

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

No.: 500-11-041305-117

SUPERIOR COURT
(Commercial Division)

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

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

**Homburg Invest Inc.
Homburg Shareco Inc.
Churchill Estates Development Ltd.
Inverness Estates Development Ltd.
CP Development Ltd.
North Calgary Land Ltd.
Homburg Management (Canada) Inc.**
Debtors / Petitioners

-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 (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-

Samson Bélair/Deloitte & Touche Inc.

Monitor

**MOTION FOR EXTENSION OF THE STAY PERIOD
AND ACCESS TO RESTRICTED CASH
(Sections 11 and 11.02 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985)**

**TO THE HONOURABLE JUSTICE LOUIS J. GOUIN OR TO ONE OF THE
HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL
DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE
PETITIONERS RESPECTFULLY SUBMIT AS FOLLOWS:**

I. INTRODUCTION

1. On September 9, 2011, the Honourable Louis J. Guin, J.S.C. issued an order (the “**Initial Order**”) pursuant to the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) in respect of Homburg Invest Inc. (“**HII**”), Homburg Shareco Inc. (“**Shareco**”), Churchill Estates Development Ltd., Inverness Estates Development Ltd. and CP Development Ltd. (collectively the “**Initial Debtors**”) as appears from the Court record;
2. Pursuant to the Initial Order, Samson Bélair/Deloitte & Touche Inc. (the “**Monitor**”) was appointed as Monitor of the Initial Debtors and a stay of proceedings (the “**Stay of Proceedings**”) was issued from the date of the Initial Order until October 7, 2011;
3. On October 7, 2011, this Court issued an order (the “**First Extension Order**”) extending the Stay of Proceedings. Since then, this Court has further extended the Stay of Proceedings, most recently until August 31, 2013 (the “**Stay Period**”), as appears from the Court record;
4. As appears from the Initial Order and the First Extension Order, the Stay of Proceedings was initially extended in favour of the following limited partnerships: Homco Realty Fund (52) Limited Partnership, Homco Realty Fund (88) Limited Partnership, Homco Realty Fund (89) Limited Partnership, Homco Realty Fund (92) Limited Partnership, Homco Realty Fund (94) Limited Partnership, Homco Realty Fund (105) Limited Partnership, Homco Realty Fund (121) Limited Partnership, Homco Realty Fund (122) Limited Partnership (“**Homco 122**”), Homco Realty Fund (142) Limited Partnership and Homco Realty Fund (199) Limited Partnership (collectively the “**Initial Mises-en-cause**”);
5. On May 31, 2012, this Court issued an order amending the Initial Order to add North Calgary Land Ltd. (“**NCLL**”) as a Petitioner and Homco Realty Fund (96) Limited Partnership (“**Homco 96**”) as an Applicant Partnership thereunder. On December 14, 2012, this Court issued a further order amending the Initial Order to add Homco Realty Fund (190) Limited Partnership (“**Homco 190**”) and Homco Realty Fund (191) Limited Partnership (“**Homco 191**”) as Applicant Partnerships;
6. By Order of the Court made on February 6, 2013, the Initial Order was further amended to add Homco Realty Fund (61) Limited Partnership (“**Homco 61**”) as an additional Applicant Partnership and Castello Development Ltd. (“**Castello**”) as a mise-en-cause. On March 14, 2013, the Initial Order was further amended to add Homburg Management (Canada) Inc. (“**HMCI**”) as an additional Petitioner. On April 26, 2013, this Court issued a further order amending the Initial Order to add Homco Realty Fund (83) Limited Partnership (“**Homco 83**”) as Applicant Partnership. Finally, on July 11, 2013, this Court discontinued the stay of proceedings in respect of Homco 122 (NCLL, Homco 96, Homco 190, Homco 191, Homco 61, Castello, HMCI, Homco 83, the Initial Debtors and the Initial Mises-en-cause (excluding Homco 122) are collectively referred to as the “**HII Group**”);
7. The HII Group respectfully requests that this Honourable Court render the orders sought

herein to extend the Stay Period until September 30, 2013 and to grant the HII Group access to additional funds in order to continue its operations and implement the Plans (as defined below);

