

KRAMER LEVIN NAFTALIS &  
FRANKEL LLP  
*Attorneys for Wilmington Trust Company, as  
Agent for the Debtors' Current Lenders*  
1177 Avenue of the Americas  
New York, New York 10036  
Phone: (212) 715-9100  
Facsimile: (212) 715-8000

MOSES & SINGER LLP  
*Attorneys for the Official Committee of  
Unsecured Creditors*  
The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174  
Phone: (212) 554-7800  
Facsimile: (212) 554-7700

TROUTMAN SANDERS LLP  
*Attorneys for the Debtors and the  
Debtors in Possession*  
The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174  
Phone: (212) 704-6000  
Facsimile: (212) 704-6288

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

---

In re	:	Chapter 11
	:	
M. FABRIKANT & SONS, INC. and	:	Case No. 06-12737 (SMB)
FABRIKANT – LEER INTERNATIONAL, LTD.	:	
	:	(Jointly Administered)
Debtors.	:	
	:	
	:	

---

**NOTICE OF FILING PLAN SUPPLEMENT**

THE HONORABLE STUART M. BERNSTEIN,  
UNITED STATES BANKRUPTCY JUDGE:

PLEASE TAKE NOTICE that on November 13, 2007, as part of the Plan Supplement,  
Wilmington Trust Company (“Wilmington”), in its capacity as collateral and administrative  
agent for the successors and assigns of the prepetition senior secured lenders of the above-

captioned debtors (collectively, the “Current Lenders”), the Current Lenders, the Official Committee of Unsecured Creditors (the “Committee”) and the above-captioned debtors (the “Debtors” and, together with Wilmington, the Current Lenders and the Committee the “Plan Proponents”):

1. filed a substantially final form of the Shared Assets Trust Agreement,<sup>1</sup> attached hereto as Exhibit A (which contains the identity of the members of the Shared Assets Trust Beneficiary Committee);
2. announced Mr. Alan M. Jacobs of AMJ Advisors as Shared Assets Trustee (a copy of the Engagement Letter for Mr. Al Jacobs as Shared Assets Trustee is attached hereto as Exhibit B); and
3. filed a substantially final form of the GUC Trust Agreement, attached hereto as Exhibit C (which contains (i) the identity of the GUC Trustee, Buchwald Capital Advisors LLC, and its proposed compensation; and (ii) the identity of the members of the GUC Trust Beneficiary Committee).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

---

<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Third Amended Disclosure Statement.

Dated: New York, New York  
November 13, 2007

KRAMER LEVIN NAFTALIS & FRANKEL  
LLP

s/ David M. Feldman

David M. Feldman (DF-8070)  
Philip Bentley (PB-0210)  
Matthew K. Kelsey (MK-3137)  
1177 Avenue of the Americas  
New York, New York 10036  
(212) 715-9100

Counsel to Wilmington Trust Company,  
in its Capacity as Agent to the Debtors'  
Prepetition Senior Secured Lenders

MOSES & SINGER LLP

s/ Christopher K. Caruso

Alan Kolod (AK-3108)  
Lawrence L. Ginsburg (LG-6370)  
Christopher J. Caruso (CC-8005)  
The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174  
(212) 554-7800

Counsel to the Official Committee  
of Unsecured Creditors

TROUTMAN SANDERS LLP

s/ Lee W. Stremba

Mitchel H. Perkiel (MP 8691)  
Lee W. Stremba (LS 0117)  
Paul H. Deutch (PD 4859)  
The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174  
(212) 704-6000

Counsel to M. Fabrikant & Sons, Inc. &  
Fabrikant-Leer International, Ltd., as  
Debtors and Debtors in Possession

# Exhibit A

## SHARED ASSETS TRUST AGREEMENT

This Shared Assets Trust Agreement (the “Trust Agreement”), dated as of December \_\_, 2007, by and among M. Fabrikant & Sons, Inc. and Fabrikant-Leer International, Ltd. (each as a debtor and debtor-in-possession, and collectively, the “Debtors”), the GUC Trust (the “GUC Trust”) and Alan M. Jacobs, or his successors and assigns (the “Shared Assets Trustee”). Capitalized terms used in this Trust Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code of the Official Committee of Unsecured Creditors, the Debtors’ Current Lenders, Wilmington Trust Company, as Agent to the Current Lenders, and the Debtors, dated November 7, 2007 (as amended, modified and supplemented from time to time, the “Plan”).

### W I T N E S S E T H:

WHEREAS, the Debtors commenced their bankruptcy cases (collectively, the “Cases”) by filing petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101-1330 (as amended, the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, on November 7, 2007, the Debtors filed the Plan with the Bankruptcy Court;

WHEREAS, on December \_\_, 2007, the Bankruptcy Court entered an order confirming the Plan (the “Confirmation Order”);

WHEREAS, the Plan went effective on the date hereof;

WHEREAS, the Plan provides for (i) the creation of the Shared Assets Trust (the “Shared Assets Trust”); (ii) the transfer by the Debtors to the Shared Assets Trust of their respective right, title, and interest in and to the Shared Assets; (iii) the transfer to the Shared Assets Trust by the Current Lenders and Wilmington Trust Company, as agent to the Current Lenders (“Wilmington”), of their respective right, title, and interest in and to the Shared Assets and the Other Lender Assets; and (iv) the Shared Assets Trust to hold the Shared Assets, the Other Lender Assets and all property that comes into possession of the Shared Assets Trust (collectively, the “Trust Assets”) in trust for the benefit of the holders of beneficial interests therein (the “Beneficiaries”) pursuant to the terms of the Plan and in accordance with this Trust Agreement;

WHEREAS, the Plan provides that the Shared Assets Trust will be administered by the Shared Assets Trustee subject to the oversight of a Shared Assets Trust Beneficiary Committee (the “Beneficiary Committee”);

WHEREAS, the Plan provides that the Current Lenders and Wilmington will receive Shared Assets Trust Class A Interests in the Shared Assets Trust (the “Class A Beneficial Interests”) and that the GUC Trust will receive Shared Assets Trust Class B Interests in the Shared Assets Trust (the “Class B Beneficial Interests”) and hold such

Class B Beneficial Interests for the benefit of the holders of Allowed Class 4 Claims and Allowed Class 5 Claims;

WHEREAS, this Trust Agreement is being executed to establish the Shared Assets Trust and to facilitate the implementation of the Plan;

WHEREAS, the Shared Assets Trust is intended to qualify as a liquidating trust that is treated as a “grantor trust” for federal income tax purposes and the Shared Assets Trustee shall operate and maintain the Shared Assets Trust in accordance with United States Internal Revenue Service (“IRS”) Revenue Procedure 94-45, 1994-2 C.B. 684 and Sections 1.671-4(a) and 301.7701-4 of the Treasury regulations (the “Treasury Regulations”) promulgated under the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”), and all subsequent guidelines or revised, amended or substitute Treasury Regulations regarding liquidating trusts issued by the IRS; and

WHEREAS, the Shared Assets Trust is established for the sole purposes of (i) liquidating the Trust Assets; (ii) making distributions to holders of Administrative/Priority Claims; (iii) making distributions to the holders of the Class A Beneficial Interests (the “Class A Beneficiaries”) and to the GUC Trust, as the holder of the Class B Beneficial Interests (the “Class B Beneficiary”); and (iv) undertaking all administrative functions of the Cases, including the ultimate closing of the Cases; but with no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Shared Assets Trust and the Plan.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Debtors and the Shared Assets Trustee agree as follows:

## ARTICLE 1

### ESTABLISHMENT OF THE SHARED ASSETS TRUST

1.1. Establishment of Shared Assets Trust. Pursuant to the Plan, the Debtors hereby establish the Shared Assets Trust for the benefit of the Beneficiaries.

1.2. Purpose of the Shared Assets Trust.

(a) The Shared Assets Trust shall be established for the sole purpose of liquidating the Trust Assets and winding down the Cases, in accordance with Treasury Regulations Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably related to, and consistent with, the liquidating purpose of the Shared Assets Trust and the Plan. Accordingly, subject to the terms and conditions of this Trust Agreement, the Shared Assets Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Trust Assets; make distributions to the Beneficiaries; resolve the Administrative/Priority Claims and make distributions to the extent such Claims are Allowed; and not unduly prolong the duration of the Shared Assets Trust. The Shared Assets Trustee shall be

charged with liquidating the Trust Assets in the most cost-effective manner possible in the shortest reasonable time, with due regard for the risk that undue haste may reduce the liquidation proceeds of any portion of the Trust Assets. In selling or otherwise monetizing the Trust Assets, the Shared Assets Trustee shall use commercially reasonable efforts to maximize the amount of the net proceeds derived therefrom. The liquidation of the Trust Assets may be accomplished either through the sale of Trust Assets (in whole or in combination), including, without limitation, the sale of any Causes of Action, or through the prosecution, settlement, compromise or dismissal of any Causes of Action, or otherwise.

(b) The Shared Assets Trust shall (i) issue Class A Beneficial Interests to the Current Lenders and Class B Beneficial Interests to the GUC Trust, in each case as provided herein, (ii) investigate, enforce, abandon, prosecute, and resolve (by litigation, settlement or otherwise) all Claims and Causes of Action of the Estates, the Committee, the Current Lenders and/or Wilmington against non-Debtor third parties, vested in or transferred to the Shared Assets Trust; (iii) maintain, sell, abandon, liquidate, collect and reduce to Cash the Trust Assets; (iv) distribute Cash to the Beneficiaries in accordance with the terms of the Plan and this Trust Agreement; (v) reconcile and resolve all Administrative/Priority Claims and make distributions to the holders of Allowed Administrative/Priority Claims; and (vi) take such steps as are reasonably necessary or appropriate to accomplish such purposes, all as more fully provided in, and subject to the terms and provisions of, the Plan and this Trust Agreement.

(c) This Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Shared Assets Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Shared Assets Trustee or the Beneficiaries, or any of them, for any purpose be, or be deemed to be or be treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Beneficiaries to the Shared Assets Trustee shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Trust Agreement.

### 1.3. Transfer of Assets and Rights to the Shared Assets Trust.

(a) As of the Effective Date, each of the Debtors hereby irrevocably and absolutely transfers, assigns, conveys and delivers to the Shared Assets Trust, in trust for the benefit of the Beneficiaries for the uses and purposes stated herein, all of its respective right, title and interest in and to the Shared Assets, including (i) all Claims and all Causes of Action against third parties, excluding the Original Lender Litigation Claims and all Claims and Causes of Action against the Current Lenders or Wilmington, (ii) the Other Lender Collateral, (iii) all Remaining Cash, (iv) all other encumbered assets of the Estates, if any, and (v) all unencumbered assets of the Estates; in each case free and clear of any and all Liens or Claims in such property of any other Person.

(b) As of the Effective Date, the Current Lenders and Wilmington shall be deemed to irrevocably and absolutely transfer, assign, convey and deliver to the Shared Assets Trust:

(i) in trust for the benefit of the Beneficiaries for the uses and purposes stated herein, all of their respective right, title and interest in and to all Claims and all Causes of Action arising from the Fortgang Guaranties, in each case free and clear of any and all Liens or Claims in such property of any other Person; and

(ii) in trust for the benefit of the Class A Beneficiaries for the uses and purposes stated herein, all of their respective right, title and interest in and to the Other Lender Assets, in each case free and clear of any and all Liens or Claims in such property of any other Person.

(c) The Shared Assets Trust hereby accepts all Shared Assets and agrees to hold and administer the Shared Assets for the benefit of the Beneficiaries, subject to the terms and conditions of this Trust Agreement and the Plan. The Shared Assets Trust hereby accepts all Other Lender Assets and agrees to hold and administer the Other Lender Assets for the benefit of the Class A Beneficiaries, subject to the terms and conditions of this Trust Agreement and the Plan.

(d) On or prior to the Effective Date, the Debtors shall deliver or cause to be delivered to the Shared Assets Trust any and all documents that relate to or that may be required or useful in connection with the Causes of Action and the other Trust Assets (including those maintained in electronic format and original documents), whether held by any of them or any of their respective agents, advisors, attorneys, accountants or other professionals, and will provide access to such employees, agents, advisors, attorneys, accountants or professionals hired by the Debtors with knowledge of matters relevant to the Causes of Action and the other Trust Assets.

(e) On or prior to the Effective Date, the Current Lenders and Wilmington shall deliver or cause to be delivered to the Shared Assets Trust any and all documents that relate to or that may be required or useful in connection with the Causes of Action and the other Trust Assets (including those maintained in electronic format and original documents), whether held by any of them or any of their respective agents, advisors, attorneys, accountants or other professionals, and will provide access to such employees, agents, advisors, attorneys, accountants or professionals with knowledge of matters relevant to the Causes of Action and the other Trust Assets.

(f) On the Effective Date, the Shared Assets Trust shall succeed to all of the rights of the Debtors, the Current Lenders and Wilmington with respect to the Shared Assets and the Other Lender Assets. The Shared Assets Trust shall have the exclusive power, on behalf and in the name of the Estates, the Current Lenders and/or Wilmington, as applicable, to prosecute, defend, compromise, settle and otherwise deal with the Shared Assets, the Other Lender Assets and the other Trust Assets, if any, in each case subject to the restrictions of the Plan and the Trust Agreement. The Shared Assets Trustee, on behalf of the Shared Assets Trust as successor in interest to the

Estates, and as a successor in interest to the Current Lenders and Wilmington as and to the extent provided herein, may (i) execute and deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and (ii) take, or cause to be taken, all such further action in order to evidence, vest, perfect or effectuate the transfer of the Shared Assets and the Other Lender Assets to the Shared Assets Trust and the consummation of the transactions contemplated hereby and by the Plan, and to otherwise carry out the intent of the parties hereunder and under the Plan.

1.4. Reliance. The Shared Assets Trustee on behalf of the Shared Assets Trust and any advisors, consultants or other professionals retained by the Shared Assets Trustee or the Shared Assets Trust may rely upon the Debtors' filed schedules and statements of financial affairs and all other information filed by the Debtors or provided by the Debtors or their representatives to the Shared Assets Trust concerning Claims filed against the Debtors, and their reconciliation and documents supporting such reconciliation.

1.5. Valuation of Liquidating Trust Assets. As soon as possible after the Effective Date, (i) the Shared Assets Trustee shall make a good faith valuation (as of the Effective Date and net of the aggregate projected value attributable to Disputed Administrative/Priority Claims) of the Trust Assets, and (ii) the Shared Assets Trustee shall apprise the Beneficiaries of such valuation (and indicate in such writing, such Beneficiaries' respective percentage ownership interests in the Shared Assets Trust based on such Beneficiaries' relative beneficial interests in the Shared Assets Trust as of the Effective Date). The valuation shall be used consistently by all parties (including, without limitation, the Shared Assets Trustee and the Beneficiaries) for all purposes, including, without limitation, federal income tax purposes.

1.6. Appointment of the Shared Assets Trustee. As of the date hereof, the Shared Assets Trustee shall be Alan M. Jacobs. The Shared Assets Trustee shall be subject to removal and replacement as and to the extent provided in Section 7.2.

1.7. Status of Shared Assets Trust and Shared Assets Trustee.

(a) The Shared Assets Trust will be the successor-in-interest to the Debtors with respect to any Cause of Action (other than Causes of Action released under the Plan) which was or could have been commenced by the Debtors prior to the Effective Date, and shall be deemed substituted for the same as the party in any such litigation. The Shared Assets Trustee on behalf of the Shared Assets Trust will be the representative of the Estates, as that term is used in Section 1123(b)(3)(B) of the Bankruptcy Code, and will have the rights and powers provided in the Bankruptcy Code in addition to any rights and powers granted in this Trust Agreement and in the Plan. All Causes of Action constituting Shared Assets are preserved and retained and may be enforced by the Shared Assets Trustee on behalf of the Shared Assets Trust as the representative of the Estates pursuant to Bankruptcy Code Section 1123(b)(3)(B).

(b) The Shared Assets Trust will be the successor-in-interest to the Current Lenders and to Wilmington with respect to all Claims and all Causes of Action

which were or could have been commenced by the Current Lenders or Wilmington prior to the Effective Date arising from (i) the Fortgang Guaranties, (ii) all of the other Shared Assets and (iii) the Other Lender Assets, and shall be deemed substituted for the same as the party in any such litigation.

## ARTICLE 2

### SHARED ASSETS TRUST BENEFICIARY COMMITTEE

#### 2.1. Membership; Authority; Tenure; Removal and Vacancies.

(a) The Shared Assets Trust Beneficiary Committee shall be comprised of five members, three of whom shall be selected by the Class A Beneficiaries (the “Shared Assets Trust Class A Designees”), and two of whom shall be selected by the GUC Trust, as the Class B Beneficiary (the “Shared Assets Trust Class B Designees”). The initial Shared Assets Trust Class A Designees shall be Mr. Luke Beltnick, Mr. Justin Neubauer, and Mr. Mark Kronfeld. The initial Shared Assets Trust Class B Designees shall be Providence Chain Co. and Mr. Pranav Shah.

