

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*, R.S.C.  
1985, c. C-36)

No: 500-11-041305-117

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

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HOMBURG INVEST INC.,

Debtor / Petitioner

-and-

THE ENTITIES LISTED IN ANNEX I AS  
DEBTORS AND MISES-EN-CAUSE

-and-

CADILLAC FAIRVIEW CORPORATION  
LIMITED,

and

STATOIL CANADA LTD.,

and

BOS SOLUTIONS LTD.,

and

CANADIAN TUBULAR SERVICES INC.,

and

KEYWEST PROJECTS LTD.,

and

MHI FUND MANAGEMENT INC.,

and

SPT GROUP CANADA LTD., FORMERLY  
NEOTECHNOLOGY CONSULTANTS LTD.,

and

PREMIER PETROLEUM CORP.,

and

TUCKER WIRELINE SERVICES CANADA  
INC.,

and

SURGE ENERGY INC.,

and

MOE HANNAH MCNEILL LLP,

and

LOGAN COMPLETION SYSTEMS INC.,

and

**CE FRANKLIN LTD.,**

**Mises-en-cause**

**-and-**

**SAMSON BÉLAIR/DELOITTE & TOUCHE  
INC.,**

**Monitor**

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**MOTION FOR AN ORDER CONFIRMING THE RE-ASSIGNMENT AND  
ASSIGNMENT OF CERTAIN AGREEMENTS AND THE RELEASE OF HII'S  
OBLIGATIONS UNDER THESE AGREEMENTS**

**(Sections 11, 11.3 and 32 of the *Companies' Creditors Arrangement Act*  
R.S.C. 1985 c. C-36)**

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF  
MONTREAL, THE DEBTOR / PETITIONER RESPECTFULLY SUBMITS THE  
FOLLOWING:**

**INTRODUCTION**

1. The Debtor / Petitioner, Homburg Invest Inc. (“**HII**”), hereby seeks an Order from this Court allowing the parties to various agreements related to the lease and sub-lease of premises located at 635 8<sup>th</sup> Avenue South West in Calgary, Alberta (“**Canoxy Place**”) to avail themselves of their contractual rights vis-à-vis the Mise-en-cause Statoil Canada Ltd. (“**Statoil**”), all the while allowing HII to be released of its obligations as concerns Canoxy Place (subject to any restructuring claims against HII that may result), thus enhancing the prospects of a viable compromise or arrangement being made in respect of HII.

**THE PARTIES AND THE EXISTING AGREEMENTS BETWEEN THEM**

2. HII is an international real estate investment and development company incorporated under the *Business Corporations Act (Alberta)* having its registered office in Halifax, Nova Scotia, and its Chief Place of business in Montreal, Quebec.

3. The Mise-en-cause Cadillac Fairview Corporation Limited (“**Cadillac**”) is an owner and manager of commercial real estate, including Canoxy Place.

4. Statoil (formerly North American Oil Sands Corporation and StatoilHydro Canada Ltd.) entered into various lease agreements with Cadillac in connection with approximately 117,568 square feet (consisting of all of floors 7, 8, 9, 12, 17, 18, 19, 20 and 22) within Canoxy Place for a lease term to expire on June 30, 2018, at a current average rent of approximately \$34 per square foot, amounting to a current monthly rent of approximately \$540,000 plus GST in the approximate sum of \$27,000, for a total monthly rental of approximately \$567,000, subject to adjustment.

5. These lease agreements, which consist of the Lease dated October 11, 2005, as modified by the First Amending Agreement, dated May 31, 2006, the Second Amending Agreement, dated November 24, 2006, the Consent Agreement, dated September 5, 2007, the Third Amending Agreement, dated September 5, 2007, the Fourth Amending Agreement, dated December 17, 2007, the Consent to Amalgamation, dated January 16, 2008 and the Fifth Amending Agreement, dated January 17, 2008, are hereinafter collectively referred to as the “**Head Lease**”. Copy of the Head Lease is disclosed herewith *en liasse* as Exhibit **R-1**.

6. HII, Cadillac and Statoil are parties to an assignment of lease agreement dated April 5, 2010 whereby Cadillac has authorized Statoil to assign its rights and obligations under the Head Lease, Exhibit R-1, to HII effective February 1, 2011, subject to Statoil remaining liable towards Cadillac for the payment of all rent and the performance of all of the terms, covenants and conditions contained in the event of a default by HII (the “**Assignment**”). Copy of the Assignment is disclosed herewith as Exhibit **R-2**.

7. Subsequent to the Assignment, Exhibit R-2, HII proceeded to sublease the premises leased pursuant to the Head Lease, Exhibit R-1, and entered into non-disturbance agreements with Statoil and each of the respective subtenants as follows:

- (a) With the Mise-en-cause BOS Solutions Ltd. (“**BOS**”), a sublease agreement dated April 4, 2011 (the “**BOS Sublease**”). Copy of the BOS Sublease is disclosed herewith as Exhibit **R-3**. Concurrently therewith, HII, Statoil and BOS concluded a Non-Disturbance Agreement dated April 4, 2011 (the “**BOS NDA**”). Copy of the BOS NDA is disclosed herewith as Exhibit **R-4**.
- (b) With the Mise-en-cause Canadian Tubular Services Inc. (“**CTS**”), a sublease agreement dated March 11, 2011 (the “**CTS Sublease**”). Copy of the CTS Sublease is disclosed herewith as Exhibit **R-5**. Concurrently therewith, HII, Statoil and CTS concluded a Non-Disturbance Agreement dated March 11, 2011 (the “**CTS NDA**”). Copy of the CTS NDA is disclosed herewith as Exhibit **R-6**.
- (c) With the Mise-en-cause Keywest Projects Ltd. (“**Keywest**”), two sublease agreements dated March 30, 2011 and July 27, 2011 (collectively, the “**Keywest Subleases**”). Copy of the Keywest Subleases are disclosed herewith *en liasse* as Exhibit **R-7**. Concurrently therewith, HII, Statoil and Keywest concluded two Non-Disturbance Agreements, dated March 30, 2011 and July 27, 2011 (the “**Keywest NDAs**”). Copy of the Keywest NDAs are disclosed herewith *en liasse* as Exhibit **R-8**.
- (d) With the Mise-en-cause MHI Fund Management Inc. (“**MHI**”), a sublease agreement dated April 11, 2011 (incorrectly dated April 11, 2010) (the “**MHI Sublease**”). Copy of the MHI Sublease is disclosed herewith as Exhibit **R-9**.

Concurrently therewith, HII, Statoil and MHI concluded a Non-Disturbance Agreement dated April 11, 2011 (the “**MHI NDA**”). Copy of the MHI NDA is disclosed herewith as Exhibit **R-10**.