II. IMPLEMENTATION OF THE PLANS OF ARRANGEMENT

8. On May 30, 2013, affected creditors voted overwhelmingly in favour of the Second Joint Amended and Restated Plan of Compromise and Reorganization of HII and Shareco and the Restated Plan of Compromise of Homco 61 (the “**Homco 61 Plan**”);
9. On June 5, HII and Shareco filed a Third Amended and Restated Plan of Compromise and Reorganization (the “**HII/Shareco Plan**” and together with the Homco 61 Plan, the “**Plans**”);
10. On June 5, 2013, this Honourable Court sanctioned the Plans, as appears from the Court record. The HII Group, the Monitor and their advisors have been working diligently in order to allow for the implementation of the transactions which will occur on Plan Implementation Date (as defined in the Plans) and diligently seeking all authorizations necessary therefor;
11. As detailed below, the HII Group, the Monitor and their respective advisors have continued their discussions with the mortgage lenders of the Core Business Assets (as defined in the Plans) to finalize all arrangements and consents required to implement the Plans and have been negotiating the terms of the closing documents with the relevant parties, the whole with a view to proceeding to implementation of the Plans as soon as possible;

A. *Tax ruling*

12. A request for the issuance by the Canada Revenue Agency (the “**CRA**”) of an advance income tax ruling, a condition precedent to the implementation of the Plans, was filed in the spring of 2013. The tax advisors of both the HII Group and the Monitor have been in continued communication with the CRA to facilitate the finalisation of the tax ruling request;
13. In that regard, the tax ruling request has reached an advanced stage of discussions with the CRA, its focus being currently aimed at determining the precise wording of the rulings requested. The tax ruling request remains, however, subject to the final approval of the Rulings Directorate of the CRA, which response the tax advisors believe should be obtained in the coming weeks;

B. *Incorporation of Newco and licence application*

14. The entity identified as Newco in the Plans was incorporated as Geneba Properties N.V. (“**Geneba**”) under the laws of the Netherlands on July 11, 2013, as a property investment company established as a public limited liability company. Members of the supervisory board and the management board have been duly appointed and retained;

15. Prior to and following the incorporation of Geneba, Dutch counsel for HII and Geneba had been in regular discussions with the Dutch Autoriteit Financiële Markten (“AFM”) regarding the form of the application for a licence as a property investment company in light of the coming into force of the European Alternative Investment Fund Managers Directive (the “AIFMD”), and whether the AFM would be able to grant the licence based on compliance with the Dutch rules then in force or would require compliance with the AIFMD;
16. Documents were filed with the AFM as they were prepared and regular discussions were held between the AFM and Dutch counsel for HII. The completed application based on the Dutch rules then in force was filed with the AFM on July 12, 2013;
17. The AIFMD came into force in the Netherlands on July 22, 2013;
18. On July 25, Dutch counsel for HII and Geneba received a letter confirming discussions held with the AFM over the preceding week. During these discussions, the AFM had indicated that it and, in particular, the Dutch Central Bank (which considers the application together with the AFM as part of the application process) would require additional time in order to complete their review of the application. As a result, Geneba would now be required to show compliance with the AIFMD in order to obtain the licence;
19. The AFM’s review of the licence application was suspended and Geneba has been given until September 25 to file additional documentation amending the initial application to show compliance with the AIFMD;
20. The additional requirements for compliance with the AIFMD include *inter alia* the following:
 - (a) Provision of additional information regarding the corporate structure of the Geneba group;
 - (b) Provision of a current business plan discussing Geneba’s strategy, objectives, target groups, and risks as well as substantiation of financial forecasts and disclosure regarding proposed leverage and any intra-group receivables and guarantees;
 - (c) Review and update of Geneba’s policies and procedures to ensure that these policies, which were initially prepared to comply as much as possible with the AIFMD, are fully compliant;
 - (d) Provision of information regarding which management tasks are to be outsourced to third parties;
 - (e) Provision of additional information regarding the independence and qualifications of Geneba’s external valuers;
 - (f) Provision of a copy of Geneba’s remuneration policy and submissions regarding how this remuneration policy was developed and how it will be applied;

(g) Provision of information regarding any holders of 10% or more of the shares of Geneba in order to permit the AFM to review the integrity of any such holders.

