

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)

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

**Homburg Invest Inc.  
Homburg Shareco Inc.**

**Debtors / Petitioners**

-and-

**Churchill Estates Development Ltd.  
Inverness Estates Development Ltd.  
CP Development Ltd.  
North Calgary Land Ltd.  
Homburg Management (Canada) Inc.**

**Debtors**

-and-

**Homco Realty Fund (52) Limited Partnership  
Homco Realty Fund (61) Limited Partnership  
Homco Realty Fund (83) Limited Partnership  
Homco Realty Fund (88) Limited Partnership  
Homco Realty Fund (89) Limited Partnership  
Homco Realty Fund (92) Limited Partnership  
Homco Realty Fund (94) Limited Partnership  
Homco Realty Fund (96) Limited Partnership  
Homco Realty Fund (105) Limited Partnership  
Homco Realty Fund (121) Limited Partnership  
Homco Realty Fund (122) Limited Partnership  
Homco Realty Fund (142) Limited Partnership  
Homco Realty Fund (190) Limited Partnership  
Homco Realty Fund (191) Limited Partnership  
Homco Realty Fund (199) Limited Partnership  
Castello Development Ltd.**

**Mises-en-cause**

-and-

**Computershare Trust Company of Canada**, a  
corporation having an office at 100 University Avenue,  
South Tower, 8<sup>th</sup> floor, Toronto, Ontario, M5J 2Y1

**Mise-en-cause**

-and-

**HSBC Bank Canada**, a bank having an office at 2001  
McGill College Avenue, Suite 300, Montréal, Québec,  
H3A 1G1

**Mise-en-cause**

-and-

**Laurentian Bank of Canada**, a bank having an office at 130 Adelaide Street West, Suite 300, Toronto, Ontario, M5H 3P5

**Mise-en-cause**

-and-

**Nova Scotia Securities Commission**, a legal entity, having an office at 1809 Barrington Street, Suite 501, Halifax, Nova Scotia B3J 3K8

**Mise-en-cause**

-and-

**Shaw GMC Chevrolet Buick Ltd.**, a corporation having a place of business at 4620 Blackfoot Trail S.E., Calgary, Alberta, T2G 4G2

**Mise-en-cause**

-and-

**Shaw GMC Chevrolet Buick Limited Partnership**, a limited partnership having a place of business at 4620 Blackfoot Trail S.E., Calgary, Alberta, T2G 4G2

**Mise-en-cause**

-and-

**Simmons Canada Inc.**, a corporation having an office at 2550 Meadowvale Boulevard, Unit 1, Mississauga, Ontario, L5N 8C2

**Mise-en-cause**

-and-

**Stichting Homburg Bonds**, a foundation having an address at Postbus 7817, 1008 AA Amsterdam, The Netherlands

**Mise-en-cause**

-and-

**Samson Bélair/Deloitte & Touche Inc.**

**Monitor**

**MOTION TO SANCTION THE THIRD JOINT AMENDED PLAN OF  
COMPROMISE AND REORGANIZATION OF HOMBURG INVEST INC. AND  
HOMBURG SHARECO INC., FOR THE ISSUANCE OF A VESTING ORDER AND  
FOR EXTENSION OF THE STAY PERIOD**  
(Sections 6, 11, 11.02 and 36 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 and Section 192 of the *Business Corporations Act*, R.S.A. 2000, c. B-9)

**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. DEFINED TERMS

1. Capitalized terms used in this motion and not otherwise defined herein shall have the meanings set out in the Third Joint Amended Plan of Compromise and Reorganization of Homburg Invest Inc. (“**HII**”) and Homburg Shareco Inc. (“**Shareco**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and the *Business Corporations Act*, R.S.A. 2000, c. B-9, as amended (the “**ABCA**”) dated June 3, 2013 (as amended, restated, supplemented and/or modified from time to time, the “**HII/Shareco Plan**”), a copy of which is filed in support of the present motion as **Exhibit P-1**;

## II. THE PARTIES

2. HII is an international real estate and development company existing under the ABCA, which directly or indirectly owns a diversified portfolio of real estate, including office, retail and industrial properties in Canada, Europe (Germany, Baltic States and the Netherlands) and the United States. HII also indirectly owns land assets for development in Alberta;
3. Shareco is a wholly-owned subsidiary of HII formed for the sole purpose of raising capital for HII and is the issuer of the Mortgage Bonds (as defined below). Shareco has no tangible assets;
4. Samson Bélair/Deloitte & Touche Inc. (the “**Monitor**”) is acting in its capacity as Monitor to HII, Shareco and certain of their affiliates pursuant to these proceedings;

## III. HISTORY AND BACKGROUND

5. A detailed description of the business, operations, financial situation, ongoing restructuring, employees and reasons for seeking protection under the CCAA are set out in the Amended Motion for an Initial Order pursuant to sections 4, 5 and 11 of the CCAA dated September 9, 2011 (the “**Initial Motion**”), and in further motions and Monitor’s reports, as shown in the Court record;

## IV. THE PROCEEDINGS

6. On September 9, 2011 (the “**Filing Date**”), an initial order (as amended, restated or varied from time to time, the “**Initial Order**”) was rendered by the Honourable Justice Louis J. Gouin, J.S.C., pursuant to the CCAA in relation to the Petitioners (excluding, as at the Filing Date, North Calgary Land Ltd. (“**NCLL**”) and Homburg Management (Canada) Inc. (“**HMCI**”));
7. As amended by the First extension order made on October 4, 2011, as shown in the Court record, the Initial Order declared that, although not a petitioner, each of *mises-en-cause* Homco Realty Fund (52) Limited Partnership (“**Homco 52**”), Homco Realty Fund (88) Limited Partnership (“**Homco 88**”), Homco Realty Fund (89) Limited Partnership, Homco Realty Fund (92) Limited Partnership, Homco Realty Fund (94) Limited