- (e) With the Mise-en-cause SPT Group Canada Ltd., formerly Neotechnology Consultants Ltd. (“**SPT**”), a sublease agreement dated May 4, 2011 (the “**SPT Sublease**”). Copy of the SPT Sublease is disclosed herewith as Exhibit **R-11**. Concurrently therewith, HII, Statoil and SPT concluded a Non-Disturbance Agreement dated May 4, 2011 (the “**SPT NDA**”). Copy of the SPT NDA is disclosed herewith as Exhibit **R-12**.
- (f) With the Mise-en-cause Premier Petroleum Corp., (“**Premier**”), a sublease agreement dated April 20, 2011 (the “**Premier Sublease**”). Copy of the Premier Sublease is disclosed herewith as Exhibit **R-13**. Concurrently therewith, HII, Statoil and Premier concluded a Non-Disturbance Agreement dated April 20, 2011 (the “**Premier NDA**”). Copy of the Premier NDA is disclosed herewith as Exhibit **R-14**.
- (g) With the Mise-en-cause Tucker Wireline Services Canada Inc. (“**Tucker**”), a sublease agreement dated May 4, 2011 (the “**Tucker Sublease**”). Copy of the Tucker Sublease is disclosed herewith as Exhibit **R-15**. Concurrently therewith, HII, Statoil and Tucker concluded a Non-Disturbance Agreement dated May 4, 2011 (the “**Tucker NDA**”). Copy of the Tucker NDA is disclosed herewith as Exhibit **R-16**.
- (h) With the Mise-en-cause Surge Energy Inc. (“**Surge**”), a sublease agreement dated November 25, 2010 (the “**Surge Sublease**”). Copy of the Surge Sublease is

disclosed herewith as Exhibit **R-17**. HII, Statoil and Surge are also party to a Non-Disturbance Agreement dated February 17, 2011 (the “**Surge NDA**”). Copy of the Surge NDA is disclosed herewith as Exhibit **R-18**.

- (i) With the Mise-en-cause Moe Hannah McNeill LLP (“**MHM**”), a sublease agreement dated March 9, 2011(the “**MHM Sublease**”). Copy of the MHM Sublease is disclosed herewith as Exhibit **R-19**. Concurrently therewith, HII, Statoil and MHM concluded a Non-Disturbance Agreement dated March 9, 2011 (the “**MHM NDA**”). Copy of the MHM NDA is disclosed herewith as Exhibit **R-20**.
- (j) With the Mise-en-cause Logan Completion Systems Inc. (“**Logan**”), a sublease agreement dated May 4, 2011 (the “**Logan Sublease**”). Copy of the Logan Sublease is disclosed herewith as Exhibit **R-21**. Concurrently therewith, HII, Statoil and Logan concluded a Non-Disturbance Agreement dated May 4, 2011 (the “**Logan NDA**”). Copy of the Logan NDA is disclosed herewith as Exhibit **R-22**.
- (k) With the Mise-en-cause CE Franklin Ltd. (“**CE**”), a sublease agreement dated April 6, 2011(incorrectly dated April 6, 2010) (the “**CE Sublease**”). Copy of the CE Sublease is disclosed herewith as Exhibit **R-23**. Concurrently therewith, HII, Statoil and CE concluded a Non-Disturbance Agreement dated April 6, 2011 (the “**CE NDA**”). Copy of the CE NDA is disclosed herewith as Exhibit **R-24**.

8. BOS, CTS, Keywest, MHI, SPT, Premier, Tucker, Surge, MHM, Logan and CE are hereinafter collectively referred to as the “**Subtenants**”.

9. The BOS Sublease, Exhibit R-3, the CTS Sublease, Exhibit R-5, the Keywest Subleases, Exhibit R-7 (*en liasse*), the MHI Sublease, Exhibit R-9, the SPT Sublease, Exhibit R-11, the Premier Sublease, Exhibit R-13, the Tucker Sublease, Exhibit R-15, the Surge Sublease, Exhibit R-17, the MHM Sublease, Exhibit R-19, the Logan Sublease, Exhibit R-21 and the CE Sublease, Exhibit R-23, are hereinafter collectively referred to as the “**Subleases**”.

10. The BOS NDA, Exhibit R-4, the CTS NDA, Exhibit R-6, the Keywest NDAs, Exhibit R-8 (*en liasse*), the MHI NDA, Exhibit R-10, the SPT NDA, Exhibit R-12, the Premier NDA, Exhibit R-14, the Tucker NDA, Exhibit R-16, the Surge NDA, Exhibit R-18, the MHM NDA, Exhibit R-20, the Logan NDA, Exhibits R-22 and the CE NDA, Exhibit R-24, are hereinafter collectively referred to as the “**NDAs**”.

## **THE RELEVANT PROVISIONS OF THE AGREEMENTS**

### **The Head Lease**

11. The Head Lease, Exhibit R-1, at its Subsection 8.03(b), already provides that Statoil shall remain liable towards Cadillac under the Head Lease in the event where it is transferred and that Statoil “shall not be released from performing or observing any of the terms or conditions of this Lease” in the event of such a transfer.

### **The Assignment**

12. As described above, pursuant to the Assignment, Exhibit R-2, Statoil assigned its rights as tenant under the Head Lease, Exhibit R-1. Cadillac consented to such assignment subject to the terms and conditions contained in the Assignment.

13. The Assignment, Exhibit R-2, provides that Statoil, as assignor of the tenant’s rights and obligations under the Head Lease, Exhibit R-1, remained liable to Cadillac for all of the obligations of HII under the Head Lease, including the obligation to pay all rent from time to time becoming due thereunder. It is important to note that the parties specifically provided that Statoil’s obligations under the Head Lease, Exhibit R-1, would survive in the event of a disclaimer of the Assignment, as per Subsection 7(a) of the Assignment:

[...] Notwithstanding the within assignment (or any disaffirmance or disclaimer of the within assignment), the Assignor [Statoil] shall remain liable during the balance of the Term of the Lease for the observance and performance of all terms, covenants and conditions contained in the Lease.

