

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-041305-117

DATE: March 1, 2013

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

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 (61) 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 (190) LIMITED PARTNERSHIP
HOMCO REALTY FUND (191) LIMITED PARTNERSHIP
HOMCO REALTY FUND (199) LIMITED PARTNERSHIP
CASTELLO DEVELOPMENT LTD.**

Mis-en-cause

- and -

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

ORDER APPROVING INVESTMENT PROPOSAL PROCESS

[1] The Petitioners present a *Motion for an extension of the Stay Period and for approval of an Investment Proposal Process* dated February 26, 2013 (the

“**Motion**”) pursuant to sections 11 and 11.02 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCAA**”);

[2] **CONSIDERING** the Motion and affidavit in support thereof, and the representations of counsel;

[3] **CONSIDERING** the Monitor’s Twentieth Report dated February 27, 2013;

[4] **CONSIDERING** the provisions of the CCAA;

[5] **CONSIDERING** that, on February 28, 2013, the Court granted in part the Motion and extended the Stay Period to April 26, 2013, and delayed its decision on the proposed Investment Proposal Process to March 1, 2013;

FOR THESE REASONS, THE COURT:

[6] **GRANTS** in part the Petitioners’ *Motion for an extension of the Stay Period and for approval of an Investment Proposal Process* (the “**Motion**”);

[7] **DECLARES** that the service of the Motion constitutes good and sufficient service on all persons, and further **DECLARES** that the Petitioners are relieved of any other requirements for service of the Motion;


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

[9] **APPROVES** the Terms and Conditions for the submission of investment proposals and set out in Schedule I of this Order;

[10] **AUTHORIZES** the HII Group, in conjunction with the Monitor and their respective advisors, to carry out the Terms and Conditions;

[11] **ORDERS** the provisional execution of this Order notwithstanding any appeal thereof and without the necessity of furnishing any security;

[12] **THE WHOLE WITHOUT COSTS.**



LOUIS J. GOUIN, J.S.C.

Hearing date : February 28, 2013

Me Martin Desrosiers
Me Sandra Abitan
Me Chris Main
Me Julien Morissette
Osler, Hoskin & Harcourt LLP
Counsel to Petitioners

SCHEDULE I
TERMS AND CONDITIONS FOR THE SUBMISSION OF INVESTMENT PROPOSALS

On September 9, 2011, Homburg Invest Inc. (“**HII**”), Homburg Shareco Inc. (“**Shareco**”), Churchill Estates Development Ltd. and Inverness Estates Development Ltd. (collectively with HII and Shareco, the “**Petitioners**”) commenced proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) before the Superior Court of Quebec (Commercial Division) (the “**Court**”) pursuant to an order granted by the Court on September 9, 2011 (as amended, restated or varied from time to time, the “**Initial Order**”).

Pursuant to the Initial Order, the Court appointed Samson Bélair/Deloitte & Touche Inc. as Court-appointed monitor in the CCAA Proceedings (the “**Monitor**”).

The Initial Order declared that, although not a Petitioner, each of *mise-en-cause* 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 (105) Limited Partnership, Homco Realty Fund (121) Limited Partnership, Homco Realty Fund (122) Limited Partnership, Homco Realty Fund (142) Limited Partnership and Homco Realty Fund (199) Limited Partnership shall enjoy the protections and authorizations provided by the Initial Order (collectively, the “**Applicant Partnerships**”).

By further Orders of the Court in the CCAA Proceedings, North Calgary Land Ltd. was added as a Petitioner (hereinafter included as a “**Petitioner**”), Homco Realty Fund (96) Limited Partnership, Homco Realty Fund (190) Limited Partnership, Homco Realty Fund (191) Limited Partnership and Homco Realty Fund (61) Limited Partnership were each added as Applicant Partnerships (hereinafter included as “**Applicant Partnerships**”) and Castello Development Ltd. was added as a *mise-en-cause* (together with the Petitioners and the Applicant Partnerships, the “**HII Group Entities**”).