21. Geneba's supervisory board and management board, together with counsel and the Monitor, are reviewing and preparing additional documents and submissions regarding the additional requirements;

C. NPEX

22. As previously disclosed to the Court, the Geneba shares to be issued pursuant to the HII/Shareco Plan will trade on the Nederlandsche Participatie Exchange ("NPEX") platform. An initial draft prospectus has been sent to NPEX for review and representatives of the HII Group and the Monitor met with representatives of NPEX on August 1, 2013. The Monitor continues to work on the logistics of the opening of NPEX accounts for future shareholders;

23. Initial comments on the disclosure contained in the prospectus were received from NPEX on August 22, 2013 and counsel to HII and Geneba in the Netherlands and Canada are revising the draft prospectus accordingly;

D. Exemption applications with Canadian securities regulators

24. In parallel, counsel to HII and Geneba have worked with counsel to The Catalyst Capital Group Inc., who have submitted an application to Canadian securities regulators for exemptive relief relating to the grant of the put right to future holders of Geneba shares;

25. Geneba has also made two applications to applied to Canadian securities regulators to cease being a reporting issuer in Canada and for certain exemptions relating to issuance of Geneba shares. Decisions on these applications are pending;

III. OPERATIONS AND RESTRUCTURING EFFORTS

26. Since the last extension of the Stay Period, the HII Group has continued to make significant progress, including advancing discussions with several mortgage lenders and has concluded agreements with certain of these lenders, the whole as more fully set forth below;

27. Highlights of the most significant activities of the HII Group are provided below. The HII Group refers the stakeholders and the Court to the Twenty-Sixth Report of the Monitor to be filed in support of the present motion (the "**Monitor's Twenty-Sixth Report**") for a complete description of these activities;

28. Several meetings have taken place since the last extension hearing with the various mortgage lenders of the European properties to finalize the restructuring of the HII Group loan portfolio. Significant developments are as follows:

(a) Documentation of the renegotiated terms of the loan advanced by Falcon Private Bank Ltd. ("**Falcon**") to Valbonne Real Estate 5 B.V. in respect of the Campeon

property (held through Homco Realty Fund (110) Limited Partnership) has been completed and executed by all parties;

- (b) Documentation of the renegotiated terms of the loan advanced by Skandinaviska Enskilda Banken AB (“**SEB**”) to Homburg Baltic LP Inc. and certain of its affiliates in respect of properties located in Estonia, Latvia and Lithuania (the “**Baltic Portfolio**”) is being negotiated and finalized with SEB pursuant to a term sheet which has been executed by the HII Group and SEB. The HII Group is currently also negotiating and finalizing the entering into by SEB of three long term leases for properties situated in each of Estonia, Latvia and Lithuania which collectively represent over 74% of the aggregate rent value of the entire Baltic Portfolio. Additionally, a lease selection agreement which sets forth the entering into of new lease agreements by SEB for certain properties comprising the Baltic Portfolio as well as a guarantee agreement with SEB are also being negotiated. HII believes that all documentation with SEB should be finalized and executed prior to the expiry of the additional stay period being requested herein;
 - (c) Legal documentation of the agreement entered into with HSH Nordbank AG is in the final stages and should be signed shortly; and
 - (d) Draft documentation outlining the terms of the revised agreement with Bank of Scotland was recently provided by counsel for Bank of Scotland and will be negotiated and finalized in the coming weeks.
29. HSBC Bank Canada (“**HSBC**”) is financing four properties in Canada: Henderson Farms (Homco 121), Kai Mortensen Towers (Homco 88), Cristal Towers (Homco 105), and Points North (NCLL). With respect to the latter three, sales processes are ongoing and any sale is subject to the approval of this Court. HSBC has been kept informed of the ongoing sale processes;
30. As regards Henderson Farms, the HII Group and the Monitor still remain of the view that there is no economic interest in this property for the HII Group and its stakeholders, other than HSBC. As previously disclosed to the Court, Homburg Canada Inc. has raised certain issues relating to the property and its guarantee of Homco 121’s debt to HSBC. Discussions as to the best course of action are ongoing and the Court will be kept apprised of any developments;
31. Highlights with respect to other properties located in North America are as follows:
- (a) The sales processes for Homburg Springs East (Homco 52) and Homburg Springs West (Homco 94) are ongoing;
 - (b) Castello stills holds two condominium units and received an offer for one of the two. It is currently anticipated that a purchase agreement will be executed, in respect of that unit, on or about the date hereof;
 - (c) Homburg Holdings (U.S.) Inc. has completed the sale of five properties located in Texas. There are five remaining properties for sale in the United States, for which the HII Group and the Monitor are currently reviewing various options.

