

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, 2022  
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)  
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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(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	Trading Symbol(s)	Name of each exchange on which registered
Common Shares, \$0.01 par value	TGH	New York Stock Exchange
7.00% Series A Fixed-to-Floating Rate Cumulative Redeemable Perpetual Preference Shares, \$0.01 par value	TGH PRA	New York Stock Exchange
6.25% Series B Fixed Rate Cumulative Redeemable Perpetual Preference Shares, \$0.01 par value	TGH PRB	New York Stock Exchange

Securities registered or to be registered pursuant to Section 12(g) of the Act: **None**  
Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act: **None**  
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.

**43,634,655 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, every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§322.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐  
Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer, or an emerging growth company. See definitions of "accelerated filer", "large accelerated filer" and "emerging growth company" in Rule 12b-2 of the Exchange Act.  
Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Emerging growth company ☐  
If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐  
Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒  
If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐  
Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐  
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 ☒

Auditor Firm Id: 34 Auditor Name: Deloitte & Touche LLP Auditor Location: San Francisco, California

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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 and preferred 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; the cost of a 40' high cube dry freight container (9'6" high) is 1.7 CEU; and the cost of a 40' high cube refrigerated container is 8.0 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; and (7) "Container Investors" means the owners of the containers in our managed fleet.*

*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.

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, the magnitude and duration of the COVID-19 pandemic, the Russia-Ukraine war 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.

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. Good faith estimates are used for some data that is 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. [Reserved]

#### 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 or preferred 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 or preferred 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 or preferred 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.*

#### *Summary of Risks Related to the Company and Investment in our Shares*

The following is a summary of the risks related to our Company and your investment in our shares. You are encouraged to review all of the risk factors that follow for more detailed information and discussion of how these risks and other risks related to our company and shares may impact us:

- The demand, pricing and utilization of our leased containers depends on many factors beyond our control, including global economic conditions, economic stability, new container prices, prevailing lease rates, freight demand, international trade and trade barriers, environmental regulations, industry consolidation and other factors.
- Our results may fluctuate based on risks associated with re-leasing containers after their initial long-term lease and gains and losses associated with the disposition or trading of used equipment. Credit events such as lease defaults, which are enhanced due to our reliance on a limited number of lessees can also impact our results.

- Our business and capital structure rely on a significant amount of debt and our indebtedness reduces our financial flexibility and could impede our ability to operate. We own the substantial majority of our containers and they are largely financed with debt. Our ability to service our debt and fund future capital expenditures, depends on many factors beyond our control. Our debt facilities have significant covenants and we rely on hedging with the use of derivatives which has risks.
- We face various operational and competitive risks which include costs to reposition our containers, surpluses of containers and a lack of storage space could negatively impact us, consolidation or disruptions with container manufacturers could harm our business, competition in the container leasing industry and our lessees may decide to buy, rather than lease their containers.
- The international nature of the container shipping industry exposes us to numerous risks, additionally terrorist attacks, the threat of such attacks or the outbreak of war and hostilities could negatively impact us, risks from the political and economic policies of China, its legal system and China's economic activity, exchange rate fluctuations, cargo security regulations and the lack of an international title registry for containers could have an adverse impact on us.
- We face a number of other business risks including IT system risks, cyber-attack and security breaches, insurance risks, U.S. government contracting risks, risks from acquisitions and joint ventures, risks from attracting and retaining senior executives, environmental regulations, risks from our investments with Trifleet Leasing, and risks from U.S. laws that impact our international operations.
- There are a number of tax risks related to our business and shares, these include (i) U.S. investors in our company could suffer adverse tax consequences if we are characterized as a passive foreign investment company (ii) we may become subject to unanticipated tax liabilities, (iii) our U.S. subsidiaries may be treated as personal holding companies for U.S. federal tax purposes, (iv) our ability to use our net operating losses to offset future taxable income may be subject to certain limitations, (v) and the calculation of our income tax expense requires judgment and the use of estimates.
- There are a number of risks related to our shares and public listings, including (i) any dividends paid in the future could be reduced or eliminated, (ii) we face risks from our share repurchase program, (iii) the market price and trading volume of our common and preferred shares, which may be affected by market conditions beyond our control, have been volatile and could continue to remain volatile, (iv) risks related to our dual listing on the Johannesburg Stock Exchange, (v) we face risks in relation to our continued compliance with corporate governance and financial reporting obligations, (vi) 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 and preferred shares to decline significantly, (vii) we have provisions in our bye-laws that may discourage a change of control, (viii) you may have greater difficulties in protecting your interests than as a shareholder of a U.S. or South African corporation, and (ix) our bye-laws restrict shareholders from bringing legal action against our officers and directors.

#### ***Risks Related to Our Business and Industry Which May be Beyond Our Control***

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

Substantially all of our revenue derives 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, selling used containers and sourcing capital required to purchase new and used containers depends, in part, upon the continued demand to lease containers and purchase used containers.

Demand for leased containers depends largely on the rate of growth 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. In the past, economic downturns in the U.S., Europe, Asia and countries with consumer-oriented economies have resulted in a reduction in the rate of growth of world trade and demand by container shipping lines for leased containers and it is likely that any future downturns would have similar results. Thus, a decrease in world trade can and has adversely affected our utilization and per diem rates and led to reduced revenue and increased operating expenses (such as storage and repositioning costs) and can have an adverse effect on our financial performance. We cannot predict whether, or when, such downturns will occur or the severity or duration of any downturn. Other material factors affecting demand for leased containers, utilization and per diem rates include the following:

- prices of new and used containers;
- economic conditions, profitability, competitive pressures and consolidation in the container shipping and container leasing 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 for us, our competitors and customers;
- fluctuations in interest rates and currency exchange rates;
- overcapacity, undercapacity and consolidation of container manufacturers;
- the lead times required to purchase containers;
- the number of containers purchased in the current year and prior years by competitors and container lessees and container inventory levels;
- container ship fleet overcapacity or undercapacity;
- repositioning by container shipping lines of their own empty containers to higher demand locations in lieu of leasing containers;
- port congestion and the efficient movement of containers as affected by labor disputes, work stoppages, increased vessel size, shipping line alliances or other factors that reduce or increase the speed at which containers are handled;
- consolidation, withdrawal or insolvency of individual container shipping lines;
- actual or threatened import/export tariffs, duties, restrictions or trade disputes;
- depot capacity and storage fees and container handling and repair costs;
- customs procedures, foreign exchange controls and other governmental regulations, including environmental or maritime rules that impact container shipping;
- natural disasters, war or events that are severe enough to affect local and global economies or interfere with trade, such as the Novel Coronavirus (or "COVID-19") pandemic and the Russia-Ukraine war; 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 and/or per diems could decrease, resulting in decreased revenue and increased storage and repositioning costs, which would harm our business, results of operations and financial condition.

**Global economic weakness has in the past and may in the future materially and negatively impact our business, results of operations, cash flows, financial condition and future prospects.**

The continued sustainability of international economic growth is uncertain particularly due to the ongoing Novel Coronavirus pandemic which created severe economic contractions and rebounds from 2020 to 2022. The Novel Coronavirus pandemic increased container trade demand and shipping lines' financial performance; however the continued strength and duration of this demand is uncertain as the congestion and economic stimulus that dramatically increased freight rates have normalized and lease rates and new and used container prices have declined.

Uncertainties relating to Novel Coronavirus include the duration of the outbreak, the countries impacted by the outbreak, recurrence or changes in the scope of the outbreak, and actions that may be taken to contain or treat its impact, by governments and others, including vaccine and medical prevention and treatment developments, declarations of states of emergency, business closures, manufacturing restrictions and a prolonged period of travel and/or other similar restrictions and limitations. Disruptions from the Novel Coronavirus or reduced container and/or container trade demand following heavy container investment during the initial outbreak of COVID-19 may lead to increased future credit concerns regarding our customers, reduced container demand, lower utilization of our fleet, lower lease rates, lower sale prices for our used containers, disruptions in the capital markets, increased risk of non-compliance with our debt covenants and operational and business process disruptions for us and our customers.

Any slowdown or reversal of the U.S. and global trade growth due to the Novel Coronavirus or otherwise 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 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.

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

We compete mostly on the pricing 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 but not exclusively correlated with the price of steel);
- the type and length of the lease;
- interest rates and the availability of financing for leasing companies and shipping lines;
- assumptions regarding residual value and future lease pricing;
- 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. From late 2018 until the middle of 2020 steel prices, container prices and lease rates generally declined and demand for new containers also declined given trade disputes and the emergence of the Novel Coronavirus pandemic. From the middle of 2020 until early 2022, steel prices, container prices and lease rates all materially escalated as cargo and container demand increased. In 2021, record levels of containers were produced at very high prices to satisfy industry demand and the demand created from congestion and trade disruptions. Container demand and

trade congestion were reduced in 2022 with approximately half as many containers produced in 2022 than in 2021. The resolution of trade disruptions, moderation in demand for goods upon the mitigation of the Novel Coronavirus pandemic and lower steel prices has caused container prices and lease rates to decline. In addition, lease rates can be negatively impacted by, among other things, the entrance of new leasing companies or container factories, overproduction of new containers by factories and the over-buying by shipping lines, leasing companies and tax-driven container investors. If future market lease rates decrease or return to historically low levels, revenues generated by our fleet will be adversely affected, which will harm our business, results of operations, cash flows and financial condition. Container utilization rates for us and our competitors increased in 2020 and are currently at very high levels by historical standards. If future container returns increase or utilization rates decrease, revenues generated by our fleet will be adversely affected, which will harm our business, results of operations, cash flows and financial condition.

**Reductions in the prices of new containers would harm our business, results of operations and financial condition.**

Lease rates for new containers are positively but not exclusively correlated to 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 ranging between \$1,598 and \$3,790 during this time. Our average new container cost per CEU decreased in 2022 compared to 2021 as container prices decreased due to lower steel costs, lower container demand and reduced prices from factories. Container prices increased from 2016 to late 2018 and then declined until early 2020 when increases resumed and prices were at historically high levels in 2021. If new container prices decline, the lease rates achievable when older, off-lease containers are leased out will also decrease and the prices obtained for containers sold at the end of their useful lives may also decrease. From late 2018 until early 2020, we generally saw new container pricing and lease rates decline, and these trends reversed for the rest of 2020 and through 2021. In 2022 new container prices and lease rates declined with a low level of market activity in the second half of the year. A decline in new container prices causes low market lease rates and low resale values for containers, which have and may in the future adversely affect our business, results of operations and financial condition, even if low new container prices allow us to purchase new containers at a lower cost.

**We derive a substantial portion of our lease rental income 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 lease rental income and cash flow from a limited number of container lessees. Lease revenues from our 20 largest container lessees represented approximately \$715 million or 88.3% of the total lease rental income during 2022. Our three largest customers in 2022 were Mediterranean Shipping Company S.A., which accounted for \$198 million or 24.4%, CMA-CGM S.A., which accounted for \$95 million or 11.7%, and COSCO Shipping Lines, which accounted for \$87 million or 10.8% of our total lease rental income. Due to the ongoing consolidation in the shipping line industry, our 20 largest container lessees are becoming an increasing percentage of our total revenue, with correspondingly increased concentration of credit risk. Given the high concentration of our customer base, a default by any of our largest customers would result in a major reduction in leasing revenue, large repossession expenses, potentially large lost equipment charges and a material adverse impact on our performance and financial condition.

The use of very large container ships (18,000 TEU+) on the major trade lanes may lead to further industry consolidation and shipping line alliance participation, and even greater reliance by us on our largest customers, and may 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 share 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. Additionally, shipping lines have used some of their substantial profits from 2020 to 2022 to purchase significant numbers of new and used container ships. The delivery of significant new ship capacity without trade growth or the retirement of older ships could result in substantial overcapacity, lower freight rates, lower shipping line profits and increased credit risk for us.



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

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 possible. Historically, shipping lines have also formed a number of alliances to share vessel space and the creation of new alliances and changes in the membership of each alliance is ongoing. Consolidation of major container shipping lines and growth of 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. If shipping line alliances are effective at making shipping lines more efficient, this could reduce the demand for containers. The growth of alliances may add pressure to those shipping lines that do not join an alliance as they may find it more difficult to cost effectively serve shippers needs and/or shippers may choose to only ship cargo with alliances due to solvency concerns or otherwise. Shifts and changes in shipping line alliances may also cause industry disruption and may change competitive dynamics which could adversely impact shipping lines and potentially adversely impact our business. 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. Significant increases in freight rates during the COVID-19 pandemic have attracted scrutiny of the shipping industry by regulators. United States and international antitrust regulators have announced increased resources devoted to investigating possible collusion or anti-competitive behavior by shipping lines. Penalties on the industry or increased regulation of the industry may adversely affect our customers, impact their financial resources and/or reduce the demand for shipping containers which could negatively impact our operations and results.

**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 People's Republic of China (the "PRC" or "China") and other Asian countries to the United States, Europe, Latin America or other regions and within Asia. The willingness and ability of international consumers to purchase foreign goods is dependent on political support, in the United States, Europe, Latin America 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. In 2018, a number of major trading economies implemented, and increased tariffs and other trade restrictions and significant renegotiations of existing trade agreements commenced. This continued in 2019 with partial resolutions of certain disputes seen at the end of that year. If these trade restrictions and tariffs continue or increase it may materially impact container demand and change trade patterns. The Novel Coronavirus pandemic initially decreased trade demand but cargo growth resumed in mid-2020 particularly for consumer goods and medical supplies. The long term impact of the Novel Coronavirus on trade and cargo demand is uncertain.

**The Russia-Ukraine war may negatively impact international trade and our business.**

The Russian military operation in Ukraine that commenced on February 24, 2022 has resulted in significant economic sanctions and trade controls on Russia with certain countries restricting shipments to or from Russian ports and limitations on Russian banks and entities ability to access international payment systems. The Company has approximately \$17 million in net book value of owned containers on lease to a customer that conducts a significant amount of its trading with Russia. If the situation continues, worsens, or if countries impose additional economic sanctions or other business restrictions, including sanctions on countries that are supporting Russia or refusing to sanction Russian parties, international trade may be negatively impacted and container trade and demand for our containers may decrease and our business and results of operation could be harmed.

**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 the Novel Coronavirus outbreak in China in early 2020, Severe Acute Respiratory Syndrome and avian flu, financial turmoil, natural disasters, and political instability in Asia. In the past, these events have adversely affected our container lessees and the general demand for shipping and have led to reduced demand for leased containers or otherwise caused adverse effects on us. Ongoing or future events such as these may have similar or worse impacts on our business. Any reduction in demand for leased containers would harm our business, results of operations and financial condition.

***Risks Inherent to Our Business and Industry***

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

We estimate the useful lives of our standard dry freight containers to be 13 to 14 years, open-top and flat-rack containers to be 14 to 16 years, refrigerated containers to be 12 years and tank containers to be 20 years. When we purchase newly produced containers, we typically lease them out under long-term leases with terms of 5 or more years at a lease rate that is correlated to the price paid for the container and prevailing interest rates. 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. 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 similar lease rate from the re-leasing of containers when their initial term leases expire which could materially adversely impact our results and financial performance.

**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 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 realized 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. Additionally, if shipping lines or our leasing company competitors determine to sell their used containers at a younger age than we believe to be the useful life of our equipment, our containers may be more difficult to sell or may sell for less than containers that were more recently manufactured.

Gains or losses on the disposition of used container equipment and the sales fees earned on the disposition of managed containers fluctuate and may be significant if we sell large quantities of used containers. Low disposal prices and the high volume of containers being disposed of can cause an elevated level of container impairments to occur. Continued low disposal prices and/or high disposal volumes could harm our business, results of operations and financial condition. Additionally, even in periods of high disposal prices, if we have limited numbers of older containers returned from shipping lines available to sell, we may be limited in our ability to benefit from periods of high disposal prices. 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 life, we opportunistically purchase used containers for resale from our shipping line customers and other sellers. Shipping lines either enter into trading arrangements with us at the time they are ready to dispose of older containers or enter into purchase leaseback transactions with us where they sell us older containers and then lease them back until the shipping line is ready to dispose of the containers. We face resale price risk with both transactions since by the time the container is provided to us from the shipping line the prevailing prices for older containers may have declined from the value we assumed at the time of purchase.

If the supply of trading 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 trading equipment were higher or if prices decline over the life of our purchase leaseback transactions, then our gross margins from trading and the sale of containers acquired through purchase leaseback transactions will decline or become negative.

**Lessee defaults have and may harm our business, results of operations and financial condition by decreasing revenue and increasing storage, repositioning, collection, insurance, 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 experienced lessee defaults, including the default of Hanjin in 2016, which severely negatively impacted our financial performance, and we believe that there is the continued risk of lessee defaults in the future. Historically, efforts to maintain high freight rates on the major trade lanes generally have not been sustainable for long periods of time. Excess vessel capacity due to new ship production, including the production of very large ships, and the re-activation of previously laid up vessels may be a factor in the future, especially if older vessels are not scrapped. Major shipping lines had record profits during 2020 to 2022 given the trade demand increase that commenced in the middle of 2020, however reliable information about the financial position and resources of many shipping lines can be difficult to obtain and all shipping lines may not benefit equally from the higher trade demand. Excess vessel capacity and continued new vessel deliveries, especially the delivery of very large vessels, may cause freight rate pressure to return in the future and substantial numbers of new ships were ordered by shipping lines since the commencement of the COVID-19 pandemic. Additionally, the commencement of various tariff and trade restriction actions between major trading nations in 2018 which continued and accelerated in 2019 has increased uncertainty about container trade growth and demand and may increase default risk if tariff actions return and/or increase. While certain trade disputes were resolved at the end of 2019, the duration of these tariff actions may have altered trade patterns and may have lasting impacts on container demand. The Novel Coronavirus pandemic has added to uncertainty about container trade demand, freight rates and our lessees' financial performance. Freight rates have normalized since the peaks seen earlier in the pandemic as congestion and demand have moderated and our lessees historical financial performance may not continue. Additionally, shipping lines' expenses for vessels and containers have significantly increased since the commencement of the Novel Coronavirus pandemic and many of these are fixed long term costs that may be difficult to service with lower freight rates and/or reduced trade demand. 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.

When lessees default, we may fail to recover all of our containers, and the containers that we do recover may be recovered in locations where we will not be able to quickly re-lease or sell them on commercially acceptable terms. In recovery actions we must locate the containers and often need to pay accrued storage and handling charges to depots and terminals, which may include debts incurred by the defaulting shipping line. We also 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. These recovery and repair costs, and repositioning costs generally are reflected in our financial statements under container lessee default expense, net, and direct container expense – owned fleet, respectively. Accordingly, the amount of our bad debt expense may not capture the total adverse financial impact on us from a shipping line's default. While we previously maintained insurance to cover some defaults, recent premium increases, large deductible amounts, and significant policy exclusions made the coverage uneconomic and we determined to let our coverage lapse in 2021. In 2015 and 2016 we filed significant insurance claims for lessee defaults we experienced. As a result of these insurance claims, potential future insurance claims or changes in the perceived risk of providing default insurance, such insurance might not be available to us in the future on commercially reasonable terms or at all. If we resume insurance, in any insurance claim our insurers may not agree with our determination that we have suffered an insured loss or our calculation of the amount of the insured loss. Any such future defaults could harm our business, results of operations and financial condition.

Historically we have recovered a very high percentage of the containers from defaulted lessees. However, in past years we encountered defaults from several smaller lessees and lessees in locations where recoveries did not track to our historical experience and significant losses were incurred. These losses were due to a number of containers being unrecoverable as the

containers were not in the control of the lessee or the containers were detained by depots or terminals that demanded storage charges in excess of the value of the detained containers after accounting for repair and repositioning costs. Additionally, in certain recent insolvencies, even when we have recovered the containers, they have generally been in very poor condition which limits their ability to be re-leased and reduces their disposal value, both of which add to the ultimate cost of the default. If a material amount of future recoveries from defaulted lessees continue to deviate from our historical recovery experience, our financial performance and cash flow could be severely adversely affected.

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

Depot operators, manufacturers, repairmen, terminals, ship owners and transporters do 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 the lien to take possession of our containers.

***Risks Related to our Debt and Leverage***

**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, 2022, we had outstanding indebtedness of \$5,540 million under our debt facilities. All of our outstanding indebtedness is secured debt collateralized primarily by our container assets and finance leases. 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 and our liquidity.

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 flows 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 industry;
- reduce our ability to make acquisitions or expand our business;
- make it more difficult for us to satisfy our current or future debt obligations;
- 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 and/or compete successfully in our industry. An uncured event of default in some or all of our debt facilities could cause some or all of our entities to be declared bankrupt or liquidated.

**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. Our business primarily generates cash from our container assets. Our lenders, rating agencies and the investors in our asset-backed debt securities look to the historical and anticipated performance of our container assets when deciding whether to lend to us and the terms for such lending. 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 expenditure;
- 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 due to declining historical or anticipated financial performance of our assets or for other reasons.

**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 secured debt facilities, revolving credit facilities, term loan and bonds may limit or prohibit, among other things, our ability to:

- incur additional indebtedness;
- pay dividends on or redeem or repurchase our common and preferred 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
- receive dividends, distributions, or other payments from our subsidiaries.

We are also required to comply with certain financial 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 financial covenants and restrictions, due to weaker financial performance, reduced asset values or otherwise 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 and finance leases. Certain covenants limit our ability to borrow amounts secured by containers leased to a defaulted or bankrupt customer, compliance with such covenants may require repayment of amounts borrowed or limit future borrowings and compliance with these covenants may be difficult in the event of an insolvency of a large customer. If needed in the future, we may be unable to obtain covenant amendments and waivers from our lenders and some or all of our indebtedness could be in default. Additionally, covenant amendments and waivers may limit our ability to access additional funds for container investment and the cost and expense of covenant amendments, waivers and/or refinancing may limit our available funds for container investment.

**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 facilities and intend to use borrowings under our revolving credit facilities and our secured debt facilities for such funding in the future. As of December 31, 2022, \$2,607 million in aggregate principal amount under our revolving debt facilities are subject to variable interest rates. We have entered into various interest rate

swap 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 Secured Overnight Financing Rate (“SOFR”), the replacement rate to London Inter Bank Offered Rate (“LIBOR”). There can be no assurance that interest rate swaps and caps will be available in the future, or if available, will be on 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 swaps and caps or if a counterparty under our interest rate swap and cap agreements defaults, our exposure associated with our variable rate debt could increase.

**Even with hedged variable rate debt and fixed rate debt, we face interest rate risk.**

We generally hedge and fix our overall debt exposure to have a maturity similar to the average remaining lease term of our long-term lease contracts. However, if during the duration of our hedging, interest rates increase but lease rate per diems do not also increase, as our hedges expire our financial performance may decline due to higher interest rates not being offset by higher per diems. If this occurs, we may not be able to generate sufficient cash flows to service our debt obligations and/or we may breach our debt covenants, all of which would materially and adversely impact us. Additionally, in recent years we have entered into long term finance and operating leases that have a duration of longer than seven years and we do not believe that hedging the debt associated with the entire duration of these leases is economic. If interest rates materially increase in the later years of these leases and the debt associated with these leases remains unhedged our results may be adversely affected.

**We own a large 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 2022, the percentage of containers in our fleet that we own increased from 93% at the beginning of the year to 94% at the end of the year. In December 2019, we purchased the fleet of containers we previously managed for Leased Assets Pool Company Limited, an affiliate of Trencor and this increased our owned fleet percentage in 2019. In 2021, we purchased the 49.9% of TAP Funding Limited that we did not own, which further increased our owned fleet percentage in 2021. 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 prices upon the 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, add third party container investors and/or acquire other fleets.

If we continue to 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. Additional borrowings may not be available under our revolving credit facilities or our secured debt facilities, and we may not be able to refinance these facilities, if 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 factors, among others, may reduce our profitability and adversely affect our plans to maintain the container ownership portion of our business.

***We Face Operational and Competitive Risks***

**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 and when lessees default and we recover containers, 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. For example, the vast majority of our long-term leases require that a high percentage of the containers are returned in Asia, primarily in China. If long-term trade patterns change, it may not be economically desirable to have the bulk of our containers returned in China at the end of long-term leases. Any such increases in costs to reposition our containers could harm our business, results of operations and financial condition.

**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 continue to experience limited depot capacity in certain major port cities. 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 trend has already caused depot storage costs to increase and could further 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. The current period of very high container utilization may further add financial stress to third party depots as they are receiving limited amounts for storing containers. This financial stress could cause depot closures and further exacerbate the risks we face from limited container storage space.

**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. 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 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.

**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 substantially all our containers from manufacturers based in 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, consolidation among container suppliers, increased tariffs imposed by the U.S. or other governments, changing trade patterns, increased fuel costs, increased labor costs, or for any other reason, we may have to seek alternative sources of supply and we may not be able to make alternative arrangements quickly enough to meet our container needs, and the alternative arrangements may increase our costs.

The availability and price of containers depend significantly on the demand, available capacity and bargaining position of the major container manufacturers. Three major manufacturers have approximately 80% of that industry's market share. Additionally, one of the major container manufacturers is under common ownership with a large container lessor, which may impact our ability to competitively source containers from this manufacturer. This market structure and the commodity inputs used in manufacturing have led to significant variability in container prices. In particular, the increased focus on environmental matters in China may reduce the supply (and increase the cost) of steel and other raw materials used in our containers and the mandatory use of water borne paint by all container factories in China has already increased the cost of containers and created container production constraints. If an increased cost of purchasing containers is not matched by a

corresponding increase in lease rates, or if we have difficulty in sourcing containers, our business, results of operations and financial condition would be harmed.

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

Container manufacturing shutdowns in China in the wake of the financial crisis drastically reduced the 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 the world container fleet of approximately 4% in 2009, creating a shortage of containers. During the period of shutdowns, container manufacturers lost up to 60% of their skilled work force 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 have continued steady production, if there is a sustained reduction in the production of new containers due to the Novel Coronavirus or otherwise, it could impact our ability to expand our fleet, which could harm our business, results of operations and financial condition.

**We face extensive competition in the container leasing industry.**

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 may 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. In recent years, several container leasing companies have acquired other container lessors and we may face increased competition from these merged firms. Following the completion of each consolidation, the new entity may face further pressure for fleet growth and may compete even more aggressively, causing further declines in rental rates available from container leases. New entrants into the leasing business may be attracted by the historically high rate of containerized trade growth, access to the capital markets and low pricing for containers. 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 investors from having other container fleets managed by competing leasing companies or from directly competing with us.

**Our lessees may decide to buy, rather than lease their containers.**

We, like other suppliers of leased containers, are dependent upon decisions by shipping lines to lease rather than to buy their container equipment. Shipping lines own a significant amount of the world's intermodal containers and effectively compete with us. In part due to constraints on their financing and need to allocate capital to new ship purchases, scrubber installations for low sulphur emissions compliance and port terminals, in recent years, shipping lines have generally reduced their purchases of new containers. However, following several years of record profits, in 2022 shipping lines increased the percentage of containers that they purchased rather than leased. In 2022, we believe that approximately 40% of all shipping containers were purchased by leasing companies. In 2022 and 2021, shipping lines continued to report historic profitability and they may have additional financial resources in the future to allocate to container purchases. 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 repositioning costs. A decrease in the portion of leased containers would also reduce our investment opportunities and significantly constrain our growth.

**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 past years, there were a limited number of reports of counterfeit and improper refrigerant gas being used to service refrigeration machines in depots primarily in Asia. The use of this counterfeit gas has led to the explosion of several refrigeration machines. Several of these incidents resulted in personal injury or death, and in all cases, the counterfeit gas led to irreparable damage to the refrigeration machines.



Safer testing procedures were developed and implemented by refrigeration manufacturers and industry participants in order to determine whether counterfeit or improper gas was used to service a refrigeration machine. However, there can be no assurance that these procedures will prove to continue to be reliable and cost effective. If industry procedures and tests are not proven safe and effective or if the use of such counterfeit and improper refrigerant recurs and is widespread or other counterfeit refrigerant issues emerge in the future, 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 by contaminated refrigeration machinery operated by our lessees which may materially adversely affect us.

### ***Risks Arising From the International Operations***

**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, tariffs and taxes;
- 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 and economic sanctions, including those of the U.S. Department of Commerce and the U.S. Treasury or other governments;
- compliance with import procedures and controls, including those of the U.S. Department of Homeland Security or other governments;
- 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.
- Outbreaks of regional or international epidemics or pandemics such as a Coronavirus or SARS.

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.

**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 a 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. Furthermore, the current high level of debt by some companies in China may lead to defaults which may not be supported by the Chinese government. In recent years the rate of economic growth in the PRC has declined. Additionally, government policies that reduce the emphasis on manufacturing and increase priorities for domestic consumption and services may alter trade patterns and dampen demand for containers. Chinese government environmental policies and practices may reduce steel production which would impact container costs and may limit factory production, which could impact trade growth and container demand.

A large number of our shipping line customers are domiciled either in the PRC (including Hong Kong) or in Taiwan. In 2022, approximately 19% of our total lease billing was attributable to shipping line customers that were either domiciled in the PRC (including Hong Kong) or in Taiwan. Substantially, all container manufacturing facilities from which we purchased our containers in 2022 are located in the PRC. A reduced rate of economic growth, changes to economic or trade 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 substantially all 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 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 72% of our direct container expenses - owned fleet were denominated in U.S. dollars for the year ended December 31, 2022. Accordingly, a significant amount of our expenses is 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 2022, 2021 and 2020, 28%, 21% and 28%, respectively, of our direct container expenses – owned fleet were paid in 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. While the prices of the used containers we trade or dispose are primarily quoted and billed in U.S. dollars, declines in the currencies where these containers are sold relative to the U.S. dollar can serve to reduce the market prices for used containers, which will decrease our net income. We do not engage in foreign currency hedging activities which might reduce the volatility associated with exchange rates.

**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 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. Accordingly, we may not be protected from liability (and expenses in defending against claims of liability) arising from a terrorist attack.

### ***Risks Related to Our Business Operations***

**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. In 2020, we commenced efforts to replace several legacy computer systems that are central to our business operations, and we implemented our new enterprise resource planning “ERP” system in 2022 to enhance the efficiency and effectiveness of our internal administrative activities and certain financial accounting and reporting processes. The failure of our systems to perform as we expect, or any failure to successfully replace our legacy systems, 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. In recent years we have moved various information technology systems and data to cloud-based storage providers and software vendors. We face additional risks

from relying on third parties to store, process and manage our data and software. Any such interruptions could harm our business, results of operations and financial condition.

**Cyber-attacks and/or information technology security breaches on us or our customers could materially and adversely affect us.**

If we, our customers or other third parties with which we do business were to fall victim to successful cyber-attacks or experience other cybersecurity incidents that cause system failure, downtime, or the loss of sensitive data, we may incur substantial costs and suffer other negative consequences. Our ability to handle the delivery and return of containers, lease billing, and the sale of older containers is dependent on the stable operation of our information technology systems. Our customers' ability to generate revenue and make timely payments to us is similarly dependent on the stable operation of their information technology systems. Successful breaches, employee malfeasance, or human or technological error could result in, for example, unauthorized access to, disclosure, modification, misuse, loss, or destruction of company, customer, or other third-party data or systems; theft of sensitive, regulated, or confidential data; the loss of access to critical data or systems through ransomware, destructive attacks, or other means; and business delays, service or system disruptions or denials of service.

Cybersecurity incidents have increased in number and severity, and it is expected that these trends will continue. Should the Company be affected by such an incident, we may incur substantial costs and suffer other negative consequences, which may include substantial remediation costs, such as liability for stolen assets or information, repairs of system damage, and incentives to customers or business partners in an effort to maintain relationships after an attack, as well as litigation and legal risks.

**We face risks from our tank container management agreement with Trifleet Leasing (The Netherlands) B.V.**

We entered into a tank container management agreement with Trifleet Leasing (The Netherlands) B.V. ("Trifleet") in June 2013. Under this agreement, we invest funds with Trifleet for the purchase and leasing of tank containers. Trifleet is our exclusive manager for investments in tank containers. Intermodal tank containers are used for the transport and storage of liquid foodstuffs, chemicals, and gases. This is a specialized market subject to a number of regulations and strict operating procedures. As Trifleet is investing funds on our behalf in tank containers, our return on any investments under this management agreement are highly reliant on their skill and performance, as well as the overall investment climate for tank containers. While we approve of the amounts committed under the management agreement, Trifleet selects the lessees, negotiates lease terms, determines equipment specifications, negotiates equipment orders and supervises production, and is responsible for all other management activities including customer billing, equipment return, re-leasing, maintenance, and repairs. If Trifleet or the tank container market does not perform as we anticipate, we may not receive adequate returns on our investment and our results could be materially impacted. Additionally, given the nature of tank containers and their cargos, our ownership of tank containers could expose us to different and additional risks than we generally face as the owner and lessor of dry freight and refrigerated containers. While lessees, Trifleet and ourselves all maintain insurance, and lessees agree to accept liability for claims caused by the operation of tank containers, this may still be inadequate to shield us from costs and liability from any claims arising from tank containers that we own pursuant to the Trifleet management agreement. In December 2020, Trifleet was purchased by GATX Corporation, a publicly traded company that primarily leases railcars. Given the sale of Trifleet, we may face additional risks in the continued performance of our tank investments managed by Trifleet and in our continued relationship with Trifleet.

**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 previously maintained insurance that, after satisfying significant 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. Given the high premium, significant deductible, and policy exclusions in this policy, we determined to lapse our coverage since 2021. Lessees' and depots' insurance policies and indemnity rights may not protect us against losses. Our own insurance may prove to be inadequate or have too high deductibles to prevent against losses or in the future coverage may be unavailable or uneconomic, and losses could arise from a lack of insurance coverage.

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

In January 2019, we were informed that the U.S. Transportation Command Directorate of Acquisition (“USTranscom”) had issued a multi-vendor contract that included us as one of the vendors selected to supply leased marine containers and intermodal equipment to the U.S. Military. As a multi-vendor contract, there is no guarantee that the U.S. Military will accept our bids to supply containers and related services. Thus, expected revenues from the USTranscom contract are difficult to predict and may not materialize or prove profitable. If we do not perform in accordance with the terms of the USTranscom contract, we may receive a poor performance report that would be considered by the U.S. Military in making any future awards.

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 USTranscom contract;
- reduce the scope and value of the USTranscom contract;
- audit our performance under the USTranscom contract and our compliance with various regulations; and
- change certain terms and conditions in the USTranscom contract.

In addition, the U.S. Military may terminate the USTranscom 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 USTranscom 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 joint venture.**

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;
- 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.

**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 solid history in the container leasing industry. 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.

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 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 chlorofluorocarbons (“CFCs”), the European Union (“EU”) instituted regulations to phase out the use of R134A in automobile air conditioning systems which began 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. It has been proposed that R134A usage in containers be banned beginning in 2025, although the final decision has not been made as of yet.

Container production also raises environmental concerns. The floors of dry freight 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 freight 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. The insulation foam in the walls of certain refrigerated containers requires the use of a blowing agent that contains CFCs. 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. EU regulations currently restrict the sale or use of refrigerated containers manufactured with the CFC containing blowing agent and strict enforcement of these regulations could impact our ability to lease or sell these refrigerated containers in EU countries. The container industry in China historically used solvent-based paint systems. Regulations in China for the container industry required stopping the use of solvent-based paint systems in 2017, due to the restrictions on volatile organic compounds used in solvent-based paints. To comply with the regulations, new water borne paint systems were developed and are being used by container manufacturers. The use of water borne paint systems has required significant factory investment and it is problematic to apply water borne paint during the winter in colder parts of China. The conversion to water borne paint impacts factory capacity, increases the cost of containers and requires greater investment by us in container inspection and factory supervision. The industry does not have significant years of experience with water borne paint and the long term durability of water borne paint may not be the same as solvent based paint which could impact the useful life and resale value of containers with water borne paint.

**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 an indirect wholly-owned U.S. subsidiary with operations in the U.S., our U.S. operations are subject to certain U.S. laws that may also impact our international operations. We are subject to the regulations imposed by the Foreign Corrupt Practices Act, 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.

### ***Tax Risks Related to Our Business and Investment in Our Common and Preferred Shares***

#### **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 could become 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 and preferred 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 the 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%.

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.

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 and preferred shares, as if the excess distribution or gain had been recognized ratably over the investor’s holding period for our common and preferred shares. Based on the composition of our income, valuation of our assets, 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 our initial public offering (“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 U.S. Internal Revenue Service (“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 IRS may challenge that a greater portion of our income is effectively connected income that should be subject to U.S. federal income tax.

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.

**Changes in tax laws or their application could adversely affect the results of our operations.**

Our worldwide operations are taxed under the laws of the jurisdictions in which we operate. However, the integrated nature of our worldwide operations can produce conflicting claims from revenue authorities in different countries as to the profits to be taxed in the individual countries, including disputes relating to transfer pricing. Some of the jurisdictions in which we operate have double tax treaties with other foreign jurisdictions, which provide a framework for mitigating the impact of double taxation on our revenues and capital gains. However, mechanisms developed to resolve such conflicting claims are largely uncertain and can be expected to be very lengthy in coming to a final determination in the applicable jurisdictions.

In recent years, tax authorities around the world have increased their scrutiny of company tax filings and have become more rigid in exercising any discretion they may have. As part of this, the Organization for Economic Co-operation and Development (“OECD”) has proposed a number of tax law changes under its Base Erosion and Profit Shifting (“BEPS”) Action Plans to address issues of transparency, coherence and substance.

These OECD tax reform initiatives also need local country implementation, including in Bermuda and the U.S., which may result in significant changes to established tax principles. In response to EU efforts to investigate the tax policies of non-EU jurisdictions, effective December 31, 2018 Bermuda adopted the Economic Substance Act of 2018, which requires that Bermuda registered entities engaged in certain relevant activities (which include finance, leasing and shipping) maintain sufficient economic substance and activities in Bermuda. The failure to comply with the Economic Substance Act may result in fines and penalties and ultimately the striking off of an entity from the Bermuda corporate register. We may be unable to comply with the Economic Substance Act or compliance with the act may materially adversely impact our operations and results. Penalties for noncompliance could adversely affect our operations and results.

On March 27, 2020, the US Coronavirus Aid, Relief, and Economic Security Act (“CARES”) of 2020 was signed into law. For applicable impacted years, the CARES Act introduced measures such as (1) additional carryback years as well as the elimination of the 80% taxable income limitation on net operating losses (“NOL”) usage; (2) enhanced interest deductibility on 163(j) business interest expense (raising adjusted taxable income deduction limit threshold from 30% to 50%); (3) accelerated alternative minimum tax credit refunds; (4) retroactive technical correction of qualified improvement property costs recovery period; (5) enhanced deductibility of charitable contributions from 10% of taxable income limitation to 25%; and (6) introduced payroll tax deferral programs and loan forgiveness programs (Paycheck Protection Program). None of these measures have a material impact on the Company’s tax situation.

Increases in income tax rates or other changes in tax laws, including changes in how existing tax laws are interpreted or enforced, may adversely affect our financial performance. For example, numerous countries have agreed to a statement in support of the OECD model rules that propose a partial global profit reallocation and a global minimum tax rate of 15% and European Union member states have recently agreed to implement the global minimum tax. There can be no assurance that other individual countries will adopt these changes, or that once adopted by any country, that these changes will not have adverse effects on our financial performance.

In general, such tax reform efforts, including with respect to tax base or rate, transfer pricing, intercompany dividends, cross border transactions, controlled corporations, and limitations on tax relief allowed on the interest on intercompany debt,

will require us to continually assess our organizational structure against tax policy trends, and could lead to an increased risk of international tax disputes and an increase in our effective tax rate, and could adversely affect our financial results.

**Our ability to use our net operating losses to offset future taxable income may be subject to certain limitations.**

We have significant net operating loss carry-forwards in the United States. As of December 31, 2022, we had net operating loss carry-forwards relating to U.S. federal income taxes; \$69,807 which will begin to expire from December 31, 2032 through December 31, 2037 if not utilized and \$6,943 has no expiration date.

In the United States, utilization of these net operating loss carry-forwards for federal income tax purposes may be subject to an annual limitation if there is an ownership change within the meaning of Section 382 of the Internal Revenue Code (“Section 382”). In general, an ownership change within the meaning of Section 382 occurs if a transaction or series of transactions over a three-year period result in a cumulative change of more than 50% in the beneficial ownership of a company’s stock. We do not believe we have a limitation on the ability to utilize our net operating loss carry-forwards under Section 382 as of December 31, 2022. However, issuances, sales and/or exchanges of our stock (including, potentially, relatively small transactions and transactions beyond our control) occurring after December 31, 2022, taken together with prior transactions with respect to our stock over a three-year period, could trigger an ownership change under Section 382 in the future and therefore a limitation on our ability to utilize our net operating loss carryforwards. Any such limitation could cause some loss carryforwards to expire before we would be able to utilize them to reduce taxable income in future periods, possibly resulting in a substantial income tax expense or write down of our tax assets or both.

**The calculation of our income tax expense requires 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 judgment required in estimating those reserves, actual amounts paid, if any, could differ from these estimates.

***Risks Related to Our Common Shares, Preferred Shares and Public Listings***

**Any dividends paid in the future could be reduced or eliminated.**

We eliminated our common share dividend payment in the fourth quarter of 2016. In the fourth quarter of 2021, we announced the commencement of dividends on our common shares. While common share dividends have been reinstated, any future dividend could again be eliminated or reduced. 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) TL’s revolving credit facilities or term loan, 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 and preferred shares. Furthermore, since we are a holding company, substantially all 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 as permitted under our lending agreements.

**We face risks from our share repurchase program.**

In September 2019, we announced a share repurchase program to repurchase up to \$25 million of our shares; the program has been increased several times and currently is authorized to repurchase up to a total of \$450 million of our shares. Purchases under this program are at our discretion and we may not purchase all \$450 million of shares authorized under the program. This program may be increased, reduced, or terminated at any time by us. Share repurchases may reduce our financial flexibility, limit our ability to reduce debt, limit our ability to continue or increase our dividend program and may reduce our funds available for container investments. Using funds to repurchase shares could cause our debt to equity ratio to increase and may impair our ability to comply with the financial covenants in our debt agreements. Share repurchases may also reduce the number of shares available for other investors to purchase in the market which could add to share price volatility for our stock. We face these and other risks related to share repurchases. During 2022, 2021 and 2020, the Company repurchased 5,636,772, 2,426,725 and 6,736,493 shares, respectively, for a total amount of approximately \$179 million, \$72 million and \$69 million, respectively.

**The market price and trading volume of our common and preferred 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 and preferred shares has been and may continue to be highly volatile and subject to wide fluctuations. In addition, the trading volume in our common and preferred 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 shares would decline. The market price of our common and/or preferred shares may fluctuate or decline significantly in the future. Some of the factors that could negatively affect the price of our common or preferred shares or result in fluctuations in the price or trading volume of our common or preferred 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 shares or our industry;
- additions or departures of key management personnel;
- adverse market reaction to any indebtedness we may incur or preferred or common shares we may issue in the future;
- changes in our dividend payment or share repurchase policies or failure to execute our existing policies;
- 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 or preferred shares, which could cause a decline in the value of your investment in our common or preferred shares. In addition, the trading price of our common or preferred 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 or preferred shares are low.