(b) The Beneficiary Committee shall have the authority to supervise and review the activities and performance of the Shared Assets Trustee and to remove and replace the Shared Assets Trustee in accordance with Section 7.2. The members of the Beneficiary Committee shall have the authority to designate counsel and other professional persons to act on their behalf, including, without limitation, to attend, participate in and vote at meetings of the Beneficiary Committee, and the reasonable fees and expenses of any such counsel and other professional persons shall be reimbursed by the Shared Assets Trust. This Trust Agreement is not intended to create a fiduciary duty, and neither the Beneficiary Committee nor any of its members will be deemed to be or be treated in any way as fiduciaries of the Beneficiaries.

(c) Each member of the Beneficiary Committee shall hold office until the termination of the Shared Assets Trust or the earlier resignation, removal, death or disability of such member. Any Shared Assets Trust Class A Designee may resign upon 30 days’ prior written notice to the Shared Assets Trustee, the other members of the Beneficiary Committee and the Class A Beneficiaries. Any Shared Assets Trust Class B Designee may resign upon 30 days’ prior written notice to the Shared Assets Trustee, the other members of the Beneficiary Committee and the GUC Trust, as the Class B Beneficiary. Any member of the Beneficiary Committee may be removed for cause by the Bankruptcy Court, and for cause or without cause by a vote of a majority of the outstanding number of Class A Beneficial Interests, in the case of a Shared Assets Trust Class A Designee, and by the GUC Trust, in the case of a Shared Assets Trust Class B Designee. In the event of the resignation, removal, death or disability of a Shared Assets Trust Class A Designee, a replacement shall be appointed by the remaining Shared Assets Trust Class A Designees. In the event of the resignation, removal, death or disability of a Shared Assets Trust Class B Designee, a replacement shall be appointed by the GUC Trust.

## 2.2. Governance.

(a) Except as otherwise provided herein, at least three members of the Beneficiary Committee must be present to constitute a quorum to conduct Beneficiary Committee business; *provided, however*, that the Beneficiary Committee may, by the majority vote of its members, designate a single member of the Beneficiary Committee to exercise all power of the Beneficiary Committee in respect of any particular matter. Except as otherwise provided in this Trust Agreement, no Beneficiary Committee business may be conducted absent a quorum. Meetings may be held in person, telephonically or electronically, and upon such notice as may be determined from time to time by the Beneficiary Committee. Members of the Beneficiary Committee may act by unanimous written consent in lieu of a meeting.

(b) Beneficiary Committee actions other than pursuant to written consent as contemplated by Section 2.2(a) may be approved only by a majority of members entitled to vote on a matter. The Beneficiary Committee shall meet at least quarterly during the first year after the Effective Date, and at least semi-annually thereafter, unless the Beneficiary Committee, in its discretion, elects to meet more or less frequently. The Beneficiary Committee is authorized to retain such counsel and other professional persons to represent the Shared Assets Trust as selected by a majority of the Beneficiary Committee members. The Beneficiary Committee shall have the right to cause the Shared Assets Trust to purchase insurance coverage with respect to the liabilities and obligations of its members or the Shared Assets Trustee under this Trust Agreement.

2.3. Actions Requiring Beneficiary Committee Approval. The Shared Assets Trustee shall report all material matters to and seek approval for all material decisions from the Beneficiary Committee. Without limiting the foregoing, the Shared Assets Trustee shall obtain the approval of the Beneficiary Committee prior to taking any action regarding any of the following matters:

(a) The commencement, abandonment, settlement, compromise, dismissal and/or election not to pursue of any Cause of Action or any other litigation by the Shared Assets Trust wherein the amount in controversy exceeds \$250,000;

(b) The sale, transfer, assignment, other disposition or abandonment of any Trust Assets having a valuation in excess of \$250,000;

(c) The engagement, compensation and indemnification on behalf of the Shared Assets Trust of consultants, agents, employees and professional persons to assist the Shared Assets Trustee with respect to the Shared Assets Trustee's responsibilities, powers and duties under this Trust Agreement;

(d) The compensation and, except as provided in Section 8.1, indemnification of the Shared Assets Trustee;

(e) The settlement, compromise or other resolution of any Disputed Administrative/Priority Claims wherein the amount in controversy exceeds \$250,000;

(f) The borrowing of any funds by the Shared Assets Trust or the pledge of any portion of the Trust Assets;

(g) Any matter which could reasonably be expected to have a material effect on the amount of distributions to be made by the Shared Assets Trust to the Class A Beneficiaries or the Class B Beneficiary;

(h) The examination of any Person pursuant to Bankruptcy Rule 2004;  
and

(i) Notwithstanding anything to the contrary contained herein and consistent with the Plan, all other matters as may be specified in writing by the Beneficiary Committee.

The Shared Assets Trustee shall report in writing to the Beneficiary Committee in accordance with Section 4.5, as to the status of all Causes of Action, Disputed Administrative/Priority Claims, and all other matters that materially affect the Shared Assets Trust or the Trust Assets.

2.4. Conflicts. Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each member of the Shared Assets Trust Beneficiary Committee shall report to the Shared Assets Trust Beneficiary Committee any conflict of interest such member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such member might have with respect to or in connection with such matter or issue). A member who has or who may have a conflict of interest shall be deemed to be a “conflicted member” who shall not be entitled to vote or take part in any action with respect to such matter or issue (however such member shall be counted for purposes of determining the existence of a quorum); and the vote or action with respect to such matter or issue shall be undertaken only by members of the Shared Assets Trust Beneficiary Committee who are not “conflicted members.”

### ARTICLE 3

#### BENEFICIARIES; RESERVE; TRUST FUNDING; TRANSFER OF INTERESTS

##### 3.1. Identification of Beneficiaries of Shared Assets Trust.

(a) On or before the Effective Date, Wilmington shall deliver to the Shared Assets Trustee a list of each Person to receive Class A Beneficial Interests as of the Effective Date pursuant to the Plan and the amount of Class A Beneficial Interests to be delivered to, and the address of, each such Person. The GUC Trust will be the sole holder of the Class B Beneficial Interests, which it will hold for the benefit of the holders of Allowed Class 4 Claims and Allowed Class 5 Claims.

(b) On or before the Effective Date, the Debtors shall deliver to the Shared Assets Trustee a list of the holder of each Administrative/Priority Claim that is Disputed as of the Effective Date, as well as the address of each such holder.

(c) The Beneficiaries are the holders of the Beneficial Interests and shall be recorded and set forth in a register maintained by the Shared Assets Trustee expressly for such purpose. All references in this Trust Agreement to the Beneficiaries or the holders of Beneficial Interests shall be read to mean holders of record as set forth in the official register maintained by the Shared Assets Trustee and shall not mean any beneficial owner not recorded on such official registry. Unless expressly provided herein or in the Plan, the Shared Assets Trustee may establish a record date that it deems practicable for determining the Beneficiaries for a particular purpose.

3.2. Distributions of Beneficial Interests. On or as soon as reasonably practicable after the Effective Date, the Shared Assets Trustee shall issue Class A Beneficial Interests and Class B Beneficial Interests to the Persons entitled to receive them as of the Effective Date pursuant to the Plan and in accordance with and as reflected on the Debtors' list described in Section 3.1(a). Beneficial Interests may be issued in fractional amounts. The Beneficial Interests will be uncertificated; accordingly, distributions of Beneficial Interests will be accomplished solely by the entry of the names of the holders and their respective Beneficial Interests in the books and records of the Shared Assets Trust.

3.3. Payment of Claims.

(a) All Claims that under the Plan are payable in full in Cash ("Cash Claims") will be satisfied out of the Remaining Cash, the proceeds of the Shared Assets and/or any financing that may be obtained by the Shared Assets Trust, and on the Effective Date, the Shared Assets Trust will establish a reserve (the "Claims Reserve") in respect of or otherwise make adequate provision for the payment when Allowed of, without duplication, (i) all Disputed Administrative Claims, (ii) unpaid professional fees that are the subject of an interim fee application that is pending before the Bankruptcy Court as of the Effective Date ("Accrued Professional Fees"), and (iii) professional fees that are set forth in the Debtors' Cash Collateral Budget dated as of September 18, 2007, as such budget may be amended from time to time ("Estimated Professional Fees"). For purposes of establishing the Claims Reserve, the Shared Assets Trustee shall reserve the filed or face amount of each Disputed Administrative Claim, if any, or if no amount is so specified, the amount of such Disputed Administrative Claim as estimated by the Shared Assets Trustee in good faith. Notwithstanding anything to the contrary contained herein, no distributions will be made to the Beneficiaries unless and until all Cash Claims are either paid in full or reserved or otherwise provided for.

(b) The Claims Reserve shall be maintained and evidenced on the books and records of the Shared Assets Trust (and except as provided herein, shall not be subject to the claims of any other Person), and the Shared Assets Trustee shall keep records as to the applicable amounts reserved in respect of each Disputed Administrative Claim, each Accrued Professional Fee and each Estimated Professional Fee.

(c) In the event any Disputed Administrative Claim, Accrued Professional Fee or Estimated Professional Fee becomes an Allowed Claim, such Claim shall be satisfied by the distribution from the Claims Reserve of the aggregate amount of Cash reserved, or the amount otherwise provided, for such Claim, and payable to such holder pursuant to the Plan, or in a manner otherwise contemplated in the Plan. Notwithstanding anything to the contrary contained in this Trust Agreement or the Plan, the Shared Assets Trust shall have no liability whatsoever to any holder of a Disputed or Allowed Administrative Claim, Accrued Professional Fee or Estimated Professional Fee except as provided in this Section 3.3, and no such holder shall have any recourse to or claims against any of the other assets or properties of the Shared Assets Trust.

(d) From time to time as Disputed Administrative Claims, Accrued Professional Fees and Estimated Professional Fees are Disallowed or become Allowed in amounts less than the amounts reserved for them, the Cash set aside in the Claims Reserve that as a result is not distributable to such holder shall be released from the Claims Reserve.

#### 3.4. Funding the Shared Assets Trust.

(a) On the Effective Date, all Remaining Cash shall be transferred to the Shared Assets Trust together with the other Shared Assets, and the Beneficiary Committee shall determine the amount of the initial funding for the administration of the Shared Assets Trust and the GUC Trust (collectively, the “Funding Amount”). The Shared Assets Trust shall distribute 25% of the Funding Amount (but in no event more than \$500,000) to the GUC Trust, which shall hold such funds in a segregated account (the “Claims Reconciliation Reserve”).

(b) In the event that the Beneficiary Committee determines that it is advisable to supplement the Funding Amount, the Shared Assets Trustee shall use commercially reasonable efforts on or after the Effective Date to obtain financing to fund the administration of the Shared Assets Trust and the GUC Trust. Twenty-five (25%) percent of any such financing shall be distributed to the GUC Trust and added to the Claims Reconciliation Reserve until such Reserve is funded in the aggregate with \$500,000.

(c) As provided in the Plan, funds in the Claims Reconciliation Reserve may be used only to pay expenses incurred by the GUC Trust in reconciling and resolving Class 4 and Class 5 Claims and for other administrative purposes (other than pursuing the Original Lender Litigation Claims). As provided in the Plan, none of the Funding Amount, including that portion distributed to the GUC Trust, no funds in the Claims Reconciliation Reserve and no funds or assets of the Shared Assets Trust may be used to fund any expenses incurred in connection with any Cause of Action against any Original Lender, and the Shared Assets Trustee is prohibited from incurring any such expenses.

(d) In the event that the Claims Reconciliation Reserve is funded, in whole or in part, with funds borrowed by the Shared Assets Trust, the GUC Trust shall

reimburse to the Shared Assets Trust the principal amount of any Claims Reconciliation Reserve funding in excess of \$250,000 that has been so borrowed, as described in Section 5.03 of the Plan (the “Claims Reconciliation Reserve Reimbursement Obligation”).

(e) With the approval of the Beneficiary Committee, the Shared Assets Trustee may replenish the Funding Amount out of the Net Proceeds of the Shared Assets (a “Trust Funding Replenishment”); provided, however, that if the aggregate Funding Amount (excluding any Claims Reconciliation Reserve funding) reaches \$2,500,000, each subsequent Trust Funding Replenishment shall be limited to 50% of any Net Proceeds of the Shared Assets not yet distributed to holders of Class A and Class B Beneficial Interests, unless the Beneficiary Committee shall determine otherwise by a consenting vote of no less than four members. As provided in the Plan, the GUC Trust has the right to reserve in the Claims Reconciliation Reserve additional amounts that would otherwise be distributed by the GUC Trust, or to use any such amounts to replenish the Claims Reconciliation Reserve.

(f) That portion of the Funding Amount that is not distributed to the GUC Trust in connection with the Claims Reconciliation Reserve shall be used, together with the Trust Funding Replenishments, if any, to fund all costs and expenses incurred by the Shared Assets Trust, including all such costs and expenses relating to the care and maintenance of the Trust Assets and the wind down of the Cases, the fees and expenses of the Shared Assets Trustee and the members of the Beneficiary Committee and their respective professionals.

(g) After repayment of any outstanding Claims Reconciliation Reserve Reimbursement Obligation, any funds remaining in the Claims Reconciliation Reserve that are not spent in connection with the reconciliation of Class 4 Claims or Class 5 Claims or other administrative purposes (other than pursuing the Original Lender Litigation Claims) may be distributed to the GUC Trust Beneficiaries by the GUC Trust. All other Funding Amounts remaining in the Shared Assets Trust shall be distributed to the Class A and Class B Beneficiaries, as set forth in Section 6.2.

3.5. Transferability of Beneficial Interests. The Shared Assets Trust cannot have more than 100 Beneficiaries, which shall be determined in accordance with Treasury Regulation 1.7704-1(h). Upon notice to the Shared Assets Trust by any Beneficiary, the Shared Assets Trustee shall amend the register to reflect any transfer of Beneficial Interests by such Beneficiary to a transferee as set forth in the notice; *provided, however*, that the Shared Assets Trustee need not reflect any transfer (or make any distribution to any transferee) and will give notice to such Beneficiary that no transfer has been recognized in the event the Shared Assets Trustee reasonably believes that such transfer (or the distribution to such transferee) (i) may constitute a violation of applicable laws, (ii) might cause there to be more than 100 Beneficiaries, or (iii) might cause the Shared Assets Trust to be required to become a reporting company under the Securities Exchange Act of 1934, as amended; and provided further, that the Class B Beneficiary may sell, assign, dispose of or otherwise transfer all, but not less than all, of the Class B Beneficial Interests.

3.6. Rights of GUC Trust. If the Beneficiary Committee determines to abandon any Claims included among the Trust Assets, the GUC Trust shall have the option to pursue such Claims at its own expense. Upon the election of the GUC Trust to pursue such abandoned Claims, such Claims shall cease to be Trust Assets and such abandoned Claims and 100% of the recoveries from such abandoned Claims shall be GUC Trust Assets.

3.7. Distributions; Withholding. As soon as reasonably practicable after the Effective Date, the Shared Assets Trust, after funding the Trust Funding and establishing the Claims Reserve and/or reserving any other Cash as determined by the Shared Assets Trustee and the Beneficiary Committee, shall distribute to the Class A and Class B Beneficiaries in accordance with Section 6.2 all excess Cash, if any. Subject to the discretion of the Beneficiary Committee, the Shared Assets Trust shall make quarterly distributions of Cash to the Class A Beneficiaries and the Class B Beneficiary in accordance with Section 6.2. The Shared Assets Trustee may withhold from amounts distributable to any Person any and all amounts, determined in the Shared Assets Trustee's reasonable sole discretion, required by any law, regulation, rule, ruling, directive or other governmental requirement. As provided in the Plan, Beneficiaries shall, as a condition to receiving distributions, provide such information and take such steps as the Shared Assets Trustee may reasonably require to ensure compliance with withholding and reporting requirements, and to enable the Shared Assets Trustee to obtain certifications and information as may be necessary or appropriate to satisfy the provisions of any tax law.

## ARTICLE 4

### THE SHARED ASSETS TRUSTEE

4.1. Role of the Shared Assets Trustee. In furtherance of and consistent with the purpose of the Shared Assets Trust and the Plan, subject to the powers and rights of the Beneficiary Committee as set forth in this Trust Agreement, the Shared Assets Trustee shall, for the benefit of the Beneficiaries, have the power and authority to hold, manage, and distribute the Trust Assets. In all circumstances, the Shared Assets Trustee shall act in the best interests of the Beneficiaries and in furtherance of the purpose of the Shared Assets Trust. In addition to any other limitations on the authority of the Shared Assets Trustee set forth in this Trust Agreement, the Shared Assets Trustee shall take such actions or refrain from taking action as may be directed in writing by the Beneficiary Committee, except to the extent the Shared Assets Trustee reasonably believes in good faith that doing so would cause it to violate any law or court order applicable to it.

