

The Debtor requests this relief in order to ensure that its prepetition payroll is honored in the ordinary course of business. The Debtor's business operations will suffer disruption due to the loss of employees and/or harm to employee morale if the Debtor is unable to pay its prepetition wages in the ordinary course of business. Such harm to the Debtor's business operations will harm the Debtor's creditors.

In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction to consider and determine this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On June 23, 2008 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts (the "Court").

3. No trustee or examiner has been appointed, and no official committee of unsecured creditors has been appointed in this case. The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

A. The History of the Debtor

4. 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”).

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

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

B. Downturn in Business Operations

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

8. In early 2002, the Debtor began working with its senior lenders and noteholders in an effort to stabilize its financial situation. The details regarding these credit facilities are described below. Despite its best efforts and intentions, the Debtor continued to incur significant

losses on large construction jobs. For fiscal year ending June 30, 2003, the Debtor incurred losses in excess of \$174,000,000.

9. In the June 2003, due to ongoing job losses, the Debtor's primary bonding company, St. Paul Fire and Marine Insurance Company ("St. Paul")¹ joined the negotiations between the Debtor and its senior lenders. As a result of its financial situation, the Debtor was unable to procure bonds for any future work from and after early 2004. In its role as agent for the Lender (as defined below), St. Paul (hereinafter, the "Surety Lender Agent") began to advance loans to and make other financial accommodations for the Debtor and certain of its affiliates to permit the Debtor and certain of its affiliates to complete various bonded projects.

10. On November 12, 2004, Mr. Marino passed away unexpectedly. Mr. Marino had been a driving force in the Debtor's business, and after his death, the Debtor began in earnest a plan to wind down its operations in an orderly fashion.

11. At the time of Mr. Marino's death, the Debtor had twenty-four (24) open construction contracts with more than \$485,000,000 remaining to complete on such contracts. Many of the Debtor's projects were at critical stages of construction, including the CA/T Project and the Route 3 project. In cooperation with the Lender, the Banks and the Noteholders (each as defined below), the Debtor determined that fulfilling its obligations to owners by completing its open contracts was in the best interest of the owners, and various other stakeholders in the projects, including subcontractors, vendors and sureties, and the various stakeholders in the Debtor, including the Lender, Banks, Noteholders, other creditors and employees.

12. From and after November 2004, with funding from the Lender the Debtor has worked diligently to complete its open construction contracts. As of the Petition Date, most of

¹ St. Paul Fire and Marine Insurance Company has since merged with Travelers Insurance Company.

the projects have been completed or are in the final stages of completion. As the Debtor completed its projects, the Debtor reduced its workforce and wound down its operations.

13. The Debtor has a number of affiliates and subsidiaries (collectively, the “Affiliates”),² most of which are co-obligors with the Debtor on agreements of indemnity (as further described herein) executed in favor of the Lender.

14. Over the past four (4) years, the Debtor and the Affiliates have liquidated most of their assets (on which assets the Lender, the Banks and the Noteholders have and held liens) in an orderly fashion. The Debtor and the Affiliates paid the proceeds of such asset liquidations to the Lender, the Banks and the Noteholders to satisfy, in part, the liens on the assets.

C. Financing and Bonding Obligations

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

16. According to the Debtor’s books and records, the Debtor owes \$27,714,012 in principal under the Bank Credit Agreement and approximately \$21,197,283 in accrued and unpaid interest.

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.

17. The Debtor and certain of the Affiliates are parties to a Second Amended and Restated Note Purchase Agreement dated as of February 12, 2004 (the “Note Purchase Agreement”) among Nationwide Life Insurance Company, Nationwide Life and Annuity Insurance Company, Provident Life and Accident Insurance Company and The Paul Revere Life Insurance Company (collectively, the “Noteholders”).

18. According to the Debtor’s books and records, the Debtor owes the Noteholders \$13,732,241 in principal under the Note Purchase Agreement, and approximately \$5,867,338 in accrued and unpaid interest.

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

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

21. The Debtor and certain of the Affiliates are parties to (a) that certain Amended and Restated July Credit and Security Agreement (and Guaranty Agreement), dated February 12, 2004, and as further amended to the date hereof (as amended, the “July Surety Credit Agreement”), among Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Underwriters, Inc. and Fidelity and Guaranty Insurance Company (collectively, the “Lender”), the Surety Lender Agent, as agent for the Lender 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.