Partnership, Homco Realty Fund (105) Limited Partnership, Homco Realty Fund (121) Limited Partnership, Homco Realty Fund (122) Limited Partnership, Homco Realty Fund (142) Limited Partnership and Homco Realty Fund (199) Limited Partnership shall enjoy the protections and authorizations provided by the Initial Order (collectively, the “**Initial Applicant Partnerships**”);

8. Further to orders rendered by this Court from time to time, NCLL and HMCI were added as Petitioners. Similarly, the *mises-en-cause* Homco Realty Fund (61) Limited Partnership (“**Homco 61 LP**”), Homco Realty Fund (83) Limited Partnership (“**Homco 83 LP**”), Homco Realty Fund (96) Limited Partnership (“**Homco 96 LP**”), Homco Realty Fund (190) Limited Partnership (“**Homco 190 LP**”), Homco Realty Fund (191) Limited Partnership (“**Homco 191 LP**”) and Castello Development Ltd. (“**Castello**”) obtained the protections and authorizations provided by the Initial Order (jointly, other than Castello, with the Initial Applicant Partnerships, the “**Applicant Partnerships**” which, together with Castello and the Petitioners, are collectively referred to as the “**HII Group Entities**”);
9. Pursuant to the Initial Order, this Honourable Court, *inter alia*:
  - (a) Granted a broad stay of any proceeding or enforcement process in respect of the HII Group Entities, the HII Group Entities’ business operations and activities and the HII Group Entities’ Property (as defined in paragraph 14 of the Initial Order);
  - (b) Authorized the HII Group Entities to file with this Honourable Court and to submit to their creditors one or more plans of compromise or arrangement in accordance with the CCAA;
  - (c) Approved and authorized the HII Group Entities to implement the Key Employee Retention Plans (as described in paragraph 32 of the Initial Order and which was extended by the Order granting fifth extension and authorizing extended KERP made on August 24, 2012, as shown in the Court record);
  - (d) Appointed the Monitor with the protections and powers provided therein;
  - (e) Ordered a priority charge (the “**Administration Charge**”) over the Property (as defined in paragraph 14 of the Initial Order) securing the professional fees and disbursements incurred by the Monitor, the Monitor’s legal counsel, the HII Group Entities’ legal counsel and other advisors to the Monitor and HII Group Entities to the extent of \$2,000,000 (the coverage of which was extended by the Order granting seventh extension made on October 10, 2012, access to Restricted Cash and amending Initial Order (coverage of Administration Charge), as shown in the Court record);
  - (f) Ordered a priority charge (the “**Directors’ Charge**”) over the Charged Property securing the indemnity provided for in the Initial Order as it relates to obligations and liabilities that the Homburg Parties’ Directors (as defined in paragraph 13 of the Initial Order) may incur after the Filing Date to the extent of \$2,000,000;

10. The Stay Period (as defined in paragraph 12 of the Initial Order) was extended from time to time pursuant to various orders rendered by this Honourable Court, and most recently on April 26, 2013 until June 7, 2013;

**V. INDEBTEDNESS AND SECURITY**

11. As described *inter alia* in the Initial Motion and summarized below, HII and Shareco have issued various debt instruments to raise capital for the Business;

**A. Corporate Bonds**

12. HII has issued four series of corporate bonds pursuant to a Trust Indenture made as of June 1, 2006 with Stichting Homburg Bonds (“**SHB**”), a foundation incorporated under the laws of the Netherlands, as trustee, and various supplemental indentures (the “**Corporate Bonds**”). The Corporate Bonds mature between May 2013 and January 2015 and interest is payable semi-annually on June 30 and December 31. The four series of Corporate Bonds are summarized in the chart below:

<b>Bond Series</b>	<b>Maturity Date</b>	<b>Interest Rate</b>	<b>Amount</b>
HB8	May 31, 2013	7.00%	€50,010,000
HB9	October 31, 2013	7.00%	€60,000,000
HB10	February 14, 2014	7.25%	€100,000,000
HB11	January 14, 2015	7.25%	€100,005,000

**B. Mortgage Bonds**

13. Shareco has issued four series of mortgage bonds pursuant to a Trust Indenture dated as of December 15, 2002 with Stichting Homburg Mortgage Bond (now SHB), as trustee, and various supplemental indentures (the “**Mortgage Bonds**”). The Mortgage Bonds matured between November 2011 and June 2012 and interest is payable semi-annually on June 30 and December 31. The four series of Mortgage Bonds are summarized in the chart below:

<b>Bond Series</b>	<b>Maturity Date</b>	<b>Interest Rate</b>	<b>Amount</b>
HMB4	November 30, 2011	7.50%	€20,010,000
HMB5	December 31, 2011	7.50%	€20,010,000
HMB6	June 30, 2012	7.50%	€31,230,000
HMB7	June 30, 2012	7.25%	€31,230,000

14. The obligations of Shareco under the Mortgage Bonds are guaranteed by HII pursuant to a guarantee agreement made by HII in favour of Stichting Homburg Mortgage Bond

(now SHB) dated as of December 15, 2002. In addition, each series of Mortgage Bonds is collateralized by way of an assignment by Shareco of a pledge received by Shareco from HII of all of the limited partnership units of specific Homcos, together with certain guarantees and collateral mortgages by certain Homcos up to the maximum principal amount of the relevant Mortgage Bond series;

