

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

N<sup>o</sup>.: 500-11-041305-117

SUPERIOR COURT

(COMMERCIAL DIVISION)

(sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*)

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

Homburg Invest Inc.  
Homburg Shareco Inc.  
Churchill Estates Development Ltd.  
Inverness Estates Development Ltd.  
CP Development Ltd.  
North Calgary Land Ltd.

Debtors

-and-

Homco Realty Fund (52) Limited Partnership  
Homco Realty Fund (61) Limited Partnership  
Homco Realty Fund (88) Limited Partnership  
Homco Realty Fund (89) Limited Partnership  
Homco Realty Fund (92) Limited Partnership  
Homco Realty Fund (94) Limited Partnership  
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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-

Samson Bélair/Deloitte & Touche Inc.

Monitor

-and-

The Catalyst Capital Group Inc., a company  
having its place of business at 77 King Street  
West, Suite 4320, Toronto, Ontario M5K 1J3

Petitioner

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**MOTION FOR DIRECTIONS FROM THE CATALYST CAPITAL GROUP INC.**  
(Section 11 of *Companies' Creditors Arrangement Act*)

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE CATALYST CAPITAL GROUP INC. RESPECTFULLY SUBMITS AS FOLLOWS:**

**I. BACKGROUND**

1. The Catalyst Capital Group Inc. ("**Catalyst**") is a financial institution registered in Canada with the Ontario Securities Commission as a portfolio manager and manages four private equity funds without leverage which own more than US\$2.0 billion in assets.
2. Catalyst is a creditor of Homburg Invest Inc. ("**Homburg**").
3. The present motion is filed following receipt by Catalyst of service of the Debtors' *Motion for an Order for the Convening, Holding and Conduct of a Creditors' Meeting and Other Relief* and *Motion for an Extension of the Stay Period and Approval of an Investment Proposal Process* (collectively, the "**Homburg Motions**").
4. For the purposes of this motion, all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Homburg Motions.
5. On February 24, 2013, Catalyst delivered to Homburg a binding offer structured so that it could be added at this time to the plan of arrangement dated February 5, 2013 filed by Homburg and the other Debtors (the "**Existing Plan**") in order to create a superior proposal for the creditors (the "**Superior Offer**").
6. The Superior Offer had no due diligence or financing conditions that may have delayed the process further. It guaranteed minimum recoveries for the creditors and preserved the terms of the Existing Plan as a choice with absolutely no downside for those who elected not to benefit from the Superior Offer.
7. On February 26, 2013, Homburg advised Catalyst that while it considered the Superior Offer to be of interest, it was not prepared to accept to include the terms of the Superior Offer at this time, the whole as it appears from a copy of the letter from Homburg dated February 26, 2013 and communicated in support hereof as **Exhibit C-1**.

8. On the same day, Catalyst advised Homburg that it had agreed that the Superior Offer be treated as a stalking horse offer (the “**Stalking Horse Offer**”) in accordance with the following:
  - (a) the Superior Offer was to be incorporated into the Existing Plan and to form part of what would be circulated to be voted upon by the creditors; and
  - (b) if the Investment Proposal Process yielded an offer which is superior to the Existing Plan as enhanced by the Superior Offer, Homburg would be at liberty with no cost to amend its Plan in accordance with the subsequent superior offer, in which case Homburg will no longer be bound to its acceptance of the Superior Offer.

the whole as it appears from a copy of a letter from Catalyst dated February 26, 2013 and communicated in support hereof as **Exhibit C-2**.

9. Catalyst also advised Homburg that it considered it important that the Superior Offer be incorporated into the Existing Plan which was to be circulated to creditors, so that they can take it into account in deciding how to cast their votes.
10. The Staking Horse Offer did not require the payment of a break fee or reimbursement of Catalyst’s expenses in the event that the Investment Proposal Process yielded a subsequent superior offer.
11. On February 27, 2013, Homburg advised Catalyst that it was not able to accept or reject the Superior Offer nor in a position to select it as a stalking horse offer or include it in the Existing Plan, the whole as it appears from a copy of the letter from Homburg dated February 27, 2013 and communicated in support hereof as **Exhibit C-3**.
12. The Superior Offer was not accepted by Homburg within the required delay and has now expired.