14. Furthermore, pursuant to Section 11 of the Assignment, Exhibit R-2, upon the giving of a notice of default by Cadillac, Statoil has a period of time to remedy the default of HII (which it must do pursuant to Subsection 8.03 of the Head Lease, Exhibit R-1, Section 7 of the



Assignment, Exhibit R-2, and Section 2 of the NDAs) and upon such rectification of the default by Statoil, all of the rights of the tenant shall be reassigned to Statoil:

ASSIGNOR'S RIGHT TO CURE – If the Landlord [Cadillac] intends to terminate the Lease, the Landlord agrees to deliver to the Assignor [Statoil] a copy of the notice of default which the Landlord delivers to the Assignee [HII]. The Assignor shall have the same period of time to remedy the default as the Assignee plus an additional five (5) business days and upon the rectification of such default by the Assignor all rights of the Assignor under the Lease and all of the rights of the tenant under the Lease shall be reassigned to the Assignor without the requirement of any further documentation and the Assignee shall surrender up possession of the Premises to the Assignor forthwith. Upon such reassignment the Assignor shall be entitled to all rights, title, estate, interest and benefits arising under the Lease, including without limitation the right to all rents and benefits arising under any subleases of the Premises. All the foregoing shall be without prejudice to all rights and remedies which the Assignor may have against the Assignee in respect of any breach of the Lease by the Assignee or which the Landlord may have against the Assignee or Assignor pursuant to the Lease or this Agreement.

## The NDAs

15. The NDAs also provide, at Section 2 thereof, that Statoil is under the obligation to cure a default of HII under the Head Lease:

### OBLIGATION OF STATOIL TO CURE

If at any time prior to the expiration of the Sublease Agreement:

- (a) The Landlord intends to terminate the Head Lease due to the default of Homburg;
- (b) The Landlord delivers a notice of default (the “**Notice of Default**”) to Homburg;
- (c) The Landlord provides Statoil with a copy of the Notice of Default; and
- (d) Homburg fails to rectify the default (the “**Default**”) specified in the Notice of Default within the required time;

Then Statoil shall, without further notice or demand, exercise its rights contained in the Assignor's Right to Cure. In particular and without limiting the generality of the foregoing Statoil shall:

- (i) rectify the Default within the required time;
- (ii) accept the reassignment of and assume all of the rights and privileges of and fulfill and perform all of the covenants, duties and obligations of the Tenant under the Head Lease; and

(iii) honour the rights of the Subtenant pursuant to the New Sublease Agreement (as defined below).

16. Furthermore, in a situation where Statoil is obliged to rectify the default of HIL, thus triggering reassignment of the Head Lease, Exhibit R-1, pursuant to Section 11 of the Assignment, Exhibit R-2, the NDAs provide, at Section 3 thereof, that the Subleases automatically terminate and that the Subtenants are immediately deemed to have attorned to Statoil as subtenants under new subleases with Statoil:

#### TERMINATION OF SUBLEASE AGREEMENT AND ATTORNMENT

Concurrent with Statoil again becoming Tenant under the Head Lease as provided in paragraph 2 above, the Sublease Agreement and all rights of the Subtenant and Homburg as Sublandlord thereunder shall simultaneously terminate. Statoil and the Subtenant agree that the Subtenant shall then immediately be deemed to have attorned to Statoil as subtenant under a new sublease and to have entered in a new sublease Agreement (the "**New Sublease Agreement**") for the remainder of the term of the Sublease Agreement (the "**Remainder Term**"). The New Sublease Agreement and such attornment shall be upon all of the same terms and conditions as the Sublease Agreement as applicable only to the Subleased premises, except that:

- (i) the Sublandlord shall be Statoil;
- (ii) the term of the New Sublease Agreement shall be the Remainder Term;
- (iii) notices to be provided to the Sublandlord shall be redirected to Statoil at the address indicated in paragraph 5 of this Agreement; and
- (iv) no credit shall be given for any security deposits or prepaid rent paid by the Subtenant under the Sublease Agreement.

and provided that:

- (v) Statoil shall not be liable to keep or perform any provisions of the New Sublease which are impossible for Statoil to perform;
- (vi) Statoil shall not be liable for any act, omission, default, misrepresentation, or breach of warranty, of any sublandlord under the Sublease Agreement (including Homburg) nor for any obligations accruing prior to the making of the New Sublease Agreement;
- (vii) Statoil shall not be subject to any offset, defence, claim or counterclaim which the Subtenant might be entitled to assert against any landlord under the Sublease Agreement (including Homburg);
- (viii) Statoil shall not be bound by any prepayment of rent, additional rent or other payments made by the Subtenant under the Sublease Agreement or shall Statoil be obligated to give the Subtenant credit for any such amount;

(ix) Statoil shall not be bound by any amendment, or modification to the Sublease Agreement, or by any consent or acquiescence made by any landlord under the Sublease Agreement (including Homburg) nor by any assignment or sublease of the Sublease Agreement hereafter granted;

(x) Statoil shall not be liable for any deposit that the Subtenant may have given to any landlord under the Sublease Agreement (including Homburg) which has not, as such, been transferred to Statoil nor shall Statoil be obligated to give Subtenant credit for any such amount.

The New Sublease Agreement shall be effective on the date the Head Lease is reassigned to or deemed to have been reassigned to Statoil pursuant to the exercise of the Assignor's Right to Cure. Upon the demand of either Statoil or the Subtenant, the other agrees to execute, from time to time, documents confirming the foregoing provisions of this paragraph 3 to the satisfaction of the so demanding, acting reasonably, and in which case Statoil and the Subtenant shall acknowledge such attornment and the terms and conditions of the New Sublease Agreement.

## THE CCAA PROCEEDINGS, THE DISCLAIMERS AND THE NOTICES OF CONSEQUENTIAL TERMINATION

17. 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 HII and certain affiliates.

18. Pursuant to the Initial Order, Samson Belair/Deloitte & Touche Inc. (the “**Monitor**”) was appointed as Monitor of the Debtors and a stay of proceedings (the “**HII Stay**”) was ordered until October 7, 2011 (the “**Initial Stay Period**”).

19. On September 13, 2011, Cadillac issued a Notice of Default to HII and Statoil giving notice that the sum of \$561,279.56 was outstanding in respect of net rent and additional rent owing under the Head Lease, Exhibit R-1, and calling upon HII and Statoil to remedy the default on or before September 19, 2011 (the “**Notice of Default**”). A copy of the Notice of Default is disclosed herewith as Exhibit **R-25**.

20. On or about September 27, 2011, and in conformity with the Head Lease, Exhibit R-1, and the Assignment, Exhibit R-2, Statoil cured the default and paid Cadillac \$561,279.56 to remedy the rent default stipulated in the Notice of Default, Exhibit R-25.

21. On September 30, 2011, with the approval of the Monitor, HII served Disclaimers of the Head Lease (the “**Head Lease Disclaimer**”) and of the Assignment (the “**Assignment Disclaimer**”) upon Cadillac and Statoil pursuant to section 32(1) of the CCAA, pursuant to which disclaimers HII notified Cadillac and Statoil that it intended to disclaim the Head Lease, Exhibit R-1, and the Assignment, Exhibit R-2, effective October 30, 2011. Copy of the Head Lease Disclaimer and the Assignment Disclaimer are disclosed herewith *en liasse* as Exhibits **R-26** and **R-27**.

