

SETTLEMENT AGREEMENT AND LIMITED RELEASES

This Settlement Agreement, and its included Limited Releases (collectively, the “Settlement Agreement”) is entered into as of the ___ day of January, 2009 by and between Modern Continental Construction Co., Inc. (“Modern”), Zurich American Insurance Company (“Zurich”), and ACE American Insurance Company (“ACE”) (collectively, the “Insurers”).

Recitals

WHEREAS, Zurich and ACE jointly issued, in connection with the Central Artery/Tunnel Project (the “Project”), a Builder’s Risk insurance policy, which policy included coverage to Modern as an additional insured with respect to Modern’s contract C09B1 (the “Policy”);

WHEREAS, a dispute arose between Modern and the Insurers regarding insurance coverage under the Policy for damages allegedly sustained by Modern as a result of floods which occurred in 2001, during the construction of Modern’s contract C09B1 (the “Floods”);

WHEREAS, Modern subsequently filed an amended complaint against the Insurers, in an action entitled: Modern Continental Construction Co., Inc. v. Zurich American Insurance Company and ACE American Insurance Company, which action is presently pending in Suffolk Superior Court, Civil Action No. 2003-03197-BLS (Gants, J.) (the “Amended Complaint” and the “Action,” respectively); and

WHEREAS, Modern is a debtor in Chapter 11 Case No. 08-14558 (WCH) pending in the United States Bankruptcy Court for the District of Massachusetts (the “Bankruptcy Court”).

NOW, THEREFORE, for and in consideration of the mutual promises hereinafter set forth herein, the sufficiency of which is acknowledged by each party to this Settlement Agreement, Modern and the Insurers hereby agree and covenant as follows:

1. **Recitals.** The defined terms set forth in the foregoing recitals are hereby incorporated into the body of this Settlement Agreement and are made a part hereof.
2. **Effective Date.** This Settlement Agreement shall be effective as of the date the Bankruptcy Court enters an order approving the Settlement Agreement, which order is not subject to a stay pending appeal (the “Effective Date”).
3. **Payment of the Settlement Amount.** On or before sixty (60) days after the Effective Date, Zurich shall pay to Modern (in the manner described below) the sum of \$3,952,500, and ACE shall pay Modern the sum of \$3,797,500 (collectively, the “Settlement Amounts”). These payments constitute net payments to Modern and account for, and shall not be reduced on account of, any deductible(s) specified in the Policy. For the avoidance of any doubt, it is expressly agreed by Zurich and ACE that Modern does not now, and shall not hereafter, owe any deductible(s) to Zurich or ACE with respect to the Floods, the Action, or the payments by the Insurers of the Settlement Amounts. The Settlement Amounts will be wired by the Insurers to the trust account of Modern's counsel, Hinckley Allen Snyder, and/or be paid by the Insurers by check(s) made payable to Modern’s counsel for deposit in its trust account, such funds thereafter to be disbursed as directed by the Bankruptcy Court. If Zurich fails to pay the sum of \$3,952,500 (or some portion thereof) within 60 days of the Effective Date, then Zurich will pay Modern interest on the unpaid amount accruing at the rate of 1 percent/month non-compounded. If ACE fails to pay the sum of \$3,797,500 (or some portion thereof) within 60 days of the Effective Date, then ACE will pay Modern interest on the unpaid amount accruing at the rate of 1 percent/month non-compounded.

4. **Additional Settlement Terms.** Effective as of the Effective Date, Modern will waive Zurich and ACE's payment of Modern's attorney's fees for the deposition of Kevin Flaherty taken on September 27, 2008.