**We face risks related to our dual listing on the Johannesburg Stock Exchange and our relationship with Trencor.**

Trencor Limited, a company traded on the Johannesburg Stock Exchange (the “JSE”) in South Africa, owned approximately 47.5% of our issued and outstanding common shares as of December 31, 2018. In December 2019 we commenced a secondary, or dual, listing of our common shares on the JSE under the symbol “TXT”. Promptly following our dual listing, Trencor distributed approximately 24.3 million of its shares in the Company to Trencor’s own shareholders and these shares are now trading on the JSE. In June 2020, Trencor distributed its remaining 3.0 million shares in the Company to Trencor’s own shareholders and those shares trade on the JSE. Following the June 2020 distribution of shares, Trencor no longer holds any shares in the Company. One of our ten directors is also a director of Trencor, and this director owes fiduciary duties to each company and may have conflicts of interest in matters involving or affecting us as well as Trencor. Any sale or transfer of some or all of the common shares owned by large South African shareholders could adversely affect our share price.

While our primary listing remains on the New York Stock Exchange, or NYSE, and we follow the corporate governance requirements applicable to a Bermuda company listed as a foreign private issuer on the NYSE, holders of our TXT shares on the JSE, may seek to impose on us some or all of the corporate governance practices applicable to South African companies which may result in constraints on management and may involve significant costs. These include the King IV Report on Corporate Governance, a document accepted by the JSE and 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 civil society and the environment); and the state.

Any future issuance of securities by us on the JSE would be subject to compliance with JSE rules and subject to review by the JSE and possibly South African exchange control regulations. These requirements could restrict or limit our ability to issue new shares in South Africa. If a significant percentage of our shares remain on the JSE, limits on our ability to issue new equity in South Africa could materially impact our ability to access capital for growth and negatively impact our business.

If we are unwilling or unable to comply with the current or future continuing listing requirements of the JSE we may have our shares delisted from the JSE. The JSE is the primary stock exchange in South Africa and there are restrictions on South African investors holding securities outside South Africa, including on the NYSE. A delisting from the JSE might cause significant sales of our common shares and negatively impact the price of our common shares on the NYSE. If we wish to voluntarily delist our shares from the JSE we may be required to provide a cash tender offer to all holders on the JSE and we may be unwilling or financially unable to do so, which could limit our ability to avoid negative share price impacts from any delisting of our common shares on the JSE.

**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 and preferred 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 or lending covenants. 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 or preferred shares.

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

We and all of our direct and indirect 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, several 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 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 audit committee have a written charter addressing the committee's purpose and responsibilities;
- we have a corporate governance and nominating 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 corporate governance and nominating 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. Our board of directors consists of a majority of independent directors and our Board committees consist solely of independent directors. However, we may use some of the exemptions available to a foreign private issuer. 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 shares 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 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 and risk 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 or preferred 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 or preferred shares to decline significantly. 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. The price of our shares could be negatively impacted if we undertake additional offerings to sell securities. In addition, at our 2019 Annual General Meeting our shareholders approved an amendment and restatement of the 2015 Share Incentive Plan as the 2019 Share Incentive Plan and to increase the maximum number of our common shares issuable pursuant to such plan by 2,500,000 shares and to extend the term of such plan for ten years from the date of the annual meeting of shareholders. The common shares to be issued pursuant to awards under our 2019 Share Incentive Plan have been registered on registration statements on Form S-8 filed with the Securities Exchange Commission and, when issued, will be freely tradable under the Securities Act of 1933.

**We have provisions in our bye-laws and in our preferred shares 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. Additionally on a change of control, subject to certain conditions, preferred shareholders have the right to convert some or all preferred shares to common shares. These 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. or South African 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. or South African corporations and their shareholders. Taken together with the provisions of our bye-laws, some of these differences may result in you 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 listed on NYSE or a South Africa corporation listed on the JSE. 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 claims 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.

## **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 primary listed on the NYSE under the symbol "TGH". The Company's common shares are secondary listed on the JSE in Johannesburg, South Africa under the symbol "TXT". 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.

At December 31, 2022, Textainer Group Holdings Limited had two directly owned subsidiaries:

- Textainer Equipment Management Limited ("TEML"), our wholly-owned subsidiary incorporated in Bermuda, which together with its four wholly-owned subsidiaries (see Item 4 (C), "*Organizational Structure*") 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 two subsidiaries:
  - Textainer Marine Containers II Limited ("TMCL II"), a Bermuda company which is wholly-owned by TL; and
  - Textainer Marine Containers VII Limited ("TMCL VII"), a Bermuda company which is wholly-owned by TL.

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.

See Item 5, "*Operating and Financial Review and Prospects*" for further information regarding recent developments in our business.

### **B. Business Overview**

#### **Our Company**

We are one of the world's largest lessors of intermodal containers based on fleet size, with a total fleet of approximately 2.7 million containers, representing 4.4 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 200 shipping lines and other lessees, including all of the world's leading international shipping lines, as measured by the total TEU capacity of their container vessels. We believe that our scale, global presence, customer service, market knowledge and long history with our 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.

We operate our business in three core segments.

- *Container Ownership.* As of December 31, 2022, we owned containers accounting for approximately 94% of our fleet.
- *Container Management.* As of December 31, 2022, we managed containers on behalf of 10 unaffiliated container investors, providing acquisition, management and disposal services. As of December 31, 2022, total managed containers accounted for approximately 6% 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 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. Our total revenues primarily consist of leasing revenues derived from the lease of owned and managed containers. The most 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 and utilization.

Our operating costs primarily consist of depreciation, direct costs related to the operations of our owned and managed fleet, and interest expense. 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.

## Industry Overview

### Containers

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 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. 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 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, vehicles, or machinery.
- *Refrigerated containers.* Refrigerated containers include an integral refrigeration unit on one end which plugs into an outside power source and are fitted with insulation. Refrigerated containers are used to transport perishable goods such as fresh and frozen produce.



- *Other containers.* Other containers include tank containers, 45' containers, pallet-wide containers and other types of containers. The most prominent type of such containers are tank containers which are stainless steel cylindrical tanks enclosed in rectangular steel frames. Tank containers are used to transport liquid bulk products such as chemicals, oils, and other liquids.

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, as they permit faster loading and unloading of shipping vessels and more efficient transportation of cargo than traditional break bulk shipping methods. The protection provided by containers also reduces damage, loss and theft of cargo during shipment. While the useful life of containers varies based upon the damage and normal wear and tear suffered by the container, we estimate that our useful life for a standard dry freight container used in intermodal transportation is on average 13 to 14 years. Some shipping lines have recently indicated that they intend to keep their containers for longer than 13 to 14 years.

### ***Container Leasing***

Container leasing companies primarily lease containers to container shipping lines. Container shipping lines own and lease containers for their use and have historically relied on leased containers to satisfy their needs. Leasing containers provide shipping lines with an alternative source of financing such as their need to allocate capital to new ship purchases, low sulphur emissions compliance and port terminals. The *Container Census & Leasing Review and Forecast of the Container Equipment Fleet (2022/2023 Annual Report)*, published by Drewry Maritime Research, estimates that as of December 2021, leasing companies owned approximately 51% of the total worldwide container fleet of approximately 49.9 million TEU. We estimated that leasing companies owned approximately 50% of the total worldwide container fleet, as of end of 2022.

Although there was a reduction in container capital expenditures in 2022 following the surge in new container production and ordering in 2021 by both leasing companies and shipping lines, depot container inventory is still at a low level as evidenced by the continued high utilization rates throughout the industry. 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. Leasing allows shipping lines to adjust their container fleets both seasonally and over time and helps balance their trade flows. In addition, the flexibility provided by leasing also allow shipping lines to manage the availability and location of containers and increase their ability to meet peak demand requirements.

The container shipping market and hence the demand for containers, is mainly driven by the rate of trade growth in global GDP and changes in per capita income as this influences consumption. Lease rates for new containers are positively but not exclusively correlated to the price of new containers, which is positively correlated with the price of steel, a major component used in the manufacture of new containers. The shipping business has been characterized by cyclical swings due in part 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, and the shipping line industry's shift to the use of significantly larger vessels. 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.

### **Competitive Strengths and Business Strategies**

*One of the Largest Container Lessors in the Industry and Be the Most Reliable Supplier of Quality Containers.*

We operate one of the world's largest fleets of leased intermodal containers. We provide our services worldwide via a network of regional and area offices and independent depots. 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.

We continue to provide superior equipment and ensure that it is available in the right location and at the right time. Having one of the world's largest container fleets, we are in a strong position to be the most reliable supplier of dry freight containers to meet the demands of shipping lines.

*Proven Ability to Grow Our Fleet Over Time and Continue to Pursue Attractive Container Related Acquisition Opportunities.*

Our ability to invest in our fleet has allowed us to become one of the world's largest container lessors. 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 from former competitors and from our managed fleet with container investors. We endeavor to make regular purchases of containers to replace older containers and increase the size of our fleet. 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 and grow our market share with our existing customers.

*Ability to Generate Attractive Returns Throughout the Container Life-Cycle and Focus on Maintaining High Levels of Utilization.*

One of our strengths is our 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's initial term, 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 in order to maximize the container's return. We focus on renewing or extending our long-term container leases beyond their expiration dates, typically from three to five or more years from the start of the lease. In addition, we attempt to negotiate favorable return provisions on all leases and maintain an active presence in the master and spot lease markets. 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 in order to optimize our returns and the residual value of our fleet.

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 will prioritize profitability with attractive yields on our assets through our disciplined focus on optimal lease pricing, longer-term leases and portfolio management, and by maintaining a low-cost structure.

## **Operations**

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

- Americas Region in Cranford, 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; and
- Asian Pacific Region in Singapore, responsible for Asia and Australia.

Regional vice presidents are in charge of regional leasing and operations. Marketing directors and assistants located in the regional 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.

## **Our Container Fleet**

As of December 31, 2022, we operated 4,425,300 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 approximately 420,000 TEU of new containers per year over the past five years and have been one of the largest buyers of new containers over the same period. Our ability to invest in our fleet on a consistent basis has been instrumental in becoming one of the world's largest container lessors. The containers that we lease are 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, 2022:

	TEU			CEU		
	Owned	Managed	Total	Owned	Managed	Total
Standard dry freight	3,898,769	269,985	4,168,754	3,443,081	239,552	3,682,633
Refrigerated	195,372	6,709	202,081	785,200	27,076	812,276
Other specialized	49,013	5,452	54,465	77,799	7,812	85,611
Total fleet	4,143,154	282,146	4,425,300	4,306,080	274,440	4,580,520
Percent of total fleet	93.6%	6.4%	100.0%	94.0%	6.0%	100.0%

The amounts in the table above did not change significantly from December 31, 2022 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 customers.

Maintenance and repair of our containers is performed by independent depots that we retain in major port areas and inland 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 and managed fleet of containers to our core shipping line customers. The 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.

The following table provides a summary of our total on-hire container fleet by lease type as of December 31, 2022:

<b>Lease Portfolio</b>	<b>Percent of Total On-Hire Fleet</b>	
	TEU	CEU
Term leases (included units on-hire under expired term leases)	70.4%	70.9%
Finance leases	27.4%	26.7%
Master leases	1.4%	1.7%
Spot leases	0.8%	0.7%
Total	100.0%	100.0%

### ***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 for 5 or more 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 rather than for a specified period. 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 cash flow certainty due to their extended duration but carry lower per diem rates than other lease types.

As of December 31, 2022, our term leases had an average remaining duration of 4 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, for leases that are not extended our containers typically remain on-hire at the contractual

per diem rate for an additional ten months beyond the end of the contractual lease term. For additional information about the minimum future rentals under the long-term leases for our owned and managed fleet at December 31, 2022, see Note 4 “Leases” in Item 18, “Financial Statements” in this Annual Report on Form 20-F.

#### *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 thirteen 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 leases. Finance leases require the lessee to keep the containers on lease for the entire term of the lease. As of December 31, 2022, our finance leases had an average remaining term of 10 years.

#### *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.

#### *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.

#### *Lease Agreements*

In general, our lease agreements consist of two basic elements, a master terms and conditions agreement (“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 containers as determined under the terms of the agreements 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.

#### ***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 a fee to assume a portion of the financial burden of repairs up to a pre-negotiated amount. A lessee may pay the DPP fee over the term of the lease in the form of a higher per-diem rate (which is recognized as earned over the term of the lease) or a fixed one-time lump sum payment upon the return of a container in exchange for not being charged for certain damages at the end of the lease term. We do not recognize DPP 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. Maintenance is monitored through

inspections at the time that a container is leased out and returned. 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.

### ***Management Services***

We earn management fees from management of the container investor's containers, which include the leasing, repair, repositioning and storage of the managed fleet pursuant to management agreements with container investors. Typically, the terms of the management agreements are for the expected economic useful life in marine service of the containers subject to the agreement. Our management fees from leasing services are calculated as a percentage of net operating income of the containers. Our information technology ("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. Net operating income is calculated as the lease payment and any other revenue attributable to a container, minus operating expenses related to that container (but not depreciation or financing expenses of the container investor). The container investors are responsible for the direct container expenses incurred in the operation of the managed fleet.

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. Fees to manage containers typically include acquisition fees of 1% to 2.5% of the purchase price; daily management fees of 8% to 12% of net operating income; and disposal fees of 5% to 10% of cash proceeds when containers are sold. 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.

We continue to serve as a long-standing supplier of leased marine containers and chassis to the U.S. Military since 2003 through our contract with the U.S. Transportation Command Directorate of Acquisition ("USTranscom"). 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. In January 2019, the USTranscom had issued a multi-vendor contract that included us as one of three vendors. The new contract covers a base year starting on March 1, 2019, with four option years running through February 29, 2024 and we have received the contract extension for the final year (or fourth option year) for the period March 1, 2023 to February 29, 2024.

### ***Resale of Containers***

We sell containers to optimize their residual value in multiple markets, including locations with low lease-out demand. Our Resale Division sells off-hire containers from our fleet at the end, typically about 13 years, 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. In addition, we buy new trading containers and used trading containers from shipping lines and other third parties that we then lease or resell. 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. Our Resale Division has a team of container sales and operations specialists in five offices globally that manage the sale process for these used containers.

### ***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 profitable disposals of used containers.

### *Re-leasing*

Since our leases allow our lessees to return their containers, we typically lease a container several times during its life. 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, their presence in relevant geographic locations and the level of service we provide our lessees. We believe that our global presence and long-term relationships with our 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 resale market when available.* In order to optimize the investment return on a container, we have sold containers in our excess inventory and/or weak demand 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, 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 pay to reposition excess containers to locations with higher demand or higher resale prices.
- *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, 2022, we managed our container fleet through approximately 400 independent container depot facilities in approximately 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. Our container repair standards and processes are generally managed in accordance with standards and procedures specified by the IICL. 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. In general, lessees are responsible for the lessee damage portion of the repair costs, such as dents in the container and debris left in the container, and we are responsible for normal wear and tear.

We occasionally supplement our internal operations group with the use of independent inspection agents. 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 depot is conducted via the internet, and majority of our depots are able to report container activity and damage detail via EDI. Most of the depot agency agreements follow a standard form and generally provide that the depot will be liable for loss or damage of off-hire 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.

## **Credit Controls**

We monitor our customers' performance and our lease exposures on an on-going basis. Our credit committee sets different maximum credit 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 monitoring collections, which positively contributes to our strong collection and credit approval process through our staff's close communication with our customers. Our credit management processes are aided by the long payment experience we have with most of our customer lessees and container sales customers, our broad network of long-standing relationships in the container shipping industry that provides current information about customer lessees' and container sales customers' market reputations and our focus on collections.

We historically have high recovery rates for containers in default situations and the re-marketability of our container fleet reduces our losses resulting from lessee defaults. From 2015 through 2022, we recovered on average, 85% of the containers that were the subject of defaulted contracts where we had completed the recovery process and had at least 1,000 CEU on lease to the customer. The growth in the container shipping industry also 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. 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. We previously maintained insurance that covered certain costs typically incurred such as repairs and repositioning when containers are recovered after a default. However, after a major bankruptcy in the shipping industry in 2016, the availability of credit insurance protection became much more limited. While we previously maintained insurance to cover some defaults, premium increases, large deductible amounts and significant policy exclusions made the coverage uneconomic and we determined to lapse our coverage since 2021.

## **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. 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. We have marketing and customer service personnel in North America, Asia, Australia, Europe and in Africa. 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.

## **Customers**

Our customers are mainly international shipping lines, but we also lease containers to freight forwarding companies and the U.S. Military. Our scale, long presence in the business and reliability as a supplier of containers in locations where our customers need them has resulted in very strong relationships with our shipping line customers. Our top 20 customers, as measured by revenues, have on average been our customers for around 30 years, and include almost all of the world's largest shipping lines, as measured by container vessel fleet size. Our top 20 and top 5 customers accounted for approximately 88.3% and 60.8%, respectively, of our total fleet's 2022 lease rental income. Our three largest customers in 2022 accounted for \$198 million or 24.4%, \$95 million or 11.7% and \$87 million or 10.8% of our total fleet's 2022 lease rental income. A default by any of our major customers could have a material adverse impact on our business, results from operations and financial condition.

## **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 technology 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, create redelivery bookings 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 all of our containers in the PRC. There are currently three major manufacturers, in addition to few smaller 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**

We compete with at least five other major container leasing companies in addition to 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 staff 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 Responsibility**

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. 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 may not be sufficient to protect us against losses arising from environmental damage and/or systems or services we may be required to install.

Container shipping has been a key element in furthering world trade and related economic development. Containerization and the use of ever larger vessels have a significantly lower environmental footprint than other forms of shipping such as air freight. Additionally, at the end of container's useful life at sea, they are not sent to landfills and have a myriad of additional uses, including as construction sheds, static storage and as shelter or housing. Containers used for these purposes have a positive environmental benefit by reducing the need to use new materials to create these storage or housing solutions.



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 (i.e., CFC's and solvent-based paints) due to their ozone depleting and global warming effects, and regulations on the cutting and export of hardwood due to concerns regarding de-forestation and climate change. These environmental regulations may impact the future repair and operating costs for these containers, and we could be required to incur large retrofitting expenses for our refrigerated containers. To comply with new regulations, water borne paint systems have been developed and are being used by container manufacturers. The conversion to water borne paint may impact factory capacity, increase the cost of containers and require greater investment by us in container inspection and factory supervision.

We are an active member in industry groups such as the International Institute of Container Lessors that participate in industry projects such as the evaluation and development of more environmentally friendly container flooring that use bamboo rather than endangered hardwoods. We worked closely with container factories and others in the industry to complete the shift to container flooring that uses farmed wood, such as larch, birch, eucalyptuses and bamboo and we are also supporting industry efforts to implement a floor design which would reduce approximately 30% of the wood content (by substituting steel for wood). We support industry efforts to explore other flooring materials such as orientated strand board and the use of recycled materials. We have also worked with and supported our container suppliers' transition to the use of waterborne paint that does not use harmful solvents in the drying process. This occurred about five years ago for dry freight containers and the transition recently occurred for refrigerated containers.

For further discussions, see Item 3, *“Key Information -- Risk Factors – Environmental liability and regulations may adversely affect our business, results of operations and financial condition.”*

## **Regulation**

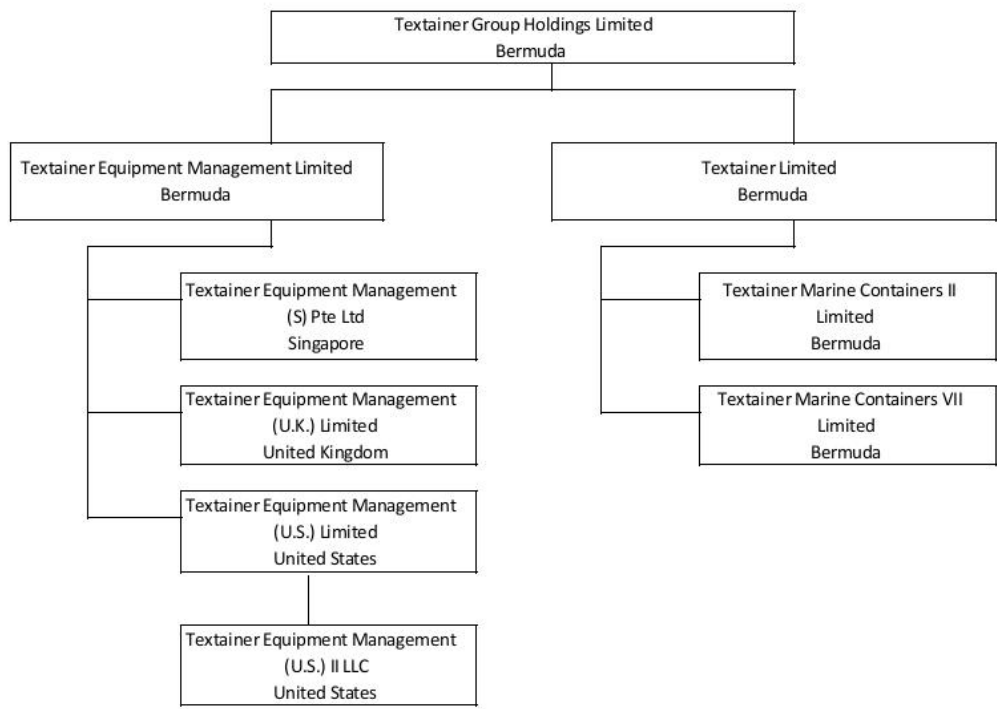
We may be subject to regulations promulgated in various countries, including the U.S., seeking to protect the integrity of international commerce and prevent the use of containers for international terrorism or other illicit activities. As these regulations develop and change, we may incur increased 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. For further discussions, see Item 3, *“Key Information -- Risk Factors – We may incur costs associated with cargo security regulations, which may adversely affect our business, results of operations and financial condition”*. We may also be affected by legal or regulatory responses to potential global climate change. Please see Item 3, *“Key Information -- Risk Factors – Environmental liability and regulations may adversely affect our business, results of operations and financial condition.”*

## **Human Capital Management**

We seek to attract, retain, and develop the best talent available in order to drive our continued success and achieve our business goals. Our management team has a solid history in the industry with extensive experience in sourcing, leasing, financing, selling and managing containers. As of December 31, 2022, our global workforce was comprised of approximately 162 employees located in 14 regional and area offices in 13 different countries. We are not a party to any collective bargaining agreements. Our employment policies and procedures are designed to provide a work environment that is responsive to and supportive of each employee's objectives and we provide competitive compensation and benefits, and meaningful recognition programs to inspire outstanding team and individual performance. As an equal employment opportunity employer, we have protections in place for all protected groups through our Code of Business Conduct and Ethics. We strive for an inclusive, safe, and respectful work environment that fosters employee growth and development.

C. Organizational Structure

Our current corporate structure as of February 14, 2023 is as follows:



D. Property, Plant and Equipment

We maintain an office in Bermuda, where Textainer Group Holdings Limited is incorporated. We have 14 offices including our head office in Bermuda, our administrative office in San Francisco, California and offices in Cranford, 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 August 2023, the lease for our San Francisco office expires in May 2027, the lease for our Cranford, New Jersey office expires in January 2025, the lease for our New Malden, United Kingdom office expires in December 2024 and our lease for our Singapore office expires in July 2024. In addition, we have non-exclusive agents who represent us in India, Indonesia, Republic of the Philippines, Sri Lanka, and Thailand. 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.*

*For the discussion of the financial condition and results of operations for the years ended December 31, 2021 compared to the year ended December 31, 2020, refer to Item 5 "Operating and Financial Review and Prospects - Operating Results" and "- Liquidity and Capital Resources" in our Form 20-F for the fiscal year ended December 31, 2021 filed with the U.S. Securities and Exchange Commission on March 17, 2022, which discussion is incorporated herein by reference.*

### Overview

Operating since 1979, we are one of the world's largest lessors of intermodal containers based on fleet size, with a total fleet of approximately 2.7 million containers, representing 4.4 million TEU. During 2022: (i) we invested in approximately \$803 million of containers for our fleet, (ii) our utilization averaged 99.4% in 2022 compared to 99.8% in 2021, and (iii) we repurchased approximately 5.6 million shares of our common shares.

Our business comprises of 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 and managed containers and other non-leasing fees received for managing containers owned by third parties, equipment resale and military management. For further details of our business overview, see Item 4, "Information on the Company."

### Market Overview

The COVID-19 pandemic has had significant impacts on global economies. The decrease in global trade volumes and economic activity due to the COVID-19 pandemic led to disruptions in global shipping and reduced container demand during the first half of 2020. However, cargo volumes and leasing demand rebounded since the start of the second half of 2020, and continued into 2022, as the pandemic stabilized, and demand for consumer goods and supply chain congestion have caused freight volumes to increase versus the first half of 2020. Global geopolitical stress from factors including the ongoing Russia-Ukraine war, as well as inflation due to higher energy prices and increased consumer demand and monetary policy during the pandemic, have led to fears of recession. Additionally, increased U.S. interest rates and the resulting stronger U.S. Dollar have contributed to global economic stress and recession concerns. This global economic stress has at least partially contributed to risk of a market recession as global demand for consumer goods and associated trade volumes stopped growing and have begun to experience some signs of decline.

We invested heavily in new containers during 2021 and the first half of 2022 in response to strong container demand, which has been subdued starting in the second half of 2022 following the prior historic container production in 2021. Container drop-offs, comprising of primarily sales-age containers and which had been subdued, started to increase in line with the reduced global shipping congestion. We currently believe these disruptions will ultimately normalize, but we have strongly benefited from the increased global containerized trade disruptions that have emerged since the second half of 2020 and throughout 2022 and containers purchased during this period were committed to very attractive leases with very long lease durations. While uncertainty remains on how the pandemic evolves, the implications from the ongoing Russia-Ukraine war and other geopolitical and economic stress, and the currently lower container demand environment, our balance sheet and liquidity are healthy and we have never had such a portfolio of secured long-term contracts. As we look out to the coming months, we see a continuation of this uncertainty with a likely reduction of our current high gain on container sales, but we remain well-positioned to respond to the current market environment. While container utilization may continue to gradually decrease, it should remain elevated compared to historic levels. For additional information regarding the risk and uncertainties

that we could encounter as a result of the COVID-19 pandemic, the Russia-Ukraine war and related global conditions, see Item 3, “Key Information - Risk Factors” and elsewhere in this Annual Report on Form 20-F.

## 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;
- steel prices and the price and availability of other container components;
- interest rates and availability of debt financing at acceptable terms;
- our ability to lease our new containers shortly after we purchase them;
- access to container production capacity;
- prices of new and used containers and the impact of changing prices on containers held for sale and the residual value of our in-fleet owned containers;
- remarketing risk;
- the creditworthiness of our customers;
- further consolidation among shipping lines and/or container lessors;
- 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, such as the COVID-19 pandemic, or the outbreak of war and hostilities, such as the impact of the Russian invasion of Ukraine.

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

## Key Operating Metrics

The most important driver of our profitability is the extent to which our leasing revenues exceed our operating costs. The key drivers of our leasing revenues are fleet size, lease rates, and utilization. Our operating costs primarily consist of depreciation, direct costs related to the operations of our owned and managed fleet, and interest expense. Our profitability is also driven by the gains or losses we realize on the sale of our containers.

**Fleet Size.** Our total fleet consists of containers that we own, and containers owned by other container investors that we manage. We purchased approximately \$803 million and \$2.0 billion during 2022 and 2021, respectively, of containers for our fleet. The size of our fleet increased in 2021 as we heavily invested in new containers in response to strong container demand, virtually all of which are currently on lease with tenors in excess of 12 years. The table below summarizes the composition of our total fleet, in TEU and CEU, by type of container as of December 31, 2022, 2021 and 2020. TEU and CEU are standard industry measures of container size and relative value and are used to measure the quantity of containers that make up our revenue earning assets:

	Total Fleet in TEU			Total Fleet in CEU		
	2022	2021	2020	2022	2021	2020
Standard dry freight	4,168,754	4,060,296	3,522,809	3,682,633	3,593,693	3,139,487
Refrigerated	202,081	203,413	191,593	812,276	818,224	772,458
Other specialized	54,465	58,658	59,651	85,611	91,587	93,015
Total fleet	4,425,300	4,322,367	3,774,053	4,580,520	4,503,504	4,004,960

**Lease Revenue.** We generate lease rental income by leasing our owned container fleet and managed container fleet to container shipping lines and other customers. Lease rental income on operating lease contracts comprises daily per diem rental charges due under the lease agreements and on finance lease contracts represents interest income earned under finance lease contracts, 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 DPP. For further details of our types of leases, see Item 4, “*Information of the Company—Business Overview.*”

Lease rental income is 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, 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 expiration of the lease. Container prices have moderated in 2022 from the record levels that prevailed in 2021. Average lease rates of our containers on operating leases increased by 3.2% in 2022 compared to 2021, primarily reflecting the favorable current market environment and impact of higher new container prices. Our finance lease income increased during 2022 compared to 2021, primarily due to growth of our fleet on finance leases by approximately 4.4% (as a percentage of our total fleet in TEU on hire during the period) which was driven by the strong demand of containers.

**Utilization.** 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.

Our average utilization during 2022 and 2021 were higher compared to historic levels due to trade volumes and global supply-chain disruptions that have continued to drive container demand. The following table summarizes our average total fleet utilization (CEU basis) for the years ended December 31, 2022, 2021 and 2020:

	2022	2021	2020
Average utilization	99.4 %	99.8 %	96.6 %

**Container Sales.** 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. In addition, we purchase new trading containers and used containers from third parties, primarily shipping lines, and resell these containers to a wide variety of buyers. Disposal volumes were higher during 2022 compared to 2021 due to increased inventory of containers available for sale. Sales prices of our containers decreased in 2022 compared to 2021 primarily due to an increase in availability of sale containers and a decrease in new container prices in 2022.

**Operating Expenses.** Storage, handling, maintenance, repositioning, agency costs, insurance expenses and other direct container expenses are operating costs of our 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 fleet and inversely related to our utilization rate for those containers. As utilization decreases, we typically have higher storage, handling, maintenance and repositioning expenses.

Our operating costs primarily consist of depreciation expense on our owned fleet. We depreciate our standard dry freight containers over a period of 13 to 14 years, refrigerated containers over a period of 12 years, tank containers over a

period of 20 years and open top and flat rack containers over a period of 14 to 16 years, on a straight-line basis to a fixed residual value. We regularly assess both the estimated useful life of our containers and the expected residual values, and, when warranted, adjust our depreciation estimates accordingly. Depreciation expense will vary over time based upon the size and the purchase price of containers in our owned fleet.

**Interest Expense.** Interest expense increased \$29,980 from 2021 to 2022 due to an increase in average effective interest rate and a higher average debt balance from funding increased container investment of our owned fleet.

## A. Operating Results

### Comparison of the Years Ended December 31, 2022 and 2021

The following table summarizes our revenues and gain on sale of owned fleet containers, net for the years ended December 31, 2022 and 2021 and changes between those periods:

	Year Ended December 31,		Variance
	2022	2021	
	(Dollars in thousands)		
Operating leases - owned fleet	\$ 609,558	\$ 589,045	\$ 20,513
Operating leases - managed fleet	49,635	56,037	(6,402)
Finance leases and container leaseback financing receivable - owned fleet	150,821	105,648	45,173
Total lease rental income	<u>\$ 810,014</u>	<u>\$ 750,730</u>	<u>\$ 59,284</u>
Management fees - non-leasing	<u>\$ 2,812</u>	<u>\$ 3,360</u>	<u>\$ (548)</u>
Trading container sales proceeds	\$ 23,791	\$ 32,045	\$ (8,254)
Cost of trading containers sold	(21,939)	(21,285)	(654)
Trading container margin	<u>\$ 1,852</u>	<u>\$ 10,760</u>	<u>\$ (8,908)</u>
Gain on sale of owned fleet containers, net	<u>\$ 76,947</u>	<u>\$ 67,229</u>	<u>\$ 9,718</u>

Total lease rental income - increased \$59,284 from 2021 to 2022 primarily due to an increase of \$45,173 in the growth of our fleet on finance leases and an increase of \$2,893 in the total operating fleet that was available for lease. The organic growth of the fleet was boosted by the procurement of containers in the first half of the year and the continued impact of containers purchased in 2021. Additionally, an increase of \$20,061 in average per diem rental rates of our total operating fleet primarily reflecting the favorable current market environment and the impact of higher new container prices. However, this increase was partially offset by a \$5,865 settlement received in 2021 from a previously insolvent customer related to unrecognized lease rental income from prior periods and a \$3,048 decrease due to lower utilization caused by decreased demand from the peak of 2021.

Management fees – non-leasing decreased \$548 from 2021 to 2022 primarily due to a decrease of \$398 in sales commissions, which was mainly due to a reduction in the managed fleet size as of result of our purchase of certain containers of a managed fleet in 2021 and the disposal of certain older and sales-age managed containers in 2021, and lower container sales prices as a result of market normalization.

Trading container margin decreased \$8,908 from 2021 to 2022; \$7,354 of the decrease resulted from a reduction in per unit margin due to lower resale prices as a result of market normalization and \$1,554 of the decrease resulted from a reduction in unit sales volume due to our limited inventory of trading containers available for sale.

Gain on sale of owned fleet containers, net, increased \$9,718 from 2021 to 2022; \$33,446 of the increase was due to higher container sales volume from redeliveries of predominantly older and sales-age containers of our owned fleet where the lease contracts had expired, partially offset by a \$22,564 decrease in average gain per container sold due to lower resale prices as a result of market normalization and a \$1,164 decrease in day-one gain on sales-type leases.

The following table summarizes our total operating expenses for the years ended December 31, 2022 and 2021 and changes between those periods:

	Year Ended December 31,		Variance
	2022	2021	
	(Dollars in thousands)		
Direct container expense - owned fleet	\$ 31,980	\$ 23,384	\$ 8,596
Distribution expense to managed fleet container investors	44,150	50,360	(6,210)
Depreciation and amortization	292,828	284,115	8,713
General and administrative expense	48,349	46,462	1,887
Bad debt expense (recovery), net	740	(1,285)	2,025
Container lessee default expense (recovery), net	1,179	(1,088)	2,267
Total operating expenses	\$ 419,226	\$ 401,948	\$ 17,278

Direct container expense – owned fleet increased \$8,596 from 2021 to 2022 primarily due to a \$6,222 increase in maintenance and handling expense and a \$2,816 increase in storage expense, resulting from a higher level of drop off activity.

Distribution expense to managed fleet container investors decreased \$6,210 from 2021 to 2022 primarily due to a decrease in lease rental income of the managed fleet resulting from a reduction in the managed fleet size as of result of our purchase of certain containers of a managed fleet in 2021 and the disposal of certain older and sales-age managed containers in 2021.

Depreciation and amortization expense increased \$8,713 from 2021 to 2022. Amortization represents the amortization of amounts paid to acquire the rights to manage the container fleets. \$8,364 of the increase was due to a net increase in the size of our owned depreciable fleet and \$2,710 of the increase was due to a net increase in writing down the value of containers held for sale to their estimated fair value less cost to sell, resulting from mark to market value adjustments on certain containers held for sale, partially offset by a decrease of \$2,361 in amortization expense primarily due to our purchase of certain containers of a managed fleet in the third quarter of 2021 and the certain managed containers becoming fully amortized in the fourth quarter of 2021.

General and administrative expense increased \$1,887 from 2021 to 2022 primarily due to a \$2,110 increase in technology expense and a \$799 increase in professional fees, mainly resulting from the successful implementation of our ERP system effective January 2022, and a \$744 increase in travel expenses resulting from the easing of COVID-19 travel restrictions, partially offset by a \$2,414 decrease in compensation and benefit costs, largely due to higher incentive payouts in the prior year.

Bad debt expense (recovery), net, changed from a recovery of \$1,285 in 2021 to an expense of \$740 in 2022 primarily due to an increase in the estimates for credit loss reserve on our net investment in finance leases and container leaseback financing receivable, driven by an increase in the finance lease and leaseback financing receivable and an increase in the estimated credit loss rates during 2022 due to a forecasted economic slowdown compared to a reduction in the estimated credit loss rates during 2021 due to a forecasted economic recovery.

Container lessee default expense (recovery), net for 2022 and 2021 amounted to an expense of \$1,179 and a recovery of \$1,088, respectively, which is summarized in the below table,

	Year Ended December 31,	
	2022	2021
	(Dollars in thousands)	
Cost to recover containers with insolvent lessees	\$ 71	\$ 3,781
Charge for written off containers that were deemed unlikely to be recovered from insolvent lessees	1,935	2,793
Gain associated with recoveries, net of container recovery costs, on containers previously estimated as lost with an insolvent lessee in 2019 who subsequently exited out of bankruptcy	—	(7,662)
Cash distribution from a prior bankruptcy lessee defaulted in 2013	(802)	
Other	(25)	—
Container lessee default expense (recovery), net	\$ 1,179	\$ (1,088)

The following table summarizes other income (expenses) and income tax expense for the years ended December 31, 2022 and 2021 and changes between those periods:

	Year Ended December 31,		Variance
	2022	2021	
	(Dollars in thousands)		
Interest expense	\$ (157,249)	\$ (127,269)	\$ (29,980)
Debt termination expense	—	(15,209)	15,209
Realized loss on financial instruments, net	(91)	(5,634)	5,543
Unrealized (loss) gain on financial instruments, net	(502)	4,409	(4,911)
Other, net	2,406	(367)	2,773
Net other expense	<u>\$ (155,436)</u>	<u>\$ (144,070)</u>	<u>\$ (11,366)</u>
Income tax expense	<u>\$ (7,539)</u>	<u>\$ (1,773)</u>	<u>\$ (5,766)</u>

Interest expense increased \$29,980 from 2021 to 2022; \$23,408 of the increase resulted from an increase in the average debt balance of \$879,521 due to the procurement of containers for organic fleet growth and \$6,572 of the increase resulted from an increase in average interest rates of 0.12 percentage points, mainly attributed to market rate increases on the unhedged component of our debt.

Debt termination expense for 2021 amounted to \$15,209, which included \$10,631 loan termination expense and \$1,235 write-off of unamortized debt issuance costs resulting from the early redemption of Textainer Marine Containers VI Limited ("TMCL VI") Term Loan and \$2,857 on the write-off of unamortized debt issuance costs of the early redemption of 2019-1 Bonds.

Realized loss on financial instruments included amounts for our marketable securities and derivative instruments. Realized loss on marketable securities for 2022 and 2021 amounted to \$91 and \$226, respectively, which was related to certain of the shares of marketable equity securities of a lessee that we received in the second quarter of 2021 for a bankruptcy settlement that were sold. Realized loss on derivative instruments, net for 2021 amounted to \$5,408. During the second and third quarters of 2021, we early terminated all of our interest rate swaps that were not designated as cash flow hedges. See Note 8 "Derivative instruments" in Item 18, "Financial Statements" in this Annual Report on Form 20-F for further information.

Unrealized (loss) gain on financial instruments included amounts for our marketable securities and derivative instruments. Unrealized loss on marketable securities for 2022 and 2021 amounted to \$502 and \$811, respectively, which was related to a fair value change in the marketable equity securities of a lessee that we received in the second quarter of 2021 for a bankruptcy settlement. Unrealized gain on derivative instruments, net for 2021 amounted to \$5,220. During the second and third quarters of 2021, we early terminated all of our interest rate swaps that were not designated as cash flow hedges. See Note 8 "Derivative instruments" in Item 18, "Financial Statements" in this Annual Report on Form 20-F for further information.

Other, net increased \$2,773 from 2021 to 2022 primarily due to a \$3,138 increase in interest income predominantly resulted from an increase in average interest rates, partially offset by a \$330 decrease related to the re-measurement at each period end of the cash balances that are denominated in currencies other than our functional currency.

Income tax expense increased \$5,766 from 2021 to 2022 primarily due to an increase in pre-tax income, a decreased proportion of the Company's income generated in lower tax jurisdictions in 2022 and an increase in tax for existing uncertain tax positions. See Note 6 "Income Taxes" to our consolidated financial statements in Item 18, "Financial Statements" in this Annual Report on Form 20-F for further information.



## Segment Information

For further discussion, see Note 1 “Nature of Business and Summary of Significant Accounting Policies” and Note 9 “Segment Information” to our consolidated financial statements in Item 18, “Financial Statements” in this Annual Report on Form 20-F.

The following table summarizes our income before income taxes attributable to each of our business segments for the years ended December 31, 2022 and 2021 (before inter-segment eliminations) and changes between those periods:

	Year Ended December 31,		Variance
	2022	2021	
	(Dollars in thousands)		
Container ownership	\$ 266,224	\$ 239,857	\$ 26,367
Container management	39,938	46,706	(6,768)
Container resale	16,666	19,166	(2,500)
Other	(6,802)	(4,845)	(1,957)
Eliminations	937	(14,823)	15,760
Income before income tax	<u>\$ 316,963</u>	<u>\$ 286,061</u>	<u>\$ 30,902</u>

Income before income taxes attributable to the Container Ownership segment increased \$26,367 from 2021 to 2022. The following table summarizes the variances included within this increase:

	From 2021 to 2022
Increase in lease rental income - owned fleet	\$ 62,935
Decrease in debt termination expense	15,209
Increase in gain on sale of owned fleet containers, net	9,522
Decrease in realized loss on derivative instruments, net	5,408
Increase in interest income	1,866
Increase in interest expense	(29,768)
Increase in direct container expense	(20,523)
Increase in depreciation expense	(9,127)
Decrease in unrealized gain on derivative instruments, net	(5,220)
Changed from container lessee default recovery, net to container lessee default expense, net	(2,267)
Change from bad debt recovery, net to bad debt expense, net	(1,852)
Other	184
	<u>\$ 26,367</u>

Income before income taxes attributable to the Container Management segment decreased \$6,768 from 2021 to 2022. The following table summarizes the variances included within this decrease:

	From 2021 to 2022
Decrease in distribution expense to managed fleet container investors	\$ 6,210
Increase in interest income	1,238
Decrease in amortization expense	972
Decrease in management fees	(8,108)
Decrease in lease rental income - managed fleet	(6,402)
Increase in general and administrative expense	(674)
Other	(4)
	<u>\$ (6,768)</u>

Income before income taxes attributable to the Container Resale segment decreased \$2,500 from 2021 to 2022. The following table summarizes the variances included within this decrease:

	From 2021 to 2022
Increase in management fees	\$ 5,059
Decrease in amortization expense	1,389
Decrease in gain on container trading, net	(8,906)
Other	(42)
	<u>\$ (2,500)</u>

Loss before income taxes attributable to Other activities unrelated to our reportable business segments increased \$1,957 from 2021 to 2022 primarily due to increases in general and administrative expense and in foreign currency exchange loss.

Segment eliminations changed from a net loss of \$14,823 for the year ended December 31, 2021 to a net income of \$937 for the year ended December 31, 2022. This change consisted of a \$14,590 decrease in acquisition fees received by our Container Management segment from our Container Ownership segment and a \$1,170 increase in amortization related to capitalized acquisition fees received by our Container Management segment from our Container Ownership segment, respectively. Our Container Ownership segment capitalizes acquisition fees billed by our Container Management segment as part of containers, net and records lease rental income and depreciation expense to amortize the acquisition fees over the lease terms and useful lives of the containers, respectively, which is eliminated in consolidation.

## Currency

Almost all of our revenues are denominated in U.S. dollars and our direct container expenses and operating expenses were substantially denominated in U.S. dollars. We pay our non-U.S. employees in local currencies and certain operating expenses are denominated in foreign currencies. During 2022, 2021 and 2020, \$8,879 or 28%, \$5,024 or 21%, and \$15,225 or 28%, respectively, of the Company's direct container expenses – owned fleet were paid in foreign currencies. Our operations in locations outside of 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 accordance with its policy, the Company does not hedge these container expenses as there are no significant payments made in any one foreign currency. For further detail on foreign currencies, see Note 1 "Nature of Business and Summary of Significant Accounting Policies" to our consolidated financial statements in Item 18, "Financial Statements" in this Annual Report on Form 20-F).