22. On or around September 30, 2011, with the approval of the Monitor, HII served on each Subtenant Notices of Consequential Termination of Sublease also dated September 29, 2011, together with, for greater certainty, a Form 4 Notice by Debtor Company to Disclaim or Resiliate an Agreement dated September 29, 2011, pursuant to subsection 32(1) of the CCAA (collectively, the “**Subtenant Notices**”).

23. Pursuant to the Subtenant Notices, HII notified the Subtenants that it intended to disclaim the Subleases effective October 30, 2011. Copies of the Subtenant Notices are disclosed herewith *en liasse* as Exhibit **R-28**.

24. Similar “Subtenant Notices” were served on the same date pertaining to a 13th Sublease of HII in Canoxy Place as well as to 14 subleases in Jamieson Place (including one with Statoil, who was a subtenant of HII in Jamieson Place), all of which have not been contested.

25. On October 5, 2011, HII paid to Cadillac the rent owing under the Head Lease, Exhibit R-1, for the period of September 9, 2011 to October 30, 2011.

26. On October 7, 2011, the Honourable Louis J. Gouin, S.C.J. issued an order which, among other things, extended the Initial Stay Period to December 9, 2011 (as extended, the “**Stay Period**”).

27. On October 11, 2011, in response to requests by certain Subtenants, namely BOS, MHI, SPT and Surge, HII provided these Subtenants with written reasons for the Head Lease Disclaimer, Exhibit R-26, the Assignment Disclaimer, Exhibit R-27 and the Subtenant Notices, Exhibit R-28 (the “**HII Reasons**”). The HII Reasons are disclosed herewith as Exhibit **R-29**.

28. As explained in the HII Reasons, Exhibit R-29, it is not economic for HII to retain the Head Lease, Exhibit R-1, given that the rent payable thereunder is significantly higher than the rents to be received by HII from the Subtenants pursuant to the Subleases.

29. In fact, it is estimated that retaining the Head Lease, Exhibit R-1, until 2018 would cost HII at least a total of approximately \$22,573,260.17, subject to adjustments. This amount includes approximately \$2,351,360 in tenant improvement costs as well as the monthly differential of at least approximately \$240,953.63 between what is collected by HII from the Subtenants pursuant to the Subleases and what is payable by HII to Cadillac pursuant to the Head Lease, said recurring monthly differential amounting to a total of approximately \$20,221,900.17 over the Term. A detailed summary of the calculation of this differential is disclosed herewith as Exhibit **R-30**.

30. As such, as explained in the HII Reasons, Exhibit R-29, HII believes that the Head Lease Disclaimer, Exhibit R-26, the Assignment Disclaimer, Exhibit R-27, and the

Subtenant Notices, Exhibit R-28, would enhance HII's ability to achieve a viable compromise or arrangement in its CCAA proceeding.

31. The Monitor is also of this opinion, as demonstrated by its approval of the Head Lease Disclaimer, Exhibit R-26, the Assignment Disclaimer, Exhibit R-27, and the Subtenant Notices, Exhibit R-28, and by paragraphs 173 to 176 of the Second Report To The Court Submitted by Samson Bélair/Deloitte & Touche Inc. In Its Capacity As Monitor (the "**Second Monitor's Report**") filed with this Court.

32. Notwithstanding the HII Reasons, Exhibit R-29, and the Second Monitor's Report, Exhibit R-31, Cadillac and the Subtenants have applied to this Honourable Court for an order that the Head Lease, Exhibit R-1, the Assignment, Exhibit R-2, and the Subleases not be disclaimed or resiliated, the whole as appears from the Court Record (the "**Applications**").

33. Statoil has not applied to this Honourable for an order that the Head Lease, Exhibit R-1, or the Assignment, Exhibit R-2, not be disclaimed or resiliated within the 15-day delay stipulated at Subsection 32(1) of the CCAA, said delay having now expired.

34. On November 1, 2011, no rent was paid to Cadillac, as called for under the Head Lease, Exhibit R-1, either by Statoil or by HII.

#### **THE ORDER SOUGHT**

35. Following the filing of the Applications, the parties entertained discussions, coordinated by the Monitor, seeking to explore alternative courses of action which would meet HII's objective of releasing it of its obligations going forward under the Head Lease, the Assignment and the Subleases (subject to any restructuring claims against HII that may result) in order to achieve a viable compromise or arrangement in its CCAA proceeding all the while

preserving the rights of Cadillac and the Subtenants under the Head Lease, Exhibit R-1, the Assignment, Exhibit R-2, the Subleases and the NDAs.

36. These discussions led the parties to realize that a solution which achieved these dual objectives was already present in the various agreements binding upon HII, Cadillac, Statoil and the Subtenants and that, with the assistance of this Honourable Court, these contractual mechanisms could be put into play such that a much lengthier debate on the merits of the Applications could be avoided.

37. In fact, it is respectfully submitted that, in light of the obligations and undertaking of Statoil under the Head Lease, Exhibit R-1, the Assignment, Exhibit R-2, and the NDAs, Cadillac and the Subtenants should suffer no prejudice or only nominal prejudice from the Head Lease Disclaimer, Exhibit R-26, the Assignment Disclaimer, Exhibit R-27 and the Subtenant Notices, Exhibit R-28, because, even if they were to be accepted by this Court, this would not have the effect (nor did HII intend any such effect) of releasing Statoil in any way from any of its contractual obligations to Cadillac and the Subtenants under the Head Lease, the Assignment and the NDAs.

38. HII submits that it is obvious that an Event of Default, as defined in the Head Lease, Exhibit R-1, has occurred. Schedule "C" of the Head Lease sets out the definitions applicable to the Head Lease and Subsection 9(c) of same clearly provides that the Initial Order constitutes an Event of Default.

39. What is more, HII was already in default of its obligations under the Head Lease, Exhibit R-1, and the Assignment, Exhibit R-2, having not paid the rent owing for the month of September when it became due, resulting in the issuance of the Notice of Default, Exhibit R-25. Pursuant to the Notice of Default, HII had until September 19, 2011 to pay the entirety of the

rent due for the month of September. HII did not meet this demand, which constitutes a further Event of Default pursuant to Subsection 9(a) of Schedule "C" – Definitions of the Head Lease.

40. While Cadillac did issue the Notice of Default, Exhibit R-25, the Initial Stay Period was in effect on the date where it was issued.

