

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)**

In re:)	
MODERN CONTINENTAL CONSTRUCTION CO., INC.,)	Chapter 11
Debtor.)	Case No. 08-14558 (WCH)

NOTICE OF ENTRY OF INTERIM ORDER AND FINAL HEARING

PLEASE TAKE NOTICE that on June 24, 2008, the Debtor filed a *Motion for Entry of an Order (I) Authorizing the Use of Cash Collateral, (II) Granting Adequate Protection, (III) Scheduling a Hearing on the Further Use of Cash Collateral, and (IV) Granting Other Relief* (the "Motion") with the United States Bankruptcy Court for the District of Massachusetts (the "Court") in the above-captioned Chapter 11 case;

PLEASE TAKE FURTHER NOTICE that on June 25, 2008, the Court entered an *Interim Agreement and Consent Order Approving Use of Cash Collateral and Related Relief, and Setting Final Hearing Pursuant to Bankruptcy Rule 4001(c)* (the "Interim Order," a true and correct copy of which is attached to this Notice as Exhibit A);

PLEASE TAKE FURTHER NOTICE that a Final Hearing on the Motion shall be held on the Motion (and objections thereto) before the Court at **1:30 p.m. on Wednesday, July 2, 2008**, at the United States Bankruptcy Court for the District of Massachusetts, Ten Causeway Street, Room 1100, Boston, Massachusetts, 02222;

PLEASE TAKE FURTHER NOTICE that all objections or responses to the Motion must be filed with the Clerk's office, U.S. Bankruptcy Court, Ten Causeway Street, Room 1100,

Boston, MA 02222, with a copy to (a) proposed bankruptcy counsel to the Debtor, Hanify & King, Professional Corporation, One Beacon Street, Boston, MA 02108 (Attn: Harold B. Murphy, Esq.);, (b) the Office of the United States Trustee, 10 Causeway Street, Boston, MA 02222 (Attn: Eric Bradford, Esq.); and (c) counsel for the Lender, DLA Piper US LLP, 33 Arch Street, 26th floor, Boston, MA, 02110 (Attn: Matthew J. Iverson, Esq.) and DLA Piper US LLP, 6225 Smith Avenue, Baltimore, MD 21209 on or before **4:00 p.m. (EDT) on Monday, June 30, 2008.**

PLEASE TAKE FURTHER NOTICE that, if an objection is timely filed, served, and received, a written reply thereto shall not be required but may be filed and served so that it is received by the objecting party and the other parties set forth above no later than **4:00 p.m. (EDT) on Tuesday, July 1, 2008.**

MODERN CONTINENTAL
CONSTRUCTION CO., INC.,

By its proposed counsel,

/s/ Christian J. Urbano
Harold B. Murphy (BBO #326610)
D. Ethan Jeffery (BBO #631941)
Christian J. Urbano (BBO #644471)
HANIFY & KING, Professional Corporation
One Beacon Street, 21st Floor
Boston, MA 02108
Tel: (617) 423-0400
Fax: (617) 556-8985
Email: cju@hanify.com

Dated: June 27, 2008

EXHIBIT A

(Interim Order)

Boston, MA 02222, with a copy to (a) proposed bankruptcy counsel to the Debtor, Hanify & King, Professional Corporation, One Beacon Street, Boston, MA 02108 (Attn: Harold B. Murphy, Esq.);, (b) the Office of the United States Trustee, 10 Causeway Street, Boston, MA 02222 (Attn: Eric Bradford, Esq.); and (c) counsel for the Lender, DLA Piper US LLP, 33 Arch Street, 26th floor, Boston, MA, 02110 (Attn: Matthew J. Iverson, Esq.) and DLA Piper US LLP, 6225 Smith Avenue, Baltimore, MD 21209 on or before 4:00 p.m. (EDT) on **Monday, June 30, 2008.**

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MODERN CONTINENTAL
CONSTRUCTION CO., INC.,

By its proposed counsel,

/s/ Christian J. Urbano

Harold B. Murphy (BBO #326610)
D. Ethan Jeffery (BBO #631941)
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Dated: June 27, 2008

EXHIBIT A

(Interim Order)

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)**

In re:)	
)	
MODERN CONTINENTAL CONSTRUCTION CO., INC.,)	Chapter 11
)	
Debtor.)	Case No. 08-14558-WCH
)	