15. On November 5, 2012, SHB and Shareco entered into Special Supplemental Indentures in respect of HMB4 and HMB7. HII intervened to these Indentures, as well as Homco 52 (for HMB4) and Homco 88 (for HMB7);
16. Pursuant thereto, HII is advancing by way of loan to Homco 52 and Homco 88 the costs of the sale processes for their respective assets as well as related professional fees of HII's counsel, the Monitor and its counsel (collectively, the "**Sale Costs**"). Pursuant to the order rendered by this Court on November 8, 2012, as shown in the Court record, reimbursement of the Sale Costs is secured by a first-ranking charge against the assets of Homco 52 and Homco 88;

**C. *Advances to Stichting Homburg Bonds***

17. Pursuant to the Order on the Trustees' Amended motion for the payment of fees, disbursements and expenses made on February 15, 2012 (along with the reasons given thereon by the Court on February 17, 2013), as shown in the Court record (the "**Funding Order**"), HII is funding by way of advances to SHB amounts equal to the fees and disbursements incurred by SHB (including its legal and financial advisors) in connection with the restructuring;
18. In accordance with the Funding Order, the HII/Shareco Plan provides that each holder of a Proven Claim that is a Corporate Bond Claim or a Mortgage Bond Claim shall receive a distribution from the Cash Pool in the amount of its Pro Rata Share of the Cash Pool (after distributions to Convenience Class Creditors with Proven Claims) that is net of an amount equal to such holder's Pro Rata Share of the Stichting Advances;

**D. *Taberna Notes***

19. In addition to the Corporate Bonds, HII is a party to various Junior Subordinated Indentures with Wells Fargo Bank, N.A., as Trustee ("**Wells Fargo**"), pursuant to which four junior subordinated notes have been issued (the "**Taberna Notes**"). The Taberna Notes are due in 2036 and interest is payable quarterly in arrears on January 30, April 30, July 30 and October 30. The Taberna Notes are summarized in the chart below:

<b>Amount</b>	<b>Interest Rate</b>
€20,000,000	8.035% until July 30, 2016; LIBOR plus 3.85% thereafter
€5,000,000	8.035% until July 30, 2016; LIBOR plus 3.85% thereafter
USD 8,000,000	9.475% until July 30, 2016; LIBOR plus 3.85% thereafter
USD 12,000,000	9.475% until July 30, 2016; LIBOR plus 3.85% thereafter

20. HII has posted Letters of Credit in favour of Wells Fargo as security for the payments due under the Taberna Notes as follows:
  - (a) €20,000,000 note and €5,000,000 note: USD 1,232,978.11 letter of credit;
  - (b) USD 8,000,000 note: USD 306,808.76 letter of credit; and
  - (c) USD 12,000,000 note: USD 460,213.14 letter of credit.
21. These letters of credit have been fully drawn;
22. On January 25, 2013, the HII Group Entities filed an *Amended motion for directions* (the “**Taberna Motion**”), as shown in the Court record, with a goal of having the Court determine who will be entitled to distributions to be made under the HII/Shareco Plan in respect of the Taberna Notes. As of the date hereof, proceedings relating to the Taberna Motion are ongoing;

**E. Capital Securities A**

23. HII has also issued Homburg Capital Securities A pursuant to a Trust Indenture dated as of February 29, 2009 between HII and Stichting Homburg Capital Securities as trustee (the “**Capital Securities A**”). These are 99-year unsecured and subordinated debt obligations bearing interest at 9.5% per year, payable quarterly in arrears until maturity at February 27, 2018. As at the Filing Date, there were 26,766 Capital Securities A outstanding;
24. Pursuant to the HII/Shareco Plan and the HII/Shareco Meeting Order (as defined herein), the holders of Capital Securities A were not entitled to vote at or attend the HII/Shareco Creditors’ Meeting (as defined herein) and are not entitled to receive any distributions under the HII/Shareco Plan;

**F. Registered Security Interests**

25. The mises-en-causes HSBC Bank Canada (“**HSBC**”), Laurentian Bank of Canada, Nova Scotia Securities Commission, Shaw GMC Chevrolet Buick Ltd., Shaw GMC Chevrolet Buick Limited Partnership, Simmons Canada Inc., SHB (in its capacity as successor of Stichting Homburg Mortgage Bond) and Shareco (collectively, the “**Registrants**”) have filed documents claiming security interests against certain assets of HII in various Canadian jurisdictions;
26. As appears from the draft order filed herewith as **Exhibit P-2**, HII is requesting that any security interests be discharged as against the Core Business Assets. With respect to HSBC, the HII/Shareco Plan specifically provides that the HSBC Secured Claim will be paid in full from the Administrative Reserve. No registration by other Registrants bears on any of the Core Business Assets. However, the discharges are being requested for

greater certainty. The HII Group Entities intend to serve all Registrants with the present motion;

**VI. THE CLAIMS PROCESS**

27. On April 30, 2012, an order was rendered by this Honourable Court (the “**Claims Process Order**”) authorizing the HII Group Entities and the Monitor to conduct a claims process for the determination of the claims of creditors of the HII Group Entities (the “**Claims Process**”);
28. Further to orders rendered by this Court from time to time, the Claims Process Order was made applicable, *mutatis mutandis*, to further HII Group Entities as summarized in the chart below:

<b>Order date</b>	<b>Entity / Entities</b>
May 31, 2012	NCLL, Homco 96 LP
December 14, 2012	Homco 190 LP, Homco 191 LP
February 6, 2013	Homco 61 LP, Castello
March 14, 2013	HMCI
April 26, 2013	Homco 83 LP