41. Had the Initial Stay Period not been in effect as at the date of the Notice of Default, Exhibit R-25, there is no doubt that Statoil's obligations under the NDAs and the Assignment, Exhibit R-2, would have been triggered, resulting in Statoil being obliged to: cure HII's defaults; accept the reassignment to it of the Head Lease, Exhibit R-1; and, enter into new sublease agreements with the Subtenants. In fact, the payment by Statoil of the September rent on or about September 27, 2011 would have certainly, but for the Initial Stay Period, triggered this contractually agreed upon chain of events.

42. In light of this, it is appropriate for this Honourable Court to dispense Cadillac from the obligation of issuing a notice of default, including any subsequent notice of intention to terminate, given that Cadillac is prevented from doing so as long as the Stay Period remains in effect.

43. As a consequence thereof, it is also necessary for this Honourable Court to declare that the delay for HII to remedy its default, has expired, as such delay would have been stipulated in a notice of default, including any subsequent notice of intention to terminate, and that HII has failed to remedy its default. As explained above, Cadillac stipulated a delay in the Notice of Default, Exhibit R-25, within which delay HII did not cure its default.

44. Dispensing Cadillac from the obligation of issuing a further notice of default, including any subsequent notice of intention to terminate, is the key which triggers Statoil's



contractual obligations towards the Subtenants and Cadillac and allows the latter parties to enjoy the status quo as concerns their rights under the Head Lease, Exhibit R-1, and the Subleases, albeit, as concerns the Subleases, under new sublease agreements with Statoil pursuant to Section 3 of the NDAs.

45. If this Honourable Court accepts to render the Order sought herein, there would no longer be any need for HII to seek to disclaim or resiliate the Head Lease, Exhibit R-1, and HII undertakes to withdraw the Head Lease Disclaimer, Exhibit R-26, said undertaking being conditional to the issuance by this Honourable Court of conclusion 13 of the Order sought herein.

46. The Assignment Disclaimer, Exhibit R-27, is necessary for the purpose of achieving a viable compromise or arrangement in HII's CCAA proceeding, and Cadillac and the Subtenants have undertaken to withdraw the Applications (which will in fact have become moot) in the event that this Honourable Court accepts to render the Order sought herein, such that, as the Assignment Disclaimer has not been contested in the prescribed timeframe by any other party, it would be deemed to have taken effect on October 30, 2011.

47. In such an event, it is appropriate for this Honourable Court to declare that HII is released of its obligations under the Head Lease, Exhibit R-1, the Assignment, Exhibit R-2, and the Subleases. Indeed, as a consequence of the Order sought herein:

- (a) The Head Lease would be reassigned to Statoil pursuant to the terms of the Assignment, notwithstanding its disclaimer, as contemplated by the terms of the Assignment;

- (b) The Assignment would be disclaimed or resiliated as of October 30, 2011 thus releasing HII of its obligations thereunder but not affecting the obligations of Statoil thereunder;
- (c) The Subleases would be terminated and the Subtenants would be deemed to have immediately attorned to Statoil as subtenants under new subleases as between the Subtenants and Statoil, as provided for at Section 3 of the NDAs.

48. It is respectfully submitted that this is exactly the result which reflects the contractual obligations of the parties to the various agreements set out herein, as these agreements make abundantly clear. Indeed, Statoil expressly accepted to warrant the performance of HII's obligations under the Head Lease, Exhibit R-1, the Assignment, Exhibit R-2 and the Subleases (as per the terms of the NDAs) without any limitations, save for those which are set out at Section 3 of the NDAs.

49. HII shall be released of its obligations pursuant to the Head Lease, Exhibit R-1, the Assignment, Exhibit R-2, and the Subleases subject only to the right of Cadillac, Statoil and the Subtenants to file, if required, a proof of claim for any loss suffered in relation to the Disclaimer of the Head Lease, Exhibit R-26 (as if it had not been withdrawn), the Assignment Disclaimer, Exhibit R-27, and the Subtenant Notices, Exhibit R-28 (as if they had not been withdrawn), which provable claims, as the case may be, shall be treated in an eventual claims process in the CCAA proceedings and subject to an arrangement or compromise under the CCAA.

50. The consequence of the Order sought herein is to enforce Statoil's undertaking towards Cadillac and the Subtenants to step into the shoes of HII should it be in default under the Head Lease, which it is in light of the unpaid rent for a period preceding the Initial Order, of the

Initial Order itself and of the Disclaimer of the Head Lease, Exhibit R-26. As such, it is in the interests of justice that this Honourable Court grant the present motion.

51. Cadillac and the Subtenants consent to the conclusions of the Order sought herein and agree that the Applications will have become moot and thus undertake to desist from the Applications provided if the Order sought herein is rendered;

52. The Monitor supports the present Motion as the Order sought herein will facilitate the restructuring of HII and enhance the prospects of a viable compromise or arrangement, while minimizing, or even eliminating entirely, any losses of Cadillac and the Subtenants resulting from the Head Lease Disclaimer, Exhibit R-26, the Assignment Disclaimer, Exhibit R-27, and the Subtenant Notices, Exhibit R-28, by ensuring the execution of the existing agreements between the parties contemplating, in case of a default by HII, the continuation of the Head Lease, Exhibit R-1, and the Subleases with Statoil as tenant and sublandlord respectively.

53. The present motion is well founded in both fact and law.

**WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:**

[1] **DECLARE** that an Event of Default has occurred under the Office Lease between The Cadillac Fairview Corporation Limited (“**Cadillac Fairview**”) and North American Oil Sands Corporation, the successor of which is now known as Statoil Canada Ltd. (“**Statoil**”) dated October 11, 2005, as amended pursuant to the Amending Agreements described herein (Exhibit R-1 ) (the “**Head Lease**”) and assigned to Homburg Invest Inc. (“**HII**”) pursuant to the Assignment of Lease agreement dated April 5, 2010 between Cadillac Fairview, Statoil and HII (Exhibit R-2 ) (the “**Assignment**”) (the “**Existing Event of Default**”);

[2]           **DISPENSE** Cadillac Fairview from the obligation of providing to HII and Statoil a Notice of Default under the Head Lease, the Assignment and the Non-Disturbance Agreements between Statoil, HII and the various subtenants who filed a contestation of HII's disclaimers of the sub-leases pursuant to the CCAA, namely: BOS Solutions Ltd.; Canadian Tabular Services Inc.; Keywest Projects Ltd.; MHI Fund Management Inc.; SPT Group Canada Ltd. (formerly Neotechnology Consultants Ltd.); Premier Petroleum Corp.; Tucker Wireline Services Canada Inc.; Surge Energy Inc.; Moe Hannah McNeill LLP; Logan Completion Systems Inc.; and, CE Franklin Ltd. (collectively, the "**Subtenants**", the various Subleases between HII and the Subtenants (Exhibits R-3, R-5, R-7, R-9, R-11, R-13, R-15, R-17, R-19, R-21 and R-23 ) being hereinafter collectively referred to as the "**Subleases**" and the various Non-Disturbance Agreements between Statoil, HII and each of the Subtenants (Exhibits R-4, R-6, R-8, R-10, R-12, R-14, R-16, R-18, R-20, R-22 and R-24 ) being hereinafter collectively referred to as the "**NDA**s");

