

**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)

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**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 (190) Limited Partnership  
Homco Realty Fund (191) Limited Partnership  
Homco Realty Fund (199) Limited Partnership**

**Mises-en-cause**

-and-

**Samson Bélair/Deloitte & Touche Inc.**

**Monitor**

<p><b>PLAN OF COMPROMISE AND REORGANIZATION</b> (Section 11 of the <i>Companies' Creditors Arrangement Act</i>, R.S.C., 1985, c. C-36 and Section 192 of the <i>Alberta Business Corporations Act</i>, R.S.A. 2000, c. B-9)</p>
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## PLAN OF COMPROMISE AND REORGANIZATION

### WHEREAS:

- A. Homburg Invest Inc, Homburg Shareco Inc., Churchill Estates Development Ltd., Inverness Estates Development Ltd., CP Development Ltd. and North Calgary Land Ltd. (collectively, the “**Petitioners**”) are insolvent;
- B. The Petitioners, excluding North Calgary Land Ltd., filed and obtained protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”);
- C. The Petitioners, excluding North Calgary Land Ltd., obtained an Order of the Superior Court of Quebec (Commercial Division) (the “**Court**”) under the CCAA on September 9, 2011, as amended pursuant to further orders of the Court (and as same may be further amended, restated or varied from time to time, the “**Initial Order**”);
- D. The Initial Order declared that, although not a Petitioner, each of *mis-en-cause* 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 shall enjoy the protections and authorizations provided by the Initial Order (such partnerships collectively referred to in the Initial Order as the “**Applicant Partnerships**”);
- E. By Order dated May 31, 2012, the Initial Order was amended to add North Calgary Land Ltd. as a Petitioner (hereinafter included as a “Petitioner”) and *mis-en-cause* Homco Realty Fund (96) Limited Partnership as an Applicant Partnership thereunder (hereinafter included as an “Applicant Partnership”);
- F. By Order of the Court made on December 14, 2012, *mis-en-cause* Homco Realty Fund (190) Limited Partnership and Homco Realty Fund (191) Limited Partnership were each added as additional Applicant Partnerships (hereinafter included as “Applicant Partnerships”);
- G. Pursuant to the Initial Order the Petitioners and the Applicant Partnerships have the authority to file with the Court and to submit to their creditors one or more plans of compromise or arrangement under the CCAA, which plan will provide, among other things, certain recoveries to stakeholders; and
- H. Homburg Invest Inc. and Homburg Shareco Inc. hereby propose and present this joint Plan of Compromise and Reorganization under and pursuant to the CCAA and the Alberta *Business Corporations Act*.

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In the Plan, unless otherwise stated or unless the subject matter or context otherwise requires:

“**ABCA**” means the Alberta *Business Corporations Act*, R.S.A. 2000, c. B-9, as amended;

“**Administration Charge**” means the charge created by paragraph 42 of the Initial Order in favour of the Monitor (including in its capacity as a Trustee in Bankruptcy), the Monitor’s legal counsel, the Petitioners’ legal counsel and other advisors over the Charged Property, and having the priority provided in paragraphs 43 and 44 of the Initial Order, and as confirmed, amended and continued for the benefit of the Monitor and its legal counsel and other advisors pursuant to the Sanction and Vesting Order;

“**Administrative Reserve**” means a Cash reserve approved by the Court pursuant to the Sanction and Vesting Order, in an amount to be agreed by the Monitor and HII prior to the Plan Implementation Date, to be deposited by the Monitor into the Administrative Reserve Account for the purpose of paying the Administrative Reserve Costs, which Administrative Reserve shall be subject to the Reserve Adjustment;

“**Administrative Reserve Account**” means a segregated trust account established by the Monitor to hold the Administrative Reserve;

“**Administrative Reserve Costs**” means amounts outstanding on the Plan Implementation Date (or to the extent provided below, arising thereafter), including in respect of Excluded Claims, Employee Priority Claims and the Government Priority Claims, together with (i) Newco’s costs, including legal fees and disbursements, relating to the issuance of the Newco Common Shares; (ii) the Monitor’s fees and disbursements (including of its legal counsel and other advisors) in connection with the performance of its duties under the Plan and in the CCAA Proceedings (both before and after the Plan Implementation Date); (iii) Bankruptcy Trustee Fees; (iv) the Bond 5 Secured Claim Cash Payment; (v) Post-Filing Trade Payables; (vi) the HSBC Secured Claim; (vii) the reasonable fees and disbursements of the members of the Liquidation Advisory Committee, in an amount to be agreed upon by such members and the Monitor; (viii) the reasonable winding-up costs and expenses of Stichting Homburg Bonds, such amounts not to exceed CDN\$35,000; (ix) the Cash Management Lender Claim; and (x) any other reasonable amounts in respect of any other contingency as the Monitor may determine in its sole discretion;

