

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC

N° : 500-11-041305-117

SUPERIOR COURT
(Commercial Division)

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 (53) Limited Partnership
Homco Realty Fund (88) Limited Partnership
Homco Realty Fund (89) Limited Partnership
Homco Realty Fund (92) 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

Mis-en-cause

-and-

Samson Bélair/Deloitte & Touche Inc.

Monitor

**MOTION TO EXTEND THE STAY PERIOD AND TO AMEND THE INITIAL ORDER
AND FOR OTHER ORDERS**

**(Articles 9 and 11 of *Companies' Creditors Arrangement Act*
(R.S.C., 1985, c. C-36)**

**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:**

Introduction

1. On September 9, 2011, the Honourable Louis J. Gouin, S.C.J. issued an order (the “**Initial Order**”) pursuant to the Companies Creditors’ Arrangement Act (the “**CCAA**”) in respect of Homburg Invest Inc (“**HII**”), Homburg Shareco Inc., Churchill Estate Developments Ltd., Inverness Estates Developments Ltd. and CP Developments 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 (the “**Stay Period**”);
3. In addition to protecting the Debtors, the Stay of Proceedings issued by the Court also extends to the following limited partnerships, which are not debtors in these proceedings but which form an integral part of the business of the Debtors: Homburg Realty Fund (92) Limited Partnership, Homburg Realty Fund (199) Limited Partnership (“**Partnership (199)**”), Homburg Realty Fund (52) Limited Partnership, Homburg Realty Fund (53) Limited Partnership (“**Partnership (53)**”), Homburg Realty Fund (88) Limited Partnership, Homburg Realty Fund (89) Limited Partnership, Homburg Realty Fund (105) Limited Partnership, Homburg Realty Fund (121) Limited Partnership, Homburg Realty Fund (122) Limited Partnership and Homburg Realty Fund (142) Limited Partnership (collectively the “**Applicant Partnerships**”) (the Debtors and the Applicant Partnerships shall be collectively referred to as the “**Homburg Parties**”);
4. The Homburg Parties respectfully request that this Honourable Court:
 - a) Extend the Stay of Proceedings until December 10, 2011; and
 - b) Amend the Initial Order as provided for in the conclusions hereof;

Extension of the Stay of Proceedings

5. Since the issuance of the Initial Order, the Homburg Parties, have acted, and continue to act in good faith and with due diligence.
6. The Debtors have made and continue to make significant efforts to stabilize their business and address the concerns of all stakeholders including, *inter alia*:

AFM

- a) Within 3 business days of the issuance of the Initial Order, HII together with the Monitor and legal counsel, travelled to the Netherlands to meet with their respective Dutch counsel and representatives of the Netherlands Authority of the Financial Market (the “**AFM**”) to apprise them of the CCAA filing and to discuss the AFM’s intention to revoke HII’s license as a financial institution (the “**Intention**”) and the serious consequences that would arise as a result therefrom;
- b) Within the prescribed delay, HII, together with its Canadian and Dutch counsel, filed a written response to the Intention. In support of HII’s response, the Monitor filed its own submissions to the AFM with respect to the Intention, the whole with

a view to maintaining HII's license in order to provide HII with the most options available in connection with its restructuring under the CCAA;

- c) Following the submission of the written responses, HII and the Monitor's respective Dutch counsel met once again to discuss the matter further and provide answers to any questions that the AFM may have;
- d) HII continued with its efforts to comply with the AFM instructions and, in that regard, has continued its review and analysis of the entire corporate structure with a view to ensuring that the independence of HII required by the AFM is appropriately reflected;