5. **Limited Releases of ACE and Zurich by Modern.** Effective as of the Effective Date, Modern, on behalf of its successors, assigns, predecessors, and affiliates, and each of its past and present management board, officers, agents, employees and attorneys, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby remises, releases and forever discharges Zurich and ACE, and all of their successors, assigns, predecessors, subsidiaries and affiliates, and all of their respective past and present shareholders, officers, directors, members, managing members, partners, agents, employees, and attorneys, from any and all past, present, or future debts, demands, actions, causes of action, rights, suits, sums of money, accounts, covenants, contracts, controversies, agreements, promises, damages, costs, expenses, liabilities, obligations, and losses, and any and all claims of any kind, nature, and description whatsoever, whether contractual, tortious, statutory, legal, equitable or otherwise, including but not limited to claims for compensatory and/or consequential damages, punitive damages, economic loss, loss of profit, interest, compensation, property damage, subrogation, contribution, indemnity, attorneys' fees, declaratory relief, unfair or deceptive trade or insurance acts or practices, bad faith, and extra-contractual damages or remedies of any type which Modern has or ever had against Zurich and ACE, known or unknown, or which may hereafter accrue or otherwise be acquired, in connection with, on account of, or in any way growing or arising from the Floods, including, without limitation, such claims as were asserted in the Amended Complaint, and/or such claims related to the Floods which could have been asserted in the Amended Complaint. Modern further warrants and represents that it owns and has not sold,

pledged, hypothecated, assigned or transferred any such claims, or any part of any such claims. Specifically excepted from this release by Modern of Zurich and ACE are the payment and other obligations of Zurich and ACE pursuant to this Settlement Agreement, and all claims Modern may have against Zurich and ACE relating to any insurance policies issued by Zurich and/or ACE to Modern, other than claims set forth in the Amended Complaint or related to the Floods. Also specifically excepted from this release are any and all claims Modern may have against Zurich and/or ACE relating to or arising out of damage to multi-layer steam and condensate lines which were installed by Modern as part of the Central Artery/Tunnel Project.

6. **Limited Release of Modern by Zurich and ACE.** Effective as of the Effective Date, Zurich and ACE, on behalf of all of their successors, assigns, predecessors, subsidiaries and shareholders, and each of their respective past and present agents, employees and attorneys, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby remise, release and forever discharge, Modern, and all of its successors, assigns, predecessors, subsidiaries, affiliates and bonding companies and all of their respective past and present management board, shareholders, officers, directors, members, managing members, partners, agents, employees, construction managers, contractors and attorneys, from any and all past, present, or future debts, demands, actions, causes of action, rights, suits, sums of money, accounts, covenants, contracts, controversies, agreements, promises, damages, costs, expenses, liabilities, obligations, and losses, and any and all claims of any kind, nature, and description whatsoever, whether contractual, tortious, statutory, legal, equitable or otherwise, including but not limited to claims for compensatory and/or consequential damages, punitive damages, economic loss, loss of profit, interest, compensation, property damage, subrogation, contribution, indemnity, attorneys' fees, declaratory relief, unfair or deceptive trade or insurance

acts or practices, bad faith, and extra-contractual damages or remedies of any type which Zurich and/or ACE have or ever had against Modern in connection with the Action or claims made in connection with the Floods, known or unknown, or which may hereafter accrue or otherwise be acquired, on account of, or in any way growing out of or arising from the Floods. Zurich and ACE each further warrant and represent that they own and have not sold, pledged, hypothecated, assigned or transferred any such claims, or any part of any such claims. Specifically excepted from this release of Modern by Zurich and ACE are the obligations of Modern pursuant to this Settlement Agreement, and any claims Zurich and/or ACE may have against Modern that are not related to the Action or the Floods, including, without limitation, claims Zurich and/or ACE may have against Modern relating to or arising from Modern's claim(s) for alleged damage(s) to multi-layer steam and condensate line which were installed by Modern as part of the Central Artery/Tunnel Project.

7. **No Admission of Liability.** It is expressly understood and agreed by the parties hereto that the execution of this Settlement Agreement is not intended to be, nor shall it be deemed, construed, or treated, in any respect, as an admission of liability or a breach of duty on the part of any party hereto. The parties hereby expressly deny any liability to one another, and recognize that the Settlement Amount is being paid and accepted for purposes of avoiding the costs and uncertainties of litigation.

