

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

**SECOND MOTION FOR APPROVAL OF THE EXERCISE OF CERTAIN OPTIONS
(BALTIC PARTNERSHIPS)**

(Section 11 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. Gouin, 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., Churchill Estates Development Ltd., Inverness Estates Development Ltd. and CP Development Ltd. (collectively the “**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 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 May 31, 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 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 and together with the Debtors, the “**HII Group**”);
 5. As appears from the Court record, the issues relating to the appropriate control of the assets and corporate structure have been a principal concern of both HII and the Monitor since the commencement of the proceedings under the CCAA. In this Motion, the HII Group respectfully requests that this Honourable Court approve the exercise of certain options pursuant to the Purchase Agreement (as defined herein) in respect of the Baltic Partnerships (as defined herein), as more fully described below, which will allow the HII Group to obtain the necessary control to advance with its restructuring efforts, the whole with a view to formulating and proposing a viable plan of arrangement or compromise to its stakeholders;

II. **BACKGROUND**

6. HII is an international real estate investment and development company which, directly or indirectly, owns a diversified portfolio of real estate assets. The vast majority of those assets through a number of limited partnerships (the “**Partnerships**”);
7. The vast majority of HII’s real estate assets are located in Canada, Germany, the Netherlands and the Baltic States;
8. As more fully appears from the *Motion for approval of a purchase agreement and for ancillary orders* (the “**PA Motion**”), in the Court record, on November 17, 2011, a Purchase Agreement was entered into by certain members of the HII Group and the HCI Group (as defined in the PA Motion);
9. On January 12, 2012, this Honourable Court approved the Purchase Agreement. Included therein are *inter alia* the following options granted to the HII Group (each an “**Option**” and collectively the “**Options**”):

- (a) The option to purchase or otherwise obtain (directly or indirectly) title to the shares of HLPM, the Baltic GPs and any European Entities (as these terms are defined in the Purchase Agreement);
 - (b) The option to require the transfer of the legal (registered) title to the Properties held by HLPM, the Baltic GPs and any European Entities; and
 - (c) The option to require the resignation of any or all General Partners of any of the Partnerships or of the Baltic Partnerships, to require their replacement by any entity and/or to effect amendments to the Limited Partnership Agreements in respect of the Partnerships and/or Baltic Partnerships;
10. The Purchase Agreement provides that the timing and manner of exercise of any Option shall be subject to the approval of the Monitor and the Court;
11. On February 17, 2012, the transaction contemplated by the Purchase Agreement closed;
12. As more fully appears from the *Motion for approval of the exercise of certain options* and the order rendered in connection therewith, in the Court record, on April 11, 2012, this Honourable Court approved a restructuring of the Partnerships for the Canadian, German and Dutch assets (the “**First Option Exercise**”). On April 30, 2012, the closing of the transactions contemplated by the First Option Exercise took place;

III. BALTIC PARTNERSHIPS

13. HII indirectly owns a portfolio of 54 commercial properties in Lithuania, Latvia and Estonia (the “**Baltic Properties**”);
14. The portfolio consists of 39 properties for which SEB Bank is a long-term tenant and 15 properties which are leased primarily to other tenants (SEB Bank occupying a limited space in some instances) or in which a short-term lease has been concluded with SEB Bank;
15. The Baltic Properties are held by HII through a wholly-owned subsidiary, Homburg Baltic LP Inc., which itself is the limited partner of:
- (a) KUB Homburg LT Baltijos Investicijos 1, a limited partnership governed by the laws of Lithuania;
 - (b) KUB Homburg LT Baltijos Investicijos 2, a limited partnership governed by the laws of Lithuania, which is the limited partner of KUB Homburg NT, also a limited partnership governed by the laws of Lithuania;
 - (c) Homburg LV Investments KS, a limited partnership governed by the laws of Latvia;
 - (d) Homburg Baltic (ES) Investments UU, a limited partnership governed by the laws of Estonia; and

- (e) Homburg Baltic (ES) AST Investments UU, a limited partnership governed by the laws of Estonia;

(collectively, the “**Baltic Partnerships**”).

