



**Jurisdiction and Venue**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 1334 and 157.
5. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue in this district is proper pursuant to 28 U.S.C. § 1409(a).
6. The statutory predicate for the relief sought in this Motion is § 365 of the Code.

**Factual Background**

7. On or about February 25, 1997, Paul Revere Transportation, LLC. (“PRT”) was formed as a limited liability company. The three members of PRT were the Debtor, Alternative Concepts, Inc. (“ACI”), and Nolan Associates (“Nolan”).
8. On or about February 25, 1997, the Debtor, ACI and Nolan executed the Operating Agreement. A true and accurate copy of the Operating Agreement is attached as Exhibit A.
9. Pursuant to the terms of the Operating Agreement, the Debtor’s membership interest was 40%. ACI’s membership interest was 50%, and Nolan’s membership interest was 10%. See Operating Agreement Article 3.01(a).<sup>1</sup>
10. As of the Petition Date, the Debtor was a member of PRT and continued to hold a 40% membership interest in PRT with all of the rights and obligations attendant thereto. Pursuant to § 541 of the Code, the Debtor’s membership interest in PRT on the Petition Date constitutes property of the Debtor’s bankruptcy estate.

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<sup>1</sup> On or about February 10, 2006, Modern and Nolan entered into a Purchase Agreement pursuant to which Nolan acquired Modern’s interest in a separate and unrelated entity, Harbor Cruises LLC. In connection with that purchase, Nolan executed a promissory note payable to Modern providing, among other things, that distributions which Nolan may receive on account of its membership interest in PRT are to be paid by Nolan to Modern in reduction of the Promissory Note.

11. The Operating Agreement provides that the commencement of a bankruptcy by any member is an “Event of Dissociation from the Company” resulting in, among other things, a loss of the disassociated member’s right to participate in the management of PRT and to only receive distributions as allowed in the sole discretion of the Company. *See* Operating Agreement Paragraph 3.10(a) and (b)(2), pp. 9-10.

12. Notwithstanding the provisions of Paragraph 3.10(a) of the PRT Operating Agreement, pursuant to §§ 541(c)(1)(B) and 365(e)(1) of the Code, the Debtor may assume the Operating Agreement and continue as a fully vested member with all of the rights of a member in good standing.

**Best Interest**

13. Based on the financial information currently available to the Debtor, PRT is operating at a profit with the potential to make significant distributions to its members. Therefore, the Debtor’s interest in PRT and right to receive distributions represents a substantial and valuable asset.

14. The Debtor has proposed a plan of liquidation (the “Plan”) which, among other things, provides for the appointment of Craig Jalbert as Liquidation Supervisor invested with the duty to collect and liquidate the Debtor’s assets for the benefit of the Debtor’s creditors.

15. The Debtor’s membership interest in PRT constitutes a valuable asset which, under the Plan, the Debtor retains for distribution to creditors pursuant to the Plan.<sup>2</sup>

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<sup>2</sup> The Debtor’s primary secured creditors have been granted a security interest in any distributions realized by the Debtor on account of its membership interest in PRT. Under Modern’s Plan of Reorganization, one of those secured creditors, Travelers (as defined in that plan) has agreed to carve-out, for the benefit of unsecured creditors, its interest in PRT.

16. Accordingly, it is in the Debtor's best interest and in the best interest of the Debtor's creditors that the Debtor assume the PRT Operating Agreement.

**Authorities**

17. Section 541(c)(1) of the Bankruptcy Code provides, in its relevant parts, that:

[A]n interest of the debtor in property becomes property of the estate under Subsection (a)(1) . . . of this Section notwithstanding any provision in an agreement, transfer instrument or applicable nonbankruptcy law —

\* \* \*

(B) that is conditioned on insolvency or financial condition of the debtor, or the commencement of a case under this Title . . . or gives option to effect a forfeiture, modification or termination of the dollar interest in property.

\* \* \*

11 U.S.C. § 541(c)(1).

18. Section 365(e)(1) of the Bankruptcy Code provides, in its relevant parts, that :

(1) Notwithstanding a provision in an executory contract . . . or in applicable law, an executory contract . . . of the debtor may not be terminated or modified, and any right and obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on —

(A) the insolvency or financial condition of the debtor at any time before the closing of the case or

(B) the commencement of a case under this Title.

\* \* \*

11 U.S.C. § 365(e)(1).

19. Paragraph 3.10(a), which provides that the commencement of a bankruptcy by a member is an “Event of Dissociation”, is unenforceable against the Debtor.

20. The Debtor may assume the PRT Operating Agreement and, upon the Debtor’s assumption of the Operating Agreement, the Debtor shall be a member of PRT with full membership rights notwithstanding any provisions of the Operating agreement to the contrary. *See* 11 U.S.C. §§ 365(e)(1) and 541(c)(1).

21. The Court may authorize the Debtor to assume an executory contract upon a finding that the assumption is in the best interest of the estate. In determining whether the assumption is in the best interest of the Estate, the Court applies the “business judgment” test to the debtor’s decision. *See Orion Pictures Corp. v. Showtime Networks, Inc.*, 4 F.3d 1095, 1098 (2<sup>nd</sup> Cir. 1993); and *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (describing business judgment test as traditional).

22. For the reasons set forth above, the Debtor has demonstrated the soundness of its business judgment in moving to assume the PRT Operating Agreement. Accordingly, the Debtor has exercised its sound business judgment in determining that the assumption is in the best interest of the estate, and the Court should approve the assumption under § 365(a) of the Code. *See In re Child World*, 142 B.R. 87, 89 (Bkrcty. S.D.N.Y. 1992); *In re TS Industries, Inc.*, 117 B.R. 682, 685; *In re Del Grosso*, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990).