4.2. Authority of Shared Assets Trustee. In connection with the administration of the Shared Assets Trust, except as set forth in this Trust Agreement, the Shared Assets Trustee is authorized to perform any and all acts necessary or desirable to accomplish the purposes of the Shared Assets Trust that are not inconsistent with IRS Revenue Procedure 94-45, 1994-2 C.B. 684 and Sections 1.671-4(a) and 301.7701-4(d) of the Treasury Regulations. Without limiting, but subject to, the role of the Shared Assets

Trustee as set forth in this Trust Agreement, and subject to the rights and powers of the Beneficiary Committee set forth in this Trust Agreement, including Sections 2.3 and 4.3 hereof, the Shared Assets Trustee shall be expressly authorized, but shall not be required, to:

- (a) perform the duties, exercise the powers, and assert the rights of a trustee under Sections 704 and 1106 of the Bankruptcy Code, including, without limitation, commencing, prosecuting or settling Causes of Action (including the Avoidance Actions), enforcing contracts, and asserting claims, defenses, offsets and privileges;
- (b) manage, invest, supervise, protect, sell, transfer, assign or deal in any other manner with any of the Trust Assets in such manner not otherwise provided for herein as the Shared Assets Trustee may deem advisable consistent with the terms of this Trust Agreement and the Plan;
- (c) execute and file any and all documents and take any and all other actions related to, or in connection with, the liquidation of the Trust Assets, the exercise of the Shared Assets Trustee's powers granted herein and the enforcement of any and all instruments, contracts, agreements or causes of action relating to the Shared Assets Trust;
- (d) protect and enforce the rights to the Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;
- (e) borrow funds, incur or assume liabilities, and pledge any portion of the Trust Assets on behalf of the Shared Assets Trust in furtherance of or in connection with the Shared Assets Trustee's or the Shared Assets Trust's duties, powers, authority, and obligations under this Trust Agreement, and determine and satisfy any and all liabilities created, incurred or assumed by the Shared Assets Trust;
- (f) file, if necessary, any and all tax and information returns with respect to the Debtors' Estates and the Shared Assets Trust, and pay taxes, if any, properly payable by the Estates or the Shared Assets Trust;
- (g) undertake any actions required to liquidate the Trust Assets in accordance with the terms of this Trust Agreement and the Plan;
- (h) pay all expenses and make all other payments relating to the Trust Assets;
- (i) obtain reasonable insurance coverage with respect to its liabilities and obligations as Shared Assets Trustee under this Trust Agreement (in the form of an errors and omissions policy or otherwise) and indemnification for the Shared Assets Trustee and others provided for in the Plan and this Trust Agreement;

(j) obtain insurance coverage with respect to real and personal property that may be part of the Trust Assets, if any;

(k) retain and pay (i) the law firms of Moses & Singer LLP, Kramer Levin Naftalis & Frankel LLP, and/or Halperin Battaglia Raicht, LLP to advise on matters to be allocated among the firms on a basis acceptable to the Beneficiary Committee and the Shared Assets Trustee; (ii) the firms of FTI Consulting Inc. and/or Consensus Advisors to advise on matters to be allocated between such firms on a basis acceptable to the Beneficiary Committee and the Shared Assets Trustee; and/or (iii) such other counsel and other professionals as the Shared Assets Trustee may select to assist him in his duties, on such terms, including contingency-fee arrangements, as the Shared Assets Trustee deems appropriate, without Bankruptcy Court approval. The past or current retention of any firm listed above by any of the Committee, Wilmington and/or the Current Lenders or by either the Shared Assets Trust and/or the GUC Trust shall not be asserted by any of them as a basis to disqualify such firm from being retained by the other Trust, and a law firm or professional shall not be disqualified from representing or otherwise serving the Shared Assets Trust solely because of its current or prior retention as counsel or professional to the parties in interest in the Cases;

(l) retain and pay an independent public accounting firm to perform such compilations, reviews and/or audits of the financial books and records of the Shared Assets Trust and the Debtors' Estates as may be appropriate and to prepare and file any tax returns or informational returns for the Shared Assets Trust and the Estates as may be required. Subject to the powers and rights of the Beneficiary Committee, as set forth in this Trust Agreement, the Shared Assets Trustee may commit the Shared Assets Trust to and shall pay such independent public accounting firm reasonable compensation for services rendered and expenses incurred;

(m) retain and pay such third parties as the Shared Assets Trustee may deem necessary or appropriate to assist the Shared Assets Trustee in carrying out its powers and duties under this Trust Agreement. Subject to the powers and rights of the Beneficiary Committee, as set forth in this Trust Agreement, the Shared Assets Trustee may commit the Shared Assets Trust to and shall pay all such persons or entities reasonable compensation for services rendered and expenses incurred, as well as commit the Shared Assets Trust to indemnify any such parties in connection with the performance of services;

(n) assert or waive any privilege or defense on behalf of the Shared Assets Trust or the Debtors;

(o) compromise, adjust, arbitrate, settle, sue on or defend, pursue, prosecute, abandon, exercise rights, powers, and privileges with respect to, or otherwise deal with and settle, in accordance with the terms set forth herein, Causes of Action and all causes of action in favor of or against the Shared Assets Trust as the Shared Assets Trustee shall deem advisable; continue the prosecution of any such efforts commenced by the Debtors and take and defend appeals of court orders with respect to such matters;

- (p) avoid and recover transfers of the Debtors' property as may be permitted by the Bankruptcy Code or applicable state law, including prosecuting the Avoidance Actions; continue the prosecutions of any such efforts commenced by the Debtors; and take and defend appeals of court orders with respect to all such matters;
- (q) execute offsets and assert counterclaims against Claims as provided for in the Plan;
- (r) take all appropriate action with respect to the Shared Assets consistent with the purpose of the Shared Assets Trust;
- (s) object to any Claims filed or scheduled in the Cases (other than Disputed Class 4 or Class 5 Claims); prosecute such objections; continue the prosecution of any such objections filed by the Debtors; take and defend appeals of any court orders with respect to all such objections; and settle and compromise all such objections;
- (t) seek, by motion or otherwise, to cap or otherwise estimate any unliquidated and/or disputed Claim; continue the prosecution of any such motions filed by the Debtors; take and defend appeals of any court orders with respect to such motions; and settle and compromise such motions;
- (u) abandon property as provided under Bankruptcy Code Section 554, but without further approval of the Bankruptcy Court;
- (v) in accordance with the terms of Section 4.11 hereof, unless reasonably necessary to maintain the value of the Trust Assets and to further the liquidating purpose of the Shared Assets Trust, to invest in, and only in, demand and time deposits, such as short-term certificates of deposit, other time deposits, in banks or other savings institutions, money market funds, obligations of the United States Government, money market mutual funds, United States Government obligation mutual funds, or other temporary, liquid investments;
- (w) request any appropriate tax determination with respect to the Shared Assets Trust (including the Claims Reserve), including, without limitation, a determination pursuant to Section 505(a) and Section 505(b) of the Bankruptcy Code;
- (x) make interim and final distributions of the Trust Assets to Beneficiaries;
- (y) take or refrain from taking any and all actions the Shared Assets Trustee reasonably deems necessary or convenient for the continuation, protection and maximization of the Trust Assets or to carry out the purposes hereof;
- (z) seek the examination of any Person pursuant to the provisions of Bankruptcy Rule 2004;
- (aa) make any tax election, settle or compromise any tax liability, consent to any claim or assessment relating to taxes or take any action consistent with the

treatment of the Shared Assets Trust as a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d);

(bb) to the extent required, file reports with the U.S. Trustee and pay fees and charges assessed pursuant to Section 1930 of title 28 of the United State Code; and

(cc) do any and all things which the Beneficiary Committee directs it to do, except to the extent the Shared Assets Trustee reasonably believes in good faith that doing so would cause it to violate any law or court order applicable to it, or which are necessary or appropriate to accomplish the purposes of the Plan and this Trust Agreement.

4.3. No Authority of Shared Assets Trustee to Engage in Trade or Business; Limitations on Authority of Shared Assets Trust.

(a) Notwithstanding anything herein to the contrary, the Shared Assets Trustee shall not be authorized to engage in any trade or business, and shall not take such actions inconsistent with the orderly liquidation of the Trust Assets as are required or contemplated by applicable law, the Plan and this Trust Agreement.

(b) The Shared Assets Trust shall not hold any operating assets of a going business or 50% or more of the stock (in either vote or value) of any entity that is treated as a corporation for federal income tax purposes, nor be the sole member of a limited liability company, nor have any interest in an entity that is treated as a partnership for federal income tax purposes, unless such stock, membership interest, or partnership interest was obtained involuntarily or as a matter of practical economic necessity in order to preserve the value of the Trust Assets and provided, that, in any case, such corporation, company or partnership does not hold operating assets of a going business.

4.4. Books and Records. The Shared Assets Trustee shall maintain in respect of the Shared Assets Trust and the holders of Beneficial Interests books and records relating to the Trust Assets and income of the Shared Assets Trust and the payment of expenses of, and liabilities of claims against or assumed by, the Shared Assets Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Shared Assets Trust. Except as otherwise may be expressly provided in this Trust Agreement, nothing in this Trust Agreement requires the Shared Assets Trustee to file any accounting or seek approval of any court with respect to the administration of the Shared Assets Trust, or as a condition for managing any payment or distribution out of the Trust Assets.

4.5. Reports to Beneficiary Committee. Commencing thirty (30) days after the month-end following the Effective Date and continuing each calendar quarter thereafter until the Shared Assets Trust is terminated, and except as otherwise agreed by the Beneficiary Committee, the Shared Assets Trustee shall provide written reports to the

members of the Beneficiary Committee which shall contain, at least, the following: (i) the aggregate amount of Cash and an estimate of the value of the Trust Assets held by the Shared Assets Trust at the end of such period; (ii) the aggregate amount of expenses disbursed during such period; (iii) a cash flow statement for such period; (iv) the proposed terms of settlement of Avoidance Actions and Claims objections; (v) a description of all Avoidance Actions and all other Causes of Action and Disputed Administrative/Priority Claims that have been resolved, whether by Bankruptcy Court order, settlement or dismissal; (v) the status of the liquidation of the non-cash Trust Assets; and (vi) a list of material disputes pending at the end of such period. The Shared Assets Trustee also will provide such additional information to the Beneficiary Committee as may be requested.

4.6. Additional Powers. Except as otherwise set forth in this Trust Agreement (including Section 2.3), and subject to the Treasury Regulations governing liquidating trusts and the retained jurisdiction of the Bankruptcy Court as provided for in the Plan, but without prior or further authorization, the Shared Assets Trustee may control and exercise authority over the Trust Assets and over the protection, conservation and disposition thereof. No Person dealing with the Shared Assets Trust shall be obligated to inquire into the authority of the Shared Assets Trustee in connection with the protection, conservation or disposition of the Trust Assets.

4.7. Tax and Reporting Duties of the Shared Assets Trustee. Subject to Section 4.2, the Shared Assets Trustee shall be responsible for all tax and other matters as set forth in Article 5.

4.8. Compliance with Laws. Any and all distributions of the Trust Assets and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, without limitation, applicable federal and state securities laws.

4.9. Compensation of the Shared Assets Trustee and Professionals. The Shared Assets Trust shall pay reasonable compensation for the services provided by the Shared Assets Trustee and any other professionals or other Persons retained by the Shared Assets Trustee, the Shared Assets Trust and the members of the Beneficiary Committee as permitted under this Trust Agreement.

4.10. Reliance by Shared Assets Trustee. Except as otherwise provided in Article 8 hereof:

(a) the Shared Assets Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by him to be genuine and to have been signed or presented by the proper party or parties; and

(b) Persons dealing with the Shared Assets Trustee shall look only to the Trust Assets to satisfy any liability incurred by the Shared Assets Trustee to such person in carrying out the terms of this Trust Agreement, and neither the Shared Assets

Trustee nor any member of the Beneficiary Committee shall have any personal liability or other obligation to satisfy any such liability.

4.11. Investment and Safekeeping of Trust Assets. The right and power of the Shared Assets Trustee to invest any portion of the Trust Assets, the proceeds thereof or any income earned by the Shared Assets Trust, shall be limited to the right and power that a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d), is permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise. The Shared Assets Trust will not receive or retain Cash (or cash equivalents) in excess of a reasonable amount to meet claims and contingent liabilities (including Disputed Claims) or to maintain the value of the assets during liquidation. Subject to Section 2.3 and the other terms of this Trust Agreement, the Shared Assets Trustee may expend the Cash of the Shared Assets Trust (a) as reasonably necessary to meet contingent liabilities and to maintain the value of the respective assets of the Shared Assets Trust during liquidation and (b) to pay the reasonable costs and expenses (including, without limitation, any taxes imposed on the Shared Assets Trust).

## ARTICLE 5

### TAX MATTERS

5.1. Federal Income Tax Treatment of the Shared Assets Trust. For federal income tax purposes, it is intended that the Shared Assets Trust be classified as a liquidating trust under Section 301.7701-4 of the Treasury regulations and that the Shared Assets Trust be owned by the Class A and Class B Beneficiaries. Accordingly, for federal income tax purposes, the Debtors, the Shared Assets Trustee and the Beneficiaries shall treat the Beneficiaries as the grantors of the Shared Assets Trust, and the transfer of the Shared Assets (but not the Other Lender Assets and other than (i) the Fortgang Guaranties and the related Claims and Causes of Action and (ii) that portion of the Shared Assets that are for the benefit of holders of Administrative/Priority Claims) to the Shared Assets Trust will be treated as a deemed distribution by the Debtors to the Beneficiaries of an undivided interest in each of such Shared Assets followed by a deemed transfer of such Shared Assets by the Beneficiaries to the Shared Assets Trust.

5.2. Federal Income Tax Treatment of the Claims Reserve. Subject to a definitive determination by the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Shared Assets Trustee of a private letter ruling if the Shared Assets Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Shared Assets Trustee), the Shared Assets Trustee shall (i) treat the Trust Assets allocable to, or retained on account of, the Claims Reserve as held by a discrete trust for federal income tax purposes, consisting of separate and independent shares to be established in respect of such reserve, in accordance with the trust provisions of the Internal Revenue Code (section 641 *et seq*), (ii) treat as a distribution from the Claims Reserve any increased amount distributed by the Shared Assets Trust as a result of the Disallowance of any Disputed Administrative Claims, Accrued Professional Fees or Estimated Professional Fees, earlier in the tax year, to the

extent such distribution relates to taxable income or loss of the Claims Reserve, determined in accordance with the provisions hereof, and (iii) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All Beneficiaries shall report, for tax purposes, in a manner consistent with the foregoing.

5.3. Tax Returns; Tax Matters.

(a) The Shared Assets Trustee shall file returns for the Shared Assets Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) and comply with all tax payment, withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority or similar governmental agency, including, without limitation, any requirements imposed by the Plan and this Article 5. The Shared Assets Trustee shall also annually send to each holder of Beneficial Interests a separate statement setting forth such holder's share of items of income, gain, loss, deduction or credit and shall instruct all such holders to report such items on their federal income tax returns. The Shared Assets Trust's taxable income, gain, loss, deduction or credit shall be allocated to such Beneficiaries in accordance with their relative beneficial interests in the Shared Assets Trust.

(b) The Shared Assets Trustee is authorized to act as agent for the Debtors in withholding or paying over any amounts required by law (including tax law) to be withheld or paid by the Debtors in connection with the transfer and assignment of the Liquidating Trust Assets to the Shared Assets Trust pursuant to the Plan. The Shared Assets Trustee is further entitled to deduct any United State federal or applicable state withholding taxes from any payments made with respect to Allowed Claims, as appropriate. The Shared Assets Trustee shall be responsible for payments, out of the Trust Assets, of any taxes imposed on the Shared Assets Trust or its assets or net income.

5.4. Expedited Determination of Taxes. The Shared Assets Trustee may request an expedited determination of taxes of the Shared Assets Trust, including the Claims Reserve under Section 505(b) of the Bankruptcy Code, for all returns filed for, or on behalf of, the Shared Assets Trust for all taxable periods through the dissolution of the Shared Assets Trust.

5.5. Fiscal Year. The Shared Assets Trust's fiscal year shall be the calendar year or such other period as may be fixed by the Shared Assets Trustee with the prior written consent of the Beneficiary Committee or as otherwise required by the Internal Revenue Code and the Treasury Regulations.

## ARTICLE 6

### DISTRIBUTIONS

6.1. Application of Cash. The Shared Assets Trust shall from time to time receive Cash from (i) the Claims Reserve as a result of Disputed Administrative Claims, Accrued Professional Fees or Estimated Professional Fees that are Allowed in the Cases aggregating less than the amount of Cash set aside in the Claims Reserve with respect thereto; (ii) the enforcement, prosecution, resolution, compromise or settlement of Causes of Action (including Avoidance Actions); and (iii) the sale, abandonment, liquidation and collection of all other Trust Assets.