- 16. Homburg LT LP1 GP1 Inc., Homburg LT LP1 GP2 Inc., Homburg LT LP2 GP1 Inc., Homburg LT LP2 GP2 Inc., Homburg LT LP3 GP1 Inc., Homburg LT LP3 GP2 Inc. and Homburg Estonia Latvia GP Inc. are the general partners of the Baltic Partnerships (the “**Baltic GPs**”);
- 17. Prior to the closing of the First Option Exercise, Homburg L.P. Management Inc. (“**HLPM**”), the sole shareholder of each of the Baltic GPs, was indirectly controlled by Richard Homburg. Upon implementation of the First Option Exercise, by way of a multiple *stichting* structure combined with the issuance of depository receipts, control over the board of directors of HLPM, and therefore control over the Baltic GPs, was transferred to HII. All attributes of the Baltic GPs’ shares other than voting rights are still nevertheless held indirectly by companies controlled by Richard Homburg;

IV. EXERCISE OF CERTAIN OPTIONS

- 18. The First Option Exercise specifically carved out the Baltic Partnerships as the HII Group and the Monitor had yet to conclude their analysis for these entities;
- 19. Following an extensive analysis of the Options and in consultation with the Monitor and respective counsel HII determined that, as of the date hereof, the most efficient and effective way to restructure the Baltic Partnerships would be as set forth below;
- 20. Essentially, the HII Group intends to:
 - (a) Incorporate or make use of inactive direct or indirect wholly owned subsidiaries of HII, to act as general partners (each of which will be the general partner of no more than one Partnership) (each a “New Baltic GP”); and
 - (b) Replace each of the Baltic GPs with a New Baltic GP or, alternatively, add a New Baltic GP to each Baltic Partnership;

(collectively referred to as the “**Second Option Exercise**”).

- 21. HII has received a legal opinion from its counsel in the Baltic States, satisfactory to the Monitor, confirming that there will be no material tax consequences to the Second Option Exercise;
- 22. The Second Option Exercise will allow the HII Group to complete a second major step in the reorganization of its corporate structure which will facilitate the continuance of the negotiations with its secured lender for the Baltic Properties, SEB Bank, and the relevant third parties, the whole with a view to advancing the restructuring and ultimately formulating a plan of arrangement;

V. CONCLUSION

23. The HII Group has acted, and continues to act, in good faith and with the utmost diligence;
24. The Monitor supports the present request for approval of the Second Option Exercise;
25. The HII Group reserves its right to seek the approval of this Honourable Court with respect to the exercise of any remaining Options as and when appropriate;
26. The HII Group respectfully requests that this Honourable Court approve the Second Option Exercise;
27. This motion is well founded in fact and law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO :

GRANT the present *Second motion for approval of the exercise of certain options (Baltic Partnerships)* (the “**Motion**”);

DECLARE that the Motion was duly served, that the notices of presentation of the Motion are sufficient and dispense the Debtors from any additional notice requirements;

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

AUTHORIZE the HII Group to enter into any and all agreements, execute any and all documents and take any and all measures necessary or useful to fully implement the Second Option Exercise;

ORDER provisional execution of the present order, notwithstanding appeal;

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

MONTRÉAL, June 15, 2012

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP


Attorneys for the Debtors and Homco Realty
Fund (x) L.P. Mises-en-cause

AFFIDAVIT

I the undersigned, **Jan Schöningh**, domiciled and residing at 597 Roslyn Avenue, Westmount, Québec, H2Y 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 for approval of the exercise of certain options (Baltic Partnerships)*;
3. All of the facts alleged in the said motion are true.

AND I HAVE SIGNED



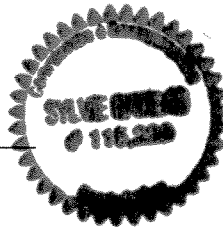
Jan Schöningh

SOLEMNLY DECLARED BEFORE ME
IN MONTRÉAL ON THE 15TH DAY OF JUNE 2012.