**Relief Requested**

23. The Debtor requests that it be authorized to assume the PRT Operating Agreement and that upon the assumption, find that the Debtor is a full member of the PRT limited liability company with all the rights attached to such membership's interest.

**Notice**

24. This motion has been served in accordance with the service requirements in the order entered by the Court approving the Debtor's disclosure statement and establishing voting and notice procedures [docket no. 1051]. The Debtor submits that such notice and service is sufficient under the circumstances.

MODERN CONTINENTAL  
CONSTRUCTION CO., INC.

By its Attorneys,

/s/ D. Ethan Jeffery

Charles R. Bennett, Jr. (BBO #037380)

D. Ethan Jeffery (BBO #631941)

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Dated: August 31, 2009

538548

**IN RE: MODERN CONTINENTAL CONSTRUCTION CO., INC.  
BANKRUPTCY No. 08-14558-WCH**

**EXHIBIT A TO**

**DEBTOR'S MOTION TO ASSUME OPERATING  
AGREEMENT OF PAUL REVERE TRANSPORTATION, LLC**

**OPERATING AGREEMENT**  
**OF**  
**PAUL REVERE TRANSPORTATION, LLC**

#130018v1-PFOD

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**OPERATING AGREEMENT  
OF**

**PAUL REVERE TRANSPORTATION, LLC**

THIS AGREEMENT is among PAUL REVERE TRANSPORTATION, LLC, a Massachusetts limited liability company (the "Company"), and Alternate Concepts, Inc., Nolan Associates and Modern Continental Construction Co., Inc. (the "initial Members").

**RECITALS**

The Company is a limited liability company formed under the Massachusetts Limited Liability Company Act. The other parties to this Agreement are the Company's initial Members.

The initial Members own 100% of the interests in Modern Continental Construction Co., Inc./Alternate Concepts, Inc./Nolan Associates, a Massachusetts general partnership (the "General Partnership"). Contemporaneously with the execution hereof, the General Partnership is being merged into the Company pursuant to an Agreement and Plan of Merger under which the Company is the surviving entity. In accordance with the Plan of Merger, the Company will become the owner of all of the assets of the General Partnership subject to all of the liabilities and obligations associated therewith. Each initial Member previously made capital contributions to and had capital accounts associated with the General Partnership, and it is the intention of the initial Members that their respective General Partnership capital accounts carry over to their capital accounts in the Company, and that the business of the General Partnership be continued by the Company after the merger.

The parties intend by this Agreement to define their rights and obligations with respect to the Company's governance and financial affairs and to adopt regulations and procedures for the conduct of the Company's activities. Accordingly, with the intention of being legally bound, they agree as follows:

**ARTICLE 1: DEFINITIONS**

1.01 Scope. For purposes of this Agreement, unless the language or context clearly indicates that a different meaning is intended, capitalized terms have the meanings specified in this Article.

1.02 Defined Terms.

- (a) "Act" means the Massachusetts Limited Liability Company Act.
- (b) "Affiliate," with respect to a Person, means (1) a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the Person, (2) a Person who owns or controls at least 10% of the outstanding voting interests of the Person, (3) a Person who is an officer, director, manager or general partner of the Person, or (4) a Person who is an officer, director, manager, general partner, trustee or owns at least 10% of the outstanding voting interests of a Person described in clauses (1) through (3) of this sentence.
- (c) "Agreement" means this agreement, including any amendments.
- (d) "Available Funds" means the Company's gross cash receipts from operations, less the sum of: (1) payments of principal, interest, charges and fees pertaining to the Company's indebtedness; (2) expenditures incurred incident to the usual conduct of the Company's business; and (3) amounts reserved to meet the reasonable needs of the Company's business.
- (e) "Bankruptcy" means the filing of a petition seeking liquidation, reorganization, arrangement, readjustment, protection, relief or composition in any state or federal bankruptcy, insolvency, reorganization or receivership proceeding.
- (f) "Capital Account" of a Member means the capital account maintained for the Member in accordance with Article 4.05.
- (g) "Certificate" means the Certificate of Organization filed with the Secretary of the Commonwealth to organize the Company, including any amendments.
- (h) "Code" means the Internal Revenue Code of 1986, as amended.
- (i) "Consent" means the unanimous vote or consent of all Members entitled to vote or consent.
- (j) "Contribution" means anything of value that a Member contributes to the Company as a prerequisite for or in connection with membership, including any combination of cash, property, services rendered, a promissory note or any other obligation to contribute cash or property or render services.
- (k) "Dissociation" means a complete termination of a Member's membership in the Company in consequence of an event described in Article 3.10.

- (l) "Distribution" means the Company's direct transfer of money or other property with respect to a Membership Interest.
- (m) "Effective Date," with respect to this Agreement, means the date on which the Company's existence as a limited liability company begins, as prescribed by the Act.
- (n) "Entity" means an association, relationship or artificial person through or by means of which an enterprise or activity may be lawfully conducted, including, without limitation, a partnership, trust, limited liability company, corporation, joint venture, cooperative or association.
- (o) "Member" means an initial Member and any Person who subsequently is admitted as an additional or substitute Member after the Effective Date, in accordance with Article 3.01.
- (p) "Membership Interest" means a Member's percentage interest in the Company, consisting of the Member's right to share in the Company's Profit, receive Distributions, participate in the Company's governance, approve the Company's acts and receive information pertaining to the Company's affairs. The Membership Interests of the initial Members are set forth in Article 3.01(a). Changes in Membership Interests after the Effective Date, including those necessitated by the admission and Dissociation of Members, will be reflected in the Company's records. The allocation of Membership Interests reflected in the Company's records from time to time is presumed to be correct for all purposes of this Agreement and the Act.
- (q) "Minimum Gain" means minimum gain as defined in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.
- (r) "Person" means a natural person or an Entity.
- (s) "Profit," as to a positive amount, and "Loss," as to a negative amount, mean, for a Taxable Year, the Company's income or loss for the Taxable Year, as determined in accordance with accounting principles appropriate to the Company's method of accounting and consistently applied.
- (t) "Regulations" means proposed, temporary or final regulations promulgated under the Code by the Department of the Treasury, as amended.
- (u) "Taxable Year" means the Company's taxable year as determined in accordance with Article 5.02.
- (v) "Transfer," as a noun, means a transaction or event by which ownership of a Membership Interest is changed or encumbered, including, without limitation, a sale,

exchange, abandonment, gift, pledge or foreclosure. "Transfer," as a verb, means to effect a Transfer.