6.2. Distributions of Net Proceeds of Shared Assets. In accordance with the Plan, the Net Proceeds of the Shared Assets shall be distributed as follows:

(a) the first \$5,000,000 of any Net Proceeds attributable to the Shared Assets shall be first used to satisfy any Claims Reconciliation Reserve Reimbursement Obligation, and then distributed to the GUC Trust for the benefit of the GUC Trust Beneficiaries;

(b) after satisfaction of clause (a) of this Section 6.2, the next \$12,500,000 of Net Proceeds attributable to the Shared Assets shall be distributed to the Class A Beneficiaries on account of the Adequate Protection Claim;

(c) after satisfaction of clauses (a) and (b) of this Section 6.2, the next \$15,000,000 of Net Proceeds attributable to the Shared Assets shall be allocated as follows: 90% to the Class A Beneficiaries and 10% to the GUC Trust for the benefit of the GUC Trust Beneficiaries;

(d) after satisfaction of clauses (a) through (c) of this Section 6.2, the \$10,000,000 of Net Proceeds attributable to the Shared Assets shall be allocated as follows: 80% to the Class A Beneficiaries and 20% to the GUC Trust for the benefit of the GUC Trust Beneficiaries; and

(e) after satisfaction of clauses (a) through (d) of this Section 6.2, all additional Net Proceeds attributable to the Shared Assets shall be allocated as follows: 70% to the Class A Beneficiaries and 30% to the GUC Trust for the benefit of the GUC Trust Beneficiaries.

6.3. Distributions of Net Proceeds of Other Lender Assets. In accordance with the Plan, all Net Proceeds attributable to the Other Lender Assets shall be distributed to the Class A Beneficiaries.

6.4. Annual Distribution Requirement. Except as otherwise agreed by the Beneficiary Committee, the Shared Assets Trustee shall make distributions to the Beneficiaries at least once each fiscal quarter.

6.5. Delivery of Shared Assets Trust Distributions. All distributions under this Trust Agreement to Beneficiaries or to holders of Allowed Administrative/Priority Claims shall be made at the address of such holder as set forth on the lists provided by the Debtors to the Shared Assets Trust pursuant to Section 3.1 herein, unless the Shared Assets Trustee has been notified in writing of a change of address. In the event that any

distribution to any holder is returned as undeliverable, the Shared Assets Trustee shall use reasonable efforts to determine the current address of such holder, but no distribution to such holder shall be made unless and until the Shared Assets Trustee has determined the then current address of such holder, at which time such distribution shall be made to such holder without interest; *provided, however*, that such undeliverable or unclaimed distributions shall be deemed unclaimed property and such holder shall forfeit all rights related thereto at the expiration of one year from the date of distribution. Upon such forfeiture of any Beneficial Interest, such Beneficial Interest shall be deemed cancelled and of no further force or effect. Upon such forfeiture of Cash or other property, such Cash or property shall be the property of the Shared Assets Trust.

6.6. Cash Distributions. No Cash distributions shall be required to be made to any holder of a Beneficial Interest in an amount less than \$50,000. Any funds so withheld and not distributed shall be held in reserve and distributed in subsequent distributions. Notwithstanding the foregoing, all Cash shall be distributed in the final liquidating distribution of the Shared Assets Trust.

6.7. Distributions Upon Termination of Shared Assets Trust. Upon the termination of the Shared Assets Trust, the Shared Assets Trustee shall, as expeditiously as is consistent with the conservation and preservation of the Trust Assets, distribute any undistributed Cash in the Shared Assets Trust in accordance with Section 6.2.

## ARTICLE 7

### SUCCESSOR TRUSTEES

7.1. Resignation of Shared Assets Trustee. The Shared Assets Trustee may resign by giving not less than 90 days' prior written notice thereof to the Beneficiary Committee. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice; or (ii) the appointment of a successor Shared Assets Trustee and the acceptance by such successor Shared Assets Trustee of such appointment. If a successor Shared Assets Trustee is not appointed or does not accept its appointment within 60 days following delivery of notice of resignation, the Shared Assets Trustee may petition the Bankruptcy Court for the appointment of a successor Shared Assets Trustee.

7.2. Removal of Shared Assets Trustee. The Shared Assets Trustee (and its successors) may be removed at any time by the vote of a majority of the members of the Beneficiary Committee or upon order of the Bankruptcy Court, which may be sought by any member of the Beneficiary Committee, and such removal shall take effect on the date specified by the Beneficiary Committee or at the time specified by the Bankruptcy Court, as the case may be. Upon such removal or resignation of the Shared Assets Trustee pursuant to Section 7.1 or the death or disability of the Shared Assets Trustee, members of the Beneficiary Committee, within 30 days, shall petition the Bankruptcy Court to appoint a successor Shared Assets Trustee.

7.3. Acceptance of Appointment by Successor Trustee. Any successor Shared Assets Trustee appointed hereunder shall execute an instrument accepting such

appointment hereunder and shall file such acceptance with the Shared Assets Trust records. Thereupon, such successor Shared Assets Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of its predecessor in the Shared Assets Trust with like effect as if originally named herein; *provided, however*, that a removed, incapacitated, or resigning Shared Assets Trustee shall, nevertheless, when requested in writing by the successor Shared Assets Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Shared Assets Trustee under the Shared Assets Trust all the estates, properties, rights, powers, and trusts of such predecessor Shared Assets Trustee.

## ARTICLE 8

### INDEMNIFICATION; LIMITATIONS OF LIABILITY

8.1. Indemnification of Shared Assets Trustee and Beneficiary Committee. None of the Shared Assets Trustee or the members of the Beneficiary Committee or any of their respective agents, representatives, designees, professionals or employees shall be liable for any act any of them takes or omits to take in its capacity as, or on behalf of, the Shared Assets Trustee or a member of the Beneficiary Committee, as the case may be, except those acts or omissions arising out of its own willful misconduct, fraud or gross negligence. The Shared Assets Trustee and the members of the Beneficiary Committee shall be entitled to rely, in good faith, on the advice of their respective retained professionals. The Shared Assets Trust shall indemnify and hold harmless the Shared Assets Trustee and the members of the Beneficiary Committee and their respective designees, agents, attorneys, professionals, and representatives (collectively “Indemnified Persons”), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses, including without limitation reasonable attorneys’ fees and costs arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Shared Assets Trust or the implementation or administration of this Trust Agreement and the Plan (“Indemnifiable Expenses”); *provided, however*, that no such indemnification will be made for such actions or omissions as a result of willful misconduct, fraud, or gross negligence (“Carved-Out Expenses”). The Shared Assets Trust shall advance to any Indemnified Person incurring any Indemnifiable Expenses such amounts, on a monthly basis, if the Indemnified Person provides the Shared Assets Trust with an undertaking reasonably satisfactory to the Shared Assets Trustee and the Beneficiary Committee that such Indemnified Person will repay any amounts finally determined to be Carved-Out Expenses.

## ARTICLE 9

### REPORTS TO HOLDERS OF BENEFICIAL INTERESTS

9.1. Securities Laws, Tax and Other Reports to Holders of Beneficial Interests.

(a) Under Section 1145 of the Bankruptcy Code, the issuance of Beneficial Interests under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration of

securities. If the Shared Assets Trustee determines, with the advice of counsel, that the Shared Assets Trust is required to comply with the registration and reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Shared Assets Trustee shall take any and all actions to comply with such reporting requirements and file periodic reports with the Securities and Exchange Commission.

(b) If the Shared Assets Trustee is not required to file the periodic reports referred to in Section 9.1(a) above, then as soon as practicable after December 31 and June 30 of each year, and as soon as practicable upon termination of the Shared Assets Trust, the Shared Assets Trustee shall submit to each holder of Beneficial Interests appearing on its records as of such date or the date of termination a written report including, without limitation, the following: (i) financial statements of the Shared Assets Trust for such period prepared on a modified cash basis or other comprehensive basis of accounting, and, if the end of a calendar year, a report of an independent certified public accountant employed by the Shared Assets Trustee, which report shall reflect the result of such procedures as may be approved by the Shared Assets Trustee relating to the financial accounting administration of the Shared Assets Trust; and (ii) a description of any action taken by the Shared Assets Trustee in the performance of its duties that materially affects the Shared Assets Trust and of which notice has not previously been given to the holders of Beneficial Interests. The Shared Assets Trustee shall promptly submit additional reports to the holders of Beneficial Interests whenever a material event or change occurs that affects either the Shared Assets Trust or the rights of the holders of Beneficial Interests hereunder. The semiannual reports furnished pursuant to this Section 9.1(b) shall include a description of the progress of converting the Trust Assets to Cash and making distributions to holders of Beneficial Interests and any other material information relating to the Trust Assets and the administration of the Shared Assets Trust.

(c) By February 28 (or if such day is not a Business Day, the first Business Day thereafter) following the end of each calendar year, the Shared Assets Trustee shall submit to each holder of Beneficial Interests appearing on its records during such year a separate statement setting forth the holder's share of items of income, gain, loss, deduction or credit, and will instruct all such holders to report such items on their federal income tax returns. The Shared Assets Trust's taxable income, gain, loss, deduction, and credit will be allocated pro rata to the Beneficiaries in accordance with their relative beneficial interests in the Shared Assets Trust. The Shared Assets Trustee shall file (or cause to be filed) all other statements, returns, or disclosures relating to the Shared Assets Trust, if any, that are required by any governmental authority.

(d) Any report required to be distributed by the Shared Assets Trustee under Section 9.1(b) shall also be distributed to the Persons listed in Section 12.6 hereof within ten Business Days of its distribution to holders of Beneficial Interests under Section 9.1(b). The Shared Assets Trustee may post any report required to be provided under this Section 9.1 on a web site maintained by the Shared Assets Trustee in lieu of actual notice to holders of Beneficial Interests (unless otherwise required by law) subject to providing notice to the Persons listed in Section 12.6.

## ARTICLE 10

### TERMINATION OF SHARED ASSETS TRUST

10.1. Termination of Shared Assets Trust. The Shared Assets Trust will terminate on the earlier of: (a) 30 days after the final distribution of the Trust Assets in accordance with the terms of this Trust Agreement and the Plan; or (b) the fifth anniversary of the Effective Date. Notwithstanding the foregoing, multiple fixed-term extensions of the term of the Shared Assets Trust may be obtained so long as Bankruptcy Court approval is obtained, upon motion and a showing that such extension is necessary to facilitate or complete the recovery and liquidation of the Trust Assets, within six months prior to the expiration of the original term and each extended term. The aggregate of all such extensions shall not exceed three years, unless the Shared Assets Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the Shared Assets Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) for federal income tax purposes. The Shared Assets Trustee shall not unduly prolong the duration of the Shared Assets Trust and shall at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute the Trust Assets and to effect the distribution of the Trust Assets to the holders of the Beneficial Interests in accordance with the terms hereof and terminate the Shared Assets Trust as soon as practicable.

## ARTICLE 11

### AMENDMENT AND WAIVER

11.1. Amendment and Waiver. Any substantive provision of this Trust Agreement may be amended, modified or waived by the Beneficiary Committee; *provided, however*, that no such amendment, modification or waiver may (a) change the priority of Claims or the order of distributions set forth in Section 5.03 of the Plan and Section 6.1 of this Trust Agreement, or (b) adversely affect the U.S. Federal income status of the Shared Assets Trust as a “liquidating trust” (in accordance with Section 1.2 hereof). Notwithstanding this Section 11.1, any amendments to this Trust Agreement shall not be inconsistent with the purpose and intention of the Shared Assets Trust to liquidate in an expeditious but orderly manner the Trust Assets in accordance with Treasury Regulations Section 301.7701-4(d) and Section 1.2 hereof.

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

12.1. Intention of Parties to Establish Shared Assets Trust. This Trust Agreement is intended to create a liquidating trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Trust Agreement may be amended to comply with such federal income tax laws, which amendments may apply retroactively.

12.2. Preservation of Privilege and Defenses. In connection with the rights, claims, and causes of action that constitute the Trust Assets, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Shared Assets Trust shall vest in the Shared Assets Trust and its representatives, and the Debtors, the Committee, the Current Lenders and Wilmington are authorized to take all necessary actions to effectuate the transfer of such privileges and available defenses.

12.3. Prevailing Party. If the Shared Assets Trustee or the Shared Assets Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Trust Agreement or the enforcement thereof, the Shared Assets Trustee or the Shared Assets Trust, as the case may be, shall be entitled to collect any and all costs, expenses and fees, including attorneys' fees, from the non-prevailing party incurred in connection with such dispute or enforcement action.

12.4. Laws as to Construction. This Trust Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to rules governing the conflict of laws that otherwise would apply the law of another jurisdiction.

12.5. Severability. If any provision of this Trust Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Trust Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

12.6. Notices. Any notice or other communication hereunder shall be in writing (including by facsimile transmission or by e-mail) and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person for whom such notice is intended (or, in the case of notice by facsimile transmission or e-mail, when received and telephonically or electronically confirmed), addressed as follows (*provided, however*, that only one notice or other communication hereunder need be sent to holders sharing the same address):

If to the Shared Assets Trustee, to:

Alan M. Jacobs  
President  
AMJ Advisors LLC  
999 Central Avenue, Suite 208  
Woodmere, New York 11598  
(516) 791-1100  
jacobsal@aol.com

With a copy to:

Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, New York 10036  
Attention: David M. Feldman, Esq.  
(212) 715-8000  
dfeldman@kramerlevin.com

If to the Beneficiary Committee, to the addresses set forth on Schedule \_\_ hereto.

If to the Beneficiaries, to the addresses set forth on the lists provided by the Debtors to the Shared Assets Trust pursuant to Section 3.1.

12.7. Headings. The section headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or of any term or provision hereof.

12.8. Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all together shall constitute one agreement.

12.9. Relationship to the Plan. The principal purpose of this Trust Agreement is to aid in the implementation of the Plan and therefore this Trust Agreement incorporates the provisions of the Plan. To that end, subject to the terms and conditions of this Trust Agreement, the Shared Assets Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan, and to seek any orders from the Bankruptcy Court in furtherance of implementation of this Trust Agreement and the Plan. If any provisions of this Trust Agreement are found to be inconsistent with the provisions of the Plan, the provisions of this Trust Agreement shall control.

12.10. No Bond. The Shared Assets Trustee may serve without bond.

12.11. Confidentiality. The Shared Assets Trustee shall, during the period that it serves in such capacity under this Trust Agreement and following either the termination of this Trust Agreement or such Shared Assets Trustee's removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Trust Assets relates or of which it has become aware in its capacity as Shared Assets Trustee. Notwithstanding anything else in the Plan, this Trust Agreement or any other agreements implementing the Plan, each of the parties hereto (and each employee, representative, or other agent of such person) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such person relating to such tax treatment and tax structure.

12.12. Effect of Death, Incapacity or Bankruptcy of Beneficiary. The death, incapacity or bankruptcy of a Beneficiary during the term of this Trust Agreement shall

not operate to terminate the Shared Assets Trust or this Trust Agreement, nor shall it entitle the representatives or creditors of the deceased Beneficiary to an accounting, or to take any action in the courts or elsewhere for the distribution of the property constituting the Trust Assets or for a partition thereof, nor shall it otherwise affect the rights and obligations of any Beneficiary.

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

M. FABRIKANT & SONS, INC.  
FABRIKANT-LEER INTERNATIONAL,  
LTD.  
Debtors and Debtors-in-Possession

By: \_\_\_\_\_  
Name:  
Title:

GUC TRUST

\_\_\_\_\_  
By:  
Name:  
Title:

SHARED ASSETS TRUSTEE:

\_\_\_\_\_  
By:

# Exhibit B

Alan M. Jacobs, President  
AMJ Advisors LLC  
999 Central Avenue  
Suite 208  
Woodmere, New York 11598  
(516) 791-1100 (Office)  
(212) 937-2300 (Fax)  
(516) 946-4470 (Cell phone)  
[jacobsal@aol.com](mailto:jacobsal@aol.com)

November \_\_, 2007, Effective as of  
Effective Date of Joint Plan of Liquidation  
of M. Fabrikant & Sons, Inc. and  
Fabrikant-Leer International, Ltd.

SHARED ASSETS TRUST  
c/o David M. Feldman, Esq.  
Kramer Levin Naftalis & Frankel LLP  
1177 Avenue of the Americas  
New York, New York 10036

In re M. Fabrikant & Sons, Inc. and Fabrikant-Leer International, Ltd.  
("Fabrikant" or the "Debtors") Jointly Administered Chapter 11 Case No. 06-  
12737 (SMB), United States Bankruptcy Court Southern District of New York

To Whom It May Concern:

This letter agreement ("Agreement") confirms the engagement of Alan M. Jacobs, President of AMJ Advisors LLC ("AMJ"), by the SHARED ASSETS TRUST (the "Shared Assets Trust") to serve as Trustee of the Shared Assets Trust.

