

233450



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. MCF 21050

FEE RECEIVED

NOV - 4 2012

**POOLING APPLICATION
FILED PURSUANT TO
49 U.S.C. § 14302**

**SURFACE
TRANSPORTATION BOARD**

NORTH AMERICAN CHASSIS POOL COOPERATIVE, LLC

John G. Calender
Baker Donelson Bearman Caldwell
& Berkowitz, PC
920 Massachusetts Avenue, N.W.
Suite 900
Washington, DC 20001
Phone: (202) 508-3474
Fax: (202) 220-2274
E-mail: jcalender@bakerdonelson.com

FILED
DEC - 4 2012
**SURFACE
TRANSPORTATION BOARD**

Attorney for North American Chassis Pool
Cooperative, LLC

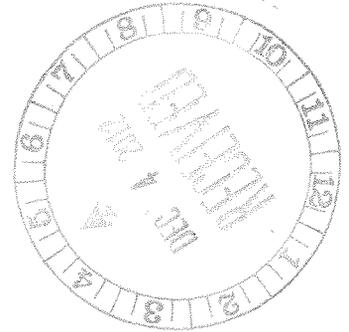
Dated: December 4, 2012

**ENTERED
Office of Proceedings**
DEC - 4 2012
**Part of
Public Record**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. MC _____

**POOLING APPLICATION
FILED PURSUANT TO
49 U.S.C. § 14302**



NORTH AMERICAN CHASSIS POOL COOPERATIVE, LLC

Pursuant to 49 U.S.C. § 14302 and 49 C.F.R. 1184, the North American Chassis Pool Cooperative, LLC, a Delaware limited liability company ("NACPC"), submits this Pooling Application ("Application") for approval by the Surface Transportation Board ("the Board") of the proposed joint venture operating and pooling agreement ("Pooling Agreement") among the participating motor carriers. Specifically, NACPC seeks to acquire international intermodal chassis used to transport marine containers and contribute these chassis to existing contributory "gray" chassis pools in order to obtain the benefit of lower chassis operation costs available to pool contributors. NACPC will acquire these chassis through long-term leases and purchases using member contributions of money and/or chassis.

As discussed below, ocean carriers are exiting from the ownership of chassis in these contributory pools and being replaced by chassis leasing companies which usually charge more than ocean carriers for chassis use by motor carriers. NACPC's objective as a new entrant is to

acquire and contribute upgraded and refurbished chassis to these pools to ensure the continued economical and efficient operation of these pools for NACPC members and other eligible users.

It is estimated that there are 565,000 international intermodal or marine chassis in the United States, and that motor carriers currently own only about three percent of these chassis, with most owned by ocean carriers and chassis leasing companies. Ocean carriers are exiting from the ownership of these chassis, which have been traditionally provided to motor carriers through ocean carrier pools for charges usually less than those imposed by chassis leasing companies.¹ NACPC seeks to preserve this economical and efficient pool model for its members by acquiring chassis either from exiting ocean carriers or from other sources to contribute to existing pools. NACPC members plan to combine their resources to achieve purchasing efficiencies on chassis acquisition and on insurance coverage, and also to significantly upgrade and refurbish its chassis. NACPC plans to operate on a cost pass through not-for-profit basis, with charges for chassis usage based on covering its ordinary and necessary expenses and sustaining its operations on an on-going basis, including funding future chassis acquisition.

The Pooling Agreement is appended hereto as Appendix 1. The effective date of the pooling arrangement is 50 days from the filing of this Application, as provided in 49 C.F.R. 1184, or earlier if approved by the Board, or unless the Board takes other action. Pooling Agreement, Article I, Section 1.1(v).

For purposes of this Application, the term chassis refers only to standard-sized international intermodal chassis (20', 40' or 45') which accommodate international ocean shipping containers. They are to be distinguished from domestic chassis which generally are of different lengths and which generally may not accommodate international marine containers.

¹ For example, many ocean carriers provide a specified number of free days for chassis usage and this is generally not the case for chassis leasing companies.

In accordance with the requirements of 49 C.F.R. 1184, *Motor Carrier Pooling Operations*, NACPC respectfully submits the following information:

**I. IDENTIFICATION OF ALL CARRIERS PARTY
TO THE POOLING AGREEMENT
(49 C.F.R. 1184.2(a))**

The following carriers have committed to joining and operating NACPC as members, subject to regulatory approval ("NACPC members"):

- (i) California Multimodal, LLC, P.O. Box 92829, Long Beach, California 90809-1143;
- (ii) Containerport Group, Inc., 1340 Depot Street, Suite 103, Cleveland, Ohio 44116-1741;
- (iii) Devine & Son Trucking Co. Inc., D/B/A Devine Intermodal, P.O. Box 980160, West Sacramento, California 95798-0160;
- (iv) Eagle Systems, Inc., 230 Grand Road, Suite A1, East Wenatchee, Washington 98802;
- (v) G & P Trucking Company, Inc., 126 Access Road, Gaston, South Carolina 29053;
- (vi) Intermodal Cartage Co., Inc., 3150 Lenox Park Boulevard, Suite 312, Memphis, Tennessee 38115;
- (vii) Reliable Transportation Specialists, Inc., 139 Venturi Drive, Chesterton, Indiana 46304;
- (viii) Tennessee Express, Inc., 22 Stanley Street, Nashville, Tennessee 37210; and
- (ix) Tri-Modal Distribution Services, Inc., 2011 Carson Street, Long Beach, California 90810;
- (x) Triple G Express, Inc., P.O. Box 10485, New Orleans, Louisiana 70181,

Each motor carrier is an intermodal carrier principally operating regionally. NACPC estimates that collectively these NACPC members currently account for only approximately

2,400 of the estimated 565,000 chassis in the United States.² Further, it is estimated that approximately 7,000 motor carriers currently provide intermodal service in the United States.³

As currently structured, and as discussed more fully below, the Pooling Agreement provides that Class A membership, which consists of both Governance Rights and Financial Rights, is limited to motor carriers. Pooling Agreement, Article IV, Section 4.3(a). The Pooling Agreement defines Governance Rights as the right to participate in the operation, management or affairs of NACPC and the right to vote in the election of Board members and other significant business and affairs. Pooling Agreement, Article I, Section 1.1(y) Financial Rights are defined as the right of members to share in losses and distributions, including interim and liquidation distributions. *Id.*, Section 1.1(x) Additional members may be added to Class A membership but only if they are motor carriers. *Id.*, Section 1.1(n). Class B membership provides only Financial Rights and is open both to motor carriers and other entities, such as shippers.

Under the Pooling Agreement, all members make a capital contribution which is used to cover NACPC costs, including: costs associated with formation and maintenance of NACPC; operating expenses (accounting, legal, documentation, bookkeeping, tax return preparation, preparation of reports to members, information technology, regulatory fees, administrative overhead, charges from pools for managing chassis); costs for acquiring chassis; costs for insurance coverage; costs for upgrading and refurbishing chassis; and costs for funding reserves to acquire chassis on an on-going basis.

Charges for chassis usage will be determined by NACPC on a cost pass through not-for-profit basis so that NACPC's on-going and self-sustaining costs are covered, including costs for additional chassis acquisition. Pooling Agreement, Article I, Section 1.1(i). Specifically, chassis usage cost will include the above identified costs plus charges imposed by pools in which

² Copies of the specific operating authority of each carrier which is the subject of the Pooling Agreement are attached as Appendix 2. A caption summary for Federal Register publication of the pooling transaction is attached as Appendix 3.

³ Motor Carrier Database of Intermodal Association of North America (IANA), comprising approximately 7,000 motor carriers participating in the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA), a program of IANA, www.uiia.org/other-files/index.shtml#itd.

NACPC participates and other terminal or port charges. In addition, the initial contributing members will be entitled to return of their capital contribution with a reasonable rate of return. Pooling Agreement, Article IX, Section 9.5(a).

Under the Agreement NACPC members will:

- contribute resources (either in the form of capital or chassis) to establish NACPC and fund its operations on an on-going basis;
- share information regarding NACPC acquisition of chassis based on customer input and market knowledge and experience and determine appropriate specifications for chassis to be acquired such as load requirements and need for specialized chassis to accommodate refrigerated containers and other shipper requirements;
- agree on programs to negotiate for and to acquire chassis, insurance, chassis upgrades and support services on the best terms and obtain favorable chassis financing;
- undertake joint management, control and accounting for usage of NACPC chassis in order to achieve efficient and maximum utilization and better service;
- pool the cost of ownership, operation, maintenance and refurbishing of chassis;
- establish and assess appropriate user charges to members and non-members on a cost pass through not-for-profit basis to cover ordinary and necessary expenses for NACPC and to sustain its operations, including charges based on usage and volume commitment, and to ensure NACPC has sufficient funds for future chassis acquisition, chassis modernization, systems development and future anticipated expenses;
- establish criteria for usage of chassis by NACPC members and non-members;
- determine to which chassis pools to contribute and the number of chassis for each pool;
- interact with chassis pools regarding usage and charges for NACPC chassis; and
- as opportunities develop, to establish and/or manage new or existing pools.⁴

Pooling Agreement, Article I, Section 1.1(i).

⁴ As discussed, only Class A members will have the right to participate in the operation, management and affairs of NACPC and the right to vote.

II. GENERAL DESCRIPTION OF THE TRANSACTION (49 C.F.R. 1184.2(b))

A. Factual Background

Chassis are metal trailer frames with tires, brakes and lights that are designed for over-the-road transportation of standard-sized international shipping containers. These international shipping containers are loaded or unloaded at ports or at inland terminals and placed on these chassis for transportation by motor carrier to the next destination. Containers destined for export can be loaded on chassis for motor carrier transport to ports or inland terminals. The World Shipping Council estimates that these chassis supported the movement of approximately 28.8 million TEUs (twenty-foot equivalent units) of marine containers in the United States in 2010, for both import and export.⁵

It is important to ocean carriers, shippers, motor carriers, railroads and ports that there are sufficient supplies of chassis available at a port or inland locations to accommodate intermodal import or export shipping containers. In order to maximize use of limited space and to ensure an adequate supply of chassis, many ports and inland terminals prefer a single chassis pool. One popular chassis pool model consists of chassis contributed to the pool primarily by ocean carriers, with the pool operated and managed by Consolidated Chassis Management ("CCM"), which is owned by an ocean carrier association, Ocean Carriers Equipment Management Association, Inc. ("OCEMA"). Contributors to a CCM pool can draw any chassis from the pool regardless of ownership of the chassis, obviating the need for a contributor to have its own nearby duplicate chassis storage facility and ensuring an adequate supply of chassis for all users.

These CCM "gray pools" in which any contributor can use any chassis in the pool regardless of ownership eliminate duplicate expenses and the time-consuming effort of trying to locate and load a container onto a chassis owned by a specific company. Under these CCM pools, CCM manages the chassis in the pool but the usage arrangements such as charges and free

⁵ World Shipping Council, Trade Statistics, www.worldshipping.org/about-the-industry/global-trade/trade-statistics. A TEU is based on the volume of a standard-sized 20 foot long intermodal container.

time for chassis removed from the pool by a pool contributor are determined between the contributor and its customer or motor carrier user.

In addition, some pools are operated by chassis leasing companies which own the chassis, and are not contributory, as distinguished from CCM contributory pools. As discussed below, pools operated by chassis leasing companies are operated on a for profit basis, in contrast to CCM pools which operate on a cost pass through "non-profit" basis.

U.S. motor carriers currently own or lease on a long-term basis only approximately three percent of the U.S. chassis fleet, in contrast to other countries where the chassis are supplied by motor carriers or logistics companies.⁶ Further, U.S. motor carriers for the most part do not own any of the chassis in a pool and therefore can incur charges for use of the chassis, depending on the owner of the chassis and the arrangements between the ocean carrier and the shipper. Ocean carriers have usually provided the chassis at lower charges than chassis leasing companies to motor carriers, and have usually included specified free time. On the other hand, chassis leasing companies generally charge a higher rate to ensure a profit on the lease of the chassis they own.

In 2005, twenty ocean carriers, acting through their association, OCEMA, formed CCM to operate efficient chassis pools on a contributory basis at ports and inland intermodal locations throughout the United States.⁷ These pools, also known as "gray pools," allow members to draw

⁶ National Cooperative Freight Research Program (NCFRP) Report 20: Guidebook for Assessing Evolving International Container Chassis Supply Models, commissioned by the Transportation Research Board of the National Academies, 2012 (hereinafter cited as "NCFRP/TRB Guidebook") at 1, 6.

⁷ OCEMA describes itself as follows:

OCEMA is an association of major U.S. and foreign flag international ocean common carriers. OCEMA provides a forum for its members to discuss operational, safety, and related matters pertaining to the intermodal transportation of ocean freight within the U.S. Included in its scope are equipment-related operational, safety, and regulatory activities such as participation in industry forums, educational sessions, regulatory proceedings and legislative matters.

OCEMA members operate worldwide and serve all major U.S. ports and inland locations, moving cargoes primarily in containers. As a regular part of intermodal transportation services provided to U.S. manufacturers, importers, retailers and others, OCEMA members interchange cargo to be carried to and from U.S. inland locations via motor carriers and railroads. An essential element of these inland operations involves the movement of containers on intermodal chassis and rail cars.

OCEMA's activities are authorized under the U.S. Shipping Act, as amended. The OCEMA Basic Agreement is filed with the Federal Maritime Commission.

<http://www.ocema.org/about.html> (last visited Nov. 8, 2012)

any chassis from the pool and CCM handles the logistics, billing, inventory, supply, maintenance and repair and repositioning of the chassis. CCM and OCEMA operate under separate agreements filed with and authorized by the Federal Maritime Commission.

CCM operates six regional pools in 29 major metropolitan transportation hubs across the country with 125,000 chassis under management.⁸ These 125,000 chassis constitute 24% of the approximately 565,000 chassis in the United States. According to CCM, its pools provide many benefits, including economical charges on a cost pass through "non-profit" basis, better utilization of scarce terminal space, more efficient transit time, better maintenance, Federal Motor Carrier Safety Administration ("FMCSA") compliance and operational savings:

CCM's vision is to operate the most efficient chassis pools for all stakeholders at port and inland intermodal locations throughout the United States. The CCM pools are an "open membership" model that allow many chassis providers to operate from within the pools.

The pools are based on a cooperative model developed by OCEMA. Also known as a "gray" chassis pool, they operate on a cost pass through "non-profit" basis. The Pools provide benefits throughout the intermodal network. Terminals are able to reclaim scarce acreage by reducing the number of chassis stored. Motor carriers are able to transit a terminal more quickly, while obtaining a well-maintained piece of equipment. Ocean carrier customers benefit from a more consistent and reliable equipment supply.

Chassis pools enable ocean carriers, leasing companies, motor carriers and others to access international container chassis under one unified management at the lowest possible cost. Unlike chassis fleets operated by individuals, a pool enables operating savings to be achieved by: reducing the combined inventory levels, maintenance and repair economies of scale and reduced repositioning expense through pool member's synergies.

http://www.ccm_pool.com/About-CCM/Company-Overview.aspx (Nov. 8, 2012)

Traditionally, ocean carriers in total have owned approximately half of all of the estimated 565,000 chassis, either through pools or individually, but that number is shrinking as many ocean carriers are starting to exit from the ownership of chassis. One factor motivating the

⁸ http://www.ccm_pool.com/About-ccm/Company-Overview.aspx. (Nov. 8, 2012)

change is the new rules issued by the FMCSA that have increased liability for intermodal equipment providers, which would include the pool provider responsible for maintenance and repair of the equipment.⁹ Further, in most of the world, the international chassis are owned by the motor carriers and not by the ocean carriers. According to OCEMA:

The United States has always been an anomaly worldwide in terms of providing chassis for the movement of intermodal containers. The general practice in other countries is that the intermodal chassis are provided by motor carriers, terminals, or shippers. For reasons having to do with the development of intermodalism for ocean borne containers in the U.S., chassis are generally provided by ocean carriers in the U.S. This is so despite the fact that the ocean carriers rarely have physical control of the chassis, as they are typically in the care and custody of motor carriers, rail or marine terminals, or shippers.

