

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

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.**

Debtors

-and-

THE ENTITIES LISTED IN ANNEXE I

Mis-en-cause

-and-

SAMSON BELAIR / DELOITTE & TOUCHE INC.

Monitor

-and-

ROMSPEN INVESTMENT CORPORATION, a legal
entity duly constituted pursuant to the laws on Ontario
and having an office at 162 Cumberland Street, Suite
300, in the City of Toronto, Province of Ontario, M5R
3N5

Petitioner

**MOTION BY ROMSPEN INVESTMENT CORPORATION FOR AN ORDER LIFTING THE
STAY OF PROCEEDINGS AGAINST CHURCHILL ESTATES DEVELOPMENT LTD. AND
INVERNESS ESTATES DEVELOPMENT LTD. FOR THE PURPOSE OF COMMENCING
MORTGAGE FORECLOSURE PROCEEDINGS AGAINST REAL PROPERTY IN THE
PROVINCE OF ALBERTA.**

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

**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
MONTREAL, THE PETITIONER ROMSPEN INVESTMENT CORPORATION
RESPECTFULLY SUBMITS THE FOLLOWING:**

I. FACTUAL BACKGROUND

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, (199) GP, 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 until October 7, 2011. Pursuant to an order dated October 7, 2011 (the "Stay Extension Order"); the stay of proceeding in favour of the Debtors was extended until December 9, 2011.
3. Romspen Investment Corporation ("Romspen") is a private investment corporation and a lender to Inverness and Churchill.
 - i- ***Loan entered in favour of Churchill***
 4. On or about December 8, 2009, Romspen advanced a loan on a secured basis to Churchill in the amount of \$10.5 million dollars pursuant to the terms of a commitment letter, the whole as it more fully appears from said commitment letter, a copy of which is communicated in support hereof as **Exhibit R-1**.
 5. Romspen's loan to Churchill is secured by, *inter alia*, the following securities (collectively, the "**Churchill Security**"):
 - a) a first ranking mortgage and charge in the principal amount of \$10,500,000.00 over the property municipally known as **701-3rd Avenue Southwest, Calgary, Alberta**, being the Churchill residential condominium tower including approximately 20 existing condominium units, 34 parking stalls, and 21 storage units (the "**Churchill Property**");
 - b) a first ranking general assignment of rents pursuant to leases affecting the Churchill Property;
 - c) a first ranking specific assignment of all leases;
 - d) a first ranking general security agreement charging all of the personal and real property of Churchill; and
 - e) a specific assignment of all of Churchill's rights in, to and under all material contracts affecting the Churchill Property.

6. The mortgage granted to Romspen by Churchill was registered against title to the Churchill Property in the Land Titles Office for the Province of Alberta on January 7, 2010 as instrument No. 101007678, the whole as it more fully appears from said Churchill Security documents communicated in support hereof as **Exhibit R-2, en liasse**.
7. In addition, a financing statement charging all of Churchill's present and after acquired personal property was registered at the Personal Property Registry for the Province of Alberta on December 22, 2009 as instrument No. 09122203543, the whole as it more fully appears from an extract of the Personal Property Registry for the Province of Alberta communicated in support hereof as **Exhibit R-3**.

ii- Loan entered in favour of Inverness

8. On or about December 8, 2009, Romspen advanced moneys on a secured basis to Inverness in the amount of \$8.9 million dollars pursuant to the terms of a commitment letter, the whole as it more fully appears from said commitment letter, a copy of which is communicated in support hereof as **Exhibit R-4**.
9. As security for the loan advanced by Romspen to Inverness, Romspen holds, *inter alia*, the following securities (collectively, the "**Inverness Security**"):
 - a) a first ranking mortgage over the property known as **12310, 12320, 12330-102nd Street, Grand Prairie, Alberta**, being compromised of approximately 77 condominium units (the "**Inverness Property**");
 - b) an assignment of leases and rents dated December 17, 2009 with respect to the Inverness Property;
 - c) a general security agreement granting Romspen a security interest in all of the present and after acquired personal property of Inverness used in or in connection with the Inverness Property; and
 - d) an assignment by Inverness of all material contracts in respect of the Inverness Property.
10. The mortgage granted to Romspen by Inverness was registered against title to the Inverness Property in the Land Titles Office for the Province of Alberta on January 7, 2010 as instrument number 102007636, the whole as it more fully appears from the Inverness Security documents communicated in support hereof as **Exhibit R-5, en liasse**.
11. In addition, a financing statement charging all of Inverness' present and after acquired personal property was registered at the Personal Property Registry for the province of Alberta on December 21, 2009 as instrument number 09122129519, the whole as it more fully appears from an extract of the Personal Property Registry for the Province of Alberta communicated in support hereof as **Exhibit R-6**.

12. On or about December 19, 2009, pursuant to a Cross Collateralization and Cross Default Agreement among Romspen, Churchill, and Inverness, the parties agreed that:
- a) default under the Inverness Security constitutes a default under the Churchill Security and vice versa;
 - b) the Inverness Security would secure all amounts owing by both Churchill and Inverness to Romspen; and
 - c) the Churchill Security would secure all amounts owing by both Churchill and Inverness to Romspen.

The whole as it more fully appears from said Cross Collateralization and Cross Default Agreement communicated in support hereof as **Exhibit R-7**.

13. On September 1, 2011, October 1, 2011, and November 1, 2011, each of Inverness and Churchill defaulted in the payment of amounts due under the Inverness Security and Churchill Security, and such defaults are continuing. Churchill also defaulted in paying condominium fees in the amount of \$86,782.22, which rank in priority to Romspen's security, and which Romspen therefore paid on October 13, 2011 under its security as a protective disbursement.
14. As of November 16, 2011, the amount due and owing by Inverness to Romspen pursuant to the Inverness Security was \$2,606,696.23, and per diem interest accrues thereafter at the rate of \$900.26, the whole as it more fully appears from a statement of account communicated in support hereof as **Exhibit R-8**.
15. As of November 16, 2011, the amount due and owing by Churchill to Romspen pursuant to the Churchill Security was \$7,010,005.97, and interest thereon accrues thereafter at the rate of \$1,889.79 per day, the whole as it more fully appears from a statement of account communicated in support hereof as **Exhibit R-9**.

II. ORDERS SOUGHT

Romspen's Right to Lift the Stay:

16. Romspen is the only secured creditor of Inverness and Churchill, and there is no plan of compromise or arrangement which Inverness or Churchill could propose which would be acceptable to Romspen other than immediate payment of its secured indebtedness in full, being in capital, interest and costs.
17. Romspen wishes to proceed with foreclosure proceedings pursuant to its mortgages registered against the Inverness and Churchill properties in Alberta.
18. Said foreclosure proceedings would not unduly prejudice Inverness and Churchill given that, in the event of a sale of any condominium unit by Inverness or Churchill during the CCAA stay, the proceeds arising will be paid to Romspen in reduction of the mortgage principal, the whole as it more fully appears from **the Monitor's Second Report to the Court dated October 5, 2011**.

19. In addition, the Inverness Property and Churchill Property do not form part of the Debtors' core assets and are not integral to their proposed restructuring or future business operations.
20. The mortgage foreclosure proceedings in Alberta are conducted under the supervision of the court and the interests of the Debtors and other persons having an interest in the Churchill Property or Inverness Property will be protected in those proceedings.
21. Accordingly, lifting the stay of proceedings to permit Romspen to enforce its mortgage security against the Inverness Property and Churchill Property will not:
 - a) jeopardize 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.

Romspen's Prejudice and Balance of Interests:

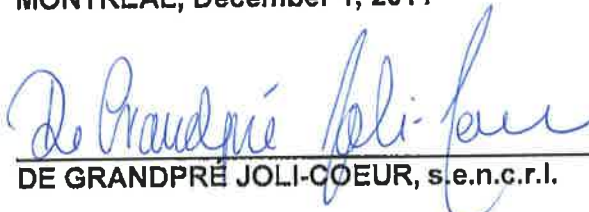
22. It is more than probable that the actual stay of proceedings will inevitably result in considerable delays and complications, even if a tight timetable is imposed, all of which is to the detriment of Romspen.
23. Romspen has received current appraisal reports with respect to the fair market values and forced sale values of the Inverness Property and Churchill Property.
24. Romspen will file those appraisal reports as confidential **Exhibit R-10** and **Exhibit R-11** subject to a request that they be sealed so as not to suppress realizations upon the sale of the Properties.
25. Although the appraised value of the Properties exceeds the amount of Romspen's indebtedness secured by the Properties, the Properties consist of residential condominium units, and significant time will be required for these units to be fully absorbed by the market, and unpaid interest on the outstanding indebtedness owing to Romspen is increasing at a rate of more than \$1 million per year. Therefore, if the Alberta real estate market suffers a correction, or the appraised values of the properties prove to be higher than actual realizations, any further delays which prevent Romspen from acting under its security could lead to Romspen suffering a shortfall in recovery of the full amount owing to it.
26. In the absence of an order lifting the stay, Romspen will be materially and unduly prejudiced by the continuing accrual of interest, default in payment of the amounts owing to it by Inverness and Churchill, and the risk of a shortfall in recovery of the full amount owing to it.

27. An order lifting the stay will not give Romspen an inappropriate advantage over other the unsecured creditors or secured creditors.
28. Given the foregoing, Romspen hereby seeks the issuance of an Order lifting the stay of proceedings against Churchill, Inverness, the Inverness Property and the Churchill Property, for the purpose of permitting Romspen to issue notices of intent to enforce its security pursuant to Section 244 of the *Bankruptcy and Insolvency Act* R.S.C. 1985 B-3, as amended, and commence mortgage foreclosure proceedings pursuant to its mortgages.

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 and the Stay Extension Order be lifted for the purposes of allowing Romspen to issue notices of intention to enforce its security against Inverness and Churchill, and thereafter to proceed with foreclosure proceedings under its mortgages against the Inverness Property and the Churchill Property;
- d. **GRANT** such other relief as this Court may deem appropriate in these circumstances.
- e. **THE WHOLE WITH COSTS**, as provided for by the terms of the Romspen's security.

MONTREAL, December 1, 2011


DE GRANDPRÉ JOLI-COEUR, s.e.n.c.r.l.



DICKINSON WRIGHT LLP
Barristers & Solicitors
Co-counsel for Romspen Investment Corporation

AFFIDAVIT

I, the undersigned, **Wesley Roitman**, businessman, having my principal place of business at 162 Cumberland Street, Suite 300, Toronto, Ontario, M5R 3N5 solemnly declare the following:

1. I am the managing general partner of Romspen Investment Corporation ("Romspen") and duly authorized representative of the Petitioner for the purpose hereof.
2. I have taken cognizance of the Motion by Romspen to lift the stay of proceedings.
3. All of the facts alleged in the Motion for an Order lifting the Stay of Proceedings for the purposes of seeking relief in respect of Churchill Estates Development Ltd. and Inverness Estates Development Ltd. are true.


SOLEMNLY SWORN AND DECLARED BEFORE ME at the City of Toronto, in the Province of Ontario on the 1st day of December, 2011



Commissioner for Taking Affidavits
(or as may be)

*JOEL MICKELSON
Barrister and Solicitor and
Member of the Law Society of Upper Canada*

AND I HAVE SIGNED



WESLEY ROITMAN

NOTICE OF PRESENTATION**TO: Service List**

TAKE NOTICE that the Motion for an Order lifting the Stay of Proceedings for the purposes of seeking relief in respect of Churchill Estates Development Ltd. and Inverness Estates Development Ltd. will be presented before the Honorable Louie Gouin J.S.C. or one of the Honorable Judges in the Superior Court, sitting in the District of Montreal, at the Montreal Courthouse, 1 Notre Dame Street West, Montreal, Quebec at a date and time to be determined by the Court and communicated to the service list.

DO GOVERN YOURSELVES ACCORDINGLY.

TORONTO, December 1, 2011


DICKINSON WRIGHT LLP

Lawyers for Romspen Investment Corporation

MONTREAL, December 1, 2011


DE GRANDPRE JOLI-COEUR, s.e.n.c.r.l.Co-counsel for Romspen Investment
Corporation

ATTESTATION OF AUTHENTICITY
(Article 82.1 of the Code of Civil Procedure, R.S.Q. c. C-25)

I, the undersigned, ME ANNIE LEFEBVRE, attorney, exercising my profession at DE GRANDPRÉ, JOLI-COEUR, L.L.P. situated at 2000, avenue McGill College, suite 1600, in the city and district of Montreal, province of Quebec, solemnly declare the following:


1. I am of the attorneys of the Petitioner to the present **MOTION BY ROMSPEN INVESTMENT CORPORATION FOR AN ORDER LIFTING THE STAY OF PROCEEDINGS AGAINST CHURCHILL ESTATES DEVELOPMENT LTD. AND INVERNESS ESTATES DEVELOPMENT LTD. FOR THE PURPOSE OF COMMENCING MORTGAGE FORECLOSURE PROCEEDINGS AGAINST REAL PROPERTY IN THE PROVINCE OF ALBERTA** in Court file number 500-11-041305-117;
2. On December 2, 2011, at 2:50p.m. (Montreal time) De Grandpré, Joli-Coeur, l.l.p. received by email the Affidavit of Mr. Wesley Roitman, a duly authorized representative of **ROMSPEN INVESTMENT CORPORATION** dated December 1, 2011;
3. The copy of the Affidavit attached hereto is a true copy of the Affidavit of Mr. Wesley Roitman received by email from Me Lisa Corne, from the city of Toronto, province of Ontario, from email address: LCorne@dickinson-wright.com.
4. All of the facts alleged herein are true.

AND I HAVE SIGNED



ANNIE LEFEBVRE

SOLEMNLY DECLARED BEFORE ME
IN MONTREAL, THIS 2nd DAY OF DECEMBER 2011



COMMISSIONER FOR OATHS
FOR THE PROVINCE OF QUEBEC

NO : 500-11-041305-117

SUPERIOR COURT
District OF MONTRÉAL

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

HOMBURG INVEST INC.

-and- HOMBURG SHARECO INC.

-and- HILL GP INC. & ALS.

Debtors

-and-

THE ENTITIES LISTED IN ANNEXE I

Mis-en-cause

-and-

SAMSON BELAIR / DELOITTE & TOUCHE INC.

Monitor

-and-

ROMSPEN INVESTMENT CORPORATION

Petitioner

MOTION FOR AN ORDER LIFTING THE STAY OF
PROCEEDINGS FOR THE PURPOSES OF SEEKING TO
ENFORCE MORTGAGE SECURITY IN RESPECT OF
CHURCHILL ESTATES DEVELOPMENT LTD. AND
INVERNESS ESTATES DEVELOPMENT LTD.,
AFFIDAVIT, ATTESTATION OF AUTHENTICITY, AND
NOTICE OF PRESENTATION

ORIGINAL

BD 3477

N/réf : 300964-18/131425-1001

ME ANNIE LEFEBVRE
DE GRANDPRÉ JOLI-
CŒUR, s.e.n.c.

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