[3]           **DECLARE** that the delay for HII to remedy the Existing Event of Default has expired as at the date of this Order and that HII has failed to remedy the Existing Event of Default;

[4]           **PRAY ACTE** of the undertaking of Cadillac Fairview not to terminate the Head Lease because of the Existing Event of Default and to consent to the re-assignment of the Head Lease to Statoil;

[5]           **DECLARE** that, as of the date of this Order (the "**Assignment Date**"), all rights and obligations of Statoil under the Head Lease assigned to HII pursuant to the Assignment are re-assigned to Statoil and **ORDER** HII to surrender possession of the Premises (as defined in the Assignment) to Statoil as at the Assignment Date;

[6]           **DECLARE** that in conformity with the terms of the Head Lease and the Assignment, Statoil remains liable to remedy all monetary defaults under the Head Lease and the Assignment;

[7]           **DECLARE** that, as at the Assignment Date, the rights of the Subtenants and of HII under the Sublease Agreements are terminated and that the Subtenants are deemed to have attorned to Statoil as sublandlord under new sublease agreements for the remainder of the term of the Sublease Agreements and upon all of the same terms and conditions as contained in the Sublease Agreements, as contemplated under the NDAs and, for greater clarity, save for the exceptions provided at section 3 of the NDAs (the “**New Sublease Agreements**”);

[8]           **PRAY ACTE** of Statoil’s undertaking in the NDAs to honour the rights of the Subtenants pursuant to the New Sublease Agreements and **DECLARE** that Statoil has the obligation to honour the rights of the Subtenants pursuant to the New Sublease Agreements;

[9]           **PRAY ACTE** of HII’s undertaking to withdraw the Disclaimer of the Head Lease (Exhibit R-26 ) and **DECLARE** that the Head Lease is not disclaimed;

[10]          **PRAY ACTE** of the obligation of Statoil under Subsection 7 (a) of the Assignment to remain liable during the balance of the term of the Head Lease for the observance and performance of all of the terms, covenants and conditions contained in the Head Lease, notwithstanding any disclaimer of the Assignment;

[11]          **DECLARE** that the Disclaimer of the Assignment (Exhibit R-27) has no effect on the obligations of Statoil towards Cadillac Fairview under the Head Lease and the Assignment and **DECLARE** that Statoil remains liable to perform all of its obligations to Cadillac Fairview under the Head Lease and Assignment;

[12]           **DECLARE** that the Notices of Consequential Termination of Subleases and the Disclaimers of the Subleases (Exhibit R-28) have no effect on the obligations of Statoil towards the Subtenants under the NDAs;

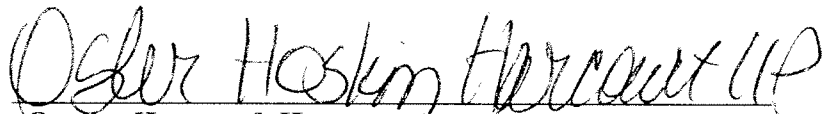
[13]           **DECLARE** HII to be released of all of its obligations pursuant to the Head Lease, the Assignment and the Sublease Agreements, subject to the right of Cadillac Fairview, Statoil and the Subtenants to file, if required, a proof of claim for any loss suffered in relation to the Disclaimers (including the Disclaimer of the Head Lease as if it has not been withdrawn by HII and had come into effect on October 30, 2011) and to the Notices of Consequential Termination and to the present Order, which provable claims, as the case may be, shall be treated in an eventual claims process in the CCAA process and subject to an arrangement or compromise under the CCAA.

[14]           **REQUEST** the aid and recognition of the Courts of the Province of Alberta to act in aid of and to render such orders as are necessary to give effect to the terms of this Order;

[15]           **ORDER** that this Order shall be executory notwithstanding any appeal.

[16]           **THE WHOLE WITHOUT COSTS**, save and except in the case of contestation.

MONTRÉAL, November 2, 2011



**OSLER, HOSKIN & HARCOURT LLP**

Attorneys for the Petitioner

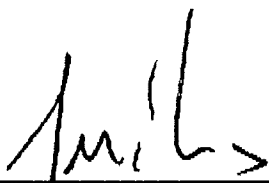
**HOMBURG INVEST INC.**

**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 Pctitioners for the purpose hereof;
2. I have taken cognizance of the attached Motion for an Order pursuant to Sections 11 and 11.3 of the *Companies' Creditors Arrangement Act*;
3. All the facts alleged in the said Motion are true.

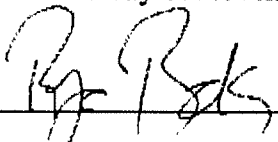
AND I HAVE SIGNED:




---

James F. Miles

SOLEMNLY DECLARED BEFORE ME  
on the 2nd day of November 2011




---

**RYAN BAKER**  
A Notary Public in and for the  
Province of Nova Scotia



**NOTICE OF PRESENTATION**

- TO :** **McCARTHY TÉTRAULT LLP** **Attorneys for the Monitor**  
1000, rue De La Gauchetière Ouest, Bureau 2500  
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**Me Miguel Bourbonnais**  
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- TO :** **BENNETT JONES LLP** **Attorneys for Penn West**  
4500 Bankers Hall East  
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**Me Kenneth T. Lenz**  
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- TO :** **BENNETT JONES LLP** **Attorneys for Statoil Canada Limited**  
4500 Bankers Hall East  
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stefan.chripounoff@lkd.ca
- TO :** **BLAKES, CASSELS & GRAYDON LLP** **Attorneys for Homburg Canada Inc. and Homburg L.P. Management Inc.**  
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**Me Simon Seida**  
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**Me Milly Chow**

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**Me Josef G. A. Krüger, Q.C.**  
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Neotechnology Consultants  
Ltd.), Logan Completion  
Systems Inc., CE Franklin  
Ltd.**

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**Me Simina Ionescu-Mocanu**

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Investment Corporation**

joint appearance with  
DeGranpré

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joint appearance with Dickson