Objectives, Scope and Approach

Mr. Jacobs' objective will be to

- Hold, administer and ultimately distribute Shared Assets Trust Property, or their proceeds, to holders of other allowed secured claims, administrative expense claims, priority claims, professional fee claims, Shared Assets Trust Class A

Interests and Shared Assets Trust Class B Interests pursuant to the Joint Plan of Liquidation and the Shared Assets Trust Agreement;

- To maintain appropriate Distribution Reserves;
- To pursue recovery of Shared Assets Trust Property;
- To pursue recovery under personal guaranties from certain individuals;
- Investigate, prosecute and resolve any Retained Causes of Action;
- To initiate, prosecute and resolve objections to disputed administrative/priority claims;
- To retain Shared Assets Trust professionals and coordinate professional services to the Shared Assets Trust;
- To work with and report to the Shared Assets Trust Beneficiary Committee in order that we each meet our respective obligations in respect to administration of the Shared Assets Trust; and
- Administer the Shared Assets Trust, including distribution of Shared Assets Trust assets, tax reporting, etc. through the date of the Shared Assets Trust's dissolution.

In performing this engagement, Mr. Jacobs shall at all times act in good faith and in compliance with all applicable laws and regulations. In no event will Mr. Jacobs be liable for damages, if any, arising from decisions or actions taken by any party as a result of Mr. Jacobs' analyses, findings, observations or comments.

### Fees

AMJ's fee arrangement is designed to align the interests of the Shared Assets Trust beneficiaries with the fees which AMJ would earn. A percentage based fee would apply overall, with a lower percentage applicable to the first tier of distributions and an increasing percentage for three next tiers of distributions, recognizing the more complex efforts and risk of recovery of such amounts. AMJ shall be entitled to fees and expenses determined as follows:

- One and one-quarter percent (1.25 %) of all cumulative Shared Assets Trust distributions for distributions up to the amount of cash remitted to the Shared Assets Trust by the Debtors on the effective date of the Joint Plan of Liquidation;
- Two percent (2.0 %) of all cumulative Shared Assets Trust distributions in excess of the amount of cash remitted to the Shared Assets Trust by the Debtors on the effective date of the Joint Plan of Liquidation up to \$10 million;
- Two and one-half percent (2.5 %) of all cumulative Shared Assets Trust distributions in excess of \$10 million (or the amount of cash remitted to the Shared Assets Trust by the Debtors on the effective date of the Joint Plan of Liquidation if such amount is greater than \$10 million) up to \$20 million;
- Three percent (3.0 %) of all cumulative Shared Assets Trust distributions in excess of \$20 million; and
- Reimbursement of all reasonable out of pocket disbursements.

Shared Assets Trust distributions shall include all Shared Assets Trust disbursements excluding (i) any loan principal repayments and (ii) all Trustee fees paid.

In addition, Mr. Jacobs will invoice the Trust for any expenses (including any reasonable expenses of legal counsel) Mr. Jacobs may incur in considering or responding to discovery requests or participating as a witness or otherwise in any legal, regulatory, or other proceeding as a result of his performance of these services.

AMJ will invoice the Trust for Mr. Jacobs' services and expenses on a calendar quarterly basis and such invoices will be payable after ten days notice to the Shared Assets Trust Beneficiary Committee unless an objection is raised by a Committee member. Any such objection shall be resolved under the terms of the Shared Assets Trust Agreement.

#### Other Issues

Any controversy or claim with respect to, in connection with, arising out of, or in any way related to this Agreement or the services provided hereunder (including any such matter involving parent, subsidiary, affiliate, successor in interest or agent of the Shared Assets Trust, Fabrikant or of AMJ or Mr. Jacobs) shall be brought in the Bankruptcy Court or District Court, if such District Court withdraws the reference, and the parties to this Agreement, and any and all successors and assigns thereof, consent to the jurisdiction and venue of such court as the sole and exclusive forum (unless such court does not have or retain jurisdiction over such claims or controversies) for the resolution of such claims, causes of action or lawsuits and expressly waive their right to a jury trial. The parties to this Agreement, and any and all successors and assigns thereof, hereby waive trial by jury, such waiver being informed and freely made. If the Bankruptcy Court does not have or retain jurisdiction over the foregoing claims or controversies, the parties to this Agreement, and any and all successors and assigns thereof, agree to submit first to non-binding mediation; and, if mediation is not successful, then to binding arbitration, in accordance with the dispute resolution procedures set forth in Exhibit A to this Agreement. Judgment on any arbitration award may be entered in any court having proper jurisdiction. The foregoing is binding upon the Shared Assets Trust, Fabrikant, AMJ and Mr. Jacobs and any and all successors and assigns thereof.

The Shared Assets Trust shall indemnify and hold harmless Mr. Jacobs and AMJ, its officers, consultants and employees ("AMJ Indemnitees") from and against (i) all claims and causes of action of any kind, including contract, tort or otherwise, by any third party related to or arising out of the services provided hereunder, and (ii) any losses, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees and expenses incurred by the AMJ Indemnitees in any action or proceeding between an AMJ Indemnitee and any third party or otherwise) that are incurred by the AMJ Indemnitees as a result of any such claims or causes of action provided, however, the Shared Assets Trust will not indemnify the AMJ Indemnitees from and against any such claim or causes of action, losses, liabilities, damages or expenses that are finally determined by an arbitral forum or a court of competent jurisdiction to have resulted from the gross negligence, recklessness or willful misconduct of any of the AMJ Indemnitees. The Shared Assets Trust shall reimburse the AMJ Indemnitees for such Indemnified Costs as they are incurred by the AMJ Indemnitees.

If any portion of this agreement is held to be void, invalid, or otherwise unenforceable, in whole or in part, the remaining portions of this agreement shall remain in effect.

We understand that this engagement may be terminated, pursuant to the terms of the Shared Assets Trust Agreement, by the Shared Assets Trust or Mr. Jacobs. All fees for distributions made on or before the effective date of termination of our services and expenses incurred through the effective date of termination of our services shall be immediately due and payable. No fees shall be earned on distributions occurring subsequent to the effective date of termination of our services except for recoveries and settlements resolved prior to the effective date of termination with scheduled proceeds to be received subsequent to the effective date of termination. The alternative dispute resolution, limitation on liability, and indemnity provisions contained in the Agreement will remain operative and in full force and effect regardless of any termination or expiration of this Agreement.

By signing this letter, the Shared Assets Trust expressly acknowledges that Mr. Jacobs and AMJ does not guarantee, warrant, or otherwise provide as to the aggregate amount of Shared Assets Trust distributions, if any, to Shared Assets Trust beneficiaries.

If the foregoing is acceptable, please so acknowledge by signing this letter in the space indicated below.

Very truly yours,  
AMJ Advisors LLC

By: \_\_\_\_\_  
Alan M. Jacobs, President

Consented and Agreed to November \_\_\_\_, 2007

By: \_\_\_\_\_

## Exhibit A

### Dispute Resolution Procedures

The following procedures shall be used to resolve any controversy or claim (“dispute”) as provided in this agreement (the “Agreement”). If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

#### Mediation

A dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot otherwise agree on a mediator, one will be appointed by the American Arbitration Association (“AAA”). However, any mediator appointed by the AAA must be acceptable to all parties.

The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.

The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

#### Arbitration

If a dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. The arbitration will be conducted in accordance with the procedures in this document and the Arbitration Rules for Professional Accounting and Related Services Disputes of the AAA (“AAA Rules”). In the event of a conflict, the provisions of this document will control.

The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the AAA Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act and resolved by the arbitrators. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.

Unless provided otherwise in the Agreement, the arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award (i) damages inconsistent with the Agreement or (ii) punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or in any other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a federal court deciding the matter in the same jurisdiction.

No discovery will be permitted in connection with the arbitration unless it is expressly authorized by the arbitration panel upon a showing of substantial need by the party seeking discovery.

All aspects of the arbitration shall be treated as confidential. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests.

The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

# Exhibit C

## **GUC TRUST AGREEMENT**

This GUC Trust Agreement (this "Trust Agreement"), dated as of December [\_\_\_], 2007, by and among M. Fabrikant & Sons, Inc. and Fabrikant-Leer International, Ltd. (the "Debtors") and the Official Committee of Unsecured Creditors (as the Debtors' representative) (the "Committee", and together with the Debtors, the "Grantors"), and Buchwald Capital Advisors LLC, as the trustee (the "GUC Trustee"), is executed in connection with the Joint Plan of Liquidation under to Chapter 11 of the Bankruptcy Code of the Official Committee of Unsecured Creditors, the Debtors' Current Lenders, Wilmington Trust Company, as agent to the Current Lenders, and the Debtors, including, without limitation, the exhibits and schedules thereto (as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions thereof, the "Plan"), to provide for a liquidating trust to resolve, liquidate and realize upon the assets transferred to the GUC Trustee and distribute the proceeds of the Trust Assets to the GUC Trust Beneficiaries. Capitalized terms used in this Trust Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Plan.

### **W I T N E S S E T H:**

WHEREAS, on November 17, 2006, MFS and FLI filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code;

WHEREAS, on November 7, 2007, the Debtors filed the Plan with the Bankruptcy Court;

WHEREAS, on December [\_\_\_], 2007 the Bankruptcy Court entered an order confirming the Plan (the "Confirmation Order");

WHEREAS, the Plan went effective on the date hereof;

WHEREAS, this GUC Trust is created pursuant to, and to effectuate certain provisions of, the Plan, including, without limitation, to liquidate the Original Lender Litigation Claims and to hold the Shared Assets Trust Class B Interests for the benefit of holders of Allowed Claims in Classes 4 and 5 (collectively, all such holders are referred to herein as, the "Beneficiaries"), in accordance with Treasury Regulation Section 301.7701-4(d);

WHEREAS, this GUC Trust is intended to qualify as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d); and

WHEREAS, the Original Lender Litigation Claims, the Shared Assets Trust Class B Interests, and all rights relating thereto and all proceeds and distributions deriving from or received or distributed in respect thereof, and any other amounts or other assets contributed by the Grantor to the GUC Trust are collectively referred to herein as the "Trust Assets";

WHEREAS, the GUC Trustee shall be responsible for reconciling the asserted Class 4 and 5 Claims, objecting to Class 4 and 5 Claims and obtaining final determinations of the identities of the Beneficiaries in order to distribute the proceeds of the Trust Assets to them.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, Grantors and the GUC Trustee agree as follows:

## ARTICLE 1

### ESTABLISHMENT OF THE LIQUIDATION TRUST

#### 1.1 Establishment of GUC Trust and Appointment of GUC Trustee.

(a) Pursuant to the Plan, Grantors and the GUC Trustee hereby establish a trust which shall be known as the "GUC Trust" on behalf of the Beneficiaries.

(b) The GUC Trustee is hereby appointed as trustee of the GUC Trust effective as of the date hereof and agrees to accept and hold the Trust Assets in trust for the Beneficiaries, as they shall be determined, subject to the terms of the Plan and this Trust Agreement. The GUC Trustee and each successor trustee serving from time to time hereunder shall have all the rights, powers and duties set forth herein.

#### 1.2 Transfer of Assets and Rights to the GUC Trust.

(a) As of the date hereof, each Grantor hereby transfers, assigns, and delivers to the GUC Trust all its respective right to and interest in and to the Original Lender Litigation Claims which shall vest in and hereafter be prosecuted by and in the name of the GUC Trust, in each case free and clear of any right, claim or interest in such Assets of any other Person.

(b) As of the date hereof, the Shared Assets Trust shall be deemed to transfer, assign and deliver to the GUC Trust all of its right, title and interest in and to the Shared Assets Trust Class B Interests, which shall vest in the GUC Trust, in each case free and clear of any right, claim or interest in such Assets of any other Person.

(c) The GUC Trust hereby accepts all Trust Assets and agrees to hold and administer the Trust Assets for the benefit of the Beneficiaries, subject to the terms and conditions of this Agreement and the Plan.

(d) On or prior to the date hereof, each Grantor shall (i) deliver or cause to be delivered to the GUC Trustee any and all documents in connection with the Trust Assets (including those maintained in electronic format and original documents) whether held by Grantors or their respective employees, agents, advisors, attorneys, accountants or any other professionals hired by Grantors and (ii) provide access to the GUC Trustee to such employees of each Grantor, and their respective agents, advisors, attorneys, accountants or any other professionals hired by each Grantor with knowledge of matters relevant to the Trust Assets. Upon the reasonable request of the GUC Trustee, Grantors shall provide the GUC Trustee with a list of all documents in connection with the Trust Assets known to it but not held by it or any of its employees, agents, advisors, attorneys, accountants or any other professionals. Such list shall contain a description of each document, to the extent feasible, as well as the name of the Person holding such document.

(e) At any time and from time to time on and after the date hereof, each Grantor agrees at the reasonable request of the GUC Trustee to execute and/or deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and to take, or cause to be taken, all such further actions as the GUC Trustee may reasonably request in order to evidence or effectuate the transfer of the GUC Trust Assets to the GUC Trust, the substitution of the GUC Trustee as plaintiff with respect to the Original Lender Litigation Claims and the consummation of the transactions contemplated hereby and by the Plan and to otherwise carry out the intent of the parties hereunder and under the Plan.

### 1.3 Title to GUC Trust Assets.

(a) The transfer of the Trust Assets by the Grantors to the GUC Trust shall be made for the ratable benefit of the Beneficiaries to the extent such Beneficiaries are entitled to GUC Trust Interests under the Plan. In this regard, such Trust Assets will be treated for Federal income tax purposes as being (i) transferred by the Grantors to the Beneficiaries in partial satisfaction of their Allowed Claims, and (ii) immediately thereafter, transferred to the GUC Trust in exchange for GUC Trust Interests for their ratable benefit, in accordance with the Plan. Upon the transfer of the Trust Assets by the Grantors to the GUC Trust, the GUC Trustee shall succeed to all of Grantor's right, title and interest in and to the Trust Assets and Grantors will have no further interest in or with respect to the Trust Assets or this GUC Trust.

(b) For all Federal income tax purposes, all parties (including, without limitation, Grantors, the GUC Trustee and the Beneficiaries) shall treat the transfer of Trust Assets by the Grantor to the GUC Trust in accordance with the terms of the Plan, as a transfer of the Trust Assets by the Grantors to the Beneficiaries followed by a transfer by such Beneficiaries to the GUC Trust, and the Beneficiaries of the GUC Trust shall be treated as the grantors and owners hereof.

### 1.4 Nature and Purpose of the GUC Trust.

(a) Purpose. The GUC Trust is a liquidating trust pursuant to which the GUC Trustee, subject to the terms and conditions contained herein and in the Plan, is to (i) hold the Trust Assets and dispose of the same in accordance with this Trust Agreement and the Plan in accordance with Treasury Regulation Section 301.7701-4(d), (ii) oversee and direct the expeditious but orderly liquidation and distribution of the Trust Assets, and (iii) prosecute appropriate claim objections and resolve Disputed Class 4 and Class 5 Claims. Accordingly, the primary purpose of this GUC Trust is to liquidate the assets transferred to it with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to preserve or enhance the liquidation value of the Trust Assets, and consistent with, the liquidating purpose of the GUC Trust.

(b) Actions of the GUC Trustee. The GUC Trustee, upon direction of the GUC Trust Beneficiary Committee, in an expeditious but orderly manner, shall liquidate and convert to Cash the Trust Assets, make timely distributions and not unduly prolong the duration of the GUC Trust. The liquidation of the Original Lender Litigation Claims may be

accomplished either through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or causes of action, or otherwise.

(c) Relationship. This Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a liquidating trust. The GUC Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the GUC Trustee or the Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners, joint venturers or shareholders. The relationship of the Beneficiaries to the GUC Trustee shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Trust Agreement.

1.5 Incorporation of Plan. The Plan and the Confirmation Order are each hereby incorporated into this Trust Agreement and made a part hereof by this reference; provided, however, to the extent that there is conflict between the provisions of this Trust Agreement, the provisions of the Plan, and/or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this Trust Agreement.

1.6 Funding of the GUC Trust.

(a) On the Effective Date, all Remaining Cash shall be transferred to the Shared Assets Trust together with the other Shared Assets, and the Shared Assets Trust Beneficiary Committee shall determine the amount of the initial funding for the administration of the Shared Assets Trust and the GUC Trust (collectively, the “Funding Amount”). The Shared Assets Trust shall distribute 25% of the Funding Amount (but in no event more than \$500,000) to the GUC Trust, which shall hold such funds in a segregated account (the “Claims Reconciliation Reserve”).

(b) In the event that the Shared Assets Trust Beneficiary Committee determines that it is advisable to supplement the Funding Amount, twenty-five (25%) percent of any such financing shall be distributed to the GUC Trust and added to the Claims Reconciliation Reserve until such Reserve is funded in the aggregate with \$500,000.

(c) As provided in the Plan, funds in the Claims Reconciliation Reserve may be used only to pay expenses incurred by the GUC Trust in reconciling and resolving Class 4 and Class 5 Claims and for other administrative purposes (other than pursuing the Original Lender Litigation Claims). As provided in the Plan, none of the Funding Amount, including that portion distributed to the GUC Trust, no funds in the Claims Reconciliation Reserve and no funds or assets of the Shared Assets Trust may be used to fund any expenses incurred in connection with any Cause of Action against any Original Lender, and the Shared Assets Trustee is prohibited from incurring any such expenses.

