
DIP CREDIT AND SECURITY 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.
FIDELITY AND GUARANTY INSURANCE COMPANY
AND THE OTHER LENDERS SIGNATORY HERETO
(collectively, Lenders)**

and

**ST. PAUL FIRE AND MARINE INSURANCE COMPANY, AS AGENT
(Agent)**

and

**MODERN CONTINENTAL CONSTRUCTION CO., INC.
(Borrower)**

Dated as of _____, 2008

Deleted: 42035197.5

Deleted: 23

DIP CREDIT AND SECURITY AGREEMENT

This DIP Credit and Security Agreement (this "**Agreement**") is made as of _____, 2008 (the "**Effective Date**"), by and among the following:

- A. Seaboard Surety Company, a New York corporation, St. Paul Fire and Marine Insurance Company, a Minnesota corporation, St. Paul Guardian Insurance Company, a Minnesota corporation, St. Paul Mercury Insurance Company, a Minnesota corporation, United States Fidelity and Guaranty Company, a Maryland corporation, Fidelity and Guaranty Insurance Underwriters, Inc., a Wisconsin corporation, and Fidelity and Guaranty Insurance Company, an Iowa corporation (collectively, "**St. Paul**"), together with the other lenders signatory hereto (individually and collectively, including St. Paul, "**Lender**" or "**Lenders**"); and
- B. St. Paul Fire and Marine Insurance Company, a Minnesota corporation, as Agent (referred to herein as "**Agent**"); and
- C. Modern Continental Construction Co., Inc., a Massachusetts corporation, as debtor-in-possession under Chapter 11 of the Bankruptcy Code (as defined below) ("**Borrower**").

Preliminary Statements

- A. On June 23, 2008 (the "**Petition Date**"), Borrower filed a voluntary petition for relief under title 11 of the Bankruptcy Code (as defined below) with the United States Bankruptcy Court for the District of Massachusetts (Eastern Division) (the "**Bankruptcy Court**"), Bankruptcy Petition #: 08-14558 (the "**Case**"), and Borrower continues in possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.
- B. Pursuant to the terms of Section 6 of that certain General Agreement of Indemnity, dated March 22, 1999, among Modern Continental Construction Co., Inc., Modern Continental Construction Holding Co., Inc., Borrower, Modern Continental South, Inc., Modern Continental Equipment Co., Inc., Modern Continental Enterprises, Inc., Ristorante Marino, Inc., Modern Continental Marine, Inc., Modern Continental Health Company, Inc., Modern Continental Construcoes Ltdas., Harbor Cruises LLC, Paul Revere Transportation LLC, Modern Construction Industries Holding Co., Inc., Lelio Marino, Lenders, Economy Fire & Casualty Company, Northern Indemnity, Inc., Seaboard Surety Company of Canada, and Afianzadora Insurgentes, S.A. de C.V., as amended by Addendum # 1 to General Agreement of Indemnity, dated March 1, 2002, Addendum # 2 to General Agreement of Indemnity, dated July 23, 2003 and Addendum # 3 to General Agreement of Indemnity, dated August 8, 2003, and Addendum # 4 to General Agreement of Indemnity, dated on or about October _____, 2003 (as further amended, modified, supplemented or replaced (the "**General Indemnity Agreement**")), Lenders have previously advanced loans or made other financial accommodations available to Borrower and certain Subsidiaries (as defined below) and Affiliates (as defined below) of Borrower, as described below, which advances and other financial accommodations are deemed "losses" under the General Indemnity Agreement.
- C. Lenders made one or more loans or other financial accommodations to Borrower and certain Subsidiaries and Affiliates of Borrower in the maximum principal amount of up to \$583,565,786 (the "**Pre-Petition July Credit Facility**") subject to the terms and conditions of that certain Amended and Restated July Credit and Security Agreement (and Guaranty Agreement), dated February 12, 2004, among Lenders, Agent, Borrower and certain Subsidiaries and Affiliates of Borrower, as amended through the Petition Date (the "**Pre-Petition July Credit Agreement**").
- D. Lenders made one or more loans or other financial accommodations to Borrower and certain Subsidiaries and Affiliates of Borrower in the maximum principal amount of up to \$51,000,000 (the "**Pre-Petition October Credit Facility**") subject to the terms and conditions of that certain Amended and Restated

October Credit and Security Agreement (and Guaranty Agreement), dated February 12, 2004, among Lenders, Agent, Borrower and certain Subsidiaries and Affiliates of Borrower, as amended through the Petition Date (the “**Pre-Petition October Credit Agreement**”).

E. Lenders made one or more loans or other financial accommodations available to Borrower and certain Subsidiaries and Affiliates of Borrower (the “**Pre-Petition Support Credit Facilities**”) subject to the terms and conditions of credit agreements, dated December 22, 2004, and October 26, 2006, respectively, among Lenders, Agent, Borrower and certain Subsidiaries and Affiliates of Borrower (the “**Pre-Petition Support Credit Agreements**”).

F. Lenders made one or more loans or other financial accommodations to Borrower and certain Subsidiaries and Affiliates of Borrower in the maximum principal amount of \$250,000 (the “**Pre-Petition Working Capital Loan**”) subject to the terms and conditions of that certain Working Capital Loan Credit Agreement, dated as of October 26, 2006, among Lenders, Agent, Borrower and certain Subsidiaries and Affiliates of Borrower (the “**Pre-Petition Working Capital Loan Agreement**,” together with the Pre-Petition July Credit Agreement, the Pre-Petition October Credit Agreement and the Pre-Petition Support Credit Agreements are collectively referred to as the “**Pre-Petition Surety Credit Agreements**” and the Pre-Petition Surety Credit Agreements, together with the Pre-Petition Indemnity Agreement (as defined below), are collectively referred to as the “**Pre-Petition Surety Agreements**”).

G. The obligations of Borrower under the Pre-Petition Surety Agreements are secured by, among other things, (1) first priority liens on Borrower’s accounts receivable, equipment and contract rights, and all proceeds of the foregoing and (2) liens on substantially all of the other assets of Borrower.

H. Borrower has requested that Lenders provide a line of credit in the aggregate principal amount not to exceed \$5,000,000, plus an amount equal to the aggregate undisbursed expenses set forth in the Cash Collateral Budgets (as defined below) secured by the Collateral (as defined below), and Lenders are willing to provide such line of credit facility subject to the terms and conditions of this Agreement.

In consideration of the premises and the mutual promises, and the representations, warranties, covenants and agreements by Borrower herein contained, the parties intending to be legally bound hereby agree as follows:

ARTICLE I
CONSTRUCTION AND DEFINED TERMS

Section 1.01. *Articles and Sections.* The Article and Section headings and captions in this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement. The references in this Agreement to Articles and Sections shall be read as Articles or Sections of this Agreement unless otherwise specifically provided.

Section 1.02. *Exhibits and Schedules.* The references in this Agreement to specific Exhibits and Schedules shall be read as references to such specific Exhibits and Schedules attached, or intended to be attached, to this Agreement and any counterpart of this Agreement and regardless of whether they are in fact attached to this Agreement, and including any amendments, supplements, and replacements thereto from time to time.

Section 1.03. *Credit Documents.* References in this Agreement to Credit Documents, and any of the documents that are included within the definition of Credit Documents, shall include such amendments, supplements, and replacements as may be made thereto or therefor from time to time.

Section 1.04. *Discretionary Consents.* Wherever a provision of this Agreement or any other Credit Document provides for Agent’s or any Lender’s consent, any such consent may be provided or withheld in

Agent's or any Lender's sole and absolute discretion (unless otherwise expressly provided herein or in such other Credit Document), and the granting of consent in one instance shall not constitute or imply the granting of consent in any similar or other instance.

Section 1.05. *Accounting Terms.* Accounting terms used but not otherwise defined in this Agreement shall have the meanings provided by, and be construed in accordance with, GAAP.

Section 1.06. *Defined Terms.* Unless otherwise expressly stated in this Agreement, capitalized terms used in this Agreement shall have the following meanings and the meaning set forth above in this Agreement:

"Account" All Accounts Receivable, and including all obligations for the payment of money arising out of Borrower's rendition of services, or sale, lease or other disposition of Borrower's goods or other property in the conduct of the Business, and including all rentals, lease payments, and other moneys earned and to be earned, due and to become due, under any lease, and all rights of stoppage in transit, replevin, repossession and reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, and all guaranties or other contracts of suretyship with respect to any of the foregoing property, and all deposits, letters of credit, and other security for the obligation of any Account Debtor relating in any way to any of the foregoing property, and all credit and other insurance for any of the foregoing.

"Account Debtor" A Person obligated on an Account, Chattel Paper, or General Intangible, other than a Person obligated to pay a negotiable instrument, even if the instrument constitutes part of Chattel Paper.

"Accounts Receivable" shall mean (a) "accounts" as defined in Article 9, (b) all deferred payments and retained percentages, and all moneys and properties that may be, and that hereafter may become, payable to Borrower on account of, and all claims and actions and causes of action relating to, any Bonded Contract, or on account of or relating to extra work or materials supplied in connection therewith, and (c) all deferred payments and retained percentages, and all moneys and properties that may be, and that hereafter may become payable, to Borrower on account of, and all claims and actions and causes of action relating to, any contract that is not a Bonded Contract, or on account of or relating to extra work or materials supplied in connection therewith.

"Affiliate" As to any Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, and including any Subsidiary of such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by," and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of voting securities, by agreement or otherwise; provided that legal or beneficial ownership of ten percent (10%) or more of the voting securities (or other ownership interests other than limited partnership interests) of a Person shall in any event be deemed to be control.

"Allowed Professional Fees" As defined in Section 2.19.

"Applicable Law" As to any Person, all Laws applicable to such Person and all Laws applicable to any Property or activity of such Person.

"Article 9" Article 9 of the UCC.

"Articles of Incorporation" As to any corporation, the Articles of Incorporation or Certificate of Incorporation, or similar charter document, and all amendments thereto.

“Asset Disposition” Any sale, exchange, assignment, conveyance, lease, license, transfer, or other disposition (including any transfer effected by recapitalization, merger, reorganization, share exchange, or other capital transaction) of any Property.

“Avoidance Action Recoveries” All recoveries of cash, property or proceeds thereof in the Bankruptcy Case under any and all of Sections 502(d), 506, 510, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of the Bankruptcy Code.

Deleted: 551

“Bankruptcy Code” The United States Bankruptcy Codes, as amended from time to time, and any successor legislation, and all rules and regulations entered, promulgated or approved thereunder.

“Bankruptcy Court” As defined in Paragraph A in the Preliminary Statements.

“Bond” Each surety bond, undertaking, guaranty, stipulation or other obligatory agreement issued at any time for or on behalf of Borrower under any Pre-Petition Indemnity Agreement.

“Bonded Contract” Each contract in connection with which any Lender has executed or may execute a Bond or Bonds and each agreement or contract referred to in any Bond.

“Borrowing Request” A completed written notice, in the form of Annex A, or in such other form as may be satisfactory to Agent, executed and delivered to Agent by a Responsible Officer of Borrower, to request a Line of Credit Loan under this Agreement.

“Budget” Collectively, (a) the budget detailing Borrower’s anticipated cash receipts and disbursements for the period commencing on August 1, 2008 and ending on October 10, 2008, attached hereto as Exhibit A and (b) the Cash Collateral Budgets, as each may hereafter be amended, modified or replaced from time to time with the prior written approval of Agent.

“Business” The construction business and related activities and businesses of Borrower as presently conducted as of the Effective Date.

“Business Day” Any day other than a Saturday, Sunday or legal holiday on which Agent is open for the transaction of a substantial part of its business.

“Capital Expenditure” For any Person, expenditures (including the aggregate amount of capital lease obligations incurred during such period and all payments made in respect of operating lease obligations during such period) made by such Person to acquire, use, or construct fixed assets, plant or equipment (including office equipment, software, hardware and other computer equipment), or real estate property and including renewals, improvements and replacements, but excluding repairs, computed in accordance with GAAP.

“Carve-Out” As defined in Section 2.19.

“Case” As defined in Paragraph A of the Preliminary Statements.