(w) "Transferee" means a Person who acquires a Membership Interest by Transfer from a Member or another Transferee and is not admitted as a Member in accordance with Article 3.01.

## ARTICLE 2: THE COMPANY

2.01 **Status.** The Company is a Massachusetts limited liability company organized under the Act.

2.02 **Name.** The Company's name is Paul Revere Transportation, LLC.

2.03 **Term.** The Company's existence as a limited liability company will commence on the Effective Date and continue until December 31, 2046, unless sooner terminated under the Act or this Agreement.

2.04 **Purposes.** The Company's purposes are (a) to merge with the General Partnership and to act as a successor entity after such merger to continue the business of the General Partnership; (b) to purchase, lease, operate, manage, dispose of and otherwise deal with transportation systems, including without limitation vehicles and vessels for land or water transport, and such other activities convenient or complimentary thereto; and (c) to engage in any other lawful activity for which a limited liability company may be organized under the Act.

2.05 **Principal Office.** The Company's principal office is located at 99 Summer Street, Boston, Massachusetts 02110

2.06 **Resident Agent and Resident Office.** The Company's resident office in Massachusetts is located at 99 Summer Street, Boston, Massachusetts 02110, and its resident agent at that location is Richard Brown. The Company may change its resident agent or resident office at any time in accordance with the Act.

## ARTICLE 3: MEMBERS

3.01 **Identification.**

(a) **Initial Members.** The names, current addresses, initial Membership Interests and initial representatives of the initial Members are as follows:

Alternate Concepts, Inc. 50%  
99 Summer Street  
Boston, Massachusetts 02110  
Telephone: (617) 951-0509  
Facsimile: (617) 951-0513  
Initial representative: Richard Brown

Modern Continental Construction Co., Inc. 40%  
600 Memorial Drive  
Cambridge, Massachusetts 02139  
Telephone: (617) 864-6300  
Facsimile: (617) 577-8366  
Initial representative: Lelio Marino

Nolan Associates 10%  
1 Long Wharf  
Boston, Massachusetts 02110  
Telephone: (617) 227-4321  
Initial representative: Frederick L. Nolan, III

(b) Each Member hereby authorizes the representative named above as its sole and exclusive representative to act on its behalf as a Member. A Member may change its representatives by delivering to each other Member a notice and duly executed appointment of a new representative, which notice and duly executed appointment shall be effective as described therein. A chairman (the "Chairman") shall be chosen by and among the representatives of the Members. The Chairman shall call and preside over meetings of the representatives in accordance with Article 3.03.

(c) Additional and Substitute Members. The Company may admit additional or substitute Members only with the Consent of the Members. A Member may withhold approval of the admission of any Person for any or no reason.

(d) Rights of Additional or Substitute Members. A Person admitted as an additional or substitute Member has all the rights and powers and is subject to all the restrictions and obligations of a Member under this Agreement and the Act.

### 3.02 Changes and Verification of Membership Interests.

(a) Changes in Membership Interests. The Members' Membership Interests may be changed only with the Consent of the Members, except that Membership Interests shall be recalculated automatically to reflect the consequences of the following events:

(1) the admission or Dissociation of a Member in accordance with the terms of this Agreement; or

(2) changes in each Member's Membership Interest necessitated by the Act or this Agreement, including without limitation those required by application of Article 4.01(c).

(b) Verification of Membership Interests. Within 10 days after receipt of a Member's written request, the Company will provide the Member with a statement of the Member's Membership Interest. The statement will serve the sole purpose of verifying the Member's Membership Interest, as reflected in the Company's records, and will not constitute for any purpose a certificated security, negotiable instrument or other vehicle by which a Transfer of a Membership Interest may be effected.

### 3.03 Manner of Acting.

(a) Management by Members. The business and affairs of the Company shall be managed by the Members. The Members shall have and be subject to all duties and liabilities, and shall have all of the authority with respect to the business and affairs of the Company, that ~~managers have~~ under the Act and this Agreement.

#### (b) Meetings of Members.

(1) Right to Call. Any Member or combination of Members may call a meeting of Members by giving written notice to all Members not less than 10 nor more than 60 days prior to the date of the meeting. The notice must specify the date of the meeting and the nature of any business to be transacted. A Member may waive notice of a meeting of Members orally, in writing or by attendance at the meeting.

(2) Quorum. Members whose aggregate Membership Interest exceeds 90% will constitute a quorum at a meeting of Members. No action may be taken in the absence of a quorum.

(3) Required Vote. Decisions by the Members at meetings shall require the Consent of the Members.

(c) Written Consent. The Members may act without a meeting by written consent describing the action and signed by Members whose aggregate Membership Interest is at least equal to the minimum that would be necessary to take the action at a meeting at which all Members were present.