Over the past two years, a number of ocean carriers have announced plans or intentions to change the way they provide intermodal chassis. Thus, certain carriers have indicated they will limit or eliminate their role in providing chassis for inland transport. The changes in chassis provisioning practices will involve a number of revisions to existing operational arrangements by industry stakeholders. OCEMA is committed to working with carriers and other stakeholders to seek to ensure any transition occurs as smoothly as possible.

<http://www.ocema.org/cpi.html> (Nov. 8, 2012) According to the NCFRB/TRB Guidebook:

"Ocean container chassis supply, ownership, and management in the United States are in a state of transition unlike at any other time in the more than 50-year history of container shipping." NCFRP/TRB Guidebook at 1. As ocean carriers are individually developing their chassis exit strategy and implementing various motor carrier billing models, the chassis landscape is "evolving into an assortment of programs that is confusing to motor carriers." *Id.* at 31.

As ocean carriers exit from the ownership of chassis, chassis leasing companies such as TRAC Intermodal/Interpool, Flexi-Van and Direct ChassisLink ("DCLI") are acquiring the chassis formerly owned by the ocean carriers. These chassis leasing companies now account for

⁹ NCFRB/TRB Guidebook at 10.

65% of all chassis.¹⁰ NCFRP/TRB Guidebook at 6. For example, a large ocean carrier, Maersk, recently sold its subsidiary Direct ChassisLink with its 66,000 chassis (approximately 12% of the U.S. fleet) to a private investment company.¹¹ By contrast, as discussed, motor carriers account for only about three percent of all chassis in use.

Unlike ocean carriers, which historically leased chassis to motor carriers for transport of their own containers at lower charges (including free time), chassis leasing companies may charge higher fees for daily use of a chassis by motor carriers, even for chassis in a CCM pool. As discussed, one of NACPC's important objectives is to acquire and contribute chassis to CCM pools in order to avoid the higher charges from chassis leasing companies.

An April 2012 *Journal of Commerce* article described the recent changes in the U.S. chassis market, including the conclusions of the NCFRP/TRB Guidebook:

"The future evolution of chassis supply in the U.S. will be the result of the interplay of various stakeholder interests, influences and regional differences, within the structural chassis supply context that shaped the U.S. chassis supply landscape," the TRB study concluded. In a clear sign of the complicated nature of the business, no stakeholder - not the trucking companies that operate the equipment, the truckers, ocean carriers, third parties and lessors that own it, or the shippers that rely on it - has the clout to singlehandedly shape the industry's new direction, the study said.

Chassis emerged as a top industry issue nearly a decade ago, when ocean carriers began to embrace equipment-sharing pools and talk about extricating themselves from the burden of supplying free chassis as part of their intermodal services.

Further impetus for change came in 2009 when Maersk Line transferred its chassis to Direct ChassisLink, a new affiliate that rented the equipment to truckers by the day. TRAC Intermodal and Flexi-Van Leasing quickly began offering

¹⁰ According to a recent S&P rating, TRAC has a "dominant presence in both the markets to lease chassis that carry marine cargo containers (i.e., those transferred from ships) and those that carry domestic cargo containers, and it is the largest U.S. chassis leasing company." TRAC/Interpool has slightly more than half of the market for leased marine chassis and TRAC/Interpool and Flexi-Van are the "dominant players among chassis lessors." "S&P assigns Interpool Inc. 'B' rating, outlook is stable," July 27, 2012, <http://www.reuters.com/article/2012/07/27/iduswna214820120727>.

¹¹ Maersk Inc. Announces Sale of Direct ChassisLink, Inc., Direct ChassisLink, Inc. News Release, 2011, www.chassislink.com/NewsRelease.aspx.

daily rentals in addition to longer leases. Numerous ocean carriers quit providing chassis at selected ports and inland points, leaving truckers to make their own arrangements.

Those steps pointed the industry in the direction of the prevailing model in other major countries, where truckers generally provide their own chassis. In the U.S., ocean carriers traditionally have been the main suppliers, a practice dating to modern container shipping's origins as a domestic coastwise competitor to trucking.

Although ocean carriers are reducing their role in chassis, they're still involved heavily, either directly or through equipment-sharing pools. Maersk and CMA CGM are the only major lines that have quit providing chassis in all U.S. locations. Others are eliminating them in phases, usually starting at small terminals and inland depots.

Of the approximately 725,000 chassis in the U.S. fleet, the TRB study estimates 565,000, or 80 percent, are used for international shipments. Leasing companies, principally TRAC, Flexi-Van and DCLI, control two-thirds of those. Ocean carriers supply the rest, except for about 3 percent supplied by motor carriers.

"Fixing Broken Chassis System Proves Elusive," *The Journal of Commerce Magazine*, Joseph Bonney, April 23, 2012, www.idstransportation.com/news/fixing-broken-chassis-system-proves-elusive.

B. NACPC Objectives and Structure

The CCM agreement approved by the Federal Maritime Commission was recently reconfirmed to allow motor carriers, shippers and others to contribute chassis to CCM pools.¹² CCM Pool Agreement, FMC Agreement No. 011962-007, effective Dec. 29, 2011, www.fmc.gov/agreement-lib/011962-007.pdf. NACPC was formed by ten motor carriers to acquire and/or lease chassis on a long-term basis to contribute to the CCM pools as ocean carriers exit from those pools. An important objective of NACPC is to preserve the existing contributory gray pool lower cost model of CCM which has provided an efficient and economical solution to chassis availability. By pooling resources, NACPC also believes it will

¹² NACPC is aware of only one motor carrier which has to date contributed chassis to a CCM pool, Intermodal Cartage Co., which is also a NACPC member.

be able to achieve important cost savings with respect to acquisition and leasing of chassis and on insurance costs and the costs of refurbishing chassis.

Modernizing the U.S. chassis fleet is also an important objective of NACPC, as roughly 40% of U.S. chassis are over 15 years old. NCFRP/TRB Guidebook at 7. The refurbishing will consist of replacing bias ply tires with radial tires, installation of auto-inflation devices, installation of self-adjusting brakes and improved lighting. These improvements should also reduce long-term maintenance costs and improve FMSCA compliance and safety and, as discussed below, provide energy savings and environmental benefits by reducing empty repositioning and lowering truck emissions. Further, modernized chassis will increase driver productivity by reducing delays due to chassis repair.

As discussed, the NACPC Pooling Agreement provides for two classes of membership: Class A members who are entitled to Governance Rights and Financial Rights, and Class B members who are entitled to Financial Rights only. Class A membership is limited to motor carriers only.¹³ Governance Rights include the right to participate in the operation, management or affairs of NACPC and the rights to vote in election of the Board and other significant business and affairs. Financial Rights are limited to the right of each Class B member to share in profits, losses and distributions and to receive interim and liquidation distributions.

While there are currently ten Class A NACPC motor carrier members, NACPC anticipates that other motor carrier members could be added as Class A members and the Agreement provides for admission of additional members.¹⁴ Pooling Agreement, Article XII.

¹³ See *The Baltimore and Ohio Railroad Co., et al., Pooling of Car Service Regarding Multi-Level Cars*, 1988 WL 489594 (I.C.C. 1988).

¹⁴ As discussed in Section XII, NACPC respectfully requests the Board institute a stream-lined notification procedure for addition or withdrawal of members to minimize additional formal applications each time a member seeks to join or withdraw.

The Pooling Agreement also describes the procedure and handling of contributions and capital accounts and allocations and distributions. Pooling Agreement, Articles VIII, IX. Finally, the Pooling Agreement makes clear that motor carrier members will continue to operate independently and are free to acquire chassis for their own use. Pooling Agreement, Article IV, Section 4.7.

III. STANDARDS FOR REVIEW

49 U.S.C. § 14302(a) states that motor carriers subject to jurisdiction under subchapter I of Chapter 135 may not agree or combine with another carrier to pool or divide traffic or services or any part of their earnings without the approval of the Board. Under the applicable statute and regulations, upon submission of a pooling application, the Board either rejects the pooling application or determines initially whether the pooling agreement is of major transportation importance and whether there is a substantial likelihood that the pooling agreement will unduly restrain competition. 49 C.F.R. 1184.3. If neither of these factors is met, the regulations state that the application will be granted without further hearing. If either factor is found to exist, a hearing will be scheduled (normally to receive written verified statements) to consider the issues further. 49 C.F.R. 1184.3

NACPC submits that the Pooling Agreement does not satisfy the factors that would necessitate a further hearing. While the NACPC members regard this proposal as important, given the limited objective of NACPC to contribute chassis to existing CCM pools that have been operational since 2005 or other similar contributory pools, NACPC does not believe that the proposal is of major transportation importance. Currently NACPC membership consists of

only ten of the estimated 7,000 intermodal motor carriers in the U.S.¹⁵ Even if the membership were to grow substantially, NACPC would only own a very small percentage of U.S. chassis, especially given the predominant share of chassis owned by major chassis leasing companies, which collectively own 65% of all chassis. NCFRP/TRB Guidebook at 6.

Further, there is no substantial likelihood that the proposal will unduly restrain competition. As discussed, an important NACPC objective is to preserve the existing CCM pool model for motor carriers which has operated efficient and economical gray chassis pools. NACPC members will continue to compete with each other and are free to acquire and/or lease their own chassis for their own use outside of NACPC. Further, non-NACPC motor carriers are free to form their own chassis pools or to contribute individually to CCM pools or similar pools. In fact, NACPC believes that its proposal will promote competition and benefit shippers by ensuring the availability of lower cost chassis supply in CCM pools to all users, including to non-NACPC members at lower rates, thereby promoting a key statutory objective. As the I.C.C. stated in 1981 in enacting these regulations (which were then set forth in 49 C.F.R. 1139):

The Motor Carrier Act of 1980 seeks to encourage pooling arrangements "when such arrangements are in the interest of better service to the public or of economy of operation and when they do not unreasonably restrain competition." [citing H.R. Rep 96-1069, 96 Cong. 2nd Sess. 34 (1980)]. In view of this charge and the general thrust of that legislation, which is to promote competition, we have taken care not to impede unnecessarily carriers seeking to enter pooling agreements.

46 Fed. Reg. 21,181 (April 9, 1981).

¹⁵ In addition, there are an estimated 214,000 for hire motor carriers and 276,000 private motor carriers in the United States.

**IV. SPECIFIC DESCRIPTION OF THE
OPERATING AUTHORITIES SOUGHT TO BE POOLED
(49 C.F.R. 1184.2(c))**

Each of the ten NACPC motor carriers members is authorized to transport general commodities throughout the United States and the operating registration of each member is attached hereto as Appendix 2. Each motor carrier plans to contribute chassis and/or funds to NACPC so NACPC can, among other things, begin operation by acquiring chassis to donate to existing CCM pools, purchase insurance, pay its on-going operating expenses and appropriate fees and pay for refurbishment of its chassis.

**V. BASIS AND STRUCTURE AS
A GENUINE POOLING ARRANGEMENT
(49 C.F.R. 1184.2(d))**

Under 49 C.F.R. 1184.2(d), applicants are required to show: "The basis to establish that the agreement is a genuine pooling arrangement (as opposed to a lease or interline arrangement)." Neither the Act nor the regulations defines what constitutes a "genuine pooling arrangement," nor is there any further discussion of the "as opposed to a lease or interline arrangement" in the regulations.¹⁶

The proposed pool arrangement is substantially more detailed and involved than a lease agreement.¹⁷ In this case the motor carrier members will pool their knowledge and resources to acquire and manage chassis to contribute to existing pools and also to determine specifications for chassis based on customer needs. NACPC members will also pool their resources to acquire

¹⁶ There do not appear to be similar regulations describing the contents of applications for railroad pooling agreements.

¹⁷ Leases and interchange of vehicles are defined and regulated in 49 C.F.R. 376. That section defines a lease of equipment and sets forth certain requirements for leases. A lease is defined as a contract or arrangement in which the owner grants the use of equipment, with or without driver, for a specified period to an authorized carrier for use in the regulated transportation of property, in exchange for compensation. 49 C.F.R. 376.2(e).

insurance for those chassis and to refurbish or upgrade the chassis by replacing bias-ply tires with radial tires and adding automatic inflation devices, self-adjusting brakes and improved lighting. NACPC will also jointly contract for a variety of services, including information technology, bookkeeping, accounting, legal and administrative support. As part of the management of NACPC, the motor carrier members will jointly agree on purchases of chassis and jointly negotiate for these purchases and for the purchase of insurance coverage and for refurbishing of chassis.

NACPC will also be coordinating with CCM and other pools with respect to their pooling operations and with respect to the charges imposed by these pools. NACPC will also be billing its members for charges imposed by CCM and other pools and also determining and assessing its members for the cost of insurance coverage, chassis refurbishing and other operating costs and also determining the appropriate charges to users of NACPC chassis in CCM and other pools.

As discussed, these activities will be undertaken by NACPC to ensure that its motor carrier members can acquire chassis being sold by ocean carriers and so that NACPC can contribute those chassis to CCM and other pools and avoid the higher charges imposed by chassis leasing companies on motor carriers and other users.

In many respects, NACPC's operations are similar to the TTX pooling agreements, which the I.C.C. first approved in 1974 and which have been reauthorized in a series of subsequent decisions. See *TTX Company, et al., Application for Approval of Pooling Of Car Service with Respect To Flatcars*, STB Finance Docket No. 27590 (Sub-No. 3), (Sept. 23, 2009), 2009 WL 305722. In the most recent TTX decision in August 2010, the Board described the TTX pooling agreement as follows:

A pooling agreement for rail cars is an agreement between or among railroads that, in its basic form, allows the railroad members of the pool to use cars in the pool as they become available. Railroad car pools have also been allowed to establish rates or prices for the use of pooled cars, to purchase pool cars centrally, to engage in centralized maintenance and repair, to standardize design, to conduct joint research and development, and to place cars in pools that are dedicated to particular commodities, shipper groups, or locations.

TTX Company - Application for Approval of Pooling of Car Service with Respect to Flatcars, STB Docket No. FD 27590 (Sub - No. 3) (August 10, 2010).

NACPC's proposed operations are very similar to those described for the TTX pool, especially with respect to setting charges for chassis usage, pooling resources for central purchasing of chassis, insurance and other services and engaging in centralized repair and refurbishing of chassis. In addition, NACPC will develop specifications for chassis it wishes to purchase, including specialized chassis for certain shippers and commodities, and also determine to which pools it wishes to contribute.¹⁸

The I.C.C. and the Board have approved and reauthorized the TTX pooling agreements since 1974 on the basis that they involve pooling of both resources and service. In approving the TTX agreement in 1989, the I.C.C. held that the term "service" as used in the statute has been viewed broadly, including ownership and purchasing of rail cars in pooling agreements. *Trailer Train Co., et al.*, 5 I.C.C. 2d 565. As the I.C.C. stated:

"The language and intent of both the Railbox and Trailer Train pooling agreements indicate that the railroad applicants will consolidate knowledge, resources, and efforts to jointly provide boxcars and flatcars which are, in turn, essential elements in the required provision of adequate car service, and that the proposed pooling will take place through the instrumentalities of Trailer Train and Railbox which will perform many of the functions described in [§ 10102(3)].