Operations

- e) As appears from *Amended Motion for an initial order* dated September 9, 2011 (the "**CCAA Motion**"), on July 28, 2011, HII and all other relevant entities terminated the Amended and Restated Master Property and Asset Management Agreement dated May 28, 2009 (the "**Management Agreement**"). Since said date, HII has devoted significant resources to transitioning the services provided under the Management Agreement internally or to interim services providers;
- f) With the support and consent of the Monitor, interim property management services were secured to ensure that the properties in respect of which HII is the ultimate owner, are appropriately managed throughout the CCAA restructuring for the benefit of all stakeholders;
- g) Together with the Monitor and respective legal advisors, HII is conducting a comprehensive review of its operations and assets to identify all opportunities to restructure its obligations in the context of the current restructuring. In that regard, HII is reviewing all agreements, including loan and security documentation;
- h) In order to ensure that the Debtors can meet their cash flow obligations during this restructuring process, and as outlined in the CCAA Motion, the closing in respect of the Bought Deal (as defined in the CCAA Motion) took place as scheduled on September 13, 2011;
- i) HII, together with the Monitor, met with some stakeholders in Canada and the Netherlands, with a view to answering any questions they may have and stabilizing the business operations in the context of the press surrounding the AFM matters and the CCAA filing;
- j) The Debtors have expended significant efforts in stabilizing their business operations and preserving the normal course of business, to the extent possible, in the context of the CCAA process. The Debtors have and continue to meet their post-filing obligations as and when they become due;

Restructuring Efforts

- k) With a view to immediately reducing ongoing expenses and liabilities, and maximizing its ability to successfully restructure under the CCAA, HII and the Monitor, together with their respective legal advisors, initiated a comprehensive review of HII's lease obligations. So far, this analysis resulted in the disclaimer of certain lease and sublease obligations by HII. The disclaimers were approved by the Monitor and determined to enhance the prospects of a viable compromise or arrangement being made in respect of HII, the whole in accordance with the provisions of the CCAA;
- l) The above noted disclaimers represent, in the aggregate, the compromise of a liability of HII in the minimum approximate amount of \$25 million and in the approximate maximum amount of \$240 million, the whole as will be more fully discussed in the Monitor's Second Report (as defined below);
- m) HII and the Monitor, together with their respective legal counsel, continue to identify those matters which will form the object of a plan of compromise or arrangement under the CCAA, the whole with a view to commencing negotiations with the relevant stakeholders in the briefest of delays;

Communication Matters

- n) Given the large number of foreign creditors of the Debtors, HII retained the services of National Public Relations in Canada and Cohn & Wolfe in the Netherlands, communication and media relations specialists, to assist HII in providing complete and timely information to its creditors, including its bondholders. All Court applications, Monitor reports and orders are posted on the Monitor's website at <http://www.deloitte.com/ca/homburg-invest>. HII's website also contain information regarding the CCAA process at <http://www.homburginvestinformation.ca/>, including a link to the Monitor's website;
 - o) HII will also be holding an online information session (webcast) to provide further details on the CCAA process;
 - p) HII has and will continue to respond to numerous inquiries of creditors, including suppliers, bondholders and employees, in respect of the CCAA process;
7. The extension of the Stay Period is necessary in order to provide the Debtors an adequate period of time to be able to complete the stabilization of their business and to commence negotiations with their stakeholders with a view to presenting a plan of compromise or arrangement under the CCAA. It is anticipated that the requested extension of the Stay Period until December 10, 2011 will afford the Debtors an adequate period of time to make material progress towards that objective;
8. As appears from the cash flow forecast, which will be included in the Monitor's Second Report, the Debtors are of the view that no creditor will suffer any undue prejudice by the extension of the Stay Period;

9. The Monitor has indicated that it will be filing a comprehensive second report (the “**Monitor’s Second Report**”) which shall contain significant additional information in respect of the Debtors, their creditors, the corporate structure and the efforts deployed by the Debtors, the Monitor and their respective legal counsel to date in the context of the CCAA restructuring and which shall include its recommendations and a review of the cash flow forecast of the Debtors up to and including December 10, 2011;
10. The Debtors are of the view that extending the Stay Period to December 10, 2011, based upon the cash flow forecast to be reported upon in the Monitor’s Second Report is appropriate in the present circumstances;
11. The Debtors have acted, and continue to act, in good faith and with the utmost diligence;
12. As will appear in the Monitor’s Second Report, the Monitor supports the present request for an extension of the Stay Period;
13. The Debtors respectfully request that this Honourable Court extend the Stay Period to December 10, 2011;