“Case Professionals” As defined in Section 2.19.

“Cash Collateral” As defined in Section 363(a) of the Bankruptcy Code.

“Cash Collateral Budgets” Each “Budget” as defined in each Cash Collateral Agreement, and attached hereto as Exhibit B.

“Cash Collateral Agreement” or “Cash Collateral Agreements” Individually and collectively, (a) the Interim Agreement and Consent Order Authorizing Debtor to Use Cash Collateral and Granting Adequate Protection entered July 25, 2008 authorizing Borrower to use the Cash Collateral expressly specified therein and (b) the Second Interim Agreement and Consent Order Approving Use of Cash Collateral and Related Relief, and Setting Final Hearing Pursuant to Bankruptcy Rule 4001(c) entered on July 7, 2008 authorizing Borrower to use the Cash Collateral of Lender expressly specified therein.

“Casualty Event” With respect to any Property used in the Business, (a) any loss or damage to, or any condemnation or other taking of, such Property for which such Person or any other Person receives insurance proceeds, or proceeds of a condemnation award or other compensation by judgment, award or otherwise, and (b) any loss or damage to, or condemnation or other taking of, any Property of any Person, not within the scope of clause (a) of this definition.

“Chattel Paper” As defined in Article 9.

“Collateral” All assets and property of Borrower, including without limitation all present and future Accounts, Deposit Accounts, Chattel Paper, Equipment, Documents, Equipment, General Intangibles, Held Items, Investment Property, Instruments, Inventory, Items of Payment, Proceeds, Products, Post-Petition Collateral, Pre-Petition Collateral, and Records, but excluding the Avoidance Action Recoveries.

“Collection Costs” means all actual and reasonable costs and expenses of administering and enforcing this Agreement and the other Credit Documents, and including any and all costs and expenses of collecting the Obligations and exercising Agent or any Lender’s rights and remedies under the Credit Documents as against any Collateral, or as against Borrower or other party to any Credit Documents, and any and all costs and expenses incurred by Agent or any Lender after the occurrence of a Default in enforcing, defending, protecting, perfecting, and maintaining Agent’s or any Lender’s security interests and the priority thereof in any Collateral, and any other costs and expenses incurred by Agent or any Lender after the occurrence of any Default, with regard to any matters relating to the Credit Documents.

“Commitment” Each commitment to make a Loan, including each Line of Credit Loan Commitment.

“Committee” The official committee of unsecured creditors and any other official committee appointed or approved by the court in the Case.

“Conversion Case” Borrower becoming the debtor in any case under Chapter 7 of the Bankruptcy Code, whether as a result of conversion of the Case to a case under Chapter 7 of the Bankruptcy Code, or otherwise.

“Credit Administration Costs” All Collection Costs, and any other costs and expenses (including Agent’s and any Lender’s reasonably attorney’s fees and expenses) incurred by Agent or any Lender from time to time relating to the preparation, modification, supplementation, review, and interpretation of the Credit Documents, or the monitoring, processing, and servicing of the Obligations, or any Collateral, and the transactions and other matters contemplated by the Credit Documents, including accounting, collateral examination, monitoring and appraisal fees, financial advisory fees, lien and pending litigation search fees, and other fees and other out of pocket expenses of Agent and Lenders in connection with the Loans and Obligations hereunder.

“Credit Document” or “Credit Documents” This Agreement, the Notes, and each and every other agreement, document or instrument of any kind, that evidences, secures or otherwise relates directly or indirectly to the Loans or the rights, remedies and obligations under this Agreement, or that is given to any Lender to induce such Lender to make, issue or extend the Obligations or any thereof.

“Deposit Accounts” All deposit accounts (as defined in Article 9), now and from time to time hereafter and including any lock-box, safe-keeping accounts, and safe-deposit boxes, and including any and all amounts and contents therein and thereof and all of Borrower’s rights under agreements relating thereto, and all of Borrower’s rights relating to the storage and retrieval thereof and access thereto.

“Default” Any event, occurrence, circumstance, act, or failure to act which is or with the giving of notice and/or the passage of time would become an Event of Default.

“Default Rate” The interest rate per annum that is three percent (3.00%) per annum greater than the interest rate that would be applicable to such Obligations prior to the occurrence of an Event of Default.

“Designated Location” Those locations set forth on Schedule 3.07 of this Agreement.

“Documents” As defined in Article 9.

“Dollars” The lawful currency of the United States of America.

“Effective Date” The Effective Date as set forth on the first page of this Agreement.

“Environmental Laws” means any statute, regulation, rule, permit, code, common law, judicial decision, order or judgment of any applicable federal, state, local or foreign jurisdiction relating to pollution, hazardous substances, hazardous wastes, petroleum or otherwise relating to protection of the environment, natural resources or human health, including, by way of example and not by way of limitation, the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), the Toxic Substances Control Act, and the Emergency Planning and Community Right-to-Know Act, all as amended.

“Environmental Permits” means all registrations, licenses, permits, authorizations and approvals that are required by any Environmental Laws or any Governmental Authority responsible for the administration of any Environmental Laws, including any necessary National Pollution Discharge Elimination System Permits.

“Equipment” As defined in Article 9.

“Event of Default” An Event of Default set forth in Article VII.

“Final Order” An order of the Bankruptcy Court in form and content satisfactory to Agent (a) authorizing the transactions contemplated by this Agreement, including the Line of Credit Loans and the superpriority status set forth in Section 6.05, (b) authorizing the termination of the Cash Collateral Agreements, (c) ~~modifying the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Agreement and the other Credit Documents, which shall (among other things) permit Agent and Lenders (i) to collect, receive and apply collections, payments and proceeds of Collateral, and (ii) to file financing statements or other instruments or documents, if any, evidencing Agent’s and each Lender’s security interests in and Liens on the Collateral, but shall not require Agent and Lenders to do so~~ and (d) providing that upon the occurrence of an Event of Default, (i) Agent and Lenders shall be permitted to immediately cease making Loans, (ii) Borrower shall be prohibited from using Cash Collateral in which Agent or any Lender has an interest without Agent’s consent, (iii) all of Agent’s and each Lender’s claims for payment with respect to the Obligations shall have superpriority administrative and first priority status pursuant to Sections 364(c)(1), (c)(2) and 364(d) of the Bankruptcy Code, subject to the Carve-Out and Permitted Liens, and that no costs or expenses of administration shall be imposed against Agent or any Lender or the Collateral pursuant to Sections 506(c) or 552 of the Bankruptcy Code or otherwise and (iv) the terms and provisions of the order shall be specifically binding on any existing or subsequently appointed Chapter 11 or Chapter 7 trustee, which Final Order shall have been entered in the Case after notice and a final hearing in accordance with Bankruptcy Rule 4001(c)(2), the operation and effect

Deleted: vacating and

of which order has not been reversed or modified in any respect, and which order is not the subject in any respect of a pending appeal or, if the subject in any respect of a pending appeal, is not the subject in any respect of any stay pending appeal.

“GAAP” or **“generally accepted accounting principles”** Generally accepted accounting principles in the United States of America as in effect from time to time as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board which are applicable to the circumstances as of the date of determination consistently applied.

“General Intangibles” All general intangibles (as defined in Article 9) of every kind and description, and including all (a) advertisements in any medium (and other marketing and promotional materials in any medium), brochures, signs, stationery, business forms, packaging and shipping materials; telephone numbers, post office addresses, mailing addresses, e-mail addresses, and all internet protocol numerical addresses, domain names, codes and rights relating thereto; so-called web sites and addresses, and all internet protocol numerical addresses, domain names, codes and rights relating thereto; programs and software; licenses, permits, consents, and approvals of any Governmental Authorities or other Persons; financing statements in which Borrower’s interest appears as a secured party or lessor; and things in action, (b) intellectual property, and to the extent not otherwise included as intellectual property, all goodwill associated with or related to any of the foregoing or Borrower or Borrower’s business, (c) all obligations and indebtedness owing to Borrower, and (iv) all rights or claims in respect of refunds for taxes paid.

“Governmental Authority” Any executive, judicial, legislative or other branch, department, office, commission, board, bureau, agency, or instrumentality of the government of any jurisdiction, including the federal government of the United States and any foreign country, and any state, provincial, local or municipal government, and including any monetary authority, and including the Persons holding or exercising the powers, privileges, discretions, titles, offices or authorities of any thereof, and including any central bank or comparable authority or agency.

“Held Items” All of Borrower’s now owned and hereafter acquired, created or arising cash, moneys, securities and other property, now or hereafter held or received by, or in transit to, any Lender, whether for safekeeping, pledge, custody, transmission, collection or otherwise, and any balances, sums and credits of Borrower held by any Lender at any time existing.

“Include and including” Unless otherwise expressly limited herein, the words “include” and “including” shall be read to mean “include, without limitation,” and “including, without limitation,” as the case may be.

“Indebtedness” As applied to any Person, and as measured without duplication, all items (except items of capital stock, capital or paid-in-surplus or of retained earnings) (a) which in accordance with GAAP, would be included in determining total liabilities as shown on the liability side of a balance sheet of such Person, and (b) to the extent not otherwise included in clause (a) of this definition, all of such Person’s (i) indebtedness for borrowed money, (ii) operating lease obligations, (iii) trade accounts payable, (iv) indebtedness of another Person secured by any Lien to which any Property owned or held by such Person is subject, whether or not the indebtedness secured thereby shall have been assumed, and (v) obligations under any guarantee.

“Instruments” As defined in Article 9.

“Interim Order” An interim order approved by the Bankruptcy Court entered prior to the Final Order, in form and content satisfactory to Agent, (a) authorizing the transactions contemplated by this Agreement, including the Line of Credit Loans and the superpriority status set forth in Section 6.05, (b) authorizing the termination of the facility under the Cash Collateral Agreements, (c) ~~modifying the automatic~~

Deleted: vacating and

stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Agreement and the other Credit Documents, which shall (among other things) permit Agent and Lenders (i) to collect, receive and apply collections, payments and proceeds of Collateral, and (ii) to file financing statements or other instruments or documents, if any, evidencing Agent's and each Lender's security interests in and Liens on the Collateral, but not requiring Agent or any Lender to do so, and (d) providing that upon the occurrence of an Event of Default, (i) Agent and Lenders shall be permitted to immediately cease making Loans, (ii) Borrower shall be prohibited from using Cash Collateral in which Agent or any Lender has an interest without Agent's consent, (iii) all of Agent's and each Lender's claims for payment with respect to the Obligations shall have superpriority administrative and first priority status pursuant to Sections 364(c)(1), (c)(2) and 364(d) of the Bankruptcy Code, subject to the Carve-Out and Permitted Liens, and that no costs or expenses of administration shall be imposed against Agent or any Lender or the Collateral pursuant to Sections 506(c) or 552 of the Bankruptcy Code or otherwise and (iv) the terms and provisions of the order shall be specifically binding on any existing or subsequently appointed Chapter 11 or Chapter 7 trustee, which Interim Order shall have been entered in the Case after notice and a preliminary hearing in accordance with Bankruptcy Rule 4001(c), the operation and effect of which order has not been reversed or modified in any respect, and which order is not the subject in any respect of a pending appeal or, if the subject in any respect of a pending appeal, is not the subject in any respect of any stay pending appeal.

"Inventory" As defined in Article 9.

"Investments" With respect to any Person, (a) any Indebtedness for borrowed money of any other Person owed to such Person, (b) the acquisition (whether for cash, Property, services or securities or otherwise) of capital stock, bonds, notes, debentures, partnership interests or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale), (c) the making of any deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such other Person, but excluding trade credit extended by a Person arising from inventory sold or services provided in the ordinary course of such Person's business), or (d) the making of any guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and any amount committed to be advanced, lent or extended to such Person.

"Investment Property" As defined in Article 9, together with all stock and other equity interests in Borrower's subsidiaries, and all Proceeds thereof.

"Items of Payments" All checks, drafts, cash, and other remittances of payment of, or on account of, any Accounts, Instruments, Chattel Paper, Documents, Investment Property, or General Intangibles, or received as proceeds of the sale or lease of Borrower's Property or as payment for any services rendered by Borrower to any Person.