(d) Operations Manager. The Members may appoint an Operations Manager, who may or may not be a Member, who shall act as the chief operations officer of the Company, and whose sole function shall be to carry out the decisions of the Members. The Operations Manager shall have the authority to supervise, manage and operate the business of the

Company by implementing the decisions of the Members. Any person dealing with the Company may always rely on a certificate signed by the Operations Manager as to any of the following:

- (1) the identity of the Members hereunder;
- (2) the existence or nonexistence of any fact or facts which constitute conditions precedent to acts by the Members or are in any other manner germane to the affairs of this Company;
- (3) the person authorized to execute and deliver any instrument or document of the Company;
- (4) the authenticity of any copy of this Agreement and amendments thereto; and
- (5) any act or failure to act by the Company or as to any other matter whatsoever involving the Company or any Member.

#### 3.04 **Fiduciary Duties.**

(a) Exculpation. A Member will not be liable to the Company or any other Member for an act or omission done in good faith to promote the Company's best interests, unless the act or omission constitutes gross negligence, intentional misconduct or a knowing violation of law.

(b) Justifiable Reliance. A Member may rely on the Company's records maintained in good faith and on information, opinions, reports or statements received from any Person pertaining to matters the Member reasonably believes to be within the Person's expertise or competence.

(c) Extent of Required Involvement. A Member must devote only the amount of time to the Company's activities as is reasonably necessary to discharge the Member's responsibilities and will be free to pursue gainful employment or any other business or activity with any other Person, in any capacity, without accounting to the Company or the other Members.

(d) Self-Dealing. A Member may enter into a business transaction with the Company if the terms of the transaction are no less favorable to the Company than those of a similar transaction with an independent third party. The Consent of the by Members having no interest in the transaction will constitute conclusive evidence that the terms satisfy the foregoing condition.

3.05 **Indemnification of Members.** The Company will indemnify each Member for all expenses, losses, liabilities and damages the Member actually and reasonably incurs in

connection with the defense or settlement of any action arising out of or relating to the conduct of the Company's activities, except an action with respect to which the Member is adjudged to be liable for breach of a fiduciary duty owed to the Company or the other Members under the Act or this Agreement.

**3.06 Compensation.** None of the Members shall make any charge against the Company for any of its general overhead expense or for services rendered or expenses incurred by any of its officers or employees in connection with the work of the Company except for such services or expenses rendered or incurred in actually assisting the Company pursuant to specific written request of or assignment by the Operations Manager.

**3.07 Resignation of a Member.** A Member may resign from the Company only with the Consent of the non-resigning Members.

**3.08 Expulsion of a Member.** At any time there are more than two Members, the Company may expel a Member, but only for cause and with the Consent of the other Members. Cause for expulsion exists if the Member has materially breached or is unable to perform the Member's material obligations under this Agreement, the Member has been convicted of a crime involving fraud or moral turpitude, or the deliberate dishonesty of the Member with respect to the Company. A Member's expulsion from the Company will be effective upon the Member's receipt of written notice of the expulsion.

**3.09 Transfer of Membership Interest.**

(a) Transfers Prohibited. A Member may not Transfer, directly or indirectly, all or a portion of a Membership Interest without the Company's prior written consent. With respect to a Member that is an Entity, a change in the control of fifty percent (50%) or more of the voting stock or other ownership interest of the Member is an indirect Transfer for purposes of this Article 3.09.

(b) Prohibited Transfers Void. If a Member attempts to Transfer all or a portion of a Membership Interest in contravention of the provisions of this Article 3.09, the purported Transfer will be null and void.

(c) Transferor's Membership Status. If a Member Transfers less than all of the Membership Interest, the Member's rights with respect to the transferred portion, including the right to vote or otherwise participate in the Company's governance and the right to receive Distributions, will terminate as of the effective date of the Transfer. However, the Member will remain liable for any obligation with respect to the transferred portion that existed prior to the effective date of the Transfer, including any costs or damages resulting from the Member's breach of this Agreement. If the Member Transfers all of the Membership Interest, the Transfer will constitute an event of Dissociation for purposes of Article 3.10.

(d) Transferee's Status.

(1) Admission as a Member. A Member who Transfers a Membership Interest has no power to confer on the Transferee the status of a Member. A Transferee may be admitted as a Member only in accordance with the provisions of Article 3.01. A Transferee who is not admitted as a Member has only the rights described in this Article 3.09(d).

(2) Rights of Non-Member Transferee. A Transferee who is not admitted as a Member in accordance with the provisions of Article 3.01 (i) has no right to vote or otherwise participate in the Company's governance, (ii) is not entitled to receive information concerning the Company's affairs or inspect the Company's books and records, (iii) with respect to the transferred Membership Interest, is entitled to receive the Distributions to which the Member would have been entitled had the Transfer not occurred, but only at such times and in such amounts as the Company in its sole discretion may determine, and (iv) is subject to the restrictions imposed by this Article 3.09 to the same extent as a Member.

### 3.10 Dissociation.

(a) Events of Dissociation. A Member's Dissociation from the Company occurs upon: (1) the Member's resignation, retirement or expulsion from the Company; (2) the Member's Transfer of the Member's entire Membership Interest; (3) the Member's Bankruptcy; (4) as to a Member who is a natural person, the Member's death or adjudication of incompetency; (5) as to a Member who holds a Membership Interest as a fiduciary, distribution of the entire Membership Interest to the beneficial owners; or (6) as to a Member that is an Entity, the Entity's dissolution.

#### (b) Rights of Member Following Dissociation.

(1) Upon Company's Dissolution. If a Member's Dissociation results in the Company's dissolution under Article 6.01, the Member will be entitled to participate in the Company's winding up to the same extent as any other Member. However, the Company will have the right to offset against any Distribution attributable to the Member's Membership Interest all amounts the Member owes to the Company, including any costs or damages resulting from the Member's breach of this Agreement, which are determinable in the sole and absolute discretion of the Company.

