

**THIS IS NOT A SOLICITATION OF ACCEPTANCES OF THE PLAN. ACCEPTANCE MAY NOT BE SOLICITED UNTIL THE DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT UNDER SECTION 1125 OF THE BANKRUPTCY CODE. THIS FORM OF DISCLOSURE STATEMENT HAS BEEN SUBMITTED TO THE BANKRUPTCY COURT, BUT HAS NOT BEEN APPROVED.**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

**In re:**

**MODERN CONTINENTAL CONSTRUCTION  
CO., INC.**

**Debtor.**

)  
)  
) **Chapter 11**

)  
) **Case No. 08-14558 (WCH)**  
)  
)  
)

**[PROPOSED]  
AMENDED DISCLOSURE STATEMENT WITH RESPECT TO  
PLAN OF LIQUIDATION OF MODERN CONTINENTAL  
CONSTRUCTION CO., INC., DEBTOR AND DEBTOR-IN-POSSESSION**

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Dated: July 15, 2009

## I. INTRODUCTION

Pursuant to Section 1125 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Modern Continental Construction Co., Inc. (the “Debtor”) provides this disclosure statement (the “Disclosure Statement”) to all of the Debtor’s known creditors and parties in interest. The purpose of this Disclosure Statement is to provide the information deemed necessary for creditors to make an informed decision in exercising their rights to vote upon the *Plan of Liquidation of Modern Continental Construction Co., Inc., Debtor And Debtor-in-Possession* (the “Plan”) dated as of the date of this Disclosure Statement. The Plan was filed with the Bankruptcy Court simultaneously with the filing of this Disclosure Statement. A summary of the Plan, the estimated claims against the Debtor and the estimated dividend is set forth in Article II, below.

The Debtor recommends that you vote to accept the Plan. Each creditor should, however, review the Plan and this Disclosure Statement carefully in order to determine whether or not to accept or reject the Plan based upon that creditor’s independent judgment and evaluation. The description of the Plan in this Disclosure Statement is in summary form and is qualified by reference to the actual terms and conditions of the Plan, which should be reviewed carefully before making a decision to accept or reject the Plan.

Capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to them in the Plan.

The information contained in this Disclosure Statement has been provided by the Debtor based upon the knowledge of its records, business and affairs. Except as otherwise expressly indicated, such information has not been subject to audit or independent review. Although great effort has been made to be accurate, the Debtor and his counsel and other professional advisors do not warrant the accuracy of the information contained in this Disclosure Statement.

No representations concerning the Debtor, including the value of its assets or the aggregate dollar amount of claims which may be allowed, are authorized other than as set forth in this Disclosure Statement. Any representations, warranties or agreements made to secure acceptance or rejection of the Plan that differ from those contained in this Disclosure Statement should not be relied upon in voting on the Plan.

Any descriptions of legal principles contained in this Disclosure Statement do not constitute a legal opinion and may not be relied upon by any creditor or party in interest. Each creditor or party in interest should consult with their own legal advisors with respect to any legal principles described in this Disclosure Statement.

This Disclosure Statement has been prepared by the Debtor to provide creditors with adequate information so that they can make an informed judgment about the Plan. Each creditor should read this Disclosure Statement and the Plan in their entirety before voting on the Plan. No solicitation of votes on the Plan may be made except pursuant to this Disclosure Statement,

and no person has been authorized to utilize any information concerning the Debtor’s business or assets other than the information contained in this Disclosure Statement.

The Debtor believes that the Plan provides the quickest recovery to creditors and will maximize the return to creditors on their Claims. **ACCORDINGLY, THE DEBTOR URGES ALL CREDITORS TO VOTE IN FAVOR OF THE PLAN.**

**II. BRIEF SUMMARY OF THE PLAN**

The Plan contemplates the continued orderly liquidation of the Debtor’s assets in accordance with the Bankruptcy Code and applicable non-bankruptcy law. The Net Proceeds of the liquidation of the Debtor’s assets will be paid first to the holders of Allowed Secured Claims against the asset in question (if any) until paid in full, next to the holders of Allowed Priority Claims until paid in full, and lastly to the holders of Allowed General Unsecured Claims.

Upon confirmation of the Plan, Craig Jalbert will be appointed as the Liquidating Supervisor to continue the liquidation of the Assets. Funding for the Plan will be provided by the Travelers Advance, the PRT Carve-Out and the Net Proceeds of the Avoidance Actions. The Travelers Advance will provide funding for the post-Effective Date administration of the Reorganized Debtor and \$100,000 towards the payment of the Allowed Priority Tax Claims and the Allowed Priority Claims. Travelers has agreed to establish the PRT Carve-Out for the benefit of the holders of Allowed Claims.

Except as described in the Plan, the holders of Allowed Secured claims will receive their collateral or the proceeds of their collateral. The Debtor anticipates that the holders of Allowed Administrative Expenses and Allowed Priority Claims will be paid in full. Some of the General Unsecured Claims are covered by pre-petition payment and/or performance bonds issued by various sureties. Accordingly, some of the General Unsecured Claims are likely to be paid by one or more of the sureties who issued pre-petition bonds on the Debtor’s projects.

A summary of the Administrative, Priority and General Unsecured claims, and the estimated dividend to each type of claim, follow.

Claim	Estimated Total	Estimated Gross Dividend
Administrative Claims	200,000	Payment in Full
Priority Claims	\$5,000 - \$175,000	Payment in Full
General Unsecured Claims	875,000,000 - 925,000,000	100,000 - 3,000,000

The Debtor’s description of the claims and estimation of the dividends set forth in this section of the Disclosure Statement does not constitute an admission that the claims are Allowed Claims or that they will receive the estimated dividend. The estimated dividend is a projection and the Debtor reserves all of its rights, claims and defenses with respect to any and all claims.

### III. INFORMATION ABOUT THE REORGANIZATION PROCESS

#### 3.1 Purpose Of Disclosure Statement

This Disclosure Statement includes background information about the Debtor and also identifies the classes into which creditors have been placed by the Plan. The Disclosure Statement describes the proposed treatment of each of those classes if the Plan is confirmed. In addition, this Disclosure Statement contains information concerning the prospects for creditors in the event of confirmation or, in the alternative, the prospects if confirmation is denied or the proposed Plan does not become effective.

Upon approval by the Bankruptcy Court and in accordance with the provisions of the Bankruptcy Code, this Disclosure Statement and any exhibits will have been found to contain adequate information of a kind and in sufficient detail that would enable reasonable, hypothetical investor typical of a holder of impaired claims or interests to make an informed judgment about the Plan. Approval of this Disclosure Statement by the Bankruptcy Court, however, does not constitute a recommendation by the Bankruptcy Court either for or against the Plan.

#### 3.2 Voting Procedure

All creditors entitled to vote on the Plan may cast their votes for or against the Plan by completing, dating, signing and causing the Ballot Form accompanying this Disclosure Statement to be returned to the following address in the enclosed envelope:

Harold B. Murphy  
Hanify & King, Professional Corporation  
One Beacon Street  
Boston, MA 02108

Ballots must be received **on or before 5:00 P.M. (Eastern Daylight Savings Time) on \_\_\_\_\_, 2009** to be counted in the voting. Ballots received after this time will not be counted in the voting unless the Bankruptcy Court so orders.

The Debtor recommends a vote for "ACCEPTANCE" of the Plan.

#### 3.3 Ballots

Accompanying this Disclosure Statement is a ballot for acceptance or rejection of the Plan (a "Ballot"). Each party in interest entitled to vote on the Plan will receive a Ballot. All Classes are impaired and may vote on the Plan. Each member of a voting Class will be asked to vote for acceptance or rejection of the Plan. A party who holds claims in more than one Class should complete a Ballot for each Class with respect to the applicable portion of its claim included in each Class.

### **3.4 The Confirmation Hearing**

The Bankruptcy Court has scheduled a hearing on confirmation of the Plan to commence on \_\_\_\_\_, 2009 at \_\_:\_\_.m., or as soon thereafter as the parties can be heard. The Confirmation Hearing will be held before the Honorable William C. Hillman, United States Bankruptcy Judge, 10 Causeway Street, 11<sup>th</sup> Floor, Boston, Massachusetts 02222. At the hearing, the Bankruptcy Court will consider whether the Plan satisfies the various requirements of the Bankruptcy Code, including whether it is feasible and whether it is in the best interests of holders of claims and interests. The Bankruptcy Court will also receive and consider a Report of Plan Voting prepared by the Debtor and summarizing the votes for acceptance or rejection of the Plan by the parties entitled to vote.

### **3.5 Acceptances Necessary To Confirm Plan**

At the Confirmation Hearing, the Bankruptcy Court must determine, among other things, whether each impaired Class has accepted the Plan. Under Section 1126 of the Bankruptcy Code, an impaired Class is deemed to have accepted the Plan if at least 2/3 in amount and more than 1/2 in number of the Allowed Claims of Class members who have voted to accept or reject the Plan have voted for acceptance of the Plan. Unless there is acceptance of the Plan by all members of an impaired Class, the Bankruptcy Court must also determine that Class members will receive under the Plan property of a value, as of the Effective Date, that is not less than the amount that such Class members would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date.

### **3.6 Confirmation Of The Plan Without The Necessary Acceptances.**

The Plan may be confirmed even if one or all of the impaired Classes does not accept the Plan if the Bankruptcy Court finds that the Plan does not discriminate unfairly against and is fair and equitable as to such Class or Classes. This provision is set forth in Section 1129(b) of the Bankruptcy Code and requires that, among other things, the claimants must either receive the full value of their claims or, if they receive less, no Class with junior liquidation priority may receive anything. For example, if the holders of Allowed Priority Tax Claims are not paid in full, the holders of General Unsecured Claims are not permitted to receive anything on account of their claims. This is known as the "absolute priority rule."

The Debtor may, at its option, choose to rely on Section 1129(b) to seek confirmation of the Plan if it is not accepted by all impaired Classes of Creditors.

#### IV. GENERAL INFORMATION

##### 4.1 Brief Description of the Debtor and Events Preceding the Debtor's Chapter 11 Filing.

###### A. Background

The Debtor is a closely-held Massachusetts corporation formed in 1967 by Lelio Marino ("Mr. Marino") and Kenneth Anderson ("Mr. Anderson") to perform general contracting services. The Debtor's first project was a sidewalk construction project in Peabody, Massachusetts. Over time, the Debtor's operations substantially increased, and it became the largest heavy civil construction company in the northeastern United States and one of the largest in the country. The Debtor served as the largest contractor (in terms of the dollar amount of contracts awarded), on the historic "Big Dig" Central Artery/Tunnel project in Boston, Massachusetts (the "CA/T Project").

At the height of its operations, the Debtor employed four thousand two hundred (4,200) persons in twenty (20) states and had annual revenues of approximately \$1,100,000,000. The Debtor and/or its affiliates performed work across the United States, including projects in New England, New York, South Carolina, California, Nevada and Hawaii.

The scope of the Debtor's construction expertise included heavy civil, marine, transportation, power, design/build and microtunneling projects. Some of the Debtor's more prominent projects included the construction of the San Francisco-Oakland Bay Bridge Seismic Retrofit, Back Bay Station and the Southwest corridor in Boston, MBTA Silver Line Immersed Tube Tunnels, Route 3 reconstruction from Route 128 to the New Hampshire border, Terminal E at Boston Logan Airport, the Deer Island Inter-Island Tunnel and a major portion of the CA/T Project.