32. The process relating to sale of non-core properties in Canada and the United States, and any related issues, will not have any impact the Plan Implementation Date;

IV. ACCESS TO RESTRICTED CASH

33. On January 20, 2012, this Honourable Court rendered a judgment authorizing the sale of Canmarc REIT units (the “**REIT Units**”) held by Homco Realty Fund (199) L.P. (the “**REIT Units Sale Order**”). As previously disclosed, the REIT Units were sold and resulted in proceeds of approximately \$145 million (the “**REIT Units Proceeds**”);
34. The REIT Units Sale Order provided that HII shall be entitled to have access to the REIT Units Proceeds for an amount of up to \$10 million (the “**Accessible Cash**”) for the purposes of funding the liquidity requirements of the HII Group during its restructuring under the CCAA and that all further funding requirements are to be approved by further order of this Honourable Court;
35. As of the date hereof, the REIT Units Proceeds, less the Accessible Cash and the commission paid to HII’s financial advisor pursuant to the REIT Units Sale Order, constitute restricted cash (the “**Restricted Cash**”);
36. In light of liquidity requirements, this Honourable Court authorized the HII Group to access additional amounts of Restricted Cash, totalling \$33.3 million, as follows:
- (a) \$6 million on April 11, 2012;
 - (b) \$11 million on May 31, 2012;
 - (c) \$5.2 million on July 18, 2012;
 - (d) \$3 million on September 14, 2012; and
 - (e) \$8.1 million on October 12, 2012;
37. The HII Group’s estimated liquidity requirements for the 4-week period ending September 30, 2013 are such that access to an additional amount of Restricted Cash will be required, namely an estimated sum of approximately \$4.95 million, in order to have sufficient liquidity to pursue its restructuring efforts and meet its ongoing obligations, without using alternate sources of financing, as will appear from HII’s cash flow forecast to be included with the Monitor’s Twenty-Sixth Report;
38. Temporary delays in obtaining funds held by certain United States subsidiaries of the HII Group have resulted in a significant reduction of available cash. In addition, added complexities relating to implementation of the Plans, discussed above, have lead to higher than expected professional fees;
39. In light of the foregoing, it is respectfully requested that this Honourable Court authorize HII to have access to an incremental amount of up to \$4.95 million of Restricted Cash to allow it to implement the Plans, the whole in the best interest of its stakeholders;

V. CONCLUSION


40. HII is of the view that providing the relief requested herein is appropriate in the present circumstances. Accordingly, HII respectfully requests that this Honourable Court render the orders contained in the conclusions herein;
41. As will appear from the Monitor's Twenty-Sixth Report, the Monitor supports the present Motion;
42. The HII Group has acted, and continues to act, in good faith and with the utmost diligence;
43. The present motion is well founded in fact and law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

