

**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.**

Debtors / Petitioners

-and-

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

Mises-en-cause

-and-

Samson Bélair/Deloitte & Touche Inc.

Monitor

-and-

Homburg L.P. Management Inc.

Mise-en-cause

**MOTION FOR APPROVAL OF THE EXERCISE OF CERTAIN OPTIONS
(Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36)**

**TO THE HONOURABLE JUSTICE LOUIS J. GOUIN OR TO ONE OF THE
HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL**

DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONERS RESPECTFULLY SUBMIT AS FOLLOWS:

I. INTRODUCTION

1. On September 9, 2011, the Honourable Louis J. Guin, S.C.J. issued an order (as amended, 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., Churchill Estates Development Ltd., Inverness Estates Development Ltd. and CP Development Ltd. (collectively the “**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 Debtors and a stay of proceedings (the “**Stay of Proceedings**”) was issued from the date of the Initial Order until October 7, 2011.
3. Since then, this Honourable Court has extended the Stay of Proceedings from time to time. On March 16, 2012, this Honourable Court issued an order extending the Stay of Proceedings until May 31, 2012;
4. As appears from the Initial Order, the Stay of Proceedings was 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 “**Applicant Partnerships**” and, together with the Debtors, the “**HII Group**”);
5. As appears from the Court record, the issues relating to the appropriate control of the assets and Partnerships (as defined below) have been a principal concern of both HII and the Monitor since the commencement of the proceedings under the CCAA. In this Motion, the HII Group respectfully requests that this Honourable Court approve the exercise of certain options pursuant to the Purchase Agreement (as defined herein), as more fully described below, which will allow the HII Group to obtain the necessary control to advance with its restructuring efforts, the whole with a view to formulating and proposing a viable plan of arrangement or compromise to its stakeholders;

II. BACKGROUND

6. HII is an international real estate investment and development company which, directly or indirectly, owns a diversified portfolio of real estate assets;
7. The vast majority of HII’s real estate assets located in Canada, Germany and the Netherlands are held through a number of limited partnerships formed under the laws of the Province of Nova Scotia, (individually a “**Partnership**” and collectively the “**Partnerships**”);
8. Legal title to HII’s real estate assets held through a limited partnership is held by:

- (a) In the case of real property in Canada, HLPM (as defined below);
 - (b) In the case of real property located in Estonia, Latvia and Lithuania, by the general partner of a number of limited partnerships formed under the laws of those jurisdictions (individually a “Baltic Partnership” and collectively the “Baltic Partnerships”); and
 - (c) In the case of real property in the Netherlands and Germany, by certain corporate entities established under the laws of those jurisdictions, the shares of which are held by the general partner of the relevant Partnership;
9. The general partner for all but one of the Partnerships is Homburg L.P. Management Incorporated (“**HLPM**”);
 10. HII is the sole limited partner in respect of the Partnerships;
 11. HLPM is a wholly owned subsidiary of Homburg Canada Inc. (“**HCI**”);
 12. HCI is a company indirectly controlled by Richard Homburg;
 13. In the Monitor’s Second Report to the Court (the “**Second Report**”), the Monitor provides significant additional detail in respect of the corporate structure of the HII Group. In particular, the Monitor advises that certain assets of certain Partnerships are held, directly or indirectly, in the name of HLPM and expresses concern in this regard;
 14. As appears from the Court record, the Netherlands Authority for Financial Markets (“**AFM**”) has also directed HII to take all appropriate steps to ensure that Richard Homburg no longer, directly or indirectly, exerts any influence or control over the HII Group or its assets. As previously disclosed to this Honourable Court, HII has taken all available steps to date to address these instructions with a view to preserving its license for the purposes of its restructuring;
 15. As indicated above, one of the primary focuses of the HII Group and the Monitor in the context of the present restructuring has been to obtain appropriate control of the Partnerships in respect of which HLPM is currently the general partner (the “**Control Issue**”). The HII Group and the Monitor have devoted significant time, effort and energy to resolving the Control Issue (including conducting a complete and thorough review of the corporate structure) in the most efficient and effective manner, *inter alia*, with a view to minimizing or avoiding any material adverse tax consequences, particularly as regards real estate transfer taxes (“**RETT**”);
 16. In order to address, *inter alia*, the Control Issue, on or about November 11, 2011, the HII Group filed the *Amended motion to amend certain limited partnership agreements and for ancillary relief*, in the Court record (the “**GP Motion**”), which sought, *inter alia*, to replace HLPM with new general partners while maintaining HLPM on title (where required) in order to avoid payment of RETT;
 17. Given the risks and uncertainties inherent in the GP Motion, including significant potential adverse tax consequences, the HII Group, in collaboration with the Monitor,

commenced negotiations with the HCI Group (as defined below), with a view to arriving to an agreement which would resolve all outstanding issues between the parties, as more fully described in the *Motion for approval of a purchase agreement and for ancillary orders*, in the Court record (the “**PA Motion**”);