## B. Liquidity and Capital Resources

As of December 31, 2022, we had cash and cash equivalents (including restricted cash) of \$267,409. For the year ended December 31, 2022, cash provided by operating activities, together with the proceeds from container leaseback financing receivable and proceeds from sale of containers and fixed assets was \$1,011,396. In addition, we had \$792,701 of maximum borrowing capacity remaining under our debt facilities as of December 31, 2022. We have successfully utilized a wide variety of debt financing alternatives to fund our growth, including revolving credit facilities, term loans and bonds payable. We believe this diversity of debt 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 some of our shipping line customers. It is likely that we will generate sufficient operating cash flow to meet these ongoing obligations in the foreseeable future.

Our principal sources of liquidity have been our cash flows from operations including the sale of containers and borrowings under debt facilities. 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 primarily related to our purchasing of containers, required principal and interest payments on our debt obligations, and any dividends and share repurchases. Also, see our discussion in Note 10 "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.

Assuming that our lenders remain solvent, and lessees meet their lease payment obligations, we currently believe that our existing cash and cash equivalents, cash flows generated from operations, proceeds from the sale of containers and borrowing availability under our debt facilities are sufficient to meet our working capital needs and other capital and liquidity

requirements for the next twelve months. We will continue to monitor our liquidity and the credit markets in light of the global economic uncertainty and financial market conditions caused by the pandemic, the ongoing Russia-Ukraine war and other ongoing geopolitical and economic stress. However, we cannot predict with any certainty the impact on the Company of any further disruptions in the credit environment.

### ***Capital Expenditures and Commitments***

As of December 31, 2022, we had container contracts payable to manufacturers of \$6,648. During 2022, we paid \$940,188 for containers and fixed assets, including for containers under leaseback financing receivable, and we have \$3,800 of total purchase commitments for future container investments for delivery in 2023. Our capital requirements are primarily financed through cash flows from operations and our debt facilities. The timing of our debt refinancing will depend on our level of future purchases of containers, the size of our debt facilities in the future, and prevailing conditions in the debt markets.

As of December 31, 2022, we had \$9,963 of future payment obligations related to our office operating leases, of which \$2,334 is due within the next twelve months (for further detail, see Note 4 “Leases” to our consolidated financial statements in Item 18, “*Financial Statements*” in this Annual Report on Form 20-F).

As of December 31, 2022, 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.

### ***Dividends***

During 2022, we paid \$19,875 of cash dividends to our preferred shareholders. As of December 31, 2022, we have cumulative undeclared and unpaid preferred dividends of \$854.

During 2022, our board of directors declared a \$0.25 quarterly cash dividend per common share for a total aggregate amount of \$46,235 to our common shareholders.

### ***Share Repurchase Program***

Since the inception of the program in 2019, we repurchased an aggregate total of \$328,403 under our share repurchase program, of which \$179,092 were repurchased during 2022 (for further detail, see Item 16E, “*Purchases of Equity Securities by the Issuer and Affiliated Purchasers*”).

### ***Description of Indebtedness***

As of December 31, 2022, the total outstanding principal balance on our debt facilities was \$5,539,803, of which \$385,836 are due within the next twelve months. Final maturities on these debt facilities are between December 2026 and August 2046. As of December 31, 2022, approximately 90% of our debt facilities have either fixed interest rates or floating interest rates that have been synthetically fixed through interest rate swap agreements. From time to time, we may issue additional debt in order to raise capital for future requirements. For further discussions and detail on the estimated future principal payments on our debt obligations, see Note 7 “Debt” to our consolidated financial statements in Item 18, “*Financial Statements*” in this Annual Report on Form 20-F.

As of December 31, 2022, our estimated future aggregate interest payments on debt obligations amounted to \$970,991 (including amounts due within the next twelve months of \$218,940), and our estimated future aggregate interest receivables on net interest rate swap receivables amounted to \$215,266 (including amounts due within the next twelve months of \$55,087).

As of December 31, 2022, we had the following outstanding borrowings and borrowing capacities per debt facility (in thousands):

<b>Facility:</b>	<b>Current Borrowing</b>	<b>Additional Borrowing Commitment</b>	<b>Total Commitment</b>	<b>Available Borrowing, as Limited by the Borrowing Base</b>	<b>Current and Available Borrowing</b>
TL Revolving Credit Facility	\$ 1,367,858	\$ 532,142	\$ 1,900,000	\$ 272,748	\$ 1,640,606
TL 2019 Term Loan	127,293	—	\$ 127,293	—	127,293
TL 2021-1 Term loan	60,315	—	60,315	—	60,315
TL 2021-2 Term Loan	192,201	—	192,201	—	192,201
TMCL II Secured Debt Facility	1,239,441	260,559	1,500,000	34,977	1,274,418
TMCL VII 2020-1 Bonds (1)	332,413	—	332,413	—	332,413
TMCL VII 2020-2 Bonds (1)	476,279	—	476,279	—	476,279
TMCL VII 2020-3 Bonds (1)	175,750	—	175,750	—	175,750
TMCL VII 2021-1 Bonds (1)	467,880	—	467,880	—	467,880
TMCL VII 2021-2 Bonds (1)	564,373	—	564,373	—	564,373
TMCL VII 2021-3 Bonds (1)	536,000	—	536,000	—	536,000
Total (2)	<u>\$ 5,539,803</u>	<u>\$ 792,701</u>	<u>\$ 6,332,504</u>	<u>\$ 307,725</u>	<u>\$ 5,847,528</u>

(1) Amounts for bonds payable exclude unamortized discounts in an aggregate amount of \$485.

(2) Current borrowing for all debts excludes prepaid debt issuance costs in an aggregate amount of \$34,399.

#### *Debt Covenants*

All of our debt facilities are secured by specific pools of containers and related assets owned by the Company. TGH also acts as an unconditional guarantor of the TL Revolving Credit Facility, the TL 2019 Term Loan, the TL 2021-1 Term Loan, and the TL 2021-2 Term Loan. In addition to customary events of default as defined in our credit agreements and indenture and various restrictive financial covenants, the Company's debt facilities also contain other various debt covenants and borrowing base minimums. The TL Revolving Credit Facility, TL 2019 Term Loan, TL 2021-1 Term Loan, and TL 2021-2 Term Loan also contain cross default provisions that may result in an acceleration of principal repayment under these debt facilities if an uncured default condition were to exist.

The debt agreements are the obligations of our subsidiaries and related debt covenants may be calculated at the consolidated or subsidiary level. We are subject to financial covenants such as those related to leverage, interest coverage, container sales proceeds ratio, net income and debt levels, including limitations on certain liens, indebtedness and investments.

The table below reflects the key covenants for the Company that cover the majority of our debt agreements as of December 31, 2022:

Financial Covenant	TGH	TL	TEML
Consolidated leverage ratio	Shall not exceed 3.80:1	Shall not exceed 3.80:1	—
Consolidated fixed charge coverage ratio	Shall not be less than 1.20:1	—	—
Consolidated interest coverage ratio	—	Shall not be less than 4.00:1	—
Consolidated funded debt	—	—	Shall not exceed \$1,000
Consolidated tangible net worth	Shall not be less than \$1,230,215 plus 50% of TGH's net income	—	—
Annual after-tax profit	—	—	Shall not be less than \$2,000

All of the Company's debt facilities also contain restrictive covenants on borrowing base minimums. As of December 31, 2022, we were in compliance with all of the applicable debt covenants.

### Cash Flow

The following table summarizes our cash flow information for the years ended December 31, 2022 and 2021:

	Year Ended December 31,		Variance
	2022	2021	
	(Dollars in thousands)		
Net cash provided by operating activities	\$ 752,519	\$ 611,783	\$ 140,736
Net cash used in investing activities	(681,311)	(1,930,129)	1,248,818
Net cash (used in) provided by financing activities	(86,246)	1,395,832	(1,482,078)

### Operating Activities

Net cash provided by operating activities increased \$140,736 from 2021 to 2022. The increase in net cash provided by operating activities was due to a \$33,332 increase in net income adjusted for depreciation and other non-cash items and a \$107,404 increase in net working capital adjustments. The increase in net working capital adjustment provided by operating activities was primarily due to an increase of \$88,387 in receipt of payments on finance leases, net of income earned, a decrease of \$11,187 in accounts receivable primarily caused by the timing of collections, partially offset by a \$19,370 decrease in other liabilities mostly due to a decrease in deferred revenue.

### Investing Activities

Net cash used in investing activities decreased \$1,248,818 from 2021 to 2022 primarily due to a \$1,163,677 decrease in payments for container purchases, including containers under leaseback financing receivables.

Net cash used in financing activities was \$86,246 in 2022, and net cash provided by financing activities was \$1,395,832 in 2021. The net decrease by \$1,482,078 from 2021 to 2022 was primarily due to a decrease of \$1,080,084 in net borrowings, a \$106,872 increase in purchases of treasury shares under our share repurchase program, a \$43,850 increase in cash dividend payments to preferred and common shareholders, and net proceeds received in 2021 of \$290,550 from the preferred shares offering, partially offset by cash paid in 2021 of \$21,500 for the purchase of noncontrolling interest.

### 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 – Liquidity and Capital Resources*” 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. Other than as disclosed elsewhere in this Annual Report, we are not aware of any trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on our revenues, net income, profitability, liquidity or capital resources, or that would cause reported financial information not necessarily to be indicative of future operating results or financial condition.

### E. Critical Accounting Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to use judgment in making estimates and assumptions that affect the reported amounts and disclosures as of the date of the financial statements. We have identified the estimates below as among those critical to our business operations and the understanding of our results of operations. We evaluate our estimates on an ongoing basis, and our estimates and judgments are based on historical experience, various other assumptions that we believe are reasonable under the circumstances and the relevant information available at the end of each period. These estimates may change as new events occur and additional information is obtained. Actual results could differ from these estimates under different assumptions or conditions.

#### *Container Leasing Equipment*

*Depreciation.* When we acquire containers, we record the cost of the container on our balance sheet. Capitalized costs for new container leasing equipment include the manufactured cost, inspection, delivery and associated transportation costs incurred in moving the container from the manufacturer to the containers’ first destined port. We depreciate the container using the straight-line method 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). Depreciation on container leasing equipment commences on the date of initial on-hire. Our estimates of useful life are based on our actual historical experience with our fleet, and our estimates of residual value are based on a number of factors including average selling prices.

We review our depreciation policies, including estimates of useful lives and residual values, on a regular basis to determine whether a change in estimates of useful lives and residual values is warranted.

We completed our 2022 annual depreciation policy review during the second half of the year and concluded no change was necessary. To perform the assessment for our estimated residual value, we analyzed sales data over a minimum of a ten-year period which reflected the cyclical nature of the global economic environment and more specifically, our industry, and assessed whether the average selling prices fall within a reasonable range compared to current residual values. We believe a ten-year length of time includes sufficient periods of high and low used container prices to allow us to more accurately predict future residual values. If the ten-year period was outside of the range of a container type, we evaluated the trend in average selling prices over three, five, and seven-year periods to corroborate the trend in the ten-year period. To perform the

assessment for our estimated useful lives, we also analyzed the average age at disposal for containers sold over the same ten-year period data used for our analysis of residual values. We then performed a peer comparison to evaluate if there were significant differences between the residual values of our containers as compared to peer within the industry.

*Valuation of Container Leasing Equipment.* 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. We performed an annual quantitative impairment assessment of our containers held for use as of December 31, 2022 to corroborate that there were no impairment triggers by comparing the total expected undiscounted cash flows of each asset group to its carrying value. When testing for impairment, the evaluation is performed at the lowest level of identifiable cash flows which we have determined to be groups of containers based on equipment type. The estimated undiscounted cash flows are based on historical lease operating revenue, expenses and residual values, adjusted to reflect current market conditions. The key assumptions used to determine future undiscounted cash flows are expected utilization, remaining useful lives, expected future lease rates, and expected sales prices of used containers.

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. When an impairment exists, containers held for use are written down to their estimated fair value and the amount of the write down is recorded in depreciation expense. As of December 31, 2022, the estimated undiscounted future cash flows exceeded the carrying value of our container leasing equipment held for use in our leasing operations. There were no key indicators of impairment, and we did not record any impairment charges related to our container leasing equipment held for use in our leasing operations for the years ended December 31, 2022, 2021 and 2020.

### ***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. When we are required to write down the cost basis of its containers identified for sale to fair value less cost to sell, we measure the fair value of its containers identified for sale under a Level 2 input. We rely on the recent sales prices for identical or similar assets in markets, by geography, that are active. We record impairments to write down the value of containers identified for sale to their estimated fair value less cost to sell.

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. Subsequent additions or reductions to the fair values of these written down assets are recorded as adjustments to the carrying value of the equipment held for sale. Any subsequent increase in fair value is recognized as a reversal to container impairment but not in excess of the cumulative loss previously recognized. During the years ended December 31, 2022, 2021 and 2020, we recorded container impairment charges (reversals) of \$2,325, \$(385) and \$11,094, respectively, to write down the value of containers held for sale to their estimated fair value less cost to sell, net of reversals of previously recorded impairments on containers held for sale, due to rising used container prices. We continue to monitor the performance of our container fleet and evaluate the key factors driving market conditions and assess the assumptions used in our impairment testing analysis should market conditions warrant a reassessment.

For further discussion on critical accounting estimates, significant accounting policies and recent accounting pronouncements, see Note 1 “Nature of Business and Summary of Significant Accounting Policies” to our consolidated financial statements in Item 18, “*Financial Statements*” in this Annual Report on Form 20-F.

## 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 February 14, 2023. Our board of directors is elected annually on a staggered basis and each director holds office for three years or 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.

David M. Nurek, Robert D. Pedersen and Grace Tang are designated Class III directors, to hold office until our 2023 annual general meeting of shareholders. Olivier Ghesquiere, James Earl and Cynthia Hostetler are designated Class II directors, to hold office until our 2024 annual general meeting of shareholders, and Jeremy Bergbaum, Dudley R. Cottingham, Hyman Shwiel and Lisa P. Young are designated Class I directors, to hold office until our 2025 annual general meeting of shareholders. Directors may be re-elected when their term of office expires.

<u>Executive Officers and Directors</u>	<u>Age</u>	<u>Position</u>
Hyman Shwiel (1)	78	Chairman
Olivier Ghesquiere	56	Director, President and Chief Executive Officer
Dudley R. Cottingham (1)(2)	71	Director
David M. Nurek (2)(3)	73	Director
Robert D. Pedersen (3)	63	Director
Grace Tang (1)	63	Director
James Earl (1)(2)	66	Director
Cynthia Hostetler (1)(3)	60	Director
Jeremy Bergbaum (1)(3)	67	Director
Lisa P. Young (1)(2)	60	Director
Michael K. Chan	60	Executive Vice President and Chief Financial Officer

- (1) Member of the Audit and Risk Committee.
- (2) Member of the Compensation Committee.
- (3) Member of the Corporate Governance and Nominating Committee.

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

#### *Directors*

**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.

**Olivier Ghesquiere** was appointed President and Chief Executive Officer and to our board of directors in August 2018. Mr. Ghesquiere served as our Executive Vice President – Leasing from January 2017 to August 2018, responsible for worldwide sales and marketing related activities and operations. Mr. Ghesquiere served as our Senior Vice President – Marketing and Sales since December 2015. Mr. Ghesquiere worked at Groupe Ermewa S.A. as Chief Operating Officer and then Chief Executive Officer from January 2009 through February 2015 where he was responsible for growing the railcar and locomotive fleet to become the second largest in Europe. During that time Mr. Ghesquiere was also Chairman of Eurotainer SA for which he was the Managing Director from April 2004 through December 2008 where he developed their tank container business focusing on higher value segments of the market. Mr. Ghesquiere has served as Vice Chairman and Chairman of the International Tank Container Organization (ITCO) leasing committee from 2006 through 2010. Mr. Ghesquiere holds a degree in Applied Economics from the Louvain School of Management, Belgium.



**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 35 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 Stock Exchange. He was a managing director of and was formerly a partner of Arthur Morris & Company Limited, a provider of audit and accounting services for international clients, since 1982. Mr. Cottingham is currently a consultant and had served as vice president and director of Continental Management Ltd., a Bermuda company providing corporate representation, administration and management services, since 1982 and was a director of 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.

**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. He is Chairman of Trecor and a member of Trecor's audit, remuneration, social and ethics, risk and governance committees. In August 2019, Mr. Nurek retired from his position as 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 was the regional Chairman of Investec Limited's various businesses in the Western Cape, South Africa, and 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 Hoffmann & 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.

**Robert D. Pedersen** has been a member of our board of directors since April 2017. Mr. Pedersen was appointed President and Chief Executive Officer of TEML, our management company, in October 2011 and retired on March 31, 2017. 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.

**Grace Tang** has been a member of our board of directors since August 2020. Ms. Tang was a partner with PwC for 22 years until her retirement in 2020. She served on the Board of Partners of the PwC China, Hong Kong, Taiwan and Singapore firms. She served as the leader of the Industrial Products sector and also the multinational client practice in China where she assisted domestic Chinese and international clients. Ms. Tang serves as an instructor of the Master of Business Administration and Master of Professional Accounting degree programs at the Peking University. Ms. Tang is a US certified public accountant, a member of the American Institute of Certified Public Accountants, and a fellow of the Hong Kong Institute of Certified Public Accountants. Ms. Tang has a B.S. from the University of Utah and an M.B.A. from Utah State University.

**James Earl** has been a member of our board of directors since May 2021. Mr. Earl was an executive with GATX Corporation, a publicly traded lessor of railcars, from 1988 to 2018, ultimately serving as Executive Vice President, President of its Rail International division and CEO of GATX's American Steamship Company. Previously Mr. Earl held management positions with the Soo Line Railroad and Southern Pacific Transportation Company. Mr. Earl serves on the Board of Directors of Harsco Corporation, a NYSE listed global market leader providing environmental solutions for industrial and specialty waste streams, and innovative technologies for the rail sector. Mr. Earl has a B.S. from Washington University in St. Louis and an M.B.A. from the Wharton School at the University of Pennsylvania.

**Cynthia Hostetler** has been a member of our board of directors since May 2021. Ms. Hostetler serves as a Trustee of Invesco Ltd. and is a member of the boards of TriLinc Global Fund, an impact investment company, Vulcan Materials Company, an NYSE listed producer of construction aggregates and Resideo Technologies, Inc., an NYSE listed manufacturer and distributor of security, energy efficiency and control systems for homes. Ms. Hostetler also has served on the board of

the Investment Company Institute since 2018. From 2001 to 2009, Ms. Hostetler served as Head of Investment Funds and Private Equity at the Overseas Private Investment Corporation (OPIC). She also served on the Board of Directors of Edgen Group, a global energy infrastructure company, prior to its acquisition by Sumitomo and the Board of Directors of Genesee & Wyoming, Inc. prior to its sale. Additionally, she has served as President and a member of the Board of Directors of First Manhattan Bancorporation, a bank holding company in the Midwest. She began her career as a corporate lawyer with Simpson Thacher & Bartlett in New York. Ms. Hostetler has a J.D. from the University of Virginia and a B.A. from Southern Methodist University.

**Jeremy Bergbaum** has been a member of our board of directors since May 2022. At the end of 2021, Mr. Bergbaum retired from EXISF Worldwide Inc., the largest lessor of intermodal tank containers and a Berkshire Hathaway company. Mr. Bergbaum was with EXSIF and its predecessor companies for over 29 years and served as President of EXSIF for 21 years. During this time EXSIF grew its fleet to over 75,000 TEU with a book value of over \$1 billion. Mr. Bergbaum is a founding member of the International Tank Container Organization (ITCO) and served as its first President.

**Lisa P. Young** has been a member of our board of directors since May 2022. Ms. Young was with Ernst & Young LLP for 36 years, including 24 years as a partner until her retirement in June of 2021. She served in several roles during this period, including as Senior Global Client Service Partner for several of the firm's largest public company clients and additionally as Americas Professional Practice Partner and Global Capital Markets Partner in EY's National Office. Ms. Young serves on the Board of Directors and Audit Committee of the Board of Accelus, Inc., a company focused on minimally invasive spine surgery technology. Ms. Young is a Certified Public Accountant and holds a BBA in Finance and Accounting from Texas Tech University.

#### *Executive Officers*

For certain biographical information about Olivier Ghesquiere, see "Directors" above.

**Michael K. Chan** was appointed Executive Vice President and Chief Financial Officer (CFO) in September 2018. Mr. Chan served as our Vice President and Senior Vice President of Finance from April 2017 through August 2018, responsible for overseeing treasury, investor relations, accounting, financial reporting, and financial planning and analysis. Mr. Chan also served as a Controller from 1994 to 2006. Prior to re-joining the company in 2017, Mr. Chan was CFO at Ygrene Energy Fund from 2015 to 2017, a market-leading specialty finance company, where he raised nearly \$1 billion in capital and achieved the industry's first AAA rating on the company's senior notes. From 2011 to 2015, Mr. Chan worked as Senior Director of Treasury and Capital Markets for The Cronos Group, a leading global container leasing company which was acquired by Shenzhen Stock Exchange listed Bohai Leasing Company. Before that, Mr. Chan held the CFO position at The Chartres Lodging Group from 2006 to 2011, where he was instrumental in executing key acquisitions and sales for the hotel investment and asset management company. Mr. Chan joined Coopers & Lybrand in 1989, now PricewaterhouseCoopers (PwC) and held the position of Audit Manager. Mr. Chan is a member of the American Institute of Certified Public Accountants (AICPA) and holds a B.S. in Business Administration – Accounting from California State University East Bay.

## *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**

### *Executive Compensation*

The aggregate direct compensation we paid to our two senior executives (CEO and CFO) as a group for the year ended December 31, 2022 was approximately \$4,157, which included approximately \$1,598 in STIP bonuses paid in 2022 (representing STIP earned for calendar year 2021 but paid in early 2022), approximately \$1,353 in restricted stock awards that vested in 2022 from grants made in prior years, and approximately \$17 funds set aside or accrued to provide for retirement or similar benefits. This amount does not include expenses we incurred for other payments, including dues for professional and business associations, business travel, health insurance and other expenses, which amounted to approximately \$154. We did not pay our senior executives who also serve as directors any separate compensation for their directorship during 2022, other than reimbursements for travel expenses. During 2022, our executive officers as a group were granted 89,406 performance-based restricted share units and 32,308 time-based restricted share units through our 2019 Share Incentive Plan.

### *Director Compensation*

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, 2022 was approximately \$1,869, which included approximately \$1,104 in restricted stock awards granted in 2022. This amount does not include \$1,094 in restricted stock awards value that vested in 2022 from grants made in prior year. Each director who is not an officer is entitled to a base annual cash retainer of \$60 (with the exception of the Chairman of the Board who receives an additional base annual cash retainer of \$30) plus a restricted stock grant valued at \$120 on the date of grant (with the exception of the Chairman of the Board who receives an additional restricted stock grant value of \$24). This grant vests in full one year after grant. During 2022, our non-executive directors as a group were granted 34,362 time-based restricted share units through our 2019 Share Incentive Plan.

Additionally, members of our Audit and Risk Committee receive an additional annual fee of \$15 and members of all other Committees receive an additional annual fee of \$10. The head of the Audit and Risk Committee receives an additional annual fee of \$15 and the head of all other Committees receive an additional annual fee of \$10. Directors were also reimbursed for expenses incurred to attend board or committee meetings which amounted to approximately \$104 during 2022.

## **2019 Share Incentive Plan**

The 2019 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.” 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,” administers the 2019 Plan, including selecting the award recipients, determining the number of shares to be subject to each award, the types of awards, the value and timing of awards, 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.

Unless terminated sooner, the 2019 Plan will automatically terminate in 2029. The board of directors will have authority to amend or terminate the 2019 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 2019 Plan in such a manner and to such a degree as required.

## **2022 Short-Term Incentive Program (STIP)**

Annually, our board of directors or the Compensation Committee set objective performance criteria when determining the annual short-term incentive bonuses to be awarded to our executive officers and employees. The Compensation Committee believes that our STIP, which provides an annual cash bonus to all employees, including employees of our dedicated agents and our executive officers, based on performance relative to Company and individual achievement goals provides executives' incentives to increase shareholder value and helps ensure that we attract and retain talented personnel. Under the STIP program for 2022, all eligible employees received an incentive award based on their respective job classification and our return on equity and adjusted net income.

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

We have entered into employment agreements with 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. Employment is at-will for each of our executive officers and their employment may be terminated at any time for any reason. 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 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. For further discussion on the practices that we follow in lieu of the NYSE's corporate governance rules, see Part II Item 16G, "Corporate Governance" in this Annual Report on Form 20-F.

#### **D. Employees**

See Item 4, "*Information of the Company*" for information regarding our human capital management.

#### **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 shown the beneficial ownership of our common shares on December 31, 2022 by:

- 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.

For the purposes of the following table, beneficial ownership of our common shares is determined in accordance with the rules of the SEC and generally includes any common shares over which a person exercises sole or shared voting or investment power. The percentage of beneficial ownership of our common shares is based on 43,634,655 common shares were issued and outstanding on December 31, 2022. 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 common shareholders. We are unaware of any arrangement that might result in a change of control of the Company.

Holders	Number of Common Shares Beneficially Owned	
	Shares (8)	% (1)
<b>5% or More Shareholders</b>		
MandG Investment Managers (Pty) Ltd. (2)	5,444,481	12.5 %
Dimensional Fund Advisors LP (3)	3,521,116	8.1 %
Coronation Asset Management (Pty) Ltd. (4)	3,504,546	8.0 %
Donald Smith & Co., Inc. (5)	2,755,426	6.3 %
<b>Directors and Executive Officers</b>		
Olivier Ghesquiere	418,215	1.0 %
Robert D. Pedersen	165,416	*
Michael K. Chan	151,389	*
Hyman Shwiel	53,710	*
Dudley R. Cottingham (6)	50,132	*
David M. Nurek (7)	47,132	*
James Earl	7,887	*
Cynthia Hostetler	7,887	*
Grace Tang	6,331	*
Jeremy Bergbaum	4,098	*
Lisa Young	3,735	*
Current directors and executive officers (11 persons) as a group	915,932	2.1 %

\* Less than 1%.

- (1) Percentage ownership is based on 43,634,655 total shares outstanding as of December 31, 2022. There are 14,524,911 common shares issued and outstanding in a secondary, or dual, listing of our common shares on the JSE in South Africa under the symbol “TXT”.
- (2) Based on the Schedule 13G filed with the SEC on January 20, 2023 by MandG Investment Managers (Pty) Ltd. (a South African company), it had sole voting and dispositive power over the 5,444,481 shares it beneficially owned as of December 31, 2022.
- (3) Based on the Schedule 13G filed with the SEC on February 10, 2023 by Dimensional Fund Advisors LP (a Delaware limited partnership), it had sole voting power over 3,463,090 shares and sole power to direct the disposition of 3,521,116 shares it beneficially owned as of December 31, 2022.
- (4) Based on the Schedule 13G filed with the SEC on January 5, 2023 by Coronation Asset Management (Pty) Ltd. (a South African company), it had sole voting and dispositive power over the 3,504,546 shares it beneficially owned as of December 31, 2022.
- (5) Based on Schedule 13G filed with the SEC on February 9, 2023 by Donald Smith & Co., Inc. (a Delaware corporation) and DSCO Value Fund, L.P. (a Delaware corporation). Donald Smith & Co., Inc. had sole voting power over 2,710,741 shares and sole power to direct the disposition of 2,734,881 shares. DSCO Value Fund, L.P. had sole voting power over 20,545 shares and sole power to direct the disposition of 20,545 shares.
- (6) Includes 46,397 shares held by Caribbean Dream Limited, a company owned by a trust in which Mr. Cottingham is the principal beneficiary.
- (7) Mr. Nurek is a member of our board of directors and board of directors of Trencor. In June 2020, Trencor distributed its remaining 3.0 million shares in the Company to Trencor’s own shareholders. Following the June 2020 distribution of shares, Trencor no longer holds any shares in the Company.
- (8) Beneficial ownership by a person assumes the exercise of all share options, warrants and rights held by such person, even if not vested. Common shares beneficially owned include the following granted but not yet vested restricted share units and performance restricted share units and not yet exercised share options:

	Grant Date									
	11/14/2013	11/19/2014	5/18/2017	11/30/2017	11/30/2018	11/30/2019	10/1/2020	10/5/2021	5/26/2022	10/3/2022
<b>Share options</b>										
Exercise price	\$ 38.36	\$ 34.14	\$ 9.75	\$ 22.95	\$ 11.15	\$ 9.13	N/A	N/A	N/A	N/A
Expiration date	11/14/2023	11/19/2024	5/18/2027	11/30/2027	11/30/2028	11/30/2029	N/A	N/A	N/A	N/A
Olivier Ghesquiere	—	—	—	17,760	40,000	40,000	—	—	—	—
Michael K. Chan	—	—	2,500	4,750	20,000	18,276	—	—	—	—
Robert D. Pedersen	26,000	13,910	—	—	—	—	—	—	—	—
<b>Performance restricted share units</b>										
Olivier Ghesquiere	—	—	—	—	—	—	72,957	46,841	—	70,517
Michael K. Chan	—	—	—	—	—	—	21,887	13,383	—	18,889
<b>Restricted share units</b>										
Olivier Ghesquiere	—	—	—	—	—	10,000	7,424	9,915	—	25,482
Michael K. Chan	—	—	—	—	—	5,000	2,227	2,832	—	6,826
Hyman Shwiel	—	—	—	—	—	—	—	—	4,482	—
Robert D. Pedersen	—	—	—	—	—	—	—	—	3,735	—
Dudley R. Cottingham	—	—	—	—	—	—	—	—	3,735	—
David M. Nurek	—	—	—	—	—	—	—	—	3,735	—
Grace Tang	—	—	—	—	—	—	—	—	3,735	—
James Earl	—	—	—	—	—	—	—	—	3,735	—
Cynthia Hostetler	—	—	—	—	—	—	—	—	3,735	—
Jeremy Bergbaum	—	—	—	—	—	—	—	—	3,735	—
Lisa Young	—	—	—	—	—	—	—	—	3,735	—

As of December 31, 2022, an aggregate of 43,261,485 of our outstanding common shares were held by Cede & Company, which includes an aggregate of 14,524,911 of our outstanding common shares that trade under secondary, or dual, listing on the JSE. The shares held by Cede & Company, a nominee of the Depository Trust Company (“DTC”), include common shares beneficially owned by holders in the United States and by non-U.S. beneficial owners. As of December 31, 2022, based on information available to the Company, 46,397 of our outstanding common shares were held in Bermuda, our domicile and headquarter country, by 1 holder of record. We do not register the jurisdiction of all beneficial owners as this information is not always available. Specifically, the number of beneficial owners in the United States, or in many regions outside the United States, is not known to the Company and cannot be ascertained from public filings. The actual number of beneficial owners is greater than the number of shareholders of record because a large portion of our outstanding common shares are held in street name by brokers and other nominees.

## B. Related Party Transactions

We, or one of our subsidiaries, as permitted by Bermuda law, 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. In order to prevent risks of conflicts of interest or the appearance of conflicts of interest, all of our directors and employees are subject to our code of business conduct and ethics which require, among other things, that any potential transaction between us and an employee or director, their relatives and closely connected persons and certain entities in which they, their relatives or closely connected persons have an interest be reviewed by the audit and risk committee.

For further detail of our transactions with our tank container manager, Trifleet Leasing (The Netherlands) B.V., see Note 3 “Transactions with Affiliates and Container Investors” to our consolidated financial statements in Item 18, “*Financial Statements*” in this Annual Report on Form 20-F.

## **Loans to Executive Officers**

Currently, there are no loans outstanding to our directors or executive officers, nor will we 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.

## **Relationships and Agreements with Trencor Limited**

Trencor Limited, a company traded on the Johannesburg Stock Exchange (the “JSE”) in South Africa, owned approximately 47.5% of our issued and outstanding common shares as of December 31, 2018. On December 11, 2019, we commenced a secondary, or dual, listing of our common shares on the JSE in Johannesburg, South Africa under the symbol “TXT”. Promptly following our dual listing, Trencor distributed approximately 24.3 million of its shares in the Company to Trencor’s own shareholders and these shares are now trading on the JSE. As of December 31, 2019, Trencor held 5.3% or 3.0 million of the Company’s common shares.

In June 2020, Trencor distributed its remaining 3.0 million of our common shares to Trencor’s own shareholders and these shares are now trading on the JSE. Following the June 2020 distribution of shares, Trencor no longer holds any shares in the Company. David M. Nurek is a member of the Company’s board of directors and the board of directors of Trencor.

In September 2020, the Company received \$330 from Trencor in exchange for the early distribution of escrow funds that were held under the escrow agreement in relation to our acquisition of LAPCO in December 2019.

In 2020, Trencor paid \$145 for accounting services performed by the Company’s personnel to assist Trencor with the conversion of the Company’s financial information from U.S. GAAP to IFRS. The Company did not receive any fees from Trencor for such accounting services in 2022 and 2021.

## **Transactions with Continental Management Ltd.**

A member of our board of directors, Dudley R. Cottingham, is a consultant for Continental Management Ltd (“Continental”). Continental is a Bermuda company that provides corporate representation, administration, and management services. In 2020, the Company incurred \$43 primarily for professional services rendered by Continental. There were no such professional services incurred in 2022 and 2021.

## **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, 2022 and 2021 and the related consolidated statements of operations, comprehensive income, shareholders' equity and cash flows for each of the years in the three-year period ended December 31, 2022 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

In the fourth quarter of 2021, we announced the commencement of dividends on our common shares. During 2022, our board of directors approved and declared quarterly cash dividends of \$0.25 per share on our issued and outstanding common shares for a total aggregate amount of \$46,235. Additionally, our board of directors approved and declared quarterly preferred cash dividends on our Series A Preferred Shares and Series B Preferred Shares. For further detail of our dividends, see Note 12 "Shareholders' Equity" to our consolidated financial statements in Item 18, "*Financial Statements*" in this Annual Report on Form 20-F.

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, 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.

We are not required to pay common share dividends, and our common shareholders do not have contractual or other rights, to receive dividends. Our preferred shareholders are entitled to a cumulative quarterly preferred dividend, when declared by our board of directors. Each series of preferred shares rank senior to the common shares with respect to dividend rights. If we fail to pay preferred dividends for six or more quarterly periods (whether or not consecutive), preferred shareholders will be entitled to elect two additional directors to the board of directors and the size of the board of directors will be increased to accommodate such election. Such right to elect two directors will continue until such time as there are no accumulated and unpaid preferred dividends in arrears. 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 period. 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 TL, 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 minimum tangible net worth level (which level would decrease by the amount of any dividend paid) and a maximum ratio of consolidated funded debt to consolidated tangible net worth (which amount would decrease by the amount of any dividend paid). 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.

In 2014, we began calculating our earnings and profits under U.S. federal income tax principles for purposes of determining whether distributions exceed our current and accumulated earnings and profits. We report each quarter on our website at [www.textainer.com](http://www.textainer.com) whether that quarter's distribution exceeds our current accumulated earnings and profits. The

taxability of the dividends does not impact our corporate tax position. You should consult with a tax advisor to determine the proper tax treatment of these distributions.

**B. Significant Changes**

Except as disclosed in the Annual Report on Form 20-F, no significant changes have occurred since December 31, 2022, 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**

Our common shares have been primary listed on the NYSE under the symbol “TGH” since October 10, 2007. Prior to that time, there was no public market for our common shares. Our common shares are secondary or dual listed on the JSE in Johannesburg, South Africa under the symbol “TXT” since December 2019.

In April 2021, our depositary shares, each representing a 1/1,000<sup>th</sup> interest in a share of our 7.00% Series A Fixed-to-Floating Rate Cumulative Redeemable Perpetual Preference Shares, began trading on the NYSE under the symbol “TGH PRA”. In August 2021, our depositary shares, each representing a 1/1,000<sup>th</sup> interest in a share of our 6.25% Series B Fixed Rate Cumulative Redeemable Perpetual Preference Shares, began trading on NYSE under the symbol “TGH PRB”.

**Transfer Agent**

The transfer agent and 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. Computershare Investor Services (PTY) LTD and Computershare (PTY) LTD provide administration services and act as the nominee registrar for the common shares traded on the JSE. The address of Computershare Investor Services (PTY) LTD and Computershare (PTY) LTD is 15 Biermann Avenue, Rosebank 2196, South Africa.

**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**

Our common shares are secondary or dual listed on the JSE in Johannesburg, South Africa under the symbol “TXT”. South Africa’s exchange control regulations provide for restrictions on exporting capital from South Africa and transactions between South African residents (including corporations) and non-residents are subject to these exchange controls. 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.

## **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 and preferred 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 and preferred 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 31, 2035 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. As an exempted company, we are required to pay an annual Bermuda government fee 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 and preferred shares. The issue, transfer, or redemption of our common and preferred 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 and preferred shares. The following discussion is not exhaustive of all possible tax considerations. This summary is 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 available and all of which are subject to differing interpretations or to change, possibly with retroactive effect. Any 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 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; certain former citizens or long-term residents of the U.S.; persons subject to the alternative minimum tax; persons holding common and preferred 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 and preferred 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 and preferred shares, as well as any tax consequences arising under the laws of any state, local, 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 and preferred 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 and preferred 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 and preferred shares that is not a U.S. Holder or an entity treated as a partnership for U.S. federal income tax purposes. 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 and preferred 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 and preferred 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 and preferred 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. 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 21% 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 on their worldwide income subject to reduction by allowable foreign tax credits. Certain foreign sourced income earned by the U.S. subsidiaries may be taxed at a rate lower than 21%.

### *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. 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. Additionally, if we have not met the requirements of the new CBC Regulations (effective for our taxable years beginning on or after June 30, 2016), we may become subject to penalties and the IRS may pursue a further investigation or audit of our operations, which may result in an adjustment to our transfer pricing policies as described in the immediately preceding sentence. 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 and Preferred Shares" and "—Dispositions of Common and Preferred 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 and Preferred Shares***

**General.** Subject to the discussion in “—Passive Foreign Investment Company” below, if you actually or constructively receive a distribution on 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 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 “—Medicare Tax” 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 shares, and thereafter as capital gain. Preferential tax rates for long-term capital gain may be applicable to non-corporate U.S. Holders. In addition, certain non-corporate U.S. Holders may be subject to an additional 3.8% Medicare tax on capital gain. See “—Medicare Tax” below.

**Qualified Dividend Income.** With respect to non-corporate U.S. Holders (i.e., individuals, trusts, and estates), the maximum individual U.S. federal income tax rate applicable to “qualified dividend income” (“QDI”) generally is 20%. Among other requirements, dividends will be treated as QDI if either (i) our 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, subject to the discussion below, under “—Passive Foreign Investment Company—Mark-to-Market Election,” we expect that under current administrative guidance, our 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 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 shares.

**In-Kind Distributions.** Generally, distributions to you of new shares or rights to subscribe for new 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 shares or rights so received will be determined by allocating your adjusted tax basis in the old shares between the old shares and the new 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 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 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 shares or rights should include the holding period for the old shares on which the distribution was made.

**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 and Preferred 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 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 shares. Such gain or loss will be capital gain or loss.

If you have held the 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 apply for non-corporate U.S. Holders. The maximum rate for individuals on net long-term capital gain is currently 20%. In the case of a corporation, capital gains are taxed at the same rate as ordinary income, the maximum rate for which is currently 35%. If you have held the shares for one year or less, such capital gain or loss will be short-term capital gain or loss taxable as ordinary income. 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 “—Medicare Tax” below.

Any gain or loss recognized on the disposition of 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 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 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 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 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 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 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 shares prior to the current taxable year, if shorter); and
- any gain recognized on the sale or other taxable disposition (including a pledge) of shares.

Under these default tax rules:

- any excess distribution or gain will be allocated ratably over your holding period for the 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.

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 and Preferred 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 shares.

If we are a PFIC for any taxable year during which you hold shares, we will continue to be treated as a PFIC with respect to you for all succeeding years during which you hold 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 shares are marketable stock. The 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 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 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 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 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 shares.

#### *Medicare Tax*

Certain U.S. persons, including individuals, estates and trusts, may be required to pay an additional 3.8% on, among other things, dividends and capital gains from the sale or disposition of Shares. 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. U.S. Holders likely will not be able to credit foreign taxes against the 3.8% Medicare tax. You should consult your tax advisors regarding the implications of the additional Medicare tax resulting from your ownership and disposition of our shares.

#### *Information Reporting and Backup Withholding*

Information reporting requirements will apply to distributions on shares or proceeds from the disposition of 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, 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*

If we are a PFIC, all U.S. Holders may be required to file annual tax returns (including on Form 8621) containing such information as the U.S. Treasury requires.

U.S. Holders who are individuals will be subject to reporting obligations with respect to their shares if they do not hold their shares in an account maintained by a financial institution and the aggregate value of their 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 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 shares.

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

### *Distributions on Common and Preferred 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 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 and Preferred 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 and Preferred 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 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 and Preferred 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, 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. The SEC maintains an internet website that contains reports, proxy and other information regarding issuers that file electronically with the SEC. You can read our SEC filings, including this annual report, 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**

**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 2022, 2021 and 2020 was denominated in U.S. dollars. 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 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 SOFR. We also utilized forward starting interest rate swap agreements to reduce the impact of interest rate changes on anticipated future debt issuances. We may also utilize interest rate cap agreements, which place a ceiling on the Company's exposure to rising interest rates, to manage interest rate risk exposure. All of our derivative agreements are with highly rated financial institutions. Credit exposures are measured based on the market value of outstanding derivative instruments.

As of December 31, 2022, all of our interest rate swap agreements are designated as cash flow hedges for accounting purposes, and any unrealized gains or losses related to the changes in fair value are recognized in accumulated comprehensive income and re-classified to interest expense as they are realized. Our valuation reflects our credit standing and the credit standing of the counterparties to the interest rate swaps. The valuation technique we utilized to calculate the fair value of the interest rate swaps was the income approach. This approach represents the present value of future cash flows based upon current market expectations.

The notional amount of the interest rate swap agreements was \$2,071,125 as of December 31, 2022, with expiration dates between February 2023 and November 2032, and fixed pay rates between -0.02% and 3.84%. We also have a forward starting interest rate swap agreement in a notional amount of \$100,000 with an effective date of February 28, 2024, a fixed pay rate at 1.96% and an expiration date of February 28, 2034. The net fair value of all these agreements was an asset of \$149,244 as of December 31, 2022.

The notional amount of the interest rate cap agreement was \$100,000 as of December 31, 2022, with a fixed cap rate at 6.33%, and expiration date of March 31, 2023.

As of December 31, 2022, approximately 90% of our debt is either fixed or hedged using derivative instruments which helps mitigate the impact of changes in short-term interest rates. It is estimated that a 1% increase in interest rates on our unhedged debt would result in a net increase of \$5,362 in interest expense over the next twelve months.

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

Not applicable.

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

None.

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

None.

**ITEM 15. CONTROLS AND PROCEDURES**

**A. Disclosure Controls and Procedures**

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our “disclosure controls and procedures” (as defined in Rules 13a-15e and 15d-15(e) under the Exchange Act) as of December 31, 2022.

The “disclosure controls and procedures” means our controls and other procedures that are designed to provide reasonable assurance that the information required to be disclosed by us in the reports that we filed or submitted to the SEC, such as this Annual Report on Form 20-F, was (1) recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and (2) accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosures. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based upon that evaluation, it was concluded that, as of such date, the disclosure controls and procedures were effective as of December 31, 2022.

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

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Management, including our Chief Executive Officer and Chief Financial Officer under the oversight of our Board of Directors, assessed the effectiveness of our internal control over financial reporting as of December 31, 2022. In making this assessment, management used the criteria for effective internal control over financial reporting described in “Internal Control-Integrated Framework (2013),” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this assessment, our management concluded that our internal control over financial reporting was effective for the year ended December 31, 2022.

