

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-041305-117

SUPERIOR COURT
(Commercial Division)
(sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
1985, c. C-36, as amended)

**IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:**

**Homburg Invest Inc.
Homburg Shareco Inc.
Churchill Estates Development Ltd.
Inverness Estates Development Ltd.
CP Development Ltd.
North Calgary Land Ltd.**

Debtors / Petitioners

-and-

**Homco Realty Fund (52) Limited Partnership
Homco Realty Fund (88) Limited Partnership
Homco Realty Fund (89) Limited Partnership
Homco Realty Fund (92) Limited Partnership
Homco Realty Fund (94) Limited Partnership
Homco Realty Fund (96) Limited Partnership
Homco Realty Fund (105) Limited Partnership
Homco Realty Fund (121) Limited Partnership
Homco Realty Fund (122) Limited Partnership
Homco Realty Fund (142) Limited Partnership
Homco Realty Fund (199) Limited Partnership**

Mises-en-cause

-and-

Samson Bélair/Deloitte & Touche Inc.

Monitor

**AMENDED MOTION TO EXTEND THE STAY PERIOD AND FOR THE APPROVAL
OF THE EXTENSION OF THE KEY EMPLOYEE RETENTION PLAN**

(Sections 11 and 11.02 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36)

**TO THE HONOURABLE JUSTICE LOUIS J. GOUIN OR TO ONE OF THE
HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL
DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE
PETITIONERS RESPECTFULLY SUBMIT AS FOLLOWS:**

I. Introduction

1. On September 9, 2011, the Honourable Louis J. Guin, J.S.C. issued an order (the “**Initial Order**”) pursuant to the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) in respect of Homburg Invest Inc. (“**HII**”), Homburg Shareco Inc. (“**Shareco**”), Churchill Estates Development Ltd., Inverness Estates Development Ltd. (“**Inverness**”) and CP Development Ltd. (collectively the “**Initial Debtors**”) as appears from the Court record;
2. Pursuant to the Initial Order, Samson Bélair/Deloitte & Touche Inc. (the “**Monitor**”) was appointed as Monitor of the Initial Debtors and a stay of proceedings (the “**Stay of Proceedings**”) was issued from the date of the Initial Order until October 7, 2011.
3. On October 7, 2011, this Court issued an order (the “**First Extension Order**”) extending the Stay of Proceedings. Since then, this Court has further extended the Stay of Proceedings, most recently until August 31, 2012 (the “**Stay Period**”), as appears from the Court record;
4. As appears from the Initial Order and the First Extension Order, the Stay of Proceedings was initially extended in favour of the following limited partnerships: Homco Realty Fund (52) Limited Partnership (“**Homco 52**”), Homco Realty Fund (88) Limited Partnership (“**Homco 88**”), Homco Realty Fund (89) Limited Partnership, Homco Realty Fund (92) Limited Partnership (“**Homco 92**”), Homco Realty Fund (94) Limited Partnership (“**Homco 94**”), Homco Realty Fund (105) Limited Partnership, Homco Realty Fund (121) Limited Partnership (“**Homco 121**”), Homco Realty Fund (122) Limited Partnership, Homco Realty Fund (142) Limited Partnership and Homco Realty Fund (199) Limited Partnership (collectively the “**Initial Mises-en-cause**”);
5. On May 31, 2012, this Court issued an order amending the Initial Order to add North Calgary Land Ltd. (“**NCLL**”) as a Petitioner and Homco Realty Fund (96) Limited Partnership (“**Homco 96**”) as a Mise-en-cause thereunder (NCLL, Homco 96, the Initial Debtors and the Initial Mises-en-cause are collectively referred to as the “**HII Group**”);
6. The HII Group respectfully requests that this Honourable Court extend the Stay Period until September 14, 2012 and approve the extension of the HII Group’s Key Employee Retention Plan the whole as set forth more fully below;

II. Extension of the stay period

7. Since the last extension of the Stay Period, the HII Group has continued to make significant progress in identifying and implementing operational restructuring measures, advancing discussions with various stakeholders, addressing the control issues and work towards a plan of arrangement or compromise (the “**Plan**”). Significant effort has been expended in maintaining the normal course of business, in the context of the CCAA process;
8. The restructuring of the HII Group is entering a key phase. On or about the date hereof, high level meetings are taking place between representatives of the HII Group, the

Monitor and the bondholders to discuss strategic issues regarding the contemplated Plan, more particularly regarding the treatment of the four series of mortgage bondholders (each such series having security on different assets of the HII Group). In parallel, the HII Group has been actively negotiating with its mortgage lenders. As well, counsel for all parties have been preparing for the hearing by this Honourable Court of several contested and significant motions;