“**Affected Claim**” means any Claim against HII, Shareco, Homco 190 LP, Homco 191 LP and Homco 199 LP and for greater certainty includes any Intercompany Claim (but excluding the Homco 190 Loan, the Homco 191 Loan and the Homco 199 Loan), but excludes the Unaffected Claims and the Equity Claims;

**“Affected Creditor”** means a Corporate Creditor, Non-Corporate Creditor or Convenience Class Creditor holding an Affected Claim;

**“AFM”** means the Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten);

**“Amalgamating Canco”** means Castello, an Alberta corporation, Holland Garden, an Alberta corporation, Homburg Invest USA, a Nova Scotia company to be continued as an Alberta corporation, Homburg US, a Nova Scotia company to be continued as an Alberta corporation and Swiss Bondco, a Nova Scotia company to be continued as an Alberta corporation, with such additions or deletions to the foregoing group as HII may determine up to the Plan Implementation Date from time to time in consultation with the Monitor, each of which is not an Insolvent Person;

**“Amalgamating Canco Creditor”** means any Person having an Amalgamating Canco Creditor Claim, which shall be Unaffected Creditor;

**“Amalgamating Canco Creditor Claim”** means any Claim against an Amalgamating Canco, which shall be an Unaffected Claim;

**“Applicable Law”** means, in respect of any Person, property, transaction, event or other matter, any law, statute, regulation, code, ordinance, principle of common law or equity, municipal by-law, treaty or Order, domestic or foreign, applicable to that Person, property, transaction, event or other matter and all applicable requirements, requests, official directives, rules, consents, approvals, authorizations, guidelines, and policies, in each case, having the force of law, of any Governmental Authority having or purporting to have authority over that Person, property, transaction, event or other matter and regarded by such Governmental Authority as requiring compliance;

**“Applicant Partnerships”** means Homco (52) LP, Homco (88) LP, Homco (89) LP, Homco (92) LP, Homco (94) LP, Homco (96) LP, Homco (105) LP, Homco (121) LP, Homco (122) LP, Homco (142) LP, Homco (190) LP, Homco (191) LP, and Homco (199) LP;

**“Articles of Reorganization”** means the Articles of Reorganization to be filed by HII pursuant to Section 192 of the ABCA substantially in the form set out in Schedule “A” to the Plan;

**“Asset Realization Cash Pool”** means the pool of Cash created by the Monitor from Non-Core Business Asset Net Proceeds, net of the Disputed Claims (Asset Realization) Reserve, which pool of Cash shall be contributed by the Monitor to the Cash Pool Account;

**“Asset Realization Costs”** means, collectively, Liquidation Costs and the Non-Core Business Entity Creditor Claims (excluding Non-Core Bankrupt Business Entity Creditor Claims);

**“Assumption Agreement”** means the agreement between Newco and HII pursuant to which Newco becomes co-obligor with HII for the amount equal to the Newco Assumed

Portion of Proven Claims and the Newco Assumed Portion of Disputed Claims, which amount shall be deemed to be equal to the Final Adjusted Newco Note Amount;

**“Bankruptcy Claim”** means any proof of claim filed or to be filed in a bankruptcy estate of a Non-Core Business Entity by HII in respect of an Intercompany Claim and any distributions or dividends arising therefrom;

**“Bankruptcy Trustee Fees”** means the fees and disbursements (including legal fees and disbursements) of Deloitte acting as Trustee in Bankruptcy of any Non-Core Business Entity incorporated or formed under Canadian federal or provincial law;

**“BIA”** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

**“Bond 5 Claim”** means, collectively, the Bond 5 Secured Claim and Bond 5 Unsecured Claim;

**“Bond 5 Claim Holders”** means, collectively, the holders of notes issued under the Bond 5 Indenture;

**“Bond 5 Indenture”** means the Third Supplemental Indenture to the Principal Mortgage Bond Trust Indenture dated as of December 31, 2004, between Shareco and Stichting Homburg Bonds, as supplemented or amended by, *inter alia*, the Special Supplemental Indenture to the Third Supplement dated as of August, 2005, between Shareco and Stichting Homburg Bonds, and the Special Supplemental Indenture between Shareco and Stichting Homburg Bonds dated November 5, 2012;