29. Further to the Claims Process Order, as modified by the supplemental Orders noted above, the Claims Process was conducted by the HII Group Entities and the Monitor, and resulted in the identification and determination of the Claims of Creditors;
30. The HII Group Entities refer the Court to the Tenth Report of the Monitor (paragraphs 162 to 168), the Fourteenth Report of the Monitor (paragraph 47), the Fifteenth Report of the Monitor (paragraphs 88 to 93), the Sixteenth Report of the Monitor (paragraphs 56 to 61), the Eighteenth Report of the Monitor (paragraphs 78 to 82), the Nineteenth Report of the Monitor (paragraphs 89 to 96), the Twentieth Report of the Monitor (paragraphs 39 and 64 to 70), the Twenty-first Report of the Monitor (paragraphs 17 to 19, 35 to 41 and 46-49) and the Twenty-Second Report of the Monitor (paragraphs 16 to 17, 77 to 81, 84 to 89 and 116 to 119) for a detailed description of the procedure followed in furtherance of the completion of the Claims Process;
31. The HII Group Entities further refer the Court to Appendix D of the Twenty-Third Report of the Monitor (the “**Plan Report**”), which gives an overview of the results of the Claims Process in relation to the claims filed against HII, Shareco, Homco 190 LP, Homco 191 LP and Homco 199 LP (which are being compromised under the HII/Shareco Plan), as well as the claims filed against Homco 61 LP (which are being compromised under the Homco 61 Plan);



## VII. INVESTMENT PROPOSAL PROCESS AND AGREEMENT WITH CATALYST

32. As appears from the Court record, several interested parties reached out to the HII Group Entities and the Monitor to express interest in pursuing a transaction with or relating to HII. With a view to maximizing value for stakeholders, this Court approved the Investment Proposal Process (as defined in the Order approving Investment Proposal Process made on March 1, 2013, in the Court record). On March 14, 2013, this Court approved a revised investment proposal process (collectively, the “**Investment Proposal Process**”);
33. On March 27, 2013, an offer made by The Catalyst Capital Group Inc. (“**Catalyst**”) was selected by HII as the Selected Superior Offer for the purposes of and in accordance with the Investment Proposal Process. The Monitor recommended, and the board of directors of HII approved, the entering into exclusive negotiations with Catalyst with a view to settling a definitive agreement, all in accordance with the Investment Proposal Process;
34. Following extensive negotiations, on April 26, 2013, HII, Shareco, Homco 61 LP, Catalyst and SHB (as intervenor) entered into a “**Restated Support Agreement**”, defining the Catalyst Investment and contemplating, *inter alia*, a cash-out option for Affected Creditors;
35. The HII Group Entities refer the Court to paragraphs 17 to 34 of the *Re-Amended motion for an order for the convening, holding and conduct of the HII/Shareco Creditors’ Meeting and other relief* made on April 29, 2013, as shown in the Court record, for more details on the Investment Proposal Process and the Restated Support Agreement;
36. As appears from the HII/Shareco Meeting Order (as defined below), the Restated Support Agreement was approved by this Court;

## VIII. FILING OF THE HII/SHARECO PLAN

37. As stated above, the Initial Order authorized the HII Group Entities to file a plan of compromise or arrangement with this Honourable Court. On February 6, 2013, HII and Shareco filed a Plan of Compromise and Reorganization dated as of February 5, 2013 with the Court. On April 26, 2013 the same parties filed a Joint Amended and Restated Plan of Compromise and Reorganization dated as of April 25, 2013. On April 29, 2013, the same parties filed a Second Joint Amended and Restated Plan of Compromise and Reorganization dated as of April 26, 2013 (the “**Second HII/Shareco Plan**”). Following a Plan Modification pursuant to the terms of and in accordance with the Second HII/Shareco Plan, the Second HII/Shareco Plan was amended as of May 3, 2013. The Second HII/Shareco Plan was further amended pursuant to and in accordance with its terms and became the HII/Shareco Plan;
38. Pursuant to an order of this Honourable Court dated April 29, 2013 (the “**HII/Shareco Meeting Order**”), the Second HII/Shareco Plan was accepted for filing with this Honourable Court. The HII/Shareco Plan contains the Catalyst Investment contemplated by the Restated Support Agreement;

39. The HII/Shareco Meeting Order also authorized HII and Shareco to conduct a meeting of Affected Creditors (the “**HII/Shareco Creditors’ Meeting**”), on May 30, 2013, in Montréal, Québec, Canada and in Utrecht, the Netherlands for the purpose of considering and, if deemed advisable, approving the HII/Shareco Plan;
40. On May 15, 2013, the Monitor sent meeting materials to the Affected Creditors in accordance with the HII/Shareco Meeting Order (the “**Meeting Materials**”), which included the following documents:
- (a) A notice of the HII/Shareco Creditors’ Meeting and of the Court hearing to consider the sanction of the Second HII/Shareco Plan, advising the creditors of the following:
    - (i) the HII/Shareco Creditors’ Meeting to be held on May 30, 2013 at 9:00 a.m (Eastern Prevailing Time) at 1000 De La Gauchetière Street West, Suite 2500, Montréal, Québec, Canada and at 3:00 p.m. (Central European Time) at Jaarbeursplein 6, Utrecht, the Netherlands;
    - (ii) the Court hearing with respect to the sanction of the Second HII/Shareco Plan to be held on June 5, 2013, at 9:15 a.m. in at the Montréal Courthouse located at 1 Notre-Dame Street East, Montréal, Québec, Canada;
  - (b) the Second HII/Shareco Plan;
  - (c) an Information Circular pertaining to the Second HII/Shareco Plan;
  - (d) a form of Proxy;
  - (e) instructions for completion of the Proxy in prescribed form;
  - (f) a Convenience Class Claim Declaration; and
  - (g) a copy of the HII/Shareco Meeting Order;
41. In addition, pursuant to and in accordance with the HII/Shareco Meeting Order, no later than May 15, 2013:
- (a) The Meeting Materials and the Shareholder Notice (as defined in the HII/Shareco Meeting Order) were posted, in English and Dutch (other than the HII/Shareco Meeting Order, which was published in English only), on the Website; and
  - (b) The Notice of Creditors’ Meeting and Sanction Hearing and Shareholder Notice were published in the Globe and Mail, the Calgary Herald, the Halifax Chronicle Herald and The Guardian (published in Charlottetown, Prince Edward Island) (English Version) and De Volkskrant, De Telegraaf, the NRC and Het Financieele Dagblad (all published in the Netherlands) (Dutch Version);

