

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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)

No.: 500-11-041305-117

**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 AND FOR ACCESS TO RESTRICTED
CASH, FOR AN EXEMPTION TO HOLD SHAREHOLDERS' MEETING AND
RELATED ORDERS**

**(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**”) 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 September 14, 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 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 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 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 October 12, 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, exempt HII from holding a shareholders’ meeting, 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, addressing the control issues 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 Groups refer the stakeholders and the Court to the Fifteenth Report of the Monitor to be filed in support of the present motion (the “**Monitor’s Fifteenth 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. It is currently anticipated that the Monitor will commence advising claimants of the revision or rejection of their claim prior to the end of September 2012;

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

11. 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. 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**”);

12. As more fully appears from the *Motion for the approval of a sale process, the retention of a valuator, access to restricted cash and related orders* and the Order rendered by this Honourable Court in connection therewith, in the Court record, HII retained the services of DTZ Zadelhoff v.o.f. to perform a valuation of certain properties located in the Netherlands and Germany which form part of the security granted to the holders of Homburg Mortgage Bond 5 bonds and Homburg Mortgage Bond 6 bonds;

13. The valuations have been completed and shared with the Trustees;

14. As indicated to the Court previously, the valuations are being used to assist in the determination, *inter alia*, of the quantum of the secured claims of the relevant Series of Mortgage Bonds, if any, as well as the determination of any residual unsecured deficiency claims;

15. With regards to Series 4 Bonds, Series 6 Bonds and Series 7 Bonds, it has been determined that the asset pledged as collateral therefor will not provide for any recovery for the unsecured creditors after payment of secured claims and prior ranking claims, if any. The HII Group is reviewing how it can be of assistance to the bondholders in obtaining the maximum value from their collateral which will reduce their deficiency claims accordingly;

16. With regards to Series 5 Bonds, HII, the Monitor and respective counsel have been reviewing all options available in the circumstances, had and continue to have

discussions with the Trustees, with the goal of concluding an agreement with the Trustees no later than September 30, 2012;

17. It is currently anticipated that there will be meetings of mortgage bondholders held in October 2012 in the Netherlands. The scope of the meetings has yet to be finalized as HII, the Monitor, the Trustees and their respective advisors are still reviewing all available options, as discussed above;

C. *Negotiations with mortgage lenders*

18. Numerous 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;
19. As of the date hereof, the negotiations are continuing and it is difficult to predict their outcome with certainty. As there are ten different European mortgage lenders, this process will require additional time to finalize arrangements, to the extent necessary, with each lender;
20. 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 Homecos holding real estate assets that are of no value to the mass of creditors and are reviewing all options available to remove the partnerships and/or assets from the HII Group structure;

D. *Second Option Exercise and Baltic properties*

21. On August 8, 2012, the closing of the transactions contemplated by the Second Option Exercise (as defined in the *Second motion for approval of the exercise of certain options (Baltic partnerships)*, in the Court record) took place. This represents the second major milestone in aligning the HII Group's corporate structure with its underlying economic interests and in maximizing control over the HII Group's partnership structure in the context of the restructuring;
22. Discussions are ongoing between HII, the Monitor and SEB Bank ("SEB"), the mortgage lender and principal tenant of the Baltic properties. The HII Group has 53 properties in the Baltic States, which represents a significant component of its portfolio;
23. It would be in the best interest of all stakeholders that new arrangements be concluded with SEB. Very productive meetings with SEB have been held over the last weeks and are expected to continue with a view to arriving at the optimal consensual long term arrangement available in the current circumstances;
24. The HII Group and the Monitor have also obtained up to date valuations of the Baltic portfolio, which is assisting in the negotiations with SEB;

E. *Virtual data room and cashflows*

25. 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;

F. *Stakeholder contacts*

26. 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. A detailed review of the current status of the restructuring was shared with the Trustees on or about August 20, 2012 and with the representatives of Taberna on August 30, 2012;

III. AFM PROCEEDINGS

27. HII, the Monitor and their respective counsel continue to have exchanges with the AFM, including a meeting which took place on September 3, 2012;
28. 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;

IV. UPCOMING STEPS

29. 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;
30. The HII Group and the Monitor will continue to diligently 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;
31. HII and the Monitor will seek to retain agents for the disposition of certain Canadian development properties within the next few weeks;
32. As indicated above, the Monitor will continue to process claims received pursuant to the Claims Process Order in due course;
33. The HII Group, with the assistance of the Monitor, will continue to elaborate and finalize 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;

34. 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 likely 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. ACCESS TO RESTRICTED CASH