Such a pooling of service will result in commonly owned fleets of boxcars and flatcars which, it can be assumed, will generate earnings. The agreements of

¹⁸ In contrast to TTX, NACPC is a start-up, whereas TTX's operations are significantly larger. When the TTX pool was first approved in 1974, the pool had been in operation since 1955 and had grown to over 67,000 rail cars, consisting of 60% of the general flatcar fleet in the U.S. *American Rail Box Car Co. and Trailer Train Co., et al.*, 347 I.C.C. 862, 896 (1974). By 1986, that percentage had risen to 65%. 5 I.C.C. 2d 552, 576 (1989).

record indicate that the costs for design, purchase, and maintenance of cars will be pooled."

5 I.C.C. 2d at 565 (1989) quoting from *Railbox Pool*, 347 I.C.C. at 876-77 (1974). Similar to the TTX agreement, NACPC will consolidate knowledge, efforts and resources to acquire and manage chassis which are an important component of providing intermodal motor carrier service of marine containers.

VI. RELEVANT TRANSPORTATION MARKETS AFFECTED BY THE PROPOSED POOLING ARRANGEMENTS (49 C.F.R. 1184.2(e))

The relevant transportation market affected is the market for international intermodal chassis for transporting standard sized international containers in the U.S. Approximately 32% and 65% of such chassis are owned by ocean carriers and chassis leasing companies respectively, with motor carriers only owning three percent. NCFRP/TRB Guidebook at 6. Of the estimated 565,000 chassis in the U.S., the ten NACPC members own or lease on a long-term basis approximately 2,400 chassis.

Another potential market that may be affected is the motor carrier intermodal transportation of marine chassis. However, there are approximately 7,000 such intermodal motor carriers in the U.S. and NACPC members constitute a very small percentage of that number. In addition, the Board has recognized the extensive competition between railroads and motor carriers for intermodal transportation.¹⁹

¹⁹ The STB also has long recognized that "[b]y its very nature, intermodal [railroad] flatcar service competes with motor and water carriers over many routes and regions." *Trailer Train Co., et al.*, 5 I.C.C. 2d 552, 582 (1989). According to the STB's predecessor agency, rail intermodal service has consistently been found to be widely subject to truck competition. *Id.*

Indeed, because transportation of intermodal TOFC/COFC rail traffic is market driven and subject to widespread and effective competition from both motor carriers and other railroads, the I.C.C. exempted large portions of that traffic from regulation, including the portion of intermodal service provided by motor carriers and virtually all motor pickup and delivery services for TOFC/COFC traffic. 49 C.F.R. 1090; See *WTL Rail Corp.*, STB Docket No. 42092, STB Ex Parte No. 230 (Sub-No. 9) (Feb. 15, 2006).

Importantly, motor carrier participants in NACPC will continue to conduct their own transportation operations and will be free to own chassis on an individual basis. However, each will be able to take advantage of its NACPC membership by being able to use CCM managed "gray pool" chassis at economical rates in pools to which NACPC has donated chassis.

**VII. THE COMPETITIVE ROUTING AND SERVICE ALTERNATIVES
REMAINING IF THE POOLING AGREEMENT IS APPROVED
(49 C.F.R. 1184.2(f))**

Significant competitive routing and service alternatives will continue to exist if the Pooling Agreement is approved. As discussed, the NACPC members will still conduct their transportation operations independently and continue to compete. In fact, the arrangement may increase competition among them by ensuring the availability of lower cost and refurbished chassis through the CCM pools.

Moreover, the ten NACPC members constitute a very small number of the estimated 7,000 intermodal motor carriers and an even smaller number of the estimated 214,000 for-hire motor carriers. The STB has recognized the "vitality" and the "robust competitive market" in the motor carrier industry and the low barriers to entry. *Motor Carrier Bureau - Periodic Review Proceeding*, STB Ex Parte No. 656 (Sub-No. 1) (S.T.B. May 4, 2007); *Clean Truck Coalition, LLC - Pooling Application*, STB Docket No. MC-F-21034 (Nov. 29, 2011) at 5 n.11. The increase in competition in the motor carrier industry since deregulation has also been recognized by the Department of Transportation. Bureau of Transportation Statistics, Section 2: Trucking Industry Background and Structure. The NACPC Pooling Agreement involving ten regional motor carriers will increase competition in the motor carrier transportation of marine containers by ensuring availability to NACPC members and other eligible users of lower cost chassis in CCM and other similar contributory pools.

**VIII. AN ESTIMATE OF THE PUBLIC BENEFITS THAT
WILL ACCRUE FROM APPROVAL OF THE PROPOSED AGREEMENT
(49 C.F.R. 1184.2(g))**

Under 49 C.F.R. 1184.2(g), if there is a lessening of alternatives discussed in response to 49 C.F.R. 1184.2(f), the applicant should provide an estimate of the benefits that will accrue from approval and the new competition that will arise which would offset such lessening. As discussed, NACPC does not believe there will be a lessening of competitive routing and service alternatives.

**IX. EFFECT OF THE POOLING ARRANGEMENT
ON PRESENT AND FUTURE COMPETITION
(49.C.F.R. 1184.2(h))**

NACPC's proposed Pooling Agreement will promote competition by seeking to ensure that CCM's existing gray pools and similar contributory pools in which chassis are available to motor carriers and other users on a lower cost basis will continue to exist. The seamless and economical availability of CCM pool chassis to motor carriers, especially in response to demand fluctuations, encourages competition among motor carriers. With the ready availability of lower cost chassis, motor carriers of all sizes, large and small, can better compete with each other without having to invest in a large chassis fleet or having to lease chassis at much higher rates from chassis leasing companies, all to the benefit of exporters and importers.

Moreover, the ownership of chassis by NACPC will serve to counter-balance the dominant position attained by the major chassis leasing companies, which now account for approximately two-thirds of chassis and which are actively purchasing chassis from ocean carriers as ocean carriers exit from chassis ownership. NACPC can provide an alternate purchaser of chassis from ocean carriers, one which would seek to perpetuate the CCM lower cost gray pools and similar contributory pools.

**X. CERTIFICATION THAT RATES FOR POOLING
OPERATIONS WOULD NOT VIOLATE
THE RESTRICTIONS ON COLLECTIVE RATEMAKING
(49.C.F.R. 1184.2(i))**

NACPC certifies that it will not violate the restrictions on collective rate making set forth in 49 C.F.R. 1331. NACPC will only be establishing charges for the use of its chassis in CCM pools and similar contributory pools based on the cost pass through not-for-profit basis described above. NACPC will not be collectively setting transportation rates.

**XI. THE RELATIVE TRANSPORTATION IMPORTANCE
OF THE POOLING AGREEMENT AS IT WOULD
AFFECT THE PUBLIC AND THE NATIONAL TRANSPORTATION SYSTEM
(49.C.F.R. 1184.2(j))**

NACPC's proposal is an important first step in transitioning chassis ownership from ocean carriers to motor carriers and other entities interested in preserving the current lower cost gray pool model operated by CCM and similar contributory pools. NACPC would contribute its chassis under the CCM model and also refurbish the chassis it acquires by, among other things, adding radial tires, auto-inflation devices and self-adjusting brakes and improving lighting. Further, the motor carrier membership of NACPC will be more responsive to customer concerns regarding chassis charges and availability than chassis leasing companies which historically have not dealt directly with shippers.

**XII. KNOWN NON-POOLING CARRIERS AUTHORIZED TO
TRANSPORT THE SUBJECT TRAFFIC NOT
INCLUDED IN THE POOLING ARRANGEMENT
(49.C.F.R. 1184.2(k))**

As discussed, NACPC estimates there are at least 7,000 motor carriers currently transporting marine containers on chassis, of which only ten have formed NACPC. Obviously it would be impossible to list the thousands of motor carriers not currently included in NACPC. Currently only ten motor carriers have committed to NACPC because these motor carriers are actively interested in participating in NACPC and willing to make contributions. Non-member motor carriers can apply for membership or apply for usage of NACPC chassis. Further, non-member motor carriers can individually acquire chassis and donate them to existing CCM or similar pools or can form their own NACPC style arrangements to acquire and contribute chassis to CCM pools or other pools.

Inclusion of additional motor carriers in NACPC could enhance competition by providing NACPC with additional capital to acquire and refurbish chassis for contribution to existing contributory pools. This would increase the number of chassis owned by motor carriers in these pools which would be available at lower rates than those charged by chassis leasing companies.

NACPC anticipates that additional motor carriers and other entities will seek to join NACPC and respectfully requests the Board simplify this process in the same manner as in *Trailer Train*, 5 I.C.C. 2d 552 (1989). In that matter, the I.C.C. authorized non-applicant carriers to join the pool without a separate I.C.C. proceeding "by simply sending a notice to the I.C.C. that describes the carrier, identifies the pool (including the docket number), and shows that the carrier assents to be bound by the terms of the approved pooling agreement." 5 I.C.C. 2d at 605. The I.C.C. also ordered that any railroad withdrawing from the pool should also notify the I.C.C. *Id.*

**XIII. POTENTIAL ENERGY AND ENVIRONMENTAL
EFFECTS OF THE PROPOSED POOLING ARRANGEMENTS
(49.C.F.R. 1184.2(l))**

NACPC's operations will continue to provide and enhance the energy savings and environmental benefits arising from the CCM pools. These CCM pools minimize empty repositioning moves and truck idling and transit time by obviating the need to locate and load a specific chassis with a specified marine container. This reduces idling time, saves energy and reduces emissions. Moreover, CCM's maintenance and repair services also provide a road-ready chassis fleet, again minimizing idling time caused by a defective chassis needing replacement or repair.

Finally, NACPC plans to refurbish and upgrade its chassis fleet by adding, among other things, radial tires and auto-inflation devices. These improvements will provide energy savings and reduce emissions by reducing fuel consumption.

**XIV. CERTIFICATION BY APPLICANTS
(49.C.F.R. 1184.2(m))**

I, John G. Calender, counsel for NACPC, do hereby certify that the representations made herein are, to the best of my knowledge and belief, true and correct.

XV. CONCLUSION

For all the foregoing reasons, NACPC respectfully requests that the Pooling Agreement which would, among other things, acquire chassis to contribute to existing contributory gray pools be approved without further hearing. The proposed Pooling Agreement seeks to continue an economical and efficient chassis pooling system as ocean carriers are divesting the chassis in

those pools. This proposal will enhance competition by providing a new entrant in pool chassis ownership, improve chassis quality, be responsive to shipper issues and provide competitive alternatives to chassis leasing companies which already control 65% of chassis in the United States.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. G. Calender". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

John G. Calender
Baker Donelson Bearman Caldwell & Berkowitz
920 Massachusetts Avenue, N.W.
Suite 900
Washington, DC 20001
Phone: (202) 508-3474
Fax: (202) 220-2274
E-mail: jcalender@bakerdonelson.com

Attorney for NACPC

APPENDIX 1

LIMITED LIABILITY COMPANY AGREEMENT

dated

[_____, 2012]

of

NORTH AMERICAN CHASSIS POOL COOPERATIVE, LLC

A Delaware Limited Liability Company

TABLE OF CONTENTS

ARTICLE I	DEFINITIONS.....	1
	Section 1.1 Certain Definitions.....	1
	Section 1.2 Construction of Terms; Captions.....	6
ARTICLE II	FORMATION OF COMPANY.....	6
	Section 2.1 Organization.....	6
	Section 2.2 Agreement, Effect of Inconsistencies with Act	6
	Section 2.3 Effective Date	7
	Section 2.4 Name.....	7
	Section 2.5 Registered Agent and Office.....	7
	Section 2.6 Principal Executive Office.....	7
	Section 2.7 Foreign Qualification.....	7
	Section 2.8 Power of Attorney.....	7
ARTICLE III	BUSINESS OF COMPANY	8
	Section 3.1 Permitted Businesses	8
	Section 3.2 Fiscal Year	8
ARTICLE IV	MEMBERS.....	9
	Section 4.1 Members and Capital.....	9
	Section 4.2 Additional Units.....	9
	Section 4.3 Units.....	9
	Section 4.4 Splits and Combinations; Fractional Shares	10
	Section 4.5 Withholding	10
	Section 4.6 Members not Agents of Company	11
	Section 4.7 Members Have No Exclusive Duty to Company or to Other Members	11
	Section 4.8 Loans by Members.....	11
	Section 4.9 Liability of Members.....	11
	Section 4.10 No Expulsion	11
	Section 4.11 Approval of Certain Transactions.....	11
	Section 4.12 Meetings of Members.....	12
	Section 4.13 Management by Members.....	13
ARTICLE V	MANAGEMENT OF THE COMPANY.....	13
	Section 5.1 Board of Governors.....	13
	Section 5.2 Officers.....	15
ARTICLE VI	EXCULPATION AND INDEMNIFICATION	17
	Section 6.1 Exculpation of Board Members and Officers.....	17
	Section 6.2 Indemnification.....	17
	Section 6.3 Indemnification When Successful on Merits or Otherwise.....	18

	Section 6.4	Payment of Expenses in Advance of Disposition of Action	18
	Section 6.5	Non-Exclusivity of Article.....	18
	Section 6.6	Insurance	18
ARTICLE VII	ACCOUNTS AND RECORDS.....		18
	Section 7.1	Records to be Maintained	18
	Section 7.2	Access to Records.....	19
	Section 7.3	Annual Audit	19
	Section 7.4	Reports to Members.....	19
ARTICLE VIII	CONTRIBUTIONS AND CAPITAL ACCOUNTS		19
	Section 8.1	Initial Capital Contributions	19
	Section 8.2	Additional Capital Contributions.....	20
	Section 8.3	Failure Event.....	20
	Section 8.4	Sale or Exchange of Interest	20
	Section 8.5	Interest and Preferential Rights.....	20
ARTICLE IX	ALLOCATIONS AND DISTRIBUTIONS		20
	Section 9.1	Capital Accounts.....	20
	Section 9.2	Member Interests	20
	Section 9.3	Reserves	21
	Section 9.4	Allocations Between Transferor and Transferee	21
	Section 9.5	Annual Distributions.....	21
	Section 9.6	Limitations on Distributions	21
ARTICLE X	TAXES		22
	Section 10.1	Methods of Elections	22
	Section 10.2	Taxes of Taxing Jurisdictions.....	22
ARTICLE XI	DISPOSITION OF A MEMBER'S UNITS		22
	Section 11.1	Limitations	22
	Section 11.2	Permitted Transactions.	22
ARTICLE XII	ADMISSION OF ADDITIONAL MEMBERS		23
ARTICLE XIII	DISSOLUTION AND WINDING UP.....		24
	Section 13.1	Term and Dissolution	24
	Section 13.2	Distribution of Assets on Dissolution.....	24
	Section 13.3	Reasonable Time.....	25
	Section 13.4	Effect of Dissolution.....	25
ARTICLE XIV	AMENDMENT		25
	Section 14.1	Agreement May Be Modified	25
	Section 14.2	Amendment or Modification of Agreement	25

ARTICLE XV	CERTIFICATE OF UNITS	25
	Section 15.1 Certificate.....	25
	Section 15.2 Cancellation of Certificate	25
	Section 15.3 Replacement of Lost, Stolen or Destroyed Certificate	25
	Section 15.4 Membership Units is a Security.....	26
	Section 15.5 Legends.....	26
ARTICLE XVI	MISCELLANEOUS PROVISIONS.....	26
	Section 16.1 Entire Agreement.....	26
	Section 16.2 Rights of Creditors and Third Parties	26
	Section 16.3 Waiver of Right to Partition	26
	Section 16.4 Determination of Matters Not Provided For In this Agreement.....	26
	Section 16.5 Interpretation.....	26
	Section 16.6 Governing Law	27
	Section 16.7 Execution of Additional Instruments.....	27
	Section 16.8 Waivers	27
	Section 16.9 Rights and Remedies Cumulative.....	27
	Section 16.10 Heirs, Successors and Assigns.....	27
	Section 16.11 Counterparts.....	27
EXHIBIT A.....	INFORMATION REGARDING MEMBERS.....	A-1
EXHIBIT B.....	VESTING SCHEDULE.....	B-1

LIMITED LIABILITY COMPANY AGREEMENT
of
NORTH AMERICAN CHASSIS POOL COOPERATIVE, LLC
OPERATING AND POOLING AGREEMENT

THIS LIMITED LIABILITY COMPANY AGREEMENT of North American Chassis Pool Cooperative, LLC (the “Company”), a limited liability company organized pursuant to the Delaware Limited Liability Company Act, is entered into as of the Effective Date, by and among the Company and the Persons who become Members of the Company or parties hereto as provided herein.

