

SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO: 500-11-041305-117

DATE: September 9, 2011

PRESENT: THE HONOURABLE LOUIS J. GOUIN, J.S.C.

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

HOMBURG INVEST INC.

-and-

HOMBURG SHARECO INC.

-and-

CHURCHILL ESTATES DEVELOPMENT LTD.

-and-

INVERNESS ESTATES DEVELOPMENT LTD.

-and-

CP DEVELOPMENT LTD.

Petitioners

- and -

THE ENTITIES LISTED IN ANNEX I

Mis-en-cause

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

JUDGMENT

[1] The Petitioners present an *Amended motion for an initial order* dated September 9, 2011 (the "**Motion**") pursuant to sections 4, 5, 11 of the *Companies' Creditors Arrangement Act R.S.C. 1985 c. C-36* ("**CCAA**");

- [2] **CONSIDERING** the Motion, the exhibits, the affidavit and testimony of James F. Miles, testimony of the Monitor and representations of counsel;

CONSIDERING the justifications provided in support of the CCAA Charges sought in the Motion;

CONSIDERING the explanations given by the Petitioners and the Monitor that there is, at the present time, a reasonably foreseeable expectation that there is a looming liquidity condition or crisis that will result in the Petitioners running out of money to pay their debts as they generally become due in the future without the benefit of the requested stay and ancillary protection;

CONSIDERING that the Court is satisfied of the urgency to authorize this filing, including as a result of the pressure from the AFM to solve concerns raised by it since at least April 22, 2011;

CONSIDERING that the Monitor has satisfied the Court that funds will not be transferred from any of the Petitioners to entities of their group without being satisfied of the reasonable advantage and benefit of such a transfer for the Petitioners and their creditors and stakeholders or, if necessary, without the prior approval of this Court

CONSIDERING that the parties should join their common interests and efforts to maximize the chances of achieving a successful restructuring and their present focus, at this point in time, should not be to fight over proxy issues and related corporate issues, including the election of directors of one of the Petitioners, therefore distracting the Petitioners from the real issue, namely, protecting and restructuring their businesses;

- [3] **CONSIDERING** the provisions of the CCAA;

FOR THESE REASONS, THE COURT:

- [4] **GRANTS** the Motion.

- [5] **DECLARES** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Petition;

- [6] **ISSUES** an order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (respectively the "**Order**" and the "**CCAA**"), divided under the following headings:

- (a) Service
- (b) Application of the CCAA
- (c) Effective Time
- (d) Plan of Arrangement

- (e) Stay of Proceedings against the Petitioners and the Property
- (f) Stay of Proceedings against the Directors and Officers
- (g) Possession of Property and Operations
- (h) No Exercise of Rights or Remedies
- (i) No Interference with Rights
- (j) Continuation of Services
- (k) Non-Derogation of Rights
- (l) Directors' and Officers' Indemnification and Charge
- (m) Restructuring
- (n) Powers of the Monitor
- (o) Priorities and General Provisions Relating to CCAA Charges
- (p) General

Service

- [7] **DECLARES** that the time for service of the Motion is hereby abridged and hereby dispense Petitioners with further service thereof.
- [8] **DECLARES** that sufficient prior notice of the presentation of this Motion has been given by Petitioners to the Trustees.

Application of the CCAA

- [9] **DECLARES** that Petitioners are debtor companies to which the CCAA applies and **DECLARES** that, although not a Petitioner, Homburg Realty Fund (92) Limited Partnership ("**Partnership (92)**"), Homburg Realty Fund (199) Limited Partnership ("**Partnership (199)**"), Homburg Realty Fund (52) Limited Partnership ("**Partnership (52)**"), Homburg Realty Fund (53) Limited Partnership ("**Partnership (53)**"), Homburg Realty Fund (88) ("**Partnership (88)**"), Homburg Realty Fund (89) Limited Partnership ("**Partnership (89)**"), Homburg Realty Fund (105) Limited Partnership ("**Partnership (105)**"), Homburg Realty Fund (121) Limited Partnership ("**Partnership (121)**"), Homburg Realty Fund (122) Limited Partnership ("**Partnership (122)**") and Homburg Realty Fund (142) ("**Partnership (142)**") and together with Partnership (92), Partnership (199), Partnership (52), Partnership (53), Partnership (88), Partnership (89), Partnership (105), Partnership (121) and Partnership (122) (collectively the "**Applicant Partnerships**") shall enjoy the protections and authorizations provided by this Order.

Effective time

- [10] **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order (the "**Effective Time**").

