

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.
Homburg Management (Canada) Inc.**
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.**

Mises-en-cause

-and-

Homco Realty Fund (83) Limited Partnership, a partnership duly constituted under the laws of Nova Scotia, having its registered office at 1959 Upper Water Street, Suite 900, Halifax, Nova Scotia, B3J 3N2 and having a chief place of business at Suite 1060, 1 Place Alexis Nihon, 3400 de Maisonneuve Boulevard West, Montréal, Québec, H3Z 3B8

Mise-en-cause

-and-

Kangcorp Inc., a corporation having its head office at 33 Harbour Square, Unit 1601, Toronto, Ontario, M5J 2G2

Mise-en-cause

-and-

Samson Bélair/Deloitte & Touche Inc.

Monitor

**MOTION FOR AMENDMENTS TO THE INITIAL ORDER, A VESTING ORDER
(HOMCO 83) AND EXTENSION OF THE STAY PERIOD .
(Sections 11, 11.02 and 36 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. Gouin, 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. 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 April 26, 2013 (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 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 (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 an Applicant Partnership thereunder. On December 14, 2012, this Court issued a further order amending the Initial Order to add Homco Realty Fund (190) Limited Partnership (“**Homco 190**”) and Homco Realty Fund (191) Limited Partnership (“**Homco 191**”) as Applicant Partnerships;
6. By Order of the Court made on February 6, 2013, the Initial Order was further amended to add Homco Realty Fund (61) Limited Partnership (“**Homco 61**”) as an additional Applicant Partnership and Castello Development Ltd. (“**Castello**”) as a *mise-en-cause*. On March 14, 2013, the Initial Order was further amended to add Homburg Management (Canada) Inc. (“**HMCI**”) as an additional Petitioner (NCLL, Homco 96, Homco 190, Homco 191, Homco 61, Castello, HMCI, the Initial Debtors and the Initial *Mises-en-cause* are collectively referred to as the “**HII Group**”);
7. The HII Group respectfully requests that this Honourable Court render the orders sought herein to amend the Initial Order to include Homco Realty Fund (83) Limited Partnership (“**Homco 83**”), as set forth in the conclusions herein, grant a vesting order in respect of a transaction by the same entity and to extend the Stay Period until June 7, 2013;

II. **HOMCO 83**

A. *Background*

8. Homco 83 is governed by the laws of Nova Scotia. Its general partners are HII (83) GP Inc., a wholly-owned subsidiary of HII, and Homburg L.P. Management Inc., an entity controlled by HII. HII is the sole limited partner of Homco 83;
9. Homco 83 developed a condominium project known as “**Northumberland**” located in Charlottetown, Prince Edward Island. Construction has been completed and Homco 83 still owns eleven of the units. Homco 83 does not hold any other significant asset;
10. On or about September 11, 2012, the HII Group received a demand letter sent on behalf of the board of directors of the Northumberland condominium corporation, Queens County Condominium Corporation #10 (“**QCCC#10**”). The letter alleged significant construction deficiencies and in particular a water ingress problem with the building envelope (the “**Deficiencies**”);
11. The HII Group has put subcontractors and other potentially responsible parties on notice of the Deficiencies claim;
12. As of the date hereof, no complete list of alleged Deficiencies has been communicated in writing to HII. However, during the winter of 2013, QCCC#10 issued an assessment in the approximate amount of \$600,000 to fund certain remediation work. Given the condominium units it holds, Homco 83 paid approximately one quarter of that amount;
13. In a letter dated March 13, 2013 received by HII, counsel for QCCC#10 threatened litigation;

B. Amendments to the Initial Order

14. Homco 83 is insolvent. The value of Homco 83's assets is less than the value of its liabilities given, mainly, past advances made by HII;
15. It is in the interest of Homco 83 and the HII Group that all outstanding claims in respect of Homco 83, including any claim QCCC#10 may have, be addressed within the current CCAA proceedings in order for the HII Group to determine the best course of action for this entity in the context of the plan of arrangement filed by HII and Shareco (the "**Plan**");
16. In order to solicit, quantify and resolve all outstanding claims with respect to Homco 83, the HII Group respectfully requests that this Honourable Court amend the Initial Order and the Claims Process Order (as amended), in the Court record, in each case, to extend their coverage to Homco 83, as set forth in the conclusions herein;