## **II. REQUESTS FROM CATALYST**

### **A. Postponement of the Meeting Order**

13. It is inherent in the institution of the Investment Proposal Process that Homburg is seeking to have a plan which is different from the Existing Plan which has already been filed.
14. It is illogical, confusing and not in the interest of the creditors that they be presented with, and called upon to vote on, the Existing Plan which is likely to be

substantially modified as a result of the Investment Proposal Process. It would be impossible for the creditors to make a decision *en pleine connaissance de cause*.

15. It may well be, for example, that the final plan will provide for certain options to be exercised by the creditors at the time of submitting their votes (as was the case with Catalyst's Superior Offer). If the provisions relating thereto are unknown at the time of the mailing to the creditors, those options would not be presented to the creditors on a timely basis and a new mailing would be required. This would unduly complicate and delay the process and increase costs.
16. The situation is exacerbated by the fact that the major body of creditors consists of retail investors in the Netherlands with whom communication is difficult in the best of circumstances.
17. It is appropriate that the process leading to a meeting of creditors be conducted at a time when all the details of the final plan are known.
18. If the Investment Proposal Process proceeds in accordance with the guidelines proposed by Homburg, the postponement will have no impact; Homburg contemplates a mailing by March 20, 2013. The structure of the final plan pursuant to the Investment Proposal Process should have been determined by then.

#### **B. Additional Information Required**

19. The Monitor's 19<sup>th</sup> report dated February 6, 2013, provided estimated realisations for the creditors.
20. However, those estimates are global in nature and are lacking in details. It is in the interest of the creditors and a basic requirement in order for them to truly understand what will be their economic position, and in no way detrimental to Homburg, that the Monitor supplement its report with more elaborate information, including the following:
  - (a) valuations of the respective properties and the assumptions behind these valuations;
  - (b) estimated timing of expected ranges for post-emergence cash and equity values; and
  - (c) estimated present value of the estimated recoveries for the post-emergence cash and equity.

### C. Qualified Investor

21. The Investment Proposal Process contains a requirement that in order for a Potential Investor to be a Qualified Investor, it must enter into a Confidentiality Agreement in the form proposed by Homburg.
22. Catalyst is of the view that that the draft Confidentiality Agreement greatly overreaches what is required in the circumstances and is likely to deter Potential Investors from participating in the Investment Proposal Process.
23. In any event, the Confidentiality Agreement should not be required at all if a Potential Investor does not seek confidential information or access to the data room to be set up by Homburg.
24. Signature of the Confidentiality Agreement should only be required if a Qualified Investor needs to access the confidential information or the data room.

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

- [1] **GRANT** the present *Motion for Directions* (the "**Motion**") from The Catalyst Capital Group Inc. ("**Catalyst**");
- [2] **DECLARE** that the present Motion was duly served, that the notice of presentation of the Motion is sufficient and dispense Catalyst from any additional notice requirements;
- [3] **DECLARE** that all capitalized terms not otherwise defined in the conclusions of this Motion shall have the meaning ascribed to them in the Motion;
- [4] **POSTPONE** the hearing on the *Motion for an Order for the Convening, Holding and Conduct of a Creditors' Meeting and Other Relief* and the adjudication of all conclusions relating thereto until the earlier of the time at which i) the Successful Investor has been selected, ii) the Investment Proposal Process is terminated or iii) April 5, 2013, the date proposed by Homburg as the Transaction Deadline;
- [5] **REQUEST** the Monitor to file a supplemental report within the next three (3) business days in order to provide to the creditors of the following information:

- (a) valuations of the respective properties and the assumptions behind these valuations;
  - (b) estimated timing of expected ranges for post-emergence cash and equity values; and
  - (c) estimated present value of the estimated recoveries for the post-emergence cash and equity.
- [6] **DECLARE** that notwithstanding the terms of the Terms and Conditions filed by Homburg, a Potential Investor will not be precluded from being a Qualified Investor under the Investment Proposal Process solely because it failed to execute a Confidentiality Agreement, but that the failure to sign a Confidentiality Agreement will preclude the Qualified Investor from having access to the confidential information contemplated by the draft Confidentiality Agreement including, without limitation, the data room.
- [7] **THE WHOLE WITHOUT COSTS**, save in case of contestation.