On February 28, 2013, the HII Group Entities brought a motion before the Court seeking an order for the approval of a process outlining the terms and conditions for the submission by third parties of investment proposals (the “**Terms and Conditions**”). The Terms and Conditions have been or will be provided to those third parties that have shown an interest in the assets and/or the business of the HII Group Entities (respectively, the “**Assets**” and the “**Business**”) since the initiation of the CCAA Proceedings and any other third party (the “**Interested Parties**”). The HII Group Entities, in collaboration with the Monitor, will review any and all investment proposals regarding the Business or Assets (each, an “**Investment Proposal**”) submitted by any of the Interested Parties to determine whether one or more Investment Proposals would be in the best interests of the HII Group Entities’ stakeholders, in comparison to the Plan of Compromise and Reorganization of HII and Shareco under the CCAA and the *Business Corporations Act* (Alberta) filed with the Court on February 6, 2013 (as it may be amended, supplemented or varied from time to time, the “**Plan**”). Accordingly, the following Terms and Conditions shall govern the submission by any Interested Party of an Investment Proposal with respect to the Business or Assets.

Summary of the Terms and Conditions

The Terms and Conditions set forth herein describe the opportunity available for the submission of an Investment Proposal, the manner in which Interested Parties may gain access to or continue to have access to due diligence materials and information concerning the Assets and the Business (the “**Information**”), the manner in which such Interested Parties and their Investment Proposals may become Qualified Investment Proposals (as defined below), the receipt and negotiation of Investment Proposals received, the ultimate selection of the Successful Investor (as defined below) and the Court’s approval thereof (collectively, the “**Investment Proposal Process**”). The HII Group Entities, in consultation with their legal advisors and the Monitor shall be coordinating the solicitation and consideration of any Investment Proposals.

Sale and Investment Opportunity

All Interested Parties that execute a Confidentiality Agreement (as defined herein) with HII will be given an opportunity to access the Information and deliver an Investment Proposal.

“As Is, Where Is”

All Investment Proposals shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by the HII Group Entities, the Monitor or any of their respective directors, officers, employees, agents, estates, advisors, professionals or otherwise, except to the extent set forth in the relevant agreement concluded with the Successful Investor.

HII Group Entities’ Assets Free Of Any And All Claims And Interests

In the event of a sale, all of the rights, title and interests of the HII Group Entities in and to the Assets, or any portion thereof, to be acquired will be sold free and clear of all security interests, charges, pledges, liens, encumbrances, claims, options, interests or other restrictions thereon and against the HII Group Entities’ Assets (collectively, the “**Claims and Interests**”) pursuant to section 36(6) of the CCAA, such Claims and Interests to attach to the net proceeds of the sale of such Assets (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except to the extent otherwise set forth in the relevant agreement concluded with the Successful Investor.

An Investment Proposal may, at the option of the Successful Investor, include one or more of the following: a restructuring, recapitalization or other form of reorganization of the business and affairs of the HII Group Entities as a going concern; a sale of Assets to a newly formed acquisition entity on terms described in the above paragraph; or a plan of compromise or arrangement pursuant to the CCAA or any applicable corporate legislation which, *inter alia*, compromises the Claims and Interests as set out in the Investment Proposal.

Press Release

On or around March 1, 2013, HII will issue a press release announcing the initiation of the Investment Proposal Process.

Interested Parties

The Monitor will send a notice of the initiation of the Investment Proposal Process and a copy of the present Terms and Conditions to the Interested Parties. The Monitor will further send copy of the Terms and Conditions to any other Interested Party who, by written notice, expresses a potential interest in the Assets or in the Business following the initiation of the Investment Proposal Process. Other than as set out herein, neither the HII Group Entities nor the Monitor shall have any further obligation to advertise the Investment Proposal Process or to solicit Investment Proposals from Interested Parties.

Participation Requirements

Unless otherwise ordered by the Court or as otherwise determined by the HII Group Entities, in consultation with the Monitor, in order to participate in the Investment Proposal Process, each Interested party (a "**Potential Investor**") must deliver the following documents (the "**Participation Documents**") to the parties set out in Schedule "1" hereto (the "**Notice Parties**") by facsimile transmission, electronic mail, personal delivery or reliable overnight courier to the addresses set out in Schedule "1" hereto:

- (a) an executed confidentiality agreement on terms satisfactory to the HII Group Entities and the Monitor (a "**Confidentiality Agreement**");
- (b) current audited financial statements and latest unaudited financial statements of the Potential Investor or, if the Potential Investor is an entity formed for the purpose of concluding the Proposed Investment, current audited financial statements and last unaudited financial statements of the equity holders or sponsors of the Potential Investor who will guarantee the obligations of the Potential Investor, or such other form of financial disclosure and credit-quality support or enhancement that will allow the HII Group Entities and the Notice Parties to make a reasonable determination as to the Potential Investor's financial and other capabilities to consummate the transaction; and
- (c) a letter setting forth the identity of the Potential Investor (and if applicable, its sponsor), the contact information for such Potential Investor and its principal advisors, and full disclosure of any pre-filing or post-filing affiliations that the Potential Investor has or may have with (i) the HII Group Entities, (ii) any affiliates of the HII Group Entities, (iii) any creditor of the HII Group Entities, (iv) any holder of equity securities of the HII Group Entities and (v) any current or former officers, managers or directors of the HII Group Entities or their affiliates.

Determination of Qualified Investors and Access to Information

As promptly as practicable after a Potential Investor delivers the Participation Documents to the Notice Parties, a Potential Investor that delivers the required Participation Documents, whose financial information and credit quality support or enhancement demonstrate to the satisfaction of the HII Group Entities and the Monitor the financial capability of the Potential Investor to consummate its Proposed Investment, that has executed a Confidentiality Agreement, and that the HII Group Entities determine in their reasonable business judgment, after consultation with their advisors and the Monitor, is likely (based on availability of financing, experience and other considerations, including regulatory approvals) to be able to proceed with an Investment Proposal which could be in the best interests of the stakeholders, taking into account and when compared to the recoveries provided to stakeholders under the Plan, will be deemed a “**Qualified Investor**”. Contemporaneous with such determination, the HII Group Entities will undertake to provide the Qualified Investor with access to a data room containing the Information. If there is no Qualified Investor by March 11, 2013, or any other date to be agreed upon between the HII Group Entities and the Monitor, the Investment Proposal Process shall be deemed terminated.

Due Diligence

Only Qualified Investors may conduct due diligence with respect to the Business and the Assets and such due diligence must be completed by **5:00 p.m. (Eastern Prevailing Time) on March 11, 2013.**

At the HII Group Entities’ discretion, in consultation with the Monitor, due diligence access may include management presentations (as may be scheduled by the HII Group Entities), access to physical and online data rooms, on-site inspections and such other matters that a Qualified Investor may reasonably request and as to which the HII Group Entities, in their reasonable exercise of discretion, in consultation with the Monitor, may agree.

The HII Group Entities will designate employee(s) or other representative(s) to coordinate, under the supervision of the Monitor, a Qualified Investor’s reasonable requests for additional information and due diligence access. In addition, the HII Group Entities, in consultation with the Monitor, may, in their discretion, coordinate due diligence efforts such that multiple Qualified Investors have simultaneous access to due diligence materials. Neither the HII Group Entities nor any of their affiliates (nor any of their respective representatives), nor the Monitor, are obligated to furnish any information relating to all or a portion of the Assets or the Business to any person other than to Qualified Investors. Except and to the extent contemplated under any definitive agreement with a Successful Investor (as defined herein), the HII Group Entities and the Monitor make no representation or warranty as to the information in any materials provided.

Deadline

All Investment Proposals must be submitted by facsimile transmission, electronic mail, personal delivery or reliable overnight courier to the Notice Parties at the addresses set out in Schedule "1" hereto so as to be actually received by **5:00 p.m. (Eastern Prevailing Time) on March 11, 2013** (the "**Investment Proposal Deadline**").

Qualified Investment Proposals

An Investment Proposal will be considered a Qualified Investment Proposal only if (i) the Investment Proposal is received on or before the Investment Proposal Deadline and (ii) the Investment Proposal complies with the following (a "**Qualified Investment Proposal**"):