22. According to the Debtor’s books and records, the Debtor owes the Lender an aggregate amount of \$626,909,275 in principal under the Surety Credit Agreements, which amount does not include approximately \$261,204,542 in accrued and unpaid interest.

23. The obligations of the Debtor under the Surety Credit Agreements are secured by first priority liens (the “Surety Liens”) on the Debtor’s accounts receivables, equipment and contract rights, and all proceeds of the foregoing.

24. The Lender and the BNH Group are parties to various intercreditor agreements pursuant to which the Lender and the BNH Group have cooperated in the liquidation of the assets of the Debtor and the Affiliates and the allocation of the proceeds realized from such disposition.

D. Current Operations of the Debtor

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

26. From 2003 to the present, the Debtor has continued to complete its open contracts while gradually winding down its operations.

27. The Debtor's annual revenues for fiscal year 2003 were in excess of \$960,000,000, and for the fiscal year ending June 30, 2007, the Debtor's annual revenues were approximately \$92,000,000.

28. The Debtor currently has fifty-five (55) employees and operates in Massachusetts and New York.

29. As of the Petition Date, the Debtor is acting as general contractor on six (6) active projects. The Debtor's active projects are as follows:

(a) Fountain Avenue, Brooklyn, New York. The Debtor is completing a landfill capping project at Fountain Avenue, Brooklyn, New York ("Fountain Avenue"). The total contract value was approximately \$158,000,000, of which approximately \$2,000,000 of the work remains to be completed. The Debtor expects to complete the work on the Fountain Avenue project by July 2008, and the Debtor's maintenance obligations for Fountain Avenue will continue through March 2009.

(b) CA/T Projects. The Debtor was the general contractor on approximately twenty-four (24) contracts on the CA/T Project having an aggregate value of

approximately \$3,333,467,000, all of which have reached substantial completion (the “CA/T Contracts”). Fourteen (14) of the CA/T Contracts have not been closed out and accepted by the Massachusetts Highway Department, acting through its agent, the Massachusetts Turnpike Authority (“MHD/MTA”), and these contracts have been, and continue to be, the subject of extensive and protracted negotiations with MHD/MTA in order to resolve payment of outstanding requisitions, approved and unapproved change orders and retainage. The Debtor is completing work under four (4) CA/T Contracts:

(i) *Contract C28A1*. The Debtor is completing a grow and install project on the Rose Kennedy Greenway. The total contract value for the project was \$7,500,000, and less than \$100,000 of work remains to be completed.

(ii) *Contract C09C2*. The Debtor constructed the interchange finishes project in the South Bay section of the CA/T Project. This project, which had a total contract value of \$191,000,000, is in the punch list stage and approximately \$100,000 of work remains to be completed.

(iii) *Contract C17A6*. For this contract, the Debtor removed the former elevated highway which ran through Boston prior to the “Big Dig” and reconstructed the surface streets and tunnels. The total contract value was approximately \$497,350,000, of which approximately \$1,000,000 of work remains to be completed.

(iv) *Contract C19E6*. The Debtor completed the Leverett Circle ramps and interchange in the north area of the CA/T Project. The total value of this project was \$46,000,000, and currently it is in the punch list stage with approximately \$600,000 of work remaining.

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

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

28. The Debtor’s assets primarily consist of contract rights in its open contracts as well as receivables owing from owners of both completed and ongoing projects. Specifically, the Debtor’s assets include, but are not limited to, the following contract receivables:

(a) Route 3 Improvement Project. The Debtor is owed approximately \$17,000,000 by MHD with regard to the Route 3 project. The Debtor is required to perform miscellaneous services valued at approximately \$1,000,000 in order to obtain final payment of this settlement amount.

(b) Settlement from Modern/Obayashi Joint Venture. The Debtor and Obayashi Corporation (“Obayashi”) were joint venture partners on four (4) CA/T Contracts, two (2) contracts with the Massachusetts Bay Transportation Authority and one (1) contract with the Massachusetts Water Resources Authority. As a result of a reach and apply claim, \$7,399,900 in proceeds of receivables was initially escrowed to resolve the reach and apply issues, and an additional \$525,015.72 has been escrowed since October 26, 2006. The balance of the escrow account is approximately \$8,400,000.