**“Bond 5 Secured Claim”** means the secured portion of the Claim of the Bond 5 Claim Holders as provided under the Bond 5 Secured Claim Settlement Agreement, which shall be an Unaffected Claim;

**“Bond 5 Secured Claim Cash Payment”** means the sum of EUR2,250,000 to be distributed on a pro rata basis to each Bond 5 Claim Holder by the Monitor pursuant to the Bond 5 Secured Claim Settlement Agreement;

**“Bond 5 Secured Claim Settlement Agreement”** means the terms of settlement among Shareco and Stichting Homburg Bonds, as more particularly set out in the Special Supplemental Indenture to the Bond 5 Indenture made on November 5, 2012, pursuant to which, on Plan Implementation Date, the Bond 5 Claim Holders shall receive as consideration for releasing the Bond 5 Secured Claim, the following: (i) the Bond 5 Secured Claim Cash Payment and (ii) the Newco Bond 5 Guarantee;

**“Bond 5 Unsecured Claim”** means the Proven Claim of the Bond 5 Claim Holders net of the Bond 5 Secured Claim Cash Payment;

**“Business”** means the direct and indirect operations and activities of HII carried on in Canada, the United States and Europe;

**“Business Day”** means a day on which banks are open for business in the City of Montreal, Province of Quebec, but does not include a Saturday, Sunday or a statutory holiday in the Province of Quebec;

“**BV**” means a Homburg Group Member that is a private limited liability company (besloten vennootschap met beperkte aansprakelijkheid) incorporated under the laws of the Netherlands;

“**BV Preferred Shareholder**” means any body corporate or limited partnership holding preferred shares of a BV other than Valbonne 5 BV;

“**Canco**” means a Subsidiary of HII incorporated under Canadian federal or provincial law;

“**Capital Securities Claim**” means any Claim of a debenture holder or Stichting Homburg Capital Securities arising under or in connection with the debentures issued under the Capital Securities Trust Indenture;

“**Capital Securities Trust Indenture**” means the subordinated Trust Indenture dated as of February 29, 2009 between HII and Stichting Homburg Capital Securities as trustee;

“**Cash**” means cash, certificates of deposits, bank deposits, commercial paper, treasury bills and other cash equivalents;

“**Cash Elected Amount**” means, in respect of an Affected Creditor for which a valid Convenience Class Claim Election has been made or deemed to have been made pursuant to and in accordance with the Plan, the Canadian dollar amount that is equal to 35 per cent of such Affected Creditor’s Convenience Class Claim that is a Proven Claim;

“**Cash Management Lender Claim**” means any Claim of HSBC arising under or pursuant to any agreement or other arrangements relating to the provision of cash management services to any of the HII Group Members (including ordinary course spot foreign exchange transactions), but for greater certainty shall exclude the HSBC Secured Claim;

“**Cash Pool**” means the amount of Cash delivered by HII and Shareco to the Monitor on the Plan Implementation Date, net of the Cash Reserves, to be held in the Cash Pool Account and distributed by the Monitor in accordance with the Plan and the Sanction and Vesting Order;

“**Cash Pool Account**” means a segregated interest-bearing trust account established by the Monitor to hold the Cash Pool and the Asset Realization Cash Pool;

“**Cash Reserves**” means the Administrative Reserve, the Disputed Claims (Cash) Reserve, the Litigation Reserve, and the Disputed Claims (Asset Realization) Reserve;

“**Castello**” means Castello Development Ltd., a corporation incorporated under the ABCA;

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

“**CCAA Charges**” means the Administration Charge and the Directors’ Charge;

**“CCAA Proceedings”** means the proceedings under the CCAA in respect of the HII Group Entities commenced pursuant to the Initial Order;

**“Charged Property”** means the present and future assets, rights, undertakings and properties of every nature and kind whatsoever and wherever situated, including all proceeds thereof, of the Petitioners;