18. Following several weeks of extensive negotiations and concerted efforts of all parties, certain members of the HII Group and the HCI Group entered into a Purchase Agreement dated November 17, 2011 (“**Purchase Agreement**”). Capitalized terms not defined herein shall have the meanings ascribed thereto in the Purchase Agreement;
19. On January 12, 2012, this Honourable Court approved the Purchase Agreement. Included therein are the following options granted to the HII Group (each an “**Option**” and collectively the “**Options**”):
 - (a) The option to purchase or otherwise obtain (directly or indirectly) title to the shares of HLPM, the Baltic GPs and any European Entities;
 - (b) The option to require the transfer of the legal (registered) title to the Properties held by HLPM, the Baltic GPs and any European Entities; and
 - (c) The option to require the resignation of any or all General Partners of any of the Partnerships or of the Baltic Partnerships, to require their replacement by any entity and/or to effect amendments to the Limited Partnership Agreements in respect of the Partnerships and/or Baltic Partnerships;
20. The Purchase Agreement provides that the timing and manner of exercise of any Option shall be subject to the approval of the Monitor and the Court;
21. On February 17, 2012, the transaction contemplated by the Purchase Agreement closed;
22. The Options are designed to allow, *inter alia*, the HII Group to address the Control Issue and properly structure the transfer of the control of the General Partners and any assets of the Partnerships and Baltic Partnerships held directly or indirectly by the General Partners on behalf of the Partnerships, Baltic Partnerships or the European Entities, with a view to minimizing any negative tax consequences for the Partnerships, the Baltic Partnerships and HII, including in particular any RETT relating to the assets, especially those located in the Netherlands and Germany;
23. As provided by the Purchase Agreement, the HCI Group is collaborating with the HII Group and the Monitor in the context of the restructuring, including to determine the most efficient manner to exercise the Options contemplated therein;

III. EXERCISE OF CERTAIN OPTIONS

24. Following an extensive analysis of the Options and in consultation with the Monitor and their respective Canadian, Dutch and German counsel, HII determined that, as of the date hereof, the most efficient and effective way to address the Control Issue in respect of certain Partnerships would be as set forth below;

25. As appears from the Second Report, certain Canadian real estate assets, namely seven properties located in Alberta and one property located in Prince Edward Island are held through Partnerships of which HLPM is the general partner and HII the limited partner (each a “**Canadian LP**” and collectively the “**Canadian LPs**”) with legal title registered in the name of HLPM;
26. As disclosed previously to the Court and as more fully appears *inter alia* in the Second, Fourth and Fifth Reports of the Monitor, real estate assets located in the Netherlands and Germany are generally held through Partnerships in which HII is the sole or principal limited partner and HLPM the sole general partner (each a “**Dutch and German LP**”) with legal title registered in the name of HLPM;
27. There are also a number of Partnerships that hold no real estate and that are generally inactive in respect of which HLPM is the general partner (each an “**Inactive LP**”);
28. In order to address the Control Issue as regards the Partnerships (other than the Baltic Partnerships), the HII Group intends to:
 - (a) Incorporate direct or indirect wholly owned subsidiaries of HII, to act as general partners (each of which will be the general partner of no more than one Partnership) (each a “**New GP**” and collectively the “**New GPs**”);
 - (b) Replace HLPM as the general partner of each Canadian LP with a New GP for each Canadian LP, save and except for Homco Realty Fund (83) Limited Partnership (“**Homco 83**”);
 - (c) Replace HLPM as the general partner of each Inactive LP with a New GP for each Inactive LP or, alternatively, proceed with the windup and dissolution of any Inactive LP;
 - (d) Add a New GP to act as general partner of Homco 83 and provide for HLPM to remain as a general partner of Homco 83 for the sole purpose of acting as legal nominee in respect of the property or assets of Homco 83 that are registered in HLPM’s name;
 - (e) Add a New GP to each Dutch and German LP to act as general partner, save and except for Homco Realty Fund (110) Limited Partnership (“**Homco 110**”), and provide for HLPM to remain as a general partner of each for the sole purpose of acting as legal nominee in respect of the property or assets of each respective Dutch and German LP that are registered in HLPM’s name;
 - (f) Replace HLPM as the general partner for Homco 110 with a New GP; and
 - (g) Reorganize the share capital of HLPM to provide HII with control of the voting rights of HLPM replace its board of directors with HII nominees and replace HLPM’s officers with individuals appointed by the new board of directors;(collectively referred to as the “**First Option Exercise**”).