Plan of Arrangement

- [11] **ORDERS** that Petitioners and the Applicant Partnerships (collectively, the "**Homburg Parties**") shall have the authority to file with this Court and to submit to their creditors one or more plans of compromise or arrangement (collectively, the "**Plan**") in accordance with the CCAA.

Stay of Proceedings against the Petitioners and the Property

- [12] **ORDERS** that, until and including October 7, 2011, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Homburg Parties, or affecting the Homburg Parties' business operations and activities (the "**Business**") or the Property (as defined herein below), except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Homburg Parties or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court. In accordance with subsection 11.1 CCAA, such stay of Proceedings shall not affect a regulatory body's investigation in respect of the Homburg Parties or a Proceeding taken by or before the regulatory body other than the enforcement of a payment ordered by the regulatory body or the Court.

Stay of Proceedings against the Directors and Officers

- [13] **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Homburg Parties nor against any person deemed to be a director or an officer of the Homburg Parties under subsection 11.03(3) CCAA (each, a "**Director**", and collectively the "**Directors**") in respect of any claim against such Director that arose prior to the Effective Time and that relates to any obligation of the Homburg Parties where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation until further order of this Court or until the Plan, if one is filed, is sanctioned by the Court or refused by the creditors or the Court.

Possession of Property and Operations

- [14] **ORDERS** that the Homburg Parties shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"). Subject to further order of this Court, the

Homburg Parties shall continue to carry on their operations and enterprise in a manner consistent with the preservation of the Business and Property.

[15] **ORDERS** that, except as otherwise provided to the contrary herein and under the supervision of the Monitor, the Homburg Parties shall be entitled to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) All expenses and capital expenditures reasonably necessary for the preservation of the Homburg Parties' Property or Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) Payment for goods or services actually delivered or supplied to the Homburg Parties following the date of this Order.

[16] **ORDERS** that the Homburg Parties shall be entitled but not compelled to pay the following expenses incurred prior to this Order, with the prior approval of the Monitor:

- (a) All wages, salaries, management fees, commissions, vacation pay (when due), current service cost pension contributions and other benefits, and reimbursement of expenses (including, without limitation, amounts charged by employees to credit cards) payable to former or current employees, managers or Directors, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) All amounts owing to or in respect of individuals working as independent contractors in connection with the Homburg Parties' Business;
- (c) All amounts payable to third party custom brokers, agents, freight carriers, freight forwarders, shippers and creditors with the right to retain;
- (d) All outstanding and future fees and disbursements of the Monitor, the Monitor's and the Homburg Parties' legal counsel, and any financial and other advisers retained by the Homburg Parties in respect of the Plan, the Restructuring or these proceedings; and
- (e) Expenses and capital expenditures reasonably necessary for the preservation of the Homburg Parties' Property or the Business.

[17] **ORDERS** that, except as otherwise provided to the contrary herein, the Homburg Parties shall remit, in accordance with legal requirements, or pay, with the prior approval of the Monitor:

- (a) Any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which

are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) Employment Insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes, together with the employer's share of Employment Insurance premiums, Canada Pension Plan contributions, Quebec Pension Plan contributions or other similar wage levy;

- (b) Amounts accruing and payable by the Homburg Parties in respect of Employment Insurance, Canada Pension Plan, workers' compensation, employer health taxes and similar obligations of any jurisdiction with respect to employees;
- (c) All goods and services or other applicable sales tax (collectively, "**Sales Tax**") required to be remitted by the Homburg Parties in connection with the sale of goods and services by the Homburg Parties, but only where such Sales Taxes are accrued or collected after the date of this Order; and
- (d) Any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the business by the Homburg Parties.

No Exercise of Rights or Remedies

- [18] **ORDERS** that during the Stay Period, and subject to subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Homburg Parties, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.
- [19] **DECLARES** that, to the extent any rights, obligations, prescription or time or limitation periods, including, without limitation, to file grievances, relating to the Homburg Parties or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights or obligations, or time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Homburg Parties become bankrupt or a receiver within the meaning of paragraph 243(2) of the BIA is appointed in respect of the Homburg Parties, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Homburg Parties in determining the 30 day periods referred to in sections 81.1 and 81.2 of the BIA.

No Interference with Rights

- [20] **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Homburg Parties, except with the written consent of the Homburg Parties and the Monitor, or with leave of this Court.