**“Churchill”** means Churchill Estates Development Ltd., a corporation incorporated under the ABCA and a Petitioner;

**“Claim”** means any right or claim of any Person, whether or not asserted, in connection with any Indebtedness, liability or obligation of any kind whatsoever, whether reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, unknown, by Guarantee, by surety, by warranty or otherwise, and whether or not such right is executory or anticipatory in nature, including without limitation, any claim arising from or caused by the termination, disclaimer, rescission, assignment or repudiation of any contract, lease or other agreement, whether written or oral, the commission of a tort (intentional or unintentional), any breach of duty (including without limitation, any legal, statutory, equitable or fiduciary duty), any right of ownership or title to property, employment, contract, a trust or deemed trust, howsoever created or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any grievance, matter, action, cause or chose in action, whether existing at present or commenced in the future, based in whole or in part on facts which existed on the Filing Date (including a Claim which relates to any time period prior to the Filing Date), together with any other claims of any kind that, if unsecured, would constitute a debt provable in bankruptcy within the meaning of the BIA, and for greater certainty, a “Claim” shall include any Equity Claim, Intercompany Claim, Restructuring Claim and Subsequent Restructuring Claim, the Corporate Bond Claims, the Capital Securities Claims, the Mortgage Bond Claims, the Bond 5 Claim, the Taberna Claim, the Shareco Creditor Claims, any Core Business Creditor Claim and any Non-Core Business Entity Creditor Claim;

**“Claims Bar Date”** has the meaning ascribed to it in the Claims Process Order;

**“Claims Process Order”** means the Order of the Court made April 30, 2012 approving and implementing the claims process in respect of the HII Group Entities as further amended, restated or varied from time to time;

**“Conditions Precedent”** means the conditions precedent to Plan implementation set out in Section 12.3 of the Plan;

**“Convenience Class Claim”** means one or more Affected Claims of an Affected Creditor that were less than or equal to Cdn\$10,000 in the aggregate as at the Claims Bar Date in respect of which the relevant Affected Creditor has made or been deemed to have made a Convenience Class Claim Election, pursuant to and in accordance with the Plan;

**“Convenience Class Claim Declaration”** means an election form, substantially in the form attached to the Meeting Order, pursuant to which an Affected Creditor with one or

more Affected Claims that were less than or equal to Cdn\$10,000 in the aggregate as at the Claims Bar Date may (i) make a Convenience Class Claim Election or (ii) elect to be treated as an Affected Creditor (other than a Convenience Class Creditor) under the Plan, and thereby be entitled to vote their Voting Claims at the Creditors' Meeting in respect of the Plan and to receive the rights and distributions provided for under and pursuant to the Plan;

**“Convenience Class Claim Election”** means an election or deemed election pursuant to which an Affected Creditor with one or more Affected Claims that were less than or equal to Cdn\$10,000 in the aggregate as at the Claims Bar Date has elected or been deemed to elect to receive only the Cash Elected Amount and is thereby deemed to vote in favour of the Plan in respect of such Affected Claims and to receive no other entitlements under the Plan;

**“Convenience Class Creditor”** means a Person having a Convenience Class Claim;

**“Core Business Assets”** means the Core Homco Assets and the shares of Homburg Baltic held by HII;

**“Core Business Creditor Claim”** means any Core Homco Creditor Claim, Core BV Creditor Claim, Core GmbH Creditor Claim and Homburg Baltic Creditor Claim, which for greater certainty shall not include any Claim of such Creditor against HII or Shareco;

**“Core Business Creditors”** means collectively the Core Homco Creditors, the Core BV Creditors, the Core GmbH Creditors and the Homburg Baltic Creditors;

**“Core Business Entity”** means any Core BV, Core Homco GP, Core GmbH and Core Homco;

**“Core BV”** means Valbonne 2 BV, Coët BV, Homco 86 BV, Homco 87 BV, and Valbonne 5 BV, with such additions or deletions to the foregoing group as HII may determine up to the Plan Implementation Date from time to time in consultation with the Monitor;

**“Core BV Creditor”** means a Person having a Core BV Creditor Claim, which shall be an Unaffected Creditor;

**“Core BV Creditor Claim”** means any Claim against a Core BV which shall be an Unaffected Claim;

**“Core GmbH”** means a GmbH that HII may determine up to the Plan Implementation Date from time to time in consultation with the Monitor is a Core Business Entity;

**“Core GmbH Creditor”** means a Person having a Core GmbH Creditor Claim, which shall be an Unaffected Creditor;

**“Core GmbH Creditor Claim”** means any Claim against Core GmbH, which shall be an Unaffected Claim;

**“Core Homco”** means Homco 69 LP, Homco 70 LP, Homco 86 LP, Homco 87 LP, and Homco 110 LP, with such additions or deletions to the foregoing group as HII may determine up to the Plan Implementation Date from time to time in consultation with the Monitor;

**“Core Homco Assets”** means the Property of a Core Homco, including shares of Core BVs and Core GmbHs;

**“Core Homco Creditor”** means a Person having a Core Homco Creditor Claim, which shall be an Unaffected Creditor;

**“Core Homco Creditor Claim”** means any Claim against a Core Homco (but for greater certainty excludes the Bond 5 Claim), which shall be an Unaffected Claim;