(2) Upon Company's Continuance. If a Member's Dissociation does not result in the Company's dissolution under Article 6.01, as of the effective date of the Member's Dissociation: (i) the Member's right to participate in the Company's governance, receive information concerning the Company's affairs and inspect the Company's books and records will terminate; and (ii) unless the Dissociation resulted from the Transfer of the Member's entire Membership Interest, the Member will be entitled to receive the Distributions to which the Member would have been entitled had the Dissociation not occurred, but only at such times and in such amounts as the Company in its sole discretion may determine. Except as provided in this

Article 3.10(b), the Member will have no right to receive Distributions or otherwise participate in the Company's financial affairs. The Member will, however, remain liable for any obligation to the Company that existed prior to the effective date of the Dissociation, including any costs or damages resulting from the Member's breach of this Agreement, and the Company will have the right to offset against any Distribution attributable to the Member's Membership Interest all amounts the Member owes to the Company, including any costs or damages resulting from the Member's breach of this Agreement, which are determinable in the sole and absolute discretion of the Company.

**3.11 Redemption of Dissociating Member's Interest.**

(a) Optional Redemption.

(1) If a Member's Dissociation is a result of Bankruptcy, death, dissolution, expulsion, adjudication of incompetency, resignation or retirement, and if the Dissociation does not cause the Company's dissolution under Article 6.01, at any time within 180 days after the effective date of the Dissociation, the Company, at its option, may redeem not less than all of the Member's Membership Interest on the terms set forth in this Article 3.11.

(2) The Company must exercise its right to redeem the Membership Interest by giving written notice to the Member or the Member's successor in interest (the "seller") within the 180-day exercise period. The notice must specify the redemption price and payment terms and indicate a closing date within 60 days after the date the notice is delivered.

**ARTICLE 4: FINANCE**

**4.01 Contributions.**

(a) Initial Members. The initial Members hereby affirm their relative interests in the Company, which relative interests represent each such Member's interest in the General Partnership and each such Member's Membership Interest in the Company as specified in Article 3.01(a):

- |     |   |     |
|-----|---|-----|
| (1) | Alternate Concepts, Inc.                  | 50% |
| (2) | Modern Continental Construction Co., Inc. | 40% |
| (3) | Nolan Associates                          | 10% |

(b) Additional Members. In addition to the rights and obligations specified in Article 3.01(d), a Person admitted as a Member in connection with the acquisition of a Membership Interest directly from the Company after the Effective Date in accordance with Article 3.01(c) will make the initial Contribution specified in the agreement pursuant to which the Person is admitted as a Member.

(c) Additional Contributions.

(1) Permitted. The Company may authorize additional Contributions at such times and on such terms and conditions as it determines to be in its best interest, but no Member shall be obligated to make any such additional Contribution unless otherwise required by Article 4.01(c)(2).

(2) Required. On the Consent of the Members, the Company shall determine from time to time the amount of working capital required to carry out the business of the Company and may require the Members to make additional Contributions sufficient to meet those needs. The Members will make the additional Contributions in proportion to their Membership Interests. The Company must give each Member written notice of the obligation to contribute additional capital, which notice must specify the amount the Member is required to contribute and establish a due date that is not less than 20 days after the date of the notice. The Members will make the additional Contributions in immediately available funds on or before the due date specified in the notice. Such Contributions shall constitute additional capital Contributions of such Member. No interest shall be paid by the Company on any funds so contributed.

(3) Default Remedies. If a Member does not contribute the full amount of the Member's share of the additional Contribution on or before the due date (each a "Defaulting Member") and all other Members do not give written consent to an extension of time for the Defaulting Member beyond such due date, any other Member may, at its election, after giving the requisite notice and only upon expiration of the "cure" period defined below, pay to the Company all or a portion of that amount; provided, however, that any Member intending to make such a payment shall first provide notice of that intention to all other Members within 10 days after the due date therefore and the Defaulting Member shall have the opportunity to cure its failure to pay within such 10-day period by making payment of the required Contribution plus interest on such amount from the date it was due until the date paid at the Prime Rate plus 2%. Pending payment in full of the Defaulting Member's share of the additional Contribution, the Defaulting Member will not be entitled to vote or otherwise participate in the Company's governance and the Company will withhold and credit to the Defaulting Member's capital account the Defaulting Member's share of any Distribution. If the Defaulting Member effects its cure in full within the appropriate time period, no Member will have any further rights under this Article 4.01(c)(3). Any Member making a payment to the Company on behalf of a Defaulting Member pursuant to this Article 4.01(c)(3) (a "Contributing Member") shall have the option to treat the payment as (a) an additional Contribution to the capital of the Company or (b) a loan to the Defaulting Member. Such election shall be made in writing, with notice to all other Members. If more than one Member elects to be a Contributing Member, then all Contributing Members shall contribute on a pro rata basis determined by the ratio of the respective Percentage Interests of the Contributing Members. If any Contributing Member has elected to treat its payment as an additional Contribution, all Membership Interest shall, after making such payment, be adjusted accordingly. If a Contributing Member has elected to treat its payment as a loan to

the Defaulting Member, then the Percentage Interest of the Defaulting Partner shall be adjusted as if the Defaulting Member had made a contribution to the capital of the Company in the amount of the loan, and the amount so advanced by a Contributing Member on behalf of the Defaulting Member and shall bear interest at the Prime Rate plus 2%. Thereafter, all distributions of cash from the Company that would be made to the Defaulting Member shall instead be paid to the Contributing Member(s) pro rata until such time as the principal and interest of the loan(s) have been paid in full, whether as a result of such distribution or by direct repayment from the Defaulting Member to the Contributing Member(s), or a combination thereof. If no Member consents to being a Contributing Member, then the Defaulting Member will not be entitled to vote or otherwise participate in the Company's governance and will cease to have any rights in any distributions made by the Company. In addition, the remaining Members, pro rata and within 10 days of a written request by the Company, will be required to make an additional Contribution in the amount of the Defaulting Member's required Contribution.