"Laws" At any time, all laws, statutes, regulations, ordinances, rules, codes, decrees, orders, and other directives of any federal, state, district, territorial, or local government within the United States of America (or any national, state, provincial or local government outside the United States), or any branch, department, agency or office thereof, applicable to any party to any Credit Document, or to any Property of any party to any Credit Document, or to any business, industry, or other activity in which any party to the Credit Documents may be engaged from time to time, including all Environmental Laws.

"Lien" Any security interest, security agreement, real estate mortgage, chattel mortgage, deed of trust, title retention contract, security title, factor's lien, assignment, pledge, grant or conveyance for security purposes or in settlement of debt, or other arrangement for security purposes, deed-in-lieu of foreclosure or to secure debt, transfer for other than fair consideration, judgment lien or other lien, charge or encumbrance of any kind, and including any of the foregoing arising by operation of statute or other law or the application of

equitable principles, whether perfected or unperfected, avoidable or unavoidable, consensual or non-consensual.

“Line of Credit Available Amount” As of any date or time of determination, the amount that is the difference of (a) the Line of Credit Maximum Amount, *minus* (b) the sum of the principal amounts of the Line of Credit Loans outstanding at such time.

“Line of Credit Availability Period” The period commencing on the Effective Date and ending on the Line of Credit Maturity Date.

“Line of Credit Commitment” The commitment of Lenders, as a whole, to make Line of Credit Loans under this Agreement during the Line of Credit Availability Period.

“Line of Credit Loan” or **“Line of Credit Loans”** As defined in Section 2.01.

“Line of Credit Maximum Amount” Five Million and 00/100 Dollars (\$5,000,000.00), plus an amount equal to the aggregate undisbursed expenses set forth in the Cash Collateral Budgets.

“Line of Credit Note” That certain Line of Credit Promissory Note dated on or about the same date as this Agreement in the principal amount of Five Million and 00/100 Dollars (\$5,000,000.00), plus an amount equal to the aggregate undisbursed expenses set forth in the Cash Collateral Budgets, in the form of Annex B, made by Borrower payable to the order of Lender, as it may be amended, modified, replaced, restated or supplemented from time to time, and any other promissory note in such other form as may be satisfactory to a Lender, executed by Borrower and delivered to any Lender that requests a Line of Credit Promissory Note to further evidence Borrower’s agreement and obligation to repay the Line of Credit Loans, as it may be amended, modified, replaced, restated or supplemented from time to time.

“Loan” All the loans made pursuant Article II to this Agreement, including each Line of Credit Loan.

“Material Adverse Effect” A material adverse effect on (a) the Property or Business of Borrower, (b) the ability of Borrower to perform its obligations under any of the Credit Documents, (c) the validity or enforceability of any of the Credit Documents, or (d) the rights and remedies of Agent or Lender under any Credit Documents.

“Maturity Date” The date that is the earliest of (a) [October 10, 2008], or (b) the earlier of the effective date of the confirmed plan of reorganization or liquidation that provides for treatment of the Obligations owing hereunder and the Pre-Petition Obligations or is otherwise acceptable to Agent in Agent’s sole discretion, or (c) the date on which (i) the Case shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code, (ii) a trustee under Chapter 11 of the Bankruptcy Code shall be appointed in the Case, or (iii) an examiner having enlarged powers relating to the operation of the business of Borrower (beyond those set forth under section 1106(a)(3) and (4) of the Bankruptcy Code shall be appointed, or (d) the termination of the Line of Credit Commitment upon the occurrence of a Default or (e) the acceleration of the Line of Credit Loans upon the occurrence of an Event of Default. Upon the occurrence of the Maturity Date, other than with respect to the Carve-Out, the commitment to make Loans shall terminate and the Obligations hereunder shall be paid in full.

“Net Proceeds” As to any Casualty Event, the cash proceeds of insurance, condemnation awards and other compensation received by Borrower in respect of such Casualty Event and, as to any Asset Disposition, the proceeds of such Asset Disposition in form of cash or cash equivalents, including payments in respect of deferred obligations when received by Borrower in the form of cash or cash equivalents and proceeds from the conversion of other property received when converted to cash or cash equivalents, net of (i) brokerage commissions, if any, directly related to such Asset Disposition, excluding any such commissions paid to any Affiliate of Borrower, and (ii) payments, if any, made to repay indebtedness for borrowed money that is

secured by a lien or security interest on the Property subject to the Asset Disposition, but only if and to the extent such lien or security interest has priority that would entitle the holder thereof to payment from such proceeds before payment to Agent or any Lender.

“Note” Each Line of Credit Note.

“Notification Event” As defined in Section 4.03.

“Objection” As defined in Section 6.06.

“Obligations” All now existing and hereinafter arising obligations, indebtedness, and liabilities of Borrower to Agent and each Lender of any kind, whether primary, secondary, contingent, direct or indirect, joint or several, or for payment or for performance under this Agreement or any of the other Credit Documents, including Borrower’s obligation to pay to Lender as and when due all principal, interest, costs and expenses (including Credit Administration Costs) evidenced by, arising under, or relating to, any of the Credit Documents, including without limitation each Line of Credit Loan; provided, however, the Obligations do not include the Pre-Petition Obligations existing on or before the Petition Date.

“Owner” Each Person and Governmental Authority that is a beneficiary of any Bond and each Person (other than Borrower, or a Subsidiary or Affiliate of Borrower) and Governmental Authority party to a Bonded Contract, including without limitation the owner of each Project for which a Bond has been issued on, before or after the Petition Date.

“Payment Office” Agent’s office at c/o Travelers, 2S1, One Tower Square, Hartford, Connecticut 06183-9062, or such other location as may be designated by Agent upon written notice to Borrower.

“Permitted Lien” Each of the following: (a) any Lien in favor of Agent or Lender, (b) Liens for taxes which are not yet delinquent, (c) deposits or pledges to secure obligations under worker’s compensation, social security or similar laws, or under unemployment insurance in the ordinary course of business of Borrower, (d) statutory liens of landlords and liens of carriers, warehousemen, bailees, mechanics, materialmen and other like liens imposed by law created in the ordinary course of business of Borrower and securing amounts not yet due and (e) Liens existing on the Petition Date.

“Person” Any natural person, corporation, limited liability company, partnership, joint venture, entity, association, joint-stock company, trust or unincorporated organization, any Governmental Authority and any Committee.

“Post-Petition Collateral” All of Borrower’s assets and property acquired, created or arising after the Petition Date described as follows: (a) Accounts Receivable, (b) supporting obligations supporting any of the Accounts Receivable, (c) acquired Equipment, (d) all proceeds of any loan made by the Lender to Borrower under this Agreement, (e) all Bonded Contracts, and all other contracts relating to Projects (as defined below), and (f) all deposit accounts and securities accounts (and other investment property) into which any proceeds of any Property described in clauses (a) through (e) are deposited, maintained or invested from time to time, or into which any Loan proceeds are deposited, maintained or invested from time to time, but excluding the Avoidance Action Recoveries.

“Pre-Petition Collateral” All of Borrower’s assets and property acquired, created or arising before the Petition Date in which Borrower has granted a security interest or Lien to secure the Pre-Petition Obligations pursuant to the Pre-Petition Credit Documents.

“Pre-Petition Indemnity Agreements” Each of the following: (a) General Indemnity Agreement, dated March 21, 1995, with the Modern Continental Companies, Inc., Modern Construction Co., Inc., Lelio Marino and Kenneth Anderson, (b) Master Surety Agreement, dated September 29, 1995, with the Modern

Continental Construction Co., Inc., Modern Continental Companies, Inc., Modern Continental Enterprises, Inc., Modern Continental Marine Co., Inc., Ristorante Marino's, Inc., Modern Continental Health Co., Inc., Lelio Marino and Kenneth Anderson, (c) the General Indemnity Agreement, (d) Collateral Agreement, dated January 13, 2003, among Modern Construction, 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., each of the foregoing as amended, modified or supplemented before the Petition Date.

"Pre-Petition Credit Documents" The Pre-Petition Surety Agreements, and each and every other agreement (of any kind), promissory note, instrument, letter of credit application, assignment, certificate, guaranty, subordination agreement, indemnity, bond, financing statement, annex, exhibit, schedule, notice, request or other document that evidences, secures, guarantees or otherwise relates directly or indirectly to Pre-Petition Surety Obligations, the Pre-Petition July Credit Facility, the Pre-Petition October Credit Facility and the Pre-Petition Support Credit Facilities.

"Pre-Petition Obligations" The obligations, indebtedness, and liabilities of Borrower to Lender under the Pre-Petition Credit Documents.

"Prime Rate" As of any date, the prime rate published in the "Money Rates" column of The Wall Street Journal (Eastern Edition) on such date, or if the prime rate is not published on such date, then the prime rate most recently published prior to such date. If The Wall Street Journal ceases to publish the prime rate, then Agent shall select a new comparable interest rate to use as the Prime Rate.

"Proceeds" All cash and non-cash proceeds (as the term is used in Article 9) and all other amounts received in respect of any sale, exchange, lease, license, transfer, redemption, or other disposition of any Collateral, and including insurance proceeds and casualty and condemnation proceeds, and any other thing of value paid or received in respect of any of the foregoing Collateral, including, without limitation, interest and dividend payments made on or in respect of any of the foregoing Collateral, and distributions made in respect of any of the foregoing Collateral.

"Products" All products of the Collateral.

"Project or Projects" Any work being done by Borrower and any work which Borrower is contractually obligated to complete or cause to be completed.

"Property" Any right or interest in or to property of any kind whatsoever, whether real, personal, or mixed, and whether tangible or intangible, used primarily in connection with the Business.

"Records" All books, records, documents, ledger cards, invoices, bills of lading and other shipping evidence, credit files, computer programs, tapes, discs, diskettes, and other data and software storage medium and devices, customer lists, mailing lists, mailing labels, business forms and stationery, and other property and general intangibles evidencing or relating to Borrower's Accounts, Inventory and/or other Collateral, or any Account Debtor, together with the file cabinets or containers in which the foregoing are stored (including any rights of Borrower with respect to the foregoing maintained with or by any other person).

"Regulated Substance or Regulated Substances" Any substance, material, or waste that is regulated or listed under any Environmental Laws, and such substances, materials, or wastes include, but are not limited to, any whose release or threatened release may pose a risk to human health or the environment, and also include (a) asbestos in any form, (b) urea formaldehyde foam insulation, (c) paint containing lead, (d) transformers or other equipment that contain dielectric fluid polychlorinated biphenyls at levels of fifty (50) parts per million or more, (e) radioactive materials, and (f) petroleum or petroleum hydrocarbons in any form.

“Responsible Officer” With respect to the subject matter of any representation, warranty, covenant, agreement, obligation, notification requirement, or certificate contained in or delivered to Agent or any Lender pursuant to any of the Credit Documents, the President, the Chief Financial Officer or the Controller of Borrower.

“Responsible Officer’s Certificate” A certificate substantially in the form of Annex C and signed by a Responsible Officer to the effect that to the best knowledge and belief of such Responsible Officer, after due inquiry, no Default or Event of Default exists, or if any Default or Event of Default does exist, specifying the nature and extent thereof and what action Borrower proposes to take with respect thereto.

“Review Period” As defined in Section 6.06.

“Specified Cash Collateral” The Cash Collateral permitted to be used by Borrower pursuant to the Cash Collateral Agreements, as amended or modified from time to time with the consent of Agent.

“Specified Payroll Account” As defined in Section 2.12.

“Standard Deduction Amounts” As defined in Section 2.12.

“Standard Employer Payroll Cost Amounts” Amounts (exclusive of Standard Withholding and Deductions) determined based on the salaries and wages paid by Borrower to its employees, which amounts are required by law to be paid by Borrower to appropriate third-party recipients, including payments for the following purposes: (a) social security (FICA) tax and medicare (in amounts equal to employee deduction), (b) federal unemployment insurance (FUTA), and (c) state unemployment insurance.