## **IX. HII/SHARECO PLAN**

42. The purpose of the HII/Shareco Plan is to:

- (a) Effect a compromise, settlement and payment of all Affected Claims as finally determined for voting and distribution purposes pursuant to the Claims Process Order, the HII/Shareco Meeting Order and the HII/Shareco Plan;
- (b) Streamline the structure and operation of the Business to maintain the Core Business Assets as a core portfolio of profitable properties in Europe and to identify and assess monetization opportunities within a reasonable timeframe;
- (c) Facilitate an orderly liquidation of Non-Core Business Assets over a reasonable period of time; and
- (d) Implement the Catalyst Investment;

all in the expectation that stakeholders will derive a greater benefit from the implementation of the HII/Shareco Plan than would result from a bankruptcy;

43. In summary, the HII/Shareco Plan generally provides for the following (subject to the specific terms of the HII/Shareco Plan relating thereto):

- (a) The compromise, settlement, release and discharge of the Affected Claims of Affected Creditors;
- (b) The creation of a single class of Affected Creditors, being the Unsecured Creditors' Class, for the purpose of voting on and receiving distributions under the Plan;
- (c) The creation of a "convenience class" of Affected Creditors with Affected Claims of less than or equal to \$10,000 in the aggregate, permitting such Affected Creditors to elect to be treated as a Convenience Class Creditors and thereby receive a distribution of the Cash Elected Amount from the Cash Pool on account of their Proven Claims and deeming them to vote in favour of the Plan;
- (d) The exclusion of holders of Equity Claims, including holders of HII Class A and holders of HII Class B Shares, from any payment, distribution or other compensation with respect to such Equity Claims and the deemed surrender of all of HII's Existing Authorized Capital for cancellation without compensation;
- (e) The exclusion of Stichting Homburg Capital Securities and the holders of Capital Securities Claims from any payment, distribution or other compensation with respect to the Capital Securities Claims;
- (f) The creation of a cash pool funded by Catalyst, being the Cash-Out Pool, to be disbursed by the Monitor, on behalf of Catalyst, to Affected Creditors who have made the Newco Common Shares Cash-Out Option Election and who were, accordingly, deemed to vote in favour of the HII/Shareco Plan;

- (g) The creation of cash pools, being the Cash Pool and the Asset Realization Cash Pool, to be distributed by the Monitor, on behalf of HII and Shareco, to Affected Creditors (other than Convenience Class Creditors) on a *pro rata* basis on account of their Proven Claims;
  - (h) The transfer of certain assets and liabilities to a public limited liability company to be incorporated in the Netherlands (“**Newco**”) and certain of its subsidiaries, and a distribution of common shares of Newco (the “**Newco Common Shares**”) by Newco or its agent, at the direction of the Monitor, on a *pro rata* basis, to Affected Creditors (other than Convenience Class Creditors and Electing Creditors), on account of their Proven Claims, and to Catalyst on account of the Proven Claims of the Electing Creditors;
  - (i) The creation of a liquidation advisory committee to consult with the Monitor with respect to the liquidation or realization of the Non-Core Business Assets;
  - (j) In accordance with section 12.3(u) of the HII/Shareco Plan, the payment of certain Administrative Reserve Costs from the Administrative Reserve on or after the Plan Implementation Date, including the payment of any Employee Priority Claims and Government Priority Claims in accordance with subsections 6(3) and 6(5), respectively, of the CCAA;
  - (k) The releases provided in section 13.1 of the HII/Shareco Plan in favour of the Released Parties;
  - (l) The steps and transactions to occur prior to implementation of the HII/Shareco Plan on the Plan Implementation Date, as more described in section 12.2 of the Plan; and
  - (m) The steps and transactions to occur upon implementation of the HII/Shareco Plan as described in sections 12.3 and 12.4 of the HII/Shareco Plan;
44. With respect to the distribution of Newco Common Shares under the Plan, the HII Group Entities intend to rely upon the securities registration exemption set out in section 3(a)(10) of the United States *Securities Act of 1933*, as amended, and the exemption set forth in section 2.11 of National Instrument 45-106 - Prospectus and Registration Exemptions, should this Honourable Court approve the HII/Shareco Plan and declare that the HII/Shareco Plan is fair and reasonable;
45. Under section 14.4 of the HII/Shareco Plan, the implementation of the HII/Shareco Plan is subject to certain conditions precedent, including, *inter alia*, the issuance by the Court of a sanction and vesting order providing for the orders set out in section 14.2 of the HII/Shareco Plan, which sanction and vesting order shall include *inter alia* the following:
- (a) A declaration that:
    - (i) The HII/Shareco Plan has been approved by the Required Majority of Affected Creditors with Proven Claims in conformity with the CCAA;