###### B. Downturn in Business Operations

For the quarter ending December 31, 2001, the Debtor failed to meet certain financial covenants contained in its senior credit facility. The failure to meet these covenants, coupled with losses sustained on certain jobs and with respect to a real estate project located in downtown Boston, precipitated significant financial difficulties for the Debtor.

In early 2002, the Debtor began working with its senior lenders and noteholders in an effort to stabilize its financial situation. The details regarding these credit facilities are described below. Despite its best efforts and intentions, the Debtor continued to incur significant losses on large construction jobs. For fiscal year ending June 30, 2003, the Debtor incurred losses in excess of \$174,000,000.

In the June 2003, due to ongoing job losses, the Debtor's primary bonding company, Travelers joined the negotiations between the Debtor and its senior lenders. As a result of its financial situation, the Debtor was unable to procure bonds for any future work from and after early 2004. In order to satisfy its bonding obligations, Travelers began to advance loans to and

make other financial accommodations for the Debtor and certain of its affiliates to permit the Debtor and certain of its affiliates to complete various bonded projects.

On November 12, 2004, Mr. Marino passed away unexpectedly. Mr. Marino had been a driving force in the Debtor's business, and after his death, the Debtor began in earnest a plan to wind down its operations in an orderly fashion. At the time of Mr. Marino's death, the Debtor had twenty-four (24) open construction contracts with more than \$485,000,000 remaining to complete on such contracts. Many of the Debtor's bonded projects were at critical stages of construction, including the CA/T Project and the Route 3 project. In cooperation with Travelers and Bank Group, the Debtor determined that fulfilling its obligations to owners by completing its open bonded contracts was in the best interest of the owners, and various other stakeholders in the bonded projects, including subcontractors, vendors and sureties, and the various stakeholders in the Debtor, including Travelers, the Bank Group, other creditors and employees.

After November 2004, with funding from Travelers, the Debtor worked diligently to complete its open bonded construction contracts. As of the Petition Date, most of the projects had been completed or were in the final stages of completion. As the Debtor completed its bonded projects, the Debtor reduced its workforce and wound down its operations.

The Debtor has a number of affiliates and subsidiaries (collectively, the "Affiliates"), including Modern Continental Companies, Inc., Modern Continental Construction Holding Co., Inc., Mystic Landing, LLC, Modern Continental South, Inc., Modern Continental Industries Holding Co., Inc., Ristorante Marino, Inc., Modern Continental Enterprises, Inc., Modern Continental Enterprises (St. Lucia) Limited, MCE-MCC Joint Venture, LLC, Modern Continental 600 Memorial, Inc., Independent Equipment Leasing, LLP, Modern Continental Construction Co. of California, Inc., Modern Continental Construction Co. of New York, Inc., Modern Continental Construcoes Ltda and Modern Continental Parque Do Brazil Ltda. Most of the Affiliates are co-obligors with the Debtor on agreements of indemnity (as further described herein) executed in favor of Travelers. Pursuant to pre and post-petition loan documents, Travelers has valid liens on the Affiliates assets as well as a pledge of the Debtor's equity interests, if applicable, in the Affiliates.

In the four (4) years prior to the Petition Date, the Debtor and the Affiliates liquidated most of their assets (on which assets Travelers and the Bank Group held liens) in an orderly fashion. The Debtor and the Affiliates paid the proceeds of the liquidation of their assets to Travelers and the Bank Group to satisfy, in part, their liens on the assets.

### **C. The Severance Agreements**

In late 2004, the Debtor lost its bonding capacity and was unable to bid for new projects. The Debtor was charged with completing in excess of \$485 million of open bonded construction projects in order to prevent substantial damage to the project owners and various other stakeholders in the projects, including subcontractors, vendors and sureties.

In order to retain employees who were essential to the completion of the Debtor's backlog of bonded projects, the Debtor, in consultation with Travelers, committed to a program

(the “Employee Severance Program”) to provide severance payments (the “Severance Payments”) upon the completion of the employees’ services with the Debtor, and incentive payments that were contingent on the completion of designated projects on which the particular employees were primarily engaged (the “Contingent Payments”).<sup>1</sup>

As of the Petition Date, the Debtor owed approximately \$2.0 million under the Employee Severance Program to current and former employees. In recognition of the valuable services provided by the Debtor’s current and former employees, Travelers agreed to provide a \$2.0 million unsecured line of credit to Modern Continental Construction Holding Co., Inc. (“MC Holding”), the Debtor’s parent, so that the payments due to the current and former employees under the Employee Severance Program could be made. Travelers and MC Holding have agreed and acknowledged that the amount loaned to MC Holding will not constitute a debt of or claim against the Debtor or its bankruptcy estate.

#### **D. Financing and Bonding Obligations**

##### **i. Bank Group Obligations.**

Pursuant to that certain Fourth Amended and Restated Term Loan Agreement dated as of February 12, 2004 (the “Bank Credit Agreement”) among Fleet National (now Bank of America, N.A., successor by merger to Fleet National Bank), KeyBank National Association, Sovereign Bank and other financial institutions from time to time a party thereto (collectively, the “Banks”), the Debtor and certain of the Affiliates, the Banks extended a credit facility to the Debtor and certain of the Affiliates. According to the Debtor’s books and records, as of the Petition Date the Debtor owed \$27,714,012 in principal under the Bank Credit Agreement and approximately \$21,197,283 in accrued and unpaid interest.

The Debtor and certain of the Affiliates are parties to a Second Amended and Restated Note Purchase Agreement dated as of February 12, 2004 (the “Note Purchase Agreement”) among Nationwide Life Insurance Company, Nationwide Life and Annuity Insurance Company, Provident Life and Accident Insurance Company and The Paul Revere Life Insurance Company (collectively, the “Noteholders”). According to the Debtor’s books and records, as of the Petition Date the Debtor owed the Noteholders \$13,732,241 in principal under the Note Purchase Agreement, and approximately \$5,867,338 in accrued and unpaid interest.

On the Petition Date, the obligations of the Debtor under the Bank Credit Agreement and the Note Purchase Agreement were secured by first priority liens on certain of the Debtor’s assets, and by liens subject to and junior only to the Surety Liens (as defined below), on certain other assets of the Debtor. The liens in favor of the Banks and the Noteholders (the “BNH Liens”) are in favor of Bank of America, N.A., as agent (the “BNH Agent”) for the Bank Group.

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<sup>1</sup> The Debtor believes it is likely that many of the project milestones necessary to achieve the Incentive Payments will not be achieved.

ii. Travelers Obligations.

The Debtor, along with certain of the Affiliates, is a party to the following indemnity agreements: (a) General Indemnity Agreement, dated March 21, 1995; (b) Master Surety Agreement, dated September 29, 1995; (c) General Indemnity Agreement dated March 19, 1999, as amended; and (d) Collateral Agreement, dated January 13, 2003, among St. Paul Fire and Marine Insurance Company, Seaboard Surety Company, St. Paul Guardian Insurance Company, St. Paul Medical Liability Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Underwriters, Inc., Fidelity and Guaranty Insurance Company, Northern Indemnity and Afianzadora Insurgentes, S.A. de C.V.

The Debtor and certain of the Affiliates are parties to (a) that certain Amended and Restated July Credit and Security Agreement (and Guaranty Agreement), dated February 12, 2004, and as further amended to the date hereof (as amended, the "July Surety Credit Agreement"), among Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Underwriters, Inc. and Fidelity and Guaranty Insurance Company, and (b) that certain Amended and Restated October Credit and Security Agreement (and Guaranty Agreement), dated February 12, 2004, and as further amended through the date hereof (as amended, the "October Surety Credit Agreement," and together with the July Surety Credit Agreement, the "Surety Credit Agreements") among Travelers, the Debtor and certain of the Affiliates.

As of the Petition Date, the Debtor believes that it owed Travelers an aggregate amount of approximately \$740,000,000.

On the Petition Date, the obligations of the Debtor under the Surety Credit Agreements were secured by first priority liens (the "Surety Liens") on the Debtor's accounts receivables, equipment and contract rights, and all proceeds of the foregoing.

Travelers and the Bank Group are parties to the Bank Group Agreements, pursuant to which Travelers and the Bank Group have cooperated in the liquidation of the Debtor's and the Affiliates respective assets and the allocation of the proceeds realized from such liquidation.

Since the Petition Date, Travelers has extended debtor-in-possession financing to the Debtor (the "DIP Financing"). As of the date of this Disclosure Statement, the total advanced under the DIP Financing is approximately \$7,292,000. The DIP Financing is secured by post-petition liens on all assets as to which Travelers held liens on the Petition Date.

**E. Current Operations of the Debtor**

The stock of the Debtor is owned by MC Holding. The stock in MC Holding is owned by Modern Continental Companies, Inc. ("MC Companies"). Seventy-five percent (75%) of the stock in MC Companies is held by a testamentary trust, controlled by Mr. Marino's daughters, and the remaining twenty-five percent (25%) is owned by Mr. Anderson.

From 2003 to the Petition Date, the Debtor continued to complete its open contracts while gradually winding down its operations. The Debtor's annual revenues for fiscal year 2003 were in excess of \$960,000,000, and for the fiscal year ending June 30, 2007, the Debtor's annual revenues were approximately \$92,000,000. As of the Petition Date, the Debtor had fifty-five (55) employees and operated in Massachusetts and New York.

As of the Petition Date, the Debtor was acting as general contractor on six (6) active projects as follows:

(a) Fountain Avenue, Brooklyn, New York. The Debtor was completing a landfill capping project at Fountain Avenue, Brooklyn, New York (the "Fountain Avenue Project"). The total contract value was approximately \$158,000,000, of which approximately \$2,000,000 of the work remained to be completed on the Petition Date.

(b) CA/T Project. The Debtor was the general contractor on approximately twenty-four (24) contracts on the Boston Central Artery/Tunnel project (the "CA/T Project), the so-called "Big Dig", having an aggregate value of approximately \$3,333,467,000, all of which have reached substantial completion (the "CA/T Contracts"). Fourteen (14) of the CA/T Contracts had not been closed out and accepted by the Massachusetts Highway Department, acting through its agent, the Massachusetts Turnpike Authority ("MHD/MTA"). On the Petition Date, the Debtor was negotiating with MHD/MTA and completing work under four (4) CA/T Contracts:

- (i) *Contract C28A1*. The Debtor was completing a grow and install project on the Rose Kennedy Greenway. The total contract value for the project was \$7,500,000, and less than \$100,000 of work remained to be completed.
- (ii) *Contract C09C2*. The Debtor constructed the interchange finishes project in the South Bay section of the CA/T Project. This project, which had a total contract value of \$191,000,000, was in the punch list stage and approximately \$100,000 of work remained to be completed.
- (iii) *Contract C17A6*. For this contract, the Debtor removed the former elevated highway which ran through Boston prior to the "Big Dig" and reconstructed the surface streets and tunnels. The total contract value was approximately \$497,350,000, of which approximately \$1,000,000 of work remained to be completed.
- (iv) *Contract C19E6*. The Debtor completed the Leverett Circle ramps and interchange in the north area of the CA/T Project. The total value of this project was \$46,000,000, and was at the punch list stage with approximately \$600,000 of work remaining.

