant to in **Section 3.4** of the Management Agreement (the “**Acquisition Fee**”) shall equal the product (the “**Purchase Price**”) of (i) the sum of (A) the applicable manufacturer’s invoice price for each Purchased Container *plus* (B) any related inspection and delivery costs for such Purchased Container *multiplied by* (ii) the percentage set forth on **Schedule A**.

**5. NO WARRANTIES.** NEITHER TGH NOR ANY AFFILIATE THEREOF MAKES ANY WARRANTY OF ANY KIND IN RELATION TO THE CONTAINERS BY VIRTUE OF THIS AGREEMENT, AND ALL CONDITIONS AND WARRANTIES IN RELATION THERETO, WHETHER EXPRESSED OR IMPLIED, WHETHER STATUTORY, COLLATERAL HERETO OR OTHERWISE, WHETHER IN RELATION TO THE FITNESS OF THE CONTAINERS FOR ANY PARTICULAR PURPOSE, OR IN COMPLIANCE WITH ANY CONVENTION, STATUTE, REGULATION, ORDER OR OTHER PROVISION OF LAW OR STANDARD, OR WHETHER IN RELATION TO MERCHANTABILITY OR AS TO DESCRIPTION, STATE, QUALITY OR CONDITION OF THE CONTAINERS OR ANY ITEM THEREOF AT DELIVERY OR AT ANY OTHER TIME, ARE HEREBY EXCLUDED AND EXTINGUISHED.

**6. Miscellaneous.** (a) **Severability.** If any term or provision of this Agreement or the performance thereof shall to any extent be or become invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement and this Agreement shall continue to be valid and enforceable to the fullest extent permitted by applicable law.

(b) **Entire Agreement.** This Agreement, including the Exhibits and Schedules hereto, set forth the entire agreement and understanding of the parties hereto with respect to the subject matter contained herein, and supersede all prior or contemporaneous agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written or express or implied, by any party or any officer, employee or representative of any party hereto.

(c) **Waiver and Amendment.** No amendment to, or modification of, any of the provisions of this Agreement shall be effective unless made in a written instrument signed by TGH and Buyer (or in the case of any waiver hereunder, signed by the party granting such waiver). No waiver of compliance with any term or condition of this Agreement shall be construed as a waiver of any subsequent breach or waiver of the same term or condition, or of any other term or condition of this Agreement.

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(d) **Signatures; Counterparts.** Any signature to this Agreement may be provided via facsimile or by electronic means and shall in either case be equally effective as the delivery of an originally executed counterpart. This Agreement may be signed in two or more counterparts each of which shall constitute an original instrument, but all of which together shall constitute but one and the same instrument.

(e) **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction. This Agreement and the transactions hereunder shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.

(f) **No Partnership.** Nothing in the Agreement shall be deemed for U.S. tax or other purposes to constitute a partnership, joint venture or other entity between Buyer (or any Affiliate or shareholder of Buyer) and TGH (or any Affiliate) or among other owners of Containers in Manager's fleet, and/or Manager. Under no circumstances may this Agreement be interpreted to provide for a sharing of benefits between Buyer (or any Affiliate or shareholder of Buyer) and TGH (or any Affiliate), or among the owners of other Containers managed by Manager.

(g) **Independent Agent.** The parties hereto agree that any reservation made by TGH or any other Acquirer, and any corresponding arrangement for purchase by or on behalf of Buyer, is made by such Acquirer as an independent broker or independent commission agent and no other agency relationship is created or implied.

(h) **Assignment.** Neither Buyer nor TGH shall assign its rights and/or obligations under this Agreement without the prior written consent of the other party.

(i) **Termination of TCG CPA.** The TCG CPA shall be terminated immediately upon execution and delivery of this Agreement by the parties hereto.

[Signatures to Follow]



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IN WITNESS WHEREOF, Buyer and TGH have executed this Container Purchase Agreement as of the date first above written.

TAP FUNDING, LTD.

By: /s/ Milton J. Anderson

Name: Milton J. Anderson

Title: Chief Executive Officer and Director

By: /s/ Adam T. DiMartino

Name: Adam T. DiMartino

Title: Senior Vice President and Director

By /s/ Christopher C. Morris

Name: Christopher C. Morris

Title: Vice President

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IN WITNESS WHEREOF, TCG has executed this Container Purchase Agreement as of the date first above written, solely for purposes of **Section 6(i)**.