ARTICLE I
DEFINITIONS

Section 1.1 Certain Definitions. The following terms used in this Agreement shall have the following meanings unless otherwise expressly provided herein:

- (a) “Acceptance” shall have the meaning set forth in Section 11.3(b).
- (b) “Acceptance Period” shall have the meaning set forth in Section 11.3(c).
- (c) “Act” shall mean the Delaware Limited Liability Company Act, as amended from time to time, and any successor thereto.
- (d) “Additional Member” shall mean any Person who becomes a Member in accordance with Article XII.
- (e) “Affiliate” shall mean with respect to any Person (as defined herein), (i) any Person directly or indirectly controlling, controlled by or under common control with such Person, (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such Person, (iii) any officer, director or general partner of such Person, or (iv) any Person who is an officer, director, general partner, trustee or holder of ten percent (10%) or more of the voting securities of any Person described in clauses (i) through (iii) of this sentence.
- (f) “Agreement” shall mean this Limited Liability Company Agreement, including all amendments hereto adopted from time to time in accordance with Article XIV and the Act.
- (g) “Bankruptcy” shall mean that a Person:
 - (i) makes an assignment for the benefit of creditors;
 - (ii) files a voluntary petition in bankruptcy;

(iii) files a petition or answer seeking for any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(iv) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Person in any proceeding in the nature of the proceedings listed in (iii) above;

(v) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person of all or any substantial part of the Person's properties; or

(vi) has become the subject of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, which proceeding is not dismissed within 120 days after commencement or if within ninety (90) days after the appointment without the Person's consent or acquiescence of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated.

(h) "Board" or "Board of Governors" shall mean the Board of Governors of the Company created pursuant to Article V, the member or members of which shall be considered "managers" under and within the meaning of the Act.

(i) "Business" shall mean the exploration and, subject to receiving appropriate regulatory approvals, the implementation of an efficient chassis supply pooling model on a cost pass through not-for-profit basis that can be implemented on a national basis to support the international intermodal chassis network, which shall include, but is not limited to, the following:

- contribution of resources by the Members (either in the form of capital or chassis) to establish the Company and fund its operations on an on-going basis;
- the sharing of information by the Members regarding the Company's acquisition of chassis based upon customer input and market knowledge and experience and determining appropriate specifications for chassis to be acquired such as load requirements and need for specialized chassis to accommodate refrigerated containers and other shipper requirements;
- negotiating for and acquiring chassis, insurance, chassis upgrades and support services on the best terms and obtain favorable chassis financing;
- management, control and accounting for usage of the Company's chassis to achieve efficient and maximum utilization and better service;
- pooling the cost of ownership, operation, maintenance and refurbishing of chassis;

- establishing and assessing appropriate user charges to Members and non-Members on a cost pass through not-for-profit basis to cover ordinary and necessary expenses for the Company and to sustain its operations, including charges based on usage and volume commitment, and to ensure the Company has sufficient funds for future chassis acquisition, chassis modernization, systems development and future anticipated expenses;
- establishing criteria for the usage of chassis by Members and non-Members;
- determining to which chassis pools to contribute and the number of chassis for each pool;
- interacting with chassis pools regarding usage and charges for the Company's chassis; and
- as opportunities develop, to establish and/or manage new or existing pools.

(j) "Capital Account" shall mean with respect to each Member, the account maintained for each Member pursuant to Section 9.1.

(k) "Capital Contribution" shall mean the Capital Contribution made by the Members as described in Article VIII and set forth on Exhibit A attached hereto.

(l) "Certificate" shall mean the Certificate of Formation of the Company, as filed with the Delaware Secretary of State on October 3, 2012 and as may be amended from time to time.

(m) "Chairman" shall have the meaning set forth in Section 5.1(c).

(n) "Class A Members" shall mean the holders of Class A Units in the Company and the holders of Class A Units shall only be motor carriers.

(o) "Class A Units" shall mean Units that shall consist of Financial Rights and Governance Rights.

(p) "Class B Members" shall mean those holders of Class B Units in the Company.

(q) "Class B Units" shall mean the Units that shall consist solely of Financial Rights with no Governance Rights and no entitlement to vote or participate in management.

(r) "Code" shall mean the Internal Revenue Code of 1986, as amended, or any successor thereto.

(s) "Company" shall mean North American Chassis Pool Cooperative, LLC, a Delaware limited liability company, and any successor limited liability company.

(t) “Disposition” (“Dispose”) shall mean any sale, assignment, transfer, dividend, exchange, mortgage, pledge, grant, hypothecation or other transfer, absolute or as security or encumbrance (including dispositions by operation of law or in Bankruptcy) of any Interest in the Company.

(u) “Distribution” shall mean a transfer of cash, securities or other property made by the Company to a Member on account of such Member’s Interest as described in Article IX or Article XIII.

(v) “Effective Date” shall mean, unless the Surface Transportation Board rejects the Company’s pooling application or determines additional action is required, the earlier to occur of (i) fifty (50) days following the filing of the Company’s pooling application with the Surface Transportation Board or (ii) the date the Company’s pooling application receives the approval from the Surface Transportation Board.

(w) “Entity” shall mean, without limitation, foreign or domestic corporations (both non-profit and other corporations), partnerships (both limited and general), joint ventures, limited liability companies, unincorporated associations, business trusts, other trusts and estates.

(x) “Financial Rights” shall mean the rights of each Member to share in profits, losses and distributions of the Company, to receive interim and liquidation distributions of the Company and to assign such rights in accordance with this Agreement. Financial Rights are expressed in terms of percentage interests as set forth for each Member on Exhibit A.

(y) “Governance Rights” means all of a Class A Member’s rights as a Class A Member in the Company other than Financial Rights, including, without limitation, the right to participate in the operation, management or affairs of the Company and the right to vote in the election of the members of the Board and other significant business and affairs of the Company. Governance Rights shall be expressed as a percentage interest, with the initial percentages being set forth on Exhibit A attached hereto.

(z) “Immediate Family” shall mean the spouses and lineal descendants (by blood or adoption) of individual Members.

(aa) “Interest” shall mean the percentage interest of each Class B Member’s Financial Rights or each Class A Member’s Governance Rights or Financial Rights, as the case may be and each as set forth on Exhibit A attached hereto, by comparing the percentage interest of such Member to the percentage interest of all Members of the Company in each class or collectively, as the case may be.

(bb) “Majority Vote” shall mean, with respect to the Members, approved by more than fifty percent (50%) of the outstanding Class A Units, with respect to the Board, at such time as there is more than one member of the Board, more than fifty percent (50%) of the total number of Board members.

(cc) “Members” shall mean the Class A Members, the Class B Members, the Additional Members and each other Person who is hereafter admitted as a Member after the date hereof in accordance with the terms of this Agreement and the Act. Solely for all federal, state and other tax purposes, the term “Member” shall include a Member’s assignee.

(dd) “Notice” shall be a written instrument. Notice may be delivered in person or sent by certified mail, return receipt requested, postage prepaid or by recognized overnight courier providing signed receipt for delivery. Personally delivered Notices, overnight couriered Notices and facsimile Notices will be effective upon actual receipt. Mailed Notices shall be deemed given on the third business day after they were mailed. Notice to the Company shall be addressed to the Board in care of the Company at the address of the Company’s principal executive office. Notice to a Member shall be addressed to the Member at that Member’s address as reflected in this Agreement, unless the Member has given the Company a Notice of a different address.

(ee) “Officer” shall mean an Officer of the Company elected or appointed pursuant to Section 5.2.

(ff) “Organization Expenses” shall mean those expenses incurred, either by the Company or for which the Company has agreed to make reimbursement, in connection with the formation and maintenance of the Company including such expenses as: (i) registration fees, filing fees, and taxes; and (ii) legal fees incurred in connection with any of the foregoing.

(gg) “Person” shall include an individual or any Entity.

(hh) “Profits” and “Losses” (and any items of income, gain, expense or loss referred to in this Agreement) shall be determined in accordance with federal income tax accounting principles, as modified by Treasury Regulations Section 1.704-1(b)(2)(iv), except that Profits and Losses shall not include items of income, gain and expense that are specially allocated pursuant to Section 9.1 or Section 9.5. Profits shall include income of the Company that is exempt from Federal income tax and Losses shall include expenditures of the Company not deductible in computing Federal income tax. All allocations of income, Profits, gain, Losses and expense (and all items contained therein) for federal income tax purposes shall be identical to all allocations of such items set forth in Article IX, except as otherwise required by Section 704(c) of the Code and Treasury Regulations Section 1.704-1(b)(4).

(ii) “Redemption” shall have the meaning as provided in Section 11.2.

(jj) “Redemption Price” shall have the meaning as provided in Section 11.2

(kk) “Supermajority Vote” shall mean the vote of at least seventy percent (70%) of the outstanding Class A Units (and not just of those Units in attendance in person or by proxy at a meeting of Members).

(ll) “Taxing Jurisdiction” shall mean the taxing jurisdiction of the federal government and of any state, local or foreign government that collects tax, interest or penalties, however designated, on any Member’s share of the income or gain attributable to the Company.

(mm) “TCW” means Tennessee Commercial Warehouse, Inc., a Tennessee corporation.

(nn) “Treasury Regulations” shall mean the permanent, temporary or proposed regulations issued by the Department of the Treasury that are promulgated under the Code, as amended.

(oo) “Units” shall mean collectively, the Class A Units and the Class B Units, with such terms and conditions set forth in Section 4.3.

Section 1.2 Construction of Terms; Captions. Whenever used in this Agreement and when required by the context, the singular shall include the plural and the plural the singular. Pronouns of one gender shall include all genders, including the neuter. The captions as to contents of particular articles, sections or paragraphs contained in this Agreement and the table of contents hereto are inserted for convenience only and are in no way to be construed as part of this Agreement or as a limitation on the scope of the particular articles, sections or paragraphs to which they refer.

ARTICLE II **FORMATION OF COMPANY**

Section 2.1 Organization. The Company has been organized as a Delaware limited liability company by the execution and filing of the Certificate by an authorized person as required by the Act.

Section 2.2 Agreement, Effect of Inconsistencies with Act. The Members hereby adopt this Agreement as the operating agreement of the Company, in the sense that the term “Operating Agreement” or, alternatively, “Limited Liability Company Agreement,” is used in the Act, to set forth the rules, regulations and provisions regarding the management of the business of the Company, the governance of the Company, the conduct of its business and the rights and privileges of its Members. The Members agree to the terms and conditions of this Agreement, as it may from time to time be amended, supplemented or restated according to its terms. The Members intend that this Agreement and the agreements attached hereto as exhibits shall be the sole source of the relationship among the parties with respect to the Company, and, except to the extent a provision of this Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Treasury Regulations or is expressly prohibited or ineffective under the Act, this Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law. To the extent any provision of this Agreement is prohibited or ineffective under the Act, this Agreement shall be considered amended to the smallest degree possible in order to make such provision effective under the Act. If the Act is subsequently amended or interpreted in such a way as to validate a provision of this Agreement that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. Each Member shall be entitled to rely on the provisions of this Agreement, and no Member shall be liable to the Company or to any other Member for any action or refusal to act taken in good faith reliance on this Agreement.

Section 2.3 Effective Date. This Agreement is effective as of the Effective Date.

Section 2.4 Name. The name of the Company shall be North American Chassis Pool Cooperative, LLC. The Company may adopt and conduct its business under such assumed or trade names as the Board may from time to time determine.

Section 2.5 Registered Agent and Office. The registered agent for the service of process and the registered office shall be that Person and location reflected in the Certificate. The Board may, from time to time, change the registered agent or office through appropriate filings with the Delaware Secretary of State. If the registered agent ceases to act as such for any reason or the location of the registered office shall change, the Board shall promptly designate a replacement registered agent or file a notice of change of address as the case may be.

Section 2.6 Principal Executive Office. The principal executive office of the Company is located at 22 Stanley Street, Nashville, Tennessee 37210. The Company may locate its principal executive office at any other place or places as the Board may, from time to time, deem advisable.

Section 2.7 Foreign Qualification. Prior to the Company's conducting business in any jurisdiction other than Delaware, the Board shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Board, with all requirements necessary to qualify the Company as a foreign limited liability company or other relevant entity in that jurisdiction, which qualifications may be under the name of the Company or such other assumed name as the Board may designate.

Section 2.8 Power of Attorney.

(a) Each Member hereby constitutes and appoints the Chairman, the President and the members of the Board or any of them (and any successor thereof by merger, transfer, assignment, election or otherwise), as its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead, to:

(i) Execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (A) all certificates, documents and other instruments (including, without limitation, this Agreement and the Certificate and all amendments or restatements thereof) that the Chairman, any Board member or the President deems necessary or appropriate to form, qualify or continue the existence or qualification of the Company as a limited liability company in the State of Delaware and in all other jurisdictions in which the Company may conduct business or own property; (B) all certificates, documents and other instruments that the Chairman, any Board member or the President deems necessary or appropriate to reflect, in accordance with its terms, any amendment, change, modification or restatement of this Agreement; (C) all certificates, documents and other instruments (including, without limitation, conveyances and a certificate of cancellation) that the Chairman, any Board member or the President deems necessary or appropriate to reflect the dissolution and liquidation of the Company pursuant to the terms of this Agreement; (D) all certificates, documents and other instruments relating to the admission, withdrawal, removal or substitution of any Member pursuant to, or other events described in this Agreement or the Capital

Contribution of any Member; (E) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges of any class or series of Preferred Units issued pursuant to Section 4.4, and (F) all certificates, documents and other instruments (including, without limitation, agreements and a certificate of merger) relating to a merger or consolidation of the Company, subject to any other applicable provisions of this Agreement; and

(ii) Execute, swear to, acknowledge, deliver, file and record all ballots, consents, approvals, waivers, certificates, documents and other instruments necessary or appropriate, in the sole discretion of the Chairman, any Board member or the President to make, evidence, give, confirm or ratify any vote, consent, approval, agreement or other action that is made or given by the Members hereunder or is consistent with the terms of this Agreement or is necessary or appropriate, in the sole discretion of the Chairman, any Board member or the President, to effectuate the terms or intent of this Agreement; provided, however, when required by this Agreement that establishes a percentage of the Members or of the Members of any class or series required to take any action, the Chairman, any Board member or the President may exercise the power of attorney made in this Section 2.8(a)(ii) only after the necessary vote, consent or approval of the Members or of the Members of such class or series, as applicable.

Nothing contained in this Section 2.8(a) shall be construed as authorizing the Chairman, any Board member or the President to amend this Agreement except in accordance with Article XIV or as may be otherwise expressly provided for in this Agreement.