(c) Route 3 Reconstruction. The Debtor was the general contractor on the widening and reconstruction of Route 3 in Massachusetts (the "Route 3 Project"). The total value of the Route 3 Project was \$388,000,000, and approximately \$1,000,000 of work remained to be finished. The Debtor had substantially completed its work on this project and was in discussions with the Massachusetts Highway Department ("MHD"), which owns the project, regarding the release of amounts owing to the Debtor for requisitions, retainage and change orders.

(d) Miscellaneous. Various awarding authorities have requested the Debtor to perform miscellaneous maintenance and punch list items on a variety of projects.

As is described below, following the Petition Date the Debtor reached a settlement with the Commonwealth (as defined below) with respect to its claims against and obligations to the Commonwealth on the CA/T Project and the Route 3 Project. The Debtor has completed its obligations under those settlement agreements and, accordingly, has no further work to do on the CA/T Project or the Route 3 Project.

The Debtor has substantially completed the construction work on the Fountain Avenue Project, although the Debtor's maintenance obligations for the Fountain Avenue will continue through 2009. The Debtor also has continuing obligations and potential obligations on various smaller projects.

#### **4.2 The Debtor's Assets**

On the Petition Date, the Debtor owned various items of personal property including: (a) cash of approximately \$880,000, (b) interests in various escrow accounts (subject to competing claims), (c) interests in various corporations, limited liability companies, partnerships and joint ventures in an unknown amount, including an interest in Paul Revere Transportation, LLC ("PRT") (discussed below), (d) accounts receivable, contract billing and contract retainage with a face value of approximately \$154,000,000 (subject to backcharges and other disputes by the account debtors), (e) litigation claims with a face value in excess of \$79,000,000 (disputed by the counter-parties to these claims), (f) machinery and equipment totaling approximately \$120,000. On the Petition Date the Debtor owned one parcel of real property, known as lot 32, Bishops Way, Castle Hill Estates II, North Reading, Massachusetts, with a value of approximately \$200,000.

On the Petition Date, all of the Debtor's assets were subject to valid and perfected liens in favor of Travelers to secure a debt of approximately \$740 million.

PRT was formed in 1990 as a joint venture between Alternate Concepts, Inc. ("ACI") and the Debtor. PRT provides ground transportation services to various groups, construction projects, and agencies. Its biggest customers are the Massachusetts Water Resources Authority ("MWRA"), MassPort, the MBTA, and MASCO, an organization of hospitals in the Longwood Medical Area. In addition, PRT offers charter bus services and car service to Logan Airport to individuals and corporations. In 1997, the joint venture converted to a limited liability company with three members. ACI has a 50% membership interest in PRT and currently serves as the

company's Operations Manager. The Debtor has a 40% membership interest, with the remaining 10% interest held by Nolan Associates. The Debtor believes that its interest in PRT is worth between \$1,000,000 and \$5,000,000.

The Debtor intends to monetize its interest in PRT pursuant to the Bankruptcy Code and applicable law. The Debtor's interest in PRT is subject to Liens in favor of Travelers and the Bank Group. Pursuant to the Bank Group Agreement, any recovery from the Debtor's interest in PRT would be shared equally between Travelers and the Bank Group.

The Avoidance Actions (described in Section 4.3, below) were created on the Petition Date by operation of the Bankruptcy Code, and are therefore unencumbered by any pre-petition Lien. The Debtor has not granted any post-petition Liens on the Avoidance Actions, and they are, therefore, wholly unencumbered.

As is discussed in Section V, below, since the Petition Date the Debtor has liquidated various items of personal property and paid the proceeds to Travelers.

#### **4.3 Debtor's Causes of Action**

Except as provided in, and unless expressly waived, relinquished, exculpated, released, compromised or settled in the Plan, the Confirmation Order, any Non-Appealable Order, or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, and in accordance with Section 1123(a)(5)(A) of the Bankruptcy Code, any Claims, demands, rights and Causes of Action that the Debtor or the Estate may hold against any Person are fully preserved. No preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to them by virtue of or in connection with the confirmation, consummation of effectiveness of the Plan. In general, the Debtor's causes of action arise from its construction projects and its contractual relationships with various parties. Accordingly, the Debtor's causes of action may include, without limitation, claims for: (a) breach of contract, (b) indemnification, (c) violation of M.G.L. c. 93A, (d) misrepresentation, (e) setoff, (f) recoupment, (g) fraud, (h) aiding and abetting the breach of the fiduciary duty, (i) breach of fiduciary duty, (j) intentional interference with contractual relationship, (k) intentional interference with advantageous business relationship, (l) mismanagement, (m) waste, and (n) other claims under applicable statutory, regulatory and/or common law. The Debtor reserves the right to assert any such claims with respect to any of its causes of action, including those listed below.

Without limiting the foregoing, the Debtor's Causes of Action include:

- Claims in excess of \$31,000,000, arising from the Debtor's work on the Fountain Avenue landfill, against the New York Department of Environmental Protection for, among other things, contract balances due, retainage due, design flaw claims, requests for change orders and requests for equitable adjustment.

- Claims in excess of \$370,000, arising from work performed at the Pentagon, against the United States Department of Defense for, among other things, contract balances due.
- Claims in excess of \$65,000, arising from work performed at Cambridgeport, against the City of Cambridge, Massachusetts for, among other things, contract balances due.
- Claims in excess of \$50,000, arising from work performed at the MBTA Transitway, against the Massachusetts Bay Transportation Authority for, among other things, contract balances due.
- Claims in excess of \$7,400,000, arising from the Debtor's work on the Long Island Expressway, against the New York Department of Transportation for, among other things, contract balances due and requests for change orders and requests for equitable adjustment.
- Claims against Paul Revere Transportation, LLC ("PRT") and/or the managers of PRT, including claims for amounts due to the Debtor on account of the Debtor's ownership interest in PRT and potential claims arising from the management of PRT.
- Claims against Zurich American Insurance Company ("Zurich") arising from pre-petition insurance policies and a pre-petition settlement agreement with Zurich whereby Zurich agreed to continue to provide insurance coverage (see Section 5.9, below).
- The Debtor has claims against Trigen Energy Corporation ("Trigen") and certain builder's risk insurers, including Zurich, Ace American Insurance Company ("Ace"), Century Indemnity Company, The Hartford Fire Insurance Company, Lumbermen's Mutual Casualty Company and Massachusetts Insolvency Fund (collectively the "Insurers") under pre-petition insurance policies relating to certain multi-layer steam and condensate lines (the "Steam Lines") that the Debtor installed on the Central Artery/Tunnel project (the "Project"). The Steam Lines were damaged some years after the Debtor installed them. The owner of the Project directed the Debtor to replace the Steam Lines at the Debtor's expense, notwithstanding that the Steam Lines had been inspected, prior to their being put into service, by the Project owner, Trigen and the manufacturer of the Steam Lines. The cost of replacing the Steam Lines was more than \$6 million. The Debtor has asserted claims against Trigen and the Insurers to recover the costs it incurred replacing the Steam Lines.
- Counterclaims against National Union Fire Insurance Co. of Pittsburgh, Pa. ("National Union") in a lawsuit captioned *National Union Fire Insurance Co. of Pittsburgh, Pa. v. Modern Continental Construction Co., Inc.*, pending under docket number 08-2015 in the Superior Court for Suffolk County Massachusetts.

This lawsuit and the counterclaims are described more fully in Section 4.4(D) below.

- Claims arising from a judgment in the approximate amount of \$5.8 million (exclusive of interest) against Smyrna Rebar, Inc.
- Attached to the Debtor's Statement of Financial Affairs (which is filed of record with the Clerk of the Bankruptcy Court) is a list of payments made in the ninety (90) days prior to the Petition Date. These payments may constitute preferential transfers that are avoidable under Section 547 of the Bankruptcy Code. The Committee is investigating various sales of equipment and machinery that occurred during the four (4) years prior to the Petition Date to determine whether any of such sales are avoidable pursuant to Sections 544 and/or 548 of the Bankruptcy Code. A list of the sales of assets within two years of the Petition Date is attached to the Debtor's Statement of Financial Affairs.

Each of these potential litigation claims is subject to dispute by the counter-party to the claim.

#### **4.4 Liabilities<sup>2</sup>**

##### **A. Secured Claims**

The Debtor's pre-petition secured obligations to Travelers and the Bank Group are described in Section 4.1(D) above.

Prior to the Petition Date, Firemans' Fund Insurance Company and various of its affiliates (collectively "FFIC") issued bonds for certain construction projects for which the Debtor acted as the general contractor. For all of the construction projects except one, FFIC was co-issued the bonds with Travelers, and its secured claim arising from these co-issued bonds is the subject of a co-surety agreement with Travelers. The construction project where FFIC was the sole issuer of a bond was completed subsequently to the Petition Date. As of the Petition Date, FFIC has asserted various claims with respect to its outstanding bond claims.

To date, secured proofs of claim totaling approximately \$950 million (inclusive of the secured claims of Travelers, FFIC and the Bank Group) have been filed. Based on the estimated value of its pre-petition assets and the amount of the asserted secured claims, the Debtor does not believe that there is equity in any of its pre-petition assets.

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<sup>2</sup> The Debtor's description of the claims set forth in this section of the Disclosure Statement does not constitute an admission that the claims are Allowed Claims. The Debtor reserves all of its rights, claims and defenses with respect to any and all claims.

**B. Administrative Claims**

Administrative Claims are claims for goods and services received by the Debtor after the Petition Date that provided a benefit to the bankruptcy estate. Since the Petition Date, the Debtor has either used Travelers cash collateral or received advances under the DIP Financing to pay substantially all known Administrative Claims. The DIP Financing agreements provide a mechanism to pay accrued Administrative Claims. Accordingly, the Debtor does not believe that the existing Administrative Claims will be substantial.

**C. Priority Claims**

To date, creditors asserting Priority Claims and Priority Tax Claims have filed proofs of claim totaling approximately \$1,090,000. It appears that that valid Priority Tax Claims totaling approximately \$4,100 have been filed as follows: (a) Commonwealth of Massachusetts Department of Revenue, \$456 for corporate franchise tax, (b) Commonwealth of Pennsylvania Department of Revenue, \$826 for corporate franchise tax, (c) State of California Franchise Tax Board, \$113 for corporate franchise tax, and (d) Mass Mutual Financial Group, \$2,754 for employee benefits for the week preceding the Petition Date.

The Debtor disputes the rest of the filed priority claims either because they are not entitled to priority treatment or the amount of the claim is wrong, or both. The Debtor estimates that the Allowed Priority Claims and the Allowed Priority Tax Claims aggregate less than \$200,000.

**D. General Unsecured Claims**

**Generally**

To date, creditors asserting General Unsecured Claims have filed proofs of claim totaling approximately \$583,860,000.

The Debtor believes that the proofs of claim asserting General Unsecured Claims are grossly overstated. Among other things, many creditors filed large, unliquidated claims against the Debtor, apparently in order to preserve their perceived rights. For example, three affiliated companies, Newman Associates, Inc., Renner Colony, LLC and Newman Renner Colony, LLC (collectively "Newman"), filed identical proofs of claim asserting they were each owed \$104,000,000. The Debtor listed Newman's claims in the Schedules as being contingent, unliquidated and/or disputed in an unknown amount.<sup>3</sup>

Some of the General Unsecured Claims are covered by pre-petition payment and/or performance bonds issued by various sureties. Accordingly, some of the General Unsecured Claims are likely to be paid by one or more of the sureties who issued pre-petition bonds on the Debtor's projects.