**INTERIM AGREEMENT AND CONSENT ORDER APPROVING USE OF CASH
COLLATERAL AND RELATED RELIEF, AND SETTING FINAL HEARING
PURSUANT TO BANKRUPTCY RULE 4001(C)**

Following the filing of the Motion for Entry of an Order (I) Authorizing the Use of Cash Collateral, (II) Granting Adequate Protection, (III) Scheduling a Hearing on the Further Use of Cash Collateral, and (IV) Granting Other Relief (the "Motion") filed by the debtor and debtor-in-possession Modern Continental Construction Co., Inc. (the "Debtor"), the Debtor and Seaboard Surety Company, St. Paul Fire and Marine Insurance Company,¹ St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Underwriters, Inc. and Fidelity and Guaranty Insurance Company (collectively, the "Lender") have reached agreement concerning the authorization of the Debtor to use the Lender's cash collateral and grant adequate protection liens.

The Debtor and the Lender hereby STIPULATE AND AGREE as follows:

A. The Debtor filed its petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on June 23, 2008 (the "Petition Date"). Pursuant to

¹ St. Paul Fire and Marine Insurance Company consists of St. Paul Fire and Marine Insurance Company individually and as agent for the Lender as defined *infra* (the "Surety Agent").

Sections 1107 and 1108 of the Bankruptcy Code, the Debtor remains in possession of its assets and has continued the operation and management of its business in this reorganization case.

B. The Motion was filed on June 23, 2008. The Debtor has provided actual notice by mail of the terms of the Motion and the relief requested to all entities claiming an interest in the collateral and cash collateral affected by the Motion including (a) the twenty (20) largest unsecured creditors for the Debtor, (b) the Office of the United States Trustee, (c) the Internal Revenue Service, (d) the Massachusetts Department of Revenue, (e) counsel for the BNH Group (as defined below), (f) the Other Sureties (as defined below), (g) counsel for the Lender, and (h) parties requesting notice and other parties-in-interest in this matter. Consequently, the Court concludes that (a) adequate notice of the Motion and an opportunity for a hearing have been given in accordance with the provisions of Sections 102, 105, 361 and 363 of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, (b) the Lender and the Debtor have agreed to the terms of this Interim Agreement and Consent Order Approving Secured Use Of Cash Collateral And Related Relief, And Setting Final Hearing Pursuant To Bankruptcy Rule 4001(c) (the "Interim Order") pursuant to Fed. R. Bankr. P. 4001(d) as a resolution of the issues raised by the Motion, and (c) no further notice relating to this proceeding is necessary or required.

C. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (G), (M), and (O), involving matters concerning the use of cash collateral under Section 363 of the Bankruptcy Code. Venue is proper in this district pursuant to 28 U.S.C. § 1408.

D. The Debtor is a closely-held Massachusetts corporation formed in 1967 by Lelio Marino ("Mr. Marino") and Kenneth Anderson ("Mr. Anderson") to perform general contracting services. The Debtor's first project was a sidewalk construction project in Peabody,

Massachusetts. Over time, the Debtor's operations substantially increased and it became the largest heavy civil construction company in the northeastern United States and one of the largest in the country. The Debtor served as the largest contractor (in terms of the dollar amount of contracts awarded), on the historic "Big Dig" Central Artery/Tunnel project in Boston, Massachusetts (the "CA/T Project").

E. The Debtor and certain of its affiliates and subsidiaries (collectively, the "Affiliates"),² are parties to certain credit agreements including *inter alia* (a) that certain Amended and Restated July Credit and Security Agreement (and Guaranty Agreement), dated February 12, 2004, and as further amended to the date hereof (as amended, the "July Surety Credit Agreement"), among the Lender and Surety Agent³ and (b) that certain Amended and Restated October Credit and Security Agreement (and Guaranty Agreement), dated February 12, 2004, and as further amended through the date hereof (as amended, the "October Surety Credit Agreement," and together with the July Surety Credit Agreement, the "Surety Credit Agreements") among the Lender, the Debtor and certain of the Affiliates.