C. Sale transaction

17. HII and Homco 83 have been marketing the unsold units with the assistance of Century 21 as broker. Given *inter alia* the small market for high-end condominium units in Charlottetown, sales have progressed very slowly;
18. HII received a letter of intent from Kangcorp Inc. ("**Kangcorp**") seeking to purchase the units in bulk. In order to ensure it obtained the best possible offers, HII caused Century 21 to seek additional bulk purchase offers. Only one further formal and credible offer was received, at which time Century 21 requested that Kangcorp and the other bidder submit their best and final offers;
19. HII and the Monitor concluded that Kangcorp's offer was superior to the other best and final offer it had received. Also, in light of the process which had been conducted, it was unlikely that any superior offer would materialize. Accordingly, with the support of the Monitor, Homburg L.P. Management Inc. (in its capacity as the general partner of Homco 83 appearing on title as bare legal nominee) entered into a Purchase and Sale Agreement dated April 18, 2013 (the "**Northumberland PSA**") with Kangcorp for the sale in bulk, on an *as is* basis and with a short due diligence period (the "**Bulk Sale**"), of nine units (the "**Units**"), as appears from a copy of the Northumberland PSA, filed in support hereof *under seal* as **Exhibit P-1**. The purchase price provided for in the Northumberland PSA is not disclosed herein because the said agreement contains a financing condition and, in the unlikely event that the Bulk Sale does not close, disclosure could prejudice further efforts to sell the Units;
20. The Bulk Sale is in the best interest of Homco 83 and its creditors. Accordingly, HII respectfully requests that it be approved by this Court as set forth in the conclusions herein;
21. The sale of a tenth condominium unit held by Homco 83, which has been negotiated in the ordinary course of business, will close on or about the date of the present Motion (the "**Tenth Sale**"). Pursuant to the Purchase Agreement dated November 17, 2011 approved

by this Honourable Court in its Judgment of January 12, 2012, in the Court record, the eleventh condominium unit will be transferred upon expiry of the Stay of Proceedings (jointly with the Tenth Sale, the “**Other Dispositions**”);

22. Once the Bulk Sale, the Other Dispositions and the claims process has been completed, HII, in cooperation with the Monitor, will be in a position to determine the best course of action for Homco 83;

III. EXTENSION OF THE STAY PERIOD

23. In addition to the steps outlined above, since the last extension of the Stay Period, the HII Group continued to make significant progress, including *inter alia*:

- (a) Advancing discussions with the numerous mortgage lenders and concluding agreements with certain of them;
- (b) Advancing the sales of several properties located in Canada, the United States and the Netherlands;
- (c) Participating in the final stages of the claims process conducted by the Monitor;
- (d) Conducting the Investment Proposal Process (as defined in the Order approving Investment Proposal Process, in the Court record);
- (e) Concluding a Support Agreement with The Catalyst Capital Group Inc.;
- (f) Crafting a plan of arrangement with respect to several HII Group entities and drafting the corollary information circular; and
- (g) Communicating frequently with key stakeholders and regulators.

Significant effort continues to be expended in maintaining the normal course of business, in the context of the CCAA process. An extension of the Stay Period is required to continue the process towards approval and implementation of a plan of arrangement;

24. The HII Group refers the stakeholders and the Court to the Monitor’s Twenty Second Report, which the Monitor has indicated will contain additional information in respect of the matters addressed in the present Motion;

IV. CONCLUSION

25. HII is of the view that providing the relief requested herein is appropriate in the present circumstances. Accordingly, HII respectfully requests that this Honourable Court render the orders contained in the conclusions herein;
26. The Letter of Intent contains sensitive commercial information and the HII Group respectfully requests that it be sealed;

27. As will appear from the Monitor's Twenty Second Report, the Monitor supports the present Motion;
28. The HII Group has acted, and continues to act, in good faith and with the utmost diligence;
29. The present motion is well founded in fact and law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

1. **GRANT** the present *Motion for amendments to the Initial Order, authorization of a sale transaction (Homco 83) and extension of the stay period* (the "**Motion**");
2. **DECLARE** that the service of the Motion constitutes good and sufficient service on all persons and further **DECLARE** that the Petitioners are relieved of any other requirements for service of the Motion;
3. **DECLARE** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion;
4. **DECLARE** that as of the date of the order to be rendered by the Court, Homco Realty Fund (83) Limited Partnership ("**Homco 83**") shall be deemed to be an Applicant Partnership under the Initial Order;
5. **DECLARE** that the Claims Process Order rendered in the present file on April 30, 2012 (the "**Claims Process Order**") applies *mutatis mutandis* to Homco 83 provided that, as regards Homco 83 only:
 - (a) All references in the Claims Process Order to "HII Group" or "HII Group Entity", shall be deleted and replaced with "Homco 83" as the circumstances require;
 - (b) The definition of "**Claims Bar Date**" in paragraph [6.11] of the Claims Process Order shall be amended as follows:

[6.11] "**Claims Bar Date**" means 5:00 p.m. (Eastern Prevailing Time) on May 17, 2013 or, for Creditors with Subsequent Restructuring Claims, the later of May 17, 2013 at 5:00 p.m. (Eastern Prevailing Time) or (ii) fifteen (15) Calendar Days after the date of receipt by the Creditor of a notice of disclaimer, rescission, repudiation, termination or restructuring by of any contract, lease or other agreement, including any employment agreement, provided that Homco 83 shall not send any such notice after the date that is thirty (30) Calendar Days prior to the meeting of creditors to be held in respect of the Plan; or such other date as may be ordered by the Court;
 - (c) The following definition shall be added to the Claims Process Order, immediately after paragraph [6.26.0]:

[6.26.0.1] "**Homco 83**" means Homco Realty Fund (83) Limited Partnership;

(d) Paragraphs [11], [12] and [13] of the Claims Process Order shall be amended as follows:

[11] **ORDERS** that the Monitor shall cause a Claims Package to be sent to each Known Creditor by regular prepaid mail on or before May 1, 2013;

[12] **ORDERS** that on a Business Day, on or before May 3, 2013, the Monitor shall cause to be published the Notice to Creditors in The Guardian (published in Charlottetown, Prince Edward Island);

[13] **ORDERS** that the Monitor shall cause the Claims Package, which includes the Notice to Creditors, to be posted on the Website on or before May 1, 2013;

6. **APPROVE** and **RATIFY** the Purchase and Sale Agreement dated April 18, 2013 (the “**Northumberland PSA**”) entered into by Homburg L.P. Management Inc. (in its capacity as the general partner of Homco 83) and Kangcorp Inc. (“**Kangcorp**”), as it may be amended with the consent of Samson Bélair/Deloitte & Touche Inc., in its capacity of Monitor to the Debtors and without any personal or corporate liability (the “**Monitor**”), in respect of the Units;

7. **DECLARE** that the Units consist of the following real property located located in Queens County, at 135 Pownal Street, Charlottetown, Province of Prince Edward Island:

Unit 201	PID 1802180
Unit 203	PID 1802206
Unit 204	PID 1802214
Unit 208	PID 1802255
Unit 301	PID 1802271
Unit 304	PID 1802305
Unit 307	PID 1802339
Unit 401	PID 1802362
Unit 407	PID 1802420

8. **AUTHORIZE** and **APPROVE** the sale, transfer and assignment of the Units to Kangcorp in accordance with the terms of the Northumberland PSA (the “**Northumberland Conveyance**”) and **AUTHORIZE** the HII Group, including without limitation Homco 83 and the Monitor, to take any and all actions necessary to proceed with the Northumberland Conveyance including, without limiting the generality of the foregoing, to execute any and all documents that may be necessary or useful to the consummation of such Northumberland Conveyance (the “**Bulk Sale**”);

9. **ORDER** and **DECLARE** that upon the filing of a Monitor's certificate in this Court record confirming payment of the full purchase price contemplated by the Bulk Sale and the closing of the Bulk Sale (the "**Monitor's Certificate**"), which Monitor's Certificate shall be delivered and filed in this Court record forthwith after confirmation by Homco 83 and Kangcorp of payment of the full purchase price contemplated by the Bulk Sale and the closing of the Bulk Sale, all of Homco 83's rights, title and interests in and to the Units shall vest absolutely in Kangcorp, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), mortgages, hypothecs, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations on any other personal property registry system or land title system (all of which are collectively referred to as "**Encumbrances**"), other than the "**Permitted Encumbrances**" listed in Schedule I of the Order to be rendered. For greater certainty, **ORDER** that all of the Encumbrances affecting or relating to the Units, other than the Permitted Encumbrances, are hereby expunged and discharged as against the Units;
10. **DECLARE** that the Order sought constitutes the only authorization required by the HII Group to proceed with the Bulk Sale and, for greater certainty, **DECLARE** that the parties involved in the Bulk Sale are exempted from requiring or obtaining any formal valuation or authorization that may have been required from any person or authority whatsoever;
11. **ORDER** and **DECLARE** that, notwithstanding:
 - (a) the pendency of these proceedings;
 - (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") in respect of the HII Group and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of the HII Group;the Bulk Sale shall be binding on any trustee in bankruptcy that may be appointed in respect of the HII Group and shall not be void or voidable and shall not be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA, article 1631 and following of the Civil Code of Québec, S.Q. 1991, c. 64 or any other applicable federal or provincial legislation nor shall they be deemed to be oppressive transactions or conduct justifying any oppression remedy under any applicable statute;
12. **EXTEND** the Stay Period (as defined in the Initial Order and as extended from time to time) to June 7, 2013, the whole subject to the terms of the Initial Order;
13. **ORDER** the sealing of the Northumberland PSA;