TCG FUND I, L.P.

TCG Fund I GP, LLC, Managing Member

By: /s/ Milton J. Anderson

Name: Milton J. Anderson

Title: Managing Member

By: /s/ Adam T. DiMartino

Name: Adam T. DiMartino

Title: Managing Member

## LIST OF SUBSIDIARIES

<u>Name of Subsidiary</u>	<u>Jurisdiction of Organization</u>	<u>Name under which Subsidiary does Business</u>
Textainer Limited	Bermuda	Textainer Limited
Textainer Equipment Management Limited	Bermuda	Textainer Equipment Management Limited
Textainer Equipment Management (S) Pte Ltd.	Singapore	Textainer Equipment Management (S) Pte Ltd
Textainer Equipment Management (U.S.) Limited	Deleware	Textainer Equipment Management (U.S.) Limited
Textainer Equipment Management (U.K.) Limited	United Kingdom	Textainer Equipment Management (U.K.) Limited
Textainer Equipment Management (U.S.) II LLC	Deleware	Textainer Equipment Management (U.S.) II LLC
Textainer Marine Containers Limited	Bermuda	Textainer Marine Containers Limited
Textainer Marine Containers II Limited	Bermuda	Textainer Marine Containers II Limited
TAP Funding Ltd.	Bermuda	TAP Funding Ltd.
TW Container Leasing, Ltd.	Bermuda	TW Container Leasing, Ltd.

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER  
REQUIRED BY RULE 13A-14(A) OR RULE 15D-14(A)  
UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED,  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Philip K. Brewer, certify that:

1. I have reviewed this annual report on Form 20-F of Textainer Group Holdings Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Date: March 15, 2013

/s/ PHILIP K. BREWER

Philip K. Brewer  
President and Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION OF THE CHIEF FINANCIAL OFFICER  
REQUIRED BY RULE 13A-14(A) OR RULE 15D-14(A)  
UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED,  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Hilliard C. Terry, III, certify that:

1. I have reviewed this annual report on Form 20-F of Textainer Group Holdings Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Date: March 15, 2013

/s/ HILLIARD C. TERRY, III

Hilliard C. Terry, III

Executive Vice President and Chief Financial Officer

(Principal Financial Officer)

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER  
REQUIRED BY RULE 13A-14(B) AND SECTION 1350  
OF CHAPTER 63 OF TITLE 18 OF THE UNITED STATES CODE,  
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350 of Chapter 63 of Title 18 of the United States Code), the undersigned officer of Textainer Group Holdings Limited (the “**Company**”), hereby certifies, to such officer’s knowledge, that:

1. The Annual Report on Form 20-F for the year ended December 31, 2012 (the “**Report**”) of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 15, 2013

/s/ PHILIP K. BREWER

Philip K. Brewer  
President and Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION OF THE CHIEF FINANCIAL OFFICER  
REQUIRED BY RULE 13A-14(B) AND SECTION 1350  
OF CHAPTER 63 OF TITLE 18 OF THE UNITED STATES CODE,  
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350 of Chapter 63 of Title 18 of the United States Code), the undersigned officer of Textainer Group Holdings Limited (the “**Company**”), hereby certifies, to such officer’s knowledge, that:

1. The Annual Report on Form 20-F for the year ended December 31, 2012 (the “**Report**”) of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 15, 2013

/s/ HILLIARD C. TERRY, III

Hilliard C. Terry, III

Executive Vice President and Chief Financial Officer

(Principal Financial Officer)



**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
Textainer Group Holdings Limited:

We consent to the incorporation by reference in the registration statements (Nos. 333-171409 and 333- 147961) on Form S-8 and registration statement (No. 333-171410) on Form F-3 of Textainer Group Holdings Limited of our reports dated March 15, 2013, with respect to the consolidated balance sheets of Textainer Group Holdings Limited and subsidiaries as of December 31, 2012 and 2011, and the related consolidated statements of comprehensive income, shareholders' equity and cash flows for each of the years in the three-year period ended December 31, 2012, and the related financial statement schedules, and the effectiveness of internal control over financial reporting as of December 31, 2012, which reports appear in the December 31, 2012 annual report on Form 20-F of Textainer Group Holdings Limited.

/s/ KPMG LLP  
San Francisco, California  
March 15, 2013

