

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.**

Debtors / Petitioners

-and-

**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 (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 (199) Limited Partnership**

Mises-en-cause

-and-

Samson Bélair/Deloitte & Touche Inc.

Monitor

**MOTION TO EXTEND THE STAY PERIOD, FOR ACCESS TO RESTRICTED CASH
AND TO AMEND THE INITIAL ORDER**

**(Sections 11 and 11.2 of the *Companies' Creditors Arrangement Act*,
R.S.C., 1985, c. C-36)**

**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**” or “**Deloitte**”) 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 October 12, 2012 (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 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 94**”), Homco Realty Fund (105) Limited Partnership (“**Homco 105**”), 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 (“**Homco 199**”) (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 a Mise-en-cause thereunder (NCLL, Homco 96, the Initial Debtors and the Initial Mises-en-cause are collectively referred to as the “**HII Group**”);
6. The HII Group respectfully requests that this Honourable Court extend the Stay Period until December 14, 2012, grant the HII Group access to additional funds in order to continue its operations and pursue its restructuring efforts during the extension of the Stay Period, and amend the Initial Order to extend the coverage of the Administration Charge (as defined in the Initial Order), the whole as described more fully below;

II. OPERATIONS AND RESTRUCTURING EFFORTS

7. Since the last extension of the Stay Period, the HII Group has continued to make significant progress in identifying and implementing operational restructuring measures, advancing discussions with various stakeholders and work towards a plan of arrangement or compromise (the “**Plan**”). Significant effort has been expended in maintaining the normal course of business, in the context of the CCAA process;

8. Highlights of the most significant activities of the HII Group are provided below. The HII Group refers the stakeholders and the Court to the Sixteenth Report of the Monitor to be filed in support of the present motion (the “**Monitor’s Sixteenth Report**”) for a complete description of these activities;

A. *Claims process*

9. Pursuant to the Claims Process Order, in the Court record, the claims bar date for the vast majority of claims was July 13, 2012. The Monitor has received over 230 claims, and has been diligently processing the claims in cooperation with HII and respective counsel;

10. As at the date hereof, more than 200 claims have been subjected to preliminary processing, including nearly all claims of trade suppliers;

11. It is currently anticipated that the Monitor will commence advising claimants of the revision or rejection of their claim no later than the week of October 8, 2012;

B. *Properties located in the Netherlands and Germany, bondholder meetings and communications*

12. Representatives of the HII Group and the Monitor have held numerous meetings and calls with the bondholders’ trustees (the “**Trustees**”) both in Montréal and in Amsterdam, with respect to, *inter alia*, the upcoming meetings of mortgage bondholders. The Trustees continue to be updated on a very regular basis on the status of the restructuring, including the discussions with the various mortgage lenders, the results of valuations and appraisals and the interactions with the Netherlands Authority of the Financial Market (the “**AFM**”);

13. As previously disclosed to the Court, DTZ Zadelhoff v.o.f. completed a valuation of certain properties located in the Netherlands and Germany which form part of the security granted to certain bondholders. The Trustees chose to retain Jones Lang Lasalle to obtain further independent valuations, which have been completed. The combined results of these valuations will be used in connection with the meeting of the holders of Homburg Mortgage Bond 5 bonds (“**Bonds 5**”) described below;

14. Meetings of the holders of Homburg Mortgage Bond 4 bonds (“**Bonds 4**”), Bonds 5 and Homburg Mortgage Bond 7 bonds (“**Bonds 7**”) will take place in the Netherlands on October 24 and October 25, 2012. At said meetings, the relevant bondholders will be asked for approval of the Trustees entering into Supplemental Indentures which will provide for such amendments as are necessary for treatment of the bondholders’ secured claims and any unsecured deficiency. Mailing of the Information Circulars, Notices of Meeting, Proxy Forms and related documents (the “**Meeting Documentation**”) shall take place at the beginning of the week of October 8, 2012;

15. As previously disclosed to this Honourable Court, HII and the Monitor determined that there is no value for the unsecured creditors of HII in the properties securing both Bonds 4 and Bonds 7, namely the properties held respectively by Homco 52 (“**Homburg Springs East**”) and Homco 88 (“**Kai Mortensen Towers**”). Since the last extension of

the Stay Period, HII and the Monitor identified a broker to proceed with the disposition of these properties. CBRE Limited (“**CBRE**”) will be retained by HII and the Monitor to market these properties in the coming days. The Trustees (as well as HSBC Bank Canada which has a claim secured by a mortgage over Kai Mortensen Towers) are being kept informed;