“Standard Withholding and Deductions” Amounts referred to generally as standard withholding and deductions which are customarily withheld or deducted by Borrower (as required by law or by agreement with the employees) from wages or salary of Borrower’s employees and paid by Borrower to the appropriate third-party recipients thereof, including but not limited to amounts withheld or deducted for the following purposes: (a) federal income tax, (b) state income tax, as applicable, (c) city income tax, as applicable; (d) social security (FICA) tax and medicare; and (e) 401K.

“Subsidiary” As to any Person, (a) any corporation or limited liability company (i) that is directly or indirectly controlled by such Person or any Subsidiary of such Person or (ii) if more than fifty percent (50%) of the voting and/or non-voting stock or other ownership shares of such corporation or limited liability company is owned by such Person or any Subsidiary of such Person, (b) any joint venture or partnership (i) in which such Person or any Subsidiary of such Person is a general partner or (ii) if more than fifty percent (50%) of the partnership interests in such venture or partnership are owned by such Person, (c) any trust for the benefit of such Person or any Subsidiary of such Person, or any other organization, trust or other entity as to which such Person or any Subsidiary of such Person is in a position of management, trust, or control, and (d) to the extent not otherwise included by the preceding clauses, any Subsidiary of any corporation, limited liability company, partnership, organization, trust or other entity described in clauses (a), (b), or (c).

“UCC” The Uniform Commercial Code, as in effect in the State of Maryland; provided that if and to the extent that the Uniform Commercial Code of a jurisdiction other than Maryland governs the perfection and the effect of perfection or nonperfection of a security interest under this Agreement, then “UCC” shall refer to the Uniform Commercial Code of such other jurisdiction to the extent applicable to the perfection and the effect of perfection or nonperfection of such security interest.

“Unsecured Creditors’ Committee” The official committee of unsecured creditors appointed or approved by the Court in the Case.

ARTICLE II
CREDIT FACILITY

Section 2.01. *Line of Credit Loan.* Upon the terms and subject to the conditions set forth in this Agreement, Lender agrees to make loans (each a "Line of Credit Loan")¹ to Borrower during the Line of Credit Availability Period in an aggregate principal amount at any time outstanding not to exceed the Line of Credit Maximum Amount.

Section 2.02. *Borrowing Requests-Line of Credit Loans.* (a) From time to time during the Line of Credit Availability Period, Borrower may request Line of Credit Loans by giving Borrowing Requests to Agent, for the benefit of Lenders, *provided* that (i) Borrower shall not request any Line of Credit Loan in an amount greater than the Line of Credit Available Amount at the time of the Borrowing Request, (ii) each Borrowing Request shall be given to Agent (A) at least five (5) Business Days prior to the proposed date of such Line of Credit Loan and shall state the proposed Business Day on which to make the Line of Credit Loan, (iii) all Borrowing Requests shall be irrevocable and (iv) all Line of Credit Loans shall be in amounts and used in accordance with the Budget.

(b) Borrowing Requests received by Agent at or before 11:00 a.m. in Hartford, Connecticut on a Business Day shall be deemed received on such Business Day. Borrowing Requests received after 11:00 a.m. in Hartford, Connecticut on a Business Day may be considered received on such Business Day or on the following Business Day in Agent's discretion. Upon receipt of a Borrowing Request, Agent shall notify Lenders of the Borrowing Request, and each Lender shall provide its share of each Line of Credit Loan requested in accordance with the terms of this Agreement to enable Agent to make the requested Line of Credit Loan, subject to the terms and conditions of this Agreement.

Section 2.03. *Covenant to Pay; Note.* Borrower covenants and agrees to execute and deliver to Agent the Note immediately upon the execution and delivery of this Agreement and to repay the Loans to Agent, for the benefit of Lenders, together with all accrued interest and late charges thereon, and all Credit Administration Costs and fees relating thereto, in accordance with the terms of this Agreement, the Notes and the other Credit Documents.

Section 2.04. *Interest.* The Obligations shall bear interest on the unpaid principal amount thereof from the date made until repaid at a rate per annum equal to the Prime Rate plus two percent (2%). Interest on the Obligations shall be payable monthly on the first (1st) day of each month commencing on August 1, 2009 until all of such Obligations have been paid in full. All interest shall be calculated on the basis of a 360-day year applied to the actual number of days the principal balance, or any portion thereof, is outstanding. Upon and after the occurrence of an Event of Default, the Obligations shall bear interest at a rate per annum equal to the Default Rate. Such interest outstanding shall be due and payable on demand.

¹ Subject to the entry of the Interim Order and the Final Order, Lenders have agreed to simultaneously make available to Borrower's parent, Modern Continental Construction Holding Co., Inc., a Massachusetts corporation ("Parent"), an unsecured line of credit up to a maximum amount not to exceed \$2,000,000 so that certain salary, severance and other payments to employees of Borrower under existing agreements between such employees and Borrower can be paid (the "Parent Advances"), subject to the deduction or withholding of Standard Employer Payroll Costs Amounts and Standard Withholding and Deductions. Lenders and Parent acknowledge that Lenders' unsecured line of credit to Parent and the Parent Advances shall not constitute a debt or claim against Borrower or Borrower's bankruptcy estate.

Section 2.05. Principal Payments. Unless sooner paid in full, the Obligations, including the entire unpaid principal balance of the Loans, together with all outstanding and unpaid accrued interest thereon, and Credit Administration Costs relating thereto, shall be due and payable in full and in cash on the Maturity Date.

Section 2.06. Voluntary Prepayments. Borrower may, upon written or telephonic notice to Agent, prepay the Loan in whole or in part at any time without premium or penalty.

Section 2.07. Mandatory Payments From Cash Collateral. Borrower covenants and agrees to immediately pay to Agent, in no event later than one (1) Business Day after receipt thereof, one hundred percent (100%) of the cash Proceeds received from the Accounts Receivable. At the request of Agent, Borrower shall direct the Account Debtor, Owner, escrow agent or similar Person with respect to such Accounts Receivable to pay such Proceeds directly to Agent for the benefit of Lenders.

Section 2.08. Mandatory Payments From All Other Collateral. Borrower covenants and agrees to immediately pay to Agent, in no event later than one (1) Business Day after receipt thereof, one hundred percent (100%) of (a) the Net Proceeds from any Asset Disposition by Borrower and (b) the cash Proceeds from any other Collateral not specifically addressed in Section 2.07 or clause (b) of this Section 2.08 (other than the Loan proceeds). At the request of Agent, Borrower shall direct the Account Debtor, escrow agent, closing agent or other applicable Person to pay such Net Proceeds or Proceeds, as the case may be, directly to Agent for the benefit of Lenders.

Section 2.09. Manner of Payments. All payments to be made to Agent or Lender shall be made in U.S. Dollars in immediately available funds without set-off, defense, counterclaim or deduction of any kind, at the Payment Office on the dates specified for such payments under this Agreement, the Note or the other Credit Documents. If any payment on the Loan shall be due and payable on any day which is not a Business Day, such payment shall be deemed due on the next following Business Day and interest shall be payable at the applicable rate specified herein through such Business Day.

Section 2.10. Application of Payments. Payments made by Borrower to Agent or Lender shall be applied in the following order: First to permanently reduce the Pre-Petition Obligations, in such order as Agent may determine in Agent's sole discretion and, second, to reduce the Obligations in such order as Agent may determine in Agent's sole discretion

Section 2.11. Use of Loan Proceeds. Without limiting the terms of Section 2.19, the proceeds of the Loans shall be used solely for post-petition working capital and general corporate purposes of Borrower as expressly set forth in the Budget and to pay the costs and expenses related to the administration of the Case and for payment of certain pre-petition expenses as contemplated in the Budget and approved in an order by the Bankruptcy Court, which order has not been reversed, vacated or stayed, unless such stay is no longer effective.

Section 2.12. Standard Withholding and Deductions. Borrower agrees that any and all salary and severance payments made to employees of Borrower shall be paid by Borrower to such employees net of applicable Standard Withholding and Deductions (the amounts of such taxes and other standard withheld or deducted amounts are referred to herein as the "**Standard Deduction Amounts**"). The amount so withheld or deducted to pay Standard Deduction Amounts shall be used by Borrower solely for the purpose of paying to the appropriate tax authorities or other appropriate recipients the applicable taxes and other Standard Withholding and Deductions relating to such salary or severance payments. Until such amounts so withheld or deducted for such Standard Withholding and Deductions are paid to the appropriate recipients thereof, Borrower shall keep such amounts in one or more segregated payroll accounts at a federally insured bank located in Massachusetts authorized by the Bankruptcy Court (the "**Specified Payroll Account**"), and shall not use such funds for any purpose other than payment of the applicable Standard Deduction Amounts to the appropriate recipients of such amounts.

Section 2.13. Standard Employer Payroll Cost Amounts. Borrower shall pay all Standard Employer Payroll Cost Amounts to the appropriate recipients thereof when due.

Section 2.14. Conditions to First Loan. The following are conditions precedent to making of the first Loan and must be fulfilled to Agent's satisfaction:

(a) Agent shall have received duly executed counterparts of the Credit Documents from Borrower;

(b) Agent shall have received signature and incumbency certificates of the officers of Borrower certified as of the Effective Date by the Secretary or Assistant Secretary of Borrower;

(c) Agent and Lender shall have received the Budget, which Budget shall be in form and content satisfactory to Agent in Agent's sole discretion;

(d) All of the representations and warranties made by Borrower pursuant to Credit Documents shall be true and correct in all material respects;

(e) Agent shall have received certificates of property and liability insurance of Borrower, and by the date of the Final Order, evidence of loss payable or additional insured clauses or endorsements, or both, as appropriate, in favor of Agent, in form and substance satisfactory to Agent;

(f) No Default or Event of Default shall exist, and no event shall have occurred and no condition shall exist since the date on which the Case was filed which has had, or could reasonably be expected to have, a Material Adverse Effect;

(g) Agent shall have received all proceeds of the Specified Cash Collateral currently held or controlled by Borrower, except \$400,000 which Borrower may retain in its general operating account and use in accordance with the Budget;

(h) Borrower shall have complied in full with the notice and other requirements of the Bankruptcy Code and the related local rule and Federal rules of bankruptcy procedure;

(k) The Bankruptcy Court shall have found that the Loans contemplated in this Agreement are made by Lenders, and the other Obligations are incurred by Borrower, in "good faith" within the meaning of Section 364(e) of the Bankruptcy Code;

(l) The Interim Order shall have been entered by the Bankruptcy Court and shall be in full force and effect and shall not have been vacated, reversed, modified, or stayed in any respect (and if the Interim Order is the subject of a pending appeal, no performance of any obligation of any party shall have been stayed pending such appeal); and

(m) Such other documents or materials requested by Agent or Lender.

Section 2.15. Conditions to Subsequent Loans. The following are conditions precedent to the making of any subsequent Loan and must be fulfilled to Agent's satisfaction:

(a) All of the representations and warranties made by Borrower pursuant to Credit Documents shall be true and correct in all material respects;

(b) Borrower shall have fulfilled in all material respects each and every of the covenants of this Agreement and the other Credit Documents;

(c) On and as of the date any Loan is made, no Default or Event of Default shall have occurred and be continuing or would result from the making of such loan or financial accommodation and no material adverse change shall have occurred in the financial condition, business, prospects, profits, operations or assets of Borrower since the date of the latest financial statements delivered to Agent;

(d) Borrower shall have provided to Agent satisfactory evidence of the entry of a Final Order (or the Interim Order shall continue to be in effect and has not been vacated, reversed, modified or stayed (and if the Interim Order is the subject of a pending appeal, no performance of any obligation of any party shall have been stayed pending such appeal));

(e) No order of the Bankruptcy Court appointing a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code or a responsible officer or an examiner with enlarged powers relating to the operation of the Business (powers beyond those set forth in Section 1106(a)(3) an (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall have been filed or entered, as the case may be; and

(f) Borrower specifies in writing those costs and expenses to which the Line of Credit Loan Advance will be applied.