(d) In the event that the Claims Reconciliation Reserve is funded, in whole or in part, with funds borrowed by the Shared Assets Trust, the GUC Trust shall reimburse to the Shared Assets Trust the principal amount of any Claims Reconciliation Reserve funding in

excess of \$250,000 that has been so borrowed, as described in Section 5.03 of the Plan (the "Claims Reconciliation Reserve Reimbursement Obligation").

(e) With the approval of the Shared Assets Trust Beneficiary Committee, the Shared Assets Trustee may replenish the Funding Amount out of the Net Proceeds of the Shared Assets (a "Trust Funding Replenishment"); provided, however, that if the aggregate Funding Amount (excluding any Claims Reconciliation Reserve funding) reaches \$2,500,000, each subsequent Trust Funding Replenishment shall be limited to 50% of any Net Proceeds of the Shared Assets not yet distributed to holders of Class A and Class B Beneficial Interests, unless the Beneficiary Committee shall determine otherwise by a consenting vote of no less than four members. As provided in the Plan, the GUC Trust has the right to reserve in the Claims Reconciliation Reserve additional amounts that would otherwise be distributed by the GUC Trust, or to use any such amounts to replenish the Claims Reconciliation Reserve.

## ARTICLE 2

### LIQUIDATION TRUST INTERESTS

2.1 Identification of Holders of GUC Trust Interests. The allocation and distribution of interests in the GUC Trust (the "GUC Trust Interests") among the Beneficiaries shall be accomplished as set forth in the Plan, including, without limitation, Sections 6.02 and 6.03 of the Plan. The name, address and Disputed Amount and Allowed Amount of the Class 4 or 5 Claims of each Beneficiary shall be recorded and set forth in a register maintained by the Trustee expressly for such purpose (as updated pursuant to this Trust Agreement, the "Register"). All references in this Trust Agreement to "Beneficiaries" shall be read to mean holders of record as set forth in the Register and shall not mean any beneficial owner not recorded in the Register. Unless expressly provided herein, the Trustee may establish a record date, which it deems practical for determining the holders GUC Trust Interests for a particular purpose.

2.2 Interests Beneficial Only. The ownership of a GUC Trust Interest shall not entitle any holder thereof to any title in or to the Trust Assets as such (which title shall be vested in the GUC Trustee) or to any right to call for a partition or division of the assets of the GUC Trust or to require an accounting.

2.3 Non-Transferability of GUC Trust Interests. The GUC Trust Interests shall not be certificated and shall not be transferable, assigned, pledged or hypothecated, in whole or part, except with respect to a transfer by will or under the laws of descent and distribution or otherwise by operation of law (a "Permitted Transfer"); provided, however, that any Permitted Transfer shall not be effective until and unless the Trustee receives written notice of such Permitted Transfer and has been provided with evidence satisfactory to it in its sole discretion of the legal right of such transferee to such GUC Trust Interests. Upon the Trustee's receipt of and satisfaction with such written notice it shall update the Register to reflect the transferee as the holder of the GUC Trust Interests subject to such Permitted Transfer.

2.4 Absolute Owners. The GUC Trustee may deem and treat the holder of record as the absolute owner of such GUC Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever and, until any

transfer of ownership is recorded in the Register pursuant to Section 2.3 above, the GUC Trustee shall not be charged with having received notice of any claim or demand to such GUC Trust Interests or the interest therein of any other Person.

2.5 Access to the Register by Holders of GUC Trust Interests. Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the GUC Trustee, and in accordance with the reasonable regulations prescribed by the GUC Trustee, to inspect and, at the sole expense of the holder seeking the same, make copies of the Register, in each case for a purpose reasonably related to such Beneficiary's interest in the GUC Trust.

2.6 Securities Law Registration. Under section 1145 of the Bankruptcy Code, the issuance of GUC Trust Interests under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration of securities. If the GUC Trustee determines, with the advice of counsel, that the GUC Trust is required to comply with registration and reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or the Investment Company Act of 1940, as amended (the "Investment Company Act"), then the GUC Trustee shall take any and all actions to comply with such registration and reporting requirements, if any, and file periodic reports with the SEC.

2.7 Conflicting Claims to Beneficial Interests. If any dispute arises with respect to the ownership or control of the GUC Trust Interests of any holder thereof or the right to receive any distribution in respect thereof, or if there is any disagreement among persons claiming to be permitted successors of any GUC Trust Interests resulting in adverse claims or demands being made in connection with such GUC Trust Interests (an "Ownership Dispute"), then, in any of such events, the GUC Trustee shall be entitled to refuse to comply with any demand or direction made by any party to such Ownership Dispute. In so refusing, the GUC Trustee may elect to make no payment or distribution with respect to the GUC Trust Interests relating to the Ownership Dispute or any part thereof, or to make payment or distribution into escrow as provided below, and to refer such Ownership Dispute to the Bankruptcy Court or another court of competent jurisdiction, which shall have jurisdiction over resolution of such Ownership Dispute. In so doing, the GUC Trustee shall not be or become liable to any of such parties for its refusal to comply with any demand or direction made by them, nor shall the GUC Trustee be liable for interest on any funds which it may so withhold. The GUC Trustee shall be entitled to refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a final judgment or (ii) all differences have been resolved by a valid written agreement among all of such parties and the GUC Trustee, which agreement shall include a complete release of the GUC Trustee and the GUC Trust Beneficiary Committee and their respective professionals. With respect to any payment or distribution to be made, the GUC Trustee may make such payment or distribution into an escrow account until the disposition thereof shall be determined by court order or by written agreement among the interested parties to such dispute; provided, however, that after providing interested parties at least thirty (30) days notice, if no action has been commenced within ninety (90) days after the relevant Distribution Date, the property which is the subject of the dispute shall irrevocably become Unclaimed Property.

## ARTICLE 3

### THE GUC TRUSTEE

3.1 GUC Trust Proceeds. All proceeds and distributions deriving from or received or distributed in respect of Trust Assets shall be added to the Trust Assets and held as a part thereof.

3.2 Collection of Income. The GUC Trustee shall collect all income earned with respect to the assets of the GUC Trust, which shall thereupon be added to the assets of the GUC Trust and held as a part thereof.

3.3 Payment of GUC Trust Expenses. The GUC Trustee may expend the assets of the Claim Reconciliation Reserve (i) to pay expenses incurred by the GUC Trust in reconciling and resolving Class 4 and Class 5 Claims, (ii) to pay reasonable expenses relating to the administration of the GUC Trust (including but not limited to, the costs and expenses of the GUC Trustee and the GUC Trust Beneficiary Committee, the fees of the U.S. Trustee, and the fees, costs and expenses of all professionals retained by any of them or their members, as the case may be, any taxes imposed on the GUC Trust or fees and expenses in connection with, arising out of or related to the Trust Assets, and (iii) to satisfy other liabilities incurred or assumed by the GUC Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Trust Agreement. Notwithstanding any other provision of this Trust Agreement to the contrary (i) the GUC Trustee shall not be required to take any action or enter into or maintain any claim, demand, action or proceeding relating to the GUC Trust unless it shall have sufficient funds in the Claim Reconciliation Reserve for that purpose and (ii) nothing herein shall permit the GUC Trustee or the GUC Trust to use any of the Claims Reconciliation Reserve in connection with the prosecution of the Original Lender Litigation Claims.

3.4 Distributions. The GUC Trustee shall distribute the net distributable assets of the GUC Trust to the holders of GUC Trust Interests in accordance with the provisions of Article 6 of the Plan.

3.5 Tenure, Removal, and Replacement of the GUC Trustee.

(a) Each GUC Trustee will serve until resignation and the appointment of a successor pursuant to subsection (b) below, removal pursuant to subsection (c) below or death (if applicable).

(b) The GUC Trustee may resign by giving not less than ninety (90) days' prior written notice to the GUC Trust Beneficiary Committee. Such resignation will become effective on the later to occur of: (i) the day specified in such notice and (ii) the appointment of a successor trustee as provided herein and the acceptance by such successor trustee of such appointment. If a successor trustee is not appointed or does not accept its appointment within ninety (90) days following delivery of notice of resignation, the GUC Trustee may file a motion with the Bankruptcy Court, upon notice and hearing, for the appointment of a successor trustee;

(c) The GUC Trustee may be removed for any reason by resolution of the GUC Trust Beneficiary Committee;

(d) To the extent that the GUC Trustee is removed pursuant to the terms specified in Section 3.5(c) (a "Removal") or the GUC Trustee resigns pursuant to the terms specified in Section 3.5(b) (a "Resignation"), and such GUC Trustee is then serving in any other capacity for or on behalf of either of the Grantors or any of their affiliates or is serving as trustee of any trust formed pursuant to the Plan (service by the GUC Trustee in each such additional capacity, a "Responsibility" and collectively, the "Responsibilities"), the GUC Trustee shall be deemed to be terminated (for all purposes and without any further action) from each of its other Responsibilities upon its Removal or Resignation;

(e) In the event of a vacancy in the position of the GUC Trustee (whether by removal, resignation or death, if applicable), the vacancy will be filled by the appointment of a successor trustee by (i) resolution of the GUC Trust Beneficiary Committee and by the acceptance of the position by the successor trustee in accordance with Section 3.6 or (ii) an order of the Bankruptcy Court after an opportunity for a hearing (provided, however, that only the GUC Trust Beneficiary Committee shall have standing to seek such an order). If a successor trustee is appointed by resolution, as provided in clause (i) of the preceding sentence, and such appointment is accepted by the successor trustee, the GUC Trust Beneficiary Committee shall file notice of such appointment and acceptance with the Bankruptcy Court, which notice will include the name, address, and telephone number of the successor trustee; provided that the filing of such notice shall not be a condition precedent to the vesting in the successor GUC Trustee of all the estates, properties, rights, powers, trusts, and duties of its predecessor;

(f) Immediately upon the acceptance of appointment by any successor trustee, all rights, powers, duties, authority, and privileges of the predecessor GUC Trustee hereunder will be vested in and undertaken by the successor trustee without any further act; and the successor trustee will not be liable personally for any act or omission of the predecessor GUC Trustee;

(g) Upon the appointment of a successor trustee, the predecessor GUC Trustee (or the duly appointed legal representative of a deceased GUC Trustee) shall, if applicable, when requested in writing by the successor trustee, execute and deliver an instrument or instruments conveying and transferring to such successor trustee upon the trust herein expressed, all the estates, properties, rights, powers and trusts of such predecessor GUC Trustee, and shall duly assign, transfer, and deliver to such successor trustee all property and money held hereunder, and all other assets and documents relating to the GUC Trust, the Trust Assets, or the GUC Trust Interests then in its possession and held hereunder; and

(h) During any period in which there is a vacancy in the position of GUC Trustee, the GUC Trust Beneficiary Committee shall appoint one of its members to serve as interim GUC Trustee, (the "Interim Trustee"). The Interim Trustee shall be subject to all the terms and conditions applicable to a GUC Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a member of the GUC Trust Beneficiary Committee merely by its appointment as Interim Trustee. The GUC Trust Beneficiary Committee may, but shall not be required to, file a notice with the Bankruptcy Court of the type required in Section 3.5(e) of the appointment of an Interim Trustee.

3.6 Acceptance of Appointment by Successor GUC Trustee. Any successor trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations of the predecessor GUC Trustee hereunder and thereupon the successor trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of its predecessor in the GUC Trust hereunder with like effect as if originally named herein.

3.7 Meetings of the GUC Trustee and the GUC Trust Beneficiary Committee. Meetings of the GUC Trustee and the GUC Trust Beneficiary Committee are to be held whenever and wherever the GUC Trustee and the GUC Trust Beneficiary Committee may determine in their reasonable discretion.

3.8 Notice of and Waiver of Notice for GUC Trustee and GUC Trust Beneficiary Committee Meetings. Notice of the time and place (but not necessarily the purpose or all of the purposes) of any meeting will be given to the GUC Trustee and the members of the GUC Trust Beneficiary Committee in person or by telephone, or via electronic mail or facsimile transmission. Notice to the GUC Trustee and the members of the GUC Trust Beneficiary Committee of any such special meeting will be deemed given sufficiently in advance when (i) if given by mail, the same is deposited in the United States mail at least ten (10) calendar days before the meeting date, with postage thereon prepaid, (ii) if given by electronic mail or facsimile transmission, the same is transmitted at least 24 hours prior to the convening of the meeting, or (iii) if personally delivered (including by overnight courier) or given by telephone, the same is handed, or the substance thereof is communicated over the telephone to the GUC Trustee and the members of the GUC Trust Beneficiary Committee or to an adult member of his/her office staff or household, at least 24 hours prior to the convening of the meeting. The GUC Trustee and any member of the GUC Trust Beneficiary Committee may waive notice of any meeting and any adjournment thereof at any time before, during, or after it is held, as provided by law. Except as provided in the next sentence below, the waiver must be in writing, signed by the GUC Trustee or the applicable member or members of the GUC Trust Beneficiary Committee entitled to the notice, and filed with the minutes or records of the GUC Trust. The attendance of the GUC Trustee or a member of the GUC Trust Beneficiary Committee at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

3.9 Manner of Acting. The GUC Trustee or any member of the GUC Trust Beneficiary Committee may participate in a meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. The GUC Trustee or any member of the GUC Trust Beneficiary Committee participating in a meeting by this means is deemed to be present in person at the meeting.

3.10 Role of the GUC Trustee. In furtherance of and consistent with the purpose of the GUC Trust and the Plan, the GUC Trustee, subject to the terms and conditions contained herein and in the Plan, and subject to the direction of the GUC Trust Beneficiary Committee, shall have the power to perform the functions and take the actions provided or permitted in the Plan or in

this Trust Agreement. In all circumstances, the GUC Trustee shall, subject to the direction of the GUC Trust Beneficiary Committee act in the best interests of all the Beneficiaries of the GUC Trust and in furtherance of the purpose of the GUC Trust.

3.11 Authority of GUC Trustee. The GUC Trustee shall report all material matters to and seek approval for all material decisions from the GUC Trust Beneficiary Committee. Subject to the supervision of the GUC Trust Beneficiary Committee and to any limitations contained herein (including, without limitation, Article 4 hereof) or in the Plan, the GUC Trustee shall have the power and authority:

(i) to receive, manage, invest, supervise, and protect the Trust Assets, hold legal title to any and all rights of the holders of GUC Trust Interests in or arising from the Trust Assets, including, without limitation, collecting and receiving any and all money and other property belonging to the GUC Trust;

(ii) to pay taxes or other obligations incurred by the Trust Assets;

(iii) to retain and pay such counsel and other professionals and/or advisors, including tax advisors (including, without limitation, any professionals previously retained by the Committee or the Debtors), as the GUC Trustee shall select in its reasonable discretion to assist the GUC Trustee in its duties (including, without limitation, the administration, prosecution and distribution of Trust Assets), on such terms as the GUC Trustee deem reasonable and appropriate, without Bankruptcy Court approval; provided, however, that the GUC Trustee shall seek and receive approval from the GUC Trust Beneficiary Committee before retaining any such professional whose fees and expenses are expected to exceed \$50,000. The GUC Trustee may commit the GUC Trust to and shall pay such counsel and other professionals reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred;

(iv) to calculate and implement distributions of Trust Assets and the proceeds thereof pursuant to the terms of the Plan and this Agreement;

(v) to prosecute, compromise, and settle, in accordance with the terms of this Agreement, all objections to Class 4 and Class 5 Claims against the Debtors and all Claims and Causes of Action vested in or otherwise transferred to the GUC Trust;

(vi) to resolve issues involving Class 4 and 5 Claims against the Debtors pursuant to Article IX of the Plan;

(vii) to investigate, reconcile and resolve asserted Class 4 and Class 5 Claims and determine which claims to dispute;

(viii) to perform the duties, exercise the powers, and assert the rights of a trustee under sections 704 and 1106 of the Bankruptcy Code, including, without limitation, commencing, prosecuting or settling causes of action, enforcing contracts or asserting claims, defenses, offsets and privilege;

(ix) to protect and enforce the rights to the Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(x) to obtain reasonable insurance coverage with respect to the liabilities and obligations of the GUC Trustee and the GUC Trust Beneficiary Committee under this Trust Agreement (in the form of an errors and omissions policy or otherwise);

(xi) to obtain insurance coverage with respect to real and personal property that may become assets of the GUC Trust, if any;

(xii) to cause such reviews and/or audits of the financial books and records of the GUC Trust and other required professionals, as may be required by the SEC and applicable securities laws and as may be reasonable and appropriate in the GUC Trustee's discretion to be performed and to prepare and file any tax returns, informational returns, or periodic or current reports as required by applicable securities laws, for the GUC Trust as may be required;

(xiii) to retain and pay attorneys, accountants, appraisers and such other third parties as deemed necessary or useful to assist the GUC Trustee in carrying out its powers and duties under this Trust Agreement; the GUC Trustee may commit the GUC Trust to and shall pay all such persons or entities reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, as well as commit the GUC Trust to indemnify any such parties in connection with the performance of services (provided that such indemnity shall not cover any losses, costs, damages, expenses or liabilities that result from the recklessness, gross negligence, willful misconduct, breach of fiduciary duty or knowing violation of law by such party);

(xiv) to compromise, adjust, arbitrate, sue on or defend, pursue, prosecute abandon, exercise rights, powers, and privileges with respect to, or otherwise deal with and settle, in accordance with the terms set forth herein, all causes of action or Ownership Dispute in favor of or against the GUC Trust;

(xv) to invest any moneys held as part of the GUC Trust in accordance with the terms of Section 3.18 hereof, limited, however, to such investments that are consistent with the GUC Trust's status as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc 94-45, 1994-2 C.B. 684;

(xvi) to appear on behalf of the GUC Trust or its Beneficiaries in any proceeding that may directly or indirectly affect the Trust Assets or their value or the recovery of Beneficiaries;

(xvii) to request any appropriate tax determination with respect to the GUC Trust, including, without limitation, a determination pursuant to Section 505 of the Bankruptcy Code;

(xviii) to establish and maintain a website for the purpose of providing notice of GUC Trust activities in lieu of sending written notice to holders of GUC Trust Interests, subject to providing notice of such website to such holders; and

(xix) to take or refrain from taking any and all other actions that the GUC Trustee, reasonably deems necessary or convenient for the continuation, protection and maximization of the Trust Assets the protection of the interests or the Beneficiaries or to carry out the purposes hereof; provided, however, that the GUC Trustee shall not be required to take direction from the GUC Trust Beneficiary Committee, to the extent such actions are purely ministerial in nature.