(c) Amounts owing from MHD/MTA. MHD/MTA has not paid the Debtor for work performed the CA/T Project after October 2007. MHD/MTA owes the Debtor (i) \$5,000,000 in contract balances, (ii) \$18,000,000 for retainage earned and scheduled to be released to the Debtor and (iii) \$50,000,000-\$70,000,000 in unapproved change orders and claims.

(d) Additional Potential Recoveries. The Debtor has claims relating to work performed pursuant to other CA/T Contracts, namely Contract C09B1 (immersed tube tunnels at Fort Point Channel) and Contracts C17A1 and C17A9 (tunneling projects at Congress to High Street and the Aquarium Station). These claims are the subject of pending litigation or mediation.

30. The Debtor also has cash on hand of approximately \$1,100,000. As set forth above, the Debtor's aggregate remaining contract values are approximately \$9,000,000, and the Debtor has accounts receivable and contract claims which, in the aggregate, have a value in excess of \$100,000,000.

E. Bankruptcy and Orderly Wind-up of Affairs

31. The filing of this bankruptcy petition was precipitated by the Debtor's failure to receive payment from MHD/MTA for work previously performed on the CA/T Project, and for work which the Debtor continues to perform on CA/T Project. The Authority has not paid the Debtor for work completed after October 2007, and the Debtor has not been paid for significant work it performed due to the Authority's refusal to approve change orders. The Authority's refusal to pay amounts due under the Debtor's contracts impedes the Debtor's ability to complete the projects in an orderly manner, which the Debtor has otherwise been able to accomplish from

2004 to date, and threatens the Debtor's ability to keep subcontractors working on the CA/T Project.

32. The purpose of the bankruptcy filing is to permit the Debtor to continue the orderly completion of its remaining contracts and conclude the wind-up of its business while the Debtor fulfills its obligations to its employees, project owners, subcontractors, vendors and suppliers.

33. Simultaneously with the filing of this Motion, the Debtor has filed a motion seeking interim and final approval of the use of cash collateral (the "Cash Collateral Motion"). The budget attached to the Cash Collateral Motion contemplates the payments described in this Motion, subject to this Court's approval.

RELIEF REQUESTED

A. Wages and Salaries

34. The Debtor seeks authority to pay any outstanding wages and salaries accrued by its employees prior to the Petition Date (collectively, the "Prepetition Wage Obligations"), and to pay the full amount of unpaid reimbursable expenses and benefits.

35. The Debtor estimates that all of the Prepetition Wage Obligations that would be paid if the relief sought in this Motion is granted would be approximately \$106,413, or approximately \$1,866.89 per employee (inclusive of salaried employees). This total amount consists of accrued but unpaid wages and salaries (inclusive of applicable taxes) as of the Petition Date. The Debtor does not propose to pay any employee an amount in excess of the \$10,950 priority cap set forth in Section 507(a)(4) of the Bankruptcy Code. A true and correct

list of the amounts to be paid to each employee pursuant to this Motion is set forth on the attached Exhibit A.³

36. Under standard payroll procedures, the Debtor's employees are paid in arrears on Thursday for the one-week pay period ending on the previous Saturday. Accordingly, there will always be amounts owed to the Debtor's employees in arrears. The Debtor last issued payroll checks to its employees on June 19, 2008 for the period ended June 13, 2008. Although the payroll checks for this period were issued prior to the filing of the Debtor's bankruptcy petition, out of an abundance of caution, the Debtor is requesting that the relief requested in this Motion extend, if necessary, to any June 19, 2008 payroll check that employees may present for payment or deposit subsequent to the Petition Date. The Debtor requests that the Court authorize and direct its bank to make such payments and honor such checks regardless of whether they were issued or presented prior to or after the Petition Date. The gross payroll for the checks funded on June 19, 2008 was \$98,726.

37. As a result of the timing of the filing of this Chapter 11 case, employee paychecks issued on June 26, 2008 will include payment for the prepetition period of June 16, 2008 to June 20, 2008. The Debtor is requesting that it be authorized, but not directed, to issue in the ordinary course of business, payroll checks that include payments for this prepetition period. The gross payroll anticipated for the checks to be funded on June 26, 2008, relating to the prepetition period, is \$106,413.