- (d) it includes a duly authorized and executed term sheet describing the terms and conditions of the proposed transaction, including (i) details regarding the proposed equity and debt structure of the HII Group Entities following completion of the proposed transaction, (ii) any anticipated regulatory approvals required to close the transaction and anticipated time frame and any anticipated impediments for obtaining such approvals, (iii) any conditions to closing that the Qualified Investor may wish to impose, (iv) the material terms and provisions of any ancillary agreements as may be required by a Qualified Investor, and (v) any other terms or conditions that the Qualified Investor believes are material to the transaction, and, in the case of a proposed acquisition of Assets, (vi) the purchase price expressed in Canadian dollars (including liabilities to be assumed by the Qualified Investor), (vii) any of the Assets expected to be included in the transaction, and (viii) the structure and financing of the transaction (the "**Term Sheet**");
- (e) it includes a letter stating that the Qualified Investor's offer is irrevocable until the earlier of (i) the selection of the Successful Investor or (ii) March 18, 2013 at 5 p.m., provided that if such Qualified Investor is selected as the Successful Investor, its offer shall remain irrevocable until the closing of the investment by the Successful Investor;
- (f) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the HII Group Entities, in consultation with the Monitor, to make a reasonable determination as to the Qualified Investor's financial and other capabilities to consummate the transaction contemplated by the Investment Proposal;
- (g) it is not conditional on (i) the outcome of unperformed due diligence by the Qualified Investor and/or (ii) obtaining financing or capital;

- (h) it fully discloses the identity of each entity that will be sponsoring or participating in the Investment Proposal, and the complete terms of any such participation;
- (i) it includes an acknowledgement and representation that the Qualified Investor: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets to be acquired and liabilities to be assumed in making its Investment Proposal and (ii) did not rely on any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express or implied (by operation of law or otherwise) regarding the Business or Assets of the HII Group Entities or the completeness of any information to be provided in connection therewith, whether made by the HII Group Entities or the Monitor or their representatives;
- (j) it includes evidence, in form and substance satisfactory to the HII Group Entities, in consultation with the Monitor, of authorization and approval from the Qualified Investor's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Investment Proposal;
- (k) it is accompanied by a refundable deposit in the form of a wire transfer payable to the Monitor (to a bank account specified by the Monitor) in an amount equal to Cdn\$2,000,000.00 (the "**Deposit**") to be held and dealt with in accordance with these Terms and Conditions; and
- (l) it contains any other information reasonably requested by the HII Group Entities, in consultation with the Monitor.

Determination of Qualified Investment Proposals

Whether an Investment Proposal of a Qualified Investor meets the foregoing requirements to become a Qualified Investment Proposal will be determined by the HII Group Entities in their reasonable business judgment, after consultation with their advisors and the Monitor. The HII Group Entities will notify the applicable Qualified Investor if they determine that a Qualified Investor has submitted a Qualified Investment Proposal on the day that any such determination is made.

The HII Group Entities, in their reasonable business judgment, after consultation with their advisors and the Monitor, may reject any Investment Proposal that (a) is inadequate or insufficient, (b) does not conform to the requirements of the CCAA or these Terms and Conditions or (b) is contrary to the best interests of the HII Group Entities' estate, their creditors or other parties in interest.

If the HII Group Entities do not receive any Qualified Investment Proposals by the Investment Proposal Deadline, the Investment Proposal Process shall be terminated and the HII Group Entities shall report same to the Court.

Negotiation of Qualified Investment Proposals

If the HII Group Entities determine in their reasonable business judgment, after consultation with their advisors and the Monitor, that a Qualified Investor has submitted a Qualified Investment Proposal, the HII Group Entities, in consultation with their advisors and the Monitor, shall select the most favourable Qualified Investment Proposal, taking into account, among other things, (i) the amount and nature of the consideration, (ii) the proposed assumption of any liabilities, if any, (iii) the ability of the Qualified Investor to close the proposed transaction, (iv) the proposed closing date and the likelihood, extent and impact of any potential delays in closing and (v) the impact of the proposed transaction on stakeholders of the HII Group Entities, all considered in the context and in comparison to the recoveries under the Plan (the “**Selected Superior Offer**”) and shall negotiate and settle a definitive agreement with the Qualified Investor by March 28, 2013 (the “**Transaction Deadline**”) conditional on Court approval, and creditor approval if applicable.

Once a definitive agreement has been negotiated and settled in respect of the Selected Superior Offer in accordance with the provisions hereof, the Selected Superior Offer shall be the “**Successful Investment Proposal**” hereunder and the person(s) who made the Selected Superior Offer shall be the “**Successful Investor**” hereunder.