16. At the meetings of the holders of Bonds 4 and Bonds 7, the bondholders will be asked to ratify the sale processes initiated by HII in connection with the relevant mortgaged properties. Given the absence of value for the unsecured creditors, it is also provided that the relevant bondholders shall assume all costs and expenses related to these properties from September 1, 2012. To the extent the holders of Bonds 4 and Bonds 7 vote in favour of the resolutions, HII will advance such costs and expenses and will seek an order from this Honourable Court to secure the reimbursement of same. This charge shall rank ahead of any recovery to the respective bondholder groups;
17. With respect to Bonds 5, HII’s units in Homco Realty Fund (69) Limited Partnership (“**Homco 69**”) and Homco Realty Fund (70) Limited Partnership (“**Homco 70**”) have been pledged as collateral security for Bonds 5 (the “**Bond 5 Security**”). HII and the Monitor determined that it would be desirable for HII to retain its interest in the properties held indirectly by Homco 69 and Homco 70, which are located in Germany and the Netherlands (the “**Bonds 5 Properties**”);
18. Accordingly and as described above, valuations of the Bond 5 Properties were obtained by HII, the Monitor and the Trustees from two independent valuers. These valuations formed the basis of an offer by HII to the holders of Bonds 5 for the redemption of the Bond 5 Security, the whole as will be reflected in the Supplemental Indenture and Circular;
19. In the event that the holders of Bond 5 vote in favour of the resolution to approve the Supplemental Indenture, the Trustees will be authorized to release the Bond 5 Security upon receipt of proceeds (in cash and equity and including the cash payment referred to below) payable upon Plan implementation in the amount of 2 million Euros, as well as receipt of an unsecured corporate guarantee of HII or its successor to secure the payment of an aggregate consideration equal to at least 50% of their total claims as determined pursuant to the Claims Process Order;
20. The Trustees are recommending that the holders of Bonds 4, Bonds 5 and Bonds 7 vote in favour of the resolutions being tabled at the upcoming bondholder meetings, the whole as will appear from the Meeting Documentation;
21. An information meeting will also take place for holders of Homburg Mortgage Bond 6 bonds. Given the underlying value of their collateral, no vote is required;

C. *Negotiations with mortgage lenders*

22. Several meetings have taken place with the various mortgage lenders of the European properties to negotiate the restructuring of the HII Group loan portfolio and explore alternative strategies for certain non-profitable properties;

23. As of the date hereof, the negotiations are continuing and it is difficult to predict their outcome with certainty. Important meetings are scheduled in the coming weeks, at which time it is to be expected that significant progress will have been made. Additional details will be provided in the Sixteenth Monitor's Report;
24. The negotiation process will require additional time to finalize arrangements, to the extent necessary, with each lender;
25. As more fully described in the Monitor's Report to be filed in connection with the present Motion, as of the date hereof, HII and the Monitor have identified 15 Homcos holding real estate assets that, in the absence of satisfactory agreements with their respective mortgage lenders, are of no value to the mass of creditors. HII and the Monitor are continuing to review all options available to remove the partnerships and/or assets from the HII Group structure;

D. *Sale process of Canadian properties*

26. The Monitor, in consultation with HII, has retained brokers for disposition of certain Canadian properties, as follows:
 - (a) North Calgary Land Ltd. – Colliers International was retained on September 28, 2012; and
 - (b) Homco 94 (Homburg Springs West) – CBRE was retained on September 30, 2012.
27. It is currently anticipated that CBRE will be retained as broker for the properties held by Homco 52 (Homburg Springs East), Homco 88 (Kai Mortensen Towers) and Homco 105 (Cristal Towers) in the coming days or weeks. For the remaining Canadian properties, HII and the Monitor are finalizing their strategies and working towards retaining a broker where appropriate;

E. *Holman Grand Hotel*

28. Representatives of HII and the Monitor have met with representatives of the Province of Prince Edward Island, in its capacity as secured creditor, and of Cominar REIT, the indirect owner of the land since its acquisition of the units of Canmarc REIT, the shareholder of Dyne Holdings Ltd., itself the owner of the land where the hotel is located and the lessor thereof under a Ground Lease. Available options were discussed with regards to the Holman Grand Hotel. Efforts to resolve all outstanding matters with Cominar REIT are ongoing;

F. *United States assets*

29. As of the date hereof, HII and the purchaser of the Cedar properties continue to dedicate all efforts with a view to closing the contemplated sale transaction in the briefest of delays. Certain loan servicer approvals are still pending and it is currently anticipated that the closing will occur by mid-October;

30. With regards to certain other properties located in the United States, the marketing process conducted by CBRE is ongoing, with updates provided to HII from time to time;

G. *Virtual data room and cashflows*

31. HII continues to populate the virtual data room with all relevant information, including detailed cashflows for each property held by the HII Group. All creditors that have signed a non-disclosure agreement in due form have been granted access to the data room accordingly. This includes representatives of the Trustees and the Taberna noteholders;

