

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

**S U P E R I O R C O U R T**  
**Commercial division**  
**(Sitting as a court designated pursuant to the**  
***Companies' Creditors Arrangement Act,***  
**R.S.C 1985, c. C-36, as amended**

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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 DEVELOPMENTS  
LTD.**  
**CP DEVELOPMENT LTD.**

Debtors

-and-

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

Monitor

-and-

**HOMCO REALTY FUND (88) LIMITED  
PARTNERSHIP**

Mis-en-cause

-and-

**HSBC BANK CANADA**

Petitioner

**MOTION FOR AN ORDER LIFTING THE STAY OF PROCEEDINGS AGAINST  
HOMCO REALTY FUND (88) LIMITED PARTNERSHIP**

**(Section 11.02 et seq. of the *Companies' Creditors Arrangement Act*, CS 1985 c. C-36)**

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**TO THE HONOURABLE JUSTICE LOUIS J. GOUIN, J.S.C. OR TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONER HSBC BANK CANADA (“HSBC”) RESPECTFULLY SUBMITS THE FOLLOWING:**

**I. INTRODUCTION**

1. On September 9, 2011, this Court issued an order (the “**Initial Order**”) pursuant to the *Companies' Creditors Arrangements Act* (the “**CCAA**”) in respect of Homburg Invest Inc. (“**HII**”), Homburg ShareCo Inc. (“**ShareCo**”), Churchill Estates Development Ltd. (“**Churchill**”), Inverness Estates Development Ltd. (“**Inverness**”) and CP Development Ltd. (“**CP**”), and together with HII, ShareCo, Churchill and Inverness (the “**Debtors**”), the whole as it more fully appears from the Court Record.
2. Pursuant to the Initial Order, a stay of proceedings was granted in favour of the Debtors (the “**Stay**”).
3. The Stay was also ordered in favour of several mis-en-causes including, *inter alia*, Homco Realty Fund (88) Limited Partnership (“**Homco 88**”). HSBC reserves all its rights as to whether or not the Stay should benefit to Homco 88.
4. The Stay was extended on several occasions, most recently until May 31, 2012.
5. HSBC is a Canadian chartered bank duly constituted and having a place of business at 2001 McGill College Avenue, Suite 150 in the City and District of Montréal, Province of Québec, H3A 1G1.
6. By the present motion, HSBC is seeking an order lifting the Stay in favour of Homco 88 for the sole purpose of allowing HSBC to apply the Amount in Deposit in reduction of the Indebtedness (as such terms are defined hereinafter).

**II. THE LETTER OF CREDIT**

7. In the normal course of business HSBC had business dealings with both Homco 88 and HII. HSBC issued at the request of Homco 88 several letters of credits to various beneficiaries.
8. In particular, at the request of Homco 88, HSBC issued a letter of credit for an amount of \$542,200.00 in favour of the City of Calgary (the “**Letter of Credit**”). A copy of the Letter of Credit is communicated in support hereof as **Exhibit R-1**.

9. On November 17, 2011, given that the Letter of Credit was to expire on November 30, 2011, HSBC wrote to Homco 88 and the Monitor to seek instructions as to whether or not the Letter or Credit should be extended, the whole as appears from a copy of the email communicated in support hereof as **Exhibit R-2**.
10. Homco 88 and the Monitor did not give any instructions to HSBC with respect to the Letter of Credit before November 30, 2011.
11. On November 30, 2011, the City of Calgary called upon the Letter of Credit when it expired. HSBC was thus forced to pay the amount of \$542,200.00.
12. Therefore, as of the day of this motion, Homco 88 owes to HSBC an amount of \$542,200.00 pursuant to the payment of the Letter of Credit (the “**Indebtedness**”).

### **III. THE GUARANTEES**

13. So as to guarantee any amount that would be owing pursuant to the Letter of Credit, Homco 88 has, *inter alia*, deposited an amount of \$542,200 in a bank account bearing number 093-104928-350 with HSBC (the “**Amount in Deposit**”).

#### **THE INDEMNITY**

14. On November 28, 2007, Homco 88 executed in favour of HSBC an Indemnity Agreement (the “**Indemnity**”). A copy of the Indemnity is communicated in support hereof as **Exhibit R-3**.
15. The Indemnity provides *inter alia* that:
  - (a) In consideration of HSBC issuing letters of credit in favour of the City of Calgary, Homco 88 agreed to indemnify and save harmless HSBC against any liabilities which HSBC may incur in connection with said letters of credit (section 1); and
  - (b) HSBC is authorized to debit any accounts of Homco 88 at HSBC, without any demand being made, for any amount payable pursuant to the Indemnity (section 4).

#### **THE SECURITY OVER CASH**

16. On November 29, 2007, Homco 88 executed a Security Over Cash, Credit Balances and Deposit Instruments (the “**Security over Cash**”) pursuant to which it granted a security interest on the Amount in Deposit in favour of HSBC. A copy of the Security over Cash is communicated in support hereof as **Exhibit R-4**.

17. The Security over Cash provides *inter alia* that:
  - (a) HSBC may, at any time and without notice, set-off the Amount in Deposit with any obligations owed by Homco 88 towards HSBC (section 8); and
  - (b) Homco 88 shall not withdraw the Amount in Deposit and HSBC shall not be required to surrender the Amount in Deposit until the complete repayment of any obligations owed by Homco 88 towards HSBC (section 9).

#### **THE HII GUARANTEE**

18. The Indebtedness is also guaranteed by HII pursuant to an unlimited guarantee agreement in favour of HSBC dated November 12, 2010, a copy of which is communicated in support hereof as **Exhibit R-5** (the “**HII Guarantee**”).
19. Any amount owing by HII to HSBC is secured by, *inter alia*, a General Security Agreement dated July 5, 2001 (the “**GSA**”) and a Hypothec on Movable Property dated December 16, 2010 (the “**Hypothec**” and collectively with the GSA, the “**HII Security**”), the whole as appears from a copy of the HII Security communicated in support hereof, *en liasse*, as **Exhibit R-6**.
20. A financing statement charging all of HII’s present and after acquired personal property was registered at the Personal Property Registry for the Province Nova Scotia under number 4294855, the whole as appears from an extract of the Personal Property Registry for the Province of Nova Scotia communicated in support hereof as **Exhibit R-7**.
21. The Hypothec has been registered at the Register of Personal and Movable Real Rights on December 17, 2010 under number 10-0888143-0001, the whole as appears from a copy of said registration communicated in support hereof as **Exhibit R-8**. The Hypothec is on the universality of HII’s movable property.
22. The Monitor’s counsel has reviewed the HII Security and has confirmed that it is valid and enforceable.

#### **IV. REASONS FOR THE ORDER SOUGHT**

23. Homco 88 validly executed the Indemnity and the Security over Cash so as to secure the Indebtedness.
24. The Amount in Deposit has been specifically segregated for the purpose of paying the Indebtedness.

25. HSBC is entitled to operate set-off between the Amount in Deposit and the Indebtedness pursuant to, amongst other, the Indemnity, the Security over Cash and section 21 *CCAA*.
26. HII validly granted the HII Guarantee and the HII Security. HSBC is the first ranking secured creditor of HII on its movable assets.
27. HII is liable for the Indebtedness pursuant to the HII Guarantee.
28. The order sought will not unduly prejudice the Debtors or Homco 88 given that it will not:
  - (a) jeopardize the Debtors' efforts at reorganization;
  - (b) endanger the survival of the Debtors;
  - (c) negatively impact the viability of any restructuring plan by the Debtors; and/or
  - (d) cause any hardship to the Debtors or their restructuring proceedings.
29. In the absence of the order sought, Homco 88, HII and ultimately all the stakeholders will be prejudiced by the continuing accrual of interest on the Indebtedness. Indeed, any further delay in the payment of the Indebtedness will generate additional interest, with no advantage to any of Homco 88 or HII's stakeholders.
30. Given the foregoing, HSBC hereby seeks the issuance of an order lifting the stay of proceedings against Homco 88 for the purpose of permitting HSBC to apply the Amount in Deposit in payment of the Indebtedness.
31. The present motion is well-founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THIS COURT:**

- a. **GRANT** the present motion;
- b. **DECLARE** the notices given of the presentation of the present motion are proper and sufficient;
- c. **DECLARE** that the stay of proceedings provided for in the Initial Order be lifted for the sole purpose of allowing HSBC Bank Canada ("**HSBC**") to apply the money in deposit with it in the bank account bearing number 093-104928-350 (the "**Amount in Deposit**") in reduction of the amount of \$542,200.00 owed by Homco Realty Fund (88) Limited Partnership ("**Homco 88**") pursuant to the payment by HSBC of the letter of credit communicated as Exhibit R-1 (the "**Indebtedness**");

- d. **DECLARE** that the stay of proceedings provided for in the Initial Order be lifted for the sole purpose of ordering Homburg Invest Inc. (“**HII**”) to pay to HSBC Bank Canada (“**HSBC**”) the Indebtedness;
- e. **ORDER** HSBC to apply, through set-off, compensation or otherwise, the Amount in Deposit in reduction of the Indebtedness, but **DECLARE** that such order will automatically be extinguished if HII first complied with the conclusion f. herein;
- f. **ORDER** HII to pay to HSBC the Indebtedness, but **DECLARE** that such order will automatically be extinguished if HSBC first complied with the conclusion e. herein;
- g. **GRANT** such other relief as this Court may deem appropriate in these circumstances.
- h. **THE WHOLE WITHOUT COSTS**, save in case of contestation.

Montréal, April 10, 2012

*Davies Ward Phillips & Vineberg*

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DAVIES WARD PHILLIPS & VINEBERG LLP  
Attorneys for HSBC Bank Canada

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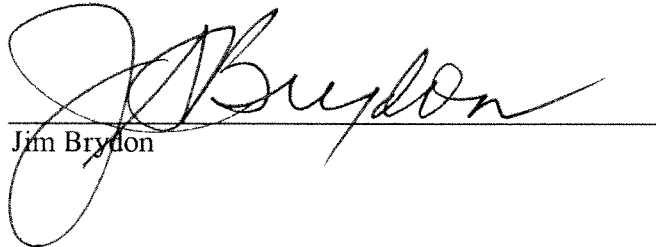
**AFFIDAVIT OF JIM BRYDON**

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I, Jim Brydon, Assistant Vice President at HSBC Bank Canada, exercising my occupation at 70 York Street, in the City of Toronto, Province of Ontario, M5J 1S9, do hereby solemnly affirm as follows:

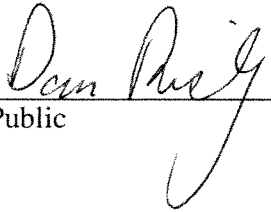
1. I have taken cognizance of the attached *Motion for an Order Lifting the Stay of Proceedings Against Homco Realty Fund (88) Limited Partnership* (the "**Motion**");
2. All the facts alleged in the Motion are true.

AND I HAVE SIGNED:

  
\_\_\_\_\_  
Jim Brydon

SOLEMNLY AFFIRMED before me  
in the City of Toronto this 10th day of April 2012

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



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**ATTESTATION OF AUTHENTICITY**

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I, the undersigned, Christian Lachance, attorney, practising my profession with the law firm of Davies Ward Phillips & Vineberg LLP, having its principal place of business at 1501 McGill College Avenue, 26<sup>th</sup> Floor, in the City and District of Montréal, Province of Québec, solemnly affirm that:

1. On April 10, 2012, at 10:42 a.m., I received by email an Affidavit signed by Jim Brydon dated April 10, 2012, a copy of such Affidavit is attached to this Attestation of Authenticity;
2. All the facts alleged herein are true.

**AND I HAVE SIGNED:**



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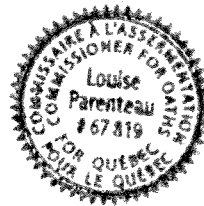
CHRISTIAN LACHANCE

**SOLEMNLY AFFIRMED BEFORE ME,** at  
Montréal, on this 10th day of April 2012.



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Commissioner for Oaths for all  
judicial districts of Québec





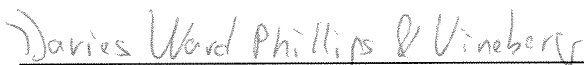
**NOTICE OF PRESENTATION**

**TO THE SERVICE LIST**

TAKE NOTICE that the *Motion for an Order lifting the Stay of Proceedings against Homco Realty Fund (88) Limited Partnership* will be presented before the Honourable Louis J. Gouin or one of the Honourable Judges in the Superior Court, sitting in the District of Montréal, at the Montréal Courthouse, 1 Notre-Dame Street West, Montréal, Québec, in room to be determined on April 11, 2012 at 2:15 p.m. or so soon thereafter as counsel may be heard.

**PLEASE ACT ACCORDINGLY.**

Montréal, April 10, 2012



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DAVIES WARD PHILLIPS & VINEBERG LLP  
Attorneys for HSBC Bank Canada

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

**SUPERIOR COURT**  
**Commercial division**  
**(Sitting as a court designated pursuant to the**  
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Petitioner

**LIST OF EXHIBITS**

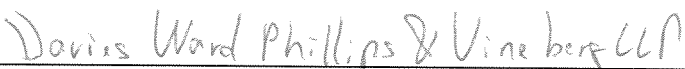
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R-1

Copy of the letter of credit for an amount of \$542,200.00 in favour of the City of Calgary;

- R-2 Copy of an email from HSBC to Homco 88 and the Monitor dated November 17, 2012;
- R-3 Copy of the Indemnity Agreement dated November 28, 2007;
- R-4 Copy of the Security Over Cash, Credit Balances and Deposit Instruments dated November 29, 2007;
- R-5 Copy of the Unlimited Guarantee Agreement in favour of HSBC dated November 12, 2010;
- R-6 Copy of the General Security Agreement dated July 5, 2001 and of the Hypothec on Movable Property dated December 16, 2010, *en liasse*;
- R-7 Extract of the Personal Property Registry for the Province of Nova Scotia under number 4294855;
- R-8 Extract of the Register of Personal and Movable Real Rights on December 17, 2010 under number 10-0888143-0001;

Montréal, April 10, 2012



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DAVIES WARD PHILLIPS & VINEBERG LLP

Attorneys for HSBC Bank Canada

No. 500-11-041305-117

**S U P E R I O R C O U R T**  
Commercial Division

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HOMBURG INVEST INC.  
HOMBURG SHARECO INC.  
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**MOTION FOR AN ORDER LIFTING THE STAY OF  
PROCEEDINGS AGAINST HOMCO REALTY FUND  
(88) LIMITED PARTNERSHIP**

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**ORIGINAL**

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Attorneys for Petitioner

Per: Me Denis Ferland and  
Christian Lachance

Dir 514 841 6423

O/F 237455



DAVIES WARD PHILLIPS & VINEBERG LLP

1501 McGill College Avenue  
26<sup>th</sup> Floor  
Montréal Canada H3A 3N9

Tel 514 841 6400  
Fax 514 841 6499  
BP-0181