38. As set forth above, the Cash Collateral Motion filed contemporaneously with this Motion contemplates the payments described in this Motion, subject to the approval of this

³ Contemporaneously with the filing of this Motion, the Debtor is filing a motion to impound Exhibit A pursuant to MLBR 9018-1 because it contains information regarding the wages, salaries and benefit information of the Debtor's employees that the Debtor makes every effort to maintain confidential and protected, and revelation of such employee information could irreparably harm the Debtor and each employee.

Court. The related budget earmarks sufficient funds to satisfy all the Prepetition Wage Obligations so that the Debtor's bank will not be prejudiced by an order directing it to honor the Debtor's checks.

39. As of the Petition Date, the Debtor has deducted from its employee's paychecks certain payments on behalf of payroll taxes and the employee's portions of FICA and FUTA, legally ordered wage garnishments and/or domestic support obligations, and dues for employees who are members of construction or other unions (collectively the "Deductions"). In the ordinary course of business, the Deductions are paid to third parties in accordance with applicable law. The employee portion of the Deductions may constitute trust funds that are not property of the Debtor's bankruptcy estate. In any case, the relevant taxing authorities would hold a priority claim under Section 507(a)(8) of the Bankruptcy Code for the tax portion of the Deductions. In addition, the employer portion of the FICA and FUTA taxes associated with the prepetition payroll also constitute priority claims under Section 507(a)(8) of the Bankruptcy Code and such payments do not prejudice creditors of the Debtor's estate. Accordingly, creditors will not be prejudiced by the payment of the Deductions or the payment of the employer portions of the FICA and FUTA taxes associated with the prepetition payroll.

B. Reimbursement Obligations

40. The Debtor customarily reimburses its employees who incur a variety of business expenses in the ordinary course of performing their duties on behalf of the Debtor. These reimbursable expenses include, among other expenses, those incurred in connection with travel, long-distance telephone charges, and cellular phone charges. In some instances, employees may use personal credit cards for which the employee pays the bill and upon submission of the receipt, is then reimbursed by the Debtor. Because the employees do not always submit claims

for reimbursement promptly, it is difficult for the Debtor to determine the exact amount outstanding at any particular time. The Debtor also seeks authority to continue to reimburse its employees for such expenses on a post-petition basis, in accordance with its prepetition practices, and to authorize and direct the Debtor's banks to honor checks issued prior to the Petition Date.

C. Vacation Pay and Sick Pay

41. The Debtor requests the authority to honor, in the ordinary course of business, earned but unused vacation time and/or sick leave for employees that accrued prior to the Petition Date.

D. Benefits

42. The Debtor has established various plans and policies for the benefit of its employees, which include a health plan covering medical insurance and dental insurance, workers' compensation insurance, and a non-matching 401(k) retirement plan (collectively, the "Employee Benefits"). The employees' cost for such Employee Benefits is deducted from their wages.

43. The Debtor provides health insurance through Blue Cross/Blue Shield of Massachusetts and Oxford Health (collectively, the "Health Insurers"). Employees pay approximately 10% of the cost of their health insurance, and the Debtor pays the remainder. The total monthly premium owed to the Health Insurers is approximately \$21,857. The premiums to the Health Insurers are paid in advance. As such, the premiums for the months of June and July have already been paid to the Health Insurers in the ordinary course of business. The Debtor also maintains dental insurance through Delta Dental of Massachusetts ("Delta Dental"). Employees contribute approximately 10% of the costs of such dental insurance. The total monthly premium

owed to Delta Dental is approximately \$3,170. The premiums to Delta Dental are paid in advance. As such, the premiums for the month of June and July have already been paid to Delta Dental. The Debtor seeks the authority to continue the medical and dental insurance programs and to pay the premiums to Health Insurers and Delta Dental on a postpetition basis, in accordance with its prepetition practices, and to authorize and direct the Debtor's bank to honor checks issued prior to the Petition Date.

44. In the ordinary course of its business the Debtor maintains workers' compensation insurance. Although the premiums on this policy are paid annually in advance, the insurance company can request an audit and adjust any premiums upward or downward. The Debtor seeks authority to pay any prepetition amounts that may be owed on account of its workers' compensation policy.