Section 2.16. Conditions to All Loans. The following are additional conditions precedent to the making of all Loans that must be fulfilled to Agent's satisfaction:

(a) After giving effect to the receipt of any Loan, Borrower may not have cash in its general operating account of more than \$400,000 (excluding (i) amounts for checks which have been written by Borrower and sent to the payee, but have not yet been presented to and cleared by Borrower's bank and (ii) amounts held in the Specified Payroll Account); and

(b) Borrower may not request more than one Loan during any consecutive seven (7) day period.

Section 2.17. Acknowledgment. Borrower acknowledges Borrower's obligations under the Pre-Petition Credit Documents, including without limitation the following:

(a) Borrower and certain of its Affiliates and Subsidiaries are parties to the Pre-Petition Credit Documents.

(b) As of the Petition Date, Borrower owes Lender an aggregate amount of \$634,565,786 in principal under the Pre-Petition Surety Credit Agreements, which amount does not include approximately \$261,000,000 in accrued and unpaid interest.

(c) The Pre-Petition Obligations of Borrower are secured by, among other things, first priority liens on Borrower's accounts receivables, equipment and contract rights, and all proceeds of the foregoing.

(d) Each Lender is Borrower's secured lender pursuant to the terms and conditions of the Pre-Petition Credit Documents with the power to initiate, conduct, or otherwise prosecute the enforcement of Agent's and such Lender's rights and remedies with respect to Borrower in accordance with the Pre-Petition Credit Documents and Applicable Law.

(e) Lender has properly perfected its security interests in and liens on the Pre-Petition Collateral by, inter alia, filing financing statements in appropriate jurisdictions and locations, taking possession of certain of the Pre-Petition Collateral or documents evidencing title thereto and/or by taking other appropriate action.

(f) Borrower acknowledges that (i) all of the Pre-Petition Obligations pursuant to the Pre-Petition Credit Documents are due and owing, are legal, binding and enforceable obligations of Borrower and are not subject to any offset, defense, claim, counterclaim or any other diminution of any type, kind or nature

whatsoever, (ii) all of the Pre-Petition Credit Documents with respect to Lender and Borrower are valid and enforceable against Borrower in accordance with their terms, are not subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever, and are not subject to avoidance pursuant to applicable state or federal laws, (iii) Agent's and each Lender's Liens and security interests in, to and against all of the Pre-Petition Collateral are valid, enforceable and properly perfected, and are not subject to avoidance under applicable state and federal law, and (iv) there are no existing claims, causes of action of Borrower, breaches of contract or other liabilities, whether liquidated or unliquidated, direct or indirect, and whether arising under state or federal law (including the Bankruptcy Code) against Agent or any Lender or their affiliates, predecessors, agents, representatives, officers, directors, employees or attorneys, arising from the business relationships between Borrower on the one hand and Agent and any Lender or their Affiliates, predecessors, agents, representatives, officers, directors, employees or attorneys on the other hand.

The provisions of this Section 2.17 and Section 2.18 are subject to Section 6.06 and shall be binding at this time only on Borrower and shall not bind other parties-in-interest.

Section 2.18. *Release.* Subject to the rights of parties-in-interest to file an Objection pursuant to Section 6.06, Borrower, for itself and each of its Subsidiaries and Affiliates, release, remise, acquit, and forever discharge Agent and each Lender and each of its employees, directors, officers, agents, successors and assigns from any and all matters of claims, actions, causes of action, suits, debts, agreements, demands, deficiencies, diminution of value, losses and other obligations of any kind or nature whatsoever, whether presently known or unknown, fixed or contingent, direct or indirect, foreseen or unforeseen, now or hereafter existing which Borrower or its respective Subsidiaries or Affiliate ever had, now has, or shall have against Agent or any Lender by reason of any act, cause, matter, or thing whatsoever which occurred from the respective date of the Pre-Petition Credit Document through the Effective Date.

Section 2.19. *Limitation on Use of Proceeds.*

(a) Neither Agent nor any Lenders shall be responsible for the direct payment or reimbursement of any fees or disbursements of any Case Professionals incurred in connection with the Case or any successor case under any chapter of the Bankruptcy Code.

(b) Subject to the further limitations set forth in clause (c) of this Section, Borrower shall be permitted to pay the following expenses (such expenses being referred to as the "**Carve-Out**"): (i) statutory quarterly fees required to be paid pursuant to 28 U.S.C. Section 1930(a)(6), (ii) fees required to be paid to the Clerk of the Court accrued prior to the occurrence of an Event of Default and (iii) subject to the terms and conditions of the Interim Order or the Final Order, (A) prior to the receipt of written notice of a Default or an Event of Default, the allowed and unpaid professional fees and disbursements incurred by Borrower and any official Committee for any professionals retained by final order of the Court (which order has not been reversed, vacated or stayed unless such stay is no longer effective) under Sections 327 or 1103(a) of the Bankruptcy Code (the "**Case Professionals**") so long as such amounts are in accordance with the Budget, are authorized by the Bankruptcy Court and do not exceed the amounts set forth in the Budget and (B) upon the receipt of written notice of a Default or an Event of Default, (1) all unpaid professional fees and disbursements of the Case Professionals incurred prior to the receipt of written notice of such Default or Event of Default to the extent incurred in accordance with the Budget, do not exceed the amounts set forth for such fees and disbursements in the Budget and are allowed and payable pursuant to an order of the Bankruptcy Court (which order has not been reversed, vacated or stayed unless such stay is no longer effective) ("**Allowed Professional Fees**") under Sections 328, 330 or 331 of the Bankruptcy Code, less any retainers still being held and available for application to such professional fees and disbursements and (2) all other unpaid expenses that are accrued prior to the receipt of written notice of such Default or Event of Default to the extent incurred in accordance with the Budget and do not exceed the amounts for such expenses set forth in the Budget. In no event shall the aggregate amount of the Loan proceeds used to pay the Carve-Out, before, on or after receipt of written notice of a Default or Event of Default exceed the undisbursed amount set forth in the line item for such expenses set forth in the Budget (less any retainers still being held and available for application to such Carve-Out).

Nothing herein shall be deemed as a waiver of the rights of Agent or any Lender to object to the allowance of any fees, expenses or disbursements.

(c) No portion of the Loans, the Collateral or the Carve-Out may be used for the payment or reimbursement of any fees, expenses or disbursements of Borrower or any Committee or any other party-in-interest incurred in connection with the assertion or joinder in any claim, counter-claim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief: (i) invalidating, setting aside, avoiding, subordinating, re-characterizing, in whole or in part, the Pre-Petition Obligations or the Obligations of Agent's or any Lender's Lien and security interest in the Collateral or the Pre-Petition Collateral, or (ii) challenging the Liens and security interest of Agent and Lenders under this Agreement or claims seeking an affirmative recovery from Agent or any Lender, or (iii) using or seeking to use cash collateral or selling or otherwise disposing of the Collateral without the consent of Agent or Lender, or (iv) using or seeking to use any insurance proceeds constituting Collateral without the consent of Agent or Lenders. Furthermore, without limiting the foregoing, no more than the aggregate amount of \$37,500 of the Carve-Out or any Loan under this Agreement shall be used to pay the fees and expenses of the Unsecured Creditors' Committee (w) to carry out its review of the Pre-Petition Credit Documents to determine the extent and validity of the liens granted thereunder and investigation of potential claims against Agent or Lenders (but not to prosecute of same), (v) appear in opposition to a Final Order of the validity, enforceability, perfection or priority of the prepetition Liens and (z) carry out any other duties of the Unsecured Creditors' Committee.

Deleted: preventing, hindering or depaying, whether directly or indirectly, the assertion by Agent or any Lender or the enforcement by Agent or any Lender of its Liens and security interest or realization by Agent or any Lender upon any of the respective Collateral; or (iii)

Deleted: iv

Deleted: v

Deleted: investigation

ARTICLE III REPRESENTATIONS AND WARRANTIES

Borrower hereby makes the following representations and warranties to Agent and Lender (a) on and as of the Effective Date, and (b) at the time that the first Loan and each subsequent Loan are made and Agent and each Lender shall be entitled to rely upon the truth, accuracy, and completeness of the following representations and warranties without regard to any other information that may be now or hereafter known by or disclosed to Agent or any Lender or any of their shareholders, directors, officers, employees, agents, attorneys or other advisors:

Section 3.01. *Existence.* Borrower: (a) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite corporate, and has all material governmental licenses, authorizations, consents, permits and approvals to own its assets and carry on the Business as now being or as proposed to be conducted, and (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify could (either individually or in the aggregate) have a Material Adverse Effect.

Section 3.02. *Action.* (a) Borrower shall have all necessary corporate power, authority and legal right to execute, deliver and perform its obligations under each of the Credit Documents, (b) the execution, delivery and performance by Borrower of each of the Credit Documents shall have been duly authorized by all necessary corporate action on Borrower's part (including any required shareholder or like approvals), and (c) this Agreement shall have been duly and validly executed and delivered by Borrower and constitutes, and the Note and other Credit Documents, when executed and delivered by Borrower, will constitute, Borrower's legal, valid and binding obligation, enforceable against Borrower, as the case may be, in accordance with its terms.

Section 3.03. *Approvals.* Subject to the approval of the Bankruptcy Court pursuant to Section 364 of the Bankruptcy Code, no authorizations, approvals or consents of, and no filings or registrations with any governmental or regulatory authority or agency, or any securities exchange, are necessary for the execution, delivery or performance of the Credit Documents by Borrower or for the legality, validity or enforceability thereof, or the perfection of the security interests created in favor of Agent and each Lender pursuant to this

Agreement and the other Credit Documents. The borrowings hereunder, and the execution, delivery and performance of each of the Credit Documents will not (a) contravene any provision of law, any order of any court or other agency of government, or (b) contravene the Articles of Incorporation or by-laws of Borrower or any indenture, agreement or other instrument binding upon Borrower, or (c) be in conflict with, result in the breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument binding upon Borrower, or (d) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Borrower, except pursuant to this Agreement and the other Credit Documents.

Section 3.04. Deposit Accounts. Borrower has provided to Agent a true, accurate, and complete listing of each deposit account, securities account and bank account owned or maintained by Borrower.

Section 3.05. Liens. Borrower has good and marketable title to its owned Property free of all Liens, except for Permitted Liens.

Section 3.06. Insurance. Schedule 3.06 contains a true, accurate, and complete listing of each insurance policy (including policies of worker's compensation insurance, liability insurance, and casualty insurance) maintained in full force and affect by Borrower.

Section 3.07. Designated Locations. The street address, and county and state, of each place of business of Borrower and each place where Borrower has, leases, maintains or stores Property, are listed on Schedule 3.07. The mailing address of Borrower's chief executive office is listed on Schedule 3.07.

Section 3.08. Environmental Status. Borrower has complied with all Environmental Laws (including Environmental Permits) except insofar as collectively any non-compliance would not have a Material Adverse Effect. Borrower has no known contingent liability relating to the use, storage, handling or release of any Regulated Substances or otherwise relating to any Regulated Substance or the violation, or alleged violation, of any Environmental Law.

Section 3.09. Taxes. Borrower has filed and will continue to file all United States income tax returns and all state income tax returns which are required to be filed, and has paid, or made adequate provisions for the payment of, all taxes which have accrued since the Case or may become due pursuant to said returns or pursuant to any assessment received by Borrower except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided.

Section 3.10. Commercial Loan. The Loans made under this Agreement are made solely for a business or commercial purpose. The terms of this Agreement do not violate any laws that regulate credit, including any laws regarding usury and the charging of interest, late charges, fees, or any costs and charges of the types included within the definition of Credit Administration Costs under this Agreement.

Section 3.11. Applicable Laws. Borrower is in compliance, in all material respects, with all Applicable Laws.

Section 3.12. No Broker. Borrower has not made any agreement or taken any action which may cause anyone to become entitled to a commission or finder's fee or other compensation of any kind attributable to any extensions of credit or other matters or transactions contemplated under this Agreement and the other Credit Documents.