Continuation of Services

- [21] **ORDERS** that during the Stay Period and subject to paragraph [22] hereof, all Persons having oral or written agreements with the Homburg Parties or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Homburg Parties, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Homburg Parties, and that the Homburg Parties shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Homburg Parties, without having to provide any security deposit or any other Security, in accordance with normal payment practices of the Homburg Parties or such other practices as may be agreed upon by the supplier or service provider and the Homburg Parties, with the consent of the Monitor, or as may be ordered by this Court.
- [22] **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 of the CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Homburg Parties on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advances of money or otherwise extend any credit to the Homburg Parties.
- [23] **ORDERS** that, without limiting the generality of the foregoing and subject to section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Homburg Parties with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by the Homburg Parties and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Homburg Parties' account(s) until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

Non-Derogation of Rights

- [24] **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Homburg Parties shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

Directors' and Officers' Indemnification and Charge

- [25] **ORDERS** that the Petitioners shall indemnify their Directors from all claims, costs, charges and expenses relating to any obligations or liabilities they may incur by reason of or in relation to their respective capacities as directors or officers of the Petitioners, after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct, or gross or intentional fault as further detailed in section 11.51 CCAA.
- [26] **ORDERS** that the Directors of the Petitioners shall be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$2,000,000 (the "**Directors' Charge**"), as security for the indemnity provided in paragraph [25] of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs [43] and [44] herein.
- [27] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph [25] of this Order.

Restructuring

- [28] **DECLARES** that, to facilitate the orderly restructuring of its business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioners shall have the right, subject to approval of the Monitor or further order of the Court, to:
- (a) Permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate and make provision for the consequences thereof in the Plan;

- (b) Pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and under reserve of subparagraph (c);
- (c) Convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$500,000 or \$1,000,000 in the aggregate;
- (d) Terminate the employment of such of its employees or temporarily or permanently lay off such of its employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Homburg Parties and such employee, or failing such agreement make provision to deal with, any consequences thereof in the Plan, as the Homburg Parties may determine;
- (e) Subject to the provisions of section 32 CCAA, disclaim or resiliate, any of their agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Homburg Parties and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and
- (f) Subject to section 11.3 CCAA, assign any rights and obligations of Homburg Parties.

[29] **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of the Petitioners pursuant to section 32 of the CCAA and subsection [28](e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Petitioners and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioners, provided nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

[30] **ORDERS** that the Petitioners shall provide to any relevant landlord notice of the Petitioners' intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Petitioners have already vacated the leased premises, they shall not be considered to be in occupation of such location pending the resolution of any dispute between the Petitioners and the landlord.

- [31] **DECLARES** that, in order to facilitate the Restructuring, the Petitioners may, subject to approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute; and
- [32] **ORDERS** that the terms of the Key Employee Retention Plans, Exhibit P-16 (the "**KERPs**") are hereby approved, and the Petitioners are hereby authorized to implement the KERPs, subject to the supervision of the Monitor.
- [33] **DECLARES** that the KERPs contain 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.
- [34] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Petitioners are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioners or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

Powers of the Monitor

- [35] **ORDERS** that Samson Bélair/Deloitte & Touche Inc. is hereby appointed to monitor the business and financial affairs of the Petitioners as an officer of this Court (the "**Monitor**") and that the Monitor, in addition to the prescribed powers and obligations, referred to in section 23 CCAA:
- (a) shall, without delay, (i) publish once a week for two (2) consecutive weeks or as otherwise directed by the Court, in *La Presse*, *The Globe and Mail*, the *Calgary Herald* and *Halifax Chronicle Herald* and (ii) within five (5) business days after the date of this Order (A) post on the Monitor's website (the "**Website**") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioners of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the

estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder;

- (b) shall assist the Petitioners, to the extent required by the Petitioners, in dealing with their creditors and other interested Persons during the Stay Period;
- (c) shall assist the Petitioners, to the extent required by the Petitioners, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (d) shall advise and assist the Petitioners, to the extent required by the Petitioners, to review the Petitioners' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (e) shall assist the Petitioners, to the extent required by the Petitioners, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- (f) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- (g) shall report to the Court on the state of the business and financial affairs of the Petitioners or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;
- (h) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (i) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- (j) may act as a "foreign representative" of the Petitioners in any proceedings outside of Canada;
- (k) may give any consent or approval as may be contemplated by the Order;
and
- (l) shall perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

The Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioners, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Petitioners.