(b) The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest, and it shall survive and not be affected by the subsequent death, incompetency, disability, incapacity, dissolution, Bankruptcy or termination of any Member and the transfer of all or any portion of such Member's Interest and shall extend to such Member's heirs, successors, assigns and personal representatives. Each such Member hereby agrees to be bound by any representation made by the Chairman, any Board Member or the President acting in good faith pursuant to such power of attorney, and each such Member hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the Chairman, any Board member or the President taken in good faith under such power of attorney. Each Member shall execute and deliver to the Company within 15 days after receipt of a request therefore, such further designation, powers of attorney and other instruments as the Chairman, any Board member or the President deems necessary to effectuate this Agreement and the purposes of the Company.

ARTICLE III **BUSINESS OF COMPANY**

Section 3.1 Permitted Businesses. The purpose of the Company is to carry on the Business and to engage in any lawful act or activity for which limited liability companies may be organized under the Act, as from time to time amended.

Section 3.2 Fiscal Year. The fiscal year of the Company shall end on December 31.

ARTICLE IV
MEMBERS

Section 4.1 Members and Capital.

(a) Interests shall be set forth on Exhibit A attached hereto and shall be evidenced in terms of Units.

(b) The following information regarding the Members is set forth on Exhibit A attached hereto:

(i) the identity of all of the Members, the class and number of Units held by such Members; and

(ii) the amount of cash and a description and statement of the agreed value of the Capital Contribution for each Unit.

Section 4.2 Additional Units.

(a) Subject to the guidelines set forth in this Section 4.2 and the requirements of the Act and other applicable laws, the Board may, at any time and from time to time, issue or take subscriptions for additional Class A Units and or Class B Units without the consent of the Members.

(b) The consideration for subscriptions to, or the purchase of, Units shall be paid in such form and in such manner as the Board shall determine. In the absence of actual fraud in the transaction, the judgment of the Board as to the value of such consideration shall be conclusive.

(c) The Board shall have the power to create and cause the Company to issue, whether or not in connection with the issue and sale of any Units or other securities of the Company, rights or options entitling the holders thereof to purchase from the Company any Units of any class or series (whether or not such class or series have theretofore been created), such rights or options to be evidenced by such instrument(s) as shall be approved by the Board. The terms upon which, including the time(s) (which may be limited or unlimited in duration) at or within which, and the price(s) at which any such Units may be purchased from the Company upon the exercise of any such right or option shall be on such terms as stated in a resolution adopted by the Board providing for the creation and issue of such rights or options and, in every such case, shall be set forth or incorporated by reference in the instrument(s) evidencing such rights or options. In the absence of actual fraud in the transaction, the judgment of the Board as to the consideration for the issuance of such rights or options and the sufficiency thereof shall be conclusive.

Section 4.3 Units.

(a) The Units of the Company shall be divided into two classes. The voting powers, designations, preferences and relative, participating, optional or other special rights, powers and duties, and qualifications, limitations and restrictions thereof, relating to the Units are as set forth in this Section 4.3.

(i) Class A Units. Class A Units shall be held only by motor carriers and shall have both Governance Rights and Financial Rights as set forth in this Agreement, and as shown on Exhibit A. The Percentage Interest of the Class A Units will initially equal one hundred percent (100%) of each of the Governance Rights and Financial Rights. The percentage interest in Financial Rights held by the Class A Members will automatically adjust to reflect the increase of the percentage interest in Financial Rights held by the Class B Members. Each Class A Member shall be entitled to vote per the percentage of Governance Rights held by the Class A Member on matters submitted to a vote or consent of Members.

(ii) Class B Units. Class B Units shall solely have Financial Rights in the Company as set forth in this Agreement, and as shown on Exhibit A. Class B Members are not entitled to vote on matters submitted to a vote or consent of Members or to participate in management

(b) Subject to the rights, if any, of the holders of any other classes or series of Units, the holders of Units (i) shall be entitled on a pro rata basis, based upon the percentage of Financial Rights of the holder, to such Distributions as may be declared from time to time by the Board, and, except to the extent otherwise provided herein, upon liquidation or dissolution of the Company shall be entitled on a pro rata basis, based upon the percentage of Financial Rights of the holder, to all remaining assets after satisfaction (by payment or reasonable provision for payment) of the Company's liabilities to creditors, (ii) shall not be subject to any right of redemption by the Company, and (iii) shall have no conversion or exchange rights.

Section 4.4 Splits and Combinations; Fractional Shares.

(a) The Board may make a pro rata distribution of Units to all holders of record or may effect a subdivision or combination of any class or series of Units; provided, however, that after such distribution, subdivision or combination, each Member shall have the same Interest as before such distribution, subdivision or combination.

(b) The Company may, but shall not be required to, issue fractions of a share with respect to any Units.

Section 4.5 Withholding. Notwithstanding any other provision of this Agreement, the Company shall comply with any withholding requirements under any law in connection with the payment of Distributions in respect of Units and shall remit amounts withheld to and file required forms with applicable taxing authorities. In the event of any claimed over-withholding, Members shall be limited to an action against the applicable taxing authority. If an amount required to be withheld was not withheld from an actual distribution, the Company may reduce subsequent Distributions by the amount of such required withholding. Each Member agrees to furnish the Company such forms or other documentation as are necessary to assist the Company in determining the extent of, and in fulfilling, its withholding obligations.

Section 4.6 Members not Agents of Company. No Member, solely by virtue of its Interest in the Company, is an agent of the Company. No Member shall have authority to transact any business for the Company or to bind the Company by its acts as a Member.

Section 4.7 Members Have No Exclusive Duty to Company or to Other Members. Each Member may have other business interests and may engage in other activities in addition to those relating to the Company whether such interests or activities are competitive with the Company or otherwise. Any Member, including those Members who are Officers or on the Board of Governors, may participate or invest in any Affiliate of the Company or any Entity in which the Company owns an interest. No Member shall incur any liability under this Agreement to the Company or to any of the other Members as a result of engaging in any other business or venture. Members shall not owe duties, fiduciary or otherwise, or obligations to the Company or other Members, except as expressly set forth herein.

Section 4.8 Loans by Members. Subject to the approval of the Board, Members may loan funds to the Company for a floating or fixed return and on other terms as set in the discretion of the Board.

Section 4.9 Liability of Members.

(a) To Third Parties. Unless otherwise provided by the Act, no Member shall be liable under any judgment, decree or order of a court, or in any other manner, for any debt, obligation or liability of the Company, whether arising in contract, tort or otherwise, or for the acts or omissions of any other Member, or any agent or employee of the Company.

(b) To the Company. If a Member receives either a return, in whole or in part, on its Capital Contribution or a Distribution made by the Company when the property of the Company is not sufficient to pay all liabilities of the Company except liabilities to Members on account of Capital Contributions, such Member is liable to the Company to the extent now or hereafter provided by the Act.

Section 4.10 No Expulsion. Neither the Members nor the Board may at any time expel any Member under the terms of this Agreement; *provided, however*, that Dispositions of Units resulting in a Person no longer being a Member may occur as permitted under Article XI.

Section 4.11 Approval of Certain Transactions. The following actions may not be undertaken by or on behalf of the Company without the prior approval of the Members by a Majority Vote:

(a) the Disposition of all, or substantially all, of the Company's assets in a single transaction or a series of related transactions other than distributions to the Members made in accordance with this Agreement;

(b) the merger or consolidation of the Company with or into any other Entity, except an Affiliate of the Company, or change or reorganize the Company into another form of legal entity;

- (c) the taking of any action or failing to take any action with respect to the Company that would fall within the definition of Bankruptcy contained in Section 1.1(e)(i)-(iv);
- (d) the dissolution of the Company, as contemplated under Article XIII;
- (e) a material change in the nature of the Company's Business;
- (f) any amendment or modification to the Certificate other than a change to the name or address of the registered agent for the Company or the name of the Company; or
- (g) entering into any agreement to do any of the foregoing.

Section 4.12 Meetings of Members.

(a) Annual Meetings. Annual meetings shall not be required in order to conduct the Business and/or affairs of the Company or take any action with respect thereto, provided, however, that meetings of the Members may be called for any purpose or purposes using the procedures contained in this Section 4.12.

(b) Special Meetings. Special meetings of the Members may be called by not less than a Majority Vote of the Members, or by the Board of Governors. The Members calling a special meeting or the Board, as the case may be, may designate any place, either within or outside the State of Delaware, as the place of special meeting. If no designation is made, the place of special meeting shall be the principal executive office of the Company.

(c) Quorum. A majority of the outstanding Class A Units, represented in person, by telephone or other electronic communication or by proxy, shall constitute a quorum at any meeting of the Members.

(d) Notice of Meetings. Notice of the place, day and hour of any meeting and the purpose or purposes for which the meeting is called shall be given not less than five (5) business days nor more than sixty (60) days before the date of the meeting by or at the direction of the Board or the person or persons calling the meeting, to each Member, whether or not entitled to vote at such meeting.

(e) Manner of Acting. A Majority Vote of the Class A Units shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, by the Certificate or by this Agreement.

(f) Action by Members Without a Meeting. All actions with respect to the Company may be taken without a meeting of the Members; *provided, however*, that any such action is evidenced by one or more written consents describing the action taken, signed by Members holding such percentage of Class A Units as is otherwise required to approve a matter and delivered to the Company for filing with the Company records. Action taken under this section is effective when the requisite percentage of Members has signed the consent, unless the consent specifies a different effective date.

(g) Waiver of Notice. When Notice is required to be given to any Member, a waiver thereof in writing signed by the Member entitled to such Notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such Notice.

(h) Proxies. Members who are entitled to vote may vote at any meeting either in person or by proxy in writing, which shall be filed with the Company before being voted. Such proxy shall entitle the holders thereof to vote the Units of the Member granting the proxy at any meeting or any adjournment of such meeting, but shall not be valid after the final adjournment thereof. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution unless the Member executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period.

(i) Meetings by any Form of Communication. Any and all Members may participate in a meeting by the use of any means of communication by which all Members participating may simultaneously hear each other during the meeting. A Member participating in a meeting by this means is deemed to be present in person at the meeting.

Section 4.13 Management by Members. Except as provided in this Article IV, or as otherwise specifically set forth in this Agreement, the Members shall take no part in the management, control or operation of the Company.

ARTICLE V

MANAGEMENT OF THE COMPANY

Section 5.1 Board of Governors.

(a) Authority; Number. All authority of the Company shall be vested in, and all decisions relating to the management and business affairs of the Company shall be made by, the Board. The Board shall be composed of not less than one nor more than twenty (20) members. The initial number of members of the Board shall be set at ten (10), and the initial Board members shall be Robert Curry, Jr., Russell Graef, Jeff Lang, Mark George, Kevin Lhotak, Randy Guillot, Dave Manning, Greg Owen, Richard Coyle, and Clifton Parker. Each Board member shall be designated as a “manager” within the meaning of the Act.

(b) Appointment; Removal; Vacancies. Each Board member shall hold office until his successor is duly elected or until his removal, death or resignation. A Board member may be removed for cause either by a Majority Vote of the Members or by a Majority Vote of the Board. A Board member also may be removed without cause by a Supermajority Vote of the Members. “Cause” shall be defined as the final conviction of a felony, declaration of unsound mind by court order, adjudication of bankruptcy, nonacceptance of office or conduct prejudicial to the interest of the Company. A Board member who is being removed by the Members may only be removed by the Members at a meeting called for the purpose of removing him, and the meeting notice must state that the purpose, or one of the purposes, of the meeting is the removal of a Board member or Board members. Any vacancy occurring in the Board may be filled either by a Majority Vote of the remaining Board members, even if less than a quorum, or by a Majority Vote of the Members.

(c) Chairman. The Board may (but need not) elect a chairman, by Majority Vote of the Board. The initial chairman shall be Dave Manning.

(d) Meetings.

(i) Annual Meetings. An annual meeting of the Board shall be held at the principal executive office of the Company or at any place, within or without the State of Delaware, and at such date and time as the Board may from time to time elect, for the transaction of any business authorized to be transacted by the Board.

(ii) Special Meetings. Special meetings of the Board may be called by any Board member or by the President of the Company. The Person(s) calling a special meeting may designate any place, either within or outside the State of Delaware, as the place of special meeting. If no designation is made, the place of meeting shall be the principal executive office of the Company.

(iii) Meetings by any Form of Communication. Any and all Board members may participate in an annual or special meeting by the use of any means of communication by which all Board members participating may simultaneously hear each other during the meeting. A Board member participating in a meeting by this means is deemed to be present in person at the meeting.

(e) Quorum. A majority of the Board represented in person or by telephone or other electronic communication shall constitute a quorum at any meeting of the Board.

(f) Notice of Meetings; Waiver of Notice. Notice of the place, day and hour of any meeting and the purpose or purposes for which the meeting is called shall be given not less than five (5) business days before the date of the meeting. When Notice is required to be given to any Board member, a waiver thereof in writing signed by the Person entitled to such Notice, whether before, at or after the time stated therein, shall be equivalent to the giving of such Notice.

(g) Manner of Acting. A Majority Vote of the Board shall be the act of the Board, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, by the Certificate or by this Agreement.

(h) Action Without a Meeting. All actions with respect to the Company may be taken without a meeting of the Board; *provided, however*, that any such action is evidenced by one or more written consents describing the action taken, signed by the number of Board members required to approve the action and delivered to the Company for filing with the Company records. Action taken under this section is effective when the required number of Board members have signed the consent, unless the consent specifies a different effective date.

(i) Committees. The Board shall have the power to appoint any committees as it may deem advisable and may delegate such authority to such committees as is not inconsistent with the Act. The members of such committees shall serve at the pleasure of the Board.

(j) Compensation. The compensation of the Board shall be fixed from time to time by the Board, and no Board member shall be prevented from receiving such compensation by reason of the fact that he is also a Member.

(k) Reimbursement. The Company shall reimburse Board members for the legal expenses, if any, reasonably incurred by them in connection with the formation, organization and capitalization of the Company.

(l) Advisory Board.

(i) Purpose. The Advisory Board shall advise the Board and officers of the Company. The members of the Advisory Board, in their capacity as such, shall not have any authority or voting rights regarding any Board or Company matters, but shall serve only in an advisory capacity.

(ii) Members. The Advisory Board shall consist of one or more natural persons. The members of the Advisory Board shall be appointed by the Board by Majority Vote.

(iii) Term. Each member shall serve on the Advisory Board until either his successor is duly elected or until his removal. An Advisory Board member may be removed at any time, with or without cause, for cause either by the Board by Majority Vote.

(iv) Meetings. The Advisory Board shall meet with the Board and Officers at a minimum of one time per year at such time and place established by the Board. The provisions of Section 5.1 regarding meeting notice and location, to the same extent they apply, shall apply to the annual meeting of the Advisory Board. Neither the Board nor the Members shall be under any obligation to follow the advice offered by the Advisory Board, but will seek the Advisory Board's view on issues.

Section 5.2 Officers.

(a) Number. The Officers of the Company shall be a President and a Secretary, each of whom shall be appointed by the Board. The Board may create such other offices or positions, and appoint Officers to fill such other offices or positions, as the Board may deem necessary or desirable. Any two (2) or more offices may be held by the same person.

(b) President. The President shall preside at all meetings of the Members and the Board of Governors at which he shall be present; he shall have general charge and supervision of the business of the Company; and, in general, he shall perform all duties incident to the office of the president of a corporation, and such other duties as, from time to time, may be assigned to him by the Board of Governors. The initial President shall be Dave Manning.