**“Core Homco GP”** means the corporate general partner of a Core Homco;

**“Core Homco Liabilities”** means all secured and unsecured obligations and liabilities of a Core Homco as at the Plan Implementation Date but excluding the amounts owing to the Bond 5 Claim Holders;

**“Corporate Bond Claim”** means any Claim of a debenture holder or Stichting Homburg Bonds arising under or in connection with the debentures issued under Corporate Bond Trust Indenture;

**“Corporate Bond Proven Claim”** means a Corporate Bond Claim that is a Proven Claim;

**“Corporate Bond Trust Indenture”** means collectively, a Trust Indenture dated as of May 31, 2006, between HII and Stichting Homburg Bonds, a Supplemental Indenture dated as of October 31, 2006, between HII and Stichting Homburg Bonds, a Second Supplemental Indenture dated as of December 21, 2006 between HII and Stichting Homburg Bonds, a Third Supplemental Indenture dated as of February 15, 2007 between HII and Stichting Homburg Bonds, and a Fourth Supplemental Indenture dated as of January 15, 2008 between HII and Stichting Homburg Bonds;

**“Corporate Creditor”** means a Person having a Corporate Creditor Claim, other than a Convenience Class Creditor;

**“Corporate Creditor Claim”** means the Bond 5 Unsecured Claim, the Corporate Bond Claims, the Mortgage Bond Trust Indenture Unsecured Claim, the Taberna Claim, the Capital Securities Claims, and such other Claim that HII and Shareco in consultation with the Monitor shall determine from time to time should be categorized as a Corporate Creditor Claim up to and including the Plan Implementation Date;

**“Corporate Creditor Disputed Claim”** means the face value of a Disputed Claim of a Corporate Creditor;

**“Corporate Creditor Proven Claim”** means a Proven Claim of a Corporate Creditor;

**“Corporate Indenture Trustees”** means, collectively, Stichting Homburg Capital Securities, Stichting Homburg Bonds and Wells Fargo in their respective capacities as trustees under the Corporate Indentures;

**“Corporate Indentures”** means, collectively, the Mortgage Bond Trust Indenture, the Corporate Bond Trust Indenture, the Taberna Indentures and the Capital Securities Trust Indenture;

**“Court”** means the Quebec Superior Court (Commercial Division) or any appellate court seized with jurisdiction in the CCAA Proceedings, as the case may be;

**“CP Development”** means CP Development Ltd., a corporation incorporated under the ABCA and a Petitioner;

**“Creditor”** means any Person asserting an Affected Claim or an Unaffected Claim and may, where the context requires, include the assignee of such Claim or a personal representative, agent, mandatary, trustee, interim receiver, receiver, receiver and manager, liquidator or other Person acting on behalf of such Person;

**“Creditor Cause of Action”** means any and all claims, actions, causes of action, demands, suits, rights, entitlements, litigation, arbitration, proceeding, hearing or complaint, whether known or unknown, reduced to judgment or not reduced to judgment, liquidated or unliquidated, contingent or non-contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, in law, equity or otherwise, based in whole or in part on any act or omission or other event occurring at any time, whether before, on or after the Filing Date which may be asserted by or on behalf of the Creditors or any representative thereof (including Stichting Homburg Bonds); provided however that in no event shall a Creditor Cause of Action include a Claim being released by the Plan;

**“Creditors’ Meeting”** means the meeting or meetings of Affected Creditors to be called and held pursuant to the Meeting Order for the purpose of considering and voting upon the Plan, and includes any adjournment of such meeting or meetings;

**“Deloitte”** means Samson Bélair/Deloitte & Touche Inc.;

**“Director”** means any former, present or future director or officer (or any individual serving in a similar capacity) of a body corporate (or similar entity) and any Person deemed to be a director or officer of a body corporate under subsection 11.03(3) of the CCAA;

**“Directors’ Charge”** means the charge granted pursuant to paragraph 26 of the Initial Order in favour of the Directors as such term is therein defined, in the Charged Property to the extent of the aggregate amount of Cdn\$2,000,000 as security for the indemnity provided in paragraph 25 of the Initial Order, having the priority set out in paragraphs 43 and 44 of such Order;

**“Disputed Claim”** means that portion of an Affected Claim of an Affected Creditor in respect of which a Proof of Claim has been filed in accordance with the Claims Process