45. In any event, for each of the foregoing plans, no employee will be paid more than the total number of employees multiplied by \$10,950, less the aggregate amount paid to such employees under Section 507(a)(4) of the Bankruptcy Code, plus the aggregate amount to be paid by the estate on behalf of such employees to any other employee benefit plan. See 11 U.S.C. §§ 507(a)(4); 507(a)(5).

E. Authorization of Banks to Process Payments

46. The Debtor requests authority to use its existing payroll account and forms for a limited period of time to enable paychecks relating to prepetition periods of service (June 6, 2008 through June 12, 2008 and June 12, 2008 through June 20, 2008) to be honored in the ordinary course of business. The Debtor would be subject to otherwise unnecessary administrative burdens if it is required to close its prepetition payroll account until these paychecks are honored by the Debtor's bank. Dishonor of the payroll checks of the Debtor would disrupt business

operations and decrease substantially employee morale. Accordingly, the Debtor requests authority to continue to utilize the prepetition payroll account the existing account number, and to use its existing payroll checks and other business forms without alteration or change, through and including the funding of the June 26, 2008 payroll.

F. Other Amounts Due to Employees.

47. In 2004, the Debtor had a number of open projects with approximately \$485,000,000 worth of work remaining to be completed. To ensure that its executives and project staff would remain with the Debtor to provide continuity on the projects and complete the remaining work a timely manner, the Debtor, in cooperation with its sureties, established a key employee retention plan (together with the obligations under separate agreements with Mr. Anderson (described below) the “Retention Plan”).

48. The Retention Plan established certain types of payments to employees, including retention payments, severance payments, project incentive payments, loss incentive payments, discretionary program payments and periodic raises. The amount of the payments varied according to the position each employee held with the Debtor and/or its affiliates. The Debtor entered into separate agreements with its employees to memorialize the payments that would be made on certain dates or upon the fulfillment of certain project milestones.

49. Pursuant to a KERP Support Credit Agreement dated as of December 22, 2004 (the “KERP Credit Agreement”) by and among the Lender, the Debtor and various affiliates and subsidiaries of the Debtor as borrowers or guarantors (collectively, the “Obligors”), the Lender previously agreed to fund the Retention Plan if the Obligors did not have sufficient funds to make payments under the Retention Plan, subject to the terms and conditions of the KERP Credit Agreement, and pursuant to the Anderson Loan Credit Agreement, dated as of October 26, 2005,

by and among the Lender, the Debtor and the Obligors (the “Anderson Severance Credit Agreement”).

50. Approximately \$1,537,759 remains to be disbursed to employees under the Retention Plan, including a payment due to Mr. Anderson pursuant to separate agreements among the Lender, the Debtor and the Obligors. Further, certain employees of the Debtor may be owed additional sums if such employees remain with the Debtor after June 30, 2008. The Debtor and the Obligors are currently in discussions with the Lender with respect to the possibility of Lender’s funding the Retention Plan in a manner that the Debtor believes should be acceptable to the Lender and the Debtor’s creditors.

GROUND FOR RELIEF REQUESTED

51. Pursuant to Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, a debtor’s employees’ claims for “wages, salaries, or commissions, including vacation, severance and sick leave pay” earned within 180 days before the Petition Date, and claims against the Debtor for contributions to employee benefit plans arising from services rendered within 180 days before the Petition Date, are afforded unsecured priority from status to the extent of \$10,950 per employee. 11 U.S.C. §§ 507(a)(4), (a)(5). Furthermore, Section 363(b) of the Bankruptcy Code provides that the debtor-in-possession, “after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code provides, in part, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].”

11 U.S.C. § 105(a).⁵ The Debtor believes that the Prepetition Wage Obligations and the other employee-related obligations set forth in this Motion substantially constitute priority claims under Sections 507(a)(4) and (a)(5).

52. It is crucial that the Debtor be permitted to pay the Prepetition Wage Obligations, reimbursable expenses, the Deductions and the Employee Benefits, and to honor prepetition vacation and sick pay in the ordinary course of business. Approval of such payments will assist in maintaining the continuity of the Debtor's business and will preserve the morale of its employees during the administration of the estate. Moreover, a potential loss (or delay in receipt) of earned wages or salaries would work a hardship on the employees.