All internal control systems and procedures, no matter how well designed, have inherent limitations. Therefore, even those internal control systems and procedures 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 control over financial reporting as of December 31, 2022 has been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report, which is included under Item 18, “Financial Statements” on page F-3 in this Annual Report on Form 20-F.

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

In January 2022, we implemented a new enterprise resource planning (“ERP”) system to enhance the efficiency and operational functionality of our internal administrative activities and certain financial accounting and reporting processes. The new ERP system is our system of financial records from January 1, 2022, forward. As a result of the newly implemented

ERP system, management had to design, implement and operate new information technology general controls and process-level controls and made changes to existing process-level controls during the year to ensure that we have adequate internal controls in place.

Other than the changes to controls arising from the implementation of the new ERP system, there were no other changes in our internal control over financial reporting as defined in Rules 13a-15(f) and 15(d)-15(f)) under the Exchange Act that occurred during the year ended December 31, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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

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

In accordance with NYSE rules, we have an audit and risk 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 and risk committee has a minimum of three members and that all of our audit and risk committee members satisfy the NYSE's requirements for independence. Our audit and risk committee has seven members, Mr. Cottingham, Mr. Earl, Ms. Tang, Ms. Hostetler, Mr. Bergbaum, Ms. Young and Mr. Shwiel. Our Board of Directors determined that all members of the Audit and Risk Committee are independent as that term is defined in Rule 10A-3 under the Exchange Act. The board affirmatively determined that Mr. Shwiel, Mr. Cottingham, Ms. Young and Ms. Tang are audit committee financial experts. Mr. Shwiel is also the Chairman of our board of directors. 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;
- 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 2022, 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 and risk committee pre-approves all services provided by our principal accountants, Deloitte & Touche LLP. All of the services and fees described below were reviewed and pre-approved by our audit and risk committee. Our audit and risk committee has delegated to the Chairman of the audit and risk committee certain limited authority to grant pre-approvals. These decisions to pre-approve a service must be presented to the full audit and risk committee at its next scheduled meeting.

The following is a summary of the fees billed to us by our principal accountants, Deloitte & Touche LLP and KPMG LLP for professional services rendered for 2022 and 2021, respectively:

<b>Fee Category</b>	<b>2022 Fees</b>	<b>2021 Fees (1)</b>
Audit Fees	\$ 1,780	\$ 1,979
Audit-Related Fees	—	555
Tax Fees	—	40
Total Fees	\$ 1,780	\$ 2,574

(1) Includes fees that were paid to KPMG LLP in 2022 in respect of 2021.

*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 assurance and related services, including services associated with compliance reporting on our certain specific lender requirements and preferred shares offerings, other than those described above as Audit Fees.

*Tax Fees*—Consists of fees billed for professional services for tax compliance, tax advice and tax planning.

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

The disclosure required by Rule 10A-3(b)(1)(iv)(D) under the Exchange Act regarding exemption from the listing standards for audit committee is not applicable to the Company's audit and risk committee.

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

In 2019, our board of directors approved a share repurchase program of up to \$25,000 of the Company's common shares, in 2020 the board of directors approved an increase of another \$75,000 to this program, in 2021 the program was further increased by \$100,000, and in 2022 the program was further increased by \$250,000. Under the program, the Company may purchase its common shares from time to time in the open market, in privately negotiated transactions or such other manner as will comply with applicable laws and regulations. The authorization did not obligate us to acquire a specific number of shares during any period, but it may be modified, suspended or terminated at any time at the discretion of the Company's board of directors.

The table below is a summary of the shares repurchased by us and the average price paid per share (excluding commissions) during the year ended December 31, 2022. All shares were repurchased in the open market pursuant to the share repurchase program.

<u>Period</u>	<u>Issuer Purchases of Common Shares</u>			
	<u>Total number of shares purchased (4)</u>	<u>Average price paid per shares</u>	<u>Total number of shares purchased as part of publicly announced plan</u>	<u>Approximate dollar value of shares that may yet be purchased under the plan</u>
January 1, 2022 through January 31, 2022	313,412	\$ 37.46	313,412	\$ 39,394
February 1, 2022 through February 28, 2022	308,657	\$ 38.41	308,657	\$ 27,539
March 1, 2022 through March 31, 2022	335,620	\$ 37.88	335,620	\$ 14,825
April 1, 2022 through April 30, 2022 (1)	295,888	\$ 34.70	295,888	\$ 54,558
May 1, 2022 through May 31, 2022	421,144	\$ 32.27	421,144	\$ 40,967
June 1, 2022 through June 30, 2022	700,787	\$ 30.30	700,787	\$ 19,730
July 1, 2022 through July 31, 2022 (2)	404,739	\$ 28.44	404,739	\$ 108,220
August 1, 2022 through August 31, 2022	521,235	\$ 33.02	521,235	\$ 91,010
September 1, 2022 through September 30, 2022	792,023	\$ 29.46	792,023	\$ 67,681
October 1, 2022 through October 31, 2022 (3)	883,622	\$ 28.56	883,622	\$ 142,447
November 1, 2022 through November 30, 2022	398,510	\$ 30.24	398,510	\$ 130,397
December 1, 2022 through December 31, 2022	261,135	\$ 30.31	261,135	\$ 122,481
Total	<u>5,636,772</u>	\$ 31.69	<u>5,636,772</u>	

- (1) In April 2022, the Board authorized to increase an additional \$50,000 to our share repurchase program.  
(2) In July 2022, the Board authorized to increase an additional \$100,000 to our share repurchase program.  
(3) In October 2022, the Board authorized to increase an additional \$100,000 to our share repurchase program.  
(4) During 2022, we repurchased 1,670,363 of our common shares on the JSE.



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

We conducted a comprehensive, competitive process to determine our independent registered public accounting firm for the year ending December 31, 2022. Pursuant to the results of this process, on February 17, 2022, our Board of Directors approved the decision to change auditors and replace KPMG upon completion of its remaining engagement responsibilities. This change became effective upon issuance by KPMG of its reports on our consolidated financial statements as of and for the year ended December 31, 2021 and the effectiveness of internal control over financial reporting as of December 31, 2021 included in the filing of our 2021 annual report on Form 20-F dated March 17, 2022. The Board of Directors also approved the engagement of Deloitte & Touche LLP ("Deloitte") as our independent registered public accounting firm for the year ended December 31, 2022 which occurred after the replacement of KPMG was effective.

KPMG's audit reports on our consolidated financial statements as of and for the years ended December 31, 2021 and 2020 did not contain an adverse opinion or a disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principles except as follows:

KPMG's report on the consolidated financial statements of Textainer Group Holdings Limited and subsidiaries for the year ended December 31, 2020, contained a separate paragraph stating, "As discussed in Note 1 to the consolidated financial statements, the Company has changed its method of accounting for leases as of January 1, 2019 due to the adoption of Accounting Standards Update No. 2016-02, Leases (Topic 842)".

During the years ended December 31, 2021 and 2020 and the subsequent interim period through March 17, 2022, there were (i) no disagreements between us and KPMG on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, any of which, if not resolved to KPMG's satisfaction, would have caused KPMG to make reference thereto in their reports, and (ii) no reportable events pursuant to Item 16F(a)(1)(v) of the instructions to Form 20-F.

During the years ended December 31, 2021 and 2020 and the subsequent interim period through March 17, 2022, neither we nor anyone on our behalf has consulted with Deloitte regarding (i) the application of accounting principles to a specific transaction, either completed or proposed, or the type of audit opinion that might be rendered on our consolidated financial statements, and neither a written report nor oral advice was provided to us that Deloitte concluded was an important factor considered by us in reaching a decision as to any accounting, auditing, or financial reporting issue, (ii) any matter that was the subject of a disagreement pursuant to Item 16F(a)(1)(iv) of the instructions to Form 20-F, or (iii) any reportable event pursuant to Item 16F(a)(1)(v) of the instructions to Form 20-F.

The Company provided KPMG with a copy of this disclosure and requested that KPMG furnish a letter addressed to the Securities and Exchange Commission stating whether or not it agrees with the statements made herein. A copy of KPMG's letter, dated March 17, 2022, was furnished as Exhibit 99.1 to the Form 20-F dated March 17, 2022.

## 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 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 are not required under Bermuda law to maintain a board of directors with a majority of independent directors. However, as of February 2023 nine of our ten directors are 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. However, we regularly hold non-executive sessions of our board of directors, where Mr. Ghesquiere, our President and Chief Executive Officer is not present.

- Mr. Shwiel serves as the Chairman of our board of directors and he has been determined to be independent under applicable NYSE rules. If the Chairman of our board of directors is not an independent director, our Corporate Governance Guidelines provide that a lead independent director who is an independent director as defined by applicable NYSE rules will be appointed and annually elected by the independent directors of the board. The lead independent director will be responsible for coordinating the activities of the independent directors and shall perform such other duties and responsibilities as the board may determine. In addition to the duties of all board members, the specific responsibilities of the lead independent director are as follows:
  - Act as the principal liaison between the independent directors of the board and the Chairman of the board;
  - Develop the agenda for and preside at executive sessions of the board's independent directors when needed;
  - If requested by the Chairman, approve with the Chairman of the board the agenda for board and board committee meetings and the need for special meetings of the board, and serve as deputy board Chairman;
  - Advise the Chairman of the board as to the quality, quantity and timeliness of the information submitted by the Company's management that is necessary or appropriate for the independent directors to effectively and responsibly perform their duties;
  - Recommend to the board the retention of advisors and consultants who report directly to the board;
  - Assist the board and Company officers in ensuring compliance with and implementation of the Corporate Governance Guidelines;
  - Serve as Chairman of the board when the Chairman is not present; and
  - Serve as a liaison for consultation and communication with shareholders.
- 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 2019 Share Incentive Plan. All members of our compensation committee are independent, as that term is defined by the NYSE. The members of our compensation committee are Mr. Cottingham, Mr. Nurek, Ms. Young and Mr. Earl. Our board of directors has also adopted a compensation committee charter.
- We have established an audit and risk 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, (iv) overseeing compliance with policies and legal requirements with respect to financial reporting, and (v) monitoring the Company's operational, business and financial risks and supervising the Company's risk mitigation and management efforts. Our audit and risk 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 and risk committee has seven members, Mr. Cottingham, Mr. Earl, Ms. Tang, Ms. Hostetler, Mr. Bergbaum, Ms. Young and Mr. Shwiel. Our Board determined that all members of the Audit and Risk Committee are independent as that term is defined in Rule 10A-3 under the Exchange Act.
- We have established a corporate governance and nominating committee comprised solely of independent directors, as would be required of a domestic issuer. Our corporate governance and nominating committee has four members, Mr. Pedersen, Mr. Nurek, Mr. Bergbaum and Ms. Hostetler. As of February 2023, Mr. Pedersen, Mr. Nurek, Mr. Bergbaum and Ms. Hostetler satisfy the NYSE's standards for director independence. Our board of directors has also adopted a corporate governance and nominating 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, on May 21, 2015 we received shareholder approval for the amendment and restatement of our 2007 Share Incentive Plan as the 2015 Share Incentive Plan, and on May 23, 2019 we received shareholder approval for the amendment and restatement of our 2015 Share Incentive Plan as the 2019 Share Incentive Plan. 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.

**ITEM 16H. MINE SAFETY DISCLOSURE**

None.

**ITEM 16I. DISCLOSURE REGARDING FOREIGN JURISDICTION THAT PREVENT INSPECTIONS**

None.

## PART III

### ITEM 17. FINANCIAL STATEMENTS

See Item 18 “Financial Statements” below for information regarding our financial statements and additional information.

### ITEM 18. FINANCIAL STATEMENTS

Reference is made to pages F-1 through F-47 and is incorporated herein by reference.

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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.

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the shareholders and the Board of Directors of Textainer Group Holdings Limited

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of Textainer Group Holdings Limited and subsidiaries (the “Company”) as of December 31, 2022, the related consolidated statements of operations, comprehensive income, shareholders’ equity, and cash flows for the year then ended, and the related notes and the schedules listed in the Index at Item 18 (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022, and the results of its operations and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 14, 2023, expressed an unqualified opinion on the Company's internal control over financial reporting.

### Basis for Opinion

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

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

### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

#### *Containers, Net of Accumulated Depreciation – Estimated Residual Values – Refer to Note 1 to the financial statements*

##### *Critical Audit Matter Description*

As of December 31, 2022, containers, net of accumulated depreciation, was \$4,365 million. Containers are recorded at cost and depreciated using the straight-line method over their estimated useful lives to an estimated residual value.

The estimated residual value represents the amount the Company estimates that it will recover upon the sale or other disposition of the containers at the end of their useful lives as shipping containers. The estimates of residual value are based on a number of factors including average selling prices. The Company reviews the estimated residual values on a regular basis to determine whether a change in their estimates of residual values is warranted. To perform the assessment of estimated residual value, the Company analyzed sales data over a period of time that it believes is reflective of the cyclical nature of the global economic environment and the industry and assessed whether the average selling prices fall within a reasonable range compared to current residual values.

We identified the estimated residual values of containers, net of accumulated depreciation as a critical audit matter because of the significant estimates and assumptions management makes in evaluating whether current estimated residual values are reasonable. This

required a high degree of auditor judgment when performing audit procedures to evaluate the reasonableness of management's estimated residual values of containers.

*How the Critical Audit Matter Was Addressed in the Audit*

Our audit procedures related to the estimated residual values of containers included the following, among others:

- We tested the effectiveness of controls relating to the Company's evaluation of estimated residual values of containers, including controls over the key information, such as historical sales data, used to estimate residual values of containers.
- We tested a sample of the historical selling prices of used containers for accuracy and completeness by examining sales invoices and cash receipts.
- We verified the mathematical accuracy of the Company's calculations and compared the average selling prices per container type to current estimated residual values.
- We compared the average selling prices for used containers to published industry reports.

/s/ Deloitte & Touche LLP

San Francisco, California  
February 14, 2023

We have served as the Company's auditor since 2022.

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the shareholders and the Board of Directors of Textainer Group Holdings Limited

### Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of Textainer Group Holdings Limited and subsidiaries (the “Company”) as of December 31, 2022, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 31, 2022, of the Company and our report dated February 14, 2023, expressed an unqualified opinion on those financial statements.

### Basis for Opinion

The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s 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 are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

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

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

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

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.

/s/ Deloitte & Touche LLP

San Francisco, California  
February 14, 2023

## Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors  
Textainer Group Holdings Limited:

### Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheet of Textainer Group Holdings Limited and subsidiaries (the Company) as of December 31, 2021, the related consolidated statements of operations, comprehensive income, shareholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2021, and the related notes and financial statement schedules I to II (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2021, in conformity with U.S. generally accepted accounting principles.

### Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

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

We served as the Company's auditor from 1987 to 2022.

/s/ KPMG LLP

San Francisco, California  
March 17, 2022



**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Consolidated Balance Sheets

December 31, 2022 and 2021

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

	<b>2022</b>	<b>2021</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 164,818	\$ 206,210
Marketable securities	1,411	—
Accounts receivable, net of allowance of \$1,582 and \$1,290, respectively	114,805	125,746
Net investment in finance leases, net of allowance of \$252 and \$100, respectively	130,913	113,048
Container leaseback financing receivable, net of allowance of \$62 and \$38, respectively	53,652	30,317
Trading containers	4,848	12,740
Containers held for sale	31,637	7,007
Prepaid expenses and other current assets	16,703	14,184
Due from affiliates, net	2,758	2,376
Total current assets	521,545	511,628
Restricted cash	102,591	76,362
Marketable securities	—	2,866
Containers, net of accumulated depreciation of \$2,029,667 and \$1,851,664, respectively	4,365,124	4,731,878
Net investment in finance leases, net of allowance of \$1,027 and \$643, respectively	1,689,123	1,693,042
Container leaseback financing receivable, net of allowance of \$52 and \$75, respectively	770,980	323,830
Derivative instruments	149,244	12,278
Deferred taxes	1,135	1,073
Other assets	13,492	14,487
Total assets	\$ 7,613,234	\$ 7,367,444
<b>Liabilities and Equity</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 24,160	\$ 22,111
Container contracts payable	6,648	140,968
Other liabilities	5,060	4,895
Due to container investors, net	16,132	17,985
Debt, net of unamortized costs of \$7,938 and \$8,624, respectively	377,898	380,207
Total current liabilities	429,898	566,166
Debt, net of unamortized costs of \$26,946 and \$32,019, respectively	5,127,021	4,960,313
Derivative instruments	—	2,139
Income tax payable	13,196	10,747
Deferred taxes	13,105	7,589
Other liabilities	33,725	39,236
Total liabilities	5,616,945	5,586,190
Equity:		
Textainer Group Holdings Limited shareholders' equity:		
Cumulative redeemable perpetual preferred shares, \$0.01 par value, \$25,000 liquidation preference per share. Authorized 10,000,000 shares; 12,000 shares issued and outstanding (equivalent to 12,000,000 depositary shares at \$25.00 liquidation preference per depositary share)	300,000	300,000
Common shares, \$0.01 par value. Authorized 140,000,000 shares; 59,943,282 shares issued and 43,634,655 shares outstanding at 2022; 59,503,710 shares issued and 48,831,855 shares outstanding at 2021	599	595
Treasury shares, at cost, 16,308,627 and 10,671,855 shares, respectively	(337,551 )	(158,459 )
Additional paid-in capital	442,154	428,945
Accumulated other comprehensive income	147,350	9,750
Retained earnings	1,443,737	1,200,423
Total shareholders' equity	1,996,289	1,781,254
Total liabilities and shareholders' equity	\$ 7,613,234	\$ 7,367,444

The accompanying notes to the consolidated financial statements are an integral part of these statements.

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Consolidated Statements of Operations

Years ended December 31, 2022, 2021 and 2020

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

	<b>2022</b>	<b>2021</b>	<b>2020</b>
<b>Revenues:</b>			
Operating leases - owned fleet (1)	\$ 609,558	\$ 589,045	\$ 491,212
Operating leases - managed fleet (1)	49,635	56,037	62,448
Finance leases and container leaseback financing receivable - owned fleet (1)	150,821	105,648	47,213
Total lease rental income	<u>810,014</u>	<u>750,730</u>	<u>600,873</u>
Management fees - non-leasing	2,812	3,360	5,271
Trading container sales proceeds	23,791	32,045	31,941
Cost of trading containers sold	(21,939)	(21,285)	(28,409)
Trading container margin	<u>1,852</u>	<u>10,760</u>	<u>3,532</u>
Gain on sale of owned fleet containers, net	76,947	67,229	27,230
<b>Operating expenses:</b>			
Direct container expense - owned fleet	31,980	23,384	55,222
Distribution expense to managed fleet container investors	44,150	50,360	57,311
Depreciation and amortization (1)	292,828	284,115	264,237
General and administrative expense	48,349	46,462	41,880
Bad debt expense (recovery), net	740	(1,285)	(1,668)
Container lessee default expense (recovery), net	1,179	(1,088)	(1,675)
Total operating expenses	<u>419,226</u>	<u>401,948</u>	<u>415,307</u>
Income from operations	<u>472,399</u>	<u>430,131</u>	<u>221,599</u>
<b>Other (expense) income:</b>			
Interest expense	(157,249)	(127,269)	(123,230)
Debt termination expense	—	(15,209)	(8,750)
Realized loss on financial instruments, net	(91)	(5,634)	(12,295)
Unrealized (loss) gain on financial instruments, net	(502)	4,409	(6,044)
Other, net	2,406	(367)	2,019
Net other expense	<u>(155,436)</u>	<u>(144,070)</u>	<u>(148,300)</u>
Income before income taxes	316,963	286,061	73,299
Income tax (expense) benefit	(7,539)	(1,773)	374
<b>Net income</b>	<u>309,424</u>	<u>284,288</u>	<u>73,673</u>
Less: Dividends on preferred shares	19,875	10,829	—
Less: Net income attributable to the noncontrolling interest	—	—	851
<b>Net income attributable to common shareholders</b>	<u>\$ 289,549</u>	<u>\$ 273,459</u>	<u>\$ 72,822</u>
Net income attributable to common shareholders per share:			
Basic	\$ 6.23	\$ 5.51	\$ 1.37
Diluted	\$ 6.12	\$ 5.41	\$ 1.36
Weighted average shares outstanding (in thousands):			
Basic	46,471	49,624	53,271
Diluted	47,299	50,576	53,481

(1) Amounts for the years ended December 31, 2021 and 2020 have been reclassified to conform with the 2022 presentation (see Note 1 (u) "Reclassifications and Changes in Presentation").

The accompanying notes to the consolidated financial statements are an integral part of these statements.

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Consolidated Statements of Comprehensive Income  
Years ended December 31, 2022, 2021 and 2020  
(All currency expressed in United States dollars in thousands)

	<b>2022</b>	<b>2021</b>	<b>2020</b>
<b>Net income</b>	\$ 309,424	\$ 284,288	\$ 73,673
<b>Other comprehensive income (loss), before tax:</b>			
Change in derivative instruments designated as cash flow hedges	151,814	10,986	(12,307)
Reclassification of realized (gain) loss on derivative instruments designated as cash flow hedges	(12,709)	8,771	2,806
Foreign currency translation adjustments	(125)	(79)	177
Comprehensive income, before tax	448,404	303,966	64,349
Income tax (expense) benefit related to items of other comprehensive income	(1,380)	(184)	91
Comprehensive income, after tax	447,024	303,782	64,440
Less: Dividends on preferred shares	19,875	10,829	—
Less: Comprehensive income attributable to the noncontrolling interest	—	—	851
Comprehensive income attributable to common shareholders	\$ 427,149	\$ 292,953	\$ 63,589

The accompanying notes to the consolidated financial statements are an integral part of these statements.

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**  
Consolidated Statements of Shareholders' Equity  
Years ended December 31, 2022, 2021 and 2020  
(All currency expressed in United States dollars in thousands, except share data)

	Preferred shares		Common shares		Treasury shares		Additional paid-in capital	Accumulated other comprehensive (loss) income	Retained earnings	Total Textainer Group Holdings Limited shareholders' equity	Noncontrolling interest	Total equity
	Shares	Amount	Shares	Amount	Shares	Amount						
Balances, December 31, 2019	—	\$ —	58,326,555	\$ 583	(1,508,637)	\$ (17,746)	\$ 410,595	\$ (511)	\$ 866,458	\$ 1,259,379	\$ 26,266	\$ 1,285,645
Cumulative adjustment for adoption of ASU 2016-13	—	—	—	—	—	—	—	—	(885)	(885)	(7)	(892)
Purchase of treasury shares	—	—	—	—	(6,736,493)	(68,493)	—	—	—	(68,493)	—	(68,493)
Restricted share units vested	—	—	300,404	3	—	—	(3)	—	—	—	—	—
Exercise of share options	—	—	113,960	1	—	—	1,294	—	—	1,295	—	1,295
Share-based compensation expense	—	—	—	—	—	—	4,723	—	—	4,723	—	4,723
Net income	—	—	—	—	—	—	—	—	72,822	72,822	851	73,673
Other comprehensive income (loss):												
Change in derivative instruments designated as cash flow hedges	—	—	—	—	—	—	—	(12,307)	—	(12,307)	—	(12,307)
Reclassification of realized loss on derivative instruments designated as cash flow hedges	—	—	—	—	—	—	—	2,806	—	2,806	—	2,806
Foreign currency translation adjustments	—	—	—	—	—	—	—	177	—	177	—	177
Income tax benefit related to items of other comprehensive loss	—	—	—	—	—	—	—	91	—	91	—	91
Total other comprehensive loss	—	—	—	—	—	—	—	—	—	—	—	(9,233)
Balances, December 31, 2020	—	—	58,740,919	587	(8,245,130)	(86,239)	416,609	(9,744)	938,395	1,259,608	27,110	1,286,718
Issuance of preferred shares, net of offering expenses	12,000	300,000	—	—	—	—	(10,420)	—	—	289,580	—	289,580
Restricted share units vested	—	—	285,688	3	—	—	(3)	—	—	—	—	—
Exercise of share options	—	—	477,103	5	—	—	9,038	—	—	9,043	—	9,043
Purchase of treasury shares	—	—	—	—	(2,426,725)	(72,220)	—	—	—	(72,220)	—	(72,220)
Share-based compensation expense	—	—	—	—	—	—	6,699	—	—	6,699	—	6,699
Purchase of noncontrolling interest	—	—	—	—	—	—	7,022	—	—	7,022	(27,110)	(20,088)
Preferred shares dividends declared	—	—	—	—	—	—	—	—	(9,975)	(9,975)	—	(9,975)
Dividends declared to common shareholders (\$0.25 per common share)	—	—	—	—	—	—	—	—	(12,285)	(12,285)	—	(12,285)
Net income	—	—	—	—	—	—	—	—	284,288	284,288	—	284,288
Other comprehensive income (loss):												
Change in derivative instruments designated as cash flow hedges	—	—	—	—	—	—	—	10,986	—	10,986	—	10,986
Reclassification of realized loss on derivative instruments designated as cash flow hedges	—	—	—	—	—	—	—	8,771	—	8,771	—	8,771
Foreign currency translation adjustments	—	—	—	—	—	—	—	(79)	—	(79)	—	(79)
Income tax expense related to items of other comprehensive income	—	—	—	—	—	—	—	(184)	—	(184)	—	(184)
Total other comprehensive income	—	—	—	—	—	—	—	—	—	—	—	19,494
Balances, December 31, 2021	12,000	300,000	59,503,710	595	(10,671,855)	(158,459)	428,945	9,750	1,200,423	1,781,254	—	1,781,254
Restricted share units vested	—	—	202,694	2	—	—	(2)	—	—	—	—	—
Exercise of share options	—	—	236,878	2	—	—	5,483	—	—	5,485	—	5,485
Purchase of treasury shares	—	—	—	—	(5,636,772)	(179,092)	—	—	—	(179,092)	—	(179,092)
Share-based compensation expense	—	—	—	—	—	—	7,728	—	—	7,728	—	7,728
Preferred shares dividends declared	—	—	—	—	—	—	—	—	(19,875)	(19,875)	—	(19,875)
Dividends declared to common shareholders (\$0.25 per common share)	—	—	—	—	—	—	—	—	(46,235)	(46,235)	—	(46,235)
Net income	—	—	—	—	—	—	—	—	309,424	309,424	—	309,424
Other comprehensive income (loss):												
Change in derivative instruments designated as cash flow hedges	—	—	—	—	—	—	—	151,814	—	151,814	—	151,814
Reclassification of realized gain on derivative instruments designated as cash flow hedges	—	—	—	—	—	—	—	(12,709)	—	(12,709)	—	(12,709)
Foreign currency translation adjustments	—	—	—	—	—	—	—	(125)	—	(125)	—	(125)
Income tax expense related to items of other comprehensive income	—	—	—	—	—	—	—	(1,380)	—	(1,380)	—	(1,380)
Total other comprehensive income	—	—	—	—	—	—	—	—	—	—	—	137,600
Balances, December 31, 2022	12,000	\$ 300,000	59,943,282	\$ 599	(16,308,627)	(337,551)	\$ 442,154	\$ 147,350	\$ 1,443,737	\$ 1,996,289	\$ —	\$ 1,996,289

The accompanying notes to the consolidated financial statements are an integral part of these statements.

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

Consolidated Statements of Cash Flows  
Years ended December 31, 2022, 2021 and 2020  
(All currency expressed in United States dollars in thousands)

	<b>2022</b>	<b>2021</b>	<b>2020</b>
Cash flows from operating activities:			
Net income	\$ 309,424	\$ 284,288	\$ 73,673
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization (1)	292,828	284,115	264,237
Bad debt expense (recovery), net	740	(1,285)	(1,668)
Container write-off (recovery) from lessee default, net	1,910	(4,868)	(260)
Unrealized loss (gain) on financial instruments, net	502	(4,409)	6,044
Amortization of unamortized debt issuance costs and accretion of bond discounts	10,129	9,845	8,112
Debt termination expense	—	15,209	8,750
Gain on sale of owned fleet containers, net	(76,947)	(67,229)	(27,230)
Share-based compensation expense	7,728	6,699	4,723
Changes in operating assets and liabilities:			
Accounts receivable, net	2,804	(6,686)	11,539
Trading containers, net	8,848	(1,911)	7,211
Receipt of payments on finance leases, net of income earned	193,157	104,770	44,569
Interest portion of container leaseback financing receivable	(1,713)	122	(933)
Prepaid expenses and other current assets	(2,519)	(2,577)	1,103
Due from affiliates, net	(382)	(867)	371
Receipt of marketable securities from a lessee	—	(5,789)	—
Proceeds from sale of marketable securities	953	2,112	—
Other assets	2,885	1,139	502
Accounts payable and accrued expenses	2,049	(2,350)	981
Other liabilities	(4,547)	14,823	(1,354)
Due to container investors, net	(1,853)	(712)	(3,281)
Settlement of interest rate swaps	—	(14,350)	—
Long-term income tax payable	2,449	700	138
Deferred taxes, net	4,074	994	(972)
Total adjustments	443,095	327,495	322,582
Net cash provided by operating activities	752,519	611,783	396,255
Cash flows from investing activities:			
Purchase of containers	(403,738)	(2,082,577)	(745,951)
Payments on container leaseback financing receivable	(533,867)	(18,705)	(116,263)
Proceeds from sale of containers	199,158	142,276	151,021
Receipt of principal payments on container leaseback financing receivable	59,719	30,119	21,485
Other	(2,583)	(1,242)	(194)
Net cash used in investing activities	(681,311)	(1,930,129)	(689,902)
Cash flows from financing activities:			
Proceeds from debt	989,650	4,863,756	2,114,260
Payments on debt	(831,010)	(3,635,663)	(1,799,870)
Payment of debt issuance costs	(4,370)	(27,895)	(13,637)
Proceeds from container leaseback financing liability, net	—	16,305	—
Principal repayments on container leaseback financing liability, net	(799)	(3,314)	(12,825)
Issuance of preferred shares, net of underwriting discount	—	290,550	—
Purchase of treasury shares	(179,092)	(72,220)	(68,493)
Issuance of common shares upon exercise of share options	5,485	9,043	1,295
Dividends paid on common shares	(46,235)	(12,285)	—
Dividends paid on preferred shares	(19,875)	(9,975)	—
Purchase of noncontrolling interest	—	(21,500)	—
Other	—	(970)	—
Net cash (used in) provided by financing activities	(86,246)	1,395,832	220,730
Effect of exchange rate changes	(125)	(79)	177
Net change in cash, cash equivalents and restricted cash	(15,163)	77,407	(72,740)
Cash, cash equivalents and restricted cash, beginning of the year	282,572	205,165	277,905
Cash, cash equivalents and restricted cash, end of the year	\$ 267,409	\$ 282,572	\$ 205,165
Supplemental disclosures of cash flow information:			
Cash paid for interest expense and realized loss and settlement of derivative instruments	\$ 144,637	\$ 145,711	\$ 126,958
Income taxes paid	\$ 815	\$ 1,567	\$ 34
Supplemental disclosures of noncash operating activities:			
Right-of-use asset for leased properties	\$ —	\$ 272	\$ 574
Supplemental disclosures of noncash investing activities:			
(Decrease) increase in accrued container purchases	\$ (134,320)	\$ (90,679)	\$ 222,253
Containers placed in finance leases	\$ 219,813	\$ 1,043,323	\$ 635,004

(1) Amounts for the years ended December 31, 2021 and 2020 have been reclassified to conform with the 2022 presentation (see Note 1 (u) "Reclassifications and Changes in Presentation").  
The accompanying notes to the consolidated financial statements are an integral part of these statements.

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**  
Notes to Consolidated Financial Statements  
December 31, 2022, 2021 and 2020  
(All currency expressed in U.S. dollars in thousands, except per share amounts)

**(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 companies, consisting of TGH and its subsidiaries (collectively, the “Company”), involved in the purchase, management, leasing and resale of a fleet of marine cargo containers. The Company also manages and provides administrative support to the third-party owners’ (the “Container Investors”) container fleets.

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 9 “Segment Information”).

*Container Ownership*

The Company’s containers consist primarily of standard dry freight containers, but also include refrigerated and other special-purpose containers. These owned containers are financed through retained earnings; revolving credit facilities, secured debt facilities and term loans provided by banks; bonds payable to investors; and a public offering of TGH’s common and preferred shares. Expenses related to lease rental income of the owned fleet primarily 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 Container Investors. All rental operations are conducted worldwide in the name of the Company who, as agent for the Container Investors, 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 Container Investors.

Fees earned by the Company under the management agreements are typically a percentage of net operating income of each Container Investor’s fleet and consist of fees for leasing services related to the management of the containers, sales commissions and net acquisition fees earned on the acquisition of containers. Lease rental income and expenses arising from the operation of the managed fleet are presented on a gross basis, whereby revenue billed to shipping lines and expenses incurred and distributions to the container investors of the managed fleet are presented in the Company’s consolidated statements of operations. Accounts receivable and vendor payables arising from direct container operations of the managed containers are presented on a gross basis in the Company’s consolidated balance sheets. See Note 2 “Managed Container Fleet” for information on the managed fleet containers.

*Container Resale*

The Company buys and subsequently resells 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 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 of its wholly-owned subsidiaries. All significant intercompany accounts and balances have been eliminated in consolidation. The Company determines whether it has a controlling financial interest in an entity by evaluating whether the entity is a variable interest entity or a voting interest entity. If it is determined that the Company does not have a variable interest in the entity, no further analysis is required, and the Company does not consolidate the entity. There were

no variable interest entities or voting interest entities (other than wholly-owned subsidiaries) required to be consolidated in the Company's consolidated financial statements as of December 31, 2022 and 2021.

### *Managed Containers*

The Company enters into container management agreements with Container Investors. The fees earned by the Company for managing container portfolios on behalf of Container Investors are commensurate with the level of effort required to provide those management services and the Company does not have the obligation to absorb losses or the right to receive benefits that may be significant to the Container Investors. As such, the Company is not the primary beneficiary and does not consolidate the Container Investors. Managed containers which are owned by Container Investors are not assets of the Company and are not included in the consolidated financial statements, except for certain managed containers that the Company is deemed to own with associated container leaseback financial liability of the Company in accordance with Topic 842, *Leases* (see Note 1(a) "Nature of Operations" and Note 2 "Managed Container Fleet").

### *Owned Containers*

The majority of the container equipment included in the accompanying consolidated financial statements is owned by Textainer Limited ("TL"), Textainer Marine Containers II Limited ("TMCL II") and Textainer Marine Containers VII Limited ("TMCL VII"), all Bermuda companies and all of which were wholly-owned subsidiaries of the Company as of December 31, 2022 and 2021. As of December 31, 2022 and 2021, all owned containers are pledged as collateral for debt.

### **(c) Concentration of Credit Risk**

The Company's container leasing equipment and accounts receivable subject it to potential credit risk. Credit risk is mitigated by the Company's assessment of the creditworthiness of container shipping lines and the ongoing monitoring of the customers' financial condition, credit history and outstanding accounts receivable balances (see Note 1 (g) "Allowance for Credit Losses" for further discussions on the Company's ongoing credit review of lessees). The Company's customers are mainly 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 geographic concentration lies with the creditworthiness of the lessees rather than the location of the containers or the domicile of the lessees.

Total lease rental income, as reported in the consolidated statements of operations, comprises revenue earned from leases on containers in the Company's total fleet, including revenue earned from leases on containers in its managed fleet. Except for the lessees noted in the table below, no other single lessee accounted for more than 10% of the Company's total lease rental income during the years ended December 31, 2022, 2021 and 2020:

Total Lease Rental Income	2022	2021	2020
Customer A	24.4 %	21.0 %	17.8 %
Customer B	11.7 %	12.2 %	13.1 %
Customer C	10.8 %	12.1 %	9.7 %

Other financial instruments that are exposed to concentrations of credit risk are cash and cash equivalents, restricted cash balances, and derivatives (see Note 1 (e) "Cash and Cash Equivalents and Restricted Cash" and Note 8 "Derivative Instruments" for further discussions). The Company believes no significant concentration risk exists with respect to its cash and cash equivalents and restricted cash balances. The Company does not anticipate any non-performance by the derivative counterparties.

**(d) 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 significantly related to the container leasing equipment, containers held for sale, allowance for credit losses, 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.

**(e) 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 10 "Commitments and Contingencies—Restricted Cash") with various financial institutions. These financial institutions are located in Bermuda, Canada, Malaysia, Singapore, South Africa, the United Kingdom and the United States. 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 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 non-current assets reported within the consolidated balance sheets.

**(f) Revenue Recognition**

The components of the Company's revenue as presented in the consolidated statements of operations and in Note 9 "Segment Information" are as follows:

*Lease Rental Income*

Lease rental income arises principally from leasing containers to various international shipping lines and includes all rental charges billed to the lessees. Lease rental income from owned fleet comprises rental income for the container fleet owned by the Company. Lease rental income from managed fleet comprises rental income for the container fleet owned by the Container Investors. For lease accounting purposes, the management agreements with these Container Investors are deemed to convey to the Company the right to control the use of the managed containers and are therefore accounted for as "operating leases - managed fleet" as reported in the consolidated statements of operations (see Note 2 "Managed Container Fleet" for further information).

Revenue is recorded when earned according to the terms of the container lease contracts with customers. Revenue is earned and recognized evenly over the period that the equipment is on lease. These contracts are typically for terms of five or more years and are generally classified as operating leases. Where minimum lease payments vary over the lease term, revenue is recognized on a straight-line basis over the term of the lease. 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, pick-up charges, and charges for a damage protection plan.

Under long-term lease agreements, containers are usually leased from the Company for periods of five or more years. 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 finance leases, the containers are usually leased from the Company for the remainder of the container's useful life and ordinarily provide lessees with a right to purchase the subject containers for a nominal amount at the end of the lease term. Finance lease income is recognized using the effective interest method, which generates a constant rate of interest over the period of the lease.

Under sales-type leaseback arrangements that are accounted for as financing transactions, the Company recorded a container leaseback financing receivable in the amount paid for the purchased containers that were leased back to the seller-lessees. Payments made by the seller-lessees are recorded as a reduction to the container leaseback financing receivable and as interest income. Interest income is recognized using the effective interest method, which generates a constant rate of interest over the period of the arrangement.

The Company's container leases generally do not include step-rent provisions, nor do they depend on indices or rates. The Company recognizes revenue on container leases that include lease concessions in the form of free-rent periods using the straight-line method over the minimum terms of the leases.

The Company will cease recognition of lease revenue if and when a container lessee defaults in making timely payments and when determined that future lease payments are not likely to be collected from the lessee (see Note 1 (f) "Allowance for Credit Losses" for further discussions on the Company's ongoing credit review of lessees).

#### *Management Fees - Non-leasing*

Under the Company's management service agreements with Container Investors, fees are earned for the acquisition and sale of containers under management (see Note 2 "Managed Container Fleet" for further information). Acquisition fees from purchases of containers for managed fleet are deferred and recognized as earned on a straight-line basis over the deemed lease term.

#### *Trading Container Margin*

The Company's trading container sales proceeds arise from the resale of new and used trading containers that were acquired for resale to a wide variety of buyers. The related expenses represent the cost of trading containers sold as well as other selling costs that are recognized as incurred. Revenue is recorded when control of the containers is transferred to the customer, which typically occurs upon delivery to, or pick-up by, the customer and when collectability is reasonably assured.

#### **(g) Allowance for Credit Losses**

Accounts receivable, net investment in finance leases and container leaseback financing receivable are stated at amortized cost net of allowance for credit losses. Subsequent changes in the estimated allowance for credit losses are recognized in "bad debt expense (recovery), net" in the consolidated statements of operations (see Note 5 "Allowance for Credit Losses" for further information).

#### *Accounts Receivables*

The Company maintains allowances, if necessary, for doubtful accounts against accounts receivables resulting from the inability of its lessees to make required payments related to billed amounts under the operating leases, finance leases, container leaseback financing receivable and for sales of owned fleet containers and trading containers. The allowance is developed based on two components: (1) specific reserves for receivables for which management believes full collection is doubtful; and (2) a general reserve for estimated losses inherent in the receivables based upon historical trends and age of the balances. These allowances are based on an ongoing review of the creditworthiness, but not limited to, each lessee's payment history, management's current assessment of the financial condition of the Company's lessees, their ability to make their required payments and the recoverability. The Company considers an account past due when a payment has not been received in accordance with the terms

of the lease agreement, and if the financial condition of the Company's lessees deteriorates resulting in an impairment of their ability to make payments, additional allowances may be required.

Accounts receivables are generally written off after an analysis is completed which indicates that collection of the full balance is remote. 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 and managed 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.

*Net Investment in Finance Leases and Container Leaseback Financing Receivables*

The Company maintains allowances for credit losses against net investment in finance leases and container leaseback financing receivable related to unbilled amounts under the finance leases and the sales-type leaseback arrangements accounted for as financing receivable. The Company estimates its potential future expected credit losses based on historical losses from lessee defaults, current economic conditions and reasonable and supportable forecasts that may affect the collectability of the reported amount. The Company monitors its container lessees' performance and its lease exposures on an ongoing basis. The Company evaluates its exposure by portfolio with similar risk characteristics based on the creditworthiness, external credit data and overall credit quality of its lessees.

The Company's internal risk rating categories are "Tier 1" for the lowest level of risk which are typically the large international shipping lines with strong financial and asset base; "Tier 2" for moderate level of risk which includes lessees which are well-established in the market; and "Tier 3" for the highest level of risk which includes smaller shipping lines or lessees that exhibit high volatility in payments on a regular basis.

**(h) Direct Container Expenses – Owned Fleet**

Direct container expense – owned fleet represents the operating costs arising from the containers owned by the Company and includes storage, handling, maintenance and repair, repositioning, agent, and insurance expense. These costs are recognized when incurred.

**(i) Distribution Expense to Managed Fleet Container Investors**

The Company's distribution amounts to Container Investors for the managed fleet includes the net operating income of each Container Investor's fleet, reduced by associated lease management fees earned and retained by the Company. This amount is also reduced by expenses related to the operation of the managed containers which are presented on a gross basis in the consolidated statements of operations. Expenses related to the operation of the managed containers such as storage, handling, repairs, repositioning, agent, insurance expense and general and administrative expenses are recognized when incurred.

**(j) Trading Containers and 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 fair value. The cost of trading containers sold is specifically identified. In addition, containers identified as being available for sale are valued at the lower of carrying value or fair value, less cost to sell. The fair value is estimated based on recent gross sales proceeds for sales of similar containers. Trading containers and containers held for resale are not subject to depreciation.

**(k) Foreign Currencies**

A functional currency is determined for each of the Company's entities based on the currency of the primary economic environment in which the entity operates. The Company's functional currency is the U.S. dollar, excluding its foreign subsidiaries Textainer Equipment Management (United Kingdom) Limited and Textainer Equipment Management (Singapore) Pte Ltd. 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 or 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 – owned fleet” in the consolidated statements of operations were \$436, \$195, and \$251 for the years ended December 31, 2022, 2021 and 2020, respectively. For consolidation purposes, the financial statements are 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.

The Company also has certain cash accounts that are denominated in currencies other than the Company's functional currency, which are remeasured at each balance sheet date at the exchange rates in effect as of those dates. The (losses) gains due to changes in exchange rates from remeasurement were \$(855), \$(524) and \$654 for the years ended December 31, 2022, 2021 and 2020, respectively, which were included in “other, net” in the consolidated statements of operations.