Amendments to the Initial Order

14. In reviewing the CCAA Motion and the Initial Order, it became apparent that certain minor corrections were necessary in order to correct certain inaccuracies;
15. Although Partnership (53) was included in the CCAA Motion as an Applicant Partnership, on the basis that it had provided a collateral mortgage on its underlying assets in respect of the Mortgage Bonds (as defined in the CCAA Motion), said collateral mortgage was released in the context of the sale of the relevant property and, this security interest was replaced with a collateral mortgage granted by Homburg Realty Fund (94) Limited Partnership (“**Partnership (94)**”) over “Homburg Springs West” in Calgary, Alberta, in the same amount. It is therefore appropriate that all reference to Partnership (53) be replaced with a reference to Partnership (94);
16. In addition, the list of mis-en-cause included as Annex I to the Initial Order erroneously included a reference to Homburg Canada Real Estate Investment Trust, which should be deleted, and failed to include Homburg Realty Fund (142) Limited Partnership, which should be added;
17. Accordingly, the Debtors hereby respectfully request that this Honourable Court amend the Initial Order as follows:
 - a) Paragraph 9 of the Initial Order should be amended to read as follows:

DECLARES that Petitioners are debtor companies to which 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 (94) Limited Partnership (“**Partnership (94)**”), Homburg Realty Fund (88) Limited

Partnership (“**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)**”) and Homburg Realty Fund (122) Limited Partnership (“**Partnership (122)**”) and Homburg Realty Fund (142) Limited Partnership (“**Partnership (142)**”) and together with Partnership (92), Partnership (199), Partnership (52), Partnership (94), 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.

b) Annex I of the Initial Order shall be amended to read as follows:

ANNEX I: MIS-EN-CAUSE ENTITIES

Homburg Realty Fund (199) Limited Partnership

[...]

Homburg Realty Fund (52) Limited Partnership

Homburg Realty Fund (94) Limited Partnership

Homburg Realty Fund (88) Limited Partnership

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

Homburg Realty Fund (142) Limited Partnership

18. In addition, in order to provide for consistency in respect of the Administration Charge and the Director’s Charge (as defined in the Initial Order), it is necessary to amend paragraphs 26, 42 and 44 in order to include the words “of the Petitioners” after the word “Property”. This amendment is consistent with paragraphs 46 and 49 of the Initial Order which provide that the CCAA Charges (as defined in the Initial Order) attach to all present and future property of the Petitioners / Debtors;
19. The Initial Order does not include a specific order in respect of the sealing of Exhibits P-16 and P-A to P-E which sealing was verbally ordered by the Court and undertaken by all parties present at the hearing which took place on September 9, 2011. Accordingly, the Debtors respectfully request that the Initial Order be amended in accordance with the conclusions hereof;

Orders relating to Applicant Partnerships

20. In response to the Motion for Amendments to the Initial Order filed by the Trustees (as defined in the CCAA Motion), the Debtors respectfully request that this Court issue the following orders in respect of the Applicant Partnerships:

ORDER that, until further order of this Court, none of the Applicant Partnerships shall:

- a) other than in accordance with existing agreements and / or in the ordinary course of business, sell, dispose of, convey, transfer, release, discharge, assign, hypothecate, pledge or grant any security on any of their property, assets and undertakings involving an amount of consideration (in any one transaction or series of related transactions) in excess of \$500,000 or \$1,000,000 in the aggregate, without prior leave of this Court; and
 - b) enter into any new material transaction or incur any new debt or obligation, except in the ordinary course of business or as otherwise provided for in the Initial Order or any subsequent order;
21. The Debtors respectfully submit that the notices given of the presentation of the present Motion are proper and sufficient;
22. This motion is well founded in fact and law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO :

GRANT the present Motion;

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

EXTEND the Stay Period (as defined in the initial order granted by this Court in this matter on September 9, 2011 (the "**Initial Order**")) to December 10, 2011, the whole subject to the terms of the Initial Order, as amended;

ORDER that the Initial Order shall be amended as follows:

- a) Paragraph 9 of the Initial Order shall be replaced by the following:

DECLARES that Petitioners are debtor companies to which 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 (94) Limited Partnership ("**Partnership (94)**"), Homburg Realty Fund (88) Limited Partnership ("**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)**") and Homburg Realty Fund (122) Limited

Partnership (“**Partnership (122)**”) and Homburg Realty Fund (142) Limited Partnership (“**Partnership (142)**”) and together with Partnership (92), Partnership (199), Partnership (52), Partnership (94), 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.