Section 3.13. Security Interest. The security interest granted to Agent and Lender under Article VI of this Agreement creates a (a) first priority perfected security interest and lien in favor of Agent and each Lender in the Post-Petition Collateral and (b) a perfected security interest and lien in favor of Agent and each Lender in all of Borrower's tangible and intangible property and assets existing on or prior to the Petition Date,

subject to any perfected, non-avoidable security interests and liens existing as of the Petition Date and any subrogation rights of sureties existing as of the Petition Date.

Section 3.14. Ownership. Modern Continental Construction Holding Co., Inc., a Massachusetts corporation, owns, holds and controls all of the legal or beneficial ownership or voting securities of Borrower.

ARTICLE IV
AFFIRMATIVE COVENANTS

Borrower covenants and agrees that from the date hereof and until the payment in full of all Obligations owed by Borrower to Lenders, unless Lenders shall otherwise consent in writing:

Section 4.01. Reporting. Borrower shall deliver to Agent, or cause to be delivered to Agent, for the benefit of Lenders, the following:

(a) as soon as available, and in any event within two (2) Business Days after filing thereof, a copy of each report filed by Borrower with the office of the U.S. Trustee;

(b) at the time of the delivery of each of the reports provided for in Sections 4.01(a), a Responsible Officer's Certificate; and

(c) with reasonable promptness upon any such request, such other information regarding the business, properties or financial or operating condition of Borrower as Agent may reasonably request; and

Section 4.02. Existence. Borrower shall maintain its corporate or other legal existence, in each jurisdiction in which it is incorporated or otherwise formed, and in each jurisdiction where it is required to register or qualify to do business, except for failures to register or qualify which, individually or in the aggregate, would not have a Material Adverse Effect and except as permitted by order of the Bankruptcy Court.

Section 4.03. Reporting Notification Events. Immediately upon any Responsible Officer obtaining knowledge thereof, but in any event within two (2) Business Days after any Responsible Officer obtains such knowledge, Borrower shall give Lender written notice of each Notification Event, which written notice shall include (a) a description of the Notification Event, (b) the date of the Notification Event and the date that the Responsible Officer first obtained knowledge of the Notification Event, and (c) a description of the manner in which Borrower has addressed or otherwise responded to the Notification Event or intends to address or otherwise respond to the Notification Event. "**Notification Event**" means any of the following events or occurrences: (i) any Default or Event of Default; or (ii) any Lien upon any Property of Borrower other than Permitted Liens; or (iii) any Casualty Event; or (iv) any environmental claim under any Environmental Law.

Section 4.04. Property. Borrower shall maintain, preserve and protect all Property that is material to the Business and keep such Property in good repair, working order and condition, normal wear and tear excepted.

Section 4.05. Insurance. Borrower shall, at all times, maintain its current insurance or like insurance in full force and effect.

Section 4.06. Compliance with Laws. Borrower shall comply, in all material respects, with all Applicable Laws.

Section 4.07. Credit Administration Costs; Brokers. Borrower shall pay all Credit Administration Costs promptly upon Agent's demand from time to time. Borrower shall indemnify and hold harmless Agent and each Lender from and against any claim by any Person for a commission or finder's fee or other

compensation of any kind attributable to any extensions of credit or other matters or transactions contemplated under this Agreement and the other Credit Documents, and shall pay Agent's and each Lender's attorney's fees, litigation expenses and court costs in defending any such claim for a commission or finder's fee other compensation.

Section 4.08. Review and Audit. Borrower shall maintain its financial books and records related to the Property and the Business in accordance with accounting practices consistently applied reflecting all financial transactions of Borrower. Agent or Lender shall be permitted access to all of Borrower's books and records at any location, including any Designated Location during normal business hours and shall be permitted to take copies, at Borrower's expense, of such books and records as Agent or Lender may request. Borrower shall permit and authorize Agent and Lender through any Person designated by Agent or Lender, at such times and as often as Agent or such Lender may reasonably request in writing, to visit, inspect, examine, audit and verify any of the properties, books and records of Borrower relevant to the subject matter of this Agreement or any other Credit Documents or information or the financial condition of Borrower.

Section 4.09. Use of Loan Proceeds. The proceeds of the Loan shall be used solely for the purpose expressly permitted in Article II.

Section 4.10. Environmental Matters. Borrower shall cause all Property owned or operated by Borrower to be kept free of contamination from Regulated Substances and any other harmful or physical conditions except as otherwise would be in compliance with applicable Environmental Laws. If Borrower receives notice or becomes aware of any environmental claim or any violation of Environmental Laws or any contamination with Regulated Substances that relates to any of them or their respective Properties, then Borrower shall promptly provide written notice thereof to Agent and, upon written request of Agent, shall provide Agent with such reports, certificates, engineering studies or other written material or data as Agent may require so as to satisfy Agent (or any Lender) that Borrower is in compliance with its obligations under this Agreement.

Section 4.11. Collection of Accounts Receivable. Borrower shall use commercially reasonable efforts to collect all Accounts Receivable from the Account Debtors, Owners, escrow agents and similar Persons and, at the request of Agent, to cause such Account Debtor, Owner, escrow agent or Person to make payments directly to Agent, on behalf of Lenders, pursuant to payment instructions provided by Agent from time to time.

Section 4.12. Anti-Money Laundering and Terrorism Regulations. Borrower agrees to comply with all applicable anti-money laundering and terrorism laws, regulations and executive orders in effect from time to time, including without limitation the USA Patriot Act. Borrower agrees to ensure that no Person who owns a controlling interest in or otherwise controls Borrower is a person designated under Section 1(b), (c) or (d) of Executive Order No. 13244 (issued September 23, 2001) or any other similar Executive Order.

ARTICLE V NEGATIVE COVENANTS

Borrower covenants and agrees that from the date hereof and until the payment in full of all Obligations owed by Borrower to Lenders, unless Lenders shall otherwise consent in writing:

Section 5.01. Capital Expenditures. Borrower shall not make any Capital Expenditures.

Section 5.02. Investments. Borrower shall not make, acquire or hold any Investments, other than such Investments existing as of the Petition Date.

Section 5.03. Indebtedness. Borrower shall not incur, create, assume or suffer to exist any Indebtedness other than (a) the Indebtedness under this Agreement and the other Credit Documents, (b) any

Indebtedness existing as of the Petition Date and permitted under the Pre-Petition Credit Documents, and (c) trade account payables incurred in the ordinary course of business. Borrower shall not, directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness, other than as expressly permitted or required pursuant to this Agreement. Borrower shall not waive, amend, modify or terminate any agreement relating to any Indebtedness existing as of the Petition Date.

Section 5.04. Line of Business; Name; Structure; Place of Business. Borrower shall not engage in any business other than the Business. Borrower shall not change its name or organizational structure or open a new place of business without Agent's written consent.

Section 5.05. Stock. Borrower shall not issue any additional shares of capital stock.

Section 5.06. Dividends; Distributions; Repurchases; Net Proceeds Dividends or Distributions. Borrower shall not declare or pay any dividend on, or make any other distribution of assets on account of, or redeem, purchase or otherwise acquire for value, any shares of any class of its capital stock, or any equity interest in it held by any Person, or any equity rights in it held by any Person.

Section 5.07. Subsidiaries. Borrower shall not form, acquire or become a Subsidiary or joint venture.

Section 5.08. Consolidations; Mergers; Dispositions; Acquisitions. Borrower shall not (a) enter into any transaction of merger or consolidation, (b) acquire by purchase or otherwise any of the outstanding capital stock of, or all or substantially all of the business, Property or assets of, any Person, (c) convey, sell, lease, license, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, without the prior written consent of Agent or (d) sell, lease, license, abandon, transfer or otherwise dispose of any of its Property whether now owned or hereafter acquired other than as permitted under Section 4.11 or pursuant to the last sentence of this Section 5.08. Notwithstanding anything to the contrary in clauses (c) and (d) of the immediately preceding sentence, Borrower may to the extent approved by an order of the Bankruptcy Court sell, for fair consideration and in cash, Property and assets that are no longer useful in Borrower's business.

Section 5.09. Liens; Bailments; Certain Sales. (a) Borrower shall not (i) store any Property with, or give possession or control of any Property to, any holder, bailee, warehouseman or other Person without Agent's prior written consent, which consent may be withheld in Agent's Discretion, or (ii) create, incur, assume or suffer to exist any security interest or Lien upon any Property of Borrower other than Permitted Liens.

(b) Borrower shall not, directly or indirectly, sell, discount or factor, with or without recourse, any Borrower's Accounts, Chattel Paper, Instruments, General Intangibles, or Documents.

Section 5.10. Budget and Compliance. Borrower shall not permit the payment of any expenses or other disbursements other than those expressly set forth in the Budget, provided that expenditures and disbursements may exceed, on an aggregate and not on a line item basis, the expenditures set forth in the Budget for expenses and disbursements by no more than ten percent (10%). Any unused amount for expenses and disbursements in one week or month shall be available for payment during the remaining weeks or months during the Line of Credit Availability Period.

Section 5.11. Chapter 11 Claims. Borrower shall not apply to the Bankruptcy Court for authority to incur, create, assume, suffer to exist or permit any other super-priority claim or Lien (and shall not incur, create, assume or suffer to exist such claims or Liens) which is *pari passu* with or senior to the claims of Agent and Lenders granted pursuant to this Agreement and the other Credit Documents.

Section 5.12. Pre-Petition Payments. Without the prior written consent of Agent, Borrower shall not apply to the Bankruptcy Court for authority to (a) make any payment with respect to pre-petition obligations, other than as permitted by the first-day orders or this Agreement or (b) amend, modify or change any agreement or document relating to any pre-petition Indebtedness.

ARTICLE VI SECURITY PROVISIONS

Section 6.01. Security Interest. (a) As security for the prompt payment in full of all of the Obligations, and without limiting the legal operation and effect of any other Credit Document, Borrower hereby grants Agent and each Lender a security interest in, and pledges and collaterally assigns to Agent and each Lender, all of Borrower's now owned and hereafter acquired, created or arising Collateral. The security interests granted hereunder shall extend and attach to all Collateral which is presently in existence or hereafter acquired (whether acquired prior to or subsequent to the commencement of the Case) and which is owned by Borrower or in which Borrower has any interest, whether held by Borrower or by others for Borrower's account, wherever located.

(b) The rights and security interests granted to Agent and each Lender under this Agreement shall continue in full force and effect until (i) the termination of this Agreement and (ii) the full and final payment and satisfaction of the Obligations.

(c) Upon the entry of the Interim Order and the Final Order, the Liens and security interests granted to Agent and each Lender under this Agreement and the other Credit Documents shall be deemed good, valid and duly perfected Liens and security interests in the Collateral with the priorities set forth in the Interim Order and the Final Order, subject to no transfer or other restrictions or liens of any kind in favor of any Person except for Permitted Liens, and shall be perfected without the recordation or filing of any UCC financing statements, notices of liens, mortgages or other instruments of assignment.

Section 6.02. Borrower's Collection Privileges. To further secure the Obligations, and in addition to Agent's or any Lender's other rights, powers, and remedies under this Agreement, Borrower agrees that Agent, on behalf of Lenders, shall have the exclusive right to collect, in the name of such Borrower, Agent or Lender, or in the name of Agent or Lender's designee, all Accounts, Chattel Paper, Documents, General Intangibles, Instruments and similar Collateral. Borrower acknowledges and agrees that Agent may direct, and Borrower shall direct at the request of Agent, Account Debtors, Owners, escrow agents and similar Persons to pay the Proceeds of all Accounts, Chattel Paper, Documents, General Intangibles, Instruments and similar Collateral directly to Agent, for the benefit of Lenders.

Section 6.03. Additional Collateral. If Borrower proposes to acquire additional Property which would constitute Collateral, and if the security interest of Agent and Lender would not be a first priority perfected security interest (or a priority Lien, subject only to Permitted Liens) upon acquisition of such Property, then Borrower shall, before acquiring such Property, notify Agent of the intended acquisition and take whatever actions Agent may require in order that, upon the acquisition of such Property, Agent and Lender will have a perfected security interest therein, subject only to Permitted Liens but excluding Liens existing on the Petition Date other than in favor of Agent and Lenders. If Borrower hold or at any time acquires a commercial tort claim (as defined in Article 9) or becomes the beneficiary of any letter of credit, Borrower shall promptly notify Agent in writing thereof and shall execute such further documents or do such further acts as Agent may reasonable request to grant to Agent and each Lender valid and perfected first priority security interests in such commercial tort claims or letters of credit, as the case may be.