9. Notably for these reasons, HII and the Monitor are not as at the date hereof in a position to provide a comprehensive review of all activities and restructuring initiatives since the last extension of the Stay Period. By way of overview, the following steps have occurred:
 - (a) Pursuant to the *Claims Process Order*, in the Court record, the claims bar date for the vast majority of claims was July 13, 2012. As of the date hereof, the Monitor has received over 230 claims. The Monitor has been diligently processing the claims in cooperation with HII and respective counsel. It is anticipated that the Monitor will advise most claimants of the acceptance, revision or rejection of their claim during the month of September 2012;
 - (b) The HII Group has been structuring the Plan in cooperation with the Monitor and major stakeholders. In particular, representatives of the HII Group have held several meetings and calls with the bondholders' trustees. Numerous meetings have taken place with mortgage lenders of the European properties to negotiate the restructuring of the HII Group loan portfolio and explore alternative strategies for certain non-profitable properties;
 - (c) As contemplated by the order rendered on April 11, 2012 in respect of the Motion for authorization to sell assets of Inverness Estates Development Ltd. and for directions in the Court record, the bulk sale in respect of the Inverness condominium units closed. Proceeds from this transaction allowed for repayment in full to the secured lender of Inverness Estates Development Ltd. and of Churchill Estates Development Ltd.;
 - (d) On August 8, 2012, the closing of the transactions contemplated by the Second Option Exercise (as defined in the *Second motion for approval of the exercise of certain options (Baltic partnerships)*, in the Court record) took place. This represents the second major milestone in aligning the HII Group's corporate structure with its underlying economic interests and in maximizing full and direct control over the HII Group's partnership structure in the context of the restructuring;
 - (e) HII has had numerous contacts with the Canada Revenue Agency ("CRA") regarding various claims, reassessments and audits. On June 25, 2012, the Attorney General of Canada (acting for CRA, as agent of Her Majesty the Queen in right of Canada) served a *Motion for an order lifting the stay of proceedings against Homburg Invest Inc.*, in the Court record. HII intends to vigorously contest this Motion;

10. HII and the Monitor intend to provide a comprehensive review of all activities in the next Motion to extend the Stay Period and adjoining Monitor's Report;
11. As will appear from the cashflow forecasts appended to the Monitor's 14th Report, the HII Group does not require access to any additional amount of "restricted cash" for use during the extension of the Stay Period sought herein;

III. Extension of the Key Employee Retention Plan

12. The retention of key employees has been and continues to be of vital importance to HII during its restructuring efforts. In the Initial Order, this Honourable Court approved a Key Employee Retention Plan (the "**KERP**") which, for most purposes, expired on June 30, 2012;
13. With a goal of encouraging certain key employees (the "**Eligible Employees**") to remain within the organization, HII wishes to extend six retention agreements which were part of the KERP (collectively the "**Extended KERP**");
14. In view of the Eligible Employees' experience, expertise and the critical role they have played and will continue to play, HII believes that the continued employment of the Eligible Employees is crucial to the preservation of the HII Group's value and to completion of its restructuring;
15. HII also believes that absent the extension of an incentive plan in favour of the Eligible Employees, they are likely to seek other employment opportunities. The departure of any of the Eligible Employees would undermine HII's restructuring efforts;
16. Under the Extended KERP, each of the Eligible Employees is eligible to receive a prescribed amount (the "**Incentive Payments**") consisting of retention, vacation and severance entitlements provided that the Eligible Employee remains actively employed by HII;
17. Resignation by an Eligible Employee or termination by HII for cause will result in the loss of any future Incentive Payments. However, each Eligible Employee will still be entitled to the Incentive Payments if their employment is terminated without cause;
18. HII's directors have approved the Extended KERP;
19. The Extended KERP was reviewed by the Monitor;
20. HII and the Monitor believe that the Extended KERP provides an appropriate and reasonable incentive for the retention of the Eligible Employees and HII seeks this Honourable Court's approval of the Extended KERP;
21. HII hereby requests that amounts sufficient to provide for the payments to be made to the Eligible Employees under the Extended KERP, in accordance with the terms thereof, namely the aggregate sum of approximately \$400,000 together with the sum of approximately \$82,000 representing amounts accruing to the Eligible Employees under the KERP over the last year (for a total of approximately \$482,000) be remitted by HII to

the Monitor, to be held in escrow by the Monitor, for the benefit of the Eligible Employees;

22. If all Incentive Payments contemplated under the Extended KERP are made, its anticipated cost is in the approximate amount of \$1.7 million dollars;
23. A copy of the Extended KERP will be filed under seal at the hearing of the present Motion as **Exhibit P-1**. In view of the sensitive and confidential nature of the Extended KERP and the fact that disclosure of its specific terms may negatively affect and be detrimental to HII, its stakeholders and the restructuring in general, HII hereby requests an order that **Exhibit P-1** be sealed;