Order, and which is the subject of negotiation with the Monitor or adjudication before the Court, and that at any particular time, has not been finally determined to be a Proven Claim in whole or in part, or is subject to a revision or disallowance that is contested in accordance with the Claims Process Order, the Meeting Order, or other Order made in the CCAA Proceedings and as such is not a Proven Claim in whole or in part;

**“Disputed Claims (Asset Realization) Reserve”** means the Cash reserve to be established by the Monitor from and after the Plan Implementation Date from the Non-Core Business Asset Net Proceeds, in an amount equal to the aggregate of each Pro Rata Share of any remaining Affected Creditor (other than a Convenience Class Creditor) holding a Disputed Claim, to be held by the Monitor in the Disputed Claims Reserve Account pending resolution of the Disputed Claims for distribution in accordance with the Plan, which Disputed Claims (Asset Realization) Reserve shall be subject to the Reserve Adjustment;

**“Disputed Claims (Cash) Reserve”** means the Cash reserve to be established at Plan Implementation Date by the Monitor in an amount equal to the aggregate of each Pro Rata Share of any remaining Affected Creditor holding a Disputed Claim and as approved by the Court under the Sanction and Vesting Order, which Cash reserve shall be held by the Monitor into the Disputed Claims Reserve Account for distribution in accordance with the Plan, which Disputed Claims (Cash) Reserve shall be subject to the Reserve Adjustment;

**“Disputed Claims Reserve Account”** means a segregated interest bearing trust account established by the Monitor to hold the Disputed Claims (Asset Realization) Reserve and the Disputed Claims (Cash) Reserve;

**“Disputed Claims (Newco Shares) Reserve”** means the reserve of Newco Common Shares held by the Monitor established pursuant to Section 5.1 of the Plan on the Plan Implementation Date, consisting of that number of Newco Common Shares in an amount equal to the aggregate of the Pro Rata Share of each Affected Creditor (other than a Convenience Class Creditor) holding a Disputed Claim, for distribution in accordance with the Plan;

**“Distribution Date”** means the date or dates from time to time set in accordance with the provisions of the Plan at the sole and absolute discretion of the Monitor to effect distributions in respect of the Proven Claims, including the Final Distribution Date but excluding the Initial Distribution Date;

**“Distribution Materials Record Date”** means a date to be determined by HII and the Monitor which date shall be posted on the Website and shall be not less than twenty-one (21) days prior to the Plan Implementation Date;

**“DNB”** means the Netherlands Central Bank (*De Nederlandsche Bank*);

**“DRS Account”** means the account of an Affected Creditor (other than a Convenience Class Creditor) (or the Monitor or its designate in the name of HII in respect of the Disputed Claims (Newco Shares) Reserve) administered by the Trading Platform or (as the case may be) a bank or broker, who qualifies directly or indirectly as an admitted

institution to the book entry system maintained by or connected to the Trading Platform in which such Affected Creditor is entitled to receive Newco Common Shares pursuant to and in accordance with the Plan in book-entry form;

**“DRS Transaction Advice”** means a statement delivered by Newco or its agent, as applicable, (the cost of which shall be treated as an Administrative Reserve Cost) on the Initial Distribution Date and each subsequent Distribution Date, as applicable, to or as directed by an Affected Creditor (other than a Convenience Class Creditor) or the Monitor or its designate indicating the number of Newco Common Shares registered or to be registered in the name of such Affected Creditor or the Monitor or its designate, as applicable, as directed by such Affected Creditor, or the Monitor or its designate, as applicable, in book-entry form in a DRS Account;

**“Effective Time”** means 12:01 a.m. on the Plan Implementation Date or such other time on such date as HII and the Monitor shall determine or as otherwise ordered by the Court;

**“Employee Priority Claim”** means of the following Claims of Employees and former or inactive employees of HII and Shareco:

- (a) Claims equal to the amounts that such Employees and former or inactive employees would have been qualified to receive under paragraph 136(1)(d) of the BIA if HII and Shareco had become bankrupt on the Filing Date; and
- (b) Claims for wages, salaries, commissions or compensation for services rendered by them after the Filing Date and on or before the Plan Implementation Date together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the Business during the same period;

**“Employees”** means any and all (i) employees who are actively at work (including full-time, part-time or temporary employees) of any of the HII Group Entities, and (ii) employees of the HII Group Entities who are on approved leaves of absence (including maternity leave, parental leave, short-term disability leave, workers’ compensation and other statutory leaves);