(4) Creditors' Rights. A Member's obligation to make additional Contributions extends only to the Company and may not be enforced by the Company's creditors without the Member's written consent.

(d) Contributions Not Interest Bearing. A Member is not entitled to interest or other compensation with respect to any cash or property the Member contributes to the Company.

(e) No Return of Contribution. A Member is not entitled to the return of any Contribution prior to the Company's dissolution and winding up.

#### 4.02 Allocation of Profit and Loss.

(a) General Allocation. After giving effect to any special allocation required by 4.02(b), the Company's Profit or Loss for a Taxable Year, including the Taxable Year in which the Company is dissolved, will be allocated among the Members in proportion to their Membership Interests.

#### (b) Special Allocations.

(1) If a Member unexpectedly receives an adjustment, allocation, or distribution described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Regulations that creates or increases a deficit in the Member's Capital Account as of the end of a Taxable Year, a pro rata portion of each item of the Company's income, including gross income and gain for the Taxable Year and, if necessary, for subsequent years will be allocated to the Member in an amount and manner sufficient to eliminate the deficit in the Member's Capital Account as quickly as possible.

(2) If a Member would have a deficit in his or its Capital Account at the end of a Taxable Year that exceeds the sum of (i) the amount the Member is obligated to restore to the Company under Section 1.704-1(b)(2)(ii)(c) of the Regulations and (ii) the

Member's share of Minimum Gain, a pro rata portion of each item of the Company's income, including gross income, and gain for the year will be allocated to the Member in an amount and manner sufficient to eliminate the deficit in the Member's Capital Account as quickly as possible.

(3) If there is a net decrease in the Company's Minimum Gain during a Taxable Year, the items of the Company's income, including gross income and gain for the Taxable Year and, if necessary, for subsequent years will be allocated to the Members in proportion to their shares of the net decrease in Minimum Gain. If the allocation made by this paragraph would cause a distortion in the economic arrangement among the Members and it is expected that the Company will not have sufficient income to correct that distortion, the Company may seek to have the Internal Revenue Service waive the requirement for the allocation in accordance with Section 1.704-2(f)(4) of the Regulations.

(4) Items of the Company's loss, deductions and expenditures described in Code Section 705(a)(2)(B) that are attributable to the Company's nonrecourse debt and are characterized as Member nonrecourse deductions under Section 1.704-2(i) of the Regulations will be allocated to the Members' Capital Accounts in accordance with Section 1.704-2(i) of the Regulations.

(5) Items of income, gain, loss and deduction with respect to property contributed to the Company's capital will be allocated between the Members so as to take into account any variation between book value and basis, to the extent and in the manner prescribed by section 704(c) of the Code and related Regulations.

(6) If the special allocations required by the foregoing provisions of this Article 4.02(b) (the "special allocations") result in Capital Account balances that are different from the Capital Account balances the Members would have had if the special allocations were not required, the Company will allocate other items of income, gain, loss and deduction in any manner it considers appropriate to offset the effects of the special allocations on the Members' Capital Account balances. Any offsetting allocation required by this paragraph is subject to and must be consistent with the special allocations.

(c) Effect of Transfers During Year. The Company will prorate items attributable to a Membership Interest that is the subject of a Transfer during a Taxable Year between the transferor and the Transferee based on the portion of the Taxable Year that elapsed prior to the Transfer.

4.03 **Tax Allocations.** For federal income tax purposes, unless the Code otherwise requires, each item of the Company's income, gain, loss or deduction will be allocated to the Members in proportion to their allocations of the Company's Profit or Loss.

4.04 **Distributions.**

(a) Available Funds. Available Funds shall be distributed by the Company to the Members at such time or times with the Consent of the Members.

(b) Proportionate Distributions. The Company will make all Distributions to the Members in proportion to their Membership Interests.

#### 4.05 Capital Accounts.

(a) General Maintenance. The Company will establish and maintain a Capital Account for each Member. A Member's Capital Account will be:

(1) increased by: (i) the amount of any money the Member contributes to the Company's capital, including Contributions made in accordance with Article 4.01(c); (ii) the fair market value of any property the Member contributes to the Company's capital, net of any liabilities the Company assumes or to which the property is subject; and (iii) the Member's share of Profits and any separately stated items of income or gain; and

(2) decreased by: (i) the amount of any money the Company distributes to the Member; (ii) the fair market value of any property the Company distributes to the Member, net of any liabilities the Member assumes or to which the property is subject; and (iii) the Member's share of Losses and any separately stated items of deduction or loss.

(b) Adjustments for Distributions in Kind. If at any time the Company distributes property in kind, it will adjust the Members' Capital Accounts to account for their shares of any Profit or Loss the Company would have realized had it sold the property at fair market value and distributed the sale proceeds.

(c) Adjustments for Acquisitions and Redemptions. If at any time a Person acquires a Membership Interest from the Company or the Company redeems a Membership Interest, the Company may adjust the Members' Capital Accounts to reflect any Profit or Loss the Company would have realized had it sold all of its assets at fair market value on the date of the acquisition or redemption.

(d) Transfer of Capital Account. A Transferee of a Membership Interest succeeds to the portion of the transferor's Capital Account that corresponds to the portion of the Membership Interest that is the subject of the Transfer.