The HII Group Entities, in consultation with the Monitor, may terminate the Investment Proposal Process at any time or reject one or more Qualified Investors if the HII Group Entities, in consultation with the Monitor, determine that the Investment Proposal Process is not in the best interests of the HII Group Entities or that any Qualified Investor is not acting in good faith or is acting contrary to the interests of the HII Group Entities or their stakeholders.

Approval Motion

The hearing to authorize some or all of the HII Group Entities to enter into agreements with respect to the Successful Investment Proposal (the “**Approval Motion**”) will be held on a date to be scheduled by the Court upon application by the HII Group Entities. The Approval Motion may be adjourned or rescheduled by the HII Group Entities, with the consent of the Monitor, without further notice by an announcement of the adjourned date at the Approval Motion.

To the extent that the Successful Investment Proposal contemplates a plan of compromise or arrangement pursuant to the CCAA or any applicable corporate legislation, it is currently contemplated that the Successful Investment Proposal will be put before creditors for consideration and approval at the creditors’ meeting to consider and approve the Plan (the “**Creditors’ Meeting**”).

All Qualified Investment Proposals (other than the Successful Investment Proposal) shall be deemed rejected on and as of the date of the approval of the Successful Investment Proposal by the Court. If a definitive agreement with respect to a Successful Investment Proposal has not been negotiated and settled by the Transaction Deadline, the Investment Proposal Process shall terminate. If following approval of the

Successful Investment Proposal by the Court, and creditors if applicable, the Successful Investor fails to consummate the proposed transaction for any reason, the HII Group Entities will not have to consummate any other transaction or re-open the Investment Proposal Process.

Deposits

All Deposits shall be retained by the Monitor and invested in an interest bearing trust account. If there is a Successful Investment Proposal, the Deposit (plus accrued interest) paid by the Successful Investor whose Successful Investment Proposal is approved at the Approval Motion, and by creditors if applicable, shall be applied to the purchase price to be paid or investment to be made by the Successful Investor upon closing of the approved transaction. If a Successful Investor fails to consummate a Court-approved sale or investment transaction because of a breach or failure to perform on the part of such Successful Investor, the HII Group Entities shall be entitled to retain the Deposit of the Successful Investor as part of their damages resulting from the breach or failure to perform by the Successful Investor. The Deposits (plus applicable interest) of Qualified Investors not selected as the Successful Investor shall be returned to such Qualified Investors within five Business Days following the earliest of the date upon which the Successful Investment Proposal is selected, the date upon which the Investment Proposal Process is terminated in accordance with these Terms and Conditions or March 18, 2013.

Approvals

For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or are otherwise required at law in order to implement a Successful Investment Proposal.

Modifications

The HII Group Entities, in their reasonable business judgment, may modify or amend this Investment Proposal Process, including the process and procedures set out herein at any time after consultation with the Monitor, and, if such modification or amendment materially deviates from these Terms and Conditions, by order of the Court.

Schedule "1": Addresses for Notices and Deliveries

Homburg Invest Inc.

32 Akerley Boulevard
Dartmouth, Nova Scotia
B3B 1N1

Attention: Mr. Jan Schöningh, President and Chief Executive Officer
and Mr. James F. Miles, Chief Financial Officer
Email: jschoningh@hinvest.ca / jmiles@hinvest.ca

With a copy to:

Osler, Hoskin & Harcourt LLP
1000 De La Gauchetière Street West
Suite 2100
Montréal, Québec
H3B 4W5

Attention: Mr. Vitale Santoro and Ms. Sandra Abitan
Fax: (514) 904-8101
Email: vsantoro@osler.com / sabitan@osler.com

Samson Bélair/Deloitte & Touche Inc.

1 Place Ville Marie
Suite 3000
Montréal, Québec
H3B 4T9

Attention: Mr. Pierre Laporte and Mr. Jean-François Nadon
Fax: (514) 390-4103
Email: pilaporte@deloitte.ca / jnadon@deloitte.ca

With a copy to:

McCarthy Tétrault LLP
1000 De la Gauchetière Street West
Suite 2500
Montréal, Québec
H3B OA2

Attention: Mr. Mason Poplaw and Mr. Clemens Mayr
Fax: (514) 875-6246
Email: mpoplaw@mccarthy.ca / cmayr@mccarthy.ca