14. **ORDER** the provisional execution of the Order notwithstanding any appeal therefrom and without the necessity of furnishing any security;

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

MONTREAL, April 23, 2013

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP

Attorneys for the Debtors and Mises-en-cause

SCHEDULE I – PERMITTED ENCUMBRANCES

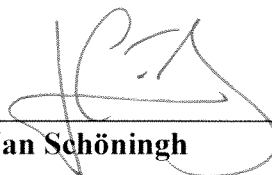
1. Encumbrances for real property taxes (which term includes charges, rates and assessments, and other governmental charges or levies) or charges for electricity, power, gas, water and other services and utilities in connection with any of the Units that (i) have accrued but are not yet due and owing or, if due and owing, are adjusted for pursuant to the terms of the Northumberland PSA, or (ii) the validity of which is being contested in good faith.
2. Registered easements, rights-of-way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any governmental authority or public utility; or any registered subdivision, development, servicing, site plan or other similar agreement with any governmental authority or public utility.
3. Facility sharing, cost sharing, tunnel, pedway, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or governmental authorities.
4. Restrictive covenants, private deed restrictions, and other similar land use controls or agreements.
5. Encroachments by any of the Units over neighbouring lands that are permitted under agreements with neighbouring landowners and encroachments over any of the Units by improvements of neighbouring landowners.
6. Any subsisting reservations, limitations, provisos, conditions or exceptions contained in the original grants of the Units from the Crown.
7. Any rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or the Province of Prince Edward Island.
8. The provisions of applicable laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning.
9. Any title defects, irregularities, easements, servitudes, encroachments, reservations, rights-of-way or other discrepancies in title or possession relating to the Units.

AFFIDAVIT

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

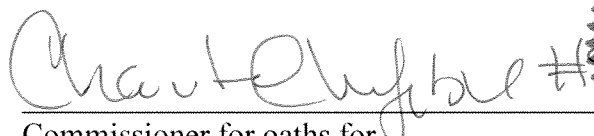
1. I am the President and Chief Executive Officer of Homburg Invest Inc. and duly authorized representative of the Petitioners for the purpose hereof;
2. I have taken cognizance of the attached *Motion for amendments to the Initial Order, authorization of a sale transaction (Homco 83) and extension of the stay period*;
3. All of the facts alleged in the said motion are true.

AND I HAVE SIGNED:



Jan Schöningh

SOLEMNLY DECLARED BEFORE ME
IN MONTRÉAL, QUÉBEC ON THE
23RD DAY OF APRIL 2013.



Commissioner for oaths for
the Province of Québec



NOTICE OF PRESENTATION

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GP Inc. and, in their capacity
a trustees of Canmarc REIT
(formerly Homburg Canada
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#10**

TAKE NOTICE that the *Motion for amendments to the Initial Order, authorization of a sale transaction (Homco 83) and extension of the stay period* will be presented for hearing and allowance in the Superior Court, commercial division, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on April 26, 2013, at 9 a.m., or so soon thereafter as counsel may be heard, and in a room to be announced.

PLEASE ACT ACCORDINGLY.

MONTRÉAL, April 23, 2013

Osler, Hoskin & Harcourt LLP

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

**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.
Homburg Management (Canada) Inc.**

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.**

Mises-en-cause

-and-

Homco Realty Fund (83) Limited Partnership

Mise-en-cause

-and-

Kangcorp Inc.

Mise-en-cause

-and-

Samson Bélair/Deloitte & Touche Inc.

Monitor

<p>LIST OF EXHIBIT</p>

Exhibit P-1: Purchase and Sale Agreement (*under seal*).

MONTRÉAL, April 23, 2013

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP

Attorneys for the Debtors and Mises-en-cause

Exhibit P-1

Purchase and Sale Agreement (*under seal*)

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. ET AL.

Debtors/Petitioners

-and-

HOMCO REALTY FUND (52) LIMITED
PARTNERSHIP ET AL.

Mises-en-cause

-and-

HOMCO REALTY FUND (83) LIMITED
PARTNERSHIP

Mise-en-cause

-and-

SAMSON BELAIR/DELOITTE & TOUCHE INC.

Monitor

MOTION FOR AMENDMENTS TO THE INITIAL
ORDER, A VESTING ORDER (HOMCO 83) AND
EXTENSION OF THE STAY PERIOD (Sections 11, 11.02
and 36 of the *Companies' Creditors Arrangement Act*,
R.S.C., 1985, c. C-36), AFFIDAVIT, ATTESTATION OF
AUTHENTICITY, NOTICE OF PRESENTATION, LIST
OF EXHIBIT

ORIGINAL

Mtre. Martin Desrosiers

Mtre. Sandra Abitan

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