- (ii) The HII Group Entities have complied with the provisions of the CCAA and the Orders of the Court made in these proceedings in all respects;
  - (iii) The Court is satisfied that the HII Group Entities have not done or purported to do anything that is not authorized by the CCAA; and
  - (iv) The HII/Shareco Plan and the Plan Transactions contemplated thereby are fair and reasonable;
- (b) A declaration and order declaring that, as of the Effective Time, the HII/Shareco Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby are approved, binding and effective on the HII Group Entities, all Affected Creditors, the Released Parties and all other Persons or Parties affected by the HII/Shareco Plan as of the Effective Time on the Plan Implementation Date;
  - (c) An order granting the Monitor the additional powers, duties and protections contemplated by and required under the HII/Shareco Plan and authorizing the Monitor to perform its duties and fulfil its functions under the HII/Shareco Plan to facilitate the implementation thereof;
  - (d) A declaration and order that all right, title and interest in and to the Core Business Assets (other than the Core GP Assets) will vest absolutely in Newco and that all right, title and interest in and to the Core GP Assets will vest absolutely in the Newco Subsidiaries, free and clear of all Encumbrances, other than Core Business Creditor Claims;
  - (e) A declaration and order compromising, discharging and releasing the Released parties from any and all Affected Claims of any nature in accordance with the HII/Shareco Plan, and declaring that the ability of any Person to proceed against the Released Parties in respect of or relating to any Affected Claims shall be forever discharged and restrained, and all proceedings with respect to, in connection with or relating to such Affected Claims be permanently stayed, subject only to the right of Affected Creditors to receive distributions pursuant to the HII/Shareco Plan in respect of their Affected Claims;
  - (f) A declaration and order that the Stay of Proceedings and protections under the Initial Order be extended to, and including, the Final Distribution Date and, in addition to the parties currently protected thereunder, shall extend to the benefit of the Released Parties;
  - (g) An order approving the constitution of the Liquidation Advisory Committee and authorizing the Monitor to consult with and seek the approval of the Liquidation Advisory Committee as more particularly provided in the Plan; and
  - (h) An order continuing the Administration Charge and the Directors' Charge and creating the Plan Charges, including the Liquidation Charge and the Affected Creditors' Charge, as set out in sections 12.3(w) and 12.3(x) of the HII/Shareco Plan;

- (i) Approval of the reserves to be established on Plan Implementation Date under the HII/Shareco Plan;

46. HII and Shareco refer the Court to Appendix B of the Plan Report, which provides an overview of the HII/Shareco Plan;

## **X. MONITOR'S REPORTS**

47. The HII Group Entities refer to the Plan Report, whose purpose is to, *inter alia*:

- (a) Report on:

- (i) General background;

- (ii) Summary of the restructuring initiatives undertaken by the HII Group Entities since the commencement of the CCAA Proceedings;

- (iii) The claims process and creditors' meetings;

- (iv) Overview of the Plans and of relevant information pertaining to Newco;

- (v) Estimated liquidation analysis; and

- (vi) Timing of distributions under the Plans; and

- (b) Provide the Monitor's recommendation with respect to the Plans and comments with respect to the Newco Common Shares Cash-Out Option;

48. The HII Group Entities also understand that the Monitor will file an additional report with this Honourable Court, reporting on, *inter alia*, the HII/Shareco Creditors' Meeting, the results of the vote conducted thereat and the recommendation of the Monitor on the sanction of the HII/Shareco Plan and the issuance of a vesting order with respect to the Core Business Assets;

## **XI. HII/SHARECO CREDITORS' MEETING**

49. The HII/Shareco Creditors' Meeting to consider and approve the HII/Shareco Plan was convened and held concurrently on May 30, 2013 at 9:00 a.m (Eastern Prevailing Time) at 1000 De La Gauchetière Street West, Suite 2500, Montréal, Québec, Canada and at 3:00 p.m. (Central European Time) at Jaarbeursplein 6, Utrecht, the Netherlands, by videoconference;

50. The Monitor chaired the HII/Shareco Creditors' Meeting. Representatives of the HII Group Entities and of the Monitor were part of the panels in Utrecht and in Montreal and representatives of SHB and of Catalyst were also present to answer questions put forth by the Affected Creditors thereat, as shown in the minutes of the HII/Shareco Creditors' Meeting which the HII Group Entities understand will be appended to the Twenty-Fourth Report of the Monitor (the "**Twenty-Fourth Report**");

51. A large number of Affected Creditors were present at the HII/Shareco Creditors' Meeting either in person or by proxy. A quorum was thus attained and the HII/Shareco Creditors' Meeting was duly constituted;
52. The Monitor provided the creditors with a brief summary of the salient terms of the HII/Shareco Plan and the estimated recoveries thereunder;
53. The Required Majority of Affected Creditors voted in favour of the HII/Shareco Plan. The Twenty-Fourth Report will contain a summary of the results of the vote. It will also include data on Affected Creditors who made a Newco Common Shares Cash-Out Option Election or a Convenience Class Claim Election and were thereby deemed to vote in favour of the HII/Shareco Plan pursuant to and in accordance with the HII/Shareco Meeting Order;

