

“Purchase Price”). The Debtor now seeks to employ Private Properties for the limited purpose of selling the Property to the Buyer for the Purchase Price. In further support of this application, the Debtor submits as follows:

BACKGROUND

1. On June 23, 2008 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of 11 U.S.C. §101, *et seq.* (the “Bankruptcy Code”) in this Court.

2. Since the Petition Date, the Debtor has managed its financial affairs and remained in possession of its property as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. Enterprises retained Private Properties to obtain a ready, willing and able purchaser for the Property.

4. Private Properties obtained the Buyer who agreed to purchase the Property from Enterprises for the Purchase Price.

5. Enterprises and the Debtor subsequently determined the Property was owned by the Debtor, not by its related entity.

6. The Debtor determined that the sale of the Property at the Purchase Price was in the best interests of its bankruptcy estate and proposes to sell the Property in this proceeding to the Buyer by private sale for the Purchase Price pursuant to the Motion to Sell.

RELIEF REQUESTED

7. Private Properties a licensed real estate brokerage in the Commonwealth of Massachusetts.

8. Pursuant to Section 327 of the Bankruptcy Code, the Debtor may employ professionals in connection with its operation of its business following the Petition Date.

9. The Debtor proposes to retain the Private Properties for the limited purpose of selling the Property to the Buyer.

10. Private Properties shall be entitled to a commission for the successful sale of the Property to the Buyer for the Purchase Price in the amount of \$10,000, which is equal to five-percent (5%) of the Purchase Price (the “Commission”). The Commission will be shared equally with Coldwell Banker Woods Real Estate (“Coldwell”), the co-broker on the listing. Neither Private Properties nor Coldwell shall be entitled to the Commission or to any other compensation if the Property is sold to any other party or at any other price. Any compensation paid to Private Properties shall be subject to the reasonableness limitations of Section 328 of the Bankruptcy Code.

11. Private Properties is responsible for marketing the Property and obtaining the Buyer under its agreement with Enterprises. Private Properties, therefore, has provided a service to the Debtor’s estate by obtaining the Buyer.

12. The Debtor seeks that any order employing Private Properties apply *nunc pro tunc* to the Petition Date. Private Properties was originally employed by Enterprises based upon the belief that Enterprises was the owner of the Property. Private Properties proceeded to market the Property and obtain the Buyer. Private Properties has therefore performed work to the benefit of the Debtor’s estate prior to the filing of this application and thus *nunc pro tunc* relief is appropriate.

DISINTERESTEDNESS

13. In connection with this application, Private Properties has filed the *Affidavit of John McQuaid in support of the Application by Debtor to Retain Private Properties Realty Group as Real Estate Broker Nunc Pro Tunc* (the “Affidavit”), including a statement pursuant to

Section 329(a) of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure 2014 and 2016, and MLBR 2014-1.

14. The Affidavit states that Private Properties has no involvement with the Debtor, creditors or other interested parties to the Debtor, except as otherwise set forth in the Affidavit.

15. Private Properties has agreed to further amend or supplement the Affidavit to any extent necessary.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order:

- a. Authorizing the Debtor to retain Private Properties as a real estate broker to market and sell the Property by private sale *nunc pro tunc* to June 23, 2008; and
- b. Providing such other and further relief as may be just.

Respectfully Submitted,

MODERN CONTINENTAL CONSTRUCTION
CO., INC.

By its counsel,

/s/ Christopher M. Condon
D. Ethan Jeffery (BBO #631941)
Christopher M. Condon (BBO #652430)
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Date: January ___, 2009

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

In re:

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

Debtor.

Chapter 11

Case No. 08-14558 - WCH

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**AFFIDAVIT OF JOHN MCQUAID IN SUPPORT OF
APPLICATION BY DEBTOR AND DEBTOR-IN-POSSESSION TO
RETAIN PRIVATE PROPERTIES REALTY GROUP, INC.,
AS REAL ESTATE BROKER NUNC PRO TUNC**

I, John McQuaid, being first duly sworn, depose and say:

1. I am a real estate broker and principal of Private Properties Realty Group, Inc., a real estate brokerage located at 21 Bow Street, North Reading, Massachusetts 01864 ("Private Properties"). I make this affidavit pursuant to Bankruptcy Code §327 and MLBR 2014-1, in support of the *Application by Debtor and Debtor-in-Possession to Retain Private Properties Realty Group, Inc., as Real Estate Broker* (the "Application") which seeks to employ Private Properties to market and sell the real property known as Lot 32, Bishops Way, Castle Hill Estates II, North Reading, Massachusetts (the "Premises").

2. I am familiar with the business of Private Properties, and have made inquiry concerning the facts set forth herein prior to making this Affidavit.

3. To the best of my knowledge, based upon my review of our client matters, neither I nor any member of Private Properties, represent any interest adverse to the estate, nor have any connection with the Debtor, creditors or any other party in interest, their respective attorneys or accountants, the United States Trustee or any person employed in the office of the United States

Trustee, except, as is set forth in greater detail in the Application, that Private Properties was previously employed by an affiliate of the Debtor's, Modern Enterprises, Inc. to market and sell the Premises.

4. Private Properties and I are disinterested persons within the meaning of §101(14) of the Bankruptcy Code.

5. Private Properties and I have and will market the Premises in a manner that is customary in the real estate industry. Except as may be required under any co-brokerage agreement, any compensation, fee, or allowance which may be claimed by me or Private Properties will belong wholly to Private Properties, and will not be divided, shared or pooled, directly or indirectly, with any other person or business, except that the agent to any buyer of the Premises may receive up to one-half of any commission paid to Private Properties by way of the Application and in accord with standard industry practice.

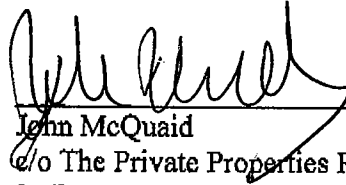
6. Private Properties and I have conducted, and will continue to conduct, research into any relationships we may have with the Debtor and its creditors, any accountants, attorneys or other professionals of the foregoing, and any other parties interested in this case. Although Private Properties and I have undertaken, and will continue to undertake, an investigation to identify any contacts with the Debtor or parties in interest, it is possible that such contacts have not been revealed. To the extent any such contacts are discovered, I will notify the Court by filing and serving a supplement to this affidavit.

7. The Debtor does not currently owe Private Properties a debt and Private Properties has no claim against the Debtor's bankruptcy estate.

8. I shall amend this statement immediately upon learning that (a) any of the within representations are incorrect, or (b) there is any change of circumstances thereto.

9. I have reviewed the provisions of MLBR 2016-1.

I declare under penalty of perjury that the foregoing is true and correct.



John McQuaid
c/o The Private Properties Realty Group, Inc.
21 Bow Street
North Reading, Massachusetts 01864

Dated: November 11th, 2008

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