- b) Annex I of the Initial Order shall be amended to read as follows:

ANNEX I: MIS-EN-CAUSE ENTITIES

Homburg Realty Fund (199) Limited Partnership

[...]

Homburg Realty Fund (52) Limited Partnership

Homburg Realty Fund (94) Limited Partnership

Homburg Realty Fund (88) Limited Partnership

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

Homburg Realty Fund (142) Limited Partnership

- c) the words “of the Petitioners” shall be added after the word “Property” in paragraphs 26, 42 and 44 of the Initial Order; and
- d) The following conclusion shall be added to the Initial Order:

DECLARE that Exhibits P-16 and P-A to P-E, 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. On notice to the Debtors, the Monitor and their respective legal counsel (as provided in the Initial Order), any interested party can apply to the Court for authorization to receive a copy of said exhibits;

ORDER that, until further order of this Court, none of the Applicant Partnerships shall:

- a) other than in accordance with existing agreements and / or in the ordinary course of business, sell, dispose of, convey, transfer, release, discharge, assign, hypothecate, pledge or grant any security on any of their property, assets and

undertakings involving an amount of consideration (in any one transaction or series of related transactions) in excess of \$500,000 or \$1,000,000 in the aggregate, without prior leave of this Court; and

- b) enter into any new material transaction or incur any new debt or obligation, except in the ordinary course of business or as otherwise provided for in the Initial Order or any subsequent order;

ORDER provisional execution of the present order, notwithstanding appeal;

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

MONTREAL, October 4, 2011

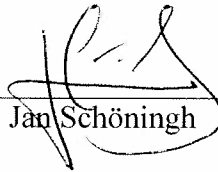
Osler, Hosking & Harcourt LLP
OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Debtors

AFFIDAVIT

I, the undersigned, Jan Schöningh, domiciled and residing at 597 Roslyn Avenue, Westmount, Quebec, H2Y 2V1, solemnly declare the following:

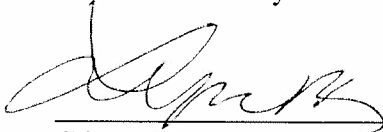
1. I am the President and Chief Executive Officer of Homburg Invest Inc. and a duly authorized representative of the Petitioners for the purpose hereof;
2. I have taken cognizance of the attached *Motion to extend the stay and to amend the initial order and for other orders* pursuant to Articles 9 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36;
3. All of the facts alleged in the said Motion are true.

AND I HAVE SIGNED:


Jan Schöningh

SOLEMNLY DECLARED BEFORE

ME on the 4th day of October, 2011



COMMISSIONER FOR OATHS FOR
THE PROVINCE OF QUEBEC



NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the *Motion to Extend the Stay Period and to Amend the Initial Order and for Other Orders* will be presented before Justice Louis J. Gouin, sitting in and for the Superior Court, Commercial Division, in and for the District of Montreal, on October 6th, 2011, at 9:15 a.m., in a room to be determined.

MONTREAL, October 4, 2011

Osler, Hoskin & Harcourt LLP
OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Debtors

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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)

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

Homburg invest inc.

- and -

Homburg SHARECO inc.

- and -

HII GP Inc.

- and -

**CHURCHILL ESTATES
DEVELOPMENT LTD.**

- and -

**INVERNESS ESTATES
DEVELOPMENT LTD.**

- and -

CP DEVELOPMENT LTD.