**“Encumbrance”** means any charge, mortgage, lien, pledge, claim, restriction, security interest, security agreement, hypothecation, assignment, deposit arrangement, hypothec, lease, rights of others including without limitation Transfer Restrictions, deed of trust, trust or deemed trust, lien, financing statement, preferential arrangement of any kind or nature whatsoever, including any title retention agreement, or any other arrangement or condition which in substance secures payment or performance of any obligations, action, claim, demand or equity of any nature whatsoever, execution, levy, charge or other financial or monetary claim, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, or other encumbrance, whether created or arising by agreement, statute or otherwise at law, attaching to property, interests or rights and shall be construed in the widest possible terms and principles known under the law applicable to such property, interests or rights and whether or not they constitute specific or floating charges as those terms are understood under Applicable Laws, including, without limiting the generality of the foregoing: (i) the CCAA Charges and (ii) the Plan Charges;

**“Equity Claim”** shall have the meaning ascribed thereto in Section 2 of the CCAA;

**“Excluded Claim”** means (i) any Claim secured by the CCAA Charges (ii) the KERP Claims; (iii) Claims in respect of Administrative Reserve Costs (iv) any Claim which cannot be compromised under the terms of the CCAA; and (v) any other Claim ordered by the Court to be treated as an Excluded Claim;

**“Filing Date”** means September 9, 2011;

**“Final Adjusted Newco Note Amount”** means the amount, equal to the final value of the Core Business Assets, less the Newco Bond 5 Guarantee Value, finally determined to be owing from Newco to HII under the Newco Note, which amount shall not be less than Cdn\$125,000,000 or greater than Cdn\$275,000,000;

**“Final Distribution Date”** means such date after all of the Non-Core Business Assets have been realized and all of the Disputed Claims finally resolved, that the Monitor shall determine in its sole and absolute discretion or the Court shall otherwise order;

**“Final Order”** means a final Order of the Court, the implementation, operation or effect of which shall not have been stayed, varied, vacated or subject to pending appeal and as to which Order any appeal periods relating thereto shall have expired;

**“Funding Order”** means the Order of the Court made January 15, 2012, in the CCAA Proceedings;

**“GmbH”** means any Homburg Group Member that is a private limited liability company (Gesellschaft mit beschränkter Haftung) incorporated under the laws of Germany;

**“Governmental Authority”** means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government, and any government department, body, ministry, agency, tribunal, commission, board, court, bureau or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government including without limitation any Taxing Authority, the AFM and DNB;

**“Government Priority Claims”** means all Claims of Governmental Authorities in respect of amounts that are outstanding and that are of a kind that could be subject to a demand on or before the Final Distribution Date under:

- (a) subsections 224(1.2) and 224(1.3) of the ITA;
- (b) any provision of the *Canada Pension Plan* or the *Employment Insurance Act* (Canada) that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or employee’s premium or employer’s premium as defined in the *Employment Insurance Act* (Canada), or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides

for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:

- (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the ITA; or
- (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a “province providing a comprehensive pension plan” as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a “provincial pension plan” as defined in that subsection;

**“Guarantee”** of a Person means any Liability of that Person under any guarantee, agreement, endorsement (other than for collection or deposit in the ordinary course of business of that Person), discount with recourse or other obligation to pay, purchase, repurchase or otherwise be or become liable or obligated upon or in respect of any Indebtedness of any other Person to indemnify or hold harmless any Person from or against any losses, liabilities or damages, in circumstances intended to enable the Person to incur or pay any Indebtedness or to comply with any agreement relating thereto or otherwise to assure or protect Creditors against loss in respect of the Indebtedness;

**“Hearing”** means the Court hearing of HII’s and Shareco’s motion for the Sanction and Vesting Order;

**“HII”** means Homburg Invest Inc., a corporation incorporated under the ABCA;

**“HII Assets”** means all Property of HII;

**“HII Baltic Subco”** means a company incorporated under the NSCA, all of the shares of which are held by HII;

**“HII Class A Preferred Shares”** means the authorized but not issued Class A preferred shares of HII;

**“HII Class A Shares”** means the issued and outstanding Class A subordinate voting shares of HII;

**“HII Class B Preferred Shares”** means the authorized but not issued Class B preferred shares of HII;

**“HII Class B Shares”** means the issued and outstanding Class B multiple voting shares of HII;

**“HII Co-obligation Note”** means the demand, adjustable, non-interest bearing promissory note issued by HII to Newco, the principal amount of which shall be deemed to be equal to the Final Adjusted Newco Note Amount, and such HII Co-obligation Note shall be secured by the Newco Co-obligation Charge;

**“HII’s Existing Authorized Capital”** means, collectively, the HII Class A Preferred Shares, the HII Class A Shares, the HII Class B Preferred Shares, and the HII Class B Shares;