3.12 Limitation of GUC Trustee's Authority. Notwithstanding anything herein to the contrary, the GUC Trustee may not, without the approval of the GUC Trust Beneficiary Committee, commence, abandon, settle or elect not to pursue any litigation and shall not (i) be authorized to engage in any trade or business, (ii) take such actions inconsistent with the orderly liquidation of the assets of the GUC Trust as are required or contemplated by applicable law, the Plan and this Trust Agreement or (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the GUC Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

3.13 Books and Records.

(a) The GUC Trustee shall maintain books and records relating to the assets of the GUC Trust and income of the GUC Trust and the payment of expenses of, and liabilities of claims against or assumed by, the GUC Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting and securities law requirements of the GUC Trust. Nothing in this Trust Agreement requires the GUC Trustee to file any accounting or seek approval of any court with respect to the administration of the GUC Trust, or as a condition for managing any payment or distribution out of the assets of the GUC Trust.

3.14 Inquiries into Trustee's Authority. Except as otherwise set forth in the Trust Agreement or in the Plan, no Person dealing with the GUC Trust shall be obligated to inquire into the authority of the GUC Trustee in connection with the protection, conservation or disposition of the Trust Assets.

3.15 Compliance with Laws. Any and all distributions of assets of the GUC Trust shall be in compliance with applicable laws, including, without limitation, applicable Federal and state securities laws.

3.16 Compensation of the GUC Trustee. Notwithstanding anything to the contrary contained herein, the GUC Trustee shall be compensated for its services hereunder at its hourly rate in effect at such time, which rate may be adjusted from time to time. The GUC Trustee's present hourly rate is \$400. Additionally, all reasonable and documented out-of-pocket expenses

incurred by the GUC Trustee in connection with the performance of its duties hereunder shall be reimbursed by the Trust upon demand for payment thereof.

3.17 Reliance by GUC Trustee. Except as otherwise provided herein:

(a) the GUC Trustee may rely, and shall be protected in acting upon, (i) any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the GUC Trustee to be genuine and to have been signed or presented by the proper party or parties, (ii) any direction by the GUC Trust Beneficiary Committee or (iii) the Debtors' filed schedules and statements of financial affairs and all other information filed by the Debtors or provided by the Debtors or their representatives to the GUC Trust concerning Claims filed against the Debtors, and their reconciliation and documents supporting such reconciliation; and

(b) Persons dealing with the GUC Trustee shall look only to the Trust Assets to satisfy any liability incurred by the GUC Trustee to such Person in carrying out the terms of this Trust Agreement, and neither the GUC Trustee nor any member of the GUC Trust Beneficiary Committee shall have any personal obligation to satisfy any such liability.

3.18 Investment and Safekeeping of GUC Trust Assets. The GUC Trustee shall invest all assets transferred to the GUC Trust (other than Original Lender Litigation Claims and the Shared Assets Trust Class B Interests), all Cash distributions in respect of the Shared Assets Trust Class B Interests, proceeds from Original Lender Litigation Claims, the Claim Reconciliation Reserve and all income earned by the GUC Trust (pending periodic distributions in accordance with the provisions of the Plan and this Trust Agreement) only in demand and time deposits, such as short-term certificates of deposits, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills, provided, however, that (a) the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise, (b) the GUC Trustee may retain any proceeds from Original Lender Litigation Claims received that are not Cash in the form received only for so long as may be required for the prompt and orderly liquidation of such assets in Cash; and (c) under no circumstances shall the GUC Trustee segregate the assets of the GUC Trust on the basis of classification of the holders of GUC Trust Interests, other than with respect to distributions to be made on account of Disputed Claims in accordance with the provisions of the Plan.

3.19 Standard of Care; Exculpation. Neither the GUC Trustee nor any of its duly designated agents or representatives or professionals shall be liable for any act or omission taken or omitted to be taken by the GUC Trustee in good faith, other than acts or omissions resulting from the GUC Trustee's own gross negligence, recklessness, willful misconduct, breach of fiduciary duty or knowing violation of law. The GUC Trustee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Persons.

Notwithstanding such authority, the GUC Trustee shall be under no obligation to consult with its attorneys, accountants, financial advisors or agents, and its good faith determination not to do so shall not result in the imposition of liability on the GUC Trustee, unless such determination is based on gross negligence, recklessness, willful misconduct, breach of fiduciary duty or knowing violation of law.

## **ARTICLE 4**

### **GUC TRUST BENEFICIARY COMMITTEE**

4.1 GUC Trust Beneficiary Committee. The GUC Trust Beneficiary Committee shall be comprised of three (3) Persons selected by the Committee. The initial members of the GUC Trust Beneficiary Committee shall be Racheli Friedman, Providence Chain Co. and Pranav Shah.

4.2 Authority of the GUC Trust Beneficiary Committee.

(a) The GUC Trust Beneficiary Committee shall have the authority and responsibility to oversee, review, and guide the activities and performance of the GUC Trustee and shall have the authority to remove the GUC Trustee in accordance with Section 3.5(c) herein. The GUC Trustee shall consult with and provide information to the GUC Trust Beneficiary Committee in accordance with and pursuant to the terms of this Trust Agreement and the Plan. The GUC Trust Beneficiary Committee shall have the authority to select and engage such Persons, and select and engage such professional advisors, including, without limitation, any professional previously retained by the Committee or the Debtors in accordance with the terms of the Plan and this Trust Agreement, as the GUC Trust Beneficiary Committee deems necessary and desirable to assist the GUC Trust Beneficiary Committee in fulfilling its obligations under this Trust Agreement and the Plan, and the GUC Trust shall pay the reasonable fees of such Persons and reimburse such Persons for their reasonable and documented out-of-pocket costs and expenses consistent with the terms of this Trust Agreement. The GUC Trust Beneficiary Committee may engage the same counsel as the GUC Trustee has engaged. This Trust Agreement is not intended to create a fiduciary duty, and neither the GUC Trust Beneficiary Committee nor any of its members will be deemed to be or be treated in any way as fiduciaries of the Beneficiaries.

(b) The GUC Trust Beneficiary Committee may elect to abandon any claim included among the Trust Assets. Upon any such election, such claims shall cease to be Trust Assets.

4.3 Meetings of the GUC Trust Beneficiary Committee. Meetings of the GUC Trust Beneficiary Committee are to be held whenever and wherever the members of the GUC Trust Beneficiary Committee may determine in their reasonable discretion.

4.4 Manner of Acting.

(a) A majority of the total number of members of the GUC Trust Beneficiary Committee then in office shall constitute a quorum for the transaction of business at any meeting of the GUC Trust Beneficiary Committee; provided, however, that the Beneficiary Committee may, by the majority vote of its members, designate a single member of the Beneficiary

Committee to exercise all power of the Beneficiary Committee in respect of any particular matter. The affirmative vote of a majority of the members of the GUC Trust Beneficiary Committee present and entitled to vote at a meeting at which a quorum is present shall be the act of the GUC Trust Beneficiary Committee except as otherwise required by law or as provided in this Trust Agreement. Any or all of the members of the GUC Trust Beneficiary Committee may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. Any member of the GUC Trust Beneficiary Committee participating in a meeting by this means is deemed to be present in person at the meeting.

(b) Any member of the GUC Trust Beneficiary Committee who is present and entitled to vote at a meeting of the GUC Trust Beneficiary Committee when action is taken is deemed to have assented to the action taken unless: (i) such member of the GUC Trust Beneficiary Committee objects at the beginning of the meeting (or promptly upon his/her arrival) to holding it or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice of his/her dissent or abstention to the GUC Trust Beneficiary Committee before its adjournment. The right of dissent or abstention is not available to any member of the GUC Trust Beneficiary Committee who votes in favor of the action taken.

(c) Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each member of the GUC Trust Beneficiary Committee shall report to the GUC Trust Beneficiary Committee any conflict of interest such member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such member might have with respect to or in connection with such matter or issue). A member who has or who may have a conflict of interest shall be deemed to be a "conflicted member" who shall not be entitled to vote or take part in any action with respect to such matter or issue (however such member shall be counted for purposes of determining the existence of a quorum); and the vote or action with respect to such matter or issue shall be undertaken only by members of the GUC Trust Beneficiary Committee who are not "conflicted members."

4.5 GUC Trust Beneficiary Committee's Action Without a Meeting. Any action required or permitted to be taken by the GUC Trust Beneficiary Committee at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the GUC Trust Beneficiary Committee as evidenced by one or more written consents describing the action taken, signed by all members of the GUC Trust Beneficiary Committee and filed with the minutes or proceedings of the GUC Trust Beneficiary Committee.

4.6 Tenure, Removal, and Replacement of the Members of the GUC Trust Beneficiary Committee. The authority of the members of the GUC Trust Beneficiary Committee will be effective as of the date hereof and will remain and continue in full force and effect until the GUC Trust is terminated in accordance with Section 9.1 hereof. The service of the members of the GUC Trust Beneficiary Committee will be subject to the following:

(a) The members of the GUC Trust Beneficiary Committee will serve until death or resignation pursuant to subsection (b) below, or removal pursuant to subsection (c) below.

(b) A member of the GUC Trust Beneficiary Committee may resign upon 30 days prior written notice to the GUC Trustee and to the remaining members of the GUC Trust Beneficiary Committee.

(c) A member of the GUC Trust Beneficiary Committee may be removed by order of the Bankruptcy Court obtained by any member of the GUC Trust Beneficiary Committee or by the unanimous resolution of the other members of the GUC Trust Beneficiary Committee, a copy of which shall be delivered to the removed GUC Trust Beneficiary Committee member; provided, however, that such removal may only be made for Cause. For purposes of this Section 4.6(c), "Cause" shall be defined as: (i) such GUC Trust Beneficiary Committee member's theft or embezzlement or attempted theft or embezzlement of money or tangible or intangible assets or property; (ii) such GUC Trust Beneficiary Committee member's violation of any law (whether foreign or domestic), which results in a felony indictment or similar judicial proceeding; (iii) such GUC Trust Beneficiary Committee member's recklessness, gross negligence, willful misconduct, breach of fiduciary duty or knowing violation of law, in the performance of his or her duties; or (iv) such GUC Trust Beneficiary Committee member's failure to perform any of his or her other material duties under this Agreement; provided, however, that such GUC Trust Beneficiary Committee member shall have been given a reasonable period to cure any alleged Cause under clauses (iii) (other than willful misconduct) or (iv).

(d) In the event of a vacancy in the GUC Trust Beneficiary Committee (whether by removal, death or resignation), a new member may be appointed to fill such position by a majority of the remaining members of the GUC Trust Beneficiary Committee or the Bankruptcy Court. If there are no remaining members of the GUC Trust Beneficiary Committee to fill such vacancies that would have been made by a majority of the remaining members of the GUC Trust Beneficiary Committee, appointments shall be made upon an order entered after an opportunity for a hearing by the Bankruptcy Court, upon motion of the GUC Trustee. The appointment of a successor member of the GUC Trust Beneficiary Committee will be evidenced by the filing with the Bankruptcy Court of a notice of appointment, which notice will include the name, address, and telephone number of the successor member of the GUC Trust Beneficiary Committee.

(e) Immediately upon the appointment of any successor member of the GUC Trust Beneficiary Committee, all rights, powers, duties, authority, and privileges of the predecessor member of the GUC Trust Beneficiary Committee hereunder will be vested in and undertaken by the successor member of the GUC Trust Beneficiary Committee without any further act; and the successor member of the GUC Trust Beneficiary Committee will not be liable personally for any act or omission of the predecessor member of the GUC Trust Beneficiary Committee.

4.7 Compensation of the GUC Trust Beneficiary Committee. Each member of the GUC Trust Beneficiary Committee shall be paid, by the Trust, the amount of \$4,000 annually

(in the aggregate) as compensation for its services hereunder, including, without limitation, any services rendered as a member of any board of directors (or similar governing body) or any services rendered in connection with any trust board (or similar governing body) (all such duties or services are referred to herein as the "Duties"). Additionally, except as set forth herein, all reasonable and documented out-of-pocket fees and expenses incurred by members of the GUC Trust Beneficiary Committee in connection with the performance of the Duties shall be reimbursed, without duplication, by the Trust, upon demand for payment thereof.

4.8 Standard of Care; Exculpation. None of the GUC Trust Beneficiary Committee, its members, designees or professionals, or any of their duly designated agents or representatives, shall be liable for the act or omission of any other member, agent or representative of the GUC Trust Beneficiary Committee, nor shall the GUC Trust Beneficiary Committee or any of its members be liable for any act or omission taken or omitted to be taken by the GUC Trust Beneficiary Committee in good faith, other than acts or omissions resulting from the GUC Trust Beneficiary Committee's own gross negligence, recklessness, willful misconduct, breach of fiduciary duty or knowing violation of law. The GUC Trust Beneficiary Committee and each of its members may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, neither the GUC Trust Beneficiary Committee nor any of its members shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and its good faith determination not to do so shall not result in the imposition of liability on the GUC Trust Beneficiary Committee or, as applicable, its members or designees, unless such determination is based on gross negligence, recklessness, willful misconduct, breach of fiduciary duty or knowing violation of law.

## **ARTICLE 5**

### **TAX MATTERS**

#### 5.1 Federal Income Tax Reporting.

(a) Subject to further guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the GUC Trustee of a private letter ruling if the GUC Trustee (or Grantor) so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the GUC Trustee), the GUC Trustee shall file returns for the GUC Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this Article 5. The GUC Trustee shall also annually send to each Beneficiary a separate statement setting forth such Beneficiary's share of items of income, gain, loss, deduction or credit and will instruct all such holders to report such items on their Federal income tax returns.

(b) As soon as possible after the date hereof, but in no event later than one-hundred twenty (120) days thereafter, (i) the GUC Trust Beneficiary Committee shall inform the GUC Trustee in writing of the value for Federal income tax purposes of the assets transferred to the GUC Trust, based on the good faith determination of the GUC Trust Beneficiary Committee

and (ii) the GUC Trustee shall apprise the Beneficiaries, in writing of such valuation. The valuation shall be used consistently by all parties (including the Grantors, the GUC Trustee and the Beneficiaries) for all Federal income tax purposes. The GUC Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the GUC Trust that are required by any governmental unit and pay taxes, if any, properly payable by the GUC Trust.

(c) The GUC Trustee may request an expedited determination of taxes of the GUC Trust under Section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the GUC Trust for all taxable periods through the dissolution of the GUC Trust.

## 5.2 Allocations of GUC Trust Taxable Income.

(a) Except as otherwise set forth in this Trust Agreement or the Plan, any items of income, deduction, credit, or loss of the GUC Trust shall be allocated for Federal income tax purposes by the GUC Trustee among the Beneficiaries in accordance with applicable Federal income tax accounting principles prescribed by the IRC, the applicable administrative and judicial authorities and pronouncements and, subject thereto, pro rata on the basis of their beneficial interests in the GUC Trust. In the case of Disputed Claims, the GUC Trustee may use any reasonable allocation method, including the payment of the tax on behalf thereof.

(b) The GUC Trustee shall be entitled to deduct any federal or state withholding taxes from any payments made with respect to Beneficiaries, as appropriate, and shall otherwise comply with section 346 of the Bankruptcy Code.