MONTREAL, February 27, 2013



**McMillan LLP**

Attorneys for The Catalyst Capital Group Inc.

**AFFIDAVIT**

I, the undersigned, Gabriel de Alba, residing for the purposes hereof at 77 King Street West, Royal Trust Tower, TD Bank Centre, Suite 4320, P.O. Box 212, Toronto, Ontario M5K 1J3, do solemnly declare that:

1. I am Managing Director and Partner at The Catalyst Capital Group Inc. ("Catalyst").
2. All the facts alleged in the Motion for Directions filed by Catalyst are true.

**AND I HAVE SIGNED:**

  
\_\_\_\_\_  
**GABRIEL DE ALBA**

SOLEMNLY DECLARED before me  
in Toronto, Ontario,  
on this 27<sup>th</sup> day of February, 2013.

  
\_\_\_\_\_  
Notary Public

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

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-and-

The Catalyst Capital Group Inc., a company  
having its place of business at 77 King Street  
West, Suite 4320, Toronto, Ontario M5K 1J3

Petitioner

---


**ATTESTATION OF AUTHENTICITY**  
*(Article 82.1 of the Code of Civil Procedure)*



I, the undersigned, **MARC-ANDRÉ MORIN**, Advocate, practicing my profession in partnership with the law firm McMillan LLP, situated at 1000, Sherbrooke Street West, 27<sup>th</sup> floor, in the City and District of Montréal, Province of Québec, under my oath of office declare as follows:

1. The attached Affidavit of Gabriel de Alba is an authentic copy of the facsimile received by my office's fax machine. This facsimile was received at Montréal, Québec on February 27, 2013 at 6:13 pm (EST), and the number of the transmitting fax machine is (416)945-3060;
2. The attached Affidavit constitutes a document which forms part of the court file number 500-11-041305-117 and is filed on behalf of The Catalyst Capital Group Inc.

MONTRÉAL, February 27, 2013

  
MARC-ANDRÉ MORIN

## NOTICE OF PRESENTATION

- TO: OSLER, HOSKIN & HARCOURT LLP** Attorneys for the Debtors  
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- TO: MCCARTHY TÉTRAULT LLP** Attorneys for the Monitor  
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  - Miguel Bourbonnais  
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- TO: BENNETT JONES LLP** Attorneys for Statoil Canada Limited  
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Ltd., Logan Completion  
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- TO: FASKEN MARTINEAU DUMOULIN LLP**  
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(formerly Homburg Canada  
REIT), Homburg Canada  
REIT Limited Partnership and  
Homburg Canada REIT GP  
Inc. and, in their capacity as  
trustees of Canmarc REIT,  
Karen A. Prentice, Frank W.  
Matheson, James F. Miles,  
Wayne Heuff, John Levitt and  
Gérard A. Limoges
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Fairview Corporation Limited
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Attorneys for the Trustees

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Attorneys for NORR  
Architects Planners

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Attorneys for Cominar REIT

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Ltd. And Arcan Resources  
Ltd.

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➤ Kim Sheppard  
(kim.sheppard@justice.gc.ca)

**TAKE NOTICE** that the *Motion for Directions from The Catalyst Capital Group Inc.* will be presented for hearing and allowance in the Superior Court, Commercial Division, at the Montréal Courthouse located at 1 Notre-Dame Street East, Montréal, Quebec, on February 28, 2013 at 9:00 a.m., or soon thereafter as counsel may be heard, in room 15.09.

**PLEASE ACT ACCORDINGLY.**

MONTRÉAL, February 27, 2013



**McMillan LLP**

Attorneys for The Catalyst Capital Group Inc.

