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TRUST AGREEMENT AND ASSIGNMENT FOR THE BENEFIT OF CREDITORS

1999-06-23 10:44:00

Cook County Recorder 79.00

OF

RELIABLE BUS COMPANY, INCORPORATED



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THIS TRUST AGREEMENT AND ASSIGNMENT FOR THE BENEFIT OF CREDITORS, is made and entered into this 27TH day of July, 1998 by and between Reliable Bus Company, Incorporated

an Illinois corporation, having its principal place of business at 2549 Waukegan Road, Suite 182, Bannockburn, Illinois 60015

herein referred to as ("Assignor"), and David Abrams of Chicago, Illinois hereinafter referred to as the ("Trustee-Assignee").

WITNESSETH:

WHEREAS, Assignor is indebted to various persons, corporations and other entities and is unable to pay its debt in full, and has decided to discontinue its business, and is desirous of transferring its property to an Assignee for the benefit of its creditors so that the property so transferred may be expeditiously liquidated and the proceeds thereof be fairly distributed to its creditors without any preference or priority, except such priority as is established and permitted by applicable law:

NOW, THEREFORE, in consideration of Assignor's existing indebtedness to its creditors, the express undertakings of the Trustee-Assignee and the mutual covenants contained herein, it is hereby AGREED:

BOX 333-CT1

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1. Creation and Object of Trust. The name of this Trust shall be the Reliable Bus Company Trust and its object shall be the orderly liquidation of the assets and property of Assignor and the distribution of the proceeds therefrom to creditors of Assignor in accordance with applicable law. Assignor hereby nominates and appoints David Abrams as Trustee-Assignee to carry out the purpose of this Trust in accordance with its terms and conditions. The Trustee-Assignee shall have the powers and duties hereinafter set forth, and shall receive reasonable compensation for his services and reimbursement of his expenses, including, but not limited to, reimbursement of his attorney's fees and costs. The Trustee-Assignee may serve without bond. In the event of death, inability or refusal to act, or the resignation of David Abrams, as trustee-Assignee, then in any such event, Mark Jossell is hereby appointed as Successor Trustee-Assignee with all the duties, rights, and powers herein imposed upon and granted to David Abrams, as original Trustee-Assignee.

2. Transfer of Assets. Assignor does hereby grant, convey, assign, transfer, and set over the Trustee-Assignee, and his Successor Trustee-Assignee, all property and assets of Assignor, whatsoever and wheresoever situated, which are now, or ever have been, used in connection with the operation of Assignor's business. The property and assets transferred shall include, without limitation, the right to receive incoming mail, if any such assets exist, all real and personal property, tangible and intangible, including, without limitation, all cash on hand, bonds, bank accounts, all accounts receivable, all furniture, fixtures, equipment, leasehold improvements,

inventory, parts, accessories, machinery, supplies, vehicles, documents, instruments, contracts, contract rights, leases, goodwill, general intangibles, patents, insurance premium and/or policy refunds, tradenames, trademarks, franchises, service marks, and causes of action. Title to the property and assets of Assignor shall immediately vest in the Trustee-Assignee for the use and purpose hereinafter set forth.

3. Powers and Duties of Trustee-Assignee. The Trustee-Assignee shall have, *inter alia*, the following powers, rights, and duties:

(a) To sell and dispose of the said assets in the most practical manner and for the highest and best price reasonably obtainable, including without limitation, the right to operate the business for a limited period of time.

(b) To collect any and all accounts receivable owing to Assignor.

(c) To sell, or otherwise dispose of, if such exists, all real property of Assignor in such manner as the Trustee-Assignee deems best. The Trustee-Assignee shall have the power to execute any and all documents necessary to effectuate a sale of said real property and to convey title to same.

(d) To sell, or otherwise dispose of, if such exists, all tangible and intangible personal property of Assignor including, but not limited to, all of its machinery, equipment, inventory, service marks, tradenames, trademarks, patents, franchises, causes of action and general intangibles, at private or public sale upon such notice and upon such terms as the Trustee-Assignee deems best. The Trustee-Assignee shall have the power to employ an auctioneer to conduct such sale and to advertise such sale in such manner as the Trustee-Assignee deems best. The Trustee-Assignee shall have the power to execute bills of sale and any other

documents necessary to convey title to Assignor's personal property. The Trustee-Assignee shall have the power to enter into an agreement with any party to participate in a liquidation sale with the Trustee-Assignee hereunder for the benefit of creditors sharing in the profits from such sale.