F. Pursuant to that certain Fourth Amended and Restated Term Loan Agreement dated as of February 12, 2004 (the "Bank Credit Agreement") among Fleet National (now Bank of America, N.A., successor by merger to Fleet National Bank), KeyBank National Association, Sovereign Bank and other financial institutions from time to time a party thereto (collectively, the "Banks"), the Debtor and certain of the Affiliates, the Banks extended a credit facility to the

² The Affiliates include Modern Continental Companies, Inc., Modern Continental Construction Holding Co., Inc., Mystic Landing, LLC, Modern Continental South, Inc., Modern Continental Industries Holding Co., Inc., Ristorante Marino, Inc., Modern Continental Enterprises, Inc., Modern Continental Enterprises (St. Lucia) Limited, MCE-MCC Joint Venture, LLC, Modern Continental 600 Memorial, Inc., Independent Equipment Leasing, LLP, Modern Continental Construction Co. of California, Inc., Modern Continental Construction Co. of New York, Inc., Modern Continental Construcoes Ltda and Modern Continental Parque Do Brazil Ltda.

³ St. Paul Fire and Marine Insurance Company is the agent for the Lender (the "Surety Agent") pursuant to the Surety Credit Agreements (as defined *infra*).

Debtor and certain of the Affiliates. The Debtor and certain of the Affiliates are also parties to a Second Amended and Restated Note Purchase Agreement dated as of February 12, 2004 (the "Note Purchase Agreement") among Nationwide Life Insurance Company, Nationwide Life and Annuity Insurance Company, Provident Life and Accident Insurance Company and The Paul Revere Life Insurance Company (collectively, the "Noteholders", and together with the Banks the "BNH Group").

G. Prior to the Petition Date, the Debtor was a party to surety and/or indemnity agreements with Firemans' Fund Insurance Company, The American Insurance Company, National Surety Corporation, Lumbermens Mutual Casualty, Associated Indemnity Corporation, American Automobile Insurance Corporation, and other affiliates of Fireman's Fund Insurance Company (collectively, "FFIC"), National Union Fire Ins. Co. of Pittsburg, Continental Casualty and AIG (collectively, with FFIC, the "Other Sureties"). The Debtor does not believe that it will collect money on any projects on which the Other Sureties provided bonds and, in any case, the Other Sureties did not provide bonds on the projects that generated the Cash Collateral (as defined below).

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

I. The obligations of the Debtor to the Lender under the Surety Credit Agreements are secured by, among other things, first priority liens (the "Surety Liens") on the Debtor's accounts receivables and contract rights, and all proceeds of the foregoing (the "Prepetition Collateral").

J. The Lender is the Debtor's secured lender pursuant to the terms and conditions of the Surety Credit Agreements with the power, subject to the restrictions imposed by the Bankruptcy Code, to initiate, conduct, or otherwise prosecute the enforcement of the Lender's rights and remedies with respect to the Debtor in accordance with the Surety Credit Agreements and applicable law. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Surety Credit Agreements.

K. The Lender asserts that it has properly perfected its security interests in and liens on the Prepetition Collateral by, inter alia, filing financing statements in appropriate jurisdictions and locations, taking possession of certain of the Prepetition Collateral or documents evidencing title thereto and/or by taking other appropriate action.

L. By virtue of the foregoing and subject to paragraph 17 below, the Lender asserts that, (a) all of the Pre-petition Indebtedness pursuant to the Surety Credit Agreements is due and owing, is a legal, binding and enforceable obligation of the Debtor, among others, and is not subject to any offset, defense, claim, counterclaim or any other diminution of any type, kind or nature whatsoever; (b) all of the Surety Credit Agreements with respect to the Lender and the Debtor are valid and enforceable against the Debtor 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; (c) the Lender's liens and security interests in, to and against all of the Prepetition Collateral are valid, enforceable and properly perfected, and are not subject to avoidance under applicable state and federal law; and (d) there are no existing claims, causes of action of the Debtor, 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 the Lender or its

affiliates, predecessors, agents, representatives, employees or attorneys, arising from the business relationships between the Debtor on the one hand and the Lender or its affiliates, predecessors, agents, representatives, employees or attorneys on the other hand.

M. A need exists for the Debtor to obtain emergency use of cash collateral to fund critical business operations. A schedule of the Debtor's imminent cash requirements is set forth in the budget (the "Budget") attached hereto as Exhibit "A" and incorporated by reference herein.