(c) With regard to Permitted Transfers of GUC Trust Interests in accordance with Section 2.3 herein, the GUC Trustee shall promptly establish a standard convention for allocating and apportioning taxable income and loss between a transferor and its transferee and shall not be required to so allocate and apportion based on the actual GUC Trust activities prior and subsequent to the date of any Permitted Transfer. The GUC Trustee shall notify the holders of GUC Trust Interest of the convention adopted promptly after such adoption. The GUC Trustee shall use its discretion to establish a fair and equitable convention to apply and may, but is not required to, adopt a monthly, quarterly or similar record date convention.

## **ARTICLE 6**

### **DISTRIBUTIONS**

6.1 Annual Distribution; Withholding. The GUC Trustee shall distribute at least annually to the holders of GUC Trust Interests all net cash income plus all net cash proceeds from the liquidation of assets; provided, however, that the GUC Trustee may cause the GUC Trust to retain such amounts (i) as are reasonably necessary to meet contingent liabilities and to maintain the value of the assets of the GUC Trust during liquidation, (ii) to pay reasonable administrative expenses (including the costs and expenses of the GUC Trustee and the GUC Trust Beneficiary Committee and the fees, costs and expenses of all professionals retained by any of them or their members, as the case may be, and any taxes imposed on the GUC Trust or in respect of the Trust Assets), (iii) to satisfy other liabilities incurred or assumed by the GUC Trust (or to which the Trust Assets are otherwise subject) in accordance with the Plan or this Trust

Agreement, and (iv) to establish any reserve authorized by the GUC Trust Beneficiary Committee. All such distributions shall be pro rata based on the number of GUC Trust Interests representing Allowed Claims held by a holder compared with the aggregate number of GUC Trust Interests representing both Allowed and Disputed Claims, subject to the terms of the Plan and this Trust Agreement. The GUC Trustee may withhold from amounts distributable to any Person any and all amounts determined in the GUC Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement. As provided in the Plan, Beneficiaries shall, as a condition to receiving distributions, provide such information and take such steps as the GUC Trustee may reasonably require to ensure compliance with withholding and reporting requirements, and to enable the GUC Trustee to obtain certifications and information as may be necessary or appropriate to satisfy the provisions of any tax law.

6.2 Manner of Payment or Distribution. All distributions made by the GUC Trustee to Beneficiaries shall be payable to the holders of GUC Trust Interests of record as of the 20th day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such day shall be the following Business Day. If the distribution shall be in Cash, the GUC Trustee shall distribute such Cash by wire, check, or such other method as the GUC Trustee deems appropriate under the circumstances.

6.3 Delivery of GUC Trust Distributions. All distributions under this Trust Agreement to any Beneficiary shall be made at the address of such holder as set forth in the Register or at such other address as such holder of GUC Trust Interests shall have specified for payment purposes in a written notice to the GUC Trustee at least 15 days prior to such distribution date. In the event that any distribution to any holder is returned as undeliverable, the GUC Trustee shall use reasonable efforts to determine the current address of such holder, but no distribution to such holder shall be made unless and until the GUC Trustee has determined the then current address of such holder, at which time such distribution shall be made to such holder without interest; provided, however, that such undeliverable or unclaimed distributions shall be deemed unclaimed property at the expiration of one year from the date of distribution. The GUC Trustee shall reallocate the undeliverable and unclaimed distributions for the benefit of all other holders of GUC Trust Interests.

6.4 Cash Distributions. No Cash distributions shall be required to be made in an amount less than \$25.00. Any funds so withheld and not distributed shall be held in reserve and distributed in subsequent distributions. Notwithstanding the foregoing, all cash shall be distributed in the final distribution of the GUC Trust.

## **ARTICLE 7**

### **INDEMNIFICATION**

#### **7.1 Indemnification of GUC Trustee and the GUC Trust Beneficiary Committee.**

(a) To the fullest extent permitted by law, the GUC Trust, to the extent of its assets legally available for that purpose, will indemnify and hold harmless the GUC Trustee and each of the members of the GUC Trust Beneficiary Committee and each of their respective

directors, members, shareholders, partners, officers, agents, employees, attorneys and other professionals (collectively, the "Indemnified Persons") from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including, without limitation, fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or liability by reason of anything any Indemnified Person did, does or refrains from doing for the business or affairs of the GUC Trust, except to the extent that the loss, cost, damage, expense or liability resulted primarily from the Indemnified Person's recklessness, gross negligence, willful misconduct, breach of fiduciary duty or knowing violation of law. To the extent reasonable, the GUC Trust will pay in advance or reimburse reasonable and documented out-of-pocket expenses (including advancing reasonable costs of defense) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the GUC Trust.

(b) Any Indemnified Person may waive the benefits of indemnification under this Section 7.1, but only by an instrument in writing executed by such Indemnified Person.

(c) The rights to indemnification under this Section 7.1 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Section 7.1 will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under any other agreement or instrument to which that Person is a party.

## **ARTICLE 8**

### **REPORTS TO BENEFICIARIES**

#### **8.1 Quarterly and Annual Reports.**

(a) The GUC Trustee shall cause to be prepared as soon as practicable after December 31 and June 30 of each year, financial statements of the GUC Trust as of the end of and for such periods, prepared in accordance with generally accepted accounting principles, including (A) a balance sheet of the GUC Trust, (B) a statement of receipts, disbursements and distributions, (C) a statement of profit and loss, (D) a schedule summarizing by type investments and assets, indicating acquisitions and dispositions and (E) a summary listing of the status of the resolution of Disputed Class 4 and Class 5 Claims. In addition, such financial statements shall contain the following supplementary information: (F) a statement of per unit GUC Trust Interest data consisting of net investment income, income distributed, net realized gains or losses and increases or decreases in unrealized appreciation, net increases or decreases in net asset values, net asset values and the GUC Trust Interests outstanding as of the beginning and end of the period, (G) a statement of changes in the number of GUC Trust Interests outstanding, including distributions and cancellations from whatever source, and (H) a schedule of expenses, including accrued and paid expenses relating to the administration of the GUC Trust.

(b) Within ten (10) Business Days after the end of the relevant report preparation period the GUC Trustee shall cause any information listed in Section 8.1(a) to be mailed to such holders and to be filed with the Bankruptcy Court.

(c) The GUC Trustee may post any report required to be provided under this Section 8.1 on a web site maintained by the GUC Trustee in lieu of actual notice to the Beneficiaries (unless otherwise required by law) subject to providing notice to the Persons listed in Section 9.6 herein.

## **ARTICLE 9**

### **TERMINATION OF THE LIQUIDATION TRUST**

#### **9.1 Winding Up/Termination of the GUC Trust.**

(a) After the repayment of any outstanding Claims Reconciliation Reserve Reimbursement Obligation, any additional funds in the Claims Reconciliation Reserve that are not spent in connection with the reconciliation of Class 4 Claims, Class 5 Claims and other administrative purposes (other than pursuing Original Lender Litigation Claims) and all other monies in the GUC Trust shall be distributed to Beneficiaries in accordance with Section 6.03 of the Plan.

(b) The GUC Trustee shall not unduly prolong the duration of the GUC Trust and shall at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Trust Assets and to effect the distribution of Trust Assets to Beneficiaries in accordance with the terms hereof and to terminate the GUC Trust as soon as practicable. Without limiting the generality of the preceding sentence, the GUC Trust shall terminate at such time as (i) all of the Trust Assets have been reduced to Cash and all of such Cash has been distributed to Beneficiaries in accordance with the terms of the Plan, and (ii) all Distributions required to be made by the GUC Trustee under the Plan, the Confirmation Order and this Trust Agreement have been made, but in no event shall this GUC Trust be dissolved later than five (5) years from the Effective Date. Notwithstanding the foregoing, the Bankruptcy Court upon motion by a party in interest on notice with an opportunity for a hearing at least six (6) months prior to the fifth anniversary of the Effective Date (or the end of any extended term approved by the Bankruptcy Court) may extend, for a fixed period (not to exceed three (3) years, inclusive of any prior extensions, without a favorable letter ruling from the IRS that any further extension would not adversely affect the status of the GUC Trust as a liquidating trust for Federal income tax purposes) if the Bankruptcy Court determines that such extension is necessary to facilitate or complete the liquidation of the assets of the GUC Trust.

9.2 Continuance of Trust for Winding Up. After the termination of the GUC Trust and for the purpose of liquidating and winding up the affairs of the GUC Trust, the GUC Trustee shall continue to act as such until its duties have been fully performed. Prior to the final distribution of all of the remaining assets of the GUC Trust and upon approval of the GUC Trust Beneficiary Committee, the GUC Trustee shall be entitled to reserve from such assets any and all amounts required to provide for its own costs and expenses, in accordance with Section 3.16 herein, until such time as the winding up of the GUC Trust is completed. Upon termination of the GUC Trust, the GUC Trustee shall retain for a period of two years the books, records, Beneficiary lists, the Trust Register, and certificates and other documents and files that have been delivered to or created by the GUC Trustee. At the GUC Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two years from

the completion and winding up of the affairs of the GUC Trust. Except as otherwise specifically provided herein, upon the termination of the GUC Trust, the GUC Trustee shall have no further duties or obligations hereunder.

## ARTICLE 10

### AMENDMENT AND WAIVER

#### 10.1 Amendment and Waiver.

(a) The GUC Trustee, with the prior approval of the GUC Trust Beneficiary Committee, may amend, supplement or waive any provision of, this Trust Agreement, without notice to or the consent of any holder of GUC Trust Interests or the approval of the Bankruptcy Court: (i) to cure any ambiguity, omission, defect or inconsistency in this Trust Agreement, provided that such amendments, supplements or waivers shall not adversely affect the distributions to be made under this Trust Agreement to any of the Beneficiaries, adversely affect the U.S. Federal income tax status of the GUC Trust as a "liquidating trust" or adversely affect the rights of the Committee under the Plan or this Trust Agreement; (ii) to comply with any requirements in connection with the U.S. Federal income tax status of the GUC Trust as a "liquidating trust"; (iii) to comply with any requirements in connection with maintaining that the GUC Trust is not subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act; and (iv) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Trust Agreement and the Plan. Notwithstanding anything to the contrary herein, the GUC Trustee may not amend, supplement or waive any provision of this Trust Agreement to authorize the use of any of the Claims Reconciliation Reserve in connection with the prosecution of the Original Lender Litigation Claims.

(b) Any substantive provision of this Trust Agreement may be amended or waived by the GUC Trustee with the prior approval of the GUC Trust Beneficiary Committee, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; provided, however, that no change may be made to this Trust Agreement that would adversely affect the distributions to be made under this Trust Agreement to any of the holders of GUC Trust Interests, adversely affect the U.S. Federal income tax status of the GUC Trust as a "liquidating trust" or adversely affect the rights of the Committee under the Plan or this Trust Agreement. Notwithstanding this Section 10.1, any amendments to this Trust Agreement shall not be inconsistent with the purpose and intention of the GUC Trust to liquidate in an expeditious but orderly manner the Trust Assets in accordance with Treasury Regulation Section 301.7701-4(d).

## ARTICLE 11

### MISCELLANEOUS PROVISIONS

11.1 Intention of Parties to Establish the GUC Trust. This Trust Agreement is intended to create a liquidating trust for Federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be

construed consistent herewith and, if necessary, this Trust Agreement may be amended in accordance with Section 10.1 to comply with such Federal income tax laws, which amendments may apply retroactively.

11.2 Prevailing Party. If the GUC Trustee, the GUC Trust Beneficiary Committee or the GUC Trust, as the case may be, is the prevailing party in a dispute with any Beneficiary or holder of a GUC Trust Interest regarding the provisions of this Trust Agreement or the enforcement thereof, the GUC Trustee, the GUC Trust Beneficiary Committee or the GUC Trust, as the case may be, shall be entitled to collect any and all costs, reasonable and documented out-of-pocket expenses and fees, including attorneys' fees, from the non-prevailing party incurred in connection with such dispute or enforcement action. To the extent that the GUC Trust has advanced such amounts, the GUC Trust may recover such amounts from the non-prevailing party.

11.3 Laws as to Construction. Except as otherwise provided hereby, this Trust Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to conflict of laws principles.

11.4 Jurisdiction. Without limiting any Person's right to appeal any order of the Bankruptcy Court or to seek withdrawal of the reference with regard to any matter, the parties, including the members of the GUC Trust Beneficiary Committee and all Beneficiaries and holders of GUC Trust Interest, hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court.

11.5 Severability. If any provision of this Trust Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Trust Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

11.6 Notices. Except as set forth in Section 3.8, all notices, requests or other communications to the parties hereto shall be in writing and shall be sufficiently given only if (i) delivered in person; (ii) sent by electronic facsimile communication, as evidenced by a confirmed fax transmission report; (iii) sent by registered or certified mail, return receipt requested; or (iv) sent by commercial delivery service or courier. Until a change of address is communicated, as provided below, all notices, requests and other communications shall be sent to the parties at the following addresses or facsimile numbers:

If to the GUC Trustee, to:

Buchwald Capital Advisors LLC  
Attn: Mr. Lee E. Buchwald  
380 Lexington Avenue, 17th Floor  
New York NY 10168  
Phone: (212) 551-1040  
Fax: (212) 656-1578

E-mail: [lbuchwald@buchwaldcapital.com](mailto:lbuchwald@buchwaldcapital.com)

If to the GUC Trust Beneficiary Committee, to:

Union Bank Of Israel Ltd.  
Attn: Racheli Friedman, Esq.  
6 Ahuzat Bayit St.  
Tel-Aviv, Israel 65143  
Tel: 972-3-5191799  
Fax: 972-3-5191710  
E-mail: [Rachelfr@ubi.co.il](mailto:Rachelfr@ubi.co.il)

Providence Chain Co.  
Attn: John Ouhרבka and Don Sloper  
225 Carolina Avenue  
Providence, RI 02905  
Tel: 401-781-1330  
Fax: 401-941-7932  
E-mail: [johno@providencechain.com](mailto:johno@providencechain.com)  
[dsloper@providencechain.com](mailto:dsloper@providencechain.com)

K.Girdharlal Inc.  
Attn: Pranav Shah  
551 Fifth Avenue  
32<sup>nd</sup> Floor  
New York, New York 10176  
Tel: 212-944-4500  
Fax: 212-944-1833  
E-mail: [pranav@kgirdharlal.com](mailto:pranav@kgirdharlal.com)

With a copy to:

Moses & Singer LLP  
Attn: Alan Kolod, Esq.  
Christopher J. Caruso, Esq.  
The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174  
Tel: 212-554-7800  
Fax: 212-554-7700  
E-mail: [akolod@mosessinger.com](mailto:akolod@mosessinger.com)  
[ccarus@mosessinger.com](mailto:ccarus@mosessinger.com)

All notices shall be effective and shall be deemed delivered (i) if by personal delivery, delivery service or courier, on the date of delivery; (ii) if by electronic facsimile communication or electronic mail, on the date of transmission of the communication; and (iii) if by mail, on the date of receipt. Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

11.7 Headings. The section headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or of any term or provision hereof.

11.8 Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all together shall constitute one agreement.

11.9 Confidentiality. The GUC Trustee and each successor trustee and each member of the GUC Trust Beneficiary Committee and each successor member of the GUC Trust Beneficiary Committee (each a "Covered Person") shall, during the period that they serve in such capacity under this Trust Agreement and following either the termination of this Trust Agreement or such individual's removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the assets of the GUC Trust relates or of which it has become aware in its capacity (the "Information"), except to the extent disclosure is required by applicable law, order, regulation or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Covered Person shall notify the GUC Trust Beneficiary Committee reasonably promptly (unless prohibited by law) so that the GUC Trust Beneficiary Committee may seek an appropriate protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section (and if the GUC Trust Beneficiary Committee seeks such an order, the relevant Covered Person will provide cooperation as the GUC Trust Beneficiary Committee shall reasonably request). If no such protective order or other remedy is obtained, or that the GUC Trust Beneficiary Committee waives compliance with the terms of this Section and that any Covered Person is nonetheless legally compelled to disclose the Information, the Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required and will give the GUC Trust Beneficiary Committee written notice (unless prohibited by law) of the Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

11.10 Entire Agreement. This Trust Agreement (including the Recitals), the Plan, and the Confirmation Order constitute the entire agreement by and among the parties hereto and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Trust Agreement, the Plan and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the

parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, in the Plan or in the Confirmation Order, nothing in this Trust Agreement is intended or shall be construed to confer upon or to give any person other than the parties thereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Trust Agreement.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, the parties hereto have either executed and acknowledged this Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

**M. FABRIKANT & SONS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**FABRIKANT-LEER INTERNATIONAL,  
LTD.**

By: \_\_\_\_\_  
Name:  
Title:

**BUCHWALD CAPITAL ADVISORS LLC**

By: \_\_\_\_\_  
Name: Lee Buchwald  
Title: President

**OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS**

By: \_\_\_\_\_  
Name:  
Title: Committee Co-chair