**(l) Fixed Assets and Capitalized Implementation Costs**

Fixed assets are recorded at cost and depreciated on a straight-line basis over the estimated useful lives of such property, furniture and equipment, ranging from three to seven years. Expenditures for maintenance and repairs are expensed as they are incurred. As of December 31, 2022 and 2021, fixed assets amounted to \$3,654 and \$1,585, respectively, net of accumulated depreciation of \$13,711 and \$13,296, respectively, which were included in “other assets” in the consolidated balance sheets.

Implementation costs associated with cloud-based hosting arrangement that is a service contract are capitalized when incurred during the application development phase. As of December 31, 2022 and 2021, the Company's aggregate capitalized implementation costs amounted to \$11,641 and \$8,767, respectively, were included in “prepaid expenses and other current assets” in the Company's consolidated balance sheets. Amortization of the capitalized implementation costs relating to the new enterprise resource planning (ERP) system commenced in January 2022 when the hosting arrangement was ready for its intended use and is being amortized on a straight-line basis over seven years which is the term of the hosting arrangement, including reasonably certain renewals. As of December 31, 2022, the Company recorded amortization of capitalized implementation costs of \$937, which was included in “general and administrative expense” in the Company's consolidated statements of operations.

**(m) Containers**

Capitalized costs for container leasing equipment include the container cost payable to the manufacturer, inspection, delivery and the associated transportation costs incurred in moving the Company's containers from the manufacturer to the containers' first destined port. Container leasing equipment are depreciated using the straight-line method over their estimated useful lives to an estimated residual value. Used containers are depreciated based upon their remaining useful lives at the date of acquisition to an estimated residual value. Repair and maintenance costs that do not extend the useful lives of the container leasing equipment are recognized in “direct container expense - owned fleet” in the consolidated statements of operations at the time the costs are incurred.

The Company evaluates the estimated residual values and remaining estimated useful lives on a regular basis to determine whether a change in its estimates of useful lives and residual values is warranted. To perform this assessment, the Company analyzed sales data over a minimum of a ten-year period which reflected the cyclical nature of the global economic environment and its industry and assessed whether the average selling prices fall within a reasonable range compared to current residual values. The Company determined that a ten-year length of time includes sufficient periods of high and low used container prices to estimate future residual values. If the ten-year period was outside of the range of a container type, the Company evaluated the trend in average selling prices over three, five, and seven-year periods to corroborate the trend in the ten-year period. The Company then performed a comparison of the estimated residual values to publicly available peer data within the industry. The Company completed its annual depreciation and residual value policy review and concluded no change was necessary during the year ended December 31, 2022.

The Company estimates the useful lives and residual values of its container leasing equipment to be as follows:

	As of December 31, 2022 and 2021	
	Estimated useful life (years)	Residual Value
Dry containers other than open top and flat rack containers:		
20'	13	\$ 1,000
40'	14	\$ 1,200
40' high cube	13	\$ 1,400
45' high cube	13	\$ 1,500
Refrigerated containers:		
20'	12	\$ 2,750
20' high cube	12	\$ 2,049
40' high cube	12	\$ 4,000
Open top and flat rack containers:		
20' folding flat rack	15	\$ 1,300
40' folding flat rack	16	\$ 1,700
20' open top	15	\$ 1,500
40' open top	14	\$ 2,500
Tank containers	20	10% of cost

The cost, accumulated depreciation and net book value of the Company's container leasing equipment by equipment type as of December 31, 2022 and 2021 were as follows:

	2022			2021		
	Cost	Accumulated Depreciation	Net Book Value	Cost	Accumulated Depreciation	Net Book Value
Dry containers other than open top and flat rack containers:						
20'	\$ 1,469,668	\$ (490,098 )	\$ 979,570	\$ 1,530,464	\$ (471,549 )	\$ 1,058,915
40'	121,512	(51,170 )	70,342	141,292	(55,448 )	85,844
40' high cube	3,416,785	(906,234 )	2,510,551	3,496,469	(791,349 )	2,705,120
45' high cube	24,718	(13,865 )	10,853	27,354	(13,871 )	13,483
Refrigerated containers:						
20'	15,537	(8,472 )	7,065	18,445	(8,899 )	9,546
20' high cube	116	(95 )	21	809	(606 )	203
40' high cube	1,122,563	(503,886 )	618,677	1,163,149	(462,645 )	700,504
Open top and flat rack containers:						
20' folding flat	15,840	(5,818 )	10,022	16,206	(5,291 )	10,915
40' folding flat	46,519	(20,335 )	26,184	47,739	(19,073 )	28,666
20' open top	12,731	(2,329 )	10,402	13,046	(2,090 )	10,956
40' open top	19,215	(4,774 )	14,441	21,394	(4,827 )	16,567
Tank containers	129,587	(22,591 )	106,996	107,175	(16,016 )	91,159
Total Containers	<u>\$ 6,394,791</u>	<u>\$ (2,029,667 )</u>	<u>\$ 4,365,124</u>	<u>\$ 6,583,542</u>	<u>\$ (1,851,664 )</u>	<u>\$ 4,731,878</u>

See Note 2 "Managed Container Fleet" for information on the managed fleet containers included above.

#### *Impairment of Container Leasing Equipment*

The Company reviews its container leasing equipment for impairment whenever events or circumstances indicate that the carrying amount of such assets may not be recoverable. The Company compares the carrying value of the container leasing equipment to the 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. There was no such impairment on the Company's container leasing equipment for the years ended December 31, 2022, 2021 and 2020.

#### *Write-Off (Recoveries) of Container Leasing Equipment due to Lessees in Default*

The Company evaluates the recoverability of the recorded amounts of container leasing equipment that are unlikely to be recovered from lessees in default. The Company recorded impairment charges during the years ended December 31, 2022, 2021 and 2020 of \$1,935, \$2,793 and \$0, respectively, to write-off containers that were unlikely to be recovered from lessees in default, offset by gains of \$827, \$7,662 and \$1,647, respectively, associated with recoveries on containers previously estimated as lost with lessees in default. The gain on container recovery of \$7,577 during the year ended December 31, 2021 was mainly due to the reinstatement of containers with a previously insolvent and bankrupt lessee who made a successful exit from bankruptcy, and such containers had been written off in 2019. The gain on container recovery of \$1,644 during the year ended December 31, 2020 was mainly due to a settlement agreement with an insolvent lessee on containers which were previously written off in 2018. These amounts are recorded in the consolidated statements of operations as "container lessee default expense (recovery), net".

#### *Impairment of Containers Held for Sale*

Containers identified as being available for sale are valued at the lower of carrying value or fair value, less costs to sell. The Company records impairment to write-down the value of containers held for sale to their estimated fair value, less cost to sell, under observable (Level 2) market inputs. The fair value was estimated based on recent gross sales proceeds for sales of similar types of containers in the locations in which the containers are stored. When containers are sold or otherwise retired, the cost and related accumulated depreciation are removed, and any resulting gain or loss is recognized.

Subsequent additions or reductions to the fair values of these written down assets are recorded as adjustments to the carrying value of the containers held for sale. The carrying value of containers held for sale that have been impaired and written down to their estimated fair value less cost to sell was \$3,556 and \$270 as of December 31, 2022 and 2021, respectively. Any subsequent increase in fair value less costs to sell is recognized as a reversal of container impairment but not in excess of the cumulative loss previously recognized. During the years ended December 31, 2022, 2021 and 2020, the Company recorded container impairment charges (reversals) of \$2,325, \$(385) and \$11,094, respectively, to write down the value of containers held for sale to their estimated fair value less cost to sell, net of reversals of previously recorded impairments on containers held for sale, due to rising used container prices. The impairment charges (reversals) are included in "depreciation and amortization" in the consolidated statements of operations.

During the years ended December 31, 2022, 2021 and 2020, the Company recorded the following net gain on sale of containers, included in "gain on sale of owned fleet containers, net" in the consolidated statements of operations:

	2022		2021		2020	
	Units	Amount	Units	Amount	Units	Amount
Gain on sale of previously written down owned fleet containers, net	2,765	\$ 431	3,430	\$ 2,165	51,541	\$ 15,451
Gain on sale of owned fleet containers not written down, net	77,217	76,516	50,550	65,064	54,807	11,779
Gain on sale of owned fleet containers, net	<u>79,982</u>	<u>\$ 76,947</u>	<u>53,980</u>	<u>\$ 67,229</u>	<u>106,348</u>	<u>\$ 27,230</u>

#### *Gain on sale of owned fleet containers, net*

The Company also generally sells containers at the end of their useful lives or when it is financially attractive to do so. The gain on sale of owned fleet containers is the excess of the sale price over the carrying value for these units at the time of sale. Revenue is recorded when control of the containers is transferred to the customer, which typically occurs upon delivery to, or pick-up by, the customer and when collectability is reasonably assured.

Gain on sale of owned fleet containers, net, also includes gains (losses) recognized at the inception of sales-type leases of our owned fleet, representing the excess (deficiency) of the estimated fair value of containers placed on sales-type leases over (below) their book value.

**(n) Container Lessee Default Expense (Recovery), net**

One of the Company's customers became bankrupt in 2019. In 2021, the bankruptcy settlement agreement related to the restructuring of the previously insolvent customer was finalized. As a result of the assessment of the previously insolvent customer's restructuring and successful exit from bankruptcy, the Company recorded a container loss recovery of \$7,986 included in "container lessee default expense (recovery), net" in the consolidated statements of operations during the year ended December 31, 2021. The Company did not submit a final insurance claim after its review of the previously insolvent customer's restructuring plan, therefore, the insurance receivable of \$2,106 was written-off and included in "container lessee default expense (recovery), net" in the consolidated statements of operations during the year ended December 31, 2021.

**(o) 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 deemed to be unlikely.

The Company also accounts for 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 an adjustment to income tax expense.

The Company records interest and penalties related to unrecognized tax benefits in income tax expense.

**(p) Debt Issuance Costs**

The Company capitalizes costs directly associated with the issuance or modification of its debt and the balance of the debt issuance costs, net of amortization, are netted against the debt recorded in the consolidated balance sheets.

Debt issuance costs are amortized using the interest rate method and the straight-line method over the general terms of the related fixed principal payment debt and the related revolving debt facilities, respectively, and the amortization is recorded as "interest expense" in the consolidated statements of operations. In 2022, 2021 and 2020, debt issuance costs of \$4,370, \$27,895 and \$13,637, respectively, were capitalized and amortization of debt issuance costs of \$10,001, \$9,723 and \$7,712, respectively, were recorded in interest expense.

When the Company's debt is modified or terminated prior to maturity, any unamortized debt issuance costs related to a decrease in borrowing capacity with any of the Company's lenders is immediately written-off and recorded in "debt termination expense". In 2021 and 2020, the Company recorded write-offs of unamortized debt issuance costs and bond discounts of \$4,578 and \$8,750, respectively (see Note 7 "Debt"). No unamortized debt issuance costs were written-off during the year ended December 31, 2022.

**(q) Derivative Instruments and Hedging**

The Company has entered into various interest rate swap 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 Secured Overnight Financing Rate ("SOFR"), which was the Company's replacement rate due to London Inter Bank Offered Rate ("LIBOR") transition. The fair value of the derivative instruments is measured at each balance sheet date and is reflected on a gross basis on the

consolidated balance sheets. The Company establishes criteria for both the designation and effectiveness of hedging activities. A derivative instrument qualifies for hedge accounting if the Company expects it to be highly effective in offsetting the underlying hedged exposure and the Company fulfills the hedge documentation requirements. Formal hedge documentation is prepared for all derivative instruments designated as hedges, including a description of the hedged item, the hedging instrument, and the risk being hedged. As of December 31, 2022 and 2021, all of the Company's derivative instruments are designated as cash flow hedges for accounting purposes (see Note 8 "Derivative Instruments" for further discussions).

Derivative instruments that are designated as cash flow hedges for accounting purposes are considered effective hedges and are recorded using hedge accounting. Under cash flow hedging, the change in fair value of derivative instruments is initially reported in the consolidated balance sheets as a component of "accumulated other comprehensive income" and reclassified to earnings in "interest expense, net" when realized or when hedged interest payments are recognized.

**(r) Share Options and Restricted Share Units**

The Company estimates the fair value of all employee share options, restricted share units ("RSU") and performance restricted share units ("PSU") awarded under its 2019 Share Incentive Plan (the "2019 Plan") on the grant date. The Company uses the Black-Scholes-Merton ("Black-Scholes") option-pricing model to determine the estimated fair value for share options. The Company uses the fair market value of the Company's common shares on the grant date, discounted for estimated dividends that will not be received by the employees during the vesting period, for determining the estimated fair value for time based RSUs. For PSUs or market based restricted share units that were granted with a market condition, the Company uses the Monte-Carlo simulation valuation model. See Note 11 "Share-Based Compensation" for further discussions.

Compensation expense for share options and RSUs with only a service condition is recognized on a straight-line basis over the requisite service period, generally the vesting period of the award. Provided that the requisite service period is rendered, compensation expense for PSUs with a market condition is recognized on a straight-line basis even if the market condition is not achieved. Compensation expense is recognized net of forfeitures that are estimated at the time of grant based on the Company's historical experience and revised in subsequent periods if actual forfeitures differ from those estimates. The expected forfeiture rate was 3.5%, 3.4% and 3.5% as of December 31, 2022, 2021 and 2020, respectively.

**(s) Comprehensive Income**

The Company discloses the effect of its foreign currency translation adjustment, change in fair value of cash flow hedging derivative instruments, and reclassification of realized gain or loss on cash flow hedging instruments as components of "other comprehensive income" in the Company's consolidated statements of comprehensive income.

**(t) Fair Value Measurements**

Fair value represents the price that would be received to sell the asset or paid to transfer the liability in an orderly transaction between market participants at the measurement date. 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.

As of December 31, 2022 and 2021, the carrying amounts of cash and cash equivalents, restricted cash, accounts receivable and payable, due from affiliates, net, container contracts payable, and due to container investors, net, approximate their fair values due to the short-term nature of these financial instruments. See Note 1 (m) “Containers”, Note 4 “Leases”, Note 7 “Debt” and Note 8 “Derivative Instruments” for further discussions on fair value of containers held for sale, fair value of net investment in finance leases and container leaseback financing receivable, fair value of debt, and fair value of derivative instruments, respectively.

#### *Fair Value of Marketable Equity Securities*

As of December 31, 2022 and 2021, the Company held investments in marketable equity securities with readily determinable fair values of \$1,411 and \$2,866, respectively. The fair value of investments in marketable equity securities is measured at each balance sheet date based on quoted market prices (Level 1) and the change in fair value of marketable equity securities still held as of December 31, 2022 and 2021 was \$(502) and \$(589) during the years ended December 31, 2022 and 2021, respectively, which was recorded as “unrealized (loss) gain on financial instruments, net” in the consolidated statements of operations.

#### **(u)    *Reclassifications and Changes in Presentation***

Certain prior period amounts for the years ended December 31, 2021 and 2020 have been reclassified to conform to the current period presentation as discussed below:

- The Company reclassified the total lease rental income out of the previously reported line items “lease rental income - owned fleet” and “lease rental income - managed fleet” to the line items “operating leases – owned fleet”, “operating leases – managed fleet” and “finance leases and container leaseback financing receivable – owned fleet” to additionally present breakdown of total lease rental income by lease type in the consolidated statements of operations.
- The Company reclassified the amounts out of the separate line item “amortization expense” to be included within the line item “depreciation and amortization” in the consolidated statements of operations and in the consolidated statements of cash flows.
- The Company reclassified the amounts out of the previously reported line item “interest income” to be included within the line item “other, net” in the consolidated statements of operations.
- The Company reclassified the fixed asset purchase amounts out of the previously reported line item “purchase of containers and fixed assets” to be included to the separate line item “other” in the consolidated statements of cash flows.
- The Company combined the previously reported separate line items for the preferred share issuances to be included within the line item “cumulative redeemable perpetual preferred shares” in total shareholders’ equity in the consolidated balance sheets.

The changes in the presentation have no impact on “total lease rental income”, “total operating expenses”, and “net income”.

#### **(v)    *Recently Issued Accounting Standards and Pronouncements***

In March 2020, the FASB issued Accounting Standards Update No. 2020-04, *Reference Rate Reform (“Topic 848”)*: Facilitation of the Effects of Reference Rate Reform on Financial Reporting (“ASU 2020-04”). In January 2021, the FASB also issued Accounting Standards Update No 2021-01, *Reference Rate Reform: Scope* (“ASU 2021-01”), which expands the scope of Topic 848. In December 2022, the FASB also issued Accounting Standards Update No 2022-06, *Reference Rate Reform: Deferral of the Sunset Date of Topic 848* (“ASU 2022-06”), which defers the sunset date from December 31, 2022 to December 31, 2024. The amendments provide optional guidance for a limited time to ease the potential burden in accounting for reference rate reform. As of December 31, 2022, the Company completed its amendment of all variable rate debt agreements and interest rate swap contracts due to replacement of LIBOR to SOFR. The adoption of this guidance did not have an impact on the Company’s consolidated financial statements.

In July 2021, the FASB issued Accounting Standards Update No. 2021-05, *Leases (Topic 842), Lessors – Certain Leases with Variable Lease Payments* (“ASU 2021-05”). The amendment provides guidance to clarify



lessor's accounting for certain leases with variable lease payments by amending the lessor lease classification requirements under Topic 842. ASU 2021-05 requires a lessor to classify and account for a lease with variable lease payments that do not depend on a reference index or a rate as an operating lease if both of the following criteria are met: 1) The lease would have been classified as a sales-type lease or a direct financing lease in accordance with the classification criteria in Topic 842; and 2) The lessor would have otherwise recognized a day-one loss. The Company adopted ASU 2021-05 effective January 1, 2022 on a prospective basis. Based on the nature of the Company's finance leases, the adoption of this guidance did not have an impact on the Company's consolidated financial statements.

In March 2022, the FASB issued Accounting Standards Update No. 2022-02, *Financial Instruments – Credit Losses (Topic 326), Troubled Debt Restructurings and Vintage Disclosures* ("ASU 2022-02"). The amendment eliminates the accounting guidance for troubled debt restructurings by creditors in *Topic 310 - Receivables* and amends the disclosure requirements for restructurings involving borrowers that are experiencing financial difficulty under *ASU 2016-13, Financial Instruments – Credit Losses (Topic 326), Measurement of Credit Losses on Financial Instruments*, which was adopted by the Company on the effective date of January 1, 2020. ASU 2022-02 requires disclosure of current period gross write-offs by year of origination for financing receivables and net investment in finance leases and must be included in the vintage disclosure of the amortized cost basis of financing receivables and net investment in finance leases by credit quality indicator and by year of origination as required by ASU 2016-13. ASU 2022-02 is effective for fiscal years beginning after December 15, 2022, with early adoption permitted. The Company will adopt ASU 2022-02 effective January 1, 2023 on a prospective basis and expects no impact on the Company's consolidated financial statements other than the enhanced disclosure requirements.

## **(2) Managed Container Fleet**

As part of the Company's on-going business operation, the Company from time to time purchases containers on behalf of Container Investors. The Company enters into management agreements with the Container Investors whereby the Company, as agent for the Container Investors, purchases and leases out these containers and manages all of the Container Investors' rights and obligations in respect of such containers and leases. The acquisition of these containers is funded entirely by the Container Investors and all risks and rewards of ownership of these containers vest and remain exclusively with the Container Investors. The Container Investors have no rights or recourse against the Company in the event of physical loss or damage, failure to lease out, any lessee default or any other risk in respect of the containers.

The Container Investors pay the Company an acquisition fee for acquiring containers on their behalf at the time of acquisition and a fee for management services, including services associated with ultimately disposing of the containers on behalf of the Container Investors.

Lease rental income and expenses from the managed fleet owned by Container Investors are reported on a gross basis. Lease rental income from managed fleet represents rental charges billed to the ultimate lessees for the managed fleet, including charges for handling fees, drop-off charges, pick-up charges, and charges for a damage protection plan that is set forth in the leases.

Management fees from non-leasing services are earned for acquiring new managed containers and sales commissions are earned from sales of the managed containers on behalf of the Container Investors, which are generally calculated as a fixed percentage of the cost of the managed containers purchased and the proceeds from the sale of the managed containers, respectively.

Under the Company's fleet management agreements for managed containers, the Company is responsible for providing the leasing services to the customers and responsible for directing and integrating third-party vendors to fulfill its performance obligations. Therefore, it was determined that the management agreements with these Container Investors are deemed to convey to the Company the right to control the use of the managed containers and are therefore accounted for as a lease. See Note 1 (f) "Accounting Policies and Recent Accounting Pronouncements – Revenue Recognition" for further information.

Distribution expense to managed fleet container investors represents direct container expenses of the managed containers and the amounts distributed to the Container Investors, reduced by associated lease management fees earned and retained by the Company.

Managed containers in the Company's managed fleet on or before December 31, 2018 are not included in the Company's container leasing equipment in the Company's consolidated balance sheet as of December 31, 2022 and 2021.

#### Container Purchases On or After January 1, 2019

Distribution expense to managed fleet container investors represents direct container expenses of the managed containers.

From an accounting perspective, in accordance with *Topic 842 - Leases* which was effective January 1, 2019 for the Company and under the management arrangements, the Company is deemed to control the containers owned by the Container Investors before they are leased out. Furthermore, the deemed leaseback is considered a sales-type lease under Topic 842, with the Company as lessee and the Container Investors as lessors.

The Company is deemed to own certain of the managed containers purchased by the Company on or after January 1, 2019 for and on behalf of Container Investors, notwithstanding the contractual management relationship which the Company has with the Container Investors. Accordingly, such managed containers are included in "containers, net" in the Company's consolidated balance sheets as of December 31, 2022 and 2021 and depreciated using the straight-line method over their estimated useful lives to an estimated dollar residual value per the Company's depreciation policy (see Note 1 (m) "Accounting Policies and Recent Accounting Pronouncements – Containers"). The purchase consideration paid by the Container Investors for such containers is reported as a deemed financial liability of the Company. Subsequent net operating income distributions made by the Company to the Container Investors are recorded as a reduction to the financial liability and as interest expense using the effective interest method. The net book value for these managed containers and the associated financial liability will reduce over time and will be removed upon container sale, irrespective of the amount realized in such sale.

As of December 31, 2022 and 2021, the Company's container leaseback financial liability to the Container Investors amounted to \$14,841 and \$15,977, respectively, which were reported as "other liabilities" in the consolidated balance sheets.

The Company's container leasing equipment includes such managed containers in the consolidated balance sheets as of December 31, 2022 and 2021, which consisted of the following:

	2022			2021		
	Cost	Accumulated Depreciation	Net Book Value	Cost	Accumulated Depreciation	Net Book Value
Containers - owned fleet	\$ 6,378,374	\$ (2,027,743)	\$ 4,350,631	\$ 6,566,785	\$ (1,850,721)	\$ 4,716,064
Containers - managed fleet	16,417	(1,924)	14,493	16,757	(943)	15,814
Total containers	<u>\$ 6,394,791</u>	<u>\$ (2,029,667)</u>	<u>\$ 4,365,124</u>	<u>\$ 6,583,542</u>	<u>\$ (1,851,664)</u>	<u>\$ 4,731,878</u>

Income from the managed fleet, including management fees earned from acquisition fees and sales commissions during 2022, 2021 and 2020 were as follows:

	2022	2021	2020
Lease rental income - managed fleet	\$ 49,635	\$ 56,037	\$ 62,448
Less: distribution expense to managed fleet container investors	(44,150)	(50,360)	(57,311)
Less: depreciation and interest expense on managed containers purchased on or after January 1, 2019	(1,836)	(1,348)	(730)
	3,649	4,329	4,407
Management fees from non-leasing services	2,812	3,360	5,271
Total	\$ 6,461	\$ 7,689	\$ 9,678

The Company's consolidated balance sheets also include the accounts receivable from the lessees of the managed fleet which are uncollected lease billings related to the containers managed by the Company for the Container Investors. Amounts billed under leases for the managed fleet ("sub-leases") are recorded in accounts receivable with a corresponding credit to due to container investors. As sub-lessor, the Company is required to remit accounts receivable from lessees of the managed fleet to the Container Investors once paid in accordance with the terms of the management agreements. The Company's consolidated balance sheets also include the prepaid expenses and accounts payable and accrued expenses related to the containers managed by the Company for the Container Investors.

The following table provides a reconciliation of the balance sheet accounts from the managed fleet to the total amount as of December 31, 2022 and 2021 in the consolidated balance sheets (also, see Note 3 "Transactions with Affiliates and Container Investors"). Accounts receivable related to the owned fleet pertains to the Company's uncollected lease billings related to the containers owned by the Company. Prepaid expenses and other current assets and accounts payable and accrued expenses related to the owned fleet represents the Company's general and administrative costs and operating costs arising from the containers owned by the Company.

	2022	2021
Accounts receivable, net - owned fleet	\$ 107,457	\$ 118,107
Accounts receivable, net - managed fleet	7,348	7,639
Total accounts receivable, net	\$ 114,805	\$ 125,746
Prepaid expenses and other current assets - owned fleet	\$ 16,614	\$ 14,142
Prepaid expenses and other current assets - managed fleet	89	42
Total prepaid expenses and other current assets	\$ 16,703	\$ 14,184
Accounts payable and accrued expenses - owned fleet	\$ 22,868	\$ 21,736
Accounts payable and accrued expenses - managed fleet	1,292	375
Total accounts payable and accrued expenses	\$ 24,160	\$ 22,111
Container contracts payable - owned fleet	\$ 6,648	\$ 140,968
Total container contracts payable	\$ 6,648	\$ 140,968

### (3) Transactions with Affiliates and Container Investors

Due from affiliates, net of \$2,758 and \$2,376, as of December 31, 2022 and 2021, respectively, represents lease rentals on tank containers collected on behalf of and payable to the Company from the Company's tank container manager, net of direct container expenses and management fees. See Note 2 "Managed Fleet" for further detail on management fees earned from the Company's managed fleet.

There was no due to affiliated Container Investors as of December 31, 2022 and 2021. The following table provides a summary of due to container investors, net at December 31, 2022 and 2021:

	2022	2021
Accounts receivable, net - managed fleet	\$ 7,348	\$ 7,639
Prepaid expenses and other current assets - managed fleet	89	42
Accounts payable and accrued expenses - managed fleet	(1,292)	(375)
	6,145	7,306
Distributions due to container investors on lease rentals collected, net of container expenses paid and management fees	9,987	10,679
Due to container investors, net	\$ 16,132	\$ 17,985

#### (4) Leases

##### (a) Lessor

The Company's lease rental income during 2022, 2021 and 2020 were as follows:

	2022			2021			2020		
	Owned	Managed	Total	Owned	Managed	Total	Owned	Managed	Total
Lease rental income - operating leases	\$ 595,202	\$ 47,694	\$ 642,896	\$ 577,946	\$ 54,652	\$ 632,598	\$ 469,109	\$ 58,175	\$ 527,284
Interest income on net investment in finance leases	108,359	—	108,359	82,659	—	82,659	30,121	—	30,121
Interest income on container leaseback financing receivable	41,997	—	41,997	21,380	—	21,380	17,243	—	17,243
Variable lease revenue	14,821	1,941	16,762	12,708	1,385	14,093	21,952	4,273	26,225
Total lease rental income	\$ 760,379	\$ 49,635	\$ 810,014	\$ 694,693	\$ 56,037	\$ 750,730	\$ 538,425	\$ 62,448	\$ 600,873

Variable lease revenue includes other charges set forth in the leases, such as handling fees, pick-up and drop-off charges and charges for damage protection plan.

For finance leases, the net selling gain (loss) recognized at lease commencement, representing the difference between the estimated fair value of containers placed on these leases and their net book value, in the amount of \$1,423, \$2,610 and \$(144) for the years ended December 31, 2022, 2021 and 2020, respectively, are included in "gain on sale of owned fleet containers, net" in the consolidated statements of operations.

##### Operating Leases

The following is a schedule, by year, of future minimum lease payments receivable under the long-term leases for the owned and managed container fleet as of December 31, 2022:

	Owned	Managed	Total
Year ending December 31:			
2023	\$ 454,913	\$ 28,933	\$ 483,846
2024	386,191	25,930	412,121
2025	300,954	20,948	321,902
2026	228,995	16,213	245,208
2027	169,451	11,830	181,281
2028 and thereafter	374,014	8,078	382,092
Total future minimum lease payments receivable	\$ 1,914,518	\$ 111,932	\$ 2,026,450

### Container Leaseback Financing Receivable

The Company's container leaseback financing receivable pertains to containers purchased that were leased back to the seller-lessees through a sales-type leaseback arrangement that are accounted for as financing transactions.

The following table represents the components of the container leaseback financing receivable as of December 31, 2022 and 2021:

	2022	2021
Future minimum payments receivable	\$ 1,179,515	\$ 483,325
Less: unearned income	(354,769)	(129,065)
Container leaseback financing receivable (1)	824,746	354,260
Less: Allowance for credit losses	(114)	(113)
Container leaseback financing receivable, net (2)	\$ 824,632	\$ 354,147
Amounts due within one year	53,652	30,317
Amounts due beyond one year	770,980	323,830
Container leaseback financing receivable, net	\$ 824,632	\$ 354,147

- (1) One major customer represented 97.4% and 90.6% of the Company's container leaseback financing receivable portfolio as of December 31, 2022 and 2021, respectively.
- (2) As of December 31, 2022 and 2021, the fair value of container leaseback financing receivable (including the short-term balance) was approximately \$732,951 and \$357,828, respectively, and was measured using Level 2 inputs.

### Net Investment in Finance Leases

The following table represents the components of the net investment in finance leases as of December 31, 2022 and 2021:

	2022	2021
Future minimum lease payments receivable	\$ 2,487,365	\$ 2,558,339
Residual value of containers	47,686	16,532
Less: unearned income	(713,736)	(768,038)
Net investment in finance leases (1)	1,821,315	1,806,833
Less: Allowance for credit losses	(1,279)	(743)
Net investment in finance leases, net (2)	\$ 1,820,036	\$ 1,806,090
Amounts due within one year	130,913	113,048
Amounts due beyond one year	1,689,123	1,693,042
Net investment in finance leases, net	\$ 1,820,036	\$ 1,806,090

- (1) One major customer represented 80.8% and 85.1% of the Company's finance lease portfolio as of December 31, 2022 and 2021, respectively. No other customer represented more than 10% of the Company's finance leases portfolio in each of those periods.
- (2) As of December 31, 2022 and 2021, the fair value of net investment in finance leases (including the short-term balance) was approximately \$1,659,155 and \$1,810,712, respectively, and was measured using Level 2 inputs.

The following is a schedule by year of future minimum lease payments receivable under container leaseback financing receivable and net investment in finance leases as of December 31, 2022:

Year ending December 31:	Container Leaseback Financing Receivable	Net Investment in Finance Leases	Total
2023	\$ 99,927	\$ 232,689	\$ 332,616
2024	95,974	228,958	324,932
2025	88,427	211,967	300,394
2026	86,942	207,216	294,158
2027	86,942	201,909	288,851
2028 and thereafter	721,303	1,404,626	2,125,929
Total future minimum lease payments receivable	<u>\$ 1,179,515</u>	<u>\$ 2,487,365</u>	<u>\$ 3,666,880</u>

**(b) Lessee**

Right-of-use (“ROU”) lease assets and lease liabilities are recognized for the Company’s office space leases at the commencement date based on the present value of lease payments over the lease term. The Company does not recognize a related ROU asset and lease liability for short-term leases having a lease term of twelve months or less. As of December 31, 2022 and 2021, ROU operating lease assets amounted to \$7,299 and \$8,988, respectively, which were reported in “other assets” in the consolidated balance sheets. As of December 31, 2022 and 2021, total lease liabilities amounted to \$9,112 and \$11,044, respectively, which were reported in “other liabilities” in the consolidated balance sheets. As of December 31, 2022, the weighted average discount rate was 4.75% and the weighted average remaining lease term was 3 years.

Operating lease expense is recognized on a straight-line basis over the lease term and is reported in “general and administrative expense” in the consolidated statements of operations. Rent expense and other information related to the Company’s operating leases during 2022, 2021 and 2020 are as follows:

	2022	2021	2020
Operating lease cost	\$ 2,084	\$ 2,103	\$ 2,103
Short-term and variable lease cost	216	112	128
Total rent expense	<u>\$ 2,300</u>	<u>\$ 2,215</u>	<u>\$ 2,231</u>
Cash paid for amounts included in the measurement of lease liabilities	\$ 2,349	\$ 2,379	\$ 2,221

Future minimum lease payment obligations under the Company’s noncancelable operating leases at December 31, 2022 were as follows:

Year ending December 31:	Operating leases
2023	\$ 2,334
2024	2,385
2025	2,130
2026	2,179
2027	935
2028 and thereafter	—
Total minimum lease payments	9,963
Less imputed interest	(851)
Total present value of operating lease liabilities	<u>\$ 9,112</u>

## (5) Allowance for Credit Losses

The Company's allowance for credit losses is estimated based on historical losses, current economic conditions, and ongoing review of the credit worthiness, but not limited to, each lessee's payment history, lessee credit ratings, management's current assessment of each lessee's financial condition and the recoverability.

### *Accounts Receivable*

The allowance for credit losses included in accounts receivable, net, amounted to \$1,582 and \$1,290 as of December 31, 2022 and 2021, respectively. As of December 31, 2022 and 2021, the allowance for credit losses related to the billed amounts under the container leaseback financing receivable and finance leases that were included in accounts receivable, net, amounted to \$586 and \$592, respectively.

### *Net Investment in Finance Leases and Container Leaseback Financing Receivable*

The allowance for credit losses related to unbilled amounts under finance leases and included in net investment in finance leases, net, amounted to \$1,279 and \$743 as of December 31, 2022 and 2021, respectively. The allowance for credit losses related to unbilled amounts under the financing arrangements and included in container leaseback financing receivable, net, amounted to \$114 and \$113 as of December 31, 2022 and 2021, respectively.

As of December 31, 2022, the Company's net investment in finance leases and container leaseback financing receivable are primarily comprised of the largest shipping lines under "Tier 1" risk rating which represented 88.3% and 97.4%, respectively, of the Company's portfolio (see Note (g) "Nature of Business and Summary of Significant Accounting Policies" for description of internal risk ratings).

The following table presents the net investment in finance leases and container leaseback financing receivable by internal credit rating category and year of origination as of December 31, 2022:

	Year Ended December 31, 2022	2021	2020	2019	2018	Prior	Total
Tier 1	\$ 84,987	\$ 818,866	\$ 566,132	\$ 97,860	\$ 31,042	\$ 8,464	\$ 1,607,351
Tier 2	33,981	76,583	32,822	28,761	15,899	1,742	189,788
Tier 3	9,726	6,430	1,823	5,853	331	13	24,176
<b>Net investment in finance leases</b>	<b>\$ 128,694</b>	<b>\$ 901,879</b>	<b>\$ 600,777</b>	<b>\$ 132,474</b>	<b>\$ 47,272</b>	<b>\$ 10,219</b>	<b>\$ 1,821,315</b>
Tier 1	\$ 504,774	\$ 11,435	\$ 100,662	\$ 186,170	\$ —	\$ —	\$ 803,041
Tier 2	—	4,021	—	17,684	—	—	21,705
<b>Container leaseback financing receivable</b>	<b>\$ 504,774</b>	<b>\$ 15,456</b>	<b>\$ 100,662</b>	<b>\$ 203,854</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 824,746</b>

## (6) 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 (benefit) for 2022, 2021 and 2020 consisted of the following:

	2022	2021	2020
<b>Current</b>			
Bermuda	\$ —	\$ —	\$ —
Foreign	2,087	594	446
	<u>2,087</u>	<u>594</u>	<u>446</u>
<b>Deferred</b>			
Bermuda	—	—	—
Foreign	5,452	1,179	(819)
	<u>5,452</u>	<u>1,179</u>	<u>(819)</u>
	<u>\$ 7,539</u>	<u>\$ 1,773</u>	<u>\$ (374)</u>

The components of income before income taxes and noncontrolling interest were as follows:

	2022	2021	2020
Bermuda sources	\$ —	\$ —	\$ —
Foreign sources	316,963	286,061	73,299
	<u>\$ 316,963</u>	<u>\$ 286,061</u>	<u>\$ 73,299</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 operations is as follows:

	2022	2021	2020
Bermuda tax rate	\$ — 0.00 %	\$ — 0.00 %	\$ — 0.00 %
Foreign tax rate	3,471 1.10 %	271 0.09 %	(1,291) (1.76) %
Tax uncertainties	4,068 1.28 %	1,502 0.53 %	917 1.25 %
	<u>\$ 7,539 2.38 %</u>	<u>\$ 1,773 0.62 %</u>	<u>\$ (374) (0.51) %</u>

The components of income tax expense and effective tax rate were as follows:

	2022	2021	2020
Income before income tax and noncontrolling interests	<u>\$ 316,963</u>	<u>\$ 286,061</u>	<u>\$ 73,299</u>
Tax uncertainties	\$ 4,068 1.28 %	\$ 1,502 0.53 %	\$ 917 1.25 %
Foreign taxes			
Stock base compensation	(27) (0.01) %	(622) (0.22) %	(94) (0.13) %
162(m) officers' compensation	459 0.14 %	412 0.14 %	102 0.14 %
Adjustment for prior years	134 0.04 %	(392) (0.14) %	47 0.06 %
Foreign derived intangible income	(455) (0.14) %	(329) (0.12) %	(112) (0.15) %
Valuation allowance	— —	(382) (0.13) %	67 0.09 %
Foreign rate difference	3,415 1.08 %	1,583 0.55 %	(1,333) (1.82) %
Other	(55) (0.02) %	1 0.00 %	32 0.04 %
	<u>3,471 1.10 %</u>	<u>271 0.09 %</u>	<u>(1,291) (1.76) %</u>
	<u>\$ 7,539 2.38 %</u>	<u>\$ 1,773 0.62 %</u>	<u>\$ (374) (0.51) %</u>

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and deferred tax liabilities at December 31, 2022 and 2021 are presented below:

	2022	2021
Deferred tax assets		
Net operating loss carryforwards	\$ 16,360	\$ 17,765
Other	(92)	1,006
	<u>16,269</u>	<u>18,771</u>
Valuation allowance	—	—
Deferred tax assets	<u>16,269</u>	<u>18,771</u>
Deferred tax liabilities		
Containers, net	28,239	25,287
Other	—	—
Deferred tax liabilities	<u>28,239</u>	<u>25,287</u>
Net deferred tax liabilities	<u>\$ 11,970</u>	<u>\$ 6,516</u>



In assessing the extent to which deferred tax assets are realizable, 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 reversal of taxable temporary items for making this assessment. Based upon the projections for the reversal of taxable temporary items over the periods in which the deferred tax assets are deductible, as well as the estimated usage of deferred tax assets to offset against 2022 and 2021 taxable income, the Company's management believes it is more likely than not the Company will realize the benefits of these deductible differences in 2022 and 2021, thus no valuation allowance has been provided for the years ended December 31, 2022 and 2021.

On March 27, 2020, the U.S. government enacted the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"). The enactment of the CARES Act does not result in any material adjustments to the Company's provision for income taxes.

The Company has U.S. federal net operating loss carry-forwards of \$69,807 that will begin to expire from December 31, 2032 through December 31, 2037 if not utilized and \$6,943 with no expiration date. The Company expects to utilize the net operating loss carry-forwards prior to their expiration. In the United States, utilization of net operating loss carry-forwards for federal income tax purposes may be subject to a substantial annual limitation if there is an ownership change within the meaning of Section 382 of the Internal Revenue Code. In general, an ownership change within the meaning of Section 382 occurs if a transaction or series of transactions over a three-year period result in a cumulative change of more than 50% in the beneficial ownership of a company's stock. The Company's management does not believe the Company has a limitation on the ability to utilize its net operating loss carry-forwards under Section 382 as of December 31, 2022. However, issuances, sales and/or exchanges of the Company's stock (including, potentially, relatively small transactions and transactions beyond the Company's control) occurring after December 31, 2022, taken together with prior transactions with respect to the Company's stock over a three-year period, could trigger an ownership change under Section 382 in the future and therefore a limitation on the Company's ability to utilize its net operating loss carryforwards. Any such limitation could cause some loss carryforwards to expire before the Company would be able to utilize them to reduce taxable income in future periods, possibly resulting in a substantial income tax expense or write down of the Company's tax assets or both.

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, 2022, cumulative earnings of approximately \$47,417 would be subject to income taxes of approximately \$14,225 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 2015, except for its United States and State of California tax returns which are no longer subject to examinations for years before 2011 and 2008, respectively.

A reconciliation of the beginning and ending unrecognized tax benefit amounts for 2022 and 2021 are as follows:

Balance at December 31, 2020	\$	20,575
Increases related to prior year tax positions		156
Increases related to current year tax positions		2,878
Lapse of statute of limitations		(1,457)
Balance at December 31, 2021	\$	22,152
Decreases related to prior year tax positions		(158)
Increases related to current year tax positions		5,474
Lapse of statute of limitations		(1,320)
Balance at December 31, 2022	\$	26,148

If the unrecognized tax benefits of \$26,148 at December 31, 2022 were recognized, tax benefits in the amount of \$26,074 would reduce our annual effective tax rate. The Company believes the total amount of unrecognized tax benefit as of December 31, 2022 will decrease by \$1,274 in the next twelve months due to expiration of the statute of limitations, which would reduce our annual effective tax rate.

Interest and penalty expense recorded during 2022, 2021 and 2020 amounted to \$69, \$(78) and \$(11), respectively. Total accrued interest and penalties as of December 31, 2022 and 2021 were \$1,451 and \$1,381, respectively, and were included in non-current income taxes payable.

## (7) Debt

The following represents the Company's debt obligations as of December 31, 2022 and 2021:

	2022		2021		Final Maturity
	Outstanding	Average Interest	Outstanding	Average Interest	
TL Revolving Credit Facility	\$ 1,367,858	5.78 %	\$ 1,062,858	1.60 %	August 2027
TL 2019 Term Loan	127,293	3.50 %	138,578	3.50 %	December 2026
TL 2021-1 Term loan	60,314	2.65 %	65,804	2.65 %	February 2028
TL 2021-2 Term Loan	192,202	2.90 %	206,635	2.90 %	October 2028
TMCL II Secured Debt Facility (1)	1,239,440	6.00 %	1,073,741	1.75 %	November 2028
TMCL VII 2020-1 Bonds	332,413	3.06 %	388,194	3.07 %	August 2045
TMCL VII 2020-2 Bonds	476,279	2.26 %	535,690	2.26 %	September 2045
TMCL VII 2020-3 Bonds	175,750	2.15 %	195,861	2.15 %	September 2045
TMCL VII 2021-1 Bonds	467,881	1.72 %	513,333	1.72 %	February 2046
TMCL VII 2021-2 Bonds	564,373	2.27 %	616,469	2.27 %	April 2046
TMCL VII 2021-3 Bonds	536,000	1.98 %	584,000	1.98 %	August 2046
Total debt outstanding (2)	5,539,803		5,381,163		
Unamortized debt premiums and discounts	(34,884)		(40,643)		
Debt, net of unamortized costs	\$ 5,504,919		\$ 5,340,520		
Debt, net of unamortized costs - current	\$ 377,898		\$ 380,207		
Debt, net of unamortized costs - non-current	\$ 5,127,021		\$ 4,960,313		

- (1) Final maturity of the TMCL II Secured Debt Facility is based on the assumption that the facility will not be extended on its scheduled conversion date.
- (2) The fair value of total debt based on the borrowing rates available to the Company was approximately \$5,107,874 and \$5,320,366 at December 31, 2022 and 2021, respectively, and was measured using Level 2 inputs.