## **XII. SANCTION OF THE HII/SHARECO PLAN**

54. The HII Group Entities have complied with all statutory requirements and orders of the Court in the CCAA Proceedings;
55. No unauthorized steps were taken or were purported to have been taken under the CCAA by the HII Group Entities in the course of the CCAA Proceedings;
56. The HII Group Entities have acted and continue to act in good faith and to the benefit of all parties affected by the Plan and the CCAA Proceedings. The HII Group Entities understand that the Monitor's Report which will be filed to accompany the present motion will contain an update regarding the HII Group Entities' ongoing restructuring initiatives;
57. The HII/Shareco Plan is fair and reasonable and is beneficial to the Affected Creditors, as it allows for:
  - (a) Affected Creditors with Claims in an aggregate amount of \$10,000 or less to elect to be treated as Convenience Class Creditors and to receive a Cash distribution of a sum certain in lieu of the distributions of Cash and Newco Common Shares under the HII/Shareco Plan;
  - (b) A *pro rata* distribution to Affected Creditors (other than Convenience Class Creditors) of the Cash Pool and the Asset Realization Cash Pool;
  - (c) A *pro rata* distribution to the Affected Creditors (other than Convenience Class Creditors and Electing Creditors) of the Newco Common Shares, allowing such Affected Creditors to share in the potential upside relating to the restructured Business going forward; and
  - (d) An option for Affected Creditors (other than Convenience Class Creditors) to elect the Newco Common Shares Cash-Out Option and receive cash in lieu of the Newco Common Shares they would otherwise receive under the Plan;

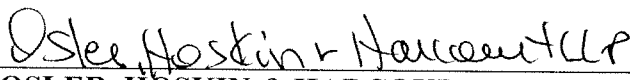
58. In light of the above and considering that the Resolution to approve the HII/Shareco Plan was overwhelmingly approved by the Required Majority of Affected Creditors, the HII Group Entities respectfully request that this Honourable Court sanction the HII/Shareco Plan in accordance with the conclusions hereof;
59. The HII Group Entities also respectfully request that this Honourable Court vest all right, title and interest in and to the Core Business Assets (other than the Core GP Assets) in Newco and the Core GP Assets in the Newco Subsidiaries, in each case free and clear of all Encumbrances, other than the Core Business Creditor Claims;
60. In addition, the HII Group Entities request that this Honourable Court release the Directors' Charge and the Administration Charge as against the Charged Property as of the Plan Implementation Date, and create the Plans Charges, Liquidation Charge and the Affected Creditors' Charge as described herein;
61. Also, the HII Group Entities request that this Honourable Court approve the reserves to be established on Plan Implementation Date under the HII/Shareco Plan;
62. Finally, the HII Group Entities respectfully request that this Honourable Court extend the Stay of Proceedings to and including July 12, 2013 and extend the protections relating thereto under the Initial Order to the benefit of the Released Parties.

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

1. **GRANT** the present *Motion to sanction the Third Joint Amended Plan of Compromise and Reorganization of Homburg Invest Inc. and Homburg Shareco Inc. and a vesting order* (the "**Motion**");
2. **DECLARE** that the service of the Motion constitutes good and sufficient service on all persons and further **DECLARE** that the Petitioners are relieved of any other requirements for service of the Motion;
3. **ISSUE** orders substantially in the form of the draft Sanction and Vesting Order (HII/Shareco) filed as Exhibit P-2 in support of the Motion;

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

MONTREAL, June 3, 2013

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

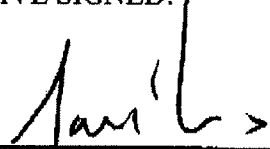


**AFFIDAVIT**

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

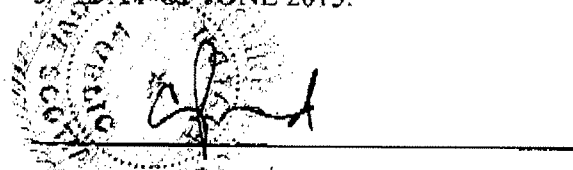
1. I am the Vice-President and Chief Financial Officer of Homburg Invest Inc. and duly authorized representative of the Petitioners for the purpose hereof;
2. I have taken cognizance of the attached *Motion to sanction the Third Joint Amended Plan of Compromise and Reorganization of Homburg Invest Inc. and Homburg Shareco Inc. and a vesting order*;
3. All of the facts alleged in the said motion are true.

AND I HAVE SIGNED:



**James F. Miles**

SOLEMNLY DECLARED BEFORE ME  
IN HALIFAX, NOVA SCOTIA ON THE  
3<sup>RD</sup> DAY OF JUNE 2013.



**CHRISTINE C. POUND**  
A Notary Public in and for the  
Province of Nova Scotia

**ATTESTATION OF AUTHENTICITY**  
(Article 82.1 of the *Code of Civil Procedure*, R.S.Q. c. C-25)

I, the undersigned, Julien Morissette, attorney, exercising my profession at Osler, Hoskin & Harcourt LLP, situated at 1000 De La Gauchetière Street West, Suite 2100, in the city and district of Montréal, Province of Québec, solemnly declare the following:

1. I am one of the attorneys of the Petitioners to the present *Motion to sanction the Third Joint Amended Plan of Compromise and Reorganization of Homburg Invest Inc. and Homburg Shareco Inc. and a vesting order* in Court file number 500-11-041305-117;
2. On June 3, 2013 at 8:33 a.m. (Montréal time), Osler, Hoskin & Harcourt LLP received by fax the Affidavit of James F. Miles, a duly authorized representative of the Petitioners, dated the same day;
3. The copy of the Affidavit attached hereto is a true copy of the Affidavit of James F. Miles received by fax from Christine C. Pound, from the city of Halifax, Province of Nova Scotia, from fax number 902-420-1417;
4. All of the facts alleged herein are true.

AND I HAVE SIGNED:



**Julien Morissette**

SOLEMNLY DECLARED BEFORE ME  
IN MONTRÉAL, QUÉBEC  
ON THE 3<sup>RD</sup> DAY OF JUNE 2013.