N. In order to continue the operation of the Debtor's business operations and to preserve the value of its assets and the Prepetition Collateral, the Debtor requires the use of certain of its cash proceeds on hand in accordance with the Budget. In particular, the Debtor requires, and the Lender agrees, that the Debtor may use the cash proceeds on hand and the receivables that have been generated and continue to be generated from the Fountain Avenue and Route 3 construction projects (collectively, the "Projects"). In the event that all or a portion of the funds from the Route 3 construction project are not timely received, the Debtor and Lender agree that the Debtor may use \$1,000,000.00 of the accounts receivable currently being held in escrow related to the Modern/Obayashi Joint Venture (as more fully set forth in the Motion at Paragraph 31) ("Escrow Funds") (the Projects and Escrow Funds along with the proceeds and profits therefrom shall be collectively referred to as the "Cash Collateral").⁴ No other Cash Collateral shall be used by the Debtor without the Lender's prior express written consent or order of the Court. In return for the use of the Cash Collateral derived from the Projects, the Lender shall receive a first priority post-petition lien on any cash, retainage, contract rights, accounts receivable and any other proceeds and/or profits (collectively the "Post-Petition Collateral")

⁴ Any cash collateral arising out of other bonded jobs will be addressed at a later date through a subsequent cash collateral agreement or other court approved financing arrangement. The Debtor shall not have the right to use any of this cash collateral at this time absent the entry of an order of the Court or the Lender's prior written consent.

from the Debtor's projects as to which the Lender issued surety bonds . Any such liens shall be subject to the limitations in paragraph 3, below.

O. Good cause has been shown for the entry of this Interim Order. Among other things, entry of this Interim Order will minimize the disruption of the Debtor's existing business and is in the best interests of the Debtor, its creditors and other parties-in-interest.

Based upon the foregoing stipulations of the parties which are incorporated by reference into this Interim Order, and following a hearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Authorization to Use Cash Collateral/Weekly Monitoring/Termination. The Debtor is authorized to use Cash Collateral in the amounts and for the purposes set forth in the Budget for the period from June 23, 2008 through and including July 4, 2008, subject to a ten percent (10%) overall variance in the cumulative expenditures set forth in the Budget. The Debtor shall only use Cash Collateral in accordance with the time period and category limits set forth in the Budget and only for the periods set forth in the Budget, subject to the 10% overall variance. The amount of such Cash Collateral used during the period shall not exceed \$1,500,000. Notwithstanding the foregoing, the Debtor shall not be authorized to make any payments to insiders, or related persons or entities (or for the benefit of said persons or entities), during the period covered by this Interim Order, except for wages and related benefits earned in the ordinary course of business and excluding inter-company transactions in the ordinary course of business. On a weekly basis, the Debtor shall provide the Lender with a compliance report in the same spreadsheet form as the Budget, certified in writing under penalties of perjury as true and accurate by an authorized representative of the Debtor, that documents the Debtor's *actual* use of cash for the prior week and cumulative *actual* cash use since the Petition Date as to each

line item and category of the Budget ("Budget Compliance Report"). The authorization granted to the Debtor under this Interim Order shall terminate upon the earlier of: (i) July 4, 2008, (ii) entry by the Court of a final order authorizing use of the Lender's Cash Collateral pursuant to the Motion that expressly supercedes this Interim Order, (iii) entry by the Court of an order denying the Debtor's authorization to use Cash Collateral; or (iv) at the option of the Lender, upon the occurrence of an Event of Default under paragraph 8 below after notice to the Debtor and the expiration of a two (2) business day cure period. Notwithstanding any such termination, the rights and obligations of the Debtor and the rights, claims, security interests, liens and priorities of the Lender with respect to all transactions which occurred prior to the occurrence of any termination, including, without limitation, all replacement liens granted to the Lender as adequate protection and priority claims under Bankruptcy Code Section 507(b) which are provided under this Interim Order, shall remain unimpaired and unaffected by any termination of the Interim Order, shall survive any such termination of the Interim Order, and shall be binding upon the Debtor, any and all successors-in-interest to the Debtor, including any Chapter 11 trustee or any Chapter 7 trustee, all creditors and other parties in interest, and the Debtor's Estate (the "Estate").

2. Disbursements from Cash Collateral Account. The Debtor is strictly prohibited from making any disbursements from the Cash Collateral Account except as provided for in the Budget or consistent herewith, or as hereafter authorized in writing by the Lender, or as provided for in any order of this Court entered after notice to the Lender and an opportunity for hearing.

3. Adequate Protection Liens and Payments in Favor of Lender. As adequate protection for any diminution in the Lender's interest after the Petition Date in Cash Collateral, the Lender is hereby granted, pursuant to Sections 361 and 363 of the Bankruptcy Code, valid,