The Company hedges the risks associated with fluctuations in interest rates on a portion of its floating-rate debt by entering into interest rate swap agreements that convert a portion of its floating-rate debt to a fixed rate basis, thereby reducing the impact of interest rate changes on future interest expense. The following table summarizes the Company's outstanding fixed-rate and floating-rate debt as of December 31, 2022:

	Balance Outstanding	Contractual Weighted Average Interest Rate
<b>Excluding impact of derivative instruments:</b>		
Fixed-rate debt	\$ 2,932,505	2.32%
Floating-rate debt	2,607,298	5.88%
<b>Including impact of derivative instruments:</b>		
Fixed-rate debt	2,932,505	2.32%
Hedged floating-rate debt	2,071,125	2.88%
Total fixed and hedged debt	5,003,630	2.55%
Unhedged floating-rate debt	536,173	5.83%
Total	\$ 5,539,803	2.87%

The Company's debt facilities are secured by specific pools of containers and related assets owned by the Company. The Company's debt agreements contain various restrictive financial and other covenants related to leverage, interest coverage, fixed charge coverage, container sales proceeds ratio, net income and debt levels and consolidated tangible net worth, including limitations on certain liens, indebtedness and investments. TL's revolving credit facility and term loans also contain limitation on loan and dividend payment to TGH. All of the Company's debt facilities contain restrictive covenants on borrowing base minimums.

Under the terms of the debt agreements, the total outstanding principal may not exceed an amount that is calculated as the total of the eligible containers designated to the respective facility multiplied by a certain advance rate, plus the restricted cash amount (the "Asset Base"). For secured debt and revolving credit facilities, the total outstanding principal may not exceed the lesser of the commitment amount or the Asset Base. TGH and its subsidiaries were in compliance with these restrictive covenants as of December 31, 2022.

#### ***Secured Debt Facility***

TMCL II has a securitization facility (the "TMCL II Secured Debt Facility") that provides for an aggregate commitment amount of up to \$1,500,000. There is a commitment fee on the unused amount of the total commitment, payable monthly in arrears.

The TMCL II Secured Debt Facility has a conversion date and final maturity date of November 2024 and November 2028, respectively, with interest rate during the revolving period of daily SOFR plus a spread of 1.60%, payable monthly in arrears.

#### ***Revolving Credit Facility***

TL has a revolving credit facility (the "TL Revolving Credit Facility") that provides for an aggregate commitment amount of up to \$1,900,000 (which includes a \$25,000 letter of credit facility). There is a commitment fee on the unused amount of the total commitment, payable quarterly in arrears. The TL Revolving Credit Facility provides for payments of interest only during its term beginning on its inception date through August 2027 when all borrowings are due in full.

In August 2022, TL entered into an amendment of the TL Revolving Credit Facility which increased the aggregate commitment amount from \$1,500,000 to \$1,900,000, extended the maturity date to August 2027, and transitioned the benchmark interest rate to SOFR due to the upcoming LIBOR discontinuation. The applicable interest rate was amended to daily SOFR plus a spread of 1.475%, payable monthly in arrears.

The TL Revolving Credit Facility contains cross default provisions that may result in an acceleration of principal repayment under the debt facility if an uncured default condition were to exist. TGH acts as an unconditional guarantor of the TL Revolving Credit Facility.

### ***Term Loans***

*TL 2019 Term Loan.* TL has a \$160,000 fixed rate term loan (the “TL 2019 Term Loan”) with a group of financial institutions. Interest on the outstanding amount due under the TL 2019 Term Loan is payable monthly in arrears.

*TL 2021-1 Term Loan.* TL has a \$70,270 fixed rate term loan (the “TL 2021-1 Term Loan”) with a group of financial institutions. Interest on the outstanding amount due under this term loan is payable monthly in arrears.

*TL 2021-2 Term Loan.* TL has a \$209,000 fixed rate term loan (the “TL 2021-2 Term Loan”) with a group of financial institutions. Interest on the outstanding amount due under this term loan is payable monthly in arrears.

The TL Term Loans contain cross default provisions that may result in an acceleration of principal repayment under the debt facility if an uncured default condition were to exist. TGH acts as an unconditional guarantor of the TL Term Loans.

### ***Bonds Payable***

*TMCL VII 2020-1 Bonds.* TMCL VII issued \$380,800 of aggregate Class A principal amount and \$69,200 of aggregate Class B principal amount of the Series 2020-1 Fixed Rate Asset Backed Notes (the “TMCL VII 2020-1 Bonds”). Under the terms of the TMCL VII 2020-1 Bonds, both principal and interest incurred are payable monthly.

*TMCL VII 2020-2 Bonds.* TMCL VII issued \$531,600 of aggregate Class A principal amount and \$76,200 of aggregate Class B principal amount of the Series 2020-2 Fixed Rate Asset Backed Notes (“the TMCL VII 2020-2 Bonds”). Under the terms of the TMCL VII 2020-2 Bonds, both principal and interest incurred are payable monthly.

*TMCL VII 2020-3 Bonds.* TMCL VII issued \$213,000 of aggregate Class A principal amount and \$8,000 of aggregate Class B principal amount of the Series 2020-3 Fixed Rate Asset Backed Notes (“the TMCL VII 2020-3 Bonds”). Under the terms of the TMCL VII 2020-3 Bonds, both principal and interest incurred are payable monthly.

*TMCL VII 2021-1 Bonds.* TMCL VII issued \$523,500 of aggregate Class A and \$26,500 of aggregate Class B Series 2021-1 Fixed Rate Asset Backed Notes (“the TMCL VII 2021-1 Bonds”). Under the terms of the TMCL VII 2021-1 Bonds, both principal and interest incurred are payable monthly.

*TMCL VII 2021-2 Bonds.* TMCL VII issued \$605,200 of aggregate Class A and \$46,000 of aggregate Class B Series 2021-2 Fixed Rate Asset Backed Notes (“the TMCL VII 2021-2 Bonds”). Under the terms of the TMCL VII 2021-2 Bonds, both principal and interest incurred are payable monthly.

*TMCL VII 2021-3 Bonds.* TMCL VII issued \$548,800 of aggregate Class A and \$51,200 of aggregate Class B Series 2021-3 Fixed Rate Asset Backed Notes (“the TMCL VII 2021-3 Bonds”). Under the terms of the TMCL VII 2021-3 Bonds, both principal and interest incurred are payable monthly.

## Estimated Future Principal Payments

The following is a schedule of future scheduled repayments, by year, and borrowing capacities, as of December 31, 2022:

	Twelve months ending December 31,						Total Borrowing	Available borrowing, as limited by the Borrowing Base	Current and Available Borrowing, as limited by the Borrowing Base
	2023	2024	2025	2026	2027	2028 and thereafter			
TL Revolving Credit Facility	\$ —	\$ —	\$ 121,409	\$ 131,386	\$ 1,115,063	\$ —	\$ 1,367,858	\$ 272,748	\$ 1,640,606
TL 2019 Term Loan	11,687	12,102	12,532	90,972	—	—	127,293	—	127,293
TL 2021-1 Term loan	5,637	5,789	5,944	6,103	6,267	30,574	60,314	—	60,314
TL 2021-2 Term Loan	14,858	15,294	15,743	16,205	16,681	113,421	192,202	—	192,202
TMCL II Secured Debt Facility (1)	64,792	100,446	102,631	92,825	83,957	794,789	1,239,440	34,977	1,274,417
TMCL VII 2020-1 Bonds (2)	57,816	58,560	57,552	51,869	57,117	49,499	332,413	—	332,413
TMCL VII 2020-2 Bonds (2)	66,975	69,541	69,827	68,492	73,971	127,473	476,279	—	476,279
TMCL VII 2020-3 Bonds (2)	20,111	20,111	20,111	20,111	20,111	75,195	175,750	—	175,750
TMCL VII 2021-1 Bonds (2)	43,864	43,864	43,864	43,864	43,864	248,561	467,881	—	467,881
TMCL VII 2021-2 Bonds (2)	52,096	52,096	52,096	52,096	52,096	303,893	564,373	—	564,373
TMCL VII 2021-3 Bonds (2)	48,000	48,000	48,000	48,000	48,000	296,000	536,000	—	536,000
Total (3)	<u>\$ 385,836</u>	<u>\$ 425,803</u>	<u>\$ 549,709</u>	<u>\$ 621,923</u>	<u>\$ 1,517,127</u>	<u>\$ 2,039,405</u>	<u>\$ 5,539,803</u>	<u>\$ 307,725</u>	<u>\$ 5,847,528</u>

- (1) The estimated future scheduled repayments for TMCL II Secured Debt Facility are based on the assumption that the facility will not be extended on its associated conversion date.
- (2) Future scheduled payments for all bonds payable exclude unamortized discounts in an aggregate amount of \$485.
- (3) Future scheduled payments for all debts exclude prepaid debt issuance costs in an aggregate amount of \$34,399.

## (8) Derivative Instruments

The Company has entered into several derivative agreements with several banks to reduce the impact of changes in interest rates associated with its variable rate debt. Interest rate swap agreements involve payments by the Company to counterparties at fixed rate interest payments in return for receipts based on floating-rate amounts. The Company has also utilized forward starting interest rate swap agreements to reduce the impact of interest rate changes on anticipated future debt issuances. The Company has also utilized interest rate cap agreements, which place a ceiling on the Company's exposure to rising interest rates, to manage interest rate risk exposure.

The counterparties to the Company's interest rate swap agreements are highly rated financial institutions. In the unlikely event that the counterparties fail to meet the terms of the interest rate swap agreements, the Company's exposure is limited to the interest rate differential on the notional amount at each monthly settlement period over the life of the agreements. The Company monitors its counterparties' credit ratings on an on-going basis and does not anticipate any non-performance by the counterparties. The Company does not have any master netting arrangements with its counterparties.

The Company has utilized the income approach to measure at each balance sheet date the fair value of its derivative instruments on a recurring basis using observable (Level 2) market inputs. This approach represents the present value of future cash flows based upon current market expectations. The Company presents the fair value of derivative instruments, which are inclusive of counterparty risk, on a gross basis as separate line items on the consolidated balance sheets.

During the year ended December 31, 2021, the Company early terminated a total notional amount of \$508,250 interest rate swaps not designated as cash flow hedges and entered into new interest rate swaps that were designated for as cash flow hedges. The Company paid a total settlement amount of \$14,552, including accrued

interest for the cancellation. As of December 31, 2022 and 2021, all of the Company's interest rate swaps were designated as cash flow hedges for accounting purposes.

The following table summarizes the Company's derivative instruments as of December 31, 2022:

<b>Derivative instruments</b>	<b>Notional amount</b>
Interest rate swap contracts with several banks that were indexed to daily SOFR, with fixed rates between -0.02% and 3.84% per annum, amortizing notional amounts, with termination dates through November 30, 2032	\$ 2,071,125
Interest rate cap contract with a bank that was indexed to daily SOFR, with fixed cap rate of 6.33% per annum, nonamortizing notional amounts, with a termination date of March 31, 2023	100,000
<b>Total notional amount as of December 31, 2022 (1) (2)</b>	<b>\$ 2,171,125</b>

- (1) As of December 31, 2022, the Company completed its amendment of all interest rate swap contracts which were related with the replacement of LIBOR to SOFR due to the reference rate reform.
- (2) Excludes the Company's interest rate swap contract with an effective date in a future period ("forward starting interest rate swap"). In February 2022, the Company entered into a forward starting interest rate swap with a bank that was indexed to daily SOFR and with an initial notional amount of \$100,000. The Company pays a fixed rate at 1.96% and with an effective date of February 28, 2024 and termination date of February 28, 2034.

The following table summarizes the fair value of derivative instruments on the consolidated balance sheets as of December 31, 2022 and 2021:

	<b>Fair Values of Derivative Instruments</b>	
	<b>Assets (liabilities), net</b>	
Balance at December 31, 2020	\$	(29,188 )
Change in derivative instruments designated as cash flow hedges		10,986
Reclassification of realized loss on derivative instruments designated as cash flow hedges for current year cash settlements		8,771
Unrealized gain on derivative instruments not designated as cash flow hedges		5,220
Cash settlements on early termination on interest rate swaps not designated as cash flow hedges		14,350
Balance at December 31, 2021		10,139
Change in derivative instruments designated as cash flow hedges		151,814
Reclassification of realized gain on derivative instruments designated as cash flow hedges for current year cash settlements		(12,709 )
Balance at December 31, 2022	\$	149,244

Over the next twelve months, the Company expects to reclassify an estimated net gain of \$55,087 related to the designated interest rate swap agreements from "accumulated other comprehensive income" in the consolidated statements of shareholders' equity to "interest expense" in the consolidated statements of operations.

The following table summarizes the pre-tax impact of derivative instruments on the consolidated statements of operations and comprehensive income during the years ended December 31, 2022, 2021 and 2020:

		2022	2021	2020
<u>Derivative instruments</u>	<u>Financial Statement Line Item</u>			
Non-designated	Realized loss on financial instruments, net	\$ —	\$ (5,408 )	\$ (12,295 )
Non-designated	Unrealized gain (loss) on financial instruments, net	\$ —	\$ 5,220	\$ (6,044 )
Designated	Other comprehensive income (loss)	\$ 151,814	\$ 10,986	\$ (12,307 )
Designated	Interest income (expense)	\$ 12,709	\$ (8,771 )	\$ (2,806 )

## (9) Segment Information

The Company operates in three reportable segments: Container Ownership, Container Management and Container Resale. The following tables show segment information for 2022, 2021 and 2020:

<u>2022</u>	<u>Container Ownership</u>	<u>Container Management</u>	<u>Container Resale</u>	<u>Other</u>	<u>Eliminations</u>	<u>Totals</u>
Total lease rental income	\$ 756,980	\$ 50,304	\$ —	\$ —	\$ 2,730	\$ 810,014
Management fees - non-leasing from external customers	\$ —	\$ 223	\$ 2,589	\$ —	\$ —	\$ 2,812
Inter-segment management fees	\$ —	\$ 75,116	\$ 15,411	\$ —	\$ (90,527 )	\$ —
Trading container margin	\$ —	\$ —	\$ 1,852	\$ —	\$ —	\$ 1,852
Gain on sale of owned fleet containers, net	\$ 76,751	\$ —	\$ —	\$ —	\$ 196	\$ 76,947
Depreciation and amortization	\$ 298,737	\$ 1,676	\$ —	\$ —	\$ (7,585 )	\$ 292,828
Container lessee default expense, net	\$ 1,179	\$ —	\$ —	\$ —	\$ —	\$ 1,179
Interest expense	\$ 156,396	\$ 853	\$ —	\$ —	\$ —	\$ 157,249
Realized loss on financial instruments, net	\$ —	\$ 91	\$ —	\$ —	\$ —	\$ 91
Unrealized loss on financial instruments, net	\$ —	\$ 502	\$ —	\$ —	\$ —	\$ 502
Segment income (loss) before income tax (1)	\$ 266,224	\$ 39,938	\$ 16,666	\$ (6,802 )	\$ 937	\$ 316,963
Income tax expense	\$ 6,922	\$ 617	\$ —	\$ —	\$ —	\$ 7,539
Total assets	\$ 7,562,913	\$ 197,368	\$ 6,464	\$ 7,539	\$ (161,050 )	\$ 7,613,234
Purchase of containers and fixed assets	\$ 269,418	\$ 2,583	\$ —	\$ —	\$ —	\$ 272,001
Payments on container leaseback financing receivable	\$ 533,867	\$ —	\$ —	\$ —	\$ —	\$ 533,867

<b>2021</b>	<b>Container Ownership</b>	<b>Container Management</b>	<b>Container Resale</b>	<b>Other</b>	<b>Eliminations</b>	<b>Totals</b>
Total lease rental income	\$ 694,045	\$ 56,685	\$ —	\$ —	\$ —	\$ 750,730
Management fees - non-leasing from external customers	\$ —	\$ 373	\$ 2,987	\$ —	\$ —	\$ 3,360
Inter-segment management fees	\$ —	\$ 83,074	\$ 9,954	\$ —	\$ (93,028)	\$ —
Trading container margin	\$ —	\$ —	\$ 10,760	\$ —	\$ —	\$ 10,760
Gain on sale of owned fleet containers, net	\$ 67,229	\$ —	\$ —	\$ —	\$ —	\$ 67,229
Depreciation and amortization	\$ 289,610	\$ 3,650	\$ —	\$ —	\$ (9,145)	\$ 284,115
Container lessee default recovery, net	\$ 1,088	\$ —	\$ —	\$ —	\$ —	\$ 1,088
Interest expense	\$ 126,628	\$ 641	\$ —	\$ —	\$ —	\$ 127,269
Debt termination expense	\$ 15,209	\$ —	\$ —	\$ —	\$ —	\$ 15,209
Realized loss on financial instruments, net	\$ 5,408	\$ 226	\$ —	\$ —	\$ —	\$ 5,634
Unrealized gain (loss) on financial instruments, net	\$ 5,220	\$ (811)	\$ —	\$ —	\$ —	\$ 4,409
Segment income (loss) before income tax (1)	\$ 239,857	\$ 46,706	\$ 19,166	\$ (4,845)	\$ (14,823)	\$ 286,061
Income tax expense	\$ 1,404	\$ 369	\$ —	\$ —	\$ —	\$ 1,773
Total assets	\$ 7,269,451	\$ 230,810	\$ 15,819	\$ 12,644	\$ (161,280)	\$ 7,367,444
Purchase of containers and fixed assets	\$ 1,991,898	\$ 1,242	\$ —	\$ —	\$ —	\$ 1,993,140
Payments on container leaseback financing receivable	\$ 18,705	\$ —	\$ —	\$ —	\$ —	\$ 18,705



<b>2020</b>	<b>Container Ownership</b>	<b>Container Management</b>	<b>Container Resale</b>	<b>Other</b>	<b>Eliminations</b>	<b>Totals</b>
Total lease rental income	\$ 537,534	\$ 63,339	\$ —	\$ —	\$ —	\$ 600,873
Management fees - non-leasing from external customers	\$ 392	\$ 129	\$ 4,750	\$ —	\$ —	\$ 5,271
Inter-segment management fees	\$ —	\$ 54,899	\$ 12,575	\$ —	\$ (67,474)	\$ —
Trading container margin	\$ —	\$ —	\$ 3,532	\$ —	\$ —	\$ 3,532
Gain on sale of owned fleet containers, net	\$ 27,230	\$ —	\$ —	\$ —	\$ —	\$ 27,230
Depreciation and amortization	\$ 268,401	\$ 3,511	\$ —	\$ —	\$ (7,675)	\$ 264,237
Container lessee default recovery, net	\$ 1,675	\$ —	\$ —	\$ —	\$ —	\$ 1,675
Interest expense	\$ 122,863	\$ 367	\$ —	\$ —	\$ —	\$ 123,230
Debt termination expense	\$ 8,750	\$ —	\$ —	\$ —	\$ —	\$ 8,750
Realized loss on financial instruments, net	\$ 12,295	\$ —	\$ —	\$ —	\$ —	\$ 12,295
Unrealized loss on financial instruments, net	\$ 6,044	\$ —	\$ —	\$ —	\$ —	\$ 6,044
Segment income (loss) before income tax and noncontrolling interests (1)	\$ 41,831	\$ 23,641	\$ 16,433	\$ (3,254)	\$ (5,352)	\$ 73,299
Income tax benefit (expense)	\$ 1,088	\$ (714)	\$ —	\$ —	\$ 0	\$ 374
Total assets	\$ 5,641,866	\$ 180,933	\$ 12,050	\$ 13,691	\$ (107,164)	\$ 5,741,376
Purchase of containers and fixed assets	\$ 968,204	\$ 194	\$ —	\$ —	\$ —	\$ 968,398
Payments on container leaseback financing receivable	\$ 116,263	\$ —	\$ —	\$ —	\$ —	\$ 116,263

(1) Container Ownership segment income (loss) before income taxes includes unrealized gain (loss) on financial instruments, net of \$0, \$5,220 and \$(6,044) for the years ended December 31, 2022, 2021 and 2020, respectively, and debt termination expense of \$0, \$15,209 and \$8,750 for the years ended December 31, 2022, 2021 and 2020, respectively.

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 the Container Resale segments and the Container Ownership segment.

### 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 on hire. Substantially all of the Company's leasing related revenue is denominated in U.S. dollars. As all of the Company's containers are used internationally, where no single 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.

The following table represents the geographic allocation of total lease rental income and management fees from non-leasing services during the years ended December 31, 2022, 2021 and 2020 based on customers' and Container Investors' primary domicile:

	Years ended December 31,		
	2022	2021	2020
<b>Total lease rental income:</b>			
Asia	\$ 395,093	\$ 373,614	\$ 302,709
Europe	379,790	343,351	266,431
North / South America	34,343	32,296	29,391
Bermuda	—	—	—
All other international	788	1,469	2,342
	<u>\$ 810,014</u>	<u>\$ 750,730</u>	<u>\$ 600,873</u>
<b>Management fees, non-leasing:</b>			
Europe	\$ 1,523	\$ 1,530	\$ 2,397
Bermuda	1,187	1,699	2,797
North / South America	63	23	9
Asia	—	45	11
All other international	39	63	57
	<u>\$ 2,812</u>	<u>\$ 3,360</u>	<u>\$ 5,271</u>

The following table represents the geographic allocation of trading container sales proceeds and gain on sale of owned fleet containers, net during the years ended December 31, 2022, 2021 and 2020 based on the location of sale:

	Years ended December 31,		
	2022	2021	2020
<b>Trading container sales proceeds:</b>			
Asia	\$ 10,517	\$ 14,317	\$ 14,896
North / South America	11,453	12,404	13,045
Europe	1,821	5,321	3,991
Bermuda	—	—	—
All other international	—	3	9
	<u>\$ 23,791</u>	<u>\$ 32,045</u>	<u>\$ 31,941</u>
<b>Gain on sale of owned fleet containers, net:</b>			
Asia	\$ 48,767	\$ 46,328	\$ 13,082
North / South America	17,317	10,385	8,610
Europe	10,863	10,516	5,538
Bermuda	—	—	—
All other international	—	—	—
	<u>\$ 76,947</u>	<u>\$ 67,229</u>	<u>\$ 27,230</u>

## (10) Commitments and Contingencies

### (a) *Restricted Cash*

Restricted interest-bearing cash accounts were established by the Company as additional collateral for outstanding borrowings under certain of the Company's debt facilities. Restricted cash at December 31, 2022 and 2021 consisted of the following:

	2022	2021
Trust accounts	\$ 25,935	\$ 16,289
Other restricted cash accounts	76,656	60,073
Total restricted cash	<u>\$ 102,591</u>	<u>\$ 76,362</u>

#### *Trust accounts*

The Company maintains certain interest-bearing bank accounts ("Trust Accounts") pursuant to certain debt agreements for the deposits of net cash proceeds collected from leasing and containers disposition after certain expenses. The cash in the Trust Accounts can only be used to pay the Company's debt, interest and other certain related expenses. After such payments, any remaining cash in the Trust Accounts is transferred to certain unrestricted bank accounts of the Company and is included in cash and cash equivalents on the consolidated balance sheets.

#### *Other restricted cash accounts*

The Company established certain interest-bearing bank accounts pursuant to certain debt agreements to maintain an amount equal to certain outstanding debt balances and a projected interest expense for a specified number of months.

### (b) *Container Commitments*

At December 31, 2022, the Company had commitments to purchase containers to be delivered subsequent to December 31, 2022 in the total amount of \$3,800.

### (c) *Legal Proceedings*

The Company is the subject of, or party to, pending or threatened legal proceedings arising in the ordinary course of its business. Based upon information presently available, the Company does not expect any liability arising from these matters to have a material effect on the Company's consolidated financial condition, results of operations or cash flows.

### (d) *Distribution Expense to Managed Fleet Container Investors*

The amounts distributed to the Container Investors are variable payments based upon the net operating income for each managed container (see Note 2 "Managed Container Fleet"). There are no future minimum lease payment obligations under the Company's management agreements.

## (11) Share-Based Compensation

The Company's 2019 Share Incentive Plan ("2019 Plan") provided for the grant of share options, restricted share units, performance restricted share units and restricted shares to the Company's employees, executives and directors. At December 31, 2022, 1,817,502 shares were available for future issuance under the 2019 Plan.

Share-based compensation expense of \$7,728, \$6,699 and \$4,723 was recorded during 2022, 2021 and 2020, respectively, of which \$7,353, \$6,470 and \$4,257 was presented as a part of "general and administrative expenses", and the remaining balance was presented as a part of "direct container expenses – owned fleet" during 2022, 2021 and 2020, respectively in the Company's consolidated statements of operations.

## Share Options

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.

The following tables summarizes the activity of share options for the years ended December 31, 2022, 2021 and 2020:

	Share options (common share equivalents)	Weighted average exercise price
Balances, December 31, 2019	1,807,665	\$ 19.76
Options exercised during the period	(113,960)	\$ 11.36
Options expired during the period	(130,711)	\$ 26.14
Options forfeited during the period	(33,968)	\$ 12.40
Balances, December 31, 2020	1,529,026	\$ 19.90
Options exercised during the period	(477,103)	\$ 18.95
Options expired during the period	(40,000)	\$ 32.70
Options forfeited during the period	(19,128)	\$ 10.74
Balances, December 31, 2021	992,795	\$ 20.02
Options exercised during the period	(236,878)	\$ 23.16
Options expired during the period	(6,220)	\$ 34.81
Balances, December 31, 2022	749,697	\$ 18.91
Options exercisable at December 31, 2022	695,515	\$ 19.67
Options vested and expected to vest at December 31, 2022	747,952	\$ 18.93

As of December 31, 2022, \$157 of total compensation cost related to non-vested share options not yet recognized is expected to be recognized over a weighted average period of 1 year. 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 \$31.01 per share as of December 31, 2022 was \$8,923. 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, 2022. The aggregate intrinsic value of all options exercised during 2022, 2021 and 2020, based on the closing share price on the date each option was exercised was \$3,044, \$5,513 and \$710, respectively.

The weighted average contractual life of options exercisable and outstanding as of December 31, 2022 was 4.15 years and 4.35 years, respectively.

## Restricted Share Units ("RSU") and Performance Restricted Share Units ("PSU")

RSU awards granted to employees prior to 2020 have a vesting period of four years or vest in increments of 25% per year on each anniversary of the grant date. RSU awards granted to employees during and after 2020 have a vesting period of three years or vest in increments of 33.33% per year on each anniversary of the grant date. RSU awards granted to directors fully vest one year after their grant date.

The Company granted PSU awards to certain executives starting 2020, which are subject to both service and market vesting conditions. The PSU awards will vest at the end of a 3-year performance cycle if the market conditions are met. The market-based conditions will be satisfied if certain milestones based on the Company's common stock price or relative total shareholder return ("TSR") are achieved.

The following tables summarizes the activity of RSU and PSU awards for the years ended December 31, 2022, 2021 and 2020:

	RSU	PSU (1)	Total	Weighted average grant date fair value
Balances, December 31, 2019	657,620	—	657,620	\$ 11.95
Share units granted	200,868	183,560	384,428	\$ 16.96
Share units vested	(300,404)	—	(300,404)	\$ 12.08
Share units forfeited	(19,743)	—	(19,743)	\$ 12.62
Balances, December 31, 2020	538,341	183,560	721,901	\$ 14.55
Share units granted	102,956	104,834	207,790	\$ 44.62
Share units vested	(278,684)	(7,004)	(285,688)	\$ 12.32
Share units forfeited	(18,753)	—	(18,753)	\$ 12.70
Balances, December 31, 2021	343,860	281,390	625,250	\$ 25.37
Share units granted	137,969	145,015	282,984	\$ 34.86
Share units vested	(202,694)	—	(202,694)	\$ 16.85
Share units forfeited	(1,239)	—	(1,239)	\$ 35.30
Balances, December 31, 2022	277,896	426,405	704,301	\$ 31.62
Total share units outstanding and expected to vest at December 31, 2022			668,146	\$ 31.37

- (1) The grant date fair value of PSU awards granted during 2022, 2021 and 2020 were \$42.36 per share, \$55.85 per share and \$22.06 per share, respectively. On the settlement date for each measurement period of market-based awards, grantees may receive shares equal to 0% to 200% of the awards granted depending upon the achievement of certain market criteria based on the Company's TSR relative to the peer group during the three-year performance period.

As of December 31, 2022, \$14,194 of total compensation cost related to non-vested time-based RSU and market-based PSU awards not yet recognized is expected to be recognized over a weighted average period of 1.7 years. The grant date fair value of the market-based PSU awards is recognized as expense ratably over the vesting period and is not adjusted in future periods for the success or failure to achieve the specified market condition.

The fair value of PSU awards granted during the years ended December 31, 2022, 2021 and 2020 were determined using the Monte Carlo simulation valuation model that incorporated multiple valuation assumptions, including the probability of achieving the specified market condition and the following assumptions.:

	2022	2021	2020
Risk-free interest rates	4.12 %	0.54 %	0.16 %
Expected common share price volatilities	57.40 %	59.80 %	57.40 %

The risk-free interest rate is based on the three-year U.S. Treasury constant maturity yields on the grant date. The expected common share price volatility is based on the historical average volatility of the Company's stock over the three-year period corresponding to the performance period of the award. The dividend yield reflects the estimated future yield on the date of grant. There were no assumed dividend yields because the TSR includes the reinvestment of dividends and the awards include dividend equivalent units.

## (12) Shareholders' Equity

### Share Repurchase Program

In 2019, the Company's board of directors approved a share repurchase program to repurchase up to \$25,000 of the Company's common shares, in 2020 the board of directors approved an increase of another \$75,000 to this program, in 2021 the program was further increased by \$100,000, and in 2022 the program was further increased by \$250,000. Under the program, the Company may purchase its common shares from time to time in the open market, in privately negotiated transactions or such other manner as will comply with applicable laws and regulations. The

authorization did not obligate the Company to acquire a specific number of shares during any period, but it may be modified, suspended or terminated at any time at the discretion of the Company's board of directors.

During the year ended December 31, 2022, the Company repurchased 5,636,772 shares at an average price of \$31.77 for a total amount of \$179,092 including commissions paid. During the year ended December 31, 2021, the Company repurchased 2,426,725 shares at an average price of \$29.76 for a total amount of \$72,220, including commissions paid. As of December 31, 2022, approximately \$122,480 remained available for repurchases under the share repurchase program.

### ***Preferred Shares***

The following table summarizes the Company's preferred share issuances (the "Series"):

<b>Preferred Share Offering</b>	<b>Date of Issuance</b>	<b>Number of Depositary Shares Issued and Outstanding (1)</b>	<b>Liquidation Preference</b>	<b>Underwriting Discounts</b>	<b>Net Proceeds</b>
7.00% Series A fixed-to-floating rate cumulative redeemable perpetual preferred shares ("Series A") (2)	April 2021	6,000,000	\$ 150,000	\$ 5,292	\$ 144,708
6.25% Series B fixed rate cumulative redeemable perpetual preferred shares ("Series B") (3)	August 2021	6,000,000	150,000	5,128	144,872
<b>Total</b>		<b>12,000,000</b>	<b>\$ 300,000</b>	<b>\$ 10,420</b>	<b>\$ 289,580</b>

- (1) Each depositary share representing a 1/1,000<sup>th</sup> interest in a preferred share, \$25,000 liquidation preference per share (equivalent to \$25.00 per depositary share).
- (2) Series A have no maturity date and are redeemable from June 15, 2026 (the "first reset date") by the Company.
- (3) Series B have no maturity date and are redeemable from December 15, 2026 by the Company.

Each Series of preferred shares may be redeemed at the Company's option, at any time after approximately five years from original issuance, for cash at a redemption price of \$25.00 per depositary share plus an amount equal to all accumulated and unpaid dividends, whether or not declared. The Company may also redeem each Series of preferred shares in the event of a Change of Control (as defined in the Certificate of Designations). If the Company does not elect to redeem the preferred shares in a Change of Control triggering event, holders of each Series of preferred shares may have the right to convert their preferred shares into common shares. There is no mandatory redemption of each Series of preferred shares or redemption at the option of the holders. Holders of the preferred shares do not have general voting rights.

### ***Preferred Share Dividends***

Dividends on each Series of preferred shares accrue daily and are cumulative from and including the date of original issuance and are payable quarterly in arrears on the 15<sup>th</sup> day of March, June, September and December of each year, when declared by the Company's board of directors. Dividends accrue at the stated annual rate of the

\$25,000 liquidation preference. Each Series of preferred shares rank senior to the Company's common shares with respect to dividend rights and rights upon the Company's liquidation, dissolution or winding up.

The Company's board of directors approved and declared the following quarterly preferred cash dividends during the years ended December 31, 2022 and 2021 on its issued and outstanding preferred shares:

Preferred Share Offering	2022		2021	
	Aggregate Payment	Per Depositary Share Payment (1)	Aggregate Payment	Per Depositary Share Payment (1) (2)
Series A	\$ 10,500	\$ 0.44	\$ 7,058	\$ 0.44
Series B	\$ 9,375	\$ 0.39	\$ 2,917	\$ 0.49
Total	<u>\$ 19,875</u>		<u>\$ 9,975</u>	

(1) Rounded to the nearest whole cent.

(2) In June 2021, September 2021, and December 2021, the dividend declared per depositary share on Series A were \$0.30, \$0.44, and \$0.44, respectively.

As of December 31, 2022, the Company had cumulative undeclared and unpaid preferred dividends of \$854.

### Common Share Dividends

As of December 31, 2022, the Company's board of directors approved and declared a quarterly cash dividend of \$0.25 per share on its issued and outstanding common shares for a total aggregate amount of \$46,235. As of December 31, 2021, the Company's board of directors approved and declared a cash dividend of \$0.25 per share on its issued and outstanding common shares for a total aggregate amount of \$12,285 paid on December 15, 2021.

### (13) Earnings Per Share

Basic earnings per share ("EPS") is computed by dividing net income attributable to common shareholders by the weighted average number of shares outstanding during the applicable period. Diluted EPS reflects the potential dilution that could occur if all outstanding share options were exercised for, and all outstanding RSUs and PSUs were converted into, common shares. Potentially dilutive share options, RSUs and PSUs that were anti-dilutive under the treasury stock method were excluded from the computation of diluted EPS.

A reconciliation of the numerator and denominator of basic EPS with that of diluted EPS during 2022, 2021 and 2020 is presented as follows:

Share amounts in thousands	2022	2021	2020
<b>Numerator:</b>			
Net income attributable to common shareholders	\$ 289,549	\$ 273,459	\$ 72,822
<b>Denominator:</b>			
Weighted average common shares outstanding - basic	46,471	49,624	53,271
Dilutive share options, RSU and PSU	828	952	210
Weighted average common shares outstanding - diluted	<u>47,299</u>	<u>50,576</u>	<u>53,481</u>
Net income attributable to common shareholders per common share			
Basic	\$ 6.23	\$ 5.51	\$ 1.37
Diluted	\$ 6.12	\$ 5.41	\$ 1.36
Share options, RSU and PSU excluded from the computation of diluted EPS because they were anti-dilutive	345	334	1,674

#### **(14) Subsequent Events**

In February 2023, the Company's board of directors approved and declared a quarterly preferred cash dividend on its issued and outstanding preferred shares, payable on March 15, 2023, to holders of record as of March 3, 2023. The dividend declared on Series A Preferred Shares and Series B Preferred Shares were \$0.44 and \$0.39 per depositary share (rounded to the nearest whole cent), respectively, for a total aggregate amount of \$2,625 and \$2,344, respectively.

In February 2023, the Company's board of directors approved and declared a cash dividend of \$0.30 per share on its issued and outstanding common shares, payable on March 15, 2023, to holders of record as of March 3, 2023.



**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**  
**SCHEDULE I - CONDENSED STATEMENTS OF COMPREHENSIVE INCOME**

Parent Company Information  
Years Ended December 31, 2022, 2021 and 2020  
(All currency expressed in United States dollars in thousands)

	2022	2021	2020
Operating expenses:			
General and administrative expense	\$ 6,047	\$ 4,519	\$ 3,988
Total operating expenses	6,047	4,519	3,988
Loss from operations	(6,047)	(4,519)	(3,988)
Other income:			
Equity in net income of subsidiaries	316,226	289,133	76,076
Other, net	(755)	(326)	734
Net other income	315,471	288,807	76,810
Income before income tax	309,424	284,288	72,822
Income tax benefit (expense)	—	—	—
Net income	309,424	284,288	72,822
Less: Dividends on preferred shares	19,875	10,829	—
Net income attributable to common shareholders	\$ 289,549	\$ 273,459	\$ 72,822
Net income attributable to common shareholders per share:			
Basic	\$ 6.23	\$ 5.51	\$ 1.37
Diluted	\$ 6.12	\$ 5.41	\$ 1.36
Weighted average shares outstanding (in thousands):			
Basic	46,471	49,624	53,271
Diluted	47,299	50,576	53,481
Other comprehensive income (loss), before tax:			
Change in derivative instruments designated as cash flow hedges	151,814	10,986	(12,307)
Reclassification of realized (gain) loss on derivative instruments designated as cash flow hedges	(12,709)	8,771	2,806
Foreign currency translation adjustments	(125)	(79)	177
Comprehensive income, before tax	448,404	303,966	63,498
Income tax (expense) benefit related to items of other comprehensive income	(1,380)	(184)	91
Comprehensive income, after tax	447,024	303,782	63,589
Less: Dividends on preferred shares	19,875	10,829	—
Comprehensive income attributable to common shareholders	\$ 427,149	\$ 292,953	\$ 63,589

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

**SCHEDULE I - CONDENSED BALANCE SHEETS**

Parent Company Information

December 31, 2022 and 2021

(All currency expressed in United States dollars in thousands)

	<b>2022</b>	<b>2021</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 6,012	\$ 10,696
Prepaid expenses and other current assets	374	378
Due from affiliates, net	774	2,231
Total current assets	7,160	13,305
Restricted cash	95	—
Investments in subsidiaries	1,989,605	1,768,779
Total assets	\$ 1,996,860	\$ 1,782,084
<b>Liabilities and Shareholders' Equity</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 571	\$ 830
Shareholders' equity:		
Preferred shares	300,000	300,000
Common shares	599	595
Treasury shares	(337,551)	(158,459)
Additional paid-in capital	442,154	428,945
Accumulated other comprehensive income	147,350	9,750
Retained earnings	1,443,737	1,200,423
Total shareholders' equity	1,996,289	1,781,254
Total liabilities and shareholders' equity	\$ 1,996,860	\$ 1,782,084

**TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES**

**SCHEDULE I - CONDENSED STATEMENTS OF CASH FLOWS**

Parent Company Information

Years ended December 31, 2022, 2021 and 2020

(All currency expressed in United States dollars in thousands)

	<u>2022</u>	<u>2021</u>	<u>2020</u>
Cash flows from operating activities:			
Net income	\$ 309,424	\$ 284,288	\$ 72,822
Adjustments to reconcile net income to net cash provided by operating activities:			
Equity in net income of subsidiaries	(316,226)	(289,133)	(76,076)
Dividends received from subsidiaries	233,000	61,000	76,167
Share-based compensation	7,728	6,699	4,723
Decrease (increase) in:			
Prepaid expenses and other current assets	4	(42)	(26)
Increase (decrease) in:			
Accounts payable and accrued expenses	(259)	436	(82)
Total adjustments	(75,753)	(221,040)	4,706
Net cash provided by operating activities	233,671	63,248	77,528
Cash flows from investing activities:			
Investments in subsidiaries	125	(269,436)	(2,050)
Net cash provided by (used in) investing activities	125	(269,436)	(2,050)
Cash flows from financing activities:			
Issuance of preferred shares, net of underwriting discount	—	290,550	—
Purchase of treasury shares	(179,092)	(72,220)	(68,493)
Issuance of common shares upon exercise of share options	5,485	9,043	1,295
Dividends paid on common shares	(46,235)	(12,285)	—
Dividends paid on preferred shares	(19,875)	(9,975)	—
Due to (from) affiliates, net	1,457	448	(2,041)
Other	—	(970)	—
Net cash (used in) provided by financing activities	(238,260)	204,591	(69,239)
Effect of exchange rate changes	(125)	(79)	177
Net change in cash, cash equivalents and restricted cash	(4,589)	(1,676)	6,416
Cash, cash equivalents and restricted cash, beginning of the year	10,696	12,372	5,956
Cash, cash equivalents and restricted cash, end of the year	\$ 6,107	\$ 10,696	\$ 12,372

## TEXTAINER GROUP HOLDINGS LIMITED AND SUBSIDIARIES

## Valuation Accounts

Years ended December 31, 2022, 2021 and 2020

(All currency expressed in United States dollars in thousands)

	<u>Balance at Beginning of Year</u>	<u>Additions Charged to Expense (Recovery)</u>	<u>Deductions</u>	<u>Balance at End of Year</u>
<b>December 31, 2020</b>				
Accounts receivable, allowance for doubtful accounts	\$ 6,299	\$ (3,149 )	\$ (487 )	\$ 2,663
Net investment in finance leases, allowance for credit losses	\$ 636	\$ 697	\$ —	\$ 1,333
Container leaseback financing receivable, allowance for credit losses	\$ 256	\$ 168	\$ —	\$ 424
<b>December 31, 2021</b>				
Accounts receivable, allowance for doubtful accounts	\$ 2,663	\$ (674 )	\$ (699 )	\$ 1,290
Net investment in finance leases, allowance for credit losses	\$ 1,333	\$ (590 )	\$ —	\$ 743
Container leaseback financing receivable, allowance for credit losses	\$ 424	\$ (311 )	\$ —	\$ 113
<b>December 31, 2022</b>				
Accounts receivable, allowance for doubtful accounts	\$ 1,290	\$ 293	\$ (1 )	\$ 1,582
Net investment in finance leases, allowance for credit losses	\$ 743	\$ 536	\$ —	\$ 1,279
Container leaseback financing receivable, allowance for credit losses	\$ 113	\$ 1	\$ —	\$ 114

## ITEM 19. EXHIBITS

The following exhibits are filed as part of this Annual Report on Form 20-F:

Exhibit Number	Description of Document
1.1	<a href="#"><u>Memorandum of Association of Textainer Group Holdings Limited (1)</u></a>
1.2	<a href="#"><u>Bye-laws of Textainer Group Holdings Limited (2)</u></a>
2.1	<a href="#"><u>Form of Common Share Certificate (3)</u></a>
4.1	<a href="#"><u>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)</u></a>
4.2	<a href="#"><u>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)</u></a>
4.3	<a href="#"><u>Second Amendment to the Office Lease, dated as of April 23, 2015, by and between Columbia REIT – 650 California Street, LLC and Textainer Equipment Management (U.S.) Limited (6)</u></a>
4.4*	<a href="#"><u>Employment Agreement, dated August 13, 2018 by and between Textainer Equipment Management (U.S.) Limited and Olivier Ghesquiere (7)</u></a>
4.5*	<a href="#"><u>Employment Agreement, dated September 13, 2018 by and between Textainer Equipment Management (U.S.) Limited and Michael Chan (8)</u></a>
4.6*	<a href="#"><u>2019 Share Incentive Plan (as amended and restated effective May 23, 2019) (9)</u></a>
4.7*	<a href="#"><u>Form of Indemnification Agreement (10)</u></a>
4.8†	<a href="#"><u>Second Amended and Restated Credit Agreement, dated August 5, 2022, by and among, Textainer Limited, as borrower, Textainer Group Holdings Limited, as guarantor, Wells Fargo Bank, N.A., as agent, the syndications agents named therein, the documentation agents named therein and the other lenders party thereto ("TL Credit Agreement")</u></a>
4.9	<a href="#"><u>Omnibus Amendment and Consent dated November 15, 2021 to the Second Amended and Restated Indenture, dated August 31, 2017, by and between Textainer Marine Containers Limited II, as issuer and Wells Fargo Bank, National Association, as indenture trustee ("TMCL II Indenture"), the Second Amended and Restated Textainer Marine Containers Limited II Series 2012-1 Supplement, dated August 31, 2017 to the TMCL II Indenture (the "Series 2012-1 Supplement") amending and restating the TMCL II Indenture, the Series 2012-1 Supplement and changing the indenture trustee and amending other facility documents) (11)</u></a>
4.10	<a href="#"><u>Certificate of Designations with Respect to the 7.000% Series A Cumulative Redeemable Perpetual Preference Shares, par value \$0.01 per share, dated April 13, 2021 (12)</u></a>
4.11	<a href="#"><u>Certificate of Designations with Respect to the 6.250% Series B Cumulative Redeemable Perpetual Preference Shares, par value \$0.01 per share, dated August 23, 2021 (13)</u></a>
4.12†	<a href="#"><u>Amendment to the Certificates of Designations for the Series A and Series B Cumulative Redeemable Preferred Preference Shares, dated February 8, 2023</u></a>
8.1†	<a href="#"><u>Subsidiaries of the Registrant</u></a>
12.1†	<a href="#"><u>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</u></a>
12.2†	<a href="#"><u>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</u></a>

Exhibit Number	Description of Document
13.1†	<a href="#">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</a>
13.2†	<a href="#">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</a>
15.1†	<a href="#">Consent of Deloitte &amp; Touche LLP</a>
15.2†	<a href="#">Consent of KPMG LLP</a>
101.INS†	Inline XBRL Instance Document
101.SCH†	Inline XBRL Taxonomy Extension Schema Document
101.CAL†	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF†	Inline XBRL Taxonomy Definition Linkbase Document
101.LAB†	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE†	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

† Filed herewith.