Section 6.04. Further Assurances of Collateral. Borrower shall execute such further agreements, documents, financing statements and other instruments as may be requested by Agent or any Lender in order to perfect the security interests granted herein. To the extent that possession of the Collateral may be necessary

or advisable to perfect the collateral assignment and security interests granted hereby, Borrower shall deliver such Collateral to Agent upon the request of Agent or any Lender.

Section 6.05. Super Priority Nature of Obligations and Lender's Liens.

(a) The priority of Agent's and Lenders' Liens on the Collateral shall be set forth in the Interim Order and the Final Order.

(b) All Obligations shall constitute administrative expenses of Borrower in the Case, with administrative priority and senior secured status under Section 364(c) of the Bankruptcy Code. Subject only to the Carve-Out, such administrative claim shall have priority over any and all administrative expense claims, unsecured claims and costs and expenses against Borrower or its estate in the Case (or any subsequent proceeding or case under the Bankruptcy Code), at any time existing or arising, of any kind or nature whatsoever, including without limitation administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(b) (except as set forth in the Order), 546(c), 546(d), 726 (to the extent permitted by law), 1113, 1114 or any other provision of the Bankruptcy Code or otherwise and shall at all times be senior to the rights of Borrower, Borrower's estate and any successor trustee or estate representative of the Case or any subsequent proceeding or case under the Bankruptcy Code. The security interests and Liens granted to Agent and Lenders on the Collateral, and the priorities accorded to the Obligations shall have priority and senior secured status afforded by Section 364(c) of the Bankruptcy Code (all as more fully set forth in the Interim Order or the Final Order) senior to all claims and interests other than (A) Permitted Liens and (B) the Carve-Out. Notwithstanding anything to the contrary in this Section 6.05, such superpriority claims shall not be paid from Avoidance Action Recoveries.

Section 6.06 Limited Period for Objection to Liens and Claims. Borrower acknowledges and agrees that all parties-in-interest, excluding Borrower as to matters listed in clauses (a) and (b) of the immediately following sentence, shall have until the later of the date the Interim Order becomes a Final Order or ninety (90) days from the date the Interim Order is entered (the "Review Period") to review the Pre-Petition Credit Documents and any actions or conduct of Agent, Lenders and Borrower. If, during the Review Period, such parties-in-interest do not file an objection or other pleading with the Bankruptcy Court contesting in whole or in part (such objection or other pleading referred to herein as an "Objection") (a) the validity, perfection, priority and enforceability of the security interests and Liens of Agent or Lenders in and to the Pre-Petition Collateral or (b) asserting any claim or cause of action against Agent or any Lender, whether arising under applicable state or federal law, or the Bankruptcy Code, whether in connection with the Pre-Petition Obligations, the Pre-Petition Credit Documents or otherwise, all parties shall thereafter be forever barred from asserting or contesting any of the matters set forth in clauses (a) or (b) of this sentence and Agent and Lenders shall be deemed to hold allowed, perfected, enforceable and non-avoidable secured interests in the Pre-Petition Collateral.

Deleted: sixty

Deleted: 60

ARTICLE VII
EVENTS OF DEFAULT; CERTAIN REMEDIES UPON DEFAULT

Section 7.01. Events of Default. Each of the following events shall constitute an Event of Default:

- (a) Borrower's failure to pay as and when due any amount of principal or interest of the Loan; or
- (b) Borrower's failure to pay any Credit Administration Costs as and when due; or
- (c) any representation or warranty made by Borrower in any Credit Document is not true, accurate and complete in all material respects when made or is otherwise breached in any material respect; or
- (d) Borrower shall fail to fulfill the requirements of any insurance provisions of the Credit Documents; or

(e) Borrower's failure to notify Agent of any Notification Event as required in accordance with the requirements of Section 4.03; or

(f) Borrower's failure to fulfill a covenant of this Agreement or any other Credit Document, which failure is not within the scope of clauses (a) through (e) of this Section, and such failure shall continue for five (5) Business Days; or

(g) any statement, report, certificate, opinion, or other information furnished to Agent or any Lender with or in accordance with the terms of this Agreement (including all annexes, schedules, and exhibits to the Credit Documents and all materials delivered to Agent or Lender to satisfy any condition of this Agreement) is not true, accurate and complete in all material respects when so furnished to Agent or such Lender; or

(h) (i) the Case shall be dismissed or converted into a Conversion Case or Borrower shall file a motion or other pleading seeking the dismissal of any of the Case under Section 1112 of the Bankruptcy Code or otherwise; or

(ii) the Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to any creditor (other than Agent and Lender) to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any material Property of Borrower; or

(iii) any Credit Documents or Pre-Petition Credit Documents shall for any reason be asserted by Borrower not to be a legal, valid and binding obligation of the respective parties thereto, enforceable in accordance with its terms; or

(iv) a trustee under Chapter 11 of the Bankruptcy Code or a responsible officer or an examiner with enlarged power relating to the operation of the Business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) shall be appointed in the Case; or

(v) any super priority administrative expense claim or any Lien shall be granted which is *pari passu* with or senior to those of Agent and Lender; or

(vi) Borrower shall pay any pre-petition debt (other than as provided herein and other than (i) payments under customary first day orders ("First Day Orders") acceptable to Agent and Lender, (ii) payments as may be approved by the Bankruptcy Court that are reasonably acceptable to Agent and Lender, and (iii) payment on the Pre-Petition Obligations permitted or required under this Agreement; or

(vii) any order of the Bankruptcy Court or any reversal, revocation or modification of any existing order of Bankruptcy Court with respect to the Case affecting the Obligations shall be entered, without the consent of Agent and Lender; or

(viii) a motion by Borrower or any Person in the Case to obtain additional financing under 364 of the Bankruptcy Code, to use cash collateral of Agent or any Lender under Section 363 of the Bankruptcy Code, or to recover from any of the Collateral any costs or expenses of preserving or disposing of such Collateral under Section 506(c) or 552 of the Bankruptcy Code shall be filed; or

(ix) the Final Order shall not be entered within thirty (30) days after the entry of the Interim Order; or

(x) Borrower shall fail to comply with or perform any of the terms or conditions of the Interim Order or the Final Order, as applicable; or

(xi) Borrower shall commence any action which contests any provision of the Interim Order or the Final Order, or the validity, priority or enforceability of any Liens or security interest of Agent or any Lender; or

(i) Borrower shall use any portion of the proceeds of the Loan for any purpose other than as contemplated by Section 2.11 and Section 2.19; or

(j) if any Property or assets of Borrower shall incur damage or loss in any material respect.

Section 7.02. Acceleration. Upon the occurrence of an Event of Default, and at any time thereafter unless and until such Event of Default has been waived by Agent, on behalf of Lender, in writing or cured to the satisfaction of Agent as expressly acknowledged by Agent, on behalf of Lender, in writing, Agent, on behalf of Lenders, may take any or all of the following actions against Borrower: (a) declare the Maturity Date accelerated (without the necessity of any notice) on the Loan; and/or (b) declare the unpaid principal of, and all accrued and unpaid interest on, the Loan and any and all other outstanding and unpaid Obligations to be due, whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrower; and/or (c) enforce any and all rights and interests created and existing under the Credit Documents and all rights of set-off; provided, however, without limiting the generality of the foregoing, upon the occurrence of an Event of Default described in Section 7.01(h) above, (y) the Maturity Date shall be immediately accelerated (without the necessity of any notice), and (z) the unpaid principal of, and all accrued and unpaid interest on, the Loans and any and all other outstanding and unpaid Obligations shall be immediately due and payable to Agent, on behalf of Lender, without any action on the part of Agent or Lender, and without presentment, demand, protest, or other notice of any kind, all of which are hereby waived.

Section 7.03. Termination of Agreement to Lend. (a) Upon the occurrence of any Default or Event of Default, upon notice from Agent to Borrower, any Commitment or other obligation of Lenders to make Loans to Borrower under this Agreement or otherwise shall terminate, provided that, Lender shall remain obligated to fund the Carve-Out subject to the terms of this Agreement.

(b) All of Borrower's obligations under this Agreement and the other Credit Documents shall continue notwithstanding the termination of any Commitment or other obligation of Agent or any Lender to make Loans or extend other credit to Borrower under this Agreement or otherwise.

Section 7.04. Other Remedies. In addition to the foregoing, upon the occurrence of an Event of Default, Agent, on behalf of Lenders, may do any of the following:

(a) Collect and enforce payment of all of Borrower's Deposit Accounts, Accounts, General Intangibles, Chattel Paper, Instruments and Documents and rights and remedies with respect to such Property as would otherwise be exercised by Borrower, including: the power to take possession of and endorse in the name of Borrower, any Items of Payment of any kind and any other documents received; the power to extend the time of payment of, the time to sue for, and the time to give acquittances for, monies due; and the power to withdraw proceeds deposited in the name of Borrower in any bank or savings institution.

(b) Sell or otherwise dispose of the Collateral, or any part thereof, at public or private sale (or at any broker's board or on any securities exchange) or otherwise, for cash, upon credit or for future delivery as Agent shall deem appropriate.

Upon consummation of any such sale, Agent, on behalf of Lenders, shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any

such sale shall hold the property sold absolutely, free from any claim or right on the part of Borrower, and Borrower hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal which Borrower now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

Agent shall give Borrower at least five (5) days' written notice (which Borrower agrees is reasonable notice within the meaning of Section 9-504(3) of the UCC) of Agent's intention to make any sale of Collateral owned by Borrower. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange.

Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as Agent may fix and state in the notice of such sale, and at any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as Agent may (in its discretion) determine, and Agent shall not be obligated to make any sale of any Collateral if Agent shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given, and Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, to Borrower or anyone else, be made at the time and place to which the same was so adjourned.

In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by Agent until the sale price is paid by the purchaser or purchasers thereof, but Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for Collateral so sold and, in case of any such failure, such of the Collateral may be sold again upon notice to Borrower as set forth in this Section.

At any public sale made pursuant to this Section, Agent may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay or appraisal on the part of Borrower (all said rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to Agent from Borrower as a credit against the purchase price, and Agent may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to Borrower therefor.

For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; Agent shall be free to carry out such sale pursuant to such agreement, and Borrower shall not be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after Agent shall have entered into such an agreement, all Events of Default shall have been remedied and the Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon Agent, Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction.

Upon any sale of Collateral by Agent (including a sale pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral being sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to Agent or such officer or be answerable in any way for the misapplication thereof.

Borrower agrees that in selling or otherwise disposing of the Collateral and in exercising Agent's rights and remedies to the Collateral, Agent and/or any designee of Agent shall have the unrestricted and irrevocable right to advertise, sell, lease, license or otherwise dispose of the Collateral under and together with, and shall otherwise have the unrestricted and irrevocable right to use, without limitation, in connection therewith, any and all of Borrower's advertisements in any medium (and other marketing and promotional

materials in any medium), brochures, signs, stationery, business forms, packaging and shipping materials, programs, software, licenses, permits, consents, approvals, and patents, trademarks, copyrights, mask works, and other intellectual property relating to such Collateral and/or Borrower's business, and all agreements with employees and former employees relating to any of the foregoing, and Borrower shall indemnify and hold harmless Agent, Lender, and their designees, shareholders, directors, officers, employees, agents, attorneys, accountants, and other advisors, from and against any and all claims (including claims for royalties and/or money damages and/or claims for injunctive relief), liabilities, damages, royalties, and penalties of any Person, and Agent's and each Lender's costs and expenses (including attorney's fees) and those of their designees, shareholders, directors, officers, employees, agents, attorneys, accountants, and other advisors, incurred to defend against any thereof.