COMMISSIONER OF OATHS FOR
THE PROVINCE OF QUÉBEC

115,222



NOTICE OF PRESENTATION

- TO : McCARTHY TÉTRAULT LLP Attorneys for the Monitor
1000 De La Gauchetière Street West, Suite 2500
Montréal QC H3B 0A2
Me Mason Poplaw
Me Jocelyn Perreault
Me Miguel Bourbonnais
email : mpoplaw@mccarthy.ca
jperreault@mccarthy.ca
mbourbonnais@mccarthy.ca
- TO : BENNETT JONES LLP Attorneys for Penn West
4500 Bankers Hall East
855 2nd Street West
Calgary AB T2P 4K7
Me Kenneth T. Lenz
email : lenzk@bennettjones.com
- TO : BENNETT JONES LLP Attorneys for Statoil Canada
4500 Bankers Hall East Limited
855 2nd Street West
Calgary AB T2P 4K7
Me Chris Simard
email : simardc@bennettjones.com
- TO : Langlois Kronström Desjardins LLP Attorneys for Statoil Canada
1002 Sherbrooke Street West Limited
28th Floor
Montréal QC H3A 3L6
Me Gerry Apostolatos
Me Dimitri Maniatis
Me Stefan Chripounoff
email : gerry.apostolatos@lkd.ca
dimitri.maniatis@lkd.ca
stefan.chripounoff@lkd.ca
- TO : BLAKES, CASSELS & GRAYDON LLP Attorneys for Homburg Canada
1000 Sherbrooke Street West, Suite 2700 Inc. and Homburg L.P.
Montréal QC H3A 3G4 Management Inc.
Me Francis Rouleau
Me Simon Seida
email : francis.rouleau@blakes.com
simon.seida@blakes.com

- TO : BLAKES, CASSELS & GRAYDON LLP
199 Bay Street
Toronto ON M5J 1A1
Me Pam Huff
Me Milly Chow
email : pam.huff@blakes.com
milly.chow@blakes.com
- Attorneys for Homburg Canada Inc. and Homburg L.P. Management Inc.
- TO : BORDEN LADNER GERVAIS LLP
1000 De La Gauchetière Street West, Suite 900
Montreal QC H3B 5H4

Me Josef G. A. Krüger, Q.C.
Me Matti Lemmens
Me Mathieu Lévesque
email : jkruger@blg.com
mlemmens@blg.com
malevesque@blg.com
- Attorneys for BOS Solutions Ltd., Canadian Tabular Services Inc., Premier Petroleum Corp, Moe Hannah McNeill LLP
- TO : BURNET, DUCKWORTH & PALMER LLP
525 8th Avenue SW, Suite 2400
Calgary AB T2P 1G1

Me Douglas S. Nishimura
Me Simina Ionescu-Mocanu
email : dsn@bdplaw.com
sionescu@bdplaw.com
- Attorneys for Keywest Projects Ltd., MHI Fund Management Inc., Neotechnology Consultants Ltd., Logan Completion Systems Inc., CE Franklin Ltd.
- TO : DAVIES WARD PHILLIPS & VINEBERG LLP
1501 McGill College Avenue, 26th floor
Montréal QC H3A 3N9
Me Denis Ferland
Me Christian Lachance
email : dferland@dwpv.com
clachance@dwpv.com
- Attorneys for HSBC
- TO : DICKINSON WRIGHT LLP
222 Bay St., 18th Floor, PO Box 124
Toronto ON M5K 1H1
Me David P. Preger
email : dpreger@dickinsonwright.com
- Attorneys for Romspen Investment Corporation
joint appearance with De Grandpré

- TO: DE GRANDPRÉ JOLI-CŒUR LLP
2000 McGill College Avenue, Suite 1600
Montréal QC H3A 3H3
Me Anne Lefebvre
email: a.lefebvre@djclegal.com
- Attorneys for Romspen
Investment Corporation
- joint appearance with Dickson
- TO : FASKEN MARTINEAU DUMOULIN LLP
Tour de la Bourse
800 Place Victoria, PO Box 242, Suite 3700
Montréal QC H4Z 1E9
- Attorneys for Canmarc REIT
(formerly Homburg Canada
REIT), Homburg Canada REIT
Limited Partnership and
Homburg Canada REIT GP Inc.
and, in their capacity a trustees
of Canmarc REIT, Karen A.
Prentice, Frank W. Matheson,
James F. Miles, Wayne Heuff,
John Levitt and Gérard A.
Limoges
- Me Luc Morin
Me Robert Paré
Me Edmond Lamek
Me Alain Riendeau
email : lmorin@fasken.com
rpare@fasken.com
elamek@fasken.com
ariendeau@fasken.com
- TO : FISHMAN FLANZ MELAND PAQUIN LLP
1250 René Lévesque Boulevard West, Suite 4100
Montréal QC H3B 4W8
Me Mark E. Meland
email : mmeland@ffmp.ca
- Attorneys for Cadillac Fairview
Corporation Limited
- TO : FRASER MILNER CASGRAIN LLP
1 Place Ville Marie, Suite 3900
Montréal QC H3B 4M7
Me Louis Dumont
Me Stephanie Campbell
Me Martin Poulin
email : louis.dumont@fmc-law.com
stephanie.campbell@fmc-law.com
martin.poulin@fmc-law.com
- Attorneys for Tucker Wireline
Services Canada Inc.