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<sup>3</sup> In any case, after the Petition Date, the Debtor reached an agreement with Newman whereby, among other things, Newman provided the Debtor with a release of any claims.

The Debtor believes that the Allowed General Unsecured Claims, exclusive of Deficiency Claims, will be approximately \$20,000,000. The Debtor believes that the Allowed Deficiency Claims will be between \$850,000,000 and \$900,000,000.

### **Pre-Petition Lawsuits Against the Debtor**

Among the General Unsecured Claims on the Petition Date were unliquidated claims associated with various lawsuits. A brief description of the primary lawsuits pending against the Debtor on the Petition Date follows.

On July 10, 2006, concrete ceiling panels and associated components in the I-90 connector tunnel fell onto the I-90 connector roadway (the "Ceiling Collapse"). The Commonwealth of Massachusetts and various governmental agencies (collectively the "State Parties") brought a civil action against the Debtor and others in Suffolk County Superior Court captioned *Commonwealth of Massachusetts, et al. v. Bechtel Corp., et al.*, and assigned docket number 06-4933-BLS (the "Ceiling Collapse Action"). In the Ceiling Collapse Action, the State Parties asserted tort and contract claims against the Debtor and other defendants, and made damage claims for, among other things, property damage, associated costs and diminution in value of the I-90 roadway project. In addition to the claims brought by the plaintiff in the Ceiling Collapse Action, various defendants (including Newman) brought cross-claims and counterclaims against the Debtor.

Another pre-petition lawsuit arising from the Ceiling Collapse was brought in Suffolk County Superior Court and was captioned *DelValle et al v. Modern Continental et al.* (the "Del Valle Action"). The Del Valle Action was a wrongful death and personal injury suit brought by the family and estate of a woman who was killed in the Ceiling Collapse. Counterclaims and cross-claims were brought against the Debtor by various of the defendants in the Del Valle Action.

On May 2, 2008, ("National Union") brought suit against the Debtor the Superior Court for Suffolk County Massachusetts (the "Coverage Action"). The Coverage Action is captioned *National Union Fire Insurance Co. of Pittsburg, Pa. v. Modern Continental Construction Co., Inc.*, and is pending under docket number 08-2015. In the Coverage Action, National Union sought a declaration that it had no duty to defend or indemnify the Debtor, under certain commercial general liability and excess insurance policies, for the property damage claims brought by the State Parties in the Ceiling Collapse Action. National Union had previously agreed to defend the Debtor in the Ceiling Collapse Action under a reservation of rights, but then refused to participate in the underlying settlement discussions and reneged on its defense commitment prior to paying any defense costs. The Debtor counterclaimed in the Coverage Action for a declaration that the claims were covered, and sought damages for breach of contract, bad faith, and unfair and deceptive claims handling practices. Among other things, the Debtor seeks reimbursement for the costs of defense in the Ceiling Collapse Action and indemnity under the policies for the \$21 million paid to settle the claims against the Debtor in the Ceiling Collapse Action. The Bankruptcy Court granted relief from the automatic stay to permit the Coverage Action to continue in the Suffolk Superior Court. Presently pending in the Coverage

Action are National Union's motions for judgment on the pleadings as to its declaratory judgment claims and a motion to dismiss the Debtor's counterclaims.

On or about June 20, 2008, the United States Department of Justice (the "DoJ") filed a Felony Information against the Debtor (the "Information") in the United States District Court for the District of Massachusetts. In the Information, the DoJ alleged that the Debtor (a) made false statements in connection with the work performed on certain of the CA/T Project's tunnel wall construction from September 1999 through August 2004, (b) overbilled by charging apprentice worker rates at higher journeymen rates for work performed on the CA/T Project from September 1999 through January 2006, and (c) committed wire fraud by receiving from the Commonwealth of Massachusetts approximately \$12 million over five wire transfers – of which approximately \$125,000 was undeserved – by falsely reporting work performed and completed according to the provisions of certain construction contracts when it had not actually done so. None of the Debtor's existing executives was charged with any knowledge of the Debtor's allegedly unlawful actions described in the Information or otherwise, and none of the Debtor's existing executives were indicted by the DoJ. The DoJ acknowledged that no evidence exists that would warrant any criminal prosecution of the Debtor's existing executives.

## **V. SIGNIFICANT POST PETITION EVENTS**

### **5.1 General Information**

On June 23, 2008 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Massachusetts. The filing of the Debtor's bankruptcy petition was precipitated by the Debtor's failure to receive payment from MHD/MTA for work previously performed on the CA/T Project, and for work which the Debtor was continuing to perform on CA/T Project. MHD/MTA's refusal to pay amounts due under the Debtor's contracts was impeding the Debtor's ability to complete its projects in an orderly manner, which the Debtor had otherwise been able to accomplish from 2004 to the Petition Date, and threatened the Debtor's ability to keep subcontractors working on the CA/T Project. The purpose of the Debtor's bankruptcy filing was to permit the Debtor to continue the orderly completion of its remaining contracts and conclude the wind-up of its business while fulfilling its obligations to its employees, project owners, subcontractors, vendors and suppliers.

Since the Petition Date, the Debtor has made substantial progress towards the wind-up of its affairs.

### **5.2 Appointment of Creditors' Committee**

On July 2, 2008, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Committee"), consisting of the following creditors: (a) URS Corporation, (b) Architectural Paving & Stone, Inc., (c) Lockton, Inc., (d) BATG Environmental, Inc., (e) Testa Corp., (f) The Aulson Company, Inc., and (g) New England Foundation Co., Inc.

The Committee retained Jager Smith, P.C. as counsel to the Committee. The Committee and their counsel have participated in the bankruptcy process and reviewed the Debtor's actions on behalf of the General Unsecured creditors. In addition, the Committee has investigated Travelers' claims and liens and has reviewed various pre-petition sales of the Debtor's equipment and other assets.

### **5.3 CA/T Settlement**

On the Petition Date, the CA/T Project was the Debtor's largest remaining open job. The settlement of the Debtor's disputes with the State Parties arising from the CA/T Project was one of the important accomplishments of the Debtor's bankruptcy case.

#### **A. Background**

The CA/T Project is the largest and most complex highway and tunnel project in the nation's history. Planning for the CA/T Project commenced in 1982 and building it cost in excess of \$14.5 billion and involved Federal, State and local governmental bodies, as well as numerous private companies.

The CA/T Project involved an overhaul of Boston's major roadway infrastructure. The I-90 Extension opened in January 2003, connecting to the new Ted Williams Tunnel and Logan International Airport and increasing the overall length of the Massachusetts Turnpike to 138 miles. The new I-93 North tunnel and the Leonard P. Zakim Bunker Hill Bridge opened to traffic in March, 2003, followed by the opening of the I-93 South tunnel in December of the same year. During 2004, the old elevated Central Artery (formerly I-93) came down, creating 27 acres for a new tree-lined boulevard and cross streets, sidewalks, parks and other refurbished open space that used to be in the shadow of the highway above. Finish work and surface restoration continues to this day.

The CA/T Project was constructed through many separate construction contracts. The Debtor was the general contractor on many of those contracts. Fourteen of the contracts on which the Debtor was the general contractor remained open on the Petition Date, and were known as: CO9B1, CO9B2, CO9C1, CO9C2, CO9C4, C19B1, C19E1, C19E6, C19E7, C17A1, C17A2, C17A6, C17A9 and C28A1 (collectively the "Modern Contracts").

The Debtor subcontracted with various parties to provide the goods and services necessary to perform its contracts on the CA/T Project. Included in certain of these subcontracts were warranties and guaranties from the subcontractors (collectively the "Subcontractor Warranties") of, among other things, the quality and merchantability of the goods and services provided by the subcontractors.

The Settling Sureties provided the Debtor with performance and payment bonds (collectively the "Bonds") on the Modern Contracts. Commencing in 2003, Travelers further provided financing through certain loans to the Debtor to fund the Debtors' operations, including the completion of the CA/T Project. Fireman's has also provided financing to the Debtor to help it meet its obligations on certain of the Modern Contracts.

## **B. The CA/T Claims**

The Debtor's claims arising from its work on the CA/T Project included the following: (a) retainage and contract funds due and owing on the Modern Contracts in the approximate amount of \$19,130,704, (b) repairs for roof to wall leaks with a value of approximately \$10,000,000, (c) testing of and repairs to slurry panels with a value of approximately \$5,500,000, (d) change orders totaling approximately \$1,000,000 submitted by the Debtor that were not approved and/or paid by the State Parties, and (e) impact claims attributable to alleged design deficiencies, unforeseen site conditions, delays, etc. in excess of \$53,000,000.

In addition to claims arising from the Ceiling Collapse Action (see Section 4.4(D), above), the State Parties' defenses to the Debtor's claims and counterclaims against the Debtor included the following: (a) the State Parties disputed the Debtor's claims for repair work performed in connection with roof to wall leaks and the Debtor's claims for the testing of and repairs to slurry panels, (b) the State Parties disputed the Debtor's so-called impact claims (c) the State Parties asserted counterclaims against the Debtor in the approximate sum of \$35,707,068 representing liquidated damages for work not completed within the time frame required by the Modern Contracts, (d) the State Parties asserted counterclaims against the Debtor for costs incurred by the State Parties completing work that the Debtor has not finished and in connection with the reconciliation of payments for unit price work and provisional payments, and (e) the State Parties asserted, on various occasions, claims for differing amounts, the last claim being in the approximate sum of \$17,881,878.

## **C. The CA/T Settlements**

After the Petition Date, the Debtor (subject to the approval of the Bankruptcy Court), entered into various settlement agreements (collectively the "CA/T Settlements") relating to the CA/T Project as follows:

- a. A settlement (the "Global Settlement") with the Commonwealth of Massachusetts, through the Massachusetts Highway Department, the Massachusetts Turnpike Authority and the Massachusetts Bay Transportation Authority (collectively the "State Parties"), certain of the Travelers entities, Fireman's Fund Insurance Company, National Surety Corp. and The American Insurance Co. (collectively "Fireman's"), and Lumbermen's Mutual Casualty Company and American Motorists Ins. Co. (collectively "Kemper", and together with Travelers and Fireman's the "Settling Sureties");
- b. A settlement (the "Newman Settlement") with Travelers, Fireman's, NSC and the Newman Associates, Inc. and certain related parties (collectively "Newman");
- c. A settlement (the "City Settlement") with Travelers, Fireman's, National Surety Corporation ("NSC") and the City of Boston (the "City"); and

- d. A settlement (the “Joint Venturers Settlement”) with Travelers, Fireman’s, NSC, Bechtel Corporation (“Bechtel”), Bechtel Infrastructure Corporation (“BIC”), PB Americas, Inc. (“Parsons”), Bechtel/Parsons Brinkerhoff (“B/PB”) (Bechtel, BIC, Parsons and B/PB being collectively referred to as the “Joint Venturers”).

The CA/T Settlements were interrelated. The Newman Settlement, the City Settlement and the Joint Venturers Settlement (collectively the “Ancillary Settlements”) became effective only in the event that the Global Settlement became effective according to its terms, and resolved claims arising from the CA/T Project. The Global Settlement was not expressly conditioned on the approval of the Ancillary Settlements. However, the Ancillary Settlements require that the parties to those settlements and the Debtor exchange releases relative to the Ceiling Collapse Action. The cumulative effect of the CA/T Settlements was the resolution of multiple disputes with respect to the Debtor’s involvement in the CA/T Project, including fourteen (14) open contracts with an aggregate adjusted total contract value in excess of \$2,700,000,000.