- [36] **ORDERS** that the Petitioners and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioners in connection with the Monitor's duties and responsibilities hereunder.
- [37] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Petitioners with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioners' counsel. In the case of information that the Monitor has been advised by the Homburg Parties is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioners unless otherwise directed by this Court.
- [38] **DECLARES** that the Monitor shall fully cooperate with the Netherlands Authority for the Financial Markets (the "AFM"), and provide the AFM with any information in possession of the Monitor in response to any requests made by the AFM to the Monitor.
- [39] **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioners or continues the employment of the Petitioners' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
- [40] **DECLARES** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel.
- [41] **ORDERS** that Petitioners shall pay the fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel and other advisers, incurred in connection with or with respect to the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
- [42] **DECLARES** that the Monitor, the Monitor's legal counsel, if any, the Petitioners' legal counsel and the Monitor and the Petitioners' respective advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order in respect of these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$2,000,000 (the "**Administration Charge**"), having the priority established by paragraphs [43] and [44] hereof.

Priorities and General Provisions Relating to CCAA Charges

- [43] **DECLARES** that the priorities of the Administration Charge and Directors' Charge (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:
- (a) first, the Administration Charge;
 - (b) second, the Directors' Charge.
- [44] **DECLARES** that, each of the CCAA Charges shall rank after any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property but before unsecured claims.
- [45] **ORDERS** that, except as otherwise expressly provided for herein, the Petitioners shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioners obtain the prior written consent of the Monitor and the prior approval of the Court.
- [46] **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
- [47] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges and that the KERPs and payments made or to be made thereunder, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Homburg Parties or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Homburg Parties; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Homburg Parties (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:
- (a) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by the Homburg Parties of any Third Party Agreement to which they are a party; and
 - (b) any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.
- [48] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any application for a bankruptcy order filed pursuant

to the BIA in respect of the Homburg Parties and any bankruptcy order allowing such application or any assignment in bankruptcy made or deemed to be made in respect of the Homburg Parties, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Homburg Parties pursuant to the Order, the granting of the CCAA Charges and the payment of any amounts under the KERPs, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

- [49] **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioners and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners, for all purposes and **DECLARE** that any payments made or to be made under the KERPs shall be valid and enforceable as against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners, for all purposes.

General

- [50] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Homburg Parties or of the Monitor, without first obtaining leave of this Court, upon seven (7) days written notice to the Homburg Parties' counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
- [51] **DECLARES** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Homburg Parties under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [52] **DECLARES** that, except as otherwise specified herein, the Homburg Parties are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Homburg Parties and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.
- [53] **DECLARES** that the Homburg Parties and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Homburg Parties shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.

[54] **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Homburg Parties and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys.

[55] **DECLARES** that the Homburg Parties or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other.

[56] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon seven (7) days notice to the Homburg Parties, the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order:

(i) Sandra Abitan and Martin Desrosiers
OSLER, HOSKIN & HARCOURT LLP
1000 De La Gauchetière Street West, Suite 2100
Montréal QC H3B 4W5
Counsel for the Homburg Parties
Email: sabitan@osler.com and mdesrosiers@osler.com

(ii) Pierre Laporte
SAMSON BÉLAIR/DELOITTE TOUCHE INC.
1 Place Ville-Marie, Suite 3000
Montréal QC H3B 5K1
Monitor
Email: pilaporte@deloitte.ca


(iii) Mason Poplaw
MCCARTHY TÉTRAULT LLP
1000, De La Gauchetière Street West, Suite 2500
Montréal QC H3B 0A2
Counsel for the Monitor
Email: mpoplaw@mccarthy.ca

[57] **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

[58] **DECLARES** that the Monitor, with the prior consent of the Homburg Parties, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Monitor shall be the foreign representative of the Homburg Parties. All courts and administrative bodies of all such jurisdictions are hereby respectively requested

to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

- [59] **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.
- [60] **ORDERS** the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security.
- [61] **THE WHOLE WITHOUT COSTS** save and except in the case of contestation.



LOUIS J. GOUIN, J.S.C.

Hearing date : September 9, 2011

Me Martin Desrosiers
Me Sandra Abitan
Me François Paradis
Me Carine Bouzaglou
Me Julien Morissette
Osler, Hoskin & Harcourt LLP
Counsel to Petitioners

*copie conforme
officier autorisé
de Mr BOUZAGLOU MORISSETTE*

ANNEX I: MIS-EN-CAUSE ENTITIES

Homburg Realty Fund (199) Limited Partnership

Homburg Canada Real Estate Investment Trust

Homburg Realty Fund (52) Limited Partnership

Homburg Realty Fund (53) Limited Partnership

Homburg Realty Fund (88)

Homburg Realty Fund (89) Limited Partnership

Homburg Realty Fund (92) Limited Partnership

Homburg Realty Fund (105) Limited Partnership

Homburg Realty Fund (121) Limited Partnership

Homburg Realty Fund (122) Limited Partnership