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**Attorneys for Canmarc REIT  
(formerly Homburg Canada  
REIT), Homburg Canada  
REIT Limited Partnership  
and Homburg Canada REIT  
GP Inc. and, in their capacity  
a trustees of Canmarc REIT  
(formerly Homburg Canada  
REIT), Karen A. Prentice,  
Q.C., ICD.D, Frank W  
Matheson, James F. Miles,  
CA, Wayne Heuff, John  
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**Me Stephanie Campbell**  
**Me Martin Poulin**  
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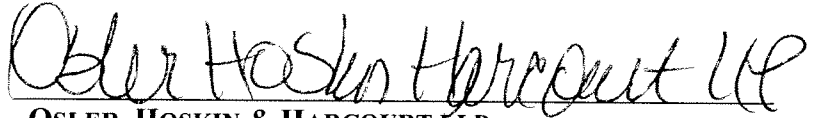
**Attorneys for Tucker  
Wireline Services Canada Inc.**

- TO :** **HEENAN BLAIKIE LLP**  
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**Me Sylvain Rigaud**  
**Me Arnold Cohen**  
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 arnold.cohen@nortonrose.com  
 philippe.giraldeau@nortonrose.com  
**Attorneys for Taberna Europe CDO I PLC, Taberna Europe CDO II PLC, Taberna Preferred Funding VIII, Ltd and Taberna Preferred Funding VI, Ltd.**
- TO :** **STIKEMAN ELLIOTT LLP**  
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 Montreal, Quebec  
**Me Guy P. Martel**  
**Me J. Reynaud**  
**Me Warren Katz**  
**Me Charles Nadeau**  
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 jreynaud@stikeman.com  
 wkatz@stikeman.com  
 cnadeau@stikeman.com  
**Attorneys for Trustees**

**TAKE NOTICE** that the present Motion will be presented for hearing and allowance in a room and at a time that will be communicated to the service list shortly, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on November 7, 2011, or so soon thereafter as Counsel may be heard.

**PLEASE ACT ACCORDINGLY.**

MONTRÉAL, November 2, 2011

A handwritten signature in black ink, appearing to read "Osler Hoskin Harcourt LLP", written over a horizontal line.

**OSLER, HOSKIN & HARCOURT LLP**

Attorneys for the Petitioner

**HOMBURG INVEST INC.**

**CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL**

**SUPERIOR COURT**

**Commercial Division**

**(Sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*, R.S.C.  
1985, c. C-36)**

**No: 500-11-041305-117**

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

---

**HOMBURG INVEST INC.,**

**Petitioner**

**-and-**

**The entities listed in Annex I**

**and**

**CADILLAC FAIRVIEW CORPORATION  
LIMITED,**

**and**

**STATOIL CANADA LTD.,**

**and**

**BOS SOLUTIONS LTD.,**

**and**

**CANADIAN TUBULAR SERVICES INC.,**

**and**

**KEYWEST PROJECTS LTD.,**

**and**

**MHI FUND MANAGEMENT INC.,**

**and**

**SPT GROUP CANADA LTD., FORMERLY  
NEOTECHNOLOGY CONSULTANTS LTD.,**

**and**

**PREMIER PETROLEUM CORP.,**

**and**

**TUCKER WIRELINE SERVICES CANADA  
INC.,**

**and**

**SURGE ENERGY INC.,**

**and**

**MOE HANNAH MCNEILL LLP,**

**and**

**LOGAN COMPLETION SYSTEMS INC.,**

**and**

**CE FRANKLIN LTD.,**

**Mises-en-cause**

**-and-**

**SAMSON BÉLAIR/DELOITTE & TOUCHE  
INC.,**

**Monitor**

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**LIST OF EXHIBITS**

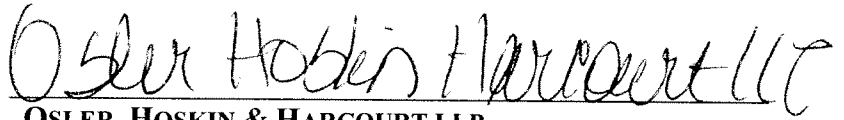
- R-1** Office Lease between The Cadillac Fairview Corporation Limited and North American Oil Sands Corporation, 635 8<sup>th</sup> Avenue, S.W. Calgary, Alberta, as amended;
- R-2** Assignment of lease agreement dated April 5, 2010 between The Cadillac Fairview Corporation Limited, Statoil Canada Ltd. and Homburg Invest Inc.;
- R-3** Sublease agreement between BOS Solutions Ltd. and Homburg Invest Inc. dated April 4, 2011;
- R-4** Non-Disturbance Agreement between BOS Solutions Ltd., Statoil Canada Ltd. and Homburg Invest Inc. dated April 4, 2011;
- R-5** Sublease agreement between Canadian Tabular Services Inc. and Homburg Invest Inc. dated March 11, 2011;
- R-6** Non-Disturbance Agreement Canadian Tabular Services Inc., Statoil Canada Ltd. and Homburg Invest Inc. dated March 11, 2011;
- R-7** Sublease agreements between Keywest Projects Ltd. and Homburg Invest Inc. dated March 30, 2011 and July 27, 2011;
- R-8** Non-Disturbance Agreements between Keywest Projects Ltd., Statoil Canada Ltd. and Homburg Invest Inc., dated March 30, 2011 and July 27, 2011;
- R-9** Sublease Agreement between MHI Fund Management Inc. and Homburg Invest Inc. dated April 11, 2011 (incorrectly dated April 11, 2010);
- R-10** Non-Disturbance Agreement MHI Fund Management Inc., Statoil Canada Ltd. and Homburg Invest Inc. dated April 11, 2011;
- R-11** Sublease agreement between SPT Group Canada Ltd. (formerly Neotechnology Consultants Ltd.) and Homburg Invest Inc. dated May 4, 2011;
- R-12** Non-Disturbance Agreement SPT Group Canada Ltd. (formerly Neotechnology Consultants Ltd.), Statoil Canada Ltd. and Homburg Invest Inc. dated May 4,

2011;