H. *Stakeholder contacts*

32. HII and the Monitor have met and/or had numerous exchanges with various creditors, including representatives of the Taberna noteholders and HSBC Bank Canada, to answer questions and provide information relating to the ongoing restructuring process;

III. AFM PROCEEDINGS

33. As of the date hereof, the decision of the AFM on HII's objection is still pending. As previously disclosed to the Court, HII, the Monitor and their respective advisors continue to explore all other available alternatives to provide for the issuance of securities to creditors in the context of the contemplated plan of arrangement;
34. Since the last Court hearing, HII, the Monitor and respective counsel met with the AFM to bring them up to date. A further meeting is planned for October 12, 2012;

IV. UPCOMING STEPS

35. In addition to the matters outlined above, together with the Monitor and respective legal advisors, the HII Group is continuing to identify and implement all opportunities to restructure its business and operations in the context of the CCAA process, including proceeding with the disclaimer of leases or other agreements as appropriate;
36. The HII Group and the Monitor will continue to actively negotiate with the mortgage lenders to improve the various loan portfolios, including to deal with those properties that have negative cashflow or no equity value;
37. All relevant parties will extend significant efforts to prepare and conduct the upcoming bondholders' meetings;
38. As indicated above, the Monitor will continue to process claims received pursuant to the Claims Process Order in due course;
39. The HII Group, with the assistance of the Monitor, will continue the implementation of its strategy with regards to the Canadian development properties and the US portfolio of properties which will remain after conclusion of the transaction relating to the Cedar assets;

40. As well, the HII Group and the Monitor are continuing to craft all aspects of the Plan including the corporate structure that will emerge following its implementation. The task is highly complex, given *inter alia* the breadth of the business, its multi-jurisdictional character, the tax considerations and the number of stakeholders. It continues to be anticipated that the Plan will include a cash and equity distribution to the affected creditors. The outcome of the negotiations with certain mortgage lenders are also key to the Plan;

V. COVERAGE OF THE ADMINISTRATION CHARGE

41. As explained above, HII and the Monitor are exploring all scenarios regarding Homcos holding, directly or indirectly, real estate assets that are of no value to the mass of creditors. For certain such Homcos, the preferable avenue may be a voluntary assignment into bankruptcy;
42. Should any bankruptcies materialize, it is anticipated that Deloitte will also act as trustee in bankruptcy for the relevant entities (the “**Trustee in Bankruptcy**”). Accordingly, the present Motion requests an amendment to the Initial Order such that the coverage of the Administration Charge (as defined in the Initial Order) be extended to the professional fees, disbursements and other obligations of the Trustee in Bankruptcy and its legal counsel;
43. No increase in the aggregate amount of the Administration Charge is being requested at this time;

VI. ACCESS TO RESTRICTED CASH

44. 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**”), of which, pursuant to the REIT Units Sale Order, an amount of approximately \$21 million (the “**Proceeds in Trust**”) is held in trust in order to secure certain obligations which were secured by a pledge on certain REIT Units (without admission by the Monitor as to the validity of such pledge);
45. The REIT Units Sale Order provided that HII shall be entitled to have access to the Net 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;
46. Thus, the REIT Units Proceeds, less the Proceeds in Trust, the Accessible Cash and the commission paid to HII’s financial advisor pursuant to the REIT Units Sale Order, namely an amount of approximately \$113 million (excluding interest accrued), constituted restricted cash (the “**Restricted Cash**”);

47. In light of liquidity requirements, this Honourable Court authorized the HII Group to access additional amounts of Restricted Cash, totalling \$25.2 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; and
 - (d) \$3 million on September 14, 2012.
48. The HII Group's estimated liquidity requirements for the 9-week period ending December 14, 2012 are such that access to an additional amount of Restricted Cash will be required, namely an estimated sum of approximately \$8.1 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 Sixteenth Report;
49. As indicated previously to the Court, the cash sweeps in connection with the HII Group's most profitable assets together with the retention of refunds by the Canada Revenue Agency continue to deprive HII of its cash flow requirements, making it necessary for it to access the Restricted Cash in order to continue its restructuring efforts. However and as also previously disclosed, the cash sweeps are reducing capital obligations to the relevant mortgage lenders, resulting in an increase in value for HII as equity holder and the creditors;
50. 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 \$8.1 million of Restricted Cash to allow it to pursue its restructuring process and to develop the Plan, the whole in the best interest of its stakeholders;