Debtors

- and -

THE ENTITIES LISTED IN ANNEXE I

Mis-en-cause

- and -

**SAMSON BELAIR / DELOITTE &
TOUCHE INC.**

Monitor

SERVICE LIST

TO : BENNETT JONES
4500 Bankers Hall East
855 2nd Street West
Calgary, Alberta T2P 4K7

Attorneys for Penn West

Me Kenneth T. Lenz
email : lenzk@bennettjones.com

- TO : BLAKES**
1000, rue Sherbrooke Ouest, Bureau 2700
Montréal QC H3A 3G4
Me Francis Rouleau
Me Simon Seida
email : FRANCIS.ROULEAU@blakes.com
simon.seida@blakes.com
- Attorneys for Homburg
Canada Inc.**
- TO : BLAKES**
199 Bay Street
Toronto, ON M5J 1A1, Canada
Me Pam Huff
Me Milly Chow
email : PAM.HUFF@blakes.com
MILLY.CHOW@blakes.com
- Attorneys for Homburg
Canada Inc.**
- TO : BORDEN LADNER GERVAIS**
Centennial Place, East Tower, 1900, 520 Third
Avenue S.W., Calgary, AB, Canada T2P 0R3
Me Josef G. A. Krüger, Q.C.
email : jkruger@blg.com
- Attorneys for BOS**
- TO : DAVIES WARD PHILLIPS & VINEBERG
S.E.N.C.R.L., s.r.l.**
1501, avenue McGill College, 26e étage
Montréal Canada H3A 3N9
Me Denis Ferland
Me Christian Lachance
email : dferland@dwpv.com
clachance@dwpv.com
- Attorneys for HSBC**
- TO : DICKINSON WRIGHT LLP**
222 Bay St., 18th Floor, PO Box 124
Toronto, ON, M5K 1H1
Me David P. Preger
email : dpreger@dickinsonwright.com
- Attorneys for Romspen
Investment Corporation**
- TO : MCCARTHY TÉTRAULT**
1000, rue De La Gauchetière Ouest, Bureau 2500
Montréal QC H3B 0A2
Me Mason Poplaw
Me Jocelyn Perreault
email : mpoplaw@mccarthy.ca
jperreault@mccarthy.ca
- Attorneys for the Monitor**

TO : MCLEOD DICKSON LLP
3700 Canterra Tower, 400 3rd Ave SW
Calgary, AB T2P 4H2
Me Judson Virtue
email : Jud.Virtue@macleoddixon.com

TO : NORTON ROSE OR S.E.N.C.R.L., S.R.L. / LLP **Attorneys for Taberna**
1, Place Ville Marie, bureau 2500, Montréal, **Europe CDO I PLC, Taberna**
Québec, Canada H3B 1R1 **Europe CDO II PLC,**
Taberna Preferred Funding
VIII, Ltd and Taberna
Preferred Funding VI, Ltd.

Me Sylvain Rigaud
Me Arnold Cohen
Me Philippe Giraldeau
email : sylvain.rigaud@nortonrose.com
arnold.cohen@nortonrose.com
philippe.giraldeau@nortonrose.com

TO : STIKEMAN ELLIOTT **Attorneys for Trustees**
1155 René-Lévesque Blvd. West
Montreal, Quebec
Me Guy P. Martel
Me J. Reynaud
Me Warren Katz
email : gmartel@stikeman.com
jreynaud@stikeman.com
wkatz@stikeman.com

No: 500-11-041305-117

SUPERIOR COURT
(Commercial Division)
DISTRICT DE MONTRÉAL

**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-

**HOMCO REALTY FUND (52) LIMITED PARTNERSHIP AND ALS,
Mis-en-cause**

and

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

**MOTION TO EXTEND THE STAY PERIOD AND TO
AMEND THE INITIAL ORDER AND FOR OTHER
ORDERS**
*(Articles 9 and 11 of Companies' Creditors Arrangement
Act)*

ORIGINAL

M^e Carine Bouzaglou
Ostler, Hoskin & Harcourt, s.e.n.c.r.l./s.r.l.
1000 rue de La Gauchetière ouest, Bureau 2100
Montréal (Québec) H3B 4W5
Tél.: 514.904.8100 Téléc.: 514.904.8101

Code : BO 0323 n/d: 1131787