(c) Secretary. The Secretary shall record all the proceedings of the meetings of the Members and the Board of Governors and of any committees in a book to be kept for that purpose; he shall see that all notices are duly given in accordance with the provisions of this Agreement or as required by law; he shall be custodian of the records of the Company; and, in

general, he shall perform all duties incident to the office of secretary of a corporation, and such other duties as, from time to time, may be assigned to her by the Board of Governors or the President. The initial Secretary shall be Curtis Whalen.

(d) Term of Office, Removal and Resignation.

(i) Each Officer shall hold office until his successor shall have been duly elected and shall have been qualified, or until his death, or until he shall resign or shall have been removed in the manner provided hereinafter.

(ii) An Officer serves at the pleasure of the Board, and the Board may remove an Officer at any time with or without cause. The Board also may eliminate any Officer position other than President or Secretary at any time.

(iii) Any Officer may resign at any time and for any reason.

(iv) In the event of a vacancy in any office because of death, resignation or removal, the Board shall appoint a successor to such office.

(v) This Section 5.2(d) is subject to the contractual rights of an Officer, if any.

(e) Delegation. An Officer may delegate some or all of the power of his office to other persons. An Officer who delegates the duties or powers of his office remains subject to the standards of conduct for an Officer with respect to the discharge of the delegated powers and duties.

(f) Compensation. The Board shall set the compensation of the Company's Officers.

(g) Company Expenses.

(i) In general, the Company's expenses shall be billed directly to and paid by the Company. The Company shall reimburse TCW for: (i) all Organization Expenses incurred by TCW; (ii) the actual costs to the TCW of goods, services, and materials used for and by the Company; and (iii) all reasonable travel and other out-of-pocket expenses incurred by TCW in the development and management of the Company and its business. Notwithstanding the above provision, each party hereto shall bear the costs of its own legal fees incurred prior to the execution of this Agreement in connection with this venture.

(ii) The Company shall also pay all fees and expenses paid to third parties, which third parties may include TCW or other Members of the Company, for accounting, legal, documentation, professional, and reporting services to the Company, which may include, but are not limited to: preparation and documentation of Company bookkeeping, accounting and audits; preparation and documentation of budgets, cash flow projections, and working capital requirements; preparation and documentation of Company state and federal tax returns; and taxes incurred in connection with the issuance, distribution, transfer, registration, and recordation of documents

evidencing ownership of a Membership Interest in the Company or in connection with the business of the Company; expenses in connection with preparing and mailing reports required to be furnished to the Members for tax reporting or other purposes, including reports, if any, that may be required to be filed with any federal or state regulatory agencies, or expenses associated with furnishing reports to Members; expenses of revising, amending, converting, modifying, or terminating the Company or this Agreement; costs incurred in connection with any litigation in which the Company is involved as well as any examination, investigation, or other proceedings conducted by any regulatory agency involving the Company; and costs of any computer equipment or services used for or by the Company.

ARTICLE VI

EXCULPATION AND INDEMNIFICATION

Section 6.1 Exculpation of Board Members and Officers. No Board member or Officer shall be liable to the Company or any Member for any claims, costs, expenses, damages or losses arising out of conduct or decisions undertaken or omitted in good faith and in the belief that such conduct or omission was in, or not opposed to, the interests of the Company; provided, that such conduct or omission did not constitute gross negligence or willful misconduct on the part of such Board member or Officer. No Board member or Officer shall be liable to the Company or any Member for any claims, costs, expenses, damages or losses due to circumstances beyond the control of such Board member or Officer.

Section 6.2 Indemnification. The Company shall indemnify any Person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the Company), by reason of the fact that such Person is or was a Member, Board member, or Officer of the Company, or is or was serving at the request of the Company as a member, director, governor, officer, partner, employee or agent of another Entity against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Person in connection with such claim, action, suit or proceeding. Further, the Company shall indemnify any Person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed claim, action, suit or proceeding by or in the right of the Company to procure a judgment in its favor by reason of the fact that such Person is or was a Member, Board member or Officer of the Company, or is or was serving at the request of the Company as a member, director, governor, officer, partner, employee or agent of another Entity against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection with the defense or settlement of such claim, action, suit or proceeding. Notwithstanding the foregoing, no indemnification under this Section 6.2 shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable for gross negligence or willful misconduct in the performance of such Person's duty to the Company unless and only to the extent that the court in which such claim, action, suit or proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Section 6.3 Indemnification When Successful on Merits or Otherwise. To the extent that a Member, Board member or Officer of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 6.2, or in defense of any claim, issue or matter therein, such Person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection with such successful defense, notwithstanding that such Person has not been successful on any other claim, issue or matter in any such action, suit or proceeding.

Section 6.4 Payment of Expenses in Advance of Disposition of Action. Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding shall be paid by the Company in advance of the final disposition of such claim, action, suit or proceeding upon receipt of an undertaking by or on behalf of the Member, Board member or Officer to repay such amount if and to the extent that it shall be ultimately determined that such Person is not entitled to be indemnified by the Company as authorized in this Article VI.

Section 6.5 Non-Exclusivity of Article. The indemnification authorized in and provided by this Article VI shall not be deemed exclusive of and shall be in addition to any other right to which those indemnified may be entitled under the Certificate, any statute, rule of law, agreement, vote or action of Members or otherwise, both as to actions in such Person's official capacity and as to actions in another capacity while holding such office, and shall continue as to a Person who has ceased to be a Member, Board member or Officer and shall inure to the benefit of the heirs, executors and administrators of such Person.

Section 6.6 Insurance. The Company may purchase and maintain insurance on behalf of any Person who is or was a Member, Board member, Officer, employee or agent of the Company, or is or was serving at the request of the Company as a member, Board member, director, governor, officer, partner, employee or agent of another Entity against any liability asserted against such Person or incurred by such Person in such capacity, whether or not the Company is required or permitted to indemnify such Person against such liability under the provisions of this Article VI or otherwise.

ARTICLE VII **ACCOUNTS AND RECORDS**

Section 7.1 Records to be Maintained. The Company shall maintain the records and accounts of all operations and expenditures of the Company. The Company shall maintain the following records at the Company's principal executive office (with copies at any other location deemed appropriate by Officers of the Company):

- (a) A current list of the full name and last known mailing address of each Member, Board member and Officer.
- (b) A copy of the Certificate and all amendments thereto.
- (c) A copy of the effective Agreement.

(d) Copies of the Company's federal, state and local income tax returns and reports for the three (3) most recent taxable years.

(e) Copies of any financial statements and annual budgets of the Company for the three (3) most recent years and financial information sufficient to provide true and full information regarding the status of the business and financial condition of the Company.

(f) Records of all proceedings of the Members and the Board.

(g) Any written consent action of the Members and the Board.

(h) A record of the number of Units and the Interest held by each Member.

(i) A copy of the Company's most recent annual report delivered to the Delaware Secretary of State.

(j) Any other records and accounts as the Board shall require the Company to maintain.

Section 7.2 Access to Records. The records required to be maintained by the Company pursuant to Section 7.1, and any other books and records of the Company, wherever situated, are subject to inspection and copying upon five (5) business days prior Notice from any Member, by and at the expense of, any Member or the Member's agent or attorney, during regular business hours of the Company.

Section 7.3 Annual Audit. The accounts of the Company may be audited (at the expense of the Company) as of the close of each fiscal year by an independent public accounting firm selected by the Board.

Section 7.4 Reports to Members. The Board may cause to be prepared and mailed (at the expense of the Company) to each Member, including disassociated Persons who no longer are Members but were Members at any time during such fiscal year, periodic financial and operations updates regarding the Company performance and assets once each calendar quarter and promptly after any material change or development. The Company shall provide all Members with information returns required by the Code and the laws of all applicable local and foreign states. The Board shall cause each Member, including disassociated Persons who were Members at any time during such fiscal year, to be furnished with any other information relating to the Company necessary to enable such Person to prepare his federal and state income tax returns.

ARTICLE VIII

CONTRIBUTIONS AND CAPITAL ACCOUNTS

Section 8.1 Initial Capital Contributions. The Capital Contributions of the Members and the number of Units held by each Member shall be set forth on Exhibit A hereto. The Company shall amend Exhibit A from time to time to reflect any changes in the amount of capital contributions, the names or addresses of the Members or their respective Units and Interest.

Section 8.2 Additional Capital Contributions. In the event that the Board, by Majority Vote, determine that Additional Capital Contributions are necessary, the Members, on a pro rata basis to such Member's Membership Interest in the Company, shall contribute such amount as an Additional Capital Contribution.

Section 8.3 Failure Event. The failure by any Member to make when due the Additional Capital Contribution required to be contributed by such Member pursuant to Section 8.2 shall constitute a "Failure Event," and each such Member shall be deemed a "Failing Member." The Additional Capital Contributions made pursuant to Section 8.2 shall be treated as loans made to the Company by the non-Failing Members (each, a "Further Loan"). The Further Loan shall carry an interest equal to two (2) percentage points above the prime rate reported in the Wall Street Journal on the date immediately prior to the Failure Event (the "Further Rate"). If upon the thirtieth (30th) day following the Failure Event ("Failure Notice Date"), each Failing Member has not made the Additional Capital Contribution, each of the non-Failing Members may choose, by notifying the Company in writing within three (3) Business Days of the Failure Notice Date, either (a) to keep the Further Loan as debt owed by the Company to the Member to be repaid at the Further Rate or (b) to convert the Further Loan amount, which shall include any interest earned at the Further Rate, into an equivalent amount of Membership Interest. The Failing Member's Membership shall be proportionately diluted upon such conversion.

Section 8.4 Sale or Exchange of Interest. In the event of a Disposition of some or all of a Member's Units, the Capital Account of the transferring Member shall become the Capital Account of the transferee acquiring such Units, to the extent it relates to the portion of the Units transferred.

Section 8.5 Interest and Preferential Rights. Except as otherwise provided in this Agreement, no interest shall accrue on any Capital Contributions, and no Member shall have any preferential rights with respect to Distributions or upon dissolution of the Company.

ARTICLE IX

ALLOCATIONS AND DISTRIBUTIONS

Section 9.1 Capital Accounts. Solely for bookkeeping purposes, there shall be established for each Member on the books of the Company, as of the first day of each accounting period of the Company, an opening Capital Account which, for the accounting period as of the beginning of which such Member was admitted, shall be an amount equal to such Member's initial Capital Contribution, and which, for each subsequent accounting period, shall be an amount equal to the closing Capital Account balance of such Member for the immediately preceding accounting period, as of the last day of such immediately preceding accounting period, plus any Capital Contribution made by such Member effective as of the first day of the applicable accounting period. The Company has elected for federal and state income tax purposes to be taxed as an association taxable as a C-corporation under the Code. The Capital Account maintenance provisions in this Agreement are solely for book purposes to reflect compliance with the Act.

Section 9.2 Member Interests. At the beginning of each accounting period, the Interest of each Member for such accounting period shall be determined by dividing the number of Units owned

by such Member by the total number of Units issued and outstanding. The sum of the Member Interests shall equal 100%.

Section 9.3 Reserves. All Members, by becoming party to this Agreement, hereby agree and consent to the Board's authority to establish whatever reserves the Board may, in the Board's absolute discretion, determine to be appropriate in order to cover losses, contingencies, liabilities and other matters. Any such reserves shall reduce the net asset value of the Company until such time, if any, as such reserves are reversed. Reserves, when reversed, shall be allocated among the Member's Capital Accounts based on the respective Member Interest attributable to each such account as of the date of reversal.

Section 9.4 Allocations Between Transferor and Transferee. If a Member disposes of any part of its Interest or if an Additional Member is admitted pursuant to Article XII, the distributive shares of the various items of Profit and Loss allocable among the Members during such taxable year of the Company shall be allocated either (a) as if the Company's taxable year had ended on the date of the transfer or admission, or (b) based on the number of days of such taxable year before and after the transfer or admission without regard to the results of Company activities in the respective portions of such taxable year. The Board shall determine which method shall be used to allocate the distributive shares of the various items of Profits and Losses between the Members and any substitute or Additional Members.

Section 9.5 Annual Distributions.

(a) On an annual basis, the Board may determine, in its sole reasonable judgment, to what extent, if any, the Company's current income and gain exceeds the current and anticipated needs for such moneys, including, without limitation, the need for operating expenses, debt service, acquisitions, reserves and mandatory distributions, if any. To the extent such excess exists, the Board may make Distributions on a pro rata basis among all Members with respect to each Member's Interest. Consistent with the foregoing, the Board shall cause the Company to, as promptly as practical after the Company's receipt thereof, distribute to the Members on a pro rata basis all proceeds from the Disposition of any of the Company's assets. Each of the Members acknowledge and agree that consistent with the Business purposes of the Company, no Distributions in an amount greater than each Member's Capital Contributions plus reasonable rate of return, if any, will be distributed to the Members.

(b) Distributions may be in cash, securities or other property (which need not be distributed proportionately), or comprised of parts of any of the foregoing.

Section 9.6 Limitations on Distributions. No Distribution shall be declared and paid unless, after the Distribution is made, the fair market value of the Company's assets is in excess of all liabilities of the Company, including reasonable reserves for operating expenses and debt service, but excluding liabilities to Members on account of their Capital Accounts.

ARTICLE X

TAXES

Section 10.1 Methods of Elections. The Board shall approve the making of any tax elections for the Company allowed under the Code or the tax laws of any Taxing Jurisdiction. Each Member agrees to supply the Company with information necessary to give proper effect to any such election. The Board of Governors shall have the authority to make any tax elections for the Company allowed under the Code, or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company without Member approval and to take any action in connection therewith to cause such election to be made, including but not limited to signing and filing on behalf of the Company or the Members any applicable form or notice.

Section 10.2 Taxes of Taxing Jurisdictions. To the extent that the laws of any Taxing Jurisdiction so require, each Member will submit an agreement indicating that the Member will make timely income tax payments to the Taxing Jurisdiction and that the Member accepts personal jurisdiction of the Taxing Jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such Taxing Jurisdiction the amount of tax, penalties and interest determined under the laws of the Taxing Jurisdiction with respect to such income. This Section 10.2 shall allow the Company to withhold and pay over any federal, state or foreign income taxes as required by applicable law. Any such payments with respect to the income of a Member shall be treated as a Distribution for purposes of Article IX. The Members may, where permitted by the rules of any Taxing Jurisdiction, file a composite, combined or aggregate tax return reflecting the income of the Company and pay the tax, interest and penalties of some or all of the Members on such income to the Taxing Jurisdiction, in which case the Company shall inform the Members of the amount of such tax, penalties and interest so paid.

ARTICLE XI

DISPOSITION OF A MEMBER'S UNITS

Section 11.1 Limitations. No Member may Dispose of all or a portion of such Member's Units, except as permitted under this Article XI. Any attempt to transfer a Member's Units or any portion thereof which does not comply with the terms and conditions of this Agreement shall be null and void.

Section 11.2 Permitted Transactions.

(a) A Member may Dispose of some or all of its Units only if the Disposition is to the Company, pursuant to the terms provided in Section 11.2(d) below.

Notwithstanding a Disposition made in reliance upon Section 11.2(a) above, the Units in the hands of the transferee must remain subject to the same restrictions on transfer as they were when held by the transferor. These transfer restrictions will also apply to (i) any Units transferred by Members to subsequent holders; (ii) any Units subsequently issued by the Company; and (iii) any Units issued pursuant to any options, warrants or convertible securities.

(b) Any certificates evidencing the Units, as described in Article XV, shall bear legends referring to such transfer restrictions, and in the event that the Company utilizes a third party registrar and transfer agent, the Company shall issue stop transfer instructions to such third party to assure compliance with these transfer restrictions.