\* Indicates management contract or compensatory plan.

- (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 11, 2016.
- (7) Incorporated by reference to Exhibit 4.4 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 25, 2019.
- (8) 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 25, 2019.
- (9) Incorporated by reference to Exhibit 4.4 to the Registrant's Registration Statement on Form S-8 (File No. 333-233323) filed with the SEC on August 16, 2019.
- (10) 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.
- (11) Incorporated by reference to Exhibit 4.9 to the Registrant's Annual Report on Form 20-F (File No. 001-33725) filed with the SEC on March 17, 2022.
- (12) Incorporated by reference to Exhibit 3.2 to the Registrant's Form 8A-12B filed with the SEC on April 13, 2021.
- (13) Incorporated by reference to Exhibit 3.2 to the Registrant's Form 8A-12B filed with the SEC on August 23, 2021.

## 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/ Olivier Ghesquiere

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Olivier Ghesquiere  
President and Chief Executive Officer

/s/ Michael K. Chan

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Michael K. Chan  
Executive Vice President and Chief Financial Officer

February 14, 2023

**SECOND AMENDED AND RESTATED CREDIT AGREEMENT**

dated as of August 5, 2022

among

**TEXTAINER LIMITED,**

as the Borrower,

**TEXTAINER GROUP HOLDINGS LIMITED,**

as the Guarantor,

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**

as Administrative Agent and L/C Issuer,

**ING BANK BELGIUM SA NV,**

**PNC BANK, NATIONAL ASSOCIATION**

**TRUIST BANK,**

and

**ROYAL BANK OF CANADA,**

as Syndication Agents,

**BNP PARIBAS**

**CITIBANK, N.A.**

**CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

**FIFTH THIRD BANK, NATIONAL ASSOCIATION,**

and

**MUFG UNION BANK, N.A.,**

as Documentation Agent(s),

and

**THE OTHER LENDERS PARTY HERETO**

Arranged By:

**WELLS FARGO SECURITIES, LLC,**

**ING BANK BELGIUM SA NV,**

**PNC BANK, NATIONAL ASSOCIATION**

**TRUIST SECURITIES, INC.,**

and

**ROYAL BANK OF CANADA,**

as Joint Lead Arrangers and Joint Bookrunners

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## EXHIBITS

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- C Form of Note
- D Form of Compliance Certificate
- E-1 Form of Assignment and Assumption
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- I Form of Pledge Agreement
- J-1 U.S. Tax Compliance Certificate (For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)
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- J-4 U.S. Tax Compliance Certificate (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

**SECOND AMENDED AND RESTATED CREDIT AGREEMENT**

This SECOND AMENDED AND RESTATED CREDIT AGREEMENT (this “*Credit Agreement*” or “*Agreement*”) is entered into as of August 5, 2022, 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 WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent and L/C Issuer.

The Borrower, Guarantor, the Lenders party thereto, Wells Fargo Bank, National Association, as administrative agent, and the other parties thereto entered into that certain Amended and Restated Credit Agreement, dated as of September 26, 2018 (as amended, restated, amended and restated, extended, or otherwise modified from time to time, the “*Existing Credit Agreement*”), pursuant to which the Lenders party thereto made loans and other extensions of credit to the Borrower. The Borrower has requested certain modifications to the terms of the Existing Credit Agreement and the Administrative Agent and Lenders have agreed to the requested modifications and to continue to make loans and other extensions of credit to the Borrower, all on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto hereby agree that, as of the Closing Date, the Existing Credit Agreement shall be amended and restated in its entirety and shall remain in full force and effect only as set forth herein and the parties hereto hereby 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:

“**2019 Segregated Term Loan**” means the Term Loan Agreement, dated as of December 18, 2019, among the Borrower, the Guarantor, Bank of America, as administrative agent, and the lenders set forth therein, as amended, restated, supplemented or otherwise modified, renewed, refinanced or replaced.

“**2021 Segregated Term Loan-MS (Feb)**” means the Term Loan Agreement, dated as of February 19, 2021, among the Borrower, the Guarantor, Bank of America, as administrative agent, and the lenders set forth therein, as amended, restated, supplemented or otherwise modified, renewed, refinanced or replaced.

“**2021 Segregated Term Loan-MS (Oct)**” means the Term Loan Agreement, dated as of October 15, 2021, among the Borrower, the Guarantor, Bank of America, as administrative

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agent, and the lenders set forth therein, as amended, restated, supplemented or otherwise modified, renewed, refinanced or replaced.

“**2021 Segregated Term Loan-RJ**” means the Term Loan Agreement, dated as of February 19, 2021, among the Borrower, the Guarantor, Bank of America, as administrative agent, and the lenders set forth therein, as amended, restated, supplemented or otherwise modified, renewed, refinanced or replaced.

“**Act**” has the meaning set forth in **Section 11.18**.

“**Adjusted Daily Simple SOFR**” means, for any day (a “**Simple SOFR Rate Day**”), a rate per annum equal to the greater of (a) the sum of (i) SOFR for the day (such day, a “**Simple SOFR Determination Day**”) that is five (5) U.S. Government Securities Business Days prior to (A) if such Simple SOFR Rate Day is a U.S. Government Securities Business Day, such Simple SOFR Rate Day or (B) if such Simple SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such Simple SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website; *provided* that if by 5:00 p.m. on the fifth (5<sup>th</sup>) U.S. Government Securities Business Day immediately following any Simple SOFR Determination Day, SOFR in respect of such Simple SOFR Determination Day has not been published on the SOFR Administrator’s Website and a Benchmark Replacement Date with respect to Adjusted Daily Simple SOFR has not occurred, then SOFR for such Simple SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which such SOFR was published on the SOFR Administrator’s Website; *provided further* that SOFR as determined pursuant to this proviso shall be utilized for purposes of calculation of Adjusted Daily Simple SOFR for no more than three (3) consecutive Simple SOFR Rate Days and (ii) the Simple SOFR Adjustment and (b) the Floor. Any change in Adjusted Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to any Borrower.

“**Administrative Agent**” means Wells Fargo, 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.

“**Advance Rate**” means eighty-three percent (83.00%).

“**Affected Financial Institution**” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“**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.



“**Agent Assignment**” has the meaning specified in **Section 9.12(d)**.

“**Aggregate Commitments**” means the Commitments of all the Lenders.

“**Agreement**” means this Second Amended and Restated Credit Agreement, as amended, restated, amended and restated, extended or otherwise 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,

(a) from time to time prior to the Collateral Release, 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)**:

Applicable Rate				
Pricing Level	Consolidated Leverage Ratio of Guarantor	Commitment Fee	SOFR Loans & Letters of Credit	Base Rate Loans
1	≤ 2.50:1	0.15%	1.25%	0.25%
2	> 2.50:1 but ≤ 3.25:1	0.20%	1.375%	0.375%
3	> 3.25:1	0.25%	1.625%	0.625%

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 not less than the rates set forth for Pricing Level 2.

(b) from time to time at or after the Collateral Release, the following percentages per annum, based upon the Debt Rating as set forth below:

Applicable Rate				
Pricing Level	Debt Rating	Commitment Fee	SOFR Loans & Letters of Credit	Base Rate Loans
1	≥ BBB / Baa2	0.15%	1.25%	0.25%
2	BBB- / Baa3	0.20%	1.375%	0.375%
3	≤ BB+ / Ba1	0.25%	1.625%	0.625%

“*Debt Rating*” means, as of any date of determination, the issuer credit rating, as determined by any of S&P, Fitch or Moody’s, of the Guarantor; *provided* that (a) if the respective Debt Ratings issued by the foregoing rating agencies differ by one level, then the Pricing Level for the higher of such Debt Ratings shall apply (with the Debt Rating for Pricing Level 1 being the highest and the Debt Rating for Pricing Level 3 being the lowest); (b) if there is a split in Debt Ratings of more than one level, then the Pricing Level that is one level lower than the Pricing Level of the higher Debt Rating shall apply; and (c) if the Guarantor has only one Debt Rating, the Pricing Level of such Debt Rating shall apply.

Any increase or decrease in the Applicable Rate resulting from a publicly announced change in the Debt Rating shall be effective, in the case of an upgrade, during the period commencing on the date of delivery by the Borrower to the Administrative Agent of notice thereof pursuant to **Section 6.03(e)** and ending on the date immediately preceding the effective date of the next such change and, in the case of a downgrade, during the period commencing on the date of the public announcement thereof and ending on the date immediately preceding the effective date of the next such change. If the rating system of Moody’s, Fitch or S&P shall change, or if any such rating agency shall cease to be in the business of rating corporate debt obligations, the Borrower and the Lenders shall negotiate in good faith to amend this definition to reflect such changed rating system or the unavailability of ratings from such rating agency and, pending the effectiveness of any such amendment, the Applicable Rate shall be determined by reference to the rating most recently in effect prior to such change or cessation.

“*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.

“*Approved Third Party Manager*” means (i) Trifleet Leasing (The Netherlands) B.V., with a registered office at Buiten Walevest 15, 3311 AD Dordrecht, The Netherlands, and (ii) any other Person that (A) is engaged in the business of container leasing, (B) is not (and is not affiliated with) a Sanctioned Person and (C) has executed and delivered an acknowledgment, in form and substance reasonably acceptable to the Administrative Agent, of Borrower’s collateral assignment of the management agreement pursuant to which such Person manages Marine Containers on behalf of Borrower. “Approved Third Party Manager” shall not include TEML.

“**Arranger**” means, collectively, each of (a) Wells Fargo Securities, LLC, (b) ING Bank Belgium SA NV, (c) PNC Bank, National Association, (d) Truist Securities, Inc. and (e) Royal Bank of Canada, each in its capacity as a joint lead arranger and joint bookrunner.

“**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, 2021, 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.

“**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**.

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from any applicable definition of “interest period” pursuant to **Section 3.03(a)(iv)**.

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“**Bail-In Legislation**” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule or regulation for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part 1 of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable to the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**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 Wells Fargo as its “prime rate”, (c) Adjusted Daily Simple SOFR

plus 1%; *provided*, that this clause (c) shall not be applicable during any period in which Adjusted Daily Simple SOFR is unavailable or unascertainable and (d) the Floor. The “prime rate” is one of Wells Fargo’s base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate. Any change in such rate announced by Wells Fargo shall take effect at the opening of business on the day specified in the announcement of such change.

“**Base Rate Loan**” means a Loan that bears interest based on the Base Rate.

“**Benchmark**” means, initially, Adjusted Daily Simple SOFR; *provided* that if a Benchmark Transition Event has occurred with respect to Adjusted Daily Simple SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to **Section 3.03(a)(i)**.

“**Benchmark Replacement**” means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; *provided* that if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement shall be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“**Benchmark Replacement Adjustment**” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor (if applicable), the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

“**Benchmark Replacement Date**” means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors (if applicable) of such Benchmark (or such component thereof) or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor (if applicable) of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, if the then-current Benchmark has any Available Tenors, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors (if applicable) of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor (if applicable) of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the FRB, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors (if applicable) of such Benchmark (or such component thereof) permanently or indefinitely, *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor (if applicable) of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, if the then-current Benchmark has any Available Tenors, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

**“Benchmark Transition Start Date”** means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the ninetieth (90<sup>th</sup>) day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than ninety (90) days after such statement or publication, the date of such statement or publication).

**“Benchmark Unavailability Period”** means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with **Section 3.03(a)** and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with **Section 3.03(a)**.

**“Beneficial Ownership Certification”** means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

**“Beneficial Ownership Regulation”** means 31 C.F.R. § 1010.230.

**“Benefit Plan”** means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

**“BHC Act Affiliate”** of a Person means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such Person.

**“Blanket 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 “Blanket Management Agreement” shall also be deemed to include any and all other written agreements (other than a Segregated Management Agreement) 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.

**“Borrower”** has the meaning specified in the introductory paragraph hereto.

**“Borrower EBIT”** means for the Borrower for any Measurement Period, the sum of (a) Borrower Net Income for such Measurement Period, (b) income tax expense of the Borrower (without giving effect to any of its Subsidiaries) for such Measurement Period, (c) Borrower Interest Expense for such Measurement Period, and (d) rental expense of the Borrower (without giving effect to any of its Subsidiaries) during such Measurement Period relating to any lease of Marine Containers or transportation equipment under which the Borrower is lessee.

**“Borrower EBITDA”** means for the Borrower for any Measurement Period, the sum of (a) Borrower EBIT for the most recently completed Measurement Period, plus (b) to the extent

deducted in calculating such Borrower EBIT (without duplication) depreciation and amortization expense.

**“Borrower Interest Expense”** means for Borrower for any Measurement Period, the aggregate amount of the interest expense during such Measurement Period in respect of Indebtedness of Borrower, as determined in accordance with GAAP, without giving effect to any of its Subsidiaries; *provided, however, that* interest expense payments made by the Borrower during such Measurement Period under any guaranties of Indebtedness of its Subsidiaries shall be included in the calculation of the Borrower Interest Expense to the extent not otherwise included in Borrower Interest Expense. 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.

**“Borrower Materials”** has the meaning specified in **Section 6.02**.

**“Borrower Net Income”** means for Borrower for any Measurement Period, the net income (or loss) of Borrower, without giving effect to any of its Subsidiaries, for such Measurement Period; *provided, however, that* (i) subject to **Section 7.03(c)**, Borrower Net Income shall include dividends paid by any Subsidiary if and to the extent that such dividends are actually paid in cash to the Borrower during such Measurement Period, and (ii) Borrower 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.

**“Borrowing”** means a borrowing consisting of simultaneous Loans of the same Type made by each of the Lenders pursuant to **Section 2.01**.

**“Borrowing Base”** means, as at any date of determination prior to the Collateral Release, an amount equal to:

(a) the Advance Rate multiplied by the sum of the Net Book Values on such date of all Eligible Marine Containers, minus

(b) the Advance Rate multiplied by 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) the Advance Rate multiplied by 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) the Advance Rate multiplied by 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) the Advance Rate multiplied by 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) the Advance Rate multiplied by 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;

*provided, however*, that (i) the total amount of Vendor Debt added to the Borrowing Base pursuant to **clauses (c) and (f)** above shall not at any time exceed One Hundred Million Dollars (\$100,000,000) in the aggregate and (ii) the total aggregate Net Book Values of Eligible Marine Containers and Eligible Trading Marine Containers, in each case, which are subject to management by an Approved Third Party Manager, included in the Borrowing Base pursuant to **clauses (a) and (d)** above shall not at any time exceed Seventy Five Million Dollars (\$75,000,000) (*provided that* (A) no Marine Containers managed by an Approved Third Party Manager shall be included in the Borrowing Base if a “manager default” (or similar event) has occurred and has continued for ninety (90) days with respect to such Approved Third Party Manager under the agreement pursuant to which such Approved Third Party Manager manages Marine Containers on behalf of Borrower; and (B) the foregoing ninety (90) day cure period shall not apply if an Event of Default has occurred and is then continuing, in each case, unless the Required Lenders have approved a back-up manager or back-up management arrangement, with respect to such Marine Containers).

“**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 that is (i) 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, San Francisco, California or the state where the Administrative Agent’s Office is located and (ii) also a U.S. Government Securities Business Day.

“**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 Collateral**” shall have the correlative meaning.



**“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.

**“Casualty Event”** means any of the following events with respect to any Marine Container (as reasonably determined, in good faith, by the Borrower, or the Manager on behalf of the Borrower): (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) any new, or adjustment to, requirements prescribed by the FRB for “Eurocurrency Liabilities” (as defined in Regulation D of the FRB), requirements imposed by the Federal Deposit Insurance Corporation, or similar requirements imposed by any domestic or foreign governmental authority or resulting from compliance by the Administrative Agent or any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority and related in any manner to SOFR or Adjusted Daily Simple SOFR, or (d) 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 nomination at least a majority of that board or equivalent governing body; 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** or to comply with **Section 7.01(p)**.

“**Collateral Release**” has the meaning assigned to such term in **Section 9.10(e)**.

“**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**.

“**Conforming Changes**” means, with respect to either the use or administration of SOFR, Adjusted Daily Simple SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate”, the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” any applicable definition of “interest period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment

or conversion notices, the applicability and length of lookback periods and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

**“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 or Subsidiary 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.

**“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 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; *provided that* the Consolidated Funded Debt and the Consolidated Tangible Net Worth attributable to any Subsidiary of such Person shall be included in such calculation only to the extent of such Person’s direct or indirect percentage ownership of such Subsidiary’s Equity Interests.

**“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.

**“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 or Subsidiary 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.

**“Covered Entity”** means any of the following:

- (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

**“Covered Party”** has the meaning assigned to such term in **Section 11.22**.

**“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 1981 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) two percent (2%) per annum; *provided, however, that* with respect to a SOFR Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan *plus* two percent (2%) per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate *plus* two percent (2%) per annum.

**“Default Right”** has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

**“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, (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, or (iii) become the subject of a Bail-in Action; *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, or whose government is, the subject of any Sanction.

**“Disposition”** or **“Dispose”** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any Division) 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.

**“Dividing Person”** has the meaning assigned to it in the definition of “Division.”

**“Division”** means the division of the assets, liabilities and/or obligations of a Person (the **“Dividing Person”**) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

**“Dollar”** and **“\$”** mean lawful money of the United States.

**“EEA Financial Institution”** means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

**“EEA Member Country”** means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**“EEA Resolution Authority”** means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

**“EU Bail-In Legislation Schedule”** means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

**“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) (a) before the Collateral Release, 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, and (b) on and after the Collateral Release, which is owned by the Guarantor or any of its Subsidiaries and which is not subject to any Lien; *provided that*, in each case, none of the following shall constitute an Eligible Marine Container: (1) any Marine Container that has been the subject of a Casualty Event, (2) any Marine Container that previously has been classified as an Eligible Trading Marine Container, and (3) any Marine Container that 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).

**“Eligible Trading Marine Container”** means any Trading Marine Container, (a) before the Collateral Release, (i) 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 (ii) which has been included in the calculation of the Borrowing Base for no longer than six (6) months, and (b) on and after the Collateral Release, which is owned by the Guarantor or any of its Subsidiaries and which is not subject to any Lien; *provided that*, in each case, none of the following shall constitute an Eligible Trading Marine Container: (1) any Marine Container that has been the subject of a Casualty Event and (2) any Trading Marine Container that 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).

**“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.

***“Erroneous Payment”*** has the meaning specified in **Section 9.12(a)**.

***“Erroneous Payment Deficiency Assignment”*** has the meaning specified in **Section 9.12(d)**.

***“Erroneous Payment Impacted Loans”*** has the meaning specified in **Section 9.12(d)**.

***“Erroneous Payment Return Deficiency”*** has the meaning specified in **Section 9.12(d)**.

***“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.

***“Existing Credit Agreement”*** means that certain Amended and Restated Credit Agreement, dated as of September 26, 2018, as amended, among the Borrower, TGH, as guarantor, the lenders party thereto, Wells Fargo Bank, National Association, as agent, and the other parties from time to time party thereto.

***“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), any current or future regulations or official interpretations thereof; any applicable intergovernmental agreement entered into thereunder (and any foreign legislation

implemented to give effect to such intergovernmental agreements) and any agreements entered into pursuant to Section 1471(b) (1) of the Code.

**“Federal Funds Rate”** means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Administrative Agent from three (3) Federal funds brokers of recognized standing selected by it (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

**“Fee Letter”** means (i) the engagement letter, dated July 14, 2022, between the Borrower and Wells Fargo Securities, and (ii) each other fee letter agreement among the Borrower, the Administrative Agent 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.

**“Fitch”** means Fitch Ratings Inc., and any successor thereto.

**“Floor”** means a rate of interest equal to zero percent (0.00%).

**“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.

**“Fixed Charge Coverage Ratio”** means, for the Guarantor and its Subsidiaries during any Measurement Period, the ratio of (a) Guarantor EBITDA for such Measurement Period *minus* (i) any gains on Dispositions of Marine Containers in such Measurement Period to the extent included in Guarantor EBITDA, *plus* (ii) any losses on Dispositions of Marine Containers in such Measurement Period to the extent included in Guarantor EBITDA, *plus* (iii) 100% of the actual GAAP impairment charges with respect to Marine Containers included in Guarantor EBITDA and incurred during such Measurement Period, *plus* (iv) cash receipts in respect of Finance Leases in excess of earnings recognized in Guarantor EBITDA for such Measurement Period in respect of such Finance Leases, to (b) the sum of (i) Guarantor Interest Expense payable in cash in such Measurement Period, (ii) the aggregate amount of federal, state, local and foreign income taxes payable in cash by Guarantor and its Subsidiaries during such Measurement Period, (iii) all Required Principal Payments in respect of Indebtedness paid or due and payable by Guarantor and its Subsidiaries during such Measurement Period, and (iv) rental expense of the Guarantor and its Subsidiaries during such Measurement Period to the extent included in Guarantor EBITDA relating to any lease of Marine Containers or transportation equipment under which the Guarantor or any Subsidiary thereof is lessee.

**“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).

“**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.

“**Guarantor EBIT**” means for Guarantor for any Measurement Period, the sum of (a) Guarantor Net Income for such Measurement Period, (b) income tax expense of Guarantor and its Subsidiaries for such Measurement Period, (c) Guarantor Interest Expense for such Measurement Period, and (d) rental expense of Guarantor and its Subsidiaries for such Measurement Period

relating to any lease of Marine Containers or transportation equipment under which such Person or Subsidiary is lessee.

“**Guarantor EBITDA**” means for Guarantor for any Measurement Period, the sum of (a) Guarantor EBIT for the most recently completed Measurement Period, plus (b) to the extent deducted in calculating such Guarantor EBIT (without duplication) depreciation and amortization expense.

“**Guarantor Interest Expense**” means for Guarantor, on a consolidated basis, as calculated for any Measurement Period, the aggregate amount of the interest expense during such Measurement Period in respect of Indebtedness of Guarantor 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.

“**Guarantor Net Income**” means for Guarantor, on a consolidated basis, as calculated for any Measurement Period, the net income (or loss) of Guarantor and its Subsidiaries for such Measurement Period; *provided, however, that* Guarantor 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.

“**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.

“**Hedge Agreement**” means a “swap agreement” as that term is defined in Section 101(53B)(A) of the Bankruptcy Code of the United States.

“**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);

(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 Coverage Ratio”** means for the Borrower for any Measurement Period, the ratio of (A) the sum of (1) Borrower EBITDA for such Measurement Period and (2) cash receipts in respect of Finance Leases in excess of earnings recognized in Borrower EBITDA for such Measurement Period in respect of such Finance Leases, to (B) the sum of (1) Borrower Interest Expense for such Measurement Period, and (2) rental expense of the Borrower, without giving effect to any of its Subsidiaries, during such Measurement Period relating to any lease of Marine Containers or transportation equipment under which the Borrower is lessee.

**“Interest Payment Date”** means the last Business Day of each calendar month and 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)**.

“**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 Wells Fargo, in its capacity as an issuer of Letters of Credit hereunder, together with any other Lender that may become an “L/C Issuer” hereunder in accordance with the terms hereof, or, in each case, 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.

“**Lender Outstandings**” means, with respect to any Lender at any time, the sum of (i) the aggregate Outstanding Amount of the Loans of such Lender at such time, plus (ii) such Lender’s Applicable Percentage of the Outstanding Amount of all L/C Obligations at such time.

“**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 Twenty Five Million Dollars (\$25,000,000); *provided*, that the Letter of Credit Sublimit may be increased from time to time, in minimum increments of Five Million Dollars (\$5,000,000), up to a maximum amount of Seventy Five Million Dollars (\$75,000,000), in the aggregate, after giving effect to all such increases subject to (x) five (5) Business Days’ prior written request from the Borrower to the Administrative Agent and (y) express agreement by a Lender to act as an L/C Issuer and issue Letters of Credit in the amount of such increase. 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); *provided that*, for purposes of clarification, none of the Blanket Management Agreement, a Segregated Management Agreement, or any agreement pursuant to which an Approved Third Party Manager manages assets of any Person shall be deemed to constitute a Lien on the assets thereunder subject to management.

**“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 or (b) a conversion of Loans from one Type to the other, pursuant to **Section 2.02(a)**, which, if in writing, shall be substantially in the form of **Exhibit A** or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

**“Loan Parties”** means, collectively, the Borrower and the Guarantor.

**“Manager”** means TEML, in its capacity as Manager under the Blanket 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 August 5, 2027.

“**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 and any write-down as of such date of determination, calculated utilizing the Borrower’s depreciation policy as set forth on **Exhibit H** or such other depreciation policy or assumptions as may result in a lower net book value at all times over the remaining life of a Marine Container, (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 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.

**“Participant”** has the meaning specified in **Section 11.06(d)**.

**“Payment Recipient”** has the meaning specified in **Section 9.12(a)**.

**“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.

**“Permitted Acquisition”** has the meaning specified in **Section 7.03(h)**.

**“Permitted Capitalized Lease”** means lease documentation (not substantially similar to this Agreement) evidencing one or more sales by Borrower of a Segregated Collateral Pool to a third party lender, coupled with a lease back by Borrower of such Segregated Collateral Pool; subject to satisfaction of the following conditions:

(a) The Net Book Value of the Segregated Collateral Pool(s) subject to such transactions equals no more than \$180 million in the aggregate for all such transactions;

(b) The gross cash proceeds received by Borrower in each such transaction shall equal at least 80% of such Net Book Value;

(c) The proceeds of such transactions are applied (i) to pay fees and expenses associated with such transaction and (ii) to repay the Obligations;

(d) The maturity of each such Permitted Capitalized Lease shall be after the Maturity Date;

(e) The Borrower shall have provided the Administrative Agent with copies of the documentation governing such Permitted Capitalized Lease, together with reports as to the Net Book Value and borrowing base characteristics of the related Segregated Collateral Pool; and

(f) no Default shall have occurred and be continuing, and the Borrower shall have demonstrated *pro forma* compliance (by Borrower and Guarantor) with all applicable financial covenants contained in **Section 7.11** after giving effect to such transaction.

**“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 Amended and Restated Pledge Agreement, dated as of September 26, 2018, 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.

“**PTE**” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**QFC**” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. § 5390(c)(8)(D).

“**QFC Credit Support**” has the meaning assigned to such term in **Section 11.22**.

“**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 the following (as amended, restated, supplemented or modified from time to time) shall be a Receivables Document: (i) the Container Sale Agreement, dated as of May 1, 2012, between the Borrower and TMCLII, and (ii) the Contribution and Sale Agreement, dated as of August 6, 2018, between the Borrower and TMCLVII.

“**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.

“**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 TMCLII and TMCLVII shall be deemed a Receivables Subsidiary.

“**Receivables Subsidiary Indenture**” means (i) TMCLII Indenture and the TMCLVII Indenture, and (ii) the equivalent of the documents described in the foregoing **clause (i)** with respect to any other 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) each Receivables Subsidiary Indenture and each “Related Document” (as defined in such Receivables Subsidiary Indenture), and (ii) the equivalent of the documents described in the foregoing **clause (i)** governing any Qualified Receivables Transaction.

**“Relevant Governmental Body”** means the FRB or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors or the Federal Reserve Bank of New York, or any successor thereto.

**“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 thirty (30) day notice period has been waived.

**“Request for Credit Extension”** means (a) with respect to a Borrowing or conversion 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 unaffiliated Lenders having more than fifty percent (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 fifty percent (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.

**“Required Principal Payments”** means, with respect to the Guarantor and its Subsidiaries for any Measurement Period, all required payments of principal paid or due and payable during such period (whether scheduled or unscheduled, including without limitation required cash flow sweeps) in respect of Indebtedness relating to (i) the borrowing of money or obtaining of credit, including the issuance of notes or bonds, (ii) the deferred purchase price of assets (other than trade payables in the ordinary course of business and Vendor Debt), (iii) Capitalized Leases or Synthetic Leases, (iv) reimbursement obligations under letters of credit, and (v) Indebtedness of the types listed above guaranteed by the Guarantor or one or more of its Subsidiaries (to the extent paid or payable by the Borrower, Guarantor or a Subsidiary in such period, as applicable); *provided, however, that* (x) “Required Principal Payments” shall not include (A) voluntary principal payments, (B) mandatory payments made solely to reduce outstandings to maintain borrowing base compliance, or (C) mandatory principal payments paid under revolving credit facilities or revolving warehouse credit facilities if, pursuant to the terms of the relevant facility, borrowing capacity is blocked at such time, but can be regained automatically without lender consent or waiver and without further additional restriction through subsequent satisfactory performance, and (y) in the case of a mandatory payment under a revolving credit facility or revolving warehouse

credit facility that fails to meet the requirements for exclusion in foregoing **clause (x)(C)**, such mandatory payment may thereafter be retroactively exempted from calculations of Required Principal Payments if and to the extent that relevant borrowing capacity is reinstated through a waiver or amendment by the applicable lenders.

**“Rescindable Amount”** has the meaning set forth in **Section 2.12(g)**.

**“Resolution Authority”** means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**“Responsible Officer”** means, with respect to any Person, 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 such Person and, solely for purposes of notices given by a Loan Party pursuant to **Article II**, any other officer or employee of such Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of such Loan Party designated in or pursuant to an agreement between such Loan Party and 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 either (a) to pay dividends to the shareholders of the Guarantor or (b) in connection with a Permitted Acquisition, shall also be subject to the limitations contained in **Section 7.03(g)**).

**“S&P”** means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

**“Sale Leaseback Containers”** means containers acquired by the Borrower from a lessee in a sale leaseback transaction whereby, simultaneously with such acquisition, such lessee leases the relevant containers from the Borrower.

**“Sanction(s)”** means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes, anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty’s Treasury

of the United Kingdom, or (d) any other Governmental Authority with jurisdiction over any Loan Party.

**“Sanctioned Entity”** means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC.

**“Sanctioned Person”** means, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC’s consolidated Non-SDN list, (b) a Person that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person owned more than 50 percent, individually or in the aggregate, directly or indirectly, by Persons described in clauses (a) through (c) above.

**“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) any 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 Amended and Restated Security Agreement, dated as of September 26, 2018, 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, 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).

**“Segregated Collateral Pool Debt”** means Indebtedness of the Borrower (a) governed by documentation substantially similar to the Credit Agreement and (b) secured by one or more



Segregated Collateral Pools. Each of the 2019 Segregated Term Loan, the 2021 Segregated Term Loan-MSC (Feb), the 2021 Segregated Term Loan-MSC (Oct) and the 2021 Segregated Term Loan-RJ constitutes Segregated Collateral Pool Debt; any Permitted Capitalized Lease shall be deemed to constitute Segregated Collateral Pool Debt.

**“Segregated Management Agreement”** means any and all written agreements which the Borrower and TEML may enter into from time to time under which TEML shall have a right to hold, manage, lease or rent property included in a Segregated Collateral Pool.

**“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.

**“Simple SOFR Adjustment”** a percentage equal to 0.10% per annum.

**“Simple SOFR Determination Day”** has the meaning set forth in the definition of “Adjusted Daily Simple SOFR”.

**“Simple SOFR Rate Day”** has the meaning set forth in the definition of “Adjusted Daily Simple SOFR”.

**“SOFR”** means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

**“SOFR Administrator”** means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

**“SOFR Administrator’s Website”** means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

**“SOFR Loan”** means each portion of a Loan that bears interest at a rate determined by reference to SOFR (other than pursuant to clause (c) of the definition of “Base Rate”).

**“SOFR Unavailability Period”** means, the period (if any) (a) beginning at the time that either (i) the SOFR Administrator permanently or indefinitely has ceased to provide SOFR or (ii) the SOFR Administrator has announced that SOFR is not representative and (b) ending at the time that either (i) the SOFR Administrator has resumed providing SOFR or (ii) the SOFR Administrator has announced that SOFR is representative, as applicable.

**“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.

**“Supported QFC”** has the meaning assigned to such term in **Section 11.22**.

**“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) 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.

“**TGH**” means Textainer Group Holdings Limited, an exempted company with limited liability incorporated under the laws of Bermuda, and its successors and assigns.

“**TMCLIF**” means Textainer Marine Containers II Limited, an exempted company with limited liability incorporated under the laws of Bermuda, and its successors and assigns.

“**TMCLII Indenture**” means the Indenture, dated as of May 1, 2012, between TMCLII 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.

“**TMCLVIF**” means Textainer Marine Containers VII Limited, an exempted company with limited liability incorporated under the laws of Bermuda, and its successors and assigns.

“**TMCLVII Indenture**” means the Indenture, dated as of August 6, 2018, between TMCLVII 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.

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a SOFR 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).

“**UK Financial Institution**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**UK Resolution Authority**” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“**Unencumbered Asset Coverage Ratio**” means, at any time, the ratio of (a) the aggregate Net Book Value of all Eligible Marine Containers and Eligible Trading Marine Containers to (b) the difference of (i) the aggregate outstanding principal amount of unsecured Indebtedness of the Guarantor and its Subsidiaries, on a consolidated basis, at such time (other than Indebtedness consisting of Hedging Obligations), *minus* (ii) all unencumbered and unrestricted cash and Cash Equivalents of the Guarantor and its Subsidiaries, on a consolidated basis, at such time.

“**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. Government Securities Business Day**” means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; *provided*, that for purposes of notice requirements in **Sections 2.02(a)**, and **2.05(a)**, in each case, such day is also a Business Day.

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“**U.S. Special Resolution Regimes**” has the meaning assigned to such term in **Section 11.22**.

“**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).

“**Wells Fargo**” means Wells Fargo Bank, National Association and its successors.

“**Wells Fargo Securities**” means Wells Fargo Securities, LLC, in its capacity as an Arranger.

“**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.

“**Write-Down and Conversion Powers**” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

**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.

**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.

**1.08 Rates.** The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to Adjusted Daily Simple SOFR, SOFR or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to **Section 3.03(a)**, will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Adjusted Daily Simple SOFR or SOFR, or any other Benchmark, prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of Adjusted Daily Simple SOFR or SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain Adjusted Daily Simple SOFR or SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

## ARTICLE II

### THE COMMITMENTS AND CREDIT EXTENSIONS

#### 2.01 Loans. Subject to the terms and conditions set forth herein:

(a) Each Lender severally agrees to make loans (each such loan, a “**Loan**”) to the Borrower from time to time prior to the Collateral Release, 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 Lender Outstandings of such Lender shall not exceed the lesser of (x) such Lender’s Commitment and (y) such Lender’s Pro Rata share of the Borrowing Base.

(b) Each Lender severally agrees to make Loans to the Borrower from time to time at or after the Collateral Release, on any Business Day during the Availability Period, in an aggregate amount for all such Loans not to exceed at any time outstanding, the lesser of (x) the Aggregate Commitments and (y) an amount that, after giving *pro forma* effect thereto, would not cause a breach of **Section 7.11(b)(iii)**; *provided*, that in no event shall the Lender Outstandings of any Lender exceed such Lender’s Commitment.

(c) 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 SOFR Loans, as further provided herein.

#### 2.02 Borrowings and Conversions of Loans.

(a) Each Borrowing and each conversion of Loans from one Type to the other shall be made upon the Borrower’s irrevocable notice to the Administrative Agent, which may be given by telephone or a Loan Notice; *provided that* any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Loan Notice. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three (3) U.S. Government Securities Business Days prior to the requested date of any Borrowing of or conversion to SOFR Loans or of any conversion of SOFR Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of or conversion to SOFR Loans shall be in a principal amount of Three Million Dollars (\$3,000,000) or a whole multiple of One Million Dollars (\$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 Five Hundred Thousand Dollars (\$500,000) or a whole multiple of One Hundred Thousand Dollars (\$100,000) in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing or a conversion of Loans from one Type to the other, (ii) the requested date of the Borrowing or conversion, as the case may be (which shall be a Business Day, or a U.S. Government Securities Business Day, in the case of any SOFR Loan), (iii) the principal amount of Loans to be borrowed or converted, and (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted. 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, 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 prior to the next immediately succeeding Interest Payment Date with respect to the applicable SOFR Loans.

(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 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 Wells Fargo 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 SOFR Loan may be converted only on the last day prior to the next immediately succeeding Interest Payment Date. During the existence of a Default, no Loans may be requested as or converted to SOFR 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 SOFR 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 Wells Fargo's prime rate used in determining the Base Rate promptly following the announcement of such change.

(e) Notwithstanding anything in this **Section 2.02** to the contrary, the Borrower may not select Adjusted Daily Simple SOFR for the initial Credit Extension unless such Credit Extension is made at least three (3) U.S. Government Securities 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) (A) prior to the Collateral Release, the Borrowing Base, and (B) on and after the Collateral Release, an amount that, after giving *pro forma* effect thereto, would not cause a breach of **Section 7.11(b)(iii)**, (y) the Lender Outstandings of any Lender shall not exceed the lesser of (1) such Lender's Commitment and (2) (A) prior to the Collateral Release, such Lender's Pro Rata share of the Borrowing Base, and (B) on and after the Collateral Release, such Lender's Commitment, 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.

(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 (12) 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 One Hundred Thousand Dollars (\$100,000), in the case of a commercial Letter of Credit, or Five Hundred Thousand Dollars (\$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.

(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 (1) 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.

(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.

(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;

(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 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 Wells Fargo. 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 Acknowledgment of Multiple L/C Issuers.** Each of the parties to this Agreement acknowledges that one or more L/C Issuers may issue or amend Letters of Credit as set forth in this Article II and each reference to L/C Issuer herein shall refer to the applicable L/C Issuer with respect to the Letters of Credit issued by such L/C Issuer and, as the context may require, all L/C Issuers.

## 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) U.S. Government Securities Business Days prior to any date of prepayment of SOFR Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of SOFR Loans shall be in a principal amount of Three Million Dollars (\$3,000,000) or a whole multiple of One Million Dollars (\$1,000,000) in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of Five Hundred Thousand Dollars (\$500,000) or a whole multiple of One Hundred Thousand Dollars (\$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. 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 SOFR 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. For clarification, such notice of prepayment may be in any such form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer.

(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 (i) at any time prior to the Collateral Release, the Borrowing Base as evidenced by the Borrowing Base Certificate most recently received by the Administrative Agent or (ii) at any time following the Collateral Release, an amount that would cause a breach of **Section 7.11(b)(iii)**, in either case, 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 (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of Ten Million Dollars (\$10,000,000) or any whole multiple of One Million Dollars (\$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 SOFR Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to Adjusted Daily Simple SOFR *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 Wells Fargo Securities 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 applicable interest period if the Borrower shall request a refund of such amount one hundred eighty (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.

## **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.

## **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 SOFR 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.

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; Lending Office.** 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. Each Lender may make any Credit Extension to the Borrower through any of such Lender's branches or lending offices, provided that the exercise of this option shall not affect the obligation of Borrower to repay the Credit Extension in accordance with the terms of this Agreement.

(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.

(g) **Rescindable Amounts.** With respect to any payment that the Administrative Agent makes for the account of the Lenders hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "**Rescindable Amount**"): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Lenders, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable 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 Federal Funds 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 with respect to any amount owing under this **Section 2.12(g)** shall be conclusive, absent manifest error.

**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).

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 no Default has occurred and is continuing or would result therefrom, 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 (an “**Incremental Commitment**”) by an aggregate amount (for all such requests) not exceeding Three Hundred Million Dollars (\$300,000,000); *provided that* any such request for an increase shall be in a minimum amount of Ten Million Dollars (\$10,000,000). 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 (10) Business Days from the date of delivery of such notice to the Lenders). An Incremental Commitment may be provided by any existing Lender or other Person that is an Eligible Assignee (each such existing Lender or other Person that agrees to provide an Incremental Term Loan Commitment, an “**Incremental Lender**”). Notwithstanding anything herein to the contrary, no Lender shall have any obligation to agree to provide an Incremental Commitment and any election to do so shall be in the sole discretion of such Lender.

(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. In order to effect an Incremental Commitment Increase from an Incremental Lender, the Borrower, the applicable Incremental Lender(s) and the Administrative Agent (but no other Lenders or Persons) shall enter into a joinder or similar agreement, pursuant to which such Person shall provide an Incremental Commitment hereunder and (if not already a Lender) become a Lender party hereto, each in form and substance satisfactory to the Borrower and the Administrative Agent.

(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.

(e) **Conditions to Effectiveness of Increase.** As a condition precedent to such increase, (i) the Borrower shall deliver to the Administrative Agent a certificate of the Borrower dated as of the Increase Effective Date signed by a Responsible Officer of the Borrower (x) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such increase, and (y) 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 has occurred and is continuing or would result therefrom, and (ii) (x) upon the reasonable request of any Lender made at least seven (7) days prior to the Increase Effective Date, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act, in each case at least five (5) days prior to the Increase Effective Date and (y) at least five (5) days prior to the Increase Effective Date, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party. 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 non-ratable increase in the Commitments under this **Section 2.14**.

## 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.

(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 ten (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 ten (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 ten (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 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.

(e) **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 or W-8BEN-E (as applicable) 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 or W-8BEN-E (as applicable) 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 W-8BEN-E (as applicable); 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 or W-8BEN-E (as applicable), 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.

(iv) For purposes of determining withholding taxes imposed under FATCA, from and after the effective date of this Agreement, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent and the Borrower to treat) the Loans hereunder as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

(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 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.** Subject to the provisions set forth in **Section 3.03(a)** below, in the event that any change in market conditions or any Change in Law shall at any time after the date hereof make it unlawful for such Lender to fund or maintain SOFR Loans (or Base Rate Loans determined with reference to Adjusted Daily Simple SOFR) or to continue such funding or maintaining, or to determine or charge interest rates at, Adjusted Daily Simple SOFR, such Lender shall give notice of such changed circumstances to the Administrative Agent and the Borrower and the Administrative Agent promptly shall transmit the notice to each other Lender and (y)(i) in the case of any SOFR Loans of such Lender that are outstanding, such SOFR Loans of such Lender will be deemed to have been converted Base Rate Loans on the last day immediately preceding the next Interest Payment Date for such SOFR Loans, if such Lender may lawfully continue to maintain such SOFR Loans, or immediately, if such Lender may not lawfully continue to maintain such SOFR Loans, and thereafter interest upon the SOFR Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans (and if applicable, without reference to the Adjusted Daily Simple SOFR component thereof) and (ii) in the case of any such Base Rate Loans of such Lender that are outstanding and that are determined with reference to Adjusted Daily Simple SOFR, interest upon the Base Rate Loans of such Lender after the date specified in such Lender's notice shall accrue interest at the rate then applicable to Base Rate Loans without reference to the Adjusted Daily Simple SOFR component thereof and (z) the Borrower shall not be entitled to convert any such Base Rate Loans to SOFR Loans and Base Rate Loans shall not be determined with reference to the Adjusted Daily Simple SOFR component thereof, in each case, until such Lender determines that it would no longer be unlawful to do so.