  
Lyne St-Amour

COMMISSIONER FOR OATHS  
FOR THE PROVINCE OF QUÉBEC



## NOTICE OF PRESENTATION

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and Homburg Canada REIT  
GP Inc. and, in their capacity  
a trustees of Canmarc REIT  
(formerly Homburg Canada  
REIT), Karen A. Prentice,  
Frank W. Matheson, James F.  
Miles, Wayne Heuff, John  
Levitt and Gérard A. Limoges
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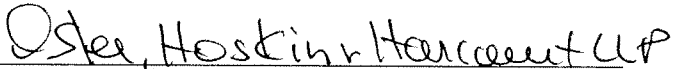
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- TO : LAURENTIAN BANK OF CANADA**  
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Toronto ON M5H 3P5
- TO : SHAW GMC CHEVROLET BUICK LTD.**  
4620 Blackfoot Trail S.E.  
Calgary AB T2G 4G2
- TO : SHAW GMC CHEVROLET BUICK LIMITED PARTNERSHIP**  
4620 Blackfoot Trail S.E.  
Calgary AB T2G 4G2
- TO : SIMMONS CANADA INC.**  
2550 Meadowvale Boulevard, Unit 1  
Mississauga ON L5N 8C2

**TAKE NOTICE** that the *Motion to sanction the Second Joint Amended Plan of Compromise and Reorganization of Homburg Invest Inc. and Homburg Shareco Inc. and a vesting order* will be presented for hearing and allowance in the Superior Court, commercial division, at the

Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on June 5, 2013, at 9:15 a.m., or so soon thereafter as counsel may be heard, and in a room to be announced.

**PLEASE ACT ACCORDINGLY.**

MONTRÉAL, June 3, 2013

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

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-041305-117

SUPERIOR COURT  
(Commercial Division)  
(sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*, R.S.C.  
1985, c. C-36, as amended)

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

**Homburg Invest Inc.**  
**Homburg Shareco Inc.**

**Debtors / Petitioners**

-and-

**Churchill Estates Development Ltd.**  
**Inverness Estates Development Ltd.**  
**CP Development Ltd.**  
**North Calgary Land Ltd.**  
**Homburg Management (Canada) Inc.**

**Debtors**

-and-

**Homco Realty Fund (52) Limited Partnership**  
**Homco Realty Fund (61) Limited Partnership**  
**Homco Realty Fund (83) Limited Partnership**  
**Homco Realty Fund (88) Limited Partnership**  
**Homco Realty Fund (89) Limited Partnership**  
**Homco Realty Fund (92) Limited Partnership**  
**Homco Realty Fund (94) Limited Partnership**  
**Homco Realty Fund (96) Limited Partnership**  
**Homco Realty Fund (105) Limited Partnership**  
**Homco Realty Fund (121) Limited Partnership**  
**Homco Realty Fund (122) Limited Partnership**  
**Homco Realty Fund (142) Limited Partnership**  
**Homco Realty Fund (190) Limited Partnership**  
**Homco Realty Fund (191) Limited Partnership**  
**Homco Realty Fund (199) Limited Partnership**  
**Castello Development Ltd.**

**Mises-en-cause**

-and-

**Computershare Trust Company of Canada**

**Mise-en-cause**

-and-

**HSBC Bank Canada**

**Mise-en-cause**

-and-  
**Laurentian Bank of Canada**  
Mise-en-cause

-and-  
**Nova Scotia Securities Commission**  
Mise-en-cause

-and-  
**Shaw GMC Chevrolet Buick Ltd.**  
Mise-en-cause

-and-  
**Shaw GMC Chevrolet Buick Limited Partnership**  
Mise-en-cause

-and-  
**Simmons Canada Inc.**  
Mise-en-cause

-and-  
**Stichting Homburg Bonds**  
Mise-en-cause

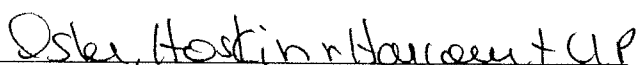
-and-  
**Samson Bélair/Deloitte & Touche Inc.**  
Monitor

<b>LIST OF EXHIBITS</b>
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Exhibit P-1: Third Joint Amended Plan of Compromise and Reorganization of Homburg Invest Inc. and Homburg Shareco Inc.

Exhibit P-2: Draft Sanction and Vesting Order (HII/Shareco)

MONTREAL, June 3, 2013

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

No: 500-11-041305-117

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**SUPERIOR COURT**  
(Commercial Division)

DISTRICT OF MONTRÉAL

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

**HOMBURG INVEST INC. ET AL**

**Debtor/Petitioners**

-and-

**CHURCHILL ESTATES DEVELOPMENT LTD.  
ET AL**

**Debtors**

-and-

**HOMCO REALTY FUND (S2) LIMITED  
PARTNERSHIP ET AL.**

**Mises-en-cause**

-and-

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

**Monitor**

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**MOTION TO SANCTION THE THIRD JOINT AMENDED  
PLAN OF COMPROMISE AND REORGANIZATION OF  
HOMBURG INVEST INC. AND HOMBURG SHARECO  
INC., FOR THE ISSUANCE OF A VESTING ORDER AND  
FOR EXTENSION OF THE STAY PERIOD (Sections 6, 11,  
11.02 and 36 of the *Companies' Creditors Arrangement Act*,  
R.S.C., 1985, c. C-36), AFFIDAVIT, ATTESTATION OF  
AUTHENTICITY, NOTICE OF PRESENTATION, LIST OF  
EXHIBITS, EXHIBITS P-1 AND P-2**

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**ORIGINAL**

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