53. The authority to continue to pay the employees is necessary to ensure that the Debtor can retain employees knowledgeable about the Debtor's day-to-day operations and financial affairs, and to provide an incentive for the Debtor's employees to continue to provide quality services to the Debtor's customers.

54. Similar relief to the relief requested in this Motion has been granted in this and other courts. See, e.g., In re The Educational Resources Institute, Inc., Case No. 08-12540 (Bankr. D. Mass. 2008); In re Iron Age Corp., Case No. 07-40217 (Bankr. D. Mass. 2007); In re Tools 4 Hire, Case No. 06-14004 (Bankr. D. Mass. 2006); In re Plymouth Rubber Co., Case No. 05-16088 (Bankr. D. Mass. 2005); In re Tower Automotive, Inc., Case No. 05-10578 (Bankr. S.D.N.Y. Feb. 3, 2005); In re Interstate Bakeries Corp., Case No. 04-45814 (Bankr. W.D. Mo. Sept. 24, 2004). The Debtor submits that the circumstances of this case warrant similar relief.

⁵ The purpose of Section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 Lawrence P. King, *Collier on Bankruptcy* ¶ 105.01 (15th ed. 2004). Thus, Section 105(a) essentially codifies the Bankruptcy Code's inherent equitable powers. *See In re Management Technology Corp.*, 56 B.R. 337, 339 (Bankr. D.N.J. 1985) (court's equitable power is derived from Section 105 of the Bankruptcy Code). Accordingly, this Court has the authority to grant the relief requested in this Motion.

55. For the foregoing reasons, the Debtor believes that granting the relief requested in this Motion is appropriate and in the best interests of its estate and creditors.

EMERGENCY HEARING REQUESTED

56. The Debtor requests that the Court schedule a hearing on the Motion on or before Wednesday, June 25, 2008, as wage payments must be funded on June 25, 2008. Pursuant to MLBR 9013-1(h), the Debtor has filed an motion for emergency consideration contemporaneously with this Motion.

NOTICE

57. The Debtor has or will serve this Motion by overnight mail, facsimile, by this Court's ECF System, and/or by e-mail, and will serve the notice of the hearing on this Motion in the same manner, on the Office of the United States Trustee, each taxing authority that has a claim in this case, the Debtor's 20 largest unsecured creditors, all parties known by the Debtor claiming to have liens on or security interests in any of the Debtor's assets, and all parties who have filed a notice of appearance in this case. The Debtor submits that such service provides sufficient notice in light of the nature of the relief requested and request that the Court approve such notice.

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WHEREFORE, the Debtor respectfully request that this Court enter an Order, substantially in the form attached to this Motion as Exhibit B, (a) granting the relief requested in the Motion, and (b) granting to the Debtor such other and further relief as the Court deems just and proper in the circumstances.

Respectfully submitted,

MODERN CONTINENTAL
CONSTRUCTION CO., INC.,

By its proposed counsel,

/s/ Harold B. Murphy
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Dated: June 24, 2008
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EXHIBIT A

(Employee Wage and Benefit Information – Subject to Motion to Impound)

EXHIBIT B

(Proposed Order)

prepetition practice; and it is further

ORDERED, that the Debtor is authorized to remit all Deductions made in the ordinary course of business and related to Employee Benefits to the fund, account, person, or entity entitled to receive them; and it is further

ORDERED, that the Debtor is authorized to make accrued prepetition contributions relating to Employee Benefits and is authorized to continue postpetition its prepetition Employee Benefits; and it is further

ORDERED, that the Debtor's bank is hereby authorized and directed to honor the Debtor's and/or its insurers' prepetition checks for the payment of Prepetition Wage Obligations, Employee Benefits and other prepetition employee obligations as set forth in the Motion; and it is further

ORDERED, that nothing in this Order shall be deemed to be an assumption or adoption of any agreement or policy; and it is further

ORDERED, that notwithstanding Rules 4001 and 6004(g) of the Federal Rules of Bankruptcy Procedure, this Order shall become effective upon its entry; and it is further

ORDERED, that this Court shall retain jurisdiction to construe and enforce the terms of this Order.

Dated: June ____, 2008

The Honorable William C. Hillman
United States Bankruptcy Judge

500399-v1