29. In the Netherlands, HII sought and obtained, through its Dutch counsel Allen & Overy LLP, an advance tax ruling from the Dutch tax authorities confirming that no RETT would be payable in the Netherlands as a result of the First Option Exercise;
30. HII and the Monitor have also obtained legal opinions from their respective Canadian, Dutch and German counsel confirming that the First Option Exercise would not give rise to any RETT in any relevant jurisdiction. In Canada, the transfer of legal title of certain properties from HLP to the New GPs will result in registration fees in the aggregate amount of approximately 25 000\$;
31. The First Option Exercise will allow the HII Group to address the AFM's concerns in respect of the Control Issue and will provide HII with the necessary authority to negotiate with secured lenders and relevant third parties, the whole with a view to advancing the restructuring and ultimately formulating a plan of arrangement for HII Group stakeholders;

IV. CONCLUSION

32. The HII Group has acted, and continues to act, in good faith and with the utmost diligence;
33. As will appear in the Ninth Report of the Monitor to the Court (the "**Ninth Report**"), the Monitor supports the present request for approval of the First Option Exercise;
34. The HII Group reserves its right to seek the approval of this Honourable Court with respect to the exercise of all remaining Options in respect of the Partnerships as and when appropriate;
35. The HII Group respectfully requests that this Honourable Court approve the First Option Exercise;
36. This motion is well founded in fact and law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO :

GRANT the present *Motion for approval of the exercise of certain options* (the "**Motion**");

DECLARE that the Motion was duly served, that the notices of presentation of the Motion are sufficient and dispense the Debtors from any additional notice requirements;

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

AUTHORIZE the HII Group to enter into any and all agreements, execute any and all documents and take any and all measures necessary or useful to fully implement the First Option Exercise;

PRAY ACT of the Monitor's Ninth Report;

ORDER provisional execution of the present order, notwithstanding appeal;

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

MONTRÉAL, April 2, 2012

Osler Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP

Attorneys for the Debtors / Petitioners

AFFIDAVIT

I the undersigned, **James F. Miles**, domiciled and residing at 29 Coventry Lane, Dartmouth, Nova Scotia, B2V 2K2, solemnly declare the following:

1. I am the Vice-President and Chief Financial 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 approval of the exercise of certain options*;
3. All of the facts alleged in the said motion are true.

AND I HAVE SIGNED



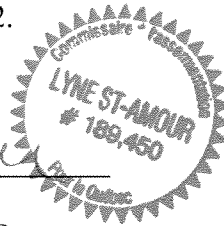
James F. Miles

SOLEMNLY DECLARED BEFORE ME
ON THE 2ND DAY OF APRIL 2012.



LYNE ST-AMOUR

COMMISSIONER OF OATHS FOR
THE PROVINCE OF QUÉBEC



NOTICE OF PRESENTATION

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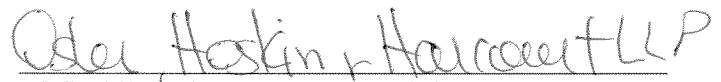
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Inc.

TAKE NOTICE that the *Motion for approval of the exercise of certain options* 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 11, 2012, at 2:15 p.m., in a room to be announced.

PLEASE ACT ACCORDINGLY.

MONTRÉAL, April 2, 2011

A handwritten signature in cursive script, reading "Osler, Hoskin & Harcourt LLP", is written over a horizontal line.

OSLER, HOSKIN & HARCOURT LLP

Attorneys for the Debtors / Petitioners

No: 500-11-041305-117

SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL

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

HOMBURG INVEST INC. & AL.

Debtors/Petitioners

-and-

HOMCO REALTY FUND (52) LIMITED PARTNERSHIP & AL.

Mis-en-cause

-and-

SAMSON BELAIR/DELOITTE & TOUCHE INC.

Monitor

-and-

HOMBURG L.P. MANAGEMENT INC.

Mis-en-cause

**MOTION FOR APPROVAL OF THE EXERCISE OF CERTAIN
OPTIONS**

*(Sections 11 of the Companies' Creditors Arrangement Act,
R.S.C. 1985, c. C-36, as amended) AFFIDAVIT, NOTICE OF
PRESENTATION*

ORIGINAL

M^e Martin Desrosiers

M^e Sandra Abitan

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