- TO : HEENAN BLAIKIE LLP
215 9th Avenue SW, Suite 1900
Calgary AB T2P 1K3
Me Caireen E. Hanert
Me Nicholas Plourde
email : chanert@heenan.ca
nplourde@heenan.ca
Attorneys for Surge Energy Inc.
- TO : HEENAN BLAIKIE LLP
1250 René Lévesque Boulevard West, Suite 2500
Montréal QC H3B 4Y1
Me Michael Hanlon
email : mhanlon@heenan.ca
Attorneys for Surge Energy Inc.
- TO : KUGLER KANDESTIN LLP
1 Place Ville Marie, Suite 2101
Montréal QC H3B 2C6
Me Gordon Levine
email : glevine@kugler-kandestin.com
Attorneys for Avison Young
Real Estate Alberta Inc.
- TO : MCLEOD DICKSON LLP
3700 Canterra Tower, 400 3rd Ave SW
Calgary AB T2P 4H2
Me Judson Virtue
email : Jud.Virtue@macleoddixon.com
Attorneys for bcIMC Realty
Corporation
- TO : NORTON ROSE OR LLP
1 Place Ville Marie, Suite 2500
Montréal QC H3B 1R1
Me Sylvain Rigaud
Me Arnold Cohen
Me Philippe Giraldeau
email : sylvain.rigaud@nortonrose.com
arnold.cohen@nortonrose.com
philippe.giraldeau@nortonrose.com
Attorneys for Taberna Europe
CDO I PLC, Taberna Europe
CDO II PLC, Taberna Preferred
Funding VIII, Ltd and Taberna
Preferred Funding VI, Ltd.

- TO : STIKEMAN ELLIOTT LLP Attorneys for Trustees
1155 René Lévesque Boulevard West, 40th floor
Montréal QC H3B 3V2
Me Guy P. Martel
Me Joseph Reynaud
Me Warren Katz
Me Charles Nadeau
email : gmartel@stikeman.com
jreynaud@stikeman.com
wkatz@stikeman.com
cnadeau@stikeman.com
- TO : NOVA SCOTIA SECURITIES COMMISSION
Enforcement Branch
CIBC Building
1809 Barrington Street, Suite 501
Halifax NS B3J 3K8
Me Stephanie Atkinson
email : atkinssj@gov.ns.ca
- TO : STONES CARBERT WAITE WELLS LLP Attorneys for NORR Architects
2000 Encor Place Planners
645 – 7th Avenue S.W.
Calgary AB T2P 4G8
Me Kelly Patrick Colborne
email : colborne@scwlawyers.com
- TO : BLAKES, CASSELS & GRAYDON LLP Attorneys for TAQA North Ltd.
Suite 2500 and Arcan Resources Ltd.
855 – 2nd Street S.W.,
Calgary AB T2P 4J8
Me Kelly J. Bourassa
email : kelly.bourassa@blakes.com
- TO : WELLS FARGO BANK, N.A. Wells Fargo Bank N.A.
Corporate Trust Services
9062 Old Annapolis Road
MAC: N2702-011
Columbia, Maryland 21045
Tel: 410-884-2286
Mr. William Fay
Default & Restructuring Account Manager
email : bill.fay@wellsfargo.com

TO : WALSH WILKINS CREIGHTON LLP
2800 – 801 6th Avenue S.W.
Calgary, Alberta T2P 4A3

Attorneys for Lafarge Canada
Inc.

Me Raymond G. Hunt
email : rhunt@wwclawyers.com

TAKE NOTICE that the *Second motion for approval of the exercise of certain options (Baltic Partnerships)* will be presented for hearing and allowance in the Superior Court, commercial division, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on June 20, 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, June 15, 2012

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Debtors and Homco Realty
Fund (x) L.P. 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 (52) LIMITED
PARTNERSHIP ET AL.**

Mises-en-cause

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

**SECOND MOTION FOR APPROVAL OF THE
EXERCISE OF CERTAIN OPTIONS (BAL TIC
PARTNERSHIPS) (Section 11 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

1000 De La Gauchetière Street West, Suite 2100

Montréal QC H3B 4W5

Tel.: 514.904.8100

Fax: 514.904.8101

Code: BO 0323 o/f: 1131787