8. **Stipulation of Dismissal.** Modern, Zurich and ACE shall, contemporaneously with the execution of this Settlement Agreement, cause their counsel to execute a Stipulation of Dismissal, dismissing claims released hereby with prejudice, and dismissing claims excepted from the releases herein without prejudice. Such dismissal shall be without costs, without attorney's fees, and with all rights of appeal waived, and in the form which is attached hereto as

Exhibit A. Said Stipulation of Dismissal shall be filed with the Court by Modern's counsel when Modern has received good funds pursuant to Paragraph 3, above. The Suffolk Superior Court has issued a Nisi Order which is set to expire on April 15, 2009. In the event that Modern has not received good funds pursuant to Paragraph 3, above, by April 1, 2009, Zurich and ACE agree to submit a joint motion to the Court extending the Nisi Order.

9. **Amendment and Waiver**. No alleged supplement, modification or waiver of this Settlement Agreement, or any part hereof or thereof shall be binding except by an instrument in writing signed by all parties hereto and delivered to each other.

10. **No Oral Promises or Representations**. This Settlement Agreement contains all the terms and conditions agreed upon by the parties hereto. All prior representations and promises made by any party hereto to another, whether in writing or orally, are understood by the parties hereto to be merged in this Settlement Agreement. Any prior alleged agreements, promises, negotiations or representations, oral or written, not expressly set forth herein are of no force or effect. The terms of this Settlement Agreement are contractual and not a mere recital. Each of the parties hereto has carefully read the terms of this Settlement Agreement, has been advised of their meaning and consequences by each of their respective attorneys, and agrees to the same of their own free will.

11. **Joint Drafting**. The parties hereto agree that they have jointly participated in the drafting and preparation of this Settlement Agreement, and that the language in this Settlement Agreement shall be construed as a whole according to its fair meaning, and not be construed strictly for or against any of the parties hereto.

12. **Invalidity or Unenforceability**. The invalidity or unenforceability of any provision (or portion thereof) of this Settlement Agreement shall not affect or render invalid or

unenforceable the remaining terms and provisions (or portion(s) thereof) of this Settlement Agreement. The parties hereto intend this Settlement Agreement to be enforced to the maximum extent permitted under Massachusetts law.

13. **Binding Effect.** Upon the Effective Date, this Settlement Agreement shall be binding upon, and inure to the benefit of the parties hereto, their representatives, administrators, successors, and assigns.

14. **Choice of Law/Venue/Seal.** The parties intend this Agreement to take effect as a sealed instrument, and to be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without regard to the conflict of laws provisions thereof. Any action arising out of this Settlement Agreement shall be commenced and conducted only in the Business Law Session of the Superior Court for Suffolk County, Massachusetts. The Parties further consent to jurisdiction and venue of such actions in said Court and agree that the Court shall award to the prevailing party or parties in any such action its/their reasonable attorneys' fees and costs incurred in connection with such action.

15. **Authority of Signatories.** Each individual executing this Settlement Agreement on behalf of an entity hereby represents and warrants that he/she has full authority to execute this Settlement Agreement on behalf of the entity or entities for which he/she signs and full authority to bind that entity to the terms hereof.

16. **Execution.** This Settlement Agreement may be executed by the parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together constitute but one and the same instrument.

17. **Miscellaneous.** The parties hereto agree that they will not, subsequent to their execution of this Settlement Agreement and Releases, initiate any contact with any news media outlet for the purpose of publicizing the terms and conditions of this Agreement.

MODERN CONTINENTAL CONSTRUCTION CO., INC.

By: _____

Title:

Subscribed and sworn to before me this _____ day of _____, 2009

Notary Public

ZURICH AMERICAN INSURANCE COMPANY

By: _____

Title:

Subscribed and sworn to before me this ____ day of _____, 2009

Notary Public

ACE AMERICAN INSURANCE COMPANY

By: _____

Title:

Subscribed and sworn to before me this ____ day of _____, 2009

Notary Public