(e) Compliance with Code. The requirements of this Article 4.05 are intended and will be construed to ensure that the allocations of the Company's income, gain, losses, deductions and credits have substantial economic effect under the Regulations promulgated under Section 704(b) of the Code.

## ARTICLE 5: RECORDS AND ACCOUNTING

### 5.01 Maintenance of Records.

(a) Required Records. The Company will maintain at its principal office:

(1) a current list of the full name and last known address of each Member (including the name of the representative for such member, if any);

(2) a copy of the Certificate, including any certificates of amendment, and executed copies of any powers of attorney pursuant to which any certificate has been executed;

(3) copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent Taxable Years;

(4) copies this Agreement, including any amendments;

(5) copies of the Company's financial statements, if any, for the three most recent Taxable Years;

(6) a schedule showing the amount of any cash and a description and statement of the agreed value of any other property or services contributed or required to be contributed by each Member;

(7) a description of the times or events at or on which any Member has agreed to make additional Contributions;

(8) a description of any Member's right to receive, or the Company's right to make, Distributions to a Member; and

(9) a description of any events on which the Company is to be dissolved and its affairs wound up.

(b) Member Access. A Member and the Member's authorized representative shall have reasonable access to and may inspect and copy all records and other materials pertaining to the Company or its activities. The exercise of such rights will be at the requesting Member's expense.

(c) Confidentiality. No Member will disclose any information relating to the Company or its activities to any unauthorized person or use any such information for his, its or any other Person's personal gain.

**5.02 Financial Accounting.**

(a) Accounting Method. The Company will account for its financial transactions using an accrual method of accounting.

(b) Taxable Year. The Company's Taxable Year is the calendar year.

**5.03 Reports.**

(a) Members. As soon as practicable after the close of each Taxable Year, the Company will prepare and send to the Members such reports and information as are reasonably necessary to (1) inform the Members of the results of the Company's operations for the Taxable Year and (2) enable the Members to completely and accurately reflect their distributive shares of the Company's income, gains, deductions, losses and credits in their federal, state and local income tax returns for the appropriate year.

(b) Periodic Reports. The Company will complete and file any periodic reports required by the Act or the law of any other jurisdiction in which the Company is qualified to do business.

**5.04 Tax Compliance.**

(a) Withholding. If the Company is required by law or regulation to withhold and pay over to a governmental agency any part or all of a Distribution or allocation of Profit to a Member:

(1) the amount withheld will be considered a Distribution to the Member; and

(2) if the withholding requirement pertains to a Distribution in kind or an allocation of Profit, the Company will pay the amount required to be withheld to the governmental agency and promptly take such action as it considers necessary or appropriate to recover a like amount from the Member, including offset against any Distributions to which the Member would otherwise be entitled.

(b) Tax Matters Partner. Alternate Concepts, Inc. is hereby designated to act as the initial "Tax Matters Partner" pursuant to Section 6231(a)(7) of the Code. By the Consent of the Members, the Company may remove any Tax Matters Partner, with or without cause, and designate a successor to any Tax Matters Partner who for any reason ceases to act. The Tax Matters Partner will inform the Members of all administrative and judicial proceedings pertaining to the determination of the Company's tax items and will provide the Members with copies of all notices received from the Internal Revenue Service regarding the commencement of a Company-level audit or a proposed adjustment of any of the Company's tax items. The Tax Matters Partner may extend the statute of limitations for assessment of tax deficiencies against the

Members attributable to any adjustment of any tax item. The Company will reimburse the Tax Matters Partner for reasonable expenses properly incurred while acting within the scope of the Tax Matters Partner's authority.

## ARTICLE 6: DISSOLUTION

### 6.01 Events of Dissolution.

(a) Enumeration. The Company will dissolve upon the first to occur of:

- (1) December 31, 2046;
- (2) the vote of the Members to dissolve the Company;
- (3) any event that makes the Company ineligible to conduct its activities as a limited liability company under the Act;
- (4) any event or circumstance that makes it unlawful or impossible for the Company to carry on its business; or
- (5) the Bankruptcy, death, dissolution, incompetency, resignation or expulsion of any Member, unless within 90 days after the event the business of the Company is continued with the Consent of the remaining Members.

(b) Exclusivity of Events. Unless specifically referred to in this Article 6.01, no event, including an event of dissolution prescribed by the Act, will result in the Company's dissolution.

### 6.02 Effect of Dissolution.

(a) Appointment of Liquidator. Upon the Company's dissolution, the Members will appoint a liquidator, who may but need not be a Member. The liquidator will wind up and liquidate the Company in an orderly, prudent and expeditious manner in accordance with the following provisions of this Article 6.02.

(b) Final Accounting. The liquidator will make proper accountings (1) to the end of the month in which the event of dissolution occurred and (2) to the date on which the Company is finally and completely liquidated.

(c) Duties and Authority of Liquidator. The liquidator will make adequate provision for the discharge of all of the Company's debts, obligations and liabilities. The liquidator may sell, encumber or retain for distribution in kind any of the Company's assets. Any gain or loss recognized on the sale of assets will be allocated to the Members' Capital Accounts in

accordance with the provisions of Article 4.02. With respect to any asset the liquidator determines to retain for distribution in kind, the liquidator will allocate to the Members' Capital Accounts the amount of gain or loss that would have been recognized had the asset been sold at its fair market value.

(d) Final Distribution. The liquidator will distribute any assets remaining after the discharge or accommodation of the Company's debts, obligations and liabilities to the Members in proportion to their Capital Accounts. The liquidator will distribute any assets distributable in kind to the Members in undivided interests as tenants in common. A Member whose Capital Account is negative will have no liability to the Company, the Company's creditors or any other Member with respect to the negative balance.