Under the Global Settlement the Debtor’s estate has received to date \$14,000,000 in cash payments. Pursuant to the DIP Financing agreements and various Bankruptcy Court orders, these amounts were paid to Travelers in reduction of its Secured Claims against the Debtor. In addition, \$21,000,000 in damages arising from the Ceiling Collapse was allocated to the Debtor. The State Parties also agreed to assign their rights against and/or their right to payment from various third parties, which may result in additional monetary recoveries from such third parties. The Global Settlement also resolved substantive issues regarding the completion of work on the CA/T Project.

Under the Newman Settlement, the City Settlement and the Joint Venturers Settlement, the Debtor received and gave releases to the counter-parties to those settlements. The Debtor paid the City \$25,000 under the City Settlement. The Debtor did not pay anything under the Newman Settlement or the Joint Venturers Settlement.

The Global Settlement and the Ancillary Settlements were approved by the Bankruptcy Court on December 18, 2008.

#### **5.4 Route 3 Settlement**

On the Petition Date, the Route 3 Project (as defined below) was one of the Debtor’s larger remaining open jobs. The settlement of the Debtor’s disputes arising from the Route 3 Project was one of the important accomplishments of the Debtor’s bankruptcy case.

##### **A. Background**

Route 3 North is a 21-mile limited access highway running from the Route 3 interchange with Interstate 95 in the Town of Burlington and proceeding north to the border between the Commonwealth of Massachusetts and the State of New Hampshire. The project to improve Route 3 (the “Route 3 Project”) included: (a) construction of an additional travel lane in each direction over the approximately 21 miles of Route 3; (b) construction of 13 interchanges with

other highways and roads; (c) addition of a median shoulder and a 30-foot clear zone; and (d) replacement of approximately 43 bridges and other facilities.

On August 2, 2000, the Debtor entered into a Route 3 Contract with the Commonwealth of Massachusetts acting by and through the Secretary of the Executive Office of Transportation and Construction and the Commissioner of the Massachusetts Highway Department (collectively, the "Owner") to complete the Route 3 Project (the "Route 3 Contract"). In addition to performing the design and construction, the Debtor was required to operate and maintain the Route 3 Project for a term not to exceed 30 years, and to provide a warranty for five years after substantial completion.

The Debtor subcontracted with various parties to provide the goods and services necessary to construct the Route 3 Project. Included in certain of these subcontracts were warranties (collectively the "Subcontractor Warranties") of, among other things, the quality and merchantability of the goods and services provided by the subcontractors.

St. Paul Fire and Marine Insurance Company, United States Fidelity and Guaranty Company, Lumbermen's Mutual Casualty Company, American Motorists Insurance Company and American Manufacturers Mutual Insurance Company (collectively the "Surety") provided the Debtor with performance and payment bonds relating to the design-build portion of the Route 3 Project.

After the award of the Route 3 Contract, disputes arose between the Debtor and the Owner, and the Debtor eventually submitted a Request for Equitable Adjustment (the "REA"). In its REA, the Debtor asserted generally that its design and construction of the Route 3 Project was significantly delayed and impacted due to: (a) the Owner's numerous inaccurate and/or misleading representations in the Route 3 Project's Request for Proposal, the Route 3 Contract and related documents; (b) the Owner's interference in the design process in complete disregard of the design-build nature of the Route 3 Project; and (c) the Owner's continuous failure to abide by the terms of Route 3 Contract and related documents. The Debtor asserted that these Owner actions and inactions represented an "Owner Default" under the Route 3 Contract and resulted in millions of dollars in damages. The Debtor's REA, as amended, was in the amount of approximately \$72,000,000, exclusive of interest, which amount included a total modified cost claim of approximately \$50,000,000 and discretely priced claims of approximately \$22,000,000. In addition, the Debtor's REA included certain pass-through claims made by URS Corporation in the amount of approximately \$5,400,000 and Aggregate Industries in the amount of approximately \$3,300,000. In response to the Debtor's REA, the Owner generally denied all liability for numerous reasons, including failure to provide timely notice and failure to comply with the dispute resolution provisions of the Route 3 Contract.

The Owner also asserted claims against the Debtor, which can generally be placed into the following categories: (a) credits for incomplete or non-conforming work (claimed damages approximated in excess of \$600,000); (b) previously negotiated credits (claimed damages of approximately \$121,000); (c) concrete material credit (claimed damages of approximately \$100,000); (d) MHD share of fiber optic development proceeds (claimed damages unspecified); and (e) additional design, engineering and administrative costs (claimed damages unspecified).

The Owner also assessed approximately \$4,700,000 in liquidated damages due to the Debtor's alleged unexcused delays in completing the Route 3 Project. The Debtor disputed all of the Owner's claims.

Under the Route 3 Contract, the Debtor was granted development rights within the Route 3 right of way (the "Development Rights"), provided that the Owner retained the right, in its sole and absolute discretion, to approve or disapprove any development proposed by the Debtor. Prior to the Petition Date, a dispute arose between the Debtor and the Owner with respect to the Development Rights. The Owner asserted that, even though no development had been approved or undertaken, the Debtor owed it a minimum of \$110,000 in annual revenue pursuant to the ancillary development provisions in the Route 3 Contract. The Debtor disputes this assertion.

### **B. The Route 3 Settlement**

After the Petition Date, the Debtor, the Surety and the Owner entered into a settlement agreement (the "Route 3 Settlement Agreement"). The Route 3 Settlement Agreement memorialized a comprehensive settlement that fully resolved all claims and disputes relating to the Route 3 Project and achieved a close out of the Route 3 Project. In summary, the Owner agreed to pay the Debtor approximately \$16.8 million in settlement of amounts due under the Route 3 Contract. Pursuant to the DIP Financing agreements and various Bankruptcy Court orders, these amounts are to be paid to Travelers in reduction of its Secured Claims against the Debtor. In addition to the funds paid by the Owner, the Route 3 Settlement Agreement also included, among other things, the following terms: (a) the Debtor and the Surety agreed to assign to the Owner whatever rights they possessed in any Subcontractor Warranties, (b) the Debtor and the Surety (if applicable) also agreed to assign to the Owner the Debtor's rights in the "Operations and Maintenance Agreement" referenced in Exhibit A to the Route 3 Contract, and, for its part, the Owner agrees that the Operations and Maintenance Agreement would not be awarded and the 30-year obligations therein will not apply to the Debtor and/or the Surety, including the insurance requirements for post-completion operations, (c) the Surety agreed to provide a five year warranty of the Debtor's continuing obligations with respect to the "Intelligent Transportation Systems" under the Route 3 Contract, (d) upon Final Acceptance of the Route 3 Project, the Surety would tender to the Owner a pre-qualified completion contractor approved by the Owner to perform certain remaining work under the Route 3 Contract, (e) upon final acceptance of the Route 3 Project, the Debtor would have no further obligation to perform any work under the Route 3 Contract, (f) the Debtor's right to exercise the Development Rights would be terminated, (g) the Surety would indemnify and hold harmless the Owner for subcontractor/supplier/third-party claims to the extent required by the Route 3 Contract or the bonds provided by the Surety, and (h) the Debtor, the Surety and the Owner shall release each other.

The Bankruptcy Court approved the Route 3 Settlement Agreement on December 18, 2008.

## 5.5 Other Settlements

In addition to the CA/T Settlements and the Route 3 Settlement, the Debtor entered into various settlements of claims by and against the Debtor. As of the date of this Disclosure Statement, the following is a list of the settlements entered into by the Debtor that have been approved by the Bankruptcy Court:

- *Modern Continental Construction Co., Inc. v. Zurich American Insurance Company and ACE American Insurance Company*, Suffolk Superior Court, Civil Action No. 2003-03197-BLS;
- *Lindita Kazazi and Islam Kazazi v. Massachusetts Port Authority and Modern Continental Construction Co., Inc.*, Suffolk Superior Court, Civil Action No. 06-09103-B;
- *Modern Continental Roadway, a Joint Venture, a/k/a Modern Continental Roadway Joint Venture, a/k/a Modern Continental Roadway Construction Co., Inc. v. American International Specialty Lines Assurance Company*, Los Angeles County Superior Court, Civil Action No. BC377279;
- *Timothy Leeman v. Modern Continental Construction Co., Inc. v. Verizon Special Services, Inc. v. Joy Electrical Company, Inc.*, Middlesex Superior Court, Civil Action No. MICV2005-0369; and
- *Joyce Syme v. The City of Santa Monica and Modern Continental Construction Co., Inc. v. Layne Christensen Company*, Superior Court of California for the County of Los Angeles, Civil Action No. SC092022.

## 5.6 Sale of Real Estate

On the Petition Date, the Debtor owned one parcel of real property known as Lot 32, Bishops Way, Castle Hill Estates II, North Reading, Massachusetts (the "Bishops Way Property"). Prior to the Petition Date, the Bishops Way Property had been extensively marketed. Following this marketing effort, Elite Construction Co., Inc. (the "Buyer") offered to purchase the Bishops Way Property for \$200,000. The Debtor filed a motion to sell the Bishops Way Property to the Buyer and gave notice of the proposed sale to all creditors and parties in interest. No objections to the sale or counter-offers were received, and the sale of the Bishops Way Property to the Buyer closed on April 15, 2009.

## 5.7 DIP Financing

Following the Petition Date, the Debtor operated by using, with Traveler's agreement, Traveler's cash collateral. It was apparent, however, that the Debtor did not, in the long term, have sufficient liquidity to meet its daily cash needs, including payroll, rent, insurance, and other services necessary to maintain operations and preserve the value of the Debtor's assets. The Debtor and Traveler's reached an agreement whereby Traveler's would provide post-petition

financing (the “DIP Financing”) to permit the Debtor to continue its operations. The DIP Financing would prevent the Debtor’s abrupt closure and would avoid harm to the Debtor’s bankruptcy estate, its creditors, and the owners and beneficiaries of its various construction projects. The DIP Financing was to be secured by post-petition, super-priority liens on all of the Debtor’s assets that were subject to Travelers’ liens on the Petition Date. The Bankruptcy Court approved the DIP Financing and subsequently approved various extensions of the DIP Financing. As of the date of this Disclosure Statement, the Debtor has borrowed approximately \$9.5 million under the DIP Financing.

### **5.8 Motions For Relief From Stay**

On June 27, 2008, the plaintiff in the Del Valle Action (the “Del Valle Plaintiff”) filed a motion for relief from the automatic stay, seeking permission to continue the Del Valle Action in the Massachusetts Superior Court. The Debtor was able to reach an agreement with the Del Valle Plaintiff (the “Del Valle Relief Agreement”) whereby, in exchange for obtaining the Debtor’s assent to relief from the automatic stay, the Del Valle Plaintiff agreed to limit any recovery in the Del Valle Action to the available insurance proceeds and to waive any claim against the Debtor’s bankruptcy estate. National Union Insurance Company of Pittsburgh, Pennsylvania (“National Union”), who provided the insurance coverage at issue, objected to the approval of the Del Valle Relief Agreement. The Bankruptcy Court ultimately approved the Del Valle Relief Agreement over National Union’s objection. The terms of the Del Valle Relief Agreement would subsequently form a template for other motions for relief from the automatic stay brought by parties to pre-petition lawsuits.

On the Petition Date, the Debtor was a defendant in various lawsuits across the country. Many of these lawsuits were personal injury matters. During the course of this bankruptcy proceeding, some of the plaintiffs in these pre-petition lawsuits have sought relief from the automatic stay to continue to prosecute the pre-petition lawsuits in their original forums. With one exception, the Debtor was able to reach agreement to grant each party relief from stay subject to the same terms as the Del Valle Relief Agreement. Each of these agreements granting relief from the automatic stay was approved by the Bankruptcy Court. In this fashion, the Debtor was able to avoid further legal fees and costs associated with the pre-petition litigation and to eliminate claims against its bankruptcy estate.

One party seeking relief from the automatic stay, Smyrna Rebar, Inc. (“Smyrna”), refused to agree to the terms described in the Del Valle Relief Agreement. Smyrna was a pre-petition plaintiff in a breach of contract lawsuit against the Debtor. Prior to the Petition Date, a trial was conducted and judgment was awarded to the Debtor, including a \$5.0 million judgment against Smyrna on the Debtor’s counter-claims. Smyrna appealed the judgment. The Bankruptcy Court ultimately permitted Smyrna to continue with its appeal.

### **5.9 Insurance Issues**

Prior to the Petition Date, Crawford & Company and Broadspire Services Inc. (collectively “Crawford”) administered various claims against the Debtor and its affiliates and coordinate the defense and payment of those claims. Crawford worked with the Debtor, the

Debtor's affiliates and their insurers. Prior to the Petition Date, the Debtor provided a cash deposit to Crawford to be used to fund defense costs. Since the filing of the Debtor's bankruptcy case stayed all actions against the Debtor, the Debtor requested the return of the deposit from Crawford. While Crawford initially refused to return the deposit, the Debtor was able to negotiate the return of the deposit.

Prior to the Petition Date, Zurich American Insurance Company ("Zurich") provided, among other things, general liability and workmens' compensation insurance to the Debtor. Because of the Debtor's poor financial condition, the Debtor and United States Fidelity and Guaranty Company entered into a pre-petition agreement with Zurich whereby, in exchange for a substantial cash payment, Zurich agreed to continue providing insurance coverage notwithstanding the Debtor's financial condition. Following the Petition Date, Zurich refused to continue providing the insurance coverage. The Debtor is currently pursuing this matter.

### **5.10 Bar Date**

On July 3, 2008, the Debtor moved the Bankruptcy Court for an order establishing a bar date for holders of prepetition Claims to file proofs of claim. The Bankruptcy Court on granted the motion and established August 22, 2008 as the Bar Date for all non-governmental entities and December 22, 2008 for all governmental entities. The Debtor subsequently amended the Schedules three times. Each amendment established a new bar date only for those claims listed on the amended Schedules. The bar dates for the claims on the respective amended Schedules were as follows:

- For holders of Claims listed in the amended Schedules dated August 29, 2008, the bar date was September 28, 2008;
- For holders of Claims listed in the amended Schedules dated October 8, 2008, the bar date was November 7, 2008;
- For holders of Claims listed in the amended Schedules dated January 9, 2009, the bar date was February 8, 2009.

All of the bar dates for filing proofs of claim have passed.

## **VI. DESCRIPTION OF THE PLAN**

The following is a summary of the significant provisions of the Plan and is qualified in its entirety by the provisions of the Plan, a copy of which accompanies this Disclosure Statement. In the event and to the extent that the description of the Plan contained in this Disclosure Statement is inconsistent with any provisions of the Plan, the provisions of the Plan shall control and take precedence. All creditors are urged to carefully read the Plan.

## **6.1 Unclassified Claims.**

As provided in Section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims are not classified for the purposes of voting on, or receiving distributions under, the Plan. All such Claims are instead treated separately in accordance with the terms set forth in Article III of the Plan.

### **A. Administrative Expense Claims.**

(1) General. Except for Professional Fee Claims and fees due to the United States Trustee, each Allowed Administrative Expense Claim shall be paid in one of the following ways: (a) in full in cash on the later to occur of the Effective Date and the entry of the order of the Bankruptcy Court Allowing the Administrative Expense Claim, unless a stay of such order is obtained, or (b) as agreed between the holder of the Allowed Administrative Expense Claim and the Liquidating Supervisor.

(2) U.S. Trustee's Fees. The fees due to the United States Trustee pursuant to 28 U.S.C. § 1930 shall be paid in full by the Debtor in Cash, on or before the Effective Date.

(3) Professional Compensation and Expense Reimbursement Claims.

(a) Except for those Professionals who were exempted from filing fee applications by an order of the Bankruptcy Court, on or before thirty (30) days after the Effective Date, each Professional shall file a final application for the allowance of any Professional Fee Claims for services rendered or reimbursement of expenses incurred through and including the Effective Date. Allowed Professional Fee Claims shall be paid in full in cash on the later to occur of the Effective Date and the entry of the order of the Bankruptcy Court allowing the Professional Fee Claim, unless a stay of such order is obtained.

(b) All fees and expenses of professionals for services rendered after the Effective Date shall be paid by the Liquidating Supervisor upon receipt of reasonably detailed invoices in such amounts and on such terms as the professional and the Liquidating Supervisor may agree. No further order or authorization from the Bankruptcy Court shall be necessary to permit the Liquidating Supervisor to pay the fees and expenses of professionals for services rendered after the Effective Date.

(4) All payments to the holders of Allowed Administrative Expense Claims shall be made by the Liquidating Supervisor from the DIP Financing, the PRT Carve-Out and the Net Proceeds of the Avoidance Actions.

### **B. Priority Tax Claims.**

At the sole election of the Liquidating Supervisor, each holder of an Allowed Priority Tax Claim shall be paid in full, in Cash, on the later of the Effective Date or the date that a Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is

practicable. All payments to the holders of Allowed Priority Tax Claims shall be made by the Liquidating Supervisor from the Travelers Advance, the PRT Carve-Out and the Net Proceeds of the Avoidance Actions.

## **6.2 Classes of Claims And Equity Interests.**

Claims, other than Administrative Expense Claims and Priority Tax Claims, are classified under the Plan as follows:

Class 1 – Travelers’ Secured Claims. Class 1 shall consist of the Secured Claims of Travelers.

Class 2 – Bank Group’s Secured Claims. Class 2 shall consist of the Secured Claims of the Bank Group.

Class 3 – Miscellaneous Secured Claims. Class 3 shall consist of Secured Claims that are not separately classified.

Class 4 – Priority Claims. Class 4 shall consist of the Priority Claims.

Class 5 – General Unsecured Claims. Class 5 shall consist of the General Unsecured Claims.

Class 6 – Claims of the United States of America. Class 6 shall consist of the Claims of the United States of America for any amounts due on account of or arising from the Information.

Class 7 – Equity Interests. Class 7 shall consist of the Equity Interests.

## **6.3 Class 1 – Travelers’ Secured Claims.**

### **A. Impairment and Voting.**

Class 1 is impaired under the Plan. The holders of Class 1 Claims shall be entitled to vote to accept or reject the Plan.

### **B. Treatment.**

Travelers shall have an Allowed Secured Claim equal to the value of the Travelers Collateral. Travelers shall retain its pre and post-petition Liens against the Travelers’ Collateral. Subject to the rights of the Bank Group to receive a portion of the Shared Collateral, the Liquidating Supervisor shall pay Travelers the Net Proceeds of the sale, transfer or other disposition of the Travelers Collateral as soon as practicable after such sale, transfer or other disposition; provided that, upon the Effective Date, the PRT Carve-Out shall be established. Confirmation of this Plan shall constitute authorization for the Liquidating Supervisor, upon the

agreement of Travelers, to return all or any part of the Travelers' Collateral to Travelers in reduction of its Allowed Secured Claim.

**C. Deficiency Claim.**

The Deficiency Claim arising from Travelers' Allowed Secured Claim shall be treated as an Allowed Class 5 Claim.

**6.4 Class 2 – Bank Group's Secured Claims.**

**A. Impairment and Voting.**

Class 2 is impaired under the Plan. The holders of Class 2 Claims shall be entitled to vote to accept or reject the Plan.

**B. Treatment.**

The Bank Group shall have an Allowed Secured Claim equal to the value of its Collateral. The Bank Group shall retain its pre and post-petition Liens against its Collateral. Subject to the rights of Travelers to receive a portion of the Shared Collateral, the Liquidating Supervisor shall pay the Bank Group the Net Proceeds of the sale, transfer or other disposition of the Bank Groups' Collateral as soon as practicable after such sale, transfer or other disposition. Confirmation of this Plan shall constitute authorization for the Liquidating Supervisor, subject to the Bank Group Agreement, to return all or any part of the Bank Groups' Collateral to the Bank Group in reduction of its Allowed Secured Claim.

**C. Deficiency Claim.**

Any Allowed Deficiency Claim arising from the Bank Groups' Allowed Secured Claim shall be treated as a Class 5 Claim.

**6.5 Class 3 – Miscellaneous Secured Claims.**

**A. Impairment and Voting.**

Class 3 is impaired under the Plan. The holders of Class 3 Claims shall be entitled to vote to accept or reject the Plan.

**B. Treatment.**

In full and final satisfaction of all Class 3 Claims and at the sole election of the Liquidating Supervisor, the holders of all Allowed Secured Claims that are not classified in another Class shall receive one of the following: (i) Cash in an amount equal to such Allowed Secured Claim on the later of the Effective Date and the date such Secured Claim becomes an Allowed Secured Claim, or as soon thereafter as is practicable, (ii) the return of the Collateral securing its Allowed Secured Claim, in full and complete satisfaction of such Claim on the later

of the Effective Date or the date such Secured Claim becomes an Allowed Secured Claim, or as soon thereafter as is practicable, or (iii) treatment as agreed to by the holder of the Allowed Secured Claim and the Debtor or, after the Effective Date, the Liquidating Supervisor. Until the payment in full of an Allowed Class 3 Secured Claim, the holder of such Allowed Secured Class 3 Claim shall retain any valid and perfected Liens it held against the Assets as of the Effective Date. Upon the payment in full of an Allowed Class 3 Secured Claim: (x) all credit agreements, notes, mortgages, security agreements, invoices, contracts, agreements and any other documents or instruments evidencing such Allowed Class 3 Secured Claim, together with any and all Liens securing the same, shall be canceled, discharged and released without further act or action by the Reorganized Debtor under any applicable agreement, law, regulation, order or rule; (y) the obligations of the Reorganized Debtor to the holder(s) of such Allowed Class 3 Secured Claim, whether under the Plan or otherwise, shall be deemed cancelled, discharged and released; and (z) all of the right, title and interest of the Debtor in the Assets securing such Allowed Class 3 Secured Claims shall revert to the Reorganized Debtor. On the Effective Date, all Liens, encumbrances or interests of any kind held by any Class 3 Creditor that do not secure an Allowed Class 3 Secured Claim shall be canceled, discharged and released without further act or action by the Debtor that is required under any applicable agreement, law, regulation, order or rule.

**C. Deficiency Claim.**

Any Allowed Deficiency Claim arising from an Allowed Class 3 Claim shall be treated as a Class 5 Claim.

**6.6 Class 4 – Priority Claims.**

**A. Impairment and Voting.**

Class 4 is impaired under the Plan. The holders of Class 4 Claims shall be entitled to vote to accept or reject the Plan.

**B. Treatment.**

In full satisfaction, settlement, release and discharge of all Class 4 Claims, each holder of an Allowed Class 4 Claim shall receive payment from the PRT Carve-Out and the Net Proceeds of the Avoidance Actions. Payments to the holders of Allowed Class 4 Claims shall be made by the Liquidating Supervisor on the later of the Effective Date or the date that a Priority Claim becomes an Allowed Priority Claim, or as soon as practicable after the receipt of the Net Proceeds of the Avoidance Actions.

**6.7 Class 5 – General Unsecured Claims.**

**A. Impairment and Voting.**

Class 5 is impaired under the Plan. The holders of Class 5 Claims shall be entitled to vote to accept or reject the Plan.

**B. Treatment.**

In full satisfaction, settlement, release and discharge of all Class 5 Claims and only after all Senior Classes have been paid in full, each holder of an Allowed Class 5 Claim shall receive one or more Pro Rata distributions from the PRT Carve-Out and the Net Proceeds of the Avoidance Actions. Payments to the holders of Allowed Class 5 Claims shall be made by the Liquidating Supervisor as soon as practicable after the Effective Date and from time to time thereafter as monies become available.

**6.8 Class 6 – Claims of the United States of America.**

**A. Impairment and Voting.**

Class 6 is impaired under the Plan. The holders of Class 6 Claims shall be entitled to vote to accept or reject the Plan.

**B. Treatment.**

In full satisfaction, settlement, release and discharge of all Class 6 Claims and only after all Senior Classes have been paid in full, the holder of the Allowed Class 6 Claim shall receive one or more Pro Rata distributions from the PRT Carve-Out and the Net Proceeds of the Avoidance Actions. Payments to the holder of the Allowed Class 6 Claim shall be made by the Liquidating Supervisor as soon as practicable after the Effective Date and from time to time thereafter as monies become available.

**6.9 Class 7 – Equity Interests.**

**A. Impairment and Voting.**

Class 7 is impaired under the Plan and is deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code.

**B. Treatment.**

In full satisfaction, settlement, release and discharge of all Class 7 Equity Interests and only after all Senior Classes have been paid in full, each holder of an Allowed Class 7 Equity Interest shall receive one or more Pro Rata distributions from the PRT Carve-Out and the Net Proceeds of the Avoidance Actions. Payments to holders of Allowed Class 7 Equity Interests shall be made by the Liquidating Supervisor as soon as practicable after the Effective Date and from time to time thereafter as monies become available.

**C. Voting Rights.**

On the Effective Date and until the dissolution of the Reorganized Debtor pursuant to Section 5.10 of the Plan, the Liquidating Supervisor shall be vested with all voting rights

associated with the Debtor's stock, whether common or preferred, but not with any beneficial ownership of such stock.

#### **6.10 Reservation of Rights With Respect to Claims.**

The Debtor and, after the Effective Date, the Liquidating Supervisor, reserve the right to, among other things, (i) contest the right of the holder of any Claim to vote on the Plan, (ii) contest the right of the holder of any Claim to receive distributions under the Plan, and (iii) seek to subordinate any Claim, for inequitable conduct or otherwise.

#### **6.11 Priority of Travelers' Advance.**

The Travelers' Advance shall be secured by a Lien on the same Collateral that secures the DIP Financing, which Lien shall have the same extent, priority and validity as the Liens securing the DIP Financing.

#### **6.12 Sales of Assets.**

Confirmation of the Plan and the occurrence of the Effective Date shall constitute authorization for the Liquidating Supervisor, without a further order of the Bankruptcy Court, to sell, lease, exchange, transfer, convey or otherwise dispose of any Asset free and clear of all liens, claims and interests pursuant to Section 363(f) of the Bankruptcy Code; provided that, the Liquidating Supervisor shall not sell, lease, exchange, transfer, convey or otherwise dispose of all or any part of the Travelers' Collateral without Travelers prior approval. Any entity with an Allowed Secured Claim against an Asset sold, transferred or otherwise disposed of under the Plan shall be entitled to the protection of Section 363(k) of the Bankruptcy Code; provided that, any holder of an Allowed Secured Claim that exercises its rights under Section 363(k) of the Bankruptcy Code shall purchase the Asset subject to any senior Liens. Prior to executing an agreement to sell, transfer or otherwise dispose of an Asset, the Liquidating Supervisor shall, by first class U.S. mail, serve the holders of Allowed Secured Claims against such Asset with a notice of the intention to enter into such an agreement (the "Notice"). The Notice shall include, among other things, a description of the Asset to be sold, transferred or disposed of and the price or other consideration to be paid for the Asset. The holder of an Allowed Secured Claim against the Asset to be sold, transferred or otherwise disposed of shall have fifteen (15) days from the date of service of the Notice to exercise its rights under Section 363(k) at the price set forth in the Notice, barring which the holder of the Allowed Secured Claim shall have waived its rights under Section 363(k) of the Bankruptcy Code.

#### **6.13 Liquidating Supervisor.**

The Plan provides for the appointment of the Liquidating Supervisor to oversee the Debtor's post-Effective Date operations and the continued liquidation of the Assets. The Plan contains provisions that establish, among other things, the scope of the Liquidating Supervisor's powers and liability for his post-Effective Date actions. The Plan contemplates that the Liquidating Supervisor will act in the stead of the Debtor's officers and directors. Craig Jalbert, CIRA, is proposed to be the Liquidating Supervisor. Mr. Jalbert's qualifications are available

upon request from counsel for the Debtor at the address listed on the cover page to this Disclosure Statement.

#### **6.14 Preservation of Causes of Action.**

Except as provided in, and unless expressly waived, released, compromised or settled in the Plan, the Confirmation Order, any Non-Appealable Order, or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, and in accordance with Section 1123(a)(5)(A) of the Bankruptcy Code, any Claims, demands, rights and Causes of Action that the Debtor or the Estate may hold against any person or entity are fully preserved. No preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to them by virtue of or in connection with the confirmation, consummation of effectiveness of the Plan. Nothing in the Plan shall be construed to effect a release or waiver of any claims of a Creditor against any other Creditor.

#### **6.15 Retention of Professionals.**

The Liquidating Supervisor may retain such attorneys (including special counsel) accountants, advisors, expert witnesses, and other professionals as he considers advisable without necessity of approval of the Court. Persons who served as Professionals to the Committee or the Debtor prior to the Effective Date may provide services to the Liquidating Supervisor. The fees and expenses of the Liquidating Supervisor and professionals retained by him shall be paid by him in the ordinary course of business without the need for the approval of the Bankruptcy Court.

#### **6.16 Dissolution of the Debtor.**

Upon the completion of the administration of all of the Assets pursuant to the Plan, the Reorganized Debtor shall be deemed to be dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Reorganized Debtor or payments to be made in connection therewith; provided, however, that the Liquidating Supervisor, on behalf of the Debtor, shall file with the appropriate state authority or authorities a certificate or statement of dissolution referencing the Plan. The Reorganized Debtor shall not be required to file any documents, or take any other action, to withdraw its business operations from any states in which the Debtor was previously conducting business operations.

#### **6.17 Dissolution of the Committee.**

The Committee shall dissolve automatically on the Effective Date. Upon such dissolution, its members, professionals, and agents shall be released from any further duties and responsibilities in the Bankruptcy Case and under the Bankruptcy Code, except with respect to applications for Professional Claims or reimbursement of expenses incurred as a member of the Committee and any motions or other actions seeking enforcement or implementation of the provisions of the Plan or the Confirmation Order or pending appeals of Orders entered in the Bankruptcy Case.

### **6.18 Resignation of Officers and Directors.**

Upon the Effective Date, all of the Debtor's officers and members of its board of directors shall be deemed to have resigned without the necessity of any further action or writing and they shall be released from any responsibilities, duties and obligations that arise after the Effective Date to the Debtor or its Creditors under the Plan or applicable law. Under no circumstances shall such parties be entitled to any compensation from the Debtor or the Liquidating Supervisor for services provided after the Effective Date, unless such individuals are subsequently employed by the Liquidating Supervisor to assist him in the consummation of the Plan.

### **6.19 Rejection of Executory Contracts and Unexpired Leases.**

Any executory contract or unexpired lease (excluding any insurance policy) that (i) has not expired by its own terms on or prior to the Confirmation Date, (ii) has not been assumed, assumed and assigned or rejected with the approval of the Bankruptcy Court on or prior to the Confirmation Date, (iii) is not the subject of a motion to assume or reject which is pending at the time of the Confirmation Date, or (iv) is not designated by the Debtor as being an executory contract or unexpired lease to be assumed at the time of confirmation of the Plan, shall be deemed rejected on the Effective Date. The entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejection pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code. Unless designated by the Debtor to be rejected at the time of confirmation of the Plan, all executory insurance policies shall be deemed assumed on the Effective Date.

### **6.20 Rejection Damages Claims.**

If the rejection of an executory contract or unexpired lease results in a Claim, such Claim, if not previously evidenced by a filed proof of claim, shall be forever barred and shall not be enforceable against the Estate, the Reorganized Debtor, the Liquidating Supervisor and their respective properties, agents, successors, or assigns, unless a proof of claim is filed with the Bankruptcy Court and served upon counsel for the Debtor and the Liquidating Supervisor on or before thirty (30) days following the Confirmation Date. Unless otherwise ordered by the Bankruptcy Court or provided in the Plan, all such Claims for which proofs of claim are timely filed will be treated as Class 5 General Unsecured Claims. The Reorganized Debtor or the Liquidating Supervisor, as the case may be, shall have the right to object to any such Claim for rejection damages in accordance with the Plan.

### **6.21 Injunction Relating to the Plan.**

As of the Effective Date, all Persons are hereby permanently enjoined from commencing or continuing, in any manner or in any place, any action or other proceeding, whether directly, indirectly, derivatively or otherwise against the Debtor, the Estates or the Reorganized Debtor, on account of, or respecting any Claims, debts, rights, Causes of Action or liabilities discharged pursuant to the Plan, except to the extent expressly permitted under the Plan.

## **6.22 Exculpation.**

Neither the Debtor, the Reorganized Debtor, the Liquidating Supervisor, the Creditors' Committee, nor any of its respective present or former members, officers, directors, employees, general or limited partners, advisors, attorneys agents, successors or assigns, shall have or incur any liability to any holder of a Claim or an Interest, or any other party in interest, or any of its respective agents, employees, representatives, financial advisors, attorneys, or affiliates, or any of its successor or assigns, for any act or omission in connection with, relating to, or arising out of, the administration of this Chapter 11 bankruptcy proceeding, the pursuit of confirmation of the Plan, the Disclosure Statement, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, provided that, (a) the terms of Section 9.2 of the Plan shall not apply to any liability of any entity for its breach of fiduciary duty, bad faith, willful misconduct or negligence, (b) nothing herein exculpates the Debtor, the Reorganized Debtor or its agents from effectuating the Plan, and (c) nothing herein shall limit or impair any rights, claims or obligations the Debtor may have against any entity as of the Petition Date.

## **6.23 Setoff.**

Except as otherwise provided in the Plan, nothing contained in the Plan shall constitute a waiver or release by the Debtor, the Reorganized Debtor or the Estate of any rights of setoff the Debtor, the Reorganized Debtor or the Estate may have against any Person.

## **6.24 Bar Date for Administrative Expense Claims.**

The Confirmation Order will establish the Administrative Expense Claim Bar Date for the filing of all Administrative Expense Claims (not including Professional Fee Claims, United States Trustee fees or the expenses of the members of the Committee), which date shall be thirty (30) days after the Effective Date. Holders of asserted Administrative Expense Claims, other than Professional Fee Claims, United States Trustee fees, or the expenses of the members of the Committee, not paid prior to the Confirmation Date must submit proof of Administrative Expense Claim on or before the Administrative Expense Claim Bar Date or forever be barred from doing so. The notice of confirmation to be delivered pursuant to Bankruptcy Rule 3020(c) and 2002(f) will set forth such date and constitute notice of this Administrative Expense Claim Bar Date. The Liquidating Supervisor shall have sixty (60) days (or such longer period as may be allowed by Order of the Court at the request of the Liquidating Supervisor) following the Administrative Expense Claim Bar Date to review and object to such Administrative Expense Claims. If no objection is made then the Administrative Expense Claim shall be Allowed and the Liquidating Supervisor shall pay such Administrative Expense Claim as soon as practicable.

## **6.25 Continuation of Injunctions or Stays until Effective Date.**

All injunctions or stays provided for in the Bankruptcy Case under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the entry of a Final Decree by the Bankruptcy Court.

## 6.26 Tax Consequences of the Plan.

The following is a general summary of certain material federal income tax consequences of the Plan and the distributions provided under the Plan. This summary does not discuss all aspects of federal taxation that may be relevant to a particular creditor in light of its individual investment circumstances or to certain creditors or shareholders subject to special treatment under the federal income tax laws (for example, tax-exempt organizations, financial institutions, broker-dealers, life insurance companies, foreign corporations or individuals who are not citizens or residents of the United States). This summary does not discuss any aspects of state, local or foreign taxation. The impact on foreign holders of claims and equity interests is not discussed.

This summary is based upon the Internal Revenue Code of 1986, as amended (the “IRC”), the Treasury regulations (including temporary regulations) promulgated thereunder, judicial authorities and current administrative rulings, all as in effect on the date hereof and all of which are subject to change (possibly with retroactive effect) by legislation, administrative action or judicial decision. Moreover, due to a lack of definitive judicial or administrative authority or interpretation and the complexity of the transactions contemplated in the Plan, substantial uncertainties exist with respect to various tax consequences of the Plan. The Debtor has not requested a ruling from the Internal Revenue Service (the “IRS”) with respect to these matters and no opinion of counsel has been sought or obtained by the Debtor with respect thereto. There can be no assurance that the IRS or any state or local taxing authorities will not challenge any or all of the tax consequences of the Plan, or that such a challenge, if asserted, would not be sustained. **FOR THE FOREGOING REASONS, CREDITORS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS AS TO THE SPECIFIC TAX CONSEQUENCES (FOREIGN, FEDERAL, STATE AND LOCAL) TO THEM OF THE PLAN. THE DEBTOR IS NOT MAKING ANY REPRESENTATIONS REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE CONFIRMATION AND CONSUMMATION OF THE PLAN AS TO ANY CREDITOR, NOR IS THE DEBTOR RENDERING ANY FORM OF LEGAL OPINION AS TO SUCH TAX CONSEQUENCES.**

### A. Federal Income Tax Consequences to the Debtor.

Cancellation of Indebtedness. Generally, the Debtor will realize cancellation of debt (“COD”) income to the extent that the Debtor pays a creditor pursuant to the Plan an amount of consideration in respect of a Claim against the Debtor that is worth less than the amount of such Claim. For this purpose, the amount of consideration paid to a creditor generally will equal the amount of cash or the fair market value of property paid to such creditor. Because the Debtor will be in a bankruptcy case at the time the COD income is realized (if any is realized), the Debtor will not be required to include COD income in gross income, but rather will be required to reduce tax attributes by the amount of COD income so excluded.

## **B. Tax Consequences to Creditors.**

In General. The federal income tax consequences of the implementation of the Plan to a holder of a Claim will depend, among other things, on: (a) whether its Claim constitutes a debt or security for federal income tax purposes, (b) whether the holder of the Claim receives consideration in more than one tax year, (c) whether the holder of the Claim is a resident of the United States, (d) whether all the consideration received by the holder of the Claimant is deemed to be received by the holder of the Claim as part of an integrated transaction, (e) whether the holder of the Claim reports income using the accrual or cash method of accounting, and (f) whether the holder has previously taken a bad debt deduction or worthless security deduction with respect to the Claim.

Gain or Loss on Exchange. Generally, a holder of an Allowed Claim will realize a gain or loss on the exchange under the Plan of his or her Allowed Claim for cash and other property in an amount equal to the difference between (i) the sum of the amount of any cash and the fair market value on the date of the exchange of any other property received by the holder (other than any consideration attributable to accrued but unpaid interest on the Allowed Claim), and (ii) the adjusted basis of the Allowed Claim exchanged therefore (other than basis attributable to accrued but unpaid interest previously included in the holder's taxable income). Any gain recognized generally will be a capital gain (except to the extent the gain is attributable to accrued but unpaid interest or accrued market discount, as described below) if the Claim was a capital asset in the hand of an exchanging holder, and such gain would be a long-term capital gain if the holder's holding period for the Claim surrendered exceeded one (1) year at the time of the exchange.

Any loss recognized by a holder of an Allowed Claim will be a capital loss if the Claim constitutes a "security" for federal income tax purposes or is otherwise held as a capital asset. For this purpose, a "security" is a debt instrument with interest coupons or in registered form.

## **C. Information Reporting and Backup Withholding.**

Under the backup withholding rules of the Internal Revenue Code, holders of Claims may be subject to backup withholding at the rate of 31 percent with respect to payments made pursuant to the Plan unless such holder (i) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or (ii) provides a correct taxpayer identification number and certifies under penalties of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding because of a failure to report all dividends and interest income. Any amount withheld under these rules will be credited against the holder's federal income tax liability. Holders of Claims may be required to establish exemption from backup withholding or to make arrangements with respect to the payment of backup withholding.

**THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FEDERAL, STATE, AND FOREIGN TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN MANY AREAS, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS STRONGLY URGED TO**

**CONSULT WITH HIS OWN TAX ADVISOR REGARDING SUCH TAX CONSEQUENCES.**

**VII. MISCELLANEOUS**

**7.1 Continuation of Injunctions or Stays Until Effective Date.**

All injunctions or stays provided for in the Bankruptcy Cases under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

**7.2 Exemption from Transfer Taxes.**

In accordance with Section 1146(c) of the Bankruptcy Code: (a) the issuance, transfer or exchange of any security under the Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by the Plan, including any merger agreements or agreements of consolidation, deeds, bills of sale or assignments executed in connection with any of the transactions contemplated under the Plan, or the re-vesting, transfer or sale of any real or personal property of the Debtor pursuant to, in implementation of, or as contemplated by the Plan; (b) the making, delivery, creation, assignment, amendment or recording of any note or other obligation for the payment of money or any mortgage, deed of trust or other security interest under, in furtherance of, or in connection with the Plan, the issuance, renewal, modification or securing of indebtedness by such means; and (c) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including, without limitation, the Confirmation Order, shall not be subject to any document recording tax, stamp tax, conveyance fee or other similar tax, mortgage tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment. Each recorder of deeds or similar official for any county, city or governmental unit in which any instrument under the Plan is to be recorded is hereby required to accept such instrument, without requiring the payment of any documentary stamp tax, deed stamps, transfer tax, intangible tax or similar tax.

**VIII. FEASIBILITY AND LIQUIDATION ANALYSES**

**8.1 Feasibility of the Plan**

In connection with confirmation of the Plan, the Bankruptcy Court will determine whether the Plan is feasible pursuant to Section 1129(a)(11) of the Bankruptcy Code, which means that the confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtor.

The Plan provides for funding from: (a) the Travelers' Advance, (b) the DIP Financing (for those Allowed Claims, accrued before the Effective Date, that qualify for payment under the DIP Financing agreements), (c) the PRT Carve-Out, and (d) the Net Proceeds of the liquidation of the Avoidance Actions.

The DIP Financing will provide for the payment of Administrative Claims (accrued prior

to the Effective Date) that, as of the Effective Date, are budgeted to be paid under the DIP Financing and otherwise qualify for payment under the DIP Financing Agreements.

As part of the Travelers Advance, Travelers has agreed to fund the lesser of (a) the aggregate of the Allowed Priority Tax Claims, and (b) \$100,000.

Under the Plan, Travelers has also agreed to establish the PRT Carve-Out pursuant to *In re SPM Manufacturing Corp.*, 984 F.2d 1305 (1<sup>st</sup> Cir. 1993). Pursuant to the PRT Carve-Out, Travelers' has agreed to make its share of the Net Proceeds of the Debtor's interest in PRT available for the payment of Allowed Claims in accordance with the Plan. The PRT Carve-Out shall be free and clear of all Liens, Claims and encumbrances of any kind, and shall be paid to the Reorganized Debtor for distribution to the holders of Allowed Claims in accordance with the Plan.

The Net Proceeds of any Avoidance Actions, which are otherwise unencumbered, will also be available to pay Allowed Claims in accordance with the Plan. Based upon the Debtor's initial analysis, it appears that Net Proceeds of the Avoidance Actions will be less than \$100,000.

Based on the foregoing, the Plan provides more to creditors than they would otherwise receive in a Chapter 7 liquidation.

## **8.2 Best Interests of Creditors And Comparison With Chapter 7 Liquidation**

As a condition to confirmation of the Plan, Section 1129(a)(7)(A)(ii) of the Bankruptcy Code requires that each impaired Class of Claims or Equity Interests must receive or retain at least the amount or value it would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date of the Plan.

All of the Debtor's assets other than the Avoidance Actions are subject to liens in favor of Travelers and the Bank Group. It does not appear that the Avoidance Actions, the only unencumbered asset available to creditors, will result in the payment of a material dividend to the holders of Allowed Claims. In order to provide funding for the Plan, Travelers has agreed to make the Travelers Advance and to establish the PRT Carve-Out. Under the Travelers Advance, Travelers has agreed to pay \$100,000 towards the Allowed Priority Tax Claims. The PRT Carve-Out will provide a dividend to Allowed General Unsecured Claims. Neither the Travelers Advance nor the PRT Carve-Out would be available in a Chapter 7 proceeding.

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In Chapter 7, a Chapter 7 trustee would be appointed to liquidate the Debtor's assets. The Chapter 7 trustee would, in turn, need to hire various professionals, including attorneys and accountants in order to investigate, analyze and liquidate the Debtor's remaining assets. The costs of these professionals would have to be paid from the Net Proceeds of the Avoidance Actions before distributions to unsecured creditors could be made. In large part, the Chapter 7 trustee and his professionals would be required to incur fees and costs to educate themselves about the Debtor's history, operations and assets. Accordingly, confirmation of the Plan is likely to result in a higher return to unsecured creditors than conversion of the Debtor's case to a proceeding under Chapter 7 of the Bankruptcy Code.

Modern Continental Construction Co., Inc.,

By: /s/ John Pastore  
Name: John Pastore  
Title: President

Dated: July 15, 2009

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