(c) With regard to all Collateral so collected, sold or otherwise disposed of, to the extent permitted by applicable law, Agent shall immediately apply any such proceeds, moneys or balances in accordance with this Agreement, first, to the settlement of all Liens on the Collateral prior to Agent's and Lenders' Lien; second, to the payment of all Collection Costs; third, to the payment of all Pre-Petition Obligations; and fourth, to the payment of all Obligations and, in case of any deficiency, Agent may collect such deficiency from Borrower (provided however, nothing in this provision shall be construed in derogation or limitation of any guaranty of payment or used to construe any guaranty of payment as being merely a guaranty of collection). In the event that the Pre-Petition Obligations and the Obligations are paid in full, Agent shall promptly remit to Borrower, any excess proceeds, moneys or balances.

Section 7.05. Waivers. Borrower waives presentment, demand, notice of dishonor, and protest, and all demands and notices of any action taken by Agent or Lender under this Agreement, except as otherwise provided herein, are hereby waived, and any indulgence of Agent or any Lender, substitution for, exchange of or release of collateral, or addition or release of any person liable on the collateral is hereby assented and consented to and shall not operate or be claimed to operate to release or exonerate any other collateral or person or any claim of Agent or any Lender.

ARTICLE VIII AGENT

Section 8.01. Appointment, Powers and Immunities. Each Lender hereby irrevocably (subject to the provisions of Section 8.02) designates and appoints St. Paul Fire and Marine Insurance Company (Agent), which designation and appointment is coupled with an interest, as Agent of such Lender under this Agreement and the other Credit Documents, and each such Lender irrevocably authorizes Agent, as Agent of such Lender, to take such action on its behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement, the other Credit Documents or otherwise, together with such other powers as are reasonably incidental thereto.

Section 8.02. Resignation or Removal of Agent. Agent may resign as Agent at any time by giving thirty (30) days' prior written notice thereof to Lenders and Borrower. Any resignation under this Section 8.02 shall take effect at the end of such thirty (30) day period or upon the earlier appointment of a successor Agent by Lenders. Agent shall be removed as Agent at any time with or without cause at the request of Lenders. Upon any resignation or removal of an Agent (or any other Agent hereunder), Lenders shall appoint a successor agent from among Lenders or, if such appointment is deemed inadvisable or impractical by Lenders, another financial institution satisfactory to Lenders.

ARTICLE IX MISCELLANEOUS

Section 9.01. Further Assurances. Borrower shall execute and deliver to Agent and each Lender such further assurances of this Agreement and the matters contemplated by this Agreement and the other

Credit Documents, including any agreements, assignments, instruments or other documents in favor of Agent or Lender, promptly from time to time upon Agent's or such Lender's written request.

Section 9.02. Successors and Assigns. This Agreement and the other Credit Documents shall be binding upon and inure to the benefit of Agent and each Lender and its successors and assigns and any holders of the Notes. Borrower shall not, without Agent's prior written consent, which consent may be withheld in Agent's discretion, assign Borrower's rights under this Agreement or any of the other Credit Documents to any Person, and any attempt of such an assignment by Borrower without Agent's prior written consent shall be void.

Section 9.03. Severability. Any provision of this Agreement prohibited by the laws of any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, or modified to conform with such laws, without invalidating the remaining provisions of this Agreement, and any such prohibition in any jurisdiction shall not invalidate such provisions in any other jurisdiction.

Section 9.04. Governing Law. This Agreement and the other Credit Documents and the rights and obligations of the parties hereunder and thereunder shall be governed by and construed and interpreted in accordance with the laws of the State of Maryland (excluding Maryland conflict of laws rules), including all matters of construction, validity and performance, regardless of the location of the parties or any Property, excepting, however, that the UCC (or decisional law) of a jurisdiction other than Maryland may provide the method of perfection of liens and security interests created under this Agreement and the other Credit Documents.

Section 9.05. Jurisdiction; Venue; Service. Borrower, Agent and each Lender acknowledge that the Bankruptcy Court shall have exclusive jurisdiction; provided, however, if the Case is dismissed, then Borrower shall consent to the jurisdiction as provided hereafter in this Section. If the Case is dismissed then Borrower irrevocably consents to the non-exclusive personal jurisdiction of the courts of the State of Maryland and, if a basis for federal jurisdiction exists, the non-exclusive jurisdiction of the United States District Court for the District of Maryland, Southern Division. Borrower agrees that venue shall be proper in any circuit court of the State of Maryland selected by Lender or, if a basis for federal jurisdiction exists, in any Division of the United States District Court for the District of Maryland, Southern Division. Borrower waives any right to object to the maintenance of any suit or claim in any of the state or federal courts of the State of Maryland on the basis of improper venue or of inconvenience of forum. Any suit or claim brought by Borrower against Lender that is based, in whole or in part, directly or indirectly, on this Agreement or any matters relating to this Agreement or the other Credit Documents, shall be brought in a court only in the State of Maryland. Borrower agrees that any forum outside the State of Maryland is an inconvenient forum and that a suit brought by Borrower against Lender in any court outside the State of Maryland should be dismissed or transferred to a court located in the State of Maryland. Each of the parties hereto further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at the address set out for notices in this Agreement, such service to become effective thirty (30) days after such mailing. Nothing herein shall affect the right of Lender to serve process in any other manner permitted by law or to commence legal proceedings or to otherwise proceed against Borrower or any other Person in any other jurisdiction.

Section 9.06. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

Section 9.07. Survival. All representations and warranties and indemnities made by Borrower herein shall survive delivery of the Note and the making of the Loans.

Section 9.08. Notices. Any notice required or permitted by or in connection with this Agreement shall be in writing and shall be made by telecopy, or by hand delivery, or by overnight delivery service, or by certified mail, return receipt requested, postage prepaid, addressed to the parties at the appropriate address set forth below or to such other address as may be hereafter specified by written notice by the parties to each other. Notice shall be considered given and received as of the earlier of the date of actual receipt, or the date of the telecopy or hand delivery, one (1) calendar day after delivery to an overnight delivery service, or three (3) calendar days after the date of mailing, independent of the date of actual delivery or whether delivery is ever in fact made, as the case may be, provided the giver of notice can establish that notice was given as provided herein.

As to Borrower:

Modern Continental Construction Co., Inc.
250 Milton Street
Dedham, Massachusetts 02026-2913
Attn: John H. Pastore, President
Facsimile: (617) 613-1123

With a copy to:

Hanify & King, P.C.
One Beacon Street
21st Floor
Boston, Massachusetts 02108
Attn: Harold B. Murphy, Esquire
Facsimile: (617) 556-8985

As to Lender:

St. Paul Fire and Marine Insurance Company, as Agent
2S1
One Tower Square
Hartford, Connecticut 06183
Attn: Richard R. Deshais
Facsimile (860) 277-1303

With a copy to:

DLA Piper US LLP
6225 Smith Avenue
Baltimore, Maryland 21209
Attn: Richard M. Kremen, Esquire and C. Kevin Kobbe, Esquire
Facsimile (410) 580-3001

Section 9.09. Agent Appointed Attorney-in-Fact. Subject to Section 362(a) and (d) of the Bankruptcy Code, the Interim Order and the Final Order, Borrower hereby appoints Agent as Borrower's attorney-in-fact, with power of substitution, which appointment is coupled with an interest and irrevocable, to do each of the following in the name of Borrower or in the name of Agent or otherwise, for the use and benefit of Agent, on behalf of Lenders, but at the cost and expense of Borrower, and with or without notice to Borrower: (a) notify the Account Debtors, Owners, escrow agents and similar Persons to make payments directly to Agent, and to take control of the cash and non-cash proceeds of any Collateral, (b) compromise, extend, or renew any of the Collateral or deal with the same as it may deem advisable, (c) release, make exchanges, substitutions, or surrender of all or any part of the Collateral, (d) remove from Borrower's place of

business all Records relating to or evidencing any of the Collateral or without cost or expense to Agent or any Lender, make such use of Borrower's places of business as may be reasonably necessary to administer, control and collect the Collateral, (e) repair, alter or supply goods, if any, necessary to fulfill in whole or in part the purchase order or similar order of any Account Debtor, (f) demand, collect, receipt for and give renewals, extensions, discharges and releases of any of the Collateral, (g) institute and prosecute legal and equitable proceedings to enforce collection of, or realize upon, any of the Collateral, (h) settle, renew, extend compromise, compound, exchange or adjust claims with respect to any of the Collateral or any legal proceedings brought with respect thereto, (i) endorse the name of Borrower upon any Items of Payment relating to the Collateral or upon any proof of claim in bankruptcy against an Account Debtor, (j) institute and prosecute legal and equitable proceedings to reclaim any of the goods sold to any Account Debtor obligated on an Account at a time when such Account Debtor was insolvent, and (k) receive and open all mail addressed to Borrower and notify the postal authorities to change the address for the delivery of mail to Borrower to such address as Agent may designate.

Section 9.10. Remedies Cumulative. No failure or delay on the part of Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between Borrower and Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies which Agent or any Lender would otherwise have. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Agent or any Lender to any other or further action in any circumstances without notice or demand.

Section 9.11. Amendments, Waivers and Consents. Neither this Agreement nor any other Credit Document nor any of the terms hereof or thereof may be amended, changed, waived, discharged or terminated unless such amendment, change, waiver, discharge or termination is in writing signed by Agent and each Lender.

Section 9.12. Waivers of Claims; Consequential and Punitive Damages. Borrower, Agent and each Lender hereby waive to the fullest extent permitted by law all claims to consequential and punitive damages in any lawsuit or other legal action brought by either of them against the other of them in respect of any claim between them arising under this Agreement, the other Credit Documents, or any other agreement or agreements between them at any time, including any such agreements, whether written or oral, made or alleged to have been made at any time prior to the date hereof, and all agreements made hereafter or otherwise, and any and all claims arising under common law or under any statute of any state or the United States of America, whether any such claims be now existing or hereafter arising, now known or unknown. In making this waiver Agent, Lender and Borrower each acknowledge and agree that there shall be no claims for consequential or punitive damages made by Agent or any Lender against Borrower and there shall be no claims for consequential or punitive damages made against Agent or any Lender by Borrower. Agent, each Lender and Borrower acknowledge and agree that this waiver of claims for consequential damages and punitive damages is a material element of the consideration for this Agreement.

Section 9.13. No Third Party Beneficiaries. There shall be no third-party beneficiaries of this Agreement.

Section 9.14. Entire Agreement. Borrower agrees that the Credit Documents are a complete and exclusive expression of all the terms of the Loan and agrees that all prior agreements, statements, and representations, whether written or oral, which relate in any way to the Loan are hereby superseded and shall be given no force and effect, and that no promise, inducement, or representation has been made to Borrower which relates in any way to the Loan, other than what is expressly stated in the Credit Documents. Borrower has executed the Credit Documents in full, understands the terms therein, and is executing this Agreement after the opportunity to have full consultation with counsel of Borrower's choice.

Section 9.15. *WAIVER OF JURY TRIAL.* BORROWER, AGENT AND EACH LENDER HEREBY WAIVE ALL RIGHT TO TRIAL BY JURY OF ANY AND ALL CLAIMS BETWEEN THEM OF ANY TYPE, INCLUDING CLAIMS ARISING UNDER AND/OR RELATING IN ANY WAY TO THIS AGREEMENT AND/OR THE OTHER CREDIT DOCUMENTS AND/OR THE TRANSACTIONS CONTEMPLATED BY THE CREDIT DOCUMENTS. BORROWER, AGENT AND EACH LENDER ACKNOWLEDGE THAT THIS IS A WAIVER OF A LEGAL RIGHT AND THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER CONSULTATION WITH COUNSEL OF ITS CHOICE.

IN WITNESS WHEREOF, Agent, each Lender and Borrower, intending to be legally bound hereby, have caused this Agreement to be duly executed and delivered under seal as of the date first above written.

BORROWER

WITNESS: MODERN CONTINENTAL CONSTRUCTION CO., INC.

_____ By: _____

LENDERS:

- 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.

WITNESS: FIDELITY AND GUARANTY INSURANCE COMPANY

_____ By: _____ (SEAL)
Name:
Title:

AGENT:

WITNESS: ST. PAUL FIRE AND MARINE INSURANCE COMPANY

_____ By: _____ (SEAL)
Name:
Title: