

MINUTES OF SETTLEMENT

WHEREAS Aecon Buildings, a division of Aecon Construction Group Inc. (“Aecon”), as general contractor, and HVM Canada Hotel Management ULC (“HVM”), as hotel manager, entered into an agreement dated August 21, 2007 (the “Construction Agreement”) for the supply of the labour and materials required for the renovation of the Extended Stay Deluxe Toronto-Vaughan Hotel (the “Hotel”) located on lands and premises known municipally as 3600 Steeles Avenue West, in the City of Vaughan, in the Regional Municipality of York (the “Hotel Premises”);

AND WHEREAS Aecon registered a Claim for Lien on December 5, 2008, receipted as YR1263633 (the “Aecon Lien”);

AND WHEREAS Aecon commenced a construction lien action in the Ontario Supreme Court of Justice, at Newmarket, bearing Court File No. CV-09-092875-00 (the “Aecon Action”) seeking recovery of amounts alleged to be due and owing by HVM, ESA Canada Trustee Inc., ESA Canada Operating Lessee Inc. and Extended Stay Inc., formerly Extended Stay America, Inc., (collectively the “ESA Aecon Defendants”) arising out of the renovation of the Hotel and for damages for delay;

AND WHEREAS in order to perfect the Aecon Lien, Aecon registered a Certificate of Action receipted as YR1278949 (the “Aecon C/A”);

AND WHEREAS in the Aecon Action, Aecon also named as party defendants, Wachovia Bank, National Association, Bear Stearns Commercial Mortgage, Inc. and Bank of America, N.A. (collectively the “Lenders”) seeking, among other things, priority to mortgage security held against the Hotel Premises;

AND WHEREAS Aecon retained Sirro Brothers Cement Finishing & Spray Ltd. (“Sirro Bros.”) as a sub-contractor to undertake concrete and cement work in connection with the renovation of the Hotel;

AND WHEREAS Sirro Bros. brought an action in the Ontario Supreme Court of Justice, at Toronto, bearing Court File No. CV-09-00390446-0000 (the “Sirro Action”) against Extended Stay Canada, Inc. and ESA Canada Trustee Inc. (collectively the “ESA Sirro Defendants”) and Aecon seeking payment of amounts allegedly due and owing for labour and materials supplied for the renovation of the Hotel;

AND WHEREAS the parties to these Minutes of Settlement have agreed to settle their dispute and the Aecon Action;

NOW, THEREFORE, in consideration of the undertakings, covenants and premises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to these Minutes of Settlement agree as follows:

1. The parties acknowledge that the recitals set out above are true and accurate and form part of these Minutes of Settlement.

2. The parties hereto agree to settle the dispute between them and the claims advanced in the Aecon Action on the following terms:

- (a) the ESA Aecon Defendants shall pay to Aecon the sum of CDN \$135,000.00, inclusive of interest, costs and applicable taxes, in full satisfaction of any and all claims Aecon may have arising out of the labour and materials supplied under the Construction Agreement or otherwise claimed with respect to the renovation of the Hotel or which could have been claimed in the Aecon Action;
- (b) in return for the payment aforesaid, Aecon shall:
 - (i) obtain and deliver to Miller Thomson LLP a copy of an Order dismissing the Aecon Action without costs as against all of the named Defendants and vacating and discharging the Aecon Lien and Aecon C/A registered against title to the Hotel Premises;
 - (ii) register the Order, hereinbefore described in sub-paragraph 2(b)(i), against title to the Hotel Premises and shall provide to Miller Thomson LLP satisfactory proof of the registration;
 - (iii) obtain and deliver to Miller Thomson LLP an original current dated Clearance Certificate from the Workplace Safety and Insurance Board certifying that all assessments related to the renovation project for the Hotel have been paid and that Aecon's account is in good standing;
 - (iv) withdraw any Proofs of Claim filed in any cases commenced by the ESA Aecon Defendants in the United States including the United States Bankruptcy Court for the Southern District of New York (the "U.S. Bankruptcy Court") under Chapter 11 of Title 11 of the United States Code, having case number 09-13764 (JMP) Jointly Administered (the "U.S. Chapter 11 Proceedings"); and
 - (v) in consideration of the payment aforesaid, fully indemnify and save harmless the ESA Aecon Defendants, the ESA Sirro Defendants and their respective parents, subsidiaries, affiliated, related and associated companies, officers, directors, employees, servants, agents, successors and assigns from any and all claims, damages, liability, loss, costs awards and, as may be agreed upon or assessed, all legal fees and disbursements, relating to the Sirro Action and/or any other, additional or further claims Sirro Bros. might advance or bring with respect to labour and materials provided for the renovation of the Hotel.

3. In consideration of the terms and conditions of the settlement of the Aecon Action and payment hereinbefore described:

- (a) Aecon, for itself, parent and subsidiary companies, affiliated, related and associated companies, its officers, directors, employees, servants and agents, successors and assigns, does hereby release and forever discharge the ESA Aecon

Defendants, the ESA Sirro Defendants and the Lenders, their respective parent and subsidiary companies, their associated, affiliated and related companies and their officers, directors, servants, employees, agents, successors and assigns from any and all causes of action, contracts, covenants, whether expressed or implied, claims, demands, damages, costs, interest, indemnities of any kind arising under the Construction Agreement and with respect to labour and/or materials supplied for the renovation of the Hotel and any and all claims included or which could have been included in the Aecon Action or in the Sirro Action; and

- (b) subject to paragraph 6 hereof, the ESA Aecon Defendants and the ESA Sirro Defendants, for themselves, their respective parent and subsidiary companies, their respective affiliated, related and associated companies, their respective officers, directors, employees, servants and agents, successors and assigns, do hereby release and forever discharge Aecon and its parent and subsidiary companies, its associated, affiliated and related companies and its officers, directors, servants, employees, agents, successors and assigns from any and all causes of action, contracts, covenants, whether expressed or implied, claims, demands, damages, costs, interest, indemnities of any kind arising under the Construction Agreement and with respect to labour and/or materials supplied for the renovation of the Hotel and any and all claims included or which could have been included in the Aecon Action or in the Sirro Action.
- 4. Aecon agrees that it shall not make any claims, including crossclaims, counterclaim, third party claims, nor bring any actions or applications or take any proceedings against any party, person or corporation which might claim contribution or indemnity against the ESA Aecon Defendants or the ESA Sirro Defendants in respect of the matters released herein.
 - 5. The ESA Aecon Defendants and the ESA Sirro Defendants agree that each of them shall not make any claims, including crossclaims, counterclaim, third party claims, nor bring any actions or applications or take any proceedings against any party, person or corporation which might claim contribution or indemnity against Aecon in respect of the matters released herein.
 - 6. The parties hereto agree that there shall be excluded from the release for which sub-paragraph 3(b) and paragraph 5 hereof provide any and all claims which the ESA Aecon Defendants and/or the ESA Sirro Defendants may have with respect to the indemnity under sub-paragraph 2(b)(v) hereof.
 - 7. These Minutes of Settlement shall not be effective and the terms hereof shall not be implemented unless and until the U.S. Bankruptcy Court shall have made an Order in the U.S. Chapter 11 Proceedings approving these Minutes of Settlement.
 - 8. These Minutes of Settlement may be executed in any number of separate counterparts each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, these Minutes of Settlement have been solely executed by the parties and is effective the __ day of September, 2010.

**ESA CANADA OPERATING LESSEE
INC.**

Per: _____
Title

**AECON BUILDINGS, A DIVISION OF
AECON CONSTRUCTION GROUP
INC.**

Per: _____
Title

EXTENDED STAY INC.

Per: _____
Title

**HVM CANADA HOTEL
MANAGEMENT ULC**

Per: _____
Title

ESA CANADA TRUSTEE INC.

Per: _____
Title

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