1. **GRANT** the present *Motion for extension of the stay period and access to Restricted Cash* (the "**Motion**");
2. **EXTEND** the Stay Period (as defined in the Initial Order rendered by the Court on September 9, 2011 and as extended from time to time) to and including September 30, 2013;
3. **ORDER** that Homburg Invest Inc. shall be entitled to have access to an incremental amount of up to \$4,950,000 (four million nine hundred and fifty thousand dollars) of the Restricted Cash (as defined in the Motion) for the purposes of funding the liquidity requirements of the HII Group (as defined in the Motion) during its restructuring under the *Companies Creditors' Arrangement Act*, R.S.C. 1985, c. C-36; all further funding requirements to be approved by further order of the Court;

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

MONTRÉAL, August 26, 2013



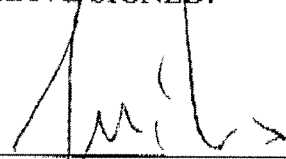
OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Debtors and Mises-en-cause

AFFIDAVIT

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

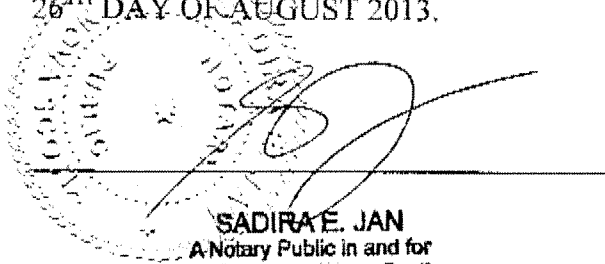
1. I am the Vice-President and Chief Financial Officer of Homburg Invest Inc. and duly authorized representative of the Petitioners for the purpose hereof;
2. I have taken cognizance of the attached *Motion for extension of the stay period and access to Restricted Cash*;
3. All of the facts alleged in the said motion are true.

AND I HAVE SIGNED:



James F. Miles

SOLEMNLY DECLARED BEFORE ME
IN HALIFAX, NOVA SCOTIA ON THE
26TH DAY OF AUGUST 2013.



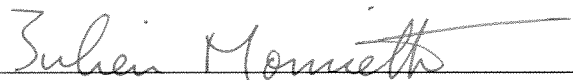
SADIRA E. JAN
A Notary Public in and for
the Province of Nova Scotia

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, Montréal, Québec, solemnly declare the following:


1. I am one of the attorneys of the Petitioners to the present *Motion for extension of the stay period and access to Restricted Cash* in Court file number 500-11-041305-117;
2. On August 26th, 2013 at 3:50 p.m. (Montréal time), Osler, Hoskin & Harcourt LLP received by fax the Affidavit of Jamie 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 Jamie Miles received by fax from Sadira E. Jan from the city of Halifax, 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 26TH DAY OF AUGUST, 2013.



TRACEY McDONALD
COMMISSIONER FOR OATHS
FOR THE PROVINCE OF QUÉBEC



NOTICE OF PRESENTATION

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**Attorneys for Lafarge Canada
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TAKE NOTICE that the *Motion for extension of the stay period and access to Restricted Cash* will be presented for hearing and allowance in the Superior Court, commercial division, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on August 29th, 2013, at 9:15 a.m., or so soon thereafter as counsel may be heard, and in room 16.12.

PLEASE ACT ACCORDINGLY.

MONTRÉAL, August 26, 2013

Osler, Hoskin & Harcourt LLP

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

No: 500-11-041305-117

SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL

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

HOMBURG INVEST INC. ET AL.

Debtors/Petitioners

-and-

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

Mises-en-cause

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

**MOTION FOR EXTENSION OF THE STAY
PERIOD AND ACCESS TO RESTRICTED CASH**
(Sections 11 and 11.02 of the *Companies' Creditors
Arrangement Act*, R.S.C., 1985, c. C-36),
**AFFIDAVIT, ATTESTATION OF
AUTHENTICITY, NOTICE OF PRESENTATION**

ORIGINAL

Mtre. Martin Desrosiers

Mtre. Sandra Abitan

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