(c) Dispositions made in accordance with this Section 11.2 shall not be effective until such date as specified in a Notice delivered to the Board, which date must be at least ten (10) days subsequent to the date of the delivery of such Notice.

(d) Any Disposition of Units pursuant to Section 11.2(a) (a "Redemption") shall be made upon the following terms:

(i) written notice that the Member desires to Dispose of its Units must be provided to the Company by the disposing Member no later than ninety (90) days prior to the Redemption;

(ii) the price paid by the Company (the "Redemption Price") shall be determined by the vesting schedule, attached hereto as Exhibit B (the "Vesting Schedule");

(iii) the Redemption Price shall be paid by the Company to the Member, which shall be determined in the Company's sole discretion, either:

1. in an amount equal to 100% of the Redemption Price in cash;
or
2. in an amount equal to 20% of the purchase price (net after reduction for any obligations owed by any Member to the Company), in cash and 80% in a non-negotiable promissory note payable in four (4) approximately equal annual installments of principal, commencing twelve (12) months after the closing, together with interest at a rate equal to the prime rate as published by the Wall Street Journal one business day prior to the issuance of the promissory note.

The ability to Dispose of an Interest under this Section 11.2 shall supersede the restrictions imposed by Section 11.3.

ARTICLE XII

ADMISSION OF ADDITIONAL MEMBERS

From the date of formation of the Company, any Person acceptable to the Board may become an Additional Member of the Company for such consideration as the Board shall determine. No Additional Member shall be entitled to any retroactive allocation of income, gain, loss, deduction or credit by the Company. At the Board's option, at the time the Additional Member is admitted, the Company may close its books (as though the Company's fiscal year had ended) or make pro rata allocations of income, gain, loss, deduction or credit to the Additional Member for that portion of the

Company's fiscal year in which the Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Treasury Regulations promulgated thereunder. Upon admission of an Additional Member, this Agreement shall be amended in order to reflect such Additional Member's Units in the Company.

ARTICLE XIII

DISSOLUTION AND WINDING UP

Section 13.1 Term and Dissolution. The Company shall continue in full force and effect in perpetuity, except that the Company shall be dissolved and its affairs wound up prior to such date, upon the first to occur of the following events:

- (a) The approval of the Members, by a Majority Vote, that the Company should dissolve.
- (b) At such time as there are no Members.
- (c) The entry of a decree of judicial dissolution of the Company under Section 18-801 of the Act by a court of competent jurisdiction.
- (d) The approval by the Board, by a Majority Vote, that the Company should dissolve.

Upon the dissolution of the Company, no further business shall be done in the Company name or on the Company's behalf except the completion of any incomplete transactions and the taking of such action as shall be necessary for the winding up of the affairs of the Company and the distribution of its assets.

Section 13.2 Distribution of Assets on Dissolution. Upon the dissolution of the Company, the Board shall (i) cause the Company property to be sold in such manner as it deems appropriate to obtain the reasonably best prices for its property, (ii) value Company property at its then fair market value for assets that the Board determines need not be sold, but may be distributed in kind to the Members, (iii) determine the Capital Accounts of the Members pursuant to Article IX by treating the day of liquidation as the final day of the fiscal year of the Company, and (iv) take the following actions and make the following distributions out of property of the Company in the following manner and order:

- (a) To creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of Company liabilities.
- (b) To establish any reserves for the period of time the Board deems necessary and advisable to provide for the payment of contingent or unascertainable liabilities.
- (c) To Members in accordance with each Member's Financial Rights. Such Distributions shall be in cash or property (which need not be distributed proportionately) or partly in both, as determined by the Board.

Section 13.3 Reasonable Time. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets in order to maximize the realization of full value therefrom, but in all events, as required by Treasury Regulation Section 1.704-1(b)(2)(ii).

Section 13.4 Effect of Dissolution. Upon dissolution, the Company shall cease carrying on, as distinguished from the winding up of, the Company business, but the Company shall not be terminated, but shall continue until the winding up of the affairs of the Company is completed and a Certificate of Cancellation with respect to the Company, or the equivalent thereof, has been issued by the Delaware Secretary of State.

ARTICLE XIV **AMENDMENT**

Section 14.1 Agreement May Be Modified. This Agreement may be modified as provided in this Article XIV (as the same may from time to time be amended). No Member shall have any vested rights in the Agreement which may not be modified through an amendment thereto.

Section 14.2 Amendment or Modification of Agreement. This Agreement may be amended or modified from time to time only by a written instrument adopted by a Majority Vote of the Members. Notwithstanding the foregoing, any amendment which affects a provision of this Agreement requiring a Supermajority Vote or Sections 3.1 or 8.2 may only be adopted by Supermajority Vote.

ARTICLE XV **CERTIFICATE OF UNITS**

Section 15.1 Certificate. A Unit may be represented by a certificate of membership. The exact contents of a certificate of membership may be determined by the Board but shall be issued substantially in conformity with the following requirements. The certificates of membership shall be respectively numbered serially, as they are issued and shall be signed by the President and the Secretary of the Company. Each certificate shall state the name of the Company, the fact that the Company is organized under the laws of the State of Delaware as a limited liability company, the name of the Person to whom the certificate is issued, the date of issue, and the number of Units represented thereby.

Section 15.2 Cancellation of Certificate. Except as herein provided with respect to lost, stolen, or destroyed certificates, no new certificates of membership shall be issued in lieu of previously issued certificates of membership until former certificates for a like number of Units shall have been surrendered and canceled. All certificates of membership surrendered to the Company for transfer shall be canceled.

Section 15.3 Replacement of Lost, Stolen or Destroyed Certificate. Any Member claiming that its certificate of membership is lost, stolen or destroyed may make an affidavit or affirmation of that fact and request a new certificate. Upon Member's delivery of a satisfactory indemnity to the Company as reasonably required by the Board, a new certificate may be issued of the same tenor and

representing the same number of Units as was represented by the certificate alleged to be lost, stolen or destroyed.

Section 15.4 Membership Units is a Security. The Units of the Company are securities and shall be governed by Article 8 of the Delaware Uniform Commercial Code.

Section 15.5 Legends. Each certificate of membership prepared by the Company shall bear a legend to the effect that the Units of the Company are securities and are governed by Article 8 of the Delaware Uniform Commercial Code. Each certificate of membership shall also bear a legend regarding the restrictions on transfer described in Article XI.

ARTICLE XVI **MISCELLANEOUS PROVISIONS**

Section 16.1 Entire Agreement. This Agreement constitutes the entire agreement among the parties. No party shall be bound by any terms, conditions, statements or representations, oral or written, not herein contained. Each party hereby acknowledges that in executing this Agreement, such party has not been induced, persuaded or motivated by any promise or representation made by any other party, unless expressly set forth herein. Each party hereto has had adequate opportunity to retain legal, accounting, tax and financial counsel to advise him regarding the provisions of this Agreement. All previous negotiations, statements and preliminary instruments by the parties or their representatives are merged in this Agreement.

Section 16.2 Rights of Creditors and Third Parties. This Agreement is entered into by and among the Members for the exclusive benefit of the Company, its Members, and their successors. This Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by the Act or other applicable statute, no such creditor or third party shall have any rights under this Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

Section 16.3 Waiver of Right to Partition. Each of the Members irrevocably waives during the term of the Company any right that such Member, in its capacity as a Member, may have to maintain any action for partition with respect to the property and assets of the Company, and hereby agrees, in its capacity as a Member, not to file a bill for an accounting or otherwise proceed adversely in any manner whatsoever against the other Members or the Company, except for fraud or violation of this Agreement.

Section 16.4 Determination of Matters Not Provided For In this Agreement. The Board shall be empowered to decide in a fair and equitable manner any questions arising with respect to the Company or to this Agreement, and to make such provisions as the Board deems to be in, or not opposed to, the best interests of the Company but which are not specifically set forth herein.

Section 16.5 Interpretation. To the extent any provision of this Agreement is prohibited or ineffective under the Act, the Agreement shall be considered automatically amended to the smallest degree possible in order to make the agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make any provision of this Agreement that was

formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

Section 16.6 Governing Law. This Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Delaware, and specifically the Act, applied without respect to any conflicts-of-law principles.

Section 16.7 Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

Section 16.8 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any agreement or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation. A waiver will only be effective if in writing and signed by the party against whom the waiver is charged.

Section 16.9 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

Section 16.10 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

Section 16.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

[Signatures contained on next page.]

Signatures

IN WITNESS WHEREOF, the parties hereto have executed this Limited Liability Company Agreement as of the Effective Date.

COMPANY:

[_____], LLC

By: _____
[name]
[title]

MEMBER:

[_____], LLC

By: _____
[name]
[title]

Exhibit A

INFORMATION REGARDING MEMBERS

Class A Members

<i>Name of Member</i>	<i>Address</i>	<i>Number of Units</i>	<i>Governance Rights</i>	<i>Financial Rights</i>	<i>Amount of Capital Contribution</i>
Tri-Modal Distribution Services, Inc.	2011 Carson Street, Long Beach, California 90810				
California Multimodal, LLC	P.O. Box 92829, Long Beach, California 90809-1143				
ContainerPort Group, Inc.	1340 Depot Street, Suite 103, Cleveland, Ohio 44116-1741				
Devine & Son Trucking Co. Inc., D/B/A Devine Intermodal	P.O. Box 980160, West Sacramento, California 95798-0160				
Eagle Systems, Inc.	230 Grand Road, Suite A1, East Wenatchee, Washington 98802				
G & P Trucking Company, Inc.	126 Access Road, Gaston, South Carolina 29053				
Intermodal Cartage Co., Inc.	3150 Lenox Park Boulevard, Suite 312, Memphis, Tennessee 38115				
Reliable Transportation Specialists, Inc.	139 Venturi Drive, Chesterton, Indiana 46304				
Tennessee Express, Inc.	22 Stanley Street, Nashville, Tennessee 37210				
Triple G Express, Inc.	P.O. Box 10485, New Orleans, Louisiana 70181				

Class B Members

<i>Name of Member</i>	<i>Address</i>	<i>Number of Units</i>	<i>Governance Rights</i>	<i>Financial Rights</i>	<i>Amount of Capital Contribution</i>
			0%		

Exhibit B
VESTING SCHEDULE

Year(s) of ownership of Units	Redemption Price
Less than 1 year	10% of unrecovered Capital Contribution
1 year but less than 2 years	20% of unrecovered Capital Contribution
2 years but less than 3 years	30% of unrecovered Capital Contribution
3 years but less than 4 years	40% of unrecovered Capital Contribution
4 years but less than 5 years	60% of unrecovered Capital Contribution
5 years or greater	80% of unrecovered Capital Contribution

APPENDIX 2

PM-31
(Rev. 10/84)

INTERSTATE COMMERCE COMMISSION

PERMIT

MC-180717 Sub 1

TRIPLE G EXPRESS, INC.,
Kenner, LA

SERVICE DATE

MAY 28 1986

This Permit is evidence of the carrier's authority to engage in transportation as a contract carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043); the designation of agents upon whom process may be served (49 CFR 1044); the execution of contracts (49 CFR 1053)*; and for passenger carriers, tariffs or schedules (49 CFR 1300 through 13

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

The transportation service to be performed is described on the reverse side of this document.

By the Commission.

JAMES H. BAYNE
Secretary

(SEAL)

*While the execution of contracts must be accomplished, it is unnecessary to file them with the Commission.

NOTE: If there are discrepancies regarding this Permit, please notify the Commission within 30 days.

PM-26
(Rev. 1/95)

SERVICE DATE
April 17, 1998

FEDERAL HIGHWAY ADMINISTRATION

CERTIFICATE

MC 187562 C

INTERMODAL CARTAGE CO., INC.

MEMPHIS, TN, US

This Certificate is evidence of the carrier's authority to engage in transportation as a common carrier of property (except household goods) by motor vehicle in interstate or foreign commerce.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 387), and the designation of agents upon whom process may be served (49 CFR 366). The carrier shall also render reasonably continuous and adequate service to the public. Failure to maintain compliance will constitute sufficient grounds for revocation of this authority.

Thomas T. Vining
Chief, Licensing and Insurance Division

NOTE: Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

PM-31
(Rev. 1/95)

SERVICE DATE
April 17, 1998

FEDERAL HIGHWAY ADMINISTRATION

PERMIT

MC 187562 P

INTERMODAL CARTAGE CO., INC.

MEMPHIS, TN, US

This Permit is evidence of the carrier's authority to engage in transportation as a contract carrier of property (except household goods) by motor vehicle in interstate or foreign commerce.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 387) and the designation of agents upon whom process may be served (49 CFR 366). Failure to maintain compliance will constitute sufficient grounds for revocation of this authority.

Service must be performed under a continuing agreement with one or more persons.

Thomas T. Vining
Chief, Licensing and Insurance Division

NOTE: Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

PM-31
(Rev. 1/95)

SERVICE DATE
September 05, 1995

INTERSTATE COMMERCE COMMISSION

PERMIT

MC 221046 SUB 1 P

RELIABLE TRANSPORTATION SPECIALISTS, INC.
Chesterton, IN

This Permit is evidence of the carrier's authority to engage in transportation as a contract carrier of property (except household goods) by motor vehicle in interstate or foreign commerce.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043) and the designation of agents upon whom process may be served (49 CFR 1044). Failure to maintain compliance will constitute sufficient grounds for revocation of this authority.

Service must be performed under a continuing agreement with one or more persons.

By the Commission.

(SEAL)

VERNON A. WILLIAMS
Secretary

NOTE: Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

INTERSTATE COMMERCE COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

10-1-82 29170

MC 162381

TRI-MODAL DISTRIBUTION SERVICES, INC.
Long Beach, CA

SERVICE DATE
SEP 27 1982

This Certificate of Public Convenience and Necessity is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority will become effective only when the carrier has met the compliance requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043), the designation of agents upon whom process may be served (49 CFR 1044), and tariffs or schedules (49 CFR 1300 through 1310, revised). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For all carriers: Any duplication in this authority and rights currently held does not confer more than one operating right.

For common carriers with irregular route authority: Any irregular route authority authorized in this certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document and will be valid as long as the carrier maintains compliance with the above requirements.

By the Commission.

Agatha L. Mergenovich
Secretary

(SEAL)

Note: If there are any discrepancies regarding this document please notify the Commission within 30 days.

RECEIVED
CALIFORNIA
LICENSE SECTION
SEP 23 11 25 AM '82

MC 162381

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce over irregular routes transporting general commodities (except classes A and B explosives, household goods and commodities in bulk), between points in California.

SERVICE DATE

JUN 9 1989

PM-31
(Rev. 10/84)

INTERSTATE COMMERCE COMMISSION

PERMIT

No. MC 140539 (Sub 7) (DOT # 036777)

TENNESSEE EXPRESS, INC.
NASHVILLE, TN

This Permit is evidence of the carrier's authority to engage in transportation as a contract carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043); the designation of agents upon whom process may be served (49 CFR 1044); the execution of contracts (49 CFR 1053)*; and for passenger carriers, tariffs or schedules (49 CFR 1312).

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

The transportation service to be performed is described on the reverse side of this document.

By the Commission.

NORETA R. MCGEE,
Secretary.

(SEAL)

*While the execution of contracts must be accomplished, it is unnecessary to file them with the Commission.

NOTE: If there are discrepancies regarding this Permit, please notify the Commission within 30 days.

No. MC 140539 (Sub 7)

Page 2

To operate as a contract carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with commercial shippers or receivers of such commodities.