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

N<sup>o</sup>.: 500-11-041305-117

SUPERIOR COURT  
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Castello Development Ltd.

Mises-en-cause

-and-

Samson Bélair/Deloitte & Touche Inc.

Monitor

-and-

The Catalyst Capital Group Inc.

Petitioner

---



**LIST OF EXHIBITS**

- Exhibit C-1** Copy of a letter from Homburg dated February 26, 2013;  
**Exhibit C-2** Copy of a letter from Catalyst dated February 26, 2013;  
**Exhibit C-3** Copy of a letter from Homburg dated February 27, 2013;

MONTRÉAL, February 27, 2013

McMillan LLP

**McMillan LLP**

Attorneys for The Catalyst Capital Group Inc.

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SUPERIOR COURT  
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Debtors

-and-

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

Monitor

-and-

**THE CATALYST CAPITAL GROUP INC.**

Petitioner

---

**EXHIBIT C-1**

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**M<sup>e</sup> MARC-ANDRÉ MORIN**

Réf. / Ref.: 213789

Procureurs pour / Attorneys for  
The Catalyst Capital Group Inc.

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**McMillan S.E.N.C.R.L., s.r.l./LLP**

1000 Sherbrooke O.W., #2700, Montréal, Québec, Canada  
H3A 3G4  
t 514.987.5000 | f 514.987.1213  
BM0259

# HOMBURG INVEST INC.

February 26, 2013

Mr. Gabriel de Alba  
Catalyst Capital Group Inc.  
77 King Street West  
Royal Trust Tower  
TD Bank Centre  
Suite 4320, P.O. Box 212  
Toronto, Ontario M5K 1J3

**RE: Your letters of February 19, 2013 and February 24, 2013**

Dear Gabriel,

We hereby acknowledge receipt of your letter addressed to Mr. Pierre Laporte of Samson/Bélair Deloitte & Touche Inc., in his capacity as court-appointed monitor (the "**Monitor**") of Homburg Invest Inc. ("**HII**") dated February 19, 2013 (the "**Information Circular Letter**") and your offer and term sheet addressed to HII and the Monitor dated February 24, 2013 (the "**Offer**").

First, we have taken note of the points and concerns as outlined by you in the Information Circular Letter and a copy of this letter has been provided to the board of directors of HII. The board and management will take your points and concerns into consideration when finalizing HII's information circular.

Second, with respect to the Offer, HII considers your Offer to be of interest. The Offer has also been provided to the board of directors of HII for their review.

HII has not concluded at this time that your Offer is "superior" to the Plan of Compromise and Reorganization filed on February 6, 2013 with the Superior Court of Québec, pursuant to the Canadian *Companies' Creditors Arrangement Act*.

As you are aware, HII is in discussions with other parties who are also considering a transaction with HII, and HII believes that it is in the best interest of HII and its creditors to explore all alternatives prior to potentially committing to any one of them.

However, the components which make up your Offer merit further discussion and we are happy you provided us with your approval to share with trustees.

Lastly, you are requesting that HII and the Monitor agree to support your offer by February 27, 2013. HII is not in a position to respond in such a short timeframe, and we therefore invite you to extend the date for acceptance of your Offer until March 15, 2013.

Should you have any other questions or concerns, feel free to contact me directly.

Yours very truly,

  
Jan Schöningh  
Chief Executive Officer

cc. Pierre Laporte (Monitor)

1 Place Alexis Nihon, Suite 1060, 3400 Blvd de Maissonneuve O/W, Montréal, Québec H3Z 3B8 | Phone (514) 841-9725  
32 Akerley Boulevard, Dartmouth, Nova Scotia B3B 1N1 | Phone (902) 468-4231 Fax (902) 469-6776

No.: 500-11-041305-117

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SUPERIOR COURT  
(Commercial Division)  
DISTRICT OF MONTREAL

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IN THE MATTER OF THE PLAN OF COMPROMISE OR  
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Debtors

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

-and-

THE CATALYST CAPITAL GROUP INC.