VII. CONCLUSION

51. The extension of the Stay Period is necessary in order to provide the HII Group time to continue its efforts with respect to the restructuring of its business and affairs, including to pursue negotiations with its lenders, continue crafting the terms of the Plan and meet with major stakeholders to discuss and review same;
52. HII will also continue negotiations with their stakeholders with a view to presenting the Plan. It is anticipated that the requested extension of the Stay Period until December 14, 2012 will afford the HII Group an adequate period of time to make material progress towards that objective;
53. HII anticipates that it will be able to report on significant additional developments on the matters addressed herein at the next extension hearing;
54. As appears from the cash flow forecast, which will be included in the Monitor's Sixteenth Report, HII is of the view that no creditor will suffer any undue prejudice from

the extension of the Stay Period or from the extended coverage of the Administration Charge;

55. The HII Group has and continues to meet its post-filing obligations as and when they become due;
56. The Monitor has indicated that it will be filing the Monitor's Sixteenth Report which shall contain significant additional information in respect of the HII Group, its creditors, and the efforts deployed by the HII Group, the Monitor and their respective legal counsel to date in the context of the CCAA restructuring and which shall include its recommendations and a review of the cash flow forecasts of the Debtors up to and including December 14, 2012;
57. HII is of the view that extending the Stay Period to December 14, 2012 and providing the other relief requested herein is appropriate in the present circumstances. Accordingly, HII respectfully requests that this Honourable Court render the orders contained in the conclusions hereof;
58. As will appear from the Monitor's Sixteenth Report, the Monitor supports the present Motion;
59. The HII Group has acted, and continues to act, in good faith and with the utmost diligence;
60. The present motion is well founded in fact and law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO :

GRANT the present *Motion to extend the stay period, for access to restricted cash and to amend the Initial Order* (the "**Motion**");

DECLARE that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion;

EXTEND the Stay Period (as defined in the Initial Order and as extended from time to time) to December 14, 2012, the whole subject to the terms of the Initial Order, as amended;

DECLARE that as of the date of the order to be rendered by the Court, paragraph 42 of the Initial Order shall read as follows:

[42] **DECLARES** that the Monitor, the Trustee in Bankruptcy (as defined in the *Motion to extend the stay period, for access to restricted cash and to amend the Initial Order* dated October 4, 2012), their respective legal counsel, the Petitioners' legal counsel and the Monitor, the Trustee in Bankruptcy and the Petitioners' respective advisers, if any, as security for the professional fees, disbursements or other obligations incurred both before and after the making of the Order in respect of these proceedings, the Plan, the Restructuring and the bankruptcy of any Petitioner (or any affiliated entity, including without limitation the Applicant Partnerships and any other direct or indirect subsidiary of any Petitioner) be entitled to the benefit of and are hereby granted a charge and

security in the Property to the extent of the aggregate amount of \$2,000,000 (the “**Administration Charge**”), having the priority established by paragraphs [43] and [44] hereof.

ORDER that HII shall be entitled to have access to an incremental amount of up to \$8,100,000 (eight million one hundred thousand dollars) of the Restricted Cash for the purposes of funding the liquidity requirements of the HII Group during its restructuring under the CCAA; all further funding requirements to be approved by further order of this Court;

PRAY ACT of the Monitor’s Sixteenth Report;

ORDER provisional execution of the present order, notwithstanding appeal;

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

MONTREAL, October 4, 2012

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP

Attorneys for the Debtors and Mises-en-cause

AFFIDAVIT

I the undersigned, Jan Schöningh, domiciled and residing at 597 Roslyn Avenue, Westmount, Québec, H3Y 2V1, solemnly declare the following:

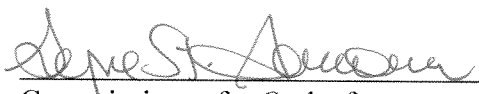
1. I am the President and Chief Executive Officer of Homburg Invest Inc. and duly authorized representative of the Petitioners for the purpose hereof;
2. I have taken cognizance of the attached Motion;
3. All of the facts alleged in the said motion are true.

AND I HAVE SIGNED



Jan Schöningh

SOLEMNLY DECLARED BEFORE ME
IN MONTRÉAL ON THE
4TH DAY OF OCTOBER 2012.



Commissioner for Oaths for
the Province of Québec



NOTICE OF PRESENTATION

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TO : DEPARTMENT OF JUSTICE CANADA
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Me Kim Sheppard
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TAKE NOTICE that the *Motion to extend the stay period, for access to restricted cash and to amend the Initial 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 October 10, 2012, at 9:15 a.m., or so soon thereafter as counsel may be heard, and in a room to be announced.

PLEASE ACT ACCORDINGLY.

MONTREAL, October 4, 2012

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

ORIGINAL

Mtre. Sandra Abitan

Mtre. Martin Desrosiers

Osler, Hoskin & Harcourt LLP

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