SERVICE DATE

OCT 4 1990

PM-26
(Rev. 10/84)

INTERSTATE COMMERCE COMMISSION

CERTIFICATE

No. MC-140539 Sub 6* (DOT # 036777)

TENNESSEE EXPRESS, INC.
NASHVILLE, TN

This Certificate is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043); the designation of agents upon whom process may be served (49 CFR 1044); and tariffs or schedules (49 CFR 1312). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For common carriers with irregular route authority: Any irregular route authority authorized in this Certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document.

By the Commission.

(SEAL)

SIDNEY L. STRICKLAND, JR.
Secretary

NOTE: If there are any discrepancies regarding this document, please notify the Commission within 30 days.

No. MC 140539 Sub 6*

Page 2

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce; over irregular routes, transporting general commodities (except household goods; commodities in bulk; classes A and B explosives; Poison A; liquefied compressed gas or compressed gas; highway route controlled quantity radioactive materials as defined in section 173.455; or hazardous substances transported in cargo tanks, portable tanks, or hopper type vehicles with capacities in excess of 3,000 water gallons), between points in the United States (except Alaska and Hawaii).

*This authority modifies and cancels No. MC 140539 Sub 6, issued November 13, 1985, as requested by applicant.

INTERSTATE COMMERCE COMMISSION

CERTIFICATE

No. MC 60709 (Sub 14)

G & P TRUCKING COMPANY, INC.
WEST COLUMBIA, SC

This Certificate is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043); the designation of agents upon whom process may be served (49 CFR 1044); and tariffs or schedules (49 CFR 1300 through 1310, revised). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For common carriers with irregular route authority: Any irregular route authority authorized in this Certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document.

By the Commission.

(SEAL)

NORETA R. McGEE,
Secretary

No. MC 60709 (Sub 14)

Page 2

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting general commodities (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

PM-31
(REV. 10/84)

INTERSTATE COMMERCE COMMISSION

PERMIT

No. MC 60709 (Sub 15)

G & P TRUCKING COMPANY, INC.
WEST COLUMBIA, SC

SERVICE DATE
MAY 27 1987

This Permit is evidence of the carrier's authority to engage in transportation as a contract carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043) ; the designation of agents upon whom process may be served (49 CFR 1044) ; the execution of contracts (49 CFR 1053) * ; and for passenger carriers, tariffs or schedules (49 CFR 1312).

This authority is subject to any terms, conditions and limitations as are now, or may later be, attached to this privilege.

The transportation service to be performed is described on the reverse side of this document.

By the Commission.

(SEAL)

NORETA R. McGEE,
Secretary

*While the execution of contracts must be accomplished, it is unnecessary to file them with the Commission.

NOTE: If there are discrepancies regarding this Permit, please notify the Commission within 30 days.

No. MC 60709 (Sub 15)

Page 2

To operate as a contract carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting general commodities (except classes A and B explosives and household goods) , between points in the U.S. (except AK and HI) , under continuing contract(s) with commercial shippers or receivers of such commodities.

RECEIVED

PM-26 FEB 10 1986
(Rev. 10/84)

EAGLE SYSTEMS, INC.

SERVICE DATE

FEB 5 1986

INTERSTATE COMMERCE COMMISSION

CERTIFICATE

MC-157824 Sub 2(A)

EAGLE SYSTEMS, INC.
Wenatchee, WA

This Certificate is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043); the designation of agents upon whom process may be served (49 CFR 1044); and tariffs or schedules (49 CFR 1300 through 1310, revised). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For common carriers with irregular route authority: Any irregular route authority authorized in this Certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document.

By the Commission.

(SEAL)

JAMES E. BAYNE
Secretary

NOTE: If there are any discrepancies regarding this document, please notify the Commission within 30 days.

MC-157824 Sub 2(A)

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the United States (except Alaska and Hawaii).

RECEIVED

FFR 10 1986

PM-31
(Rev. 10/84)

EAGLE SYSTEMS, INC.

INTERSTATE COMMERCE COMMISSION

PERMIT

MC-157824 Sub 2(B)

EAGLE SYSTEMS, INC.
Wenatchee, WA

SERVICE DATE

FEB 5 1986

This Permit is evidence of the carrier's authority to engage in transportation as a contract carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043); the designation of agents upon whom process may be served (49 CFR 1044); the execution of contracts (49 CFR 1053)*; and for passenger carriers, tariffs or schedules (49 CFR 1300 through 1310).

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

The transportation service to be performed is described on the reverse side of this document.

By the Commission.

(SEAL)

JAMES E. BAYNE
Secretary

*While the execution of contracts must be accomplished, it is unnecessary to file them with the Commission.

NOTE: If there are discrepancies regarding this Permit, please notify the Commission within 30 days.

MC-157824 Sub 2(B)

To operate as a contract carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the United States, under continuing contract(s) with commercial shippers or receivers of such commodities.

PM-31
(Rev. 11/92)

INTERSTATE COMMERCE COMMISSION

PERMIT*

No. MC 152125 Sub 8

CONTAINERPORT GROUP, INC.
CLEVELAND, OH

SERVICE DATE
JUL 1 1993

This Permit is evidence of the carrier's authority to engage in transportation as a contract carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043); the designation of agents upon whom process may be served (49 CFR 1044); and for passenger carriers, tariffs or schedules (49 CFR 1312).

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

The transportation service to be performed is described on the reverse side of this document. Service must be performed under a continuing agreement with one or more persons.

By the Commission.

SIDNEY L. STRICKLAND, JR.
Secretary

(SEAL)

NOTE: If there are discrepancies regarding this Permit, please notify the Commission within 30 days.

No. MC 152125 Sub 8

Page 2

To operate as a contract carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with commercial shippers or receivers of such commodities.

*This Permit cancels Permit No. MC 175180 Sub 2-P issued July 12, 1988, acquired pursuant to MCF 20312.

NOTE: Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.



U.S. Department of Transportation
Federal Motor Carrier Safety Administration

400 7th Street SW
Washington, DC 20590

SERVICE DATE
February 18, 2004

DECISION

MC-28599

DEVINE & SON TRUCKING CO., INC.
D/B/A DEVINE & PETERS INTERMODAL
WEST SACRAMENTO, CA
REENTITLED
DEVINE & SON TRUCKING CO., INC.
D/B/A DEVINE INTERMODAL

On February 11, 2004, applicant filed a request to have the Federal Motor Carrier Safety Administration's records changed to reflect a name change.

It is ordered:

The Federal Motor Carrier Safety Administration's records are amended to reflect the carrier's name as DEVINE & SON TRUCKING CO., INC., D/B/A DEVINE INTERMODAL.

Within 30 days after this decision is served, the applicant must establish that it is in full compliance with the statute and the insurance regulations by having amended filings on prescribed FMCSA forms (BMC91 or 91X or 82 for bodily injury and property damage liability, BMC 34 or 83 for cargo liability, or a BMC 84 or 85 for property broker security and BOC-3 for designation of agents upon whom process may be served) submitted on its behalf. Copies of Form MCS-90 or other "certificates of insurance" are not acceptable evidence of insurance compliance. Insurance and BOC-3 filings should be sent to Federal Motor Carrier Safety Administration, 400 Virginia Avenue, SW, Suite 600, Washington, DC 20024.

The applicant is notified that failure to comply with the terms of this decision shall result in revocation of its operating rights registration, effective 30 days from the service date of this decision.

To verify that the applicant is in full compliance, call (202)358-7000 or visit our web site at: <http://li-public.fmcsa.dot.gov>. Any other questions regarding the action taken should be directed to (202)366-9805.

Decided: February 12, 2004

By the Federal Motor Carrier Safety Administration

Angell Sebastian, Chief
Information Systems Division

NC/A

PM-26
(Rev. 1/95)

SERVICE DATE
March 03, 2000

DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

CERTIFICATE

MC 28599 C

DEVINE & SON TRUCKING CO., INC.
D/B/A DEVINE & PETERS INTERMODAL
WEST SACRAMENTO, CA, US

This Certificate is evidence of the carrier's authority to engage in transportation as a **common carrier of property (except household goods)** by motor vehicle in interstate or foreign commerce.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 387), and the designation of agents upon whom process may be served (49 CFR 366). The carrier shall also render reasonably continuous and adequate service to the public. Failure to maintain compliance will constitute sufficient grounds for revocation of this authority.

John F. Grimm, Director
Information Systems & Data Analysis

NOTE: Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

NOTE: This registration is issued pursuant to a transfer. Applicant must establish that it is in full compliance with the statute and the insurance regulations by having amended filings on prescribed FMCSA forms (BMC91 or 91X or 82 for bodily injury and property damage liability, BMC 34 or 83 for cargo liability, or a BMC 84 or 85 for property broker security and BOC-3 for designation of agents upon whom process may be served) on file before beginning operations. Failure to comply will result in revocation of this registration.

PM-31
(Rev. 1/95)

SERVICE DATE
March 03, 2000

DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

PERMIT

MC 28599 P

DEVINE & SON TRUCKING CO., INC.
D/B/A DEVINE & PETERS INTERMODAL
WEST SACRAMENTO, CA, US

This Permit is evidence of the carrier's authority to engage in transportation as a **contract carrier of property (except household goods)** by motor vehicle in interstate or foreign commerce.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 387) and the designation of agents upon whom process may be served (49 CFR 366). Failure to maintain compliance will constitute sufficient grounds for revocation of this authority.

Service must be performed under a continuing agreement with one or more persons.

John F. Grimm, Director
Information Systems & Data Analysis

NOTE: Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

NOTE: This registration is issued pursuant to a transfer. Applicant must establish that it is in full compliance with the statute and the insurance regulations by having amended filings on prescribed FMCSA forms (BMC91 or 91X or 82 for bodily injury and property damage liability, BMC 34 or 83 for cargo liability, or a BMC 84 or 85 for property broker security and BOC-3 for designation of agents upon whom process may be served) on file before beginning operations. Failure to comply will result in revocation of this registration.



U.S. Department of Transportation
Federal Motor Carrier Safety Administration

400 7th Street SW
Washington, DC 20590

SERVICE DATE
August 29, 2006

DECISION
MC-182854
CALIFORNIA MULTIMODAL, INC
SIGNAL HILL, CA
REENTITLED
CALIFORNIA MULTIMODAL, LLC

On August 8, 2006, applicant filed a request to have the Federal Motor Carrier Safety Administration's records changed to reflect a name change.

It is ordered:

The Federal Motor Carrier Safety Administration's records are amended to reflect the carrier's name as CALIFORNIA MULTIMODAL, LLC.

Within 30 days after this decision is served, the applicant must establish that it is in full compliance with the statute and the insurance regulations by having amended filings on prescribed FMCSA forms (BMC91 or 91X or 82 for bodily injury and property damage liability, BMC 34 or 83 for cargo liability, or a BMC 84 or 85 for property broker security and BOC-3 for designation of agents upon whom process may be served) submitted on its behalf. Copies of Form MCS-90 or other "certificates of insurance" are not acceptable evidence of insurance compliance. Insurance and BOC-3 filings should be sent to Federal Motor Carrier Safety Administration, 400 Virginia Avenue, SW, Suite 600, Washington, DC 20024.

The applicant is notified that failure to comply with the terms of this decision shall result in revocation of its operating rights registration, effective 30 days from the service date of this decision.

To verify that the applicant is in full compliance, call (202)358-7000 or visit our web site at: <http://li-public.fmcsa.dot.gov>. Any other questions regarding the action taken should be directed to (202)366-9805.

Decided: August 24, 2006
By the Federal Motor Carrier Safety Administration

Angell Sebastian, Chief
Information Systems Division

N/C/A

PM-26
(Rev. 10/84)

INTERSTATE COMMERCE COMMISSION
CERTIFICATE

SERVICE DATE

FEB 27 1987

No. MC 182854 (Sub 2)

CALIFORNIA MULTIMODAL, INC
LONG BEACH, CA

This Certificate is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043); the designation of agents upon whom process may be served (49 CFR 1044); and tariffs or schedules (49 CFR 1300 through 1310, revised). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For common carriers with irregular route authority: Any irregular route authority authorized in this Certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document.

By the Commission.

(SEAL)

NORETA R. MCGEE,
Secretary.

NOTE: If there are any discrepancies regarding this document, please notify the Commission within 30 days.

No. MC 182854 (Sub 2)

Page 2

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

4 2 8 1

APPENDIX 3

FEDERAL REGISTER CAPTION SUMMARY

DEPARTMENT OF TRANSPORTATION SURFACE TRANSPORTATION BOARD STB DOCKET NO. MC-_____

Motor Carrier Pooling Application - North American Chassis Pool Cooperative, LLC

North American Chassis Pool Cooperative, LLC ("NACPC") seeks approval under 49 U.S.C. § 14302 and 49 C.F.R. 1184 of a motor carrier pooling agreement with respect to international intermodal chassis. The objectives of NACPC include the acquisition, management and refurbishment of international intermodal chassis and contribution of these chassis to contributory "gray" chassis pools in order to obtain better rates for chassis leasing and also to upgrade the chassis, all to better serve the public and promote competition. The motor carriers which have committed to joining and operating NACPC, subject to regulatory approval, are: California Multimodal, LLC; Containerport Group, Inc.; Devine & Son Trucking Co. Inc., D/B/A Devine Intermodal; Eagle Systems, Inc.; G & P Trucking Company, Inc.; Intermodal Cartage Co., Inc.; Reliable Transportation Specialists, Inc.; Tennessee Express, Inc.; Tri-Modal Distribution Services, Inc.; and Triple G Express, Inc.

Under this pooling agreement, NACPC members will:

- contribute resources (either in the form of capital or chassis) to establish NACPC and fund its operations on an on-going basis;
- share information regarding NACPC acquisition of chassis based on customer input and market knowledge and experience and determine appropriate specifications for chassis to be acquired such as load requirements and need for specialized chassis to accommodate refrigerated containers and other shipper requirements;
- agree on programs to negotiate for and to acquire chassis, insurance, chassis upgrades and support services on the best terms and obtain favorable chassis financing;
- undertake joint management, control and accounting for usage of NACPC chassis in order to achieve efficient and maximum utilization and better service;
- pool the cost of ownership, operation, maintenance and refurbishing of chassis;

- establish and assess appropriate user charges on a cost pass through not-for-profit basis to cover ordinary and necessary expenses for NACPC and to sustain its operations, including charges based on usage and volume commitment, and to ensure NACPC has sufficient funds for future chassis acquisition, chassis modernization, systems development and future anticipated expenses;
- establish criteria for usage of chassis by NACPC members and non-members;
- determine to which chassis pools to contribute and the number of chassis for each pool;
- interact with chassis pools regarding usage and charges for NACPC chassis;
- as opportunities develop, to establish and/or manage new or existing pools.¹

Currently chassis leasing companies own 65% of such international chassis, and ocean carriers currently own 32%. Motor carriers own only approximately three percent of these chassis. Ocean carriers are exiting from the ownership of chassis, which they historically have contributed to ocean carrier operated pools and which ocean carriers have generally made available to motor carriers at lower charges than chassis leasing companies. Among other things, NACPC seeks to pool resources to acquire chassis to contribute to these and similar pools in order to obtain the benefit of lower leasing charges for NACPC members and other eligible users. This proposal will provide many benefits including lower charges, upgraded chassis, purchasing and operating efficiencies, increased competition and better service.

The motor carriers committed to NACPC own only approximately 2,400 of the estimated 565,000 international intermodal chassis in the United States. Further, there are an estimated 7,000 motor carriers currently involved in intermodal container transportation in the United States. Given the small presence of the ten NACPC motor carriers with respect to chassis ownership and intermodal motor carrier transportation, the proposal would establish a new entrant which will provide numerous benefits to international intermodal motor carrier transportation in the United States.

¹ As discussed, only Class A motor carrier members will have the right to participate in the operation, management and affairs of NACPC and the right to vote.