- R-13** Sublease agreement between Premier Petroleum Corp. and Homburg Invest Inc. dated April 20, 2011;
- R-14** Non-Disturbance Agreement Premier Petroleum Corp., Statoil Canada Ltd. and Homburg Invest Inc. dated April 20, 2011;
- R-15** Sublease agreement between Tucker Wireline Services Canada Inc. and Homburg Invest Inc. dated May 4, 2011;
- R-16** Non-Disturbance Agreement Tucker Wireline Services Canada Inc., Statoil Canada Ltd. and Homburg Invest Inc. dated May 4, 2011;
- R-17** Sublease agreement between Surge Energy Inc. and Homburg Invest Inc. dated November 25, 2010, as amended;
- R-18** Non-Disturbance Agreement Surge Energy Inc., Statoil Canada Ltd. and Homburg Invest Inc. dated February 17, 2011;
- R-19** Sublease agreement between Moe Hannah McNeil LLP and Homburg Invest Inc. dated March 9, 2011;
- R-20** Non-Disturbance Agreement Moe Hannah McNeil LLP, Statoil Canada Ltd. and Homburg Invest Inc. dated March 9, 2011;
- R-21** Sublease agreement between Logan Completion Systems Inc. and Homburg Invest Inc. dated May 4, 2011;
- R-22** Non-Disturbance Agreement Logan Completion Systems Inc., Statoil Canada Ltd. and Homburg Invest Inc. dated May 4, 2011;
- R-23** Sublease agreement between CE Franklin Ltd. and Homburg Invest Inc. dated April 6, 2011 (incorrectly dated April 6, 2010);
- R-24** Non-Disturbance Agreement CE Franklin Ltd., Statoil Canada Ltd. and Homburg Invest Inc. dated April, 2011;
- R-25** Notice of Default of The Cadillac Fairview Corporation Limited to Homburg Invest Inc. and Statoil Canada Ltd. dated September 13, 2011;
- R-26** Notice by Debtor Company to Disclaim or Resiliate Lease agreement with respect to the building located at 635 – 8<sup>th</sup> Avenue S.W., Calgary, Alberta dated October 11, 2005 between The Cadillac Fairview Corporation Limited and North American Oil Sands Corporation as tenant, as amended;
- R-27** Notice by Debtor Company to Disclaim or Resiliate Assignment of lease agreement dated April 5, 2010 between The Cadillac Fairview Corporation Limited, Statoil Canada Ltd. and Homburg Invest Inc.;

- R-28 Notices of Consequential Termination of Subleases;
- R-29 Written reasons of Homburg Invest Inc. for the Notice by Debtor Company to Disclaim or Resiliate an Agreement dated September 9, 2011 pursuant to subsection 31(1) of the *Companies' Creditors Arrangement Act* ("CCAA") and Notice of Consequential Termination of Lease dated September 29, 2011;
- R-30 Detailed summary of rent differential calculation;

MONTREAL, November 2, 2011



**OSLER, HOSKIN & HARCOURT LLP**  
Attorneys for the Petitioner  
**HOMBURG INVEST INC.**



**ANNEX I: DEBTORS / MISES-EN-CAUSE ENTITIES**

**Debtors**

Homburg Shareco Inc.

Churchill Estates Development Ltd.

Inverness Estates Development Ltd.

CP Development Ltd.

**Mises-en-cause**

Homburg Realty Fund (52) Limited Partnership

Homburg Realty Fund Limited Partnership

Homburg Realty Fund (88) Limited Partnership

Homburg Realty Fund (89) Limited Partnership

Homco Realty Fund (92) Limited Partnership

Homco Realty Fund (94) Limited Partnership

Homburg Realty Fund (105) Limited Partnership

Homburg Realty Fund (121) Limited Partnership

Homburg Realty Fund (122) Limited Partnership

Homco Realty Fund (142) Limited Partnership

Homburg Realty Fund (199) Limited Partnership

**CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL**

**SUPERIOR COURT**

**Commercial Division**

**(Sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*, R.S.C.  
1985, c. C-36)**

**No: 500-11-041305-117**

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

---

**HOMBURG INVEST INC.,**

**Debtor / Petitioner**

**-and-**

**THE ENTITIES LISTED IN ANNEX I AS  
DEBTORS AND MISES-EN-CAUSE**

**-and-**

**CADILLAC FAIRVIEW CORPORATION  
LIMITED,  
and  
STATOIL CANADA LTD.,  
and  
BOS SOLUTIONS LTD.,  
and  
CANADIAN TABULAR SERVICES INC.,  
and  
KEYWEST PROJECTS LTD.,  
and  
MHI FUND MANAGEMENT INC.,  
and  
SPT GROUP CANADA LTD., FORMELY  
NEOTECHNOLOGY CONSULTANTS LTD,  
and  
PREMIER PETROLEUM CORP.,  
and  
TUCKER WIRELINE SERVICES CANADA  
INC.,  
and  
SURGE ENERGY INC.,  
and  
MOE HANNAH MCNEIL LLP,  
and**

**LOGAN COMPLETION SYSTEMS INC.,  
and  
CE FRANKLIN LTD.,**

**Mises-en-cause**

**-and-**

**SAMSON BÉLAIR/DELOITTE & TOUCHE  
INC.,**

**Monitor**

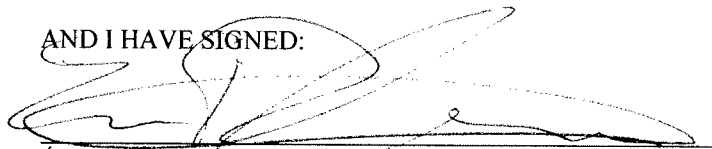
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**ATTESTATION OF AUTHENTICITY**

I, the undersigned, Éric Préfontaine, attorney, exercising my profession at Osler, Hoskin & Harcourt LLP, situated at 1000 de La Gauchetière West, Suite 2100, in the City and District of Montreal, Province of Quebec, do hereby solemnly affirm as follows:

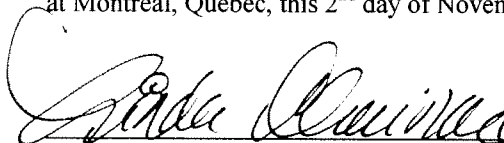
1. I am a partner of the law firm of Osler, Hoskin & Harcourt LLP.
2. On November 2, 2011, at 4:01 p.m. Montreal time, Osler, Hoskin & Harcourt LLP received by telecopier the Affidavit of James F. Miles, dated November 2, 2011, a duly authorized representative of the Petitioners for the purpose hereof.
3. The copy of the Affidavit attached hereto is a true copy of the Affidavit of James F. Miles received by telecopier from said Petitioners' representative, from telecopier number (902) 469-6776.
4. The facts alleged herein are true.

AND I HAVE SIGNED:



ÉRIC PRÉFONTAINE

SOLEMNLY AFFIRMED BEFORE ME  
at Montreal, Quebec, this 2<sup>nd</sup> day of November 2011



Commissioner for Oaths for Quebec



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 FOR AN ORDER CONFIRMING THE RE-  
ASSIGNMENT AND ASSIGNMENT OF CERTAIN  
AGREEMENTS AND THE RELEASE OF HI'S  
OBLIGATIONS UNDER THESE AGREEMENTS  
(Sections 11, 11.3 and 32 of the *Companies' Creditors  
Arrangement Act*, R.S.C. 1985 c. C-36)**

**ORIGINAL**

**M<sup>c</sup>Éric Préfontaine  
Me Alexandre Fallon**

**Osler, Hoskin & Harcourt, s.e.n.c.r.l./s.r.l.**  
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