(e) To employ attorneys, accountants, and such additional personnel to whatever extent may be necessary to handle the administrative details of this Trust, including the hiring of additional special counsel by the Trustee-Assignee should he deem it necessary to prosecute or defend any legal or equitable action or to perform such other duties as may be required in the circumstances.

(f) To require all creditors of Assignor to whom a balance is now owing to submit verified statements of their accounts.

(g) To settle any and all claims against or in favor of Assignor, with full power to compromise, or in the discretion of the Trustee-Assignee, to sue or be sued, and to prosecute or defend any claim or claims of any nature whatsoever existing against or in favor of Assignor.

(h) To pay the creditors of Assignor out of the monies which shall come into his hands as Trustee according to the following priorities:

(1) First, all costs for the preservation of the Trust Assets, including the maintenance and insurance thereon, the expenses of operation, and such other administrative expenses as shall reasonably be incurred.

(2) Second, all costs and expenses incidental to the administration of the trust, including the remuneration of the Trustee-Assignee and the payment of reasonable compensation for the services of attorneys for the

Trustee-Assignee. These costs and expenses shall include those incidental to the preparation and execution of this Trust Agreement. The Trustee-Assignee shall also have the right to pay an accountant reasonable compensation for services performed in connection with the administration of this Trust and the attorneys for Assignor for such services as shall be rendered in aid of the administration of the Trust and its property.

(3) To pay such debts that are entitled by law to a priority.

(4) All federal taxes of any nature whatsoever owing as of the date of this Trust Agreement, including, but not limited to, federal withholding tax, federal unemployment tax, and other federal income, excise, property, and employment taxes.

(5) All state and county taxes of any nature whatsoever owing as of the date of this Trust Agreement, including, but not limited to, state and county employment, property, and income taxes.

(6) Payrolls and wages owing as of the date of this Trust Agreement.

(7) With the exception of those classes set forth above, all distributions to other creditors shall be, within each class *pro rata* in accordance with the terms of each creditor's indebtedness, until all such debts are paid in full. The Trustee-Assignee shall make interim distributions whenever the Trustee-Assignee accumulates sufficient funds to enable him to make a reasonable distribution.

(8) The surplus, if any, of the Trust's funds, when all debts of the Trust shall have been paid in full, shall be paid and transferred to Assignor.

(i) To do and perform any and all other acts necessary and proper for the orderly liquidation or other disposition, including, but not limited to, abandonment of the assets and property of Assignor and the distribution of the proceeds derived therefrom to the creditors of Assignor.

4. Rights of Creditors. All rights and remedies of the creditors against any surety or sureties for Assignor are hereby expressly reserved and nothing herein contained shall prevent the creditors or any of them from suing any third parties or persons who may be liable to any of the creditors for all or any part of their claim against Assignor, or from enforcing or otherwise obtaining the full benefit of any mortgage, charge, pledge, lien or their security which they now hold on any property, creditors or effects of Assignor.

5. Administration of Trust. This Trust shall be administered out of court. The Trustee-Assignee shall, however, have the right to ask any court of competent jurisdiction for a declaratory judgment or such other relief as the Trustee-Assignee may deem necessary, if, in his opinion, said action is desirable in connection with any dispute or claim arising hereunder.

6. Liability of Trustee-Assignee. It is understood and agreed that the Trustee-Assignee is to assume no personal liability or responsibility for any of his acts as Trustee-Assignee herein, but his obligation shall be limited to the performance of the terms and conditions of the Trust Agreement, in good faith and in the exercise of his best judgment.

7. Warranties of Assignor. Assignor hereby warrants as follows:

(a) The list of creditors delivered concurrently herewith to the Trustee-

Assignee is complete and correct as reflected by the books and records of Assignor, or through its officers and directors, as to names of said creditors, their addresses and the amount due them.

(b) Assignor, through its officers and directors, shall perform any and all acts reasonably necessary and proper to assist the Trustee-Assignee in the orderly liquidation of Assignor's assets and the collection of monies owing the Assignor, and in the distribution of said monies and the proceeds of asset sales to Assignor's creditors, if requested to do so by the Trustee-Assignee.