35. 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;
36. 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;
37. 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**”);
38. In light of liquidity requirements, this Honourable Court authorized the HII Group to access additional amounts of Restricted Cash, totalling \$22.2 million, as follows:
- (a) \$6 million on April 11, 2012;
 - (b) \$11 million on May 31, 2012; and
 - (c) \$5.2 million on July 18, 2012.
39. The HII Group’s estimated liquidity requirements for the 4-week period ending October 12, 2012 are such that access to an additional amount of Restricted Cash will be required, namely an estimated sum of approximately \$3 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 Fifteenth Report;
40. 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;

41. 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 \$3 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;

VI. SHAREHOLDERS' MEETING EXEMPTION

42. HII is a corporation governed by the *Alberta Business Corporations Act*, R.S.A. 2000, c. B-9 (the "ABCA");
43. The last annual meeting of HII shareholders took place on September 9, 2011;
44. Pursuant to section 132 of the ABCA, directors must call an annual meeting of shareholders "not later than 15 months after holding the last preceding annual meeting";
45. Given the ongoing restructuring, it would be costly and unproductive to hold a shareholders' meeting prior to the Plan being presented to the creditors, voted upon and submitted to the Court for approval. HII therefore seeks an exemption from the obligation of holding an annual meeting;
46. Section 11 of the CCAA vests this Honourable Court with the power to exempt HII from holding a shareholders' meeting;
47. HII is of the view that no shareholder will suffer any prejudice from the shareholders' meeting exemption sought herein;

VII. CONCLUSION

48. 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;
49. 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 October 12, 2012 will afford the HII Group an adequate period of time to make material progress towards that objective;
50. HII anticipates that it will be able to report on significant additional developments on the matters addressed herein at the next extension hearing;

51. As appears from the cash flow forecast, which will be included in the Monitor's Fifteenth Report, HII is of the view that no creditor will suffer any undue prejudice from the extension of the Stay Period;
52. The HII Group has and continues to meet its post-filing obligations as and when they become due;
53. The Monitor has indicated that it will be filing the Monitor's Fifteenth 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 October 12, 2012;
54. HII is of the view that extending the Stay Period to October 12, 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;
55. As will appear from the Monitor's Fifteenth Report, the Monitor supports the present Motion;
56. The HII Group has acted, and continues to act, in good faith and with the utmost diligence;
57. 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 and for access to restricted cash, for an exemption to hold shareholders' meeting and related orders* (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 October 12, 2012, the whole subject to the terms of the Initial Order, as amended;

ORDER that HII shall be entitled to have access to an incremental amount of up to \$3,000,000 (three million 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;

EXEMPT HII from holding any shareholders' meeting until further order of the Court and **DECLARE** that the Order to be rendered is the only authorization required to this effect;

PRAY ACT of the Monitor's Fifteenth Report;

ORDER provisional execution of the present order, notwithstanding appeal;

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

MONTREAL, September 11, 2012

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP

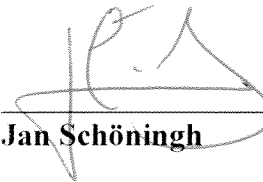
Attorneys for the Debtors and Mises-en-cause

AFFIDAVIT

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

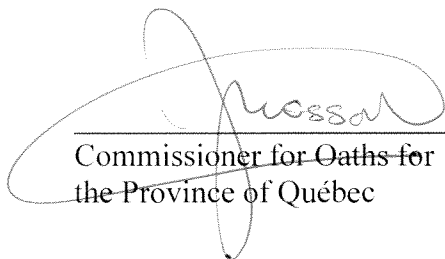
1. I am the President and Chief Executive Officer of Homburg Invest Inc. and duly authorized representative of the Petitioners for the purpose hereof;
2. I have taken cognizance of the attached *Motion to extend the stay period and for access to restricted cash, for an exemption to hold shareholders' meeting and related orders*;
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
11TH DAY OF SEPTEMBER 2012.



Commissioner for Oaths for
the Province of Québec



NOTICE OF PRESENTATION

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TAKE NOTICE that the *Motion to extend the stay period and for access to restricted cash, for an exemption to hold shareholders' meeting and related orders* will be presented for hearing and allowance in the Superior Court, commercial division, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on September 14, 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.

MONTRÉAL, September 11, 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 AND
FOR ACCESS TO RESTRICTED CASH, FOR AN
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MEETING AND RELATED ORDERS (Sections 11
and 11.02 of the Companies' Creditors Arrangement
Act, R.S.C., 1985, c. C-36), AFFIDAVIT, NOTICE
OF PRESENTATION

ORIGINAL

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