Petitioner

---

EXHIBIT C-2

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M<sup>e</sup> MARC-ANDRÉ MORIN

Réf. / Ref.: 213789

Procureurs pour / Attorneys for  
The Catalyst Capital Group Inc.

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McMillan S.E.N.C.R.L., s.r.l./LLP

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# The Catalyst Capital Group Inc.

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Royal Trust Tower  
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Mr. Jan Schöningh  
Chief Executive Officer  
Homburg Invest Inc.  
1 Place Alexis Nihon, Suite 1060  
3400 de Maisonneuve Blvd. West  
Montreal, QC H3Z 3B8

Dear Jan:

We acknowledge receipt of your letter of February 26, 2013.

We believe that it is important that Catalyst's offer dated February 24, 2013 (the "Offer") be incorporated into the existing Plan which is to be circulated to creditors, so that they can take it into account in deciding how to cast their votes.

Catalyst agrees that the Offer may be treated as a stalking-horse offer in accordance with the following:

1. The Offer is to be incorporated into the existing Plan and to form part of what is circulated to be voted upon by the creditors; and
2. If the bidding process yields an offer which is superior to the existing Plan as enhanced by the Offer, the Company will be at liberty to amend its Plan in accordance with the superior offer, in which case Homburg will no longer be bound to its acceptance of the Offer.

On this basis, we believe that not only is there no downside to Homburg or to the creditors which can arise from Homburg's acceptance of the Offer, but that the Offer also raises the floor value of the existing Plan for the Company.

I will be pleased to discuss the matter with you.

Yours sincerely,



Gabriel de Alba  
Managing Director and Partner

cc. Pierre Laporte, Samson/Bélair Deloitte & Touche Inc., CCAA Monitor of Homburg Invest Inc.

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. & ALS.

Debtors

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

-and-

THE CATALYST CAPITAL GROUP INC.

Petitioner

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EXHIBIT C-3

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M<sup>e</sup> **MARC-ANDRÉ MORIN**

Réf. / Ref.: 213789

Procureurs pour / Attorneys for  
The Catalyst Capital Group Inc.

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# HOMBURG INVEST INC.

February 27, 2013

Mr. Gabriel de Alba  
Catalyst Capital Group Inc.  
77 King Street West  
Royal Trust Tower  
TD Bank Centre  
Suite 4320, P.O. Box 212  
Toronto, Ontario M5K 1J3

**RE: Your letter of February 26, 2013**

Dear Gabriel,

Thank you for your letter today addressed to Homburg Invest Inc. ("HII").

We have noted your interest in being selected as a stalking horse bidder and in having your February 24 offer included in the plan of compromise and arrangement.

As indicated in my previous letter to you, at this time HII is not able to accept or reject your offer nor in a position to select it as a stalking horse offer or include it in the plan. As you are aware, HII is running an investment solicitation process. You are welcome to participate in this process and we encourage you to continue to do so. Although initial details regarding this process have been provided to you by Deloitte, you will have received further information regarding the process together with service of the motion for approval of the process in the evening of February 26.

Yours very truly,



Jan Schöningh  
Chief Executive Officer

cc. Pierre Laporte, Samson/Bélair Deloitte & Touche Inc., in his capacity as court-appointed monitor

No. : 500-1-041305-117

SUPERIOR COURT  
(Commercial Division)  
DISTRICT OF MONTRÉAL

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

HOMBURG INVEST INC. & ALS.

Debtors

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

-and-

THE CATALYST CAPITAL GROUP INC.

Petitioner

ORIGINAL

MOTION FOR DIRECTIONS (Section 11 of the Companies'  
*Creditors Arrangement Act*, R.S.C., 1985, c. C-36),  
AFFIDAVIT, ATTESTATION OF AUTHENTICITY, NOTICE OF  
PRESENTATION, LIST OF EXHIBITS, EXHIBITS C-1 TO C-5

M<sup>e</sup> MARC-ANDRÉ MORIN

Réf. / Ref.: 213789

Procureurs pour / Attorneys for  
The Catalyst Capital Group Inc.

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