8. Acceptance by Trustee-Assignee. The Trustee-Assignee does hereby accept the Trust herein created and agrees to faithfully perform the same according to the best of the Trustee-Assignee's skill, knowledge, and ability. It is understood that the Trustee-Assignee shall receive reasonable compensation for his services rendered in connection with this Trust.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

Reliable Bus Company, Incorporated

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By: Andrew Ellis
Its President

D. Abrams

David Abrams

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STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

99604521

I, EVELYN M. KRAWCZYK a Notary Public in and for the County and State aforesaid, do hereby certify that Andrea Ellis, President of Reliable Bus Company, Incorporated, an Illinois corporation, appeared before me this day in person and acknowledged to me that he signed the foregoing instrument as his free and voluntary act and as the free and voluntary act of said corporation, pursuant to directions and resolutions passed by the Stockholders and Board of Directors of said corporation, for the uses and purposes therein set forth.

GIVEN, under my hand and Notarial Seal this 27th day of July,
A.D. 1998.


Notary Public



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JOINT WRITTEN CONSENT BY THE BOARD OF DIRECTORS AND SHAREHOLDERS

The undersigned, being all of the members of the Board of Directors of Reliable Bus Company, Incorporated, an Illinois corporation (the "Corporation"), and being shareholders of the Corporation, respectively, in accordance with Sections 7.10 and 8.45 of the Illinois Business Corporation Act of 1983, as amended, hereby adopt by this written consent the following resolutions with the same force and effect as if they had been unanimously adopted by the Board of Directors of the Corporation and adopted by the shareholders of the Corporation at duly convened meetings of the Board of Directors and shareholders of the Corporation, respectively:

WHEREAS, for some time the Corporation has suffered from severe financial strain associated with cash flow shortages and other problems; and

WHEREAS, despite efforts by the Board of Directors and management of the Corporation, the Corporation remains unable to operate at a net profit; and

WHEREAS, the Corporation is currently without the operating capital necessary to operate its business and cannot continue to operate its business; and

WHEREAS, the Corporation is desirous of taking the steps necessary to maximize the expeditious and fair payment of indebtedness due to its creditors; and

WHEREAS, under the above circumstances the principal secured creditor of the Corporation is desirous of receiving present payment of the amount due it from the Corporation and is desirous of avoiding the cost and delay of foreclosure proceedings; and

WHEREAS, the Corporation is desirous of avoiding the commencement of a chapter 7 case under the United States Bankruptcy Code; and

WHEREAS, the Board of Directors believes the Corporation to be insolvent and has determined that it is in the best interest of the Corporation and its creditors to make a common law assignment to an assignee for the benefit of the creditors of the Corporation and hereby recommends to the shareholders of the Corporation that they approve such an assignment;

NOW, THEREFORE, BE IT RESOLVED, that the proper officers of the Corporation are hereby authorized and directed to execute and deliver such documentation and to take such other steps as may be necessary to effect a common law assignment to an assignee for the benefit of the creditors of the Corporation;

FURTHER RESOLVED, that such assignment be made to such assignee as may be designated by the president of the Corporation;

FURTHER RESOLVED, that, pending making such assignment, the proper officers of the Corporation are authorized and directed to take such steps as they deem necessary and appropriate to preserve and safeguard the assets of the Corporation, subject to the rights and direction of the Corporation's secured creditor(s);

FURTHER RESOLVED, that this consent shall be deemed effective upon the earlier of (a) its execution and delivery by all of the directors and shareholders of the Corporation, respectively, or (b) the date, not less than five days after a form of this consent has been given to all shareholders of the Corporation, upon which this Consent has been executed and delivered by all of the Directors of the Corporation and the holders of at least two-thirds of the issued and outstanding shares of the Corporation;

FURTHER RESOLVED, that this Consent may be executed in one or more counterparts, all of which taken together, shall constitute one consent.

IN WITNESS WHEREOF, the undersigned have executed this Consent as of the

27TH day of July, 1998.

Andrea Ellis
Andrea Ellis

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LEGAL DESCRIPTION OF REAL PROPERTY

LOTS 38, 39, 40, AND 41 IN BLOCK 10 IN RESUBDIVISION OF BLOCKS 7, 8, 9 AND 10 IN SUBDIVISION OF SOUTH ½ OF SECTION 10-39-13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS, COMMONLY KNOWN AS 4646 WEST FULTON STREET.

Common Address: 4646 West Fulton Street
Chicago, Illinois

Permanent Real Estate Index Number: 16-10-309-008-0000

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