### **3.03 Special Provisions Applicable to SOFR.**

- (a) Benchmark Replacement Setting.

(i) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this *Section 3.03(a)(i)* will occur prior to the applicable Benchmark Transition Start Date.

(ii) **Benchmark Replacement Conforming Changes.** In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) **Notices; Standards for Decisions and Determinations.** The Administrative Agent will promptly notify the Borrower and the Lenders of (1) the implementation of any Benchmark Replacement and (2) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify Administrative Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to **Section 3.03(a)(iv)** and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this **Section 3.03(a)**, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this **Section 3.03(a)**.

(iv) **Unavailability of Tenor of Benchmark.** Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (1) if the then-current Benchmark is a term rate and either (I) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (II) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify any applicable definition of “interest period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (2) if a tenor that was removed pursuant to clause (1) above either (I) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (II) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the

Administrative Agent may modify any applicable definition of “interest period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) **Benchmark Unavailability Period.** Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, (1) the Borrower may revoke any pending request for a borrowing of or conversion to SOFR Loans to be made or converted during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans and (2) any outstanding affected SOFR Loans will be deemed to have been converted to Base Rate Loans as of the last day immediately preceding the next Interest Payment Date for such SOFR Loans. During any SOFR Unavailability Period, the component of the Base Rate based upon the Adjusted Daily Simple SOFR will not be used in any determination of the Base Rate.

### **3.04 Increased Costs; Reserves on SOFR Loans.**

(a) **Increased Costs Generally.** Adjusted Daily Simple SOFR may be adjusted by the Administrative Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs (other than Taxes), in each case, due to changes in applicable law occurring subsequent to the commencement of any then applicable interest period, or pursuant to any Change in Law or change in the reserve requirements imposed by the Board of Governors, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at Adjusted Daily Simple SOFR. In any such event, the affected Lender shall give the Borrower and the Administrative Agent notice of such a determination and adjustment and the Administrative Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, the Borrower may, by notice to such affected Lender (A) require such Lender to furnish to the Borrower a statement setting forth in reasonable detail the basis for adjusting such Adjusted Daily Simple SOFR and the method for determining the amount of such adjustment (provided that such Lender shall not be required to disclose information that the Lender is not legally allowed to disclose, is confidential or which constitutes price-sensitive trade secrets), or (B) repay the SOFR Loans or Base Rate Loans determined with reference to Adjusted Daily Simple SOFR, in each case, of such Lender with respect to which such adjustment is made (together with any additional amounts required pursuant to **Section 3.05**).

(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) **No Requirement of Matched Funding.** Anything to the contrary contained herein notwithstanding, neither the Administrative Agent, nor any Lender, nor any of their Participants, is required actually to match fund any Obligation as to which interest accrues based upon SOFR.

**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 conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day immediately preceding the next Interest Payment Date for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow 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 SOFR Loan on a day other than the last day immediately preceding the next Interest Payment Date 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.

### **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.

## **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 that certain Omnibus Reaffirmation, Ratification and Amendment Agreement, duly executed by the Borrower and Guarantor, together with:

(A) 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

(B) 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) [reserved];

(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 incorporated and in good standing in Bermuda, including without limitation certificates of compliance issued by the Registrar of Companies 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 Bermuda;

(vii) favorable opinions of (1) Norton Rose Fulbright US LLP, counsel to the Loan Parties, (2) Conyers Dill & Pearman Limited, 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 March 31, 2022, 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; and

(xiv) 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); 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 March 31, 2022 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.

(f) All interest and fees accrued under the Existing Credit Agreement through the Closing Date shall have been paid in full by the Borrower, and the Administrative Agent shall have received reasonably satisfactory evidence thereof.

(g) Upon the reasonable request of any Lender made at least seven (7) days prior to the Closing Date, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act, in each case at least five (5) days prior to the Closing Date and (ii) at least five (5) days prior to the Closing Date, to the extent that the Borrower or Guarantor qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, it shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification.

(h) No Default shall have occurred and be continuing under the Existing Credit Agreement immediately before the Closing Date or under this Agreement immediately after the Closing Date.

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, including the Pledge Agreement and the Security Agreement.

**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) 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 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) In the case of any Credit Extension to be made prior to the Collateral Release, 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 applicable financial covenants set forth in **Section 7.11** and, in the case of any Credit Extension to be made at or following the Collateral Release, the Borrower shall have delivered to the Administrative Agent a duly completed and executed Compliance Certificate demonstrating the same.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in **Sections 4.02(a)** and **(b)** 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 L/C Issuer 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.

**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 balance sheets of the Borrower and its Subsidiaries dated March 31, 2022, and the related consolidated 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, 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.

**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 or 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)**.

(e) The Loan Parties represent and warrant that the Loan Parties are not and will not be using “plan assets” (within the meaning of 29 C.F.R. § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

**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. As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

**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 or 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.** At all times prior to the Collateral Release, 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. At all times prior to the Collateral Release, 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 nor, to the knowledge of the Loan Parties, any director, officer, employee, agent, affiliate or representative of such Loan Party or its Subsidiaries, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject of any Sanctions, (ii) located, organized, residing or operating in any Designated Jurisdiction, or (iii) included on OFAC's List of Specially Designated nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other applicable sanctions authority in a jurisdiction where any Loan Party employs or contracts personnel and conducts material operations.

**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.

**5.22 Anti-Corruption Laws.** Each Loan Party has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010, and other similar applicable anti-corruption legislation in other jurisdictions where any Loan Party employs or contracts personnel and conducts material operations, and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

## 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) (i) as soon as available, but in any event within one hundred twenty (120) days after the end of each fiscal year of the Borrower, (A) a stand-alone balance sheet of the Borrower as at the end of such fiscal year, the related statements of income or operations of the Borrower on a stand-alone basis for such fiscal year, and the related changes in shareholders' equity, and cash flows of the Borrower on a stand-alone basis for such fiscal year, and (B) a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, the related consolidated statements of income or operations for such fiscal year, and the related consolidated changes in shareholders' equity, and cash flows for such fiscal year, in each case, setting forth in comparative form the figures for the previous fiscal year, all in reasonable detail, unaudited and certified by a Responsible Officer of the Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Borrower (or the Borrower and its Subsidiaries, as the case may be) in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(ii) (A) as soon as available, but in any event within one hundred twenty (120) days after the end of each fiscal year of the Guarantor, a consolidated balance sheet of the Guarantor and its Subsidiaries as at the end of such fiscal year, the related consolidated statements of income or operations for such fiscal year, and the related consolidated changes in shareholders' equity, and cash flows for such fiscal year, in each case, setting forth 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, and

(B) as soon as available, but in any event within one hundred twenty (120) days after the end of each fiscal year of the Guarantor, a consolidating balance sheet of the Guarantor and its Subsidiaries as at the end of such fiscal year, and the related consolidating statements of income or operations for such fiscal year all in reasonable detail, unaudited and certified by a Responsible Officer of the Guarantor as fairly presenting the financial condition and results of operations of the Guarantor and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes;

(iii) as soon as available, but in any event within one hundred twenty (120) days after the end of each fiscal year of TEML, a consolidated balance sheet of TEML and its Subsidiaries as at the end of such fiscal year, the related consolidated statements of income or operations for such fiscal year, and the related consolidated changes in shareholders' equity, and cash flows for such fiscal year, in each case, setting forth in comparative form the figures for the previous fiscal year, all in reasonable detail, unaudited and certified by a Responsible Officer of TEML as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of TEML and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes; *provided that*, to the extent that audited versions of the foregoing are produced for a purpose other than compliance with the Loan

Documents (which, for the avoidance of doubt, this Section 6.01(a)(iii) does not require), the foregoing requirement shall be for versions that are 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;

(iv) as soon as available, but in any event within one hundred twenty (120) days after the end of each fiscal year of each Receivables Subsidiary, a consolidated balance sheet of such Person and its Subsidiaries as at the end of such fiscal year, the related consolidated statements of income or operations for such fiscal year, and the related consolidated changes in shareholders’ equity, and cash flows for such fiscal year, in each case, setting forth in comparative form the figures for the previous fiscal year, all in reasonable detail, unaudited and certified by a Responsible Officer of such Person 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; *provided that*, to the extent that such Receivables Subsidiary’s Related Documents require that audited versions of the foregoing be provided to the related debtholders, this Section 6.01(a)(iv) shall require versions of the foregoing that are 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; and

(b) as soon as available, but in any event within sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year of each of the Borrower, the Guarantor and TEMPL, (A) a consolidated and, with respect to the Guarantor, 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, 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, in each case, setting forth 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, unaudited and certified by a Responsible Officer of such Person 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, and (B) in the case of the Borrower, a stand-alone balance sheet of such Person as at the end of such fiscal quarter, the related statements of income or operations of such Person on a stand-alone basis for such fiscal quarter, and the related changes in shareholders’ equity, and cash flows of such Person on a stand-alone basis for such fiscal quarter and for the portion of such Person’s fiscal year then ended, in each case, setting forth 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, unaudited and certified by a Responsible Officer of such Person as fairly presenting the financial condition, results of operations, shareholders’ equity and cash flows of such Person 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)**, 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) prior to the Collateral Release, 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) prior to the Collateral Release, (x) upon Administrative Agent's request, or (y) if the sum of the Net Book Values of all Marine Container Collateral 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) prior to the Collateral Release, 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 (i) each Borrowing Base Report (as defined in any Receivables Indenture or Related Document) and container report, and (ii) such other information and reports provided under any Receivables Indenture or Related Document that may be requested by the Administrative Agent or any Lender with respect to any other Receivables Subsidiary;

(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 (5) 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 (and, in the case of the Borrower, a stand-alone budget for the Borrower for such fiscal year) for such fiscal year (including a projected consolidated (or stand-alone, as applicable) 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, including information and documentation reasonably requested for purposes of compliance with

applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Act and the Beneficial Ownership Regulation.

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 Arrangers, 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 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 a Receivables Subsidiary Indenture) or (y) the equivalent of the events described in clause (x) with respect to any other Receivables Subsidiary;

(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 Debt Rating of the Guarantor, (x) of any change in such Debt Rating after each announcement thereof by S&P, Moody's or Fitch, as applicable, or (y) of any notification from any of S&P, Moody's or Fitch that such Debt Rating has been placed on watch for a possible downgrade.

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 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 Credit 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 permits; obtain and renew all 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 (x) 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 (y) 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; *provided that* foregoing **clauses (ii)--(iv)** shall not apply to the extent that such Liens or other encumbrances have been released or terminated in connection with the Collateral Release.

**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.

**6.17 Anti-Corruption Laws.** Conduct its business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010, and other similar applicable anti-corruption legislation in other jurisdictions where any Loan Party employs or contracts personnel and conducts material operations, and maintain policies and procedures designed to promote and achieve compliance with such laws.

## 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;

(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 (i) **Section 7.02(g)** or **(k)**, (ii) **Section 7.02(j)**, in the case of this clause (ii) solely to the extent that such Liens are not spread to any additional assets;

(l) Liens, on Segregated Collateral Pools, securing the Segregated Collateral Pool Debt;

(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;

(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; and

(p) Liens securing Indebtedness permitted in reliance on **Section 7.02(m)**; *provided that* (i) to the extent that such Indebtedness is secured by a Lien on any property or assets of the Borrower or Guarantor, the Obligations are, simultaneously, equally and ratably, secured by Liens on such property or assets and (ii) any Loan Party or Affiliate that guarantees such Indebtedness also guarantees the Obligations, in each case of the foregoing clauses (i) and (ii), pursuant to such documentation and arrangements as shall be reasonably satisfactory to the Administrative Agent.

**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 (x) at any time after the Collateral Release, with respect to any such Indebtedness which is secured, the aggregate principal amount thereof shall not exceed the lesser of (I) the aggregate principal amount of commitments or outstanding loans,

as applicable, thereunder as of the Closing Date and (II) the aggregate principal amount of commitments or outstanding loans, as applicable, thereunder as of the date on which the Collateral Release occurs, and (y) subject to the foregoing **clause (x)**, 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 or Subsidiary 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**;

(j) Indebtedness of a Person existing at the time such Person becomes a Subsidiary of a Loan Party pursuant to a Permitted Acquisition, but only to the extent that such Indebtedness shall have been in existence at the time such Permitted Acquisition was consummated and either (i) was not incurred in connection with, as a result of, or in contemplation of, such Permitted Acquisition or (ii) was incurred to refinance or replace Indebtedness of the type referred to in clause (i); *provided that* with respect to Indebtedness incurred pursuant to clause (ii), (A) such Indebtedness shall have terms relating to principal amount, amortization, collateral (if any), subordination (if any), and other material terms taken as a whole no less favorable in any material respect to the Indebtedness referred to in clause (i), (B) such Indebtedness shall have a maturity no shorter than the maturity of the Indebtedness referred to in clause (i), (C) the interest rate applicable to such Indebtedness shall not exceed the then applicable market interest rate, and (D) such Indebtedness shall not become Indebtedness of any Loan Party;

(k) 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 that*, if any such Indebtedness is secured, the aggregate principal amount of such Indebtedness, when added to the aggregate principal amount of all other Indebtedness incurred after the Collateral Release and permitted in reliance on this **Section 7.02(k)** does not exceed the greater of (x) One Hundred Million Dollars (\$100,000,000) and (y) five percent (5%) of Consolidated Tangible Net Worth;

(l) Indebtedness in connection with a Permitted Capitalized Lease;

(m) for the Guarantor, the Borrower or any of their respective Subsidiaries, Indebtedness 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 that*, if any such debt is secured, such Lien is expressly permitted by **Section 7.01(p)**;

*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 applicable 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, including, for the avoidance of doubt, any contribution of property by the Borrower to a Receivables Subsidiary in connection with the issuance of a Qualified Receivables Transaction (provided that, to the extent that any such

property was received by the Borrower in a distribution from another Receivables Subsidiary substantially simultaneously with, or in contemplation of, such contribution, such property (x) shall not be added to Borrower Net Income for the purpose of calculating Borrower EBIT);

(d) Investments by the Guarantor in either the Borrower or TEML; *provided that*, both before and after each such Investment, no Default shall have occurred;

(e) 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;

(f) Guarantees permitted by **Section 7.02**;

(g) 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 or for the purpose of providing funds for Permitted Acquisitions; *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**;

(h) Investments consisting of the purchase or other acquisition of capital stock or other securities or assets of another Person in the same line of business as the Borrower; *provided that* (i) no Default exists or would result from such acquisition, (ii) any Person acquired pursuant to this **Section 7.03(h)** shall become a wholly owned Subsidiary of a Loan Party, (iii) such acquisition shall be on arm's length terms, (iv) such acquisition shall not be hostile and shall have been approved by the board of directors (or other similar body) and the requisite stockholders or other equityholders of such Person, (v) after giving effect to such acquisition, the Borrower and the Guarantor shall be in *pro forma* compliance with the applicable financial covenants set forth in **Section 7.11**, (vi) the Borrower has notified the Administrative Agent and the Lenders of such proposed acquisition, and shall have furnished to the Administrative Agent and the Lenders (at least five (5) Business Days prior to the consummation of such acquisition) a Compliance Certificate, historical financial information, and projections demonstrating compliance with the applicable financial covenants set forth in **Section 7.11** for the four fiscal quarters following consummation of such acquisition (a "**Permitted Acquisition**");

(i) Investments by a Loan Party in a Subsidiary acquired in connection with (or to effect) a Permitted Acquisition;

(j) Investments listed on **Schedule 5.08(c)**; and

(k) other Investments by the Borrower made in the Ordinary Course of Business.

**7.04 Fundamental Changes.** Merge, dissolve, liquidate, amalgamate, consolidate with or into another Person, except, so long as no Default exists or would result therefrom, (i) mergers or consolidations of Subsidiaries of the Loan Parties in connection with Permitted Acquisitions, and



(ii) any merger of any Person with any Loan Party; provided that such Loan Party is 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 (including, in each case, pursuant to a Division), 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, if such Disposition occurs prior to the Collateral Release, the Borrowing Base exceeds the Total Outstandings at such time;

(c) Sales, transfers and conveyances of Receivables Program Assets in connection with any Qualified Receivables Transaction so long as (i) no Default exists or would exist as a result of such sale, conveyance or transfer and (ii) if such Disposition occurs prior to the Collateral Release, Borrower has delivered a completed Borrowing Base Certificate to the Administrative Agent demonstrating that, after giving effect to such sale, transfer and conveyance, the Borrowing Base exceeds the Total Outstandings;

(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; and

(e) Dispositions in connection with a Permitted Capitalized Lease;

*provided, however, that* any Disposition (other than (i) to a Person that is an Affiliate of any Loan Party or any of its Subsidiaries, or (ii) in connection with a Permitted Capitalized Lease) 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 four consecutive fiscal quarters, when aggregated with the amounts of all other such Restricted Payments made by Borrower in such four consecutive fiscal quarters, would exceed seventy-five percent (75%) of Borrower Net Income 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.**

(a) In the case of Borrower sell, pledge, transfer or otherwise encumber the Equity Interests owned by the Borrower in any Receivables Subsidiary or other Subsidiary of the Borrower, including without limitation the Equity Interests in any Subsidiary acquired by the Borrower in a Permitted Acquisition.

(b) In the case of Borrower and Guarantor, enter into any agreement after the date hereof restricting the ability of such Person to pledge its assets to secure the Obligations; *provided that* no such agreement that requires the obligations thereunder to be secured equally and ratably with the Obligations shall be deemed to violate this Section 7.09(b).

**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) Prior to the Collateral Release:

(i) **Maximum Consolidated Leverage Ratio of Borrower.** In the case of the Borrower, permit the Consolidated Leverage Ratio of the Borrower to exceed 3.80 to 1.00.

(ii) **Maximum Consolidated Leverage Ratio of Guarantor.** In the case of the Guarantor, permit the Consolidated Leverage Ratio of the Guarantor to exceed 3.80 to 1.00.

(iii) **Minimum Consolidated Tangible Net Worth.** Permit Consolidated Tangible Net Worth of the Guarantor at any time to be less than \$1,230,215,140 *plus*, 50% of positive quarterly Guarantor Net Income following March 31, 2022, with no deduction for any period in which there is a net loss.

(iv) **Fixed Charge Coverage Ratio.** In the case of the Guarantor, permit the Fixed Charge Coverage Ratio as of the end of any fiscal quarter to be less than 1.20 to 1.00.

(v) **Minimum Interest Coverage of Borrower.** In the case of the Borrower, permit the Interest Coverage Ratio as of the end of any fiscal quarter to be less than 4.00 to 1.00.

(b) On and after the Collateral Release:

(i) **Maximum Consolidated Leverage Ratio of Guarantor.** In the case of the Guarantor, permit the Consolidated Leverage Ratio of the Guarantor to exceed 4.00 to 1.00.

(ii) **Fixed Charge Coverage Ratio.** In the case of the Guarantor, permit the Fixed Charge Coverage Ratio as of the end of any fiscal quarter to be less than 1.20 to 1.00.

(iii) **Minimum Unencumbered Asset Coverage Ratio.** Permit the Unencumbered Asset Coverage Ratio at any time to be less than 1.20 to 1.00.

**7.12 Amendments of Organization Documents or Blanket Management Agreement.** Amend any of its Organization Documents or the Blanket Management Agreement in a way that could cause a Material Adverse Effect.

**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 Credit Extensions in accordance with the terms of this Agreement, (b) regularly scheduled or required repayments, prepayments or redemptions of Indebtedness set forth in **Schedule 5.05**, and (c) repayments and prepayments of the Segregated Collateral Pool Debt; *provided that* voluntary prepayments under subsection (c) above will only be permitted if at the time of such prepayment, no Default exists or would exist as a result of such prepayment.

**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 Marine 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 (or, if after the Collateral Release, a Lien has been granted to comply with **Section 7.01(p)**, if any Loan Party obtains knowledge that a Marine Container Collateral) 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 (or, if after the Collateral Release, a Lien has been granted to comply with **Section 7.01(p)**, no Trading Marine Container Collateral) will be sold to a Sanctioned Person or a Sanctioned Entity.

**7.19 Sanctions.** Directly or indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, to such Loan Party's knowledge, to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, or otherwise) of Sanctions.

**7.20 Anti-Corruption Laws.** Directly or indirectly use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010, and other similar applicable anti-corruption legislation in other jurisdictions where any Loan Party employs or contracts personnel and conducts material operations.

## 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, at any time prior to the Collateral Release, 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 (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; (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; (iii) any 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 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 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 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

(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 TEML, or (iii) the Borrower shall cease, directly, to own and control legally and beneficially all of the Equity Interests in each Receivables Subsidiary; 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 or in connection with the Collateral Release) 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; or

(n) **Customer Insolvency.** Prior to the Collateral Release, any bankruptcy or insolvency proceeding shall have been filed by or against any customer of the Borrower, Guarantor or any Subsidiary that is lessee of either (i) 3% or more of the Net Book Value of Marine Containers relied upon in order to cause the Borrowing Base to equal or exceed Total Outstandings or (ii) (other than in the case of Hanjin Shipping Co., Ltd. and its Affiliates) 3% or more of the Consolidated Total Assets of the Guarantor, and the Borrower and Guarantor shall not have agreed to additional amendments satisfactory to the Administrative Agent and Required Lenders within thirty (30) days following the commencement of such proceeding.

**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;

*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, L/C Borrowings and Obligations under Swap Contracts, ratably among the Lenders, the L/C Issuer and Secured Parties 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 Wells Fargo 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-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.

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 Wells Fargo as Administrative Agent pursuant to this **Section 9.06** shall also constitute its resignation as L/C Issuer. If Wells Fargo 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 Wells Fargo to effectively assume the obligations of Wells Fargo with respect to such Letters of Credit.

**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 Joint Bookrunners, the Joint Lead Arrangers, the Syndication Agents and the Documentation Agents 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.

**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 (A) 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, (B) that is Disposed of or to be Disposed of as part of or in connection with any Disposition permitted

hereunder or under any other Loan Document, (C) subject to **Section 11.01**, if approved, authorized or ratified in writing by the Required Lenders or (D) in connection with the Collateral Release; 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) (i) In the event of any Disposition of Collateral permitted pursuant to **Section 7.05(b)–(d)**, 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) if such Disposition occurs before the Collateral Release, a Borrowing Base Certificate 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, and (B) if such Disposition occurs at or after the Collateral Release, a Compliance Certificate demonstrating that, after giving *pro forma* effect to any such requested release of Collateral, the Borrower is in compliance with **Section 7.11(b)(iii)**. 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.

(ii) In the event of the granting of Liens on Collateral consisting of a Segregated Collateral Pool to secure the Segregated Collateral Pool Debt (other than a Permitted Capitalized Lease), 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 (w) such requests for release may be made no more frequently than quarterly (and with respect to releases relating solely to Sale Leaseback Containers, no more frequently than monthly), (x) such Liens are granted in connection with establishing Segregated Collateral Pool Debt, or are necessary to maintain compliance with the borrowing base provisions of such Segregated Collateral Pool Debt, or the Borrower wishes to dispose of assets then included in such Segregated Collateral Pool, (y) the Borrower shall have submitted to the Administrative Agent (A) if such release occurs before the Collateral Release, a Borrowing Base Certificate demonstrating that, immediately prior to and after giving *pro forma* effect to any such requested release of Collateral, the Total Outstandings shall not exceed the lesser of (1) the Aggregate Commitments and (2) the Borrowing Base and (B) if such release occurs at or after the Collateral Release, a Compliance Certificate demonstrating that, after giving *pro forma* effect to any such release, the Borrower is in compliance with **Section 7.11(b)(iii)**, and (z) except in the case of any release of Sale Leaseback Containers acquired after June 19, 2015 or any release after the Collateral Release, the Borrower shall have submitted to the Administrative Agent a certificate, in form and substance satisfactory to the Administrative Agent, showing that after giving effect to such release of Collateral (as compared to the Collateral included in the Borrowing Base Certificate as of December 31, 2016), (A) the Weighted Average age of the Eligible Marine Containers shall not exceed six and one-half (6.5) years, (B) the Weighted Average long term lease remaining tenor shall not have decreased by more than nine months, (C) the Weighted Average long term lease composition (as a percentage of the aggregate Borrowing Base pool of Eligible Marine Containers) shall not have decreased by more than five percentage points, (D) no individual customer's concentration percentage shall have increased by more than five percentage points, measured by net book value, and (E) off-hire containers

composition (as a percentage of the aggregate Borrowing Base pool of Eligible Marine Containers, measured by net book value) shall not have increased by more than two percentage points. For purposes of this section, “**Weighted Average**” for any factor, and any group of Eligible Marine Containers, shall be based on the net book value for such group of Eligible Marine Containers. 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. 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.

(iii) In the event of the granting of Liens on Collateral consisting of a Segregated Collateral Pool to secure a Permitted Capitalized Lease, 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) if such release occurs before the Collateral Release, (x) a Borrowing Base Certificate demonstrating that, immediately prior to and after giving *pro forma* effect to such Permitted Capitalized Lease, the Total Outstandings shall not exceed the lesser of (1) the Aggregate Commitments and (2) the Borrowing Base, and (y) a report demonstrating the effect of such transaction on the Borrowing Base characteristics contained in **Section 9.10(b)(ii)(z)** and compliance therewith, and (B) if such release occurs at or after the Collateral Release, a Compliance Certificate demonstrating that, after giving *pro forma* effect to any such release, the Borrower is in compliance with **Section 7.11(b)(iii)**. In such event, the Administrative Agent, on behalf of the Secured Parties, shall be deemed to have released such Segregated Collateral Pool 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. Furthermore, the Lenders, the Administrative Agent and the L/C Issuer agree that the Lien of the Collateral Documents shall not re-attach despite the structure of the Permitted Capitalized Lease as a sale-leaseback in which the Segregated Collateral Pool is reconveyed (or deemed reconveyed) to the Borrower so long as such Segregated Collateral Pool remains subject to a Lien pursuant to the Permitted Capitalized Lease.

(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 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.

(e) Notwithstanding the foregoing or anything else herein or in any other Loan Document to the contrary, each Lender, the L/C Issuer and each other Secured Party hereby irrevocably authorizes the Administrative Agent, to release all Liens on all Collateral (other than any Cash Collateral granted or required to be granted pursuant to **Section 2.03(g)**) upon the satisfaction of the following conditions precedent (the satisfaction thereof and the occurrence of such release, the "**Collateral Release**"):

(i) The Guarantor shall have received a Debt Rating of at least BBB- / Baa3 (as applicable) or better from at least two (2) of S&P, Fitch and Moody's;

(ii) The Borrower and the Guarantor shall be in compliance, on a *pro forma* basis, both immediately before and after giving effect to such Collateral Release, with the financial covenants set forth in **Section 7.11(b)**;

(iii) No Default has occurred and is continuing or would result from the release of Liens on and security interests in the Collateral contemplated by the Collateral Release; and

(iv) Receipt by the Administrative Agent (which shall promptly deliver to the Lenders), at least five (5) Business Days prior to the proposed occurrence of the Collateral



Release, of a certificate signed by a Responsible Officer of the Borrower and the Guarantor certifying that the conditions specified in **Sections 9.10(e)(i) – (iii)** have been satisfied.

**9.11 ERISA Representations.** (a) Each Lender (x) represents and warrants, as of the date such Person becomes a Lender party hereto, to, and (y) covenants, from the date such Person becomes a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(a) (i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the

Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

#### **9.12 Erroneous Payments.**

(a) Each Lender, each Issuing Bank, and any other party hereto hereby severally agrees that if (i) the Administrative Agent notifies (which such notice shall be conclusive absent manifest error) such Lender or Issuing Bank (or the Lender which is an Affiliate of a Lender or Issuing Bank) or any other Person that has received funds from the Administrative Agent or any of its Affiliates, either for its own account or on behalf of a Lender or Issuing Bank (each such recipient, a “***Payment Recipient***”) that the Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this **Section 9.12(a)**, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an “***Erroneous Payment***”), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided that nothing in this Section shall require the Administrative Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine.

(b) Without limiting the immediately preceding **clause (a)**, each Payment Recipient agrees that, in the case of **clause (a)(ii)** above, it shall promptly notify the Administrative Agent in writing of such occurrence.

(c) In the case of either **clause (a)(i)** or **(a)(ii)** above, such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and upon demand from the Administrative Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than one Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment

Recipient to the date such amount is repaid 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 from time to time in effect.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an “**Erroneous Payment Return Deficiency**”), then at the sole discretion of the Administrative Agent and upon the Administrative Agent’s written notice to such Lender (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the “**Erroneous Payment Impacted Loans**”) to the Administrative Agent or, at the option of the Administrative Agent, the Administrative Agent’s applicable lending affiliate (such assignee, the “**Agent Assignee**”) in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Loans, the “**Erroneous Payment Deficiency Assignment**”) *plus* any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by Agent Assignee as the assignee of such Erroneous Payment Deficiency Assignment. Without limitation of its rights hereunder, following the effectiveness of the Erroneous Payment Deficiency Assignment, the Administrative Agent may make a cashless reassignment to the applicable assigning Lender of any Erroneous Payment Deficiency Assignment at any time by written notice to the applicable assigning Lender and upon such reassignment all of the Loans assigned pursuant to such Erroneous Payment Deficiency Assignment shall be reassigned to such Lender without any requirement for payment or other consideration. The parties hereto acknowledge and agree that (1) any assignment contemplated in this **clause (d)** shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this **clause (d)** shall govern in the event of any conflict with the terms and conditions of **Section 11.06** and (3) the Administrative Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent (1) shall be subrogated to all the rights of such Payment Recipient and (2) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Payment Recipient from any source, against any amount due to the Administrative Agent under this **Section 9.12** or under the indemnification provisions of this Agreement, (y) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by the Borrowers or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrowers or any other Loan Party for the purpose of making for a payment on the Obligations and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any

part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received.

(f) Each party's obligations under this **Section 9.12** shall survive the resignation or replacement of the Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

(g) The provisions of this **Section 9.12** to the contrary notwithstanding, (i) nothing in this **Section 9.12** will constitute a waiver or release of any claim of any party hereunder arising from any Payment Recipient's receipt of an Erroneous Payment and (ii) there will only be deemed to be a recovery of the Erroneous Payment to the extent that the Administrative Agent has received payment from the Payment Recipient in immediately available funds the Erroneous Payment Return, whether directly from the Payment Recipient, as a result of the exercise by the Administrative Agent of its rights of subrogation or set off as set forth above in clause (e) or as a result of the receipt by Agent Assignee of a payment of the outstanding principal balance of the Loans assigned to Agent Assignee pursuant to an Erroneous Payment Deficiency Assignment, but excluding any other amounts in respect thereof (it being agreed that any payments of interest, fees, expenses or other amounts (other than principal) received by Agent Assignee in respect of the Loans assigned to Agent Assignee pursuant to an Erroneous Payment Deficiency Assignment shall be the sole property of Agent Assignee and shall not constitute a recovery of the Erroneous Payment).

## 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, under any Swap Contract 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 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 Credit 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 Credit Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Credit 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.

#### **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), the Arrangers, each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, penalties and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee 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 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

Indemnitor or in violation by such Indemnitor of **Section 11.07**, other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitor 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 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 Wells Fargo assigns all of its Commitment and Loans pursuant to **Section 11.06(b)**, Wells Fargo 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 Wells Fargo as L/C Issuer. If Wells Fargo 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 Wells Fargo to effectively assume the obligations of Wells Fargo 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 and any applicable insurer, re-insurer and insurance broker (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 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 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 Arrangers, 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 “delivery,” “execute,” “execution,” “signed,” “signature,” and words of like import in any Loan Document or any other document executed in connection herewith 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, physical delivery thereof 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; provided that notwithstanding anything contained herein to the contrary neither the Administrative Agent, the L/C Issuer nor any Lender is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent, the L/C Issuer or such Lender pursuant to procedures approved by it and provided further without limiting the foregoing, upon the request of any party, any electronic signature shall be promptly followed by such manually executed counterpart.

**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 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.

**11.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions .** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or



(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

**11.22 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**” and each such QFC a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States): In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

**11.23 Appointment of Borrower.** Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Borrower may execute such documents and provide such authorizations on behalf of such Loan Parties as the Borrower deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent, L/C Issuer or a Lender to the Borrower shall be deemed delivered to each Loan Party and (c) the Administrative Agent, L/C Issuer or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Borrower on behalf of each of the Loan Parties.

**11.24 Amendment and Restatement of Existing Credit Agreement.** On the Closing Date, this Agreement shall amend, restate and supersede the Existing Credit Agreement in its entirety, except as provided in this **Section 11.24**. On the Closing Date, the rights and obligations of the parties evidenced by the Existing Credit Agreement shall be evidenced by this Agreement and the other Loan Documents and the grant of security interest in the Collateral by the relevant Loan

Parties under the Existing Credit Agreement and the other “Loan Documents” (as defined in the Existing Credit Agreement) shall continue under but as amended by this Agreement and the other Loan Documents, and shall not in any event be terminated, extinguished or annulled but shall hereafter be governed by this Agreement and the other Loan Documents. All references to the Existing Credit Agreement in any Loan Document or other document or instrument delivered in connection therewith shall be deemed to refer to this Agreement and the provisions hereof. Nothing contained herein shall be construed as a novation of the “Obligations” outstanding under and as defined in the Existing Credit Agreement, which shall remain in full force and effect, except as modified hereby.

*[signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER:

TEXTAINER LIMITED

By /s/ Adam Hopkin

Name: Adam Hopkin

Title: Secretary

GUARANTOR:

TEXTAINER GROUP HOLDINGS LIMITED

By /s/ Adam Hopkin

Name: Adam Hopkin

Title: Secretary

*[Signature Page to Second Amended and Restated Credit Agreement (Textainer)]*

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WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Administrative Agent

By /s/ Jerri Kallam

Name: Jerri Kallam  
Title: Managing Director

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as a Lender and as L/C  
Issuer

By /s/ Jerri Kallam

Name: Jerri Kallam  
Title: Managing Director

CITIBANK N.A., as a Lender

By /s/ Andres Romagosa

Name: Andres Romagosa  
Title: Senior Vice President

MUFG UNION BANK, N.A., as a Lender

By /s/ Fabrice Centeno

Name: Fabrice Centeno  
Title: Director

HSBC BANK CANADA, as a Lender

By /s/ Douglas Remington

Name: Douglas Remington  
Title: AVP, International Subsidiary Banking, Corporates

CITY NATIONAL BANK, as a Lender

By /s/ Marguerite Sutton

Name: Marguerite Sutton  
Title: Vice President

HSBC BANK USA, NATIONAL ASSOCIATION, as a Lender

By /s/ Mary Beth Dam

Name: Mary Beth Dam  
Title: Region Head, 22710

TRUIST BANK, as a Lender

By /s/ Andrew Johnson

Name: Andrew Johnson  
Title: Managing Director

[Signature Page to Second Amended and Restated Credit Agreement (Textainer)]

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PNC BANK, NATIONAL ASSOCIATION, as a Lender

By /s/ Dominic Trozzi

Name: Dominic Trozzi

Title: Vice President

BNP PARIBAS, as a Lender

By /s/ Robert Papas

Name: Robert Papas

Title: Managing Director

By /s/ Ahsan Avais

Name: Ahsan Avais

Title: Director

BANK OF AMERICA, N.A., as a Lender

By /s/ Jason Eshler

Name: Jason Eshler

Title: Vice President

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, as a Lender

By /s/ Christoph Clauss

Name: Christoph Clauss

Title: Managing Director

By /s/ Hayden Arnoux

Name: Hayden Arnoux

Title: Director

DBS BANK LTD., as a Lender

By /s/ Josephine Lim

Name: Josephine Lim

Title: Senior Vice President

ING BELGIUM SA NV, as a Lender

By /s/ Bram Debruyne

Name: Bram Debruyne

Title: \_\_\_\_\_

By /s/ Luc Missoorten

Name: Luc Missoorten

Title: \_\_\_\_\_

ROYAL BANK OF CANADA, as a Lender

By /s/ Scott Umbs

Name: Scott Umbs

Title: Authorized Signatory

FIFTH THIRD BANK, NATIONAL ASSOCIATION, as a Lender

By /s/ Matthew Glahn

Name: Matthew Glahn

Title: Officer

KEYBANK NATIONAL ASSOCIATION, as a Lender

By /s/ Tad L. Stainbrook

Name: Tad L. Stainbrook

Title: Vice President

REGIONS BANK, as a Lender

By /s/ Tyler Sherman

Name: Tyler Sherman

Title: Assistant Vice President

CRÉDIT INDUSTRIEL ET COMMERCIAL,  
NEW YORK BRANCH, as a Lender

By /s/ Adrienne Molloy

Name: Adrienne Molloy

Title: Managing Director

By /s/ Garry Weiss

Name: Garry Weiss

Title: Managing Director

## TEXTAINER GROUP HOLDINGS LIMITED

(the "Company")

## DIRECTORS' UNANIMOUS WRITTEN RESOLUTION

made pursuant to bye-law number 60 of the bye-laws of the Company

The undersigned, being all of the Directors of the Company, a company organized and existing under the laws of Bermuda, acting by written consent without a meeting **DO HEREBY CONSENT** to the adoption of the following resolutions:

**1. AMENDMENT OF CERTIFICATES OF DESIGNATIONS**

**WHEREAS**, pursuant to certificate of designation dated April 13, 2021 (the "**Class A Certificate of Designation**"), on April 13, 2021 the Company issued \$150,000,000 of 7.00% Series A Cumulative Redeemable Perpetual Preferred Preference Shares (the "**Series A Preference Shares**") the terms of which provide for a 7.00% annual dividend rate upon declaration by the Company's Board of Directors;

**WHEREAS**, pursuant to certificate of designation dated August 23, 2021 (the "**Class B Certificate of Designation**" and together with the Class A Certificate of Designation, the "**Certificates of Designation**"), on August 23, 2021 the Company issued \$150,000,000 of 6.25% Series B Cumulative Redeemable Perpetual Preferred Preference Shares (the "**Series B Preference Shares**") the terms of which provide for a 6.25% annual dividend rate upon declaration by the Company's Board of Directors;

**WHEREAS**, in response to a request by the Company's audit firm, it is proposed that the Certificates of Designation be amended (the "**Amendment**") to cure an ambiguity by inserting as the last sentence in Section 8 (C) of the Certificates of Designation the following:

"A Change of Control under this sub-section 8(C) would be applicable only upon conversion of all Common Shares into cash, securities or other property or other assets (including any combination thereof) in which case the holders of Series [A/B] Preference Shares electing their Change of Control Conversion Right shall only be entitled to receive the same form of consideration that the holders of the Common Shares are entitled to receive."

**WHEREAS**, it is noted the Amendment does not affect the special rights, preferences, privileges and voting powers of either the Series A Preference Shares or the Series B Preference Shares.

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**NOW THEREFORE BE IT RESOLVED**, that the Amendment to the Certificates of Designations be and hereby is approved.

**2. GENERAL AUTHORITY**

**RESOLVED THAT** any Director or Officer of the Company, acting singly, be and is hereby authorised to execute (under the common seal of the Company if appropriate) and deliver on behalf of the Company from time to time any and all documents whatsoever, and do any and all things whatsoever (including filing any documents necessary or appropriate with the relevant authorities), as such Director or Officer in his or her sole discretion determines appropriate in connection with any of the foregoing resolutions and/or the matters contemplated thereby, such determination to be conclusively evidenced by any such execution or the taking of any such action by such person or persons and, further, that the execution and delivery of any and all documents whatsoever, and the taking of any and all actions whatsoever, by any Director or Officer of the Company on behalf of the Company in connection with the subject matter of these resolutions prior to the date of these resolutions be and are hereby approved, ratified and confirmed.

*Signature page to follow*

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This written resolution may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. These written resolutions may be executed by facsimile.

/s/ Olivier Ghesquiere\_\_\_\_ Date: February 8, 2023\_\_\_\_\_  
Olivier Ghesquiere

/s/ Dudley Cottingham\_\_\_\_ Date: February 8, 2023\_\_\_\_\_  
Dudley R. Cottingham

/s/ Grace Tang\_\_\_\_ Date: February 8, 2023\_\_\_\_\_  
Grace Tang

/s/ Lisa Young\_\_\_\_ Date: February 8, 2023\_\_\_\_\_  
Lisa P. Young

/s/ David Nurek\_\_\_\_ Date: February 8, 2023\_\_\_\_\_  
David Nurek

/s/ Hyman Shwiel\_\_\_\_ Date: February 8, 2023\_\_\_\_\_  
Hyman Shwiel

/s/ Robert Pedersen\_\_\_\_ Date: February 8, 2023\_\_\_\_\_  
Robert Pedersen

/s/ Cynthia Hostetler\_\_\_\_ Date: February 8, 2023\_\_\_\_\_  
Cynthia Hostetler

/s/ Jim Earl\_\_\_\_ Date: February 8, 2023\_\_\_\_\_  
Jim Earl

/s/ Jeremy Bergbaum\_\_\_\_ Date: February 8, 2023\_\_\_\_\_  
Jeremy Bergbaum

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## 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	Delaware	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	Delaware	Textainer Equipment Management (U.S.) II LLC
Textainer Marine Containers II Limited	Bermuda	Textainer Marine Containers II Limited
Textainer Marine Containers VII Limited	Bermuda	Textainer Marine Containers VII Limited

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**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, Olivier Ghesquiere, 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: February 14, 2023

/s/ OLIVIER GHESQUIERE

Olivier Ghesquiere  
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, Michael K. Chan, 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: February 14, 2023

/s/ MICHAEL K. CHAN

Michael K. Chan

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, 2022 (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: February 14, 2023

/s/ OLIVIER GHESQUIERE

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Olivier Ghesquiere  
President and Chief Executive Officer  
(Principal Executive Officer)

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**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, 2022 (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: February 14, 2023

/s/ MICHAEL K. CHAN

\_\_\_\_\_  
Michael K. Chan

Executive Vice President and Chief Financial Officer

(Principal Financial Officer)

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**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement No. 333-146304 on Form F-1, Registration Statements Nos. 333-147961, 333-171409, 333-211290 and 333-233323 on Form S-8, and Registration Statements Nos. 333-171410, 333-223657, 333-234444 and 333-255054 on Form F-3 of our reports dated February 14, 2023, related to the financial statements of Textainer Group Holdings Limited and subsidiaries and the effectiveness of Textainer Group Holdings Limited and subsidiaries' internal control over financial reporting appearing in this Annual Report on Form 20-F for the year ended December 31, 2022.

/s/ Deloitte & Touche LLP  
San Francisco, CA  
February 14, 2023

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**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the registration statements (No. 333-146304) on Form F-1, registration statements (Nos. 333-147961, 333-171409, 333-211290 and 333-233323) on Form S-8, and registration statements (Nos. 333-171410, 333-223657, 333-234444, and 333-255054) on Form F-3 of our report dated March 17, 2022, with respect to the consolidated financial statements of Textainer Group Holdings Limited and subsidiaries and the effectiveness of internal control over financial reporting.

/s/ KPMG LLP  
San Francisco, California  
February 14, 2023

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