IV. Conclusion

24. The extension of the Stay Period is necessary in order to provide the HII Group time to continue its efforts with respect to the restructuring of its business and affairs, including to pursue negotiations with its lenders, continue crafting the terms of the Plan and meet with major stakeholders to discuss and review same;
25. HII will also continue negotiations with their stakeholders with a view to presenting the Plan;
26. As appears from the cash flow forecast, which will be included in the Monitor's 14th Report, HII is of the view that no creditor will suffer any undue prejudice from the extension of the Stay Period;
27. The HII Group has and continues to meet its post-filing obligations as and when they become due;
28. HII is of the view that extending the Stay Period to September 14, 2012 and approving the Extended KERP is appropriate in the present circumstances. Accordingly, HII respectfully requests that this Honourable Court render the orders contained in the conclusions hereof;
29. As will appear from the Monitor's 14th Report, the Monitor supports the present Motion;
30. The HII Group has acted, and continues to act, in good faith and with the utmost diligence;
31. The present motion is well founded in fact and law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO :

GRANT the present *Amended Motion to extend the stay period and for the approval of the extension of the Key Employee Retention Plan* (the "**Motion**");

DECLARE that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion;

EXTEND the Stay Period (as defined in the initial order granted by this Court in this matter on September 9, 2011 (the “**Initial Order**”) and as extended from time to time) to September 14, 2012, the whole subject to the terms of the Initial Order, as amended;

ORDER that the terms of the Extended KERP, **Exhibit P-1** are hereby approved, and HII is hereby authorized to implement the Extended KERP and **AUTHORIZE** HII to remit to the Monitor the aggregate amount of \$482,000 to be held in escrow by the Monitor together with the funds already in escrow with the Monitor in respect of the KERP for the benefit of the Eligible Employees;

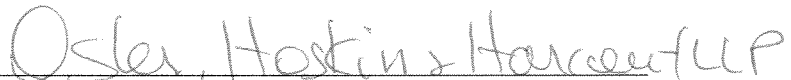
DECLARE that the Extended KERP contains sensitive and confidential information and shall be sealed in the court file in these proceedings and segregated from, and not form part of, the public record;

PRAY ACT of the Monitor’s 14th Report;

ORDER provisional execution of the present order, notwithstanding appeal;

THE WHOLE WITHOUT COSTS, save in the event of contestation.

MONTRÉAL, August 23, 2012



OSLER, HOSKIN & HARCOURT LLP

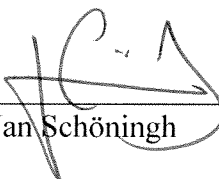
Attorneys for the Debtors and Mises-en-cause

AFFIDAVIT

I the undersigned, Jan Schöningh, domiciled and residing at 597 Avenue Roslyn, Westmount, Quebec, H3Y 2V1, solemnly declare the following:

1. I am the President and Chief Executive Officer of Homburg Invest Inc. and duly authorized representative of the Petitioners for the purpose hereof;
2. I have taken cognizance of the attached *Amended Motion to extend the stay period and for the approval of the extension of the Key Employee Retention Plan*;
3. All of the facts alleged in the said motion are true.

AND I HAVE SIGNED



Jan Schöningh

SOLEMNLY DECLARED BEFORE ME
IN MONTRÉAL ON THE 23rd DAY OF AUGUST 2012.



Commissioner for Oaths for the Québec



NOTICE OF PRESENTATION

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Prentice, Frank W. Matheson,
James F. Miles, Wayne Heuff,
John Levitt and Gérard A.
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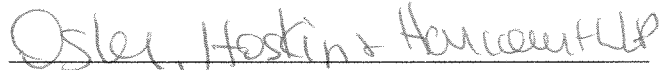
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Me Kelly Bourassa
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TAKE NOTICE that the *Amended Motion to extend the stay period and for approval of the extension of the Key Employee Retention Plan* will be presented for hearing and allowance in the Superior Court, commercial division, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on August 24, 2012, at 9:15 a.m., or so soon thereafter as counsel may be heard, and in a room to be announced.

PLEASE ACT ACCORDINGLY.

MONTRÉAL, August 23, 2012


OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Debtors and Mises-en-cause

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
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-and-

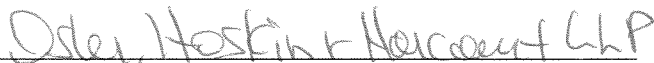
Samson Bélair/Deloitte & Touche Inc.

Monitor

LIST OF EXHIBIT

Exhibit P-1: Key Employee Retention Plan extension (*under seal*).

MONTRÉAL, August 23, 2012


OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Debtors and Mises-en-cause

No.: 500-11-041305-117

SUPERIOR COURT
(Commercial Division)

DISTRICT OF MONTRÉAL

**IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF :**

HOMBURG INVEST INC. & AL.

Debtors/Petitioners

-and-

**HOMCO REALTY FUND (S2) LIMITED
PARTNERSHIP & ALS.**

Mises-en-cause

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
Monitor

**AMENDED MOTION TO EXTEND THE STAY
PERIOD AND FOR THE APPROVAL OF THE
EXTENSION OF THE KEY EMPLOYEE
RETENTION PLAN (Section 11 and 11.02 of the
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c. C-36), AFFIDAVIT, ATTESTATION OF
AUTHENTICITY, NOTICE OF PRESENTATION,
LIST OF EXHIBIT**

ORIGINAL

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