(e) Required Filings. The liquidator will file with the Secretary of the Commonwealth such statements, certificates and other instruments, and take such other actions, as are reasonably necessary or appropriate to effectuate and confirm the cessation of the Company's existence.

## ARTICLE 7: GENERAL PROVISIONS

### 7.01 Amendments.

(a) Required Amendments. The Company and the Members will execute and file any amendment to the Certificate required by the Act. If any such amendment results in inconsistencies between the Certificate and this Agreement, this Agreement will be considered to have been amended in the specifics necessary to eliminate the inconsistencies.

(b) Other Amendments. Any Member may propose for consideration and action an amendment to this Agreement or to the Certificate. A proposed amendment will become effective at such time as it is approved by the Consent of the Members.

7.02 Investment Representation. Each Member represents to the Company and the other Members that (a) the Member is acquiring a Membership Interest in the Company for investment and for the Member's own account and not with a view to its sale or distribution and (b) neither the Company nor any other Member has made any guaranty or representation upon which the Member has relied concerning the possibility or probability of profit or loss resulting from the Member's investment in the Company.

### 7.03 Resolution of Disputes.

(a) Preliminary Resolution. If, after full opportunity for debate on any issue, a decision cannot be reached by the representatives appointed by the Members in accordance with Article 3.01(b), then the matter shall be referred to the chief executive officer of each Member (and directly to any Member who is an individual). The Operations Manager shall

prepare a full written briefing document setting out the details of the issue. This document shall be endorsed as a true record of the issue by the representatives (or each representative shall provide a statement as to those portions of the record that it does not believe to be a true record of the issue) and shall be then forwarded to the chief executive officers (and individual Members) within 48 hours of the meeting at which a decision could not be reached. The chief executive officers (and individual Members) shall have 72 hours to confer amongst themselves with the intent that a decision be reached by the chief executive officers (and individual Members) as representative of the Members.

(b) Arbitration. If after 72 hours no decision is reached by the chief executive officers (and individual Members), the matter shall be submitted to arbitration according to the then prevailing rules and procedures of the American Arbitration Association. Massachusetts law will govern the rights and obligations of the parties with respect to the matters in controversy and the arbitration will be held in the Commonwealth of Massachusetts. The arbitrator will allocate all costs and fees attributable to the arbitration between the parties equally. The arbitrator's award will be final and binding and judgment may be entered in any court of competent jurisdiction.

7.04 Notices. Notices contemplated by this Agreement may be sent by any commercially reasonable means, including hand delivery, first class mail, or private courier. The notice must be prepaid and addressed as set forth in the Company's records. The notice will be effective on the date of receipt or, in the case of notice sent by first class mail, the fifth day after mailing.

7.05 Resolution of Inconsistencies. If there are inconsistencies between this Agreement and the Certificate, the Certificate will control. If there are inconsistencies between this Agreement and the Act, this Agreement will control, except to the extent the inconsistencies relate to provisions of the Act that the Members cannot alter by agreement. Without limiting the generality of the foregoing, unless the language or context clearly indicates a different intent, the provisions of this Agreement pertaining to the Company's governance and financial affairs and the rights of the Members upon Dissociation and dissolution will supersede the provisions of the Act relating to the same matters.

7.06 Additional Instruments. Each Member will execute and deliver any document or statement necessary to give effect to the terms of this Agreement or to comply with any law, rule or regulation governing the Company's formation and activities.

7.07 Headings. Headings and paragraph titles are for convenience only and have no significance in the interpretation of this Agreement.

7.08 Computation of Time. In computing any period of time under this Agreement, the day of the act or event from which the specified period begins to run is not be included. The last day of the period is included, unless it is a Saturday, Sunday or legal holiday, in

which case the period will run until the end of the next day that is not a Saturday, Sunday or legal holiday.

**7.09 Entire Agreement.** This Agreement and the Certificate comprise the entire agreement among the parties with respect to the Company. This Agreement and the Certificate supersede any prior agreements or understandings with respect to the Company. No representation, statement or condition not contained in this Agreement or the Certificate has any force or effect.

**7.10 Waiver.** No right under this Agreement may be waived, except by an instrument in writing signed by the party sought to be charged with the waiver.

**7.11 General Construction Principles.** Words in any gender are deemed to include the other genders. The singular is deemed to include the plural and vice versa. The headings and underlined paragraph titles are for guidance only and have no significance in the interpretation of this Agreement.


**7.12 Binding Effect.** Subject to the provisions of this Agreement relating to the transferability of Membership Interests and the rights of Transferees, this Agreement is binding on and will inure to the benefit of the Company, the Members and their respective distributees, successors and assigns.

**7.13 Governing Law.** Massachusetts law (without regard to its conflicts of laws principles) governs the construction and application of the terms of this Agreement.

**7.14 Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original.

Signed on the respective dates set forth below, to be effective as of the Effective Date.

PAUL REVERE TRANSPORTATION, LLC, a limited  
liability company

By:   
Operations Manager

Date: February 25, 1997

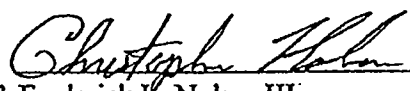
MEMBERS:

ALTERNATE CONCEPTS, INC., a corporation

By:   
Richard M. Brown, Treasurer

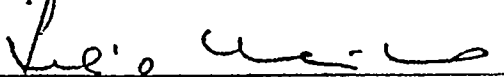
Date: February 25, 1997

NOLAN ASSOCIATES, a general partnership

  
Frederick L. Nolan, III  
Its: General Partner

Date: February 14, 1997

MODERN CONTINENTAL CONSTRUCTION CO.,  
INC., a corporation

By:   
Lelio Marino, President

Date: February \_\_, 1997