**“HII Group”** means the Petitioners and the Applicant Partnerships;

**“HII Group Entity”** means any member of the HII Group;

**“HII New Common Shares”** means the new class of common shares of HII to be authorized and issued to Newco pursuant to Section 10.3(g)(ii) of the Plan;

**“Holland Garden”** means Holland Garden Development Ltd., a corporation incorporated under the ABCA;

**“Homburg Baltic”** means Homburg Baltic LP Inc., a corporation incorporated under the NSCA;

**“Homburg Baltic Creditor”** means a Person having a Homburg Baltic Creditor Claim, which shall be an Unaffected Creditor;

**“Homburg Baltic Creditor Claim”** means any Claim against Homburg Baltic, which shall be an Unaffected Claim;

**“Homburg Baltic Intercompany Loan”** means the receivable obligations owing from Homburg Baltic to HII as at the Filing Date;

**“Homburg Baltic Limited Partnership Creditor”** means a secured or unsecured Creditor of any of the Homburg Baltic Limited Partnerships, which shall be an Unaffected Creditor;

**“Homburg Baltic Limited Partnerships”** means the following limited partnerships formed under the laws of the Baltic States: Kub Homburg LT Baltijos Investicijos, Kub Homburg LT Baltijos Investicijos 2, Homburg LV Investments KS, Homburg Baltic (ES) Investments UU, and Homburg Baltic (ES) AST Investments UU;

**“Homburg Group Member”** means any body corporate or limited partnership directly or indirectly owned by HII wherever incorporated or formed;

**“Homburg Invest USA”** means Homburg Invest (USA) Limited, a company incorporated under the NSCA and to be continued as an Alberta corporation;

**“Homburg US”** means Homburg (US) Incorporated, a company incorporated under the NSCA to be continued as an Alberta corporation;

**“Homco”** means a Homburg Group Member limited partnership formed under the NSLPA and more particularly set out on Schedule “D” to the Plan;

**“Homco 190 Loan”** means the intercompany loan from Homco 190 LP to Homco 199 LP as evidenced by the Homco 190 Loan Promissory Note;

**“Homco 190 Loan Promissory Note”** means the promissory note dated May 25, 2010, delivered by Homco 199 LP to Homco 190 LP;

**“Homco 190 LP”** means Homco Realty Fund (190) Limited Partnership, a limited partnership formed under the NSLPA;

**“Homco 191 Loan”** means the intercompany loan from Homco 191 LP to Homco 199 LP as evidenced by the Homco 191 Loan Promissory Note;

**“Homco 191 Loan Promissory Note”** means the promissory note dated May 25, 2010, delivered by Homco 199 LP to Homco 191 LP;

**“Homco 191 LP”** means Homco Realty Fund (191) Limited Partnership, a limited partnership formed under the NSLPA;

**“Homco 199 Cash Amount”** means the amount of Cash held by Homco 199 LP on the Plan Implementation Date;

**“Homco 199 Loan”** means all amounts loaned by Homco 199 LP to HII and outstanding as at the Plan Implementation Date;

**“Homco 199 LP”** means Homco Realty Fund (199) Limited Partnership, a limited partnership formed under the NSLPA;

**“Homco GP”** means the corporate general partner of a Homco;

**“HSBC”** means HSBC Bank Canada;

**“HSBC Secured Claim”** means the claim of HSBC against HII secured by HII’s personal and movable property pursuant to a general security agreement dated July 5, 2001 and a hypothec on movable property dated December 16, 2010, to the extent of the amount of such security, subject to such security being valid and enforceable;

**“Incorporation Foundation”** means Stichting Oprichting Phenix Properties, a Dutch foundation (Stichting) incorporated solely for the purposes of incorporating Newco and acting as initial shareholder of Newco in accordance with the Pre-Plan Implementation Date Transactions;

**“Indebtedness”** of a Person means, without duplication:

- (a) all debts and liabilities of that Person for borrowed money;
- (b) all debts and liabilities of that Person representing the deferred acquisition cost of property and services; and
- (c) all Guarantees given by that Person;

**“Information Circular”** means the information circular prepared by HII and any schedules or appendices thereto, as may be amended, restated or varied from time to

time, together with any other documents required by the Court in connection with the calling and holding of the Creditors' Meeting to consider and approve the Plan;

**“Initial Distribution Date”** means a date on or after the Plan Implementation Date as the Monitor shall have determined in its sole discretion, or such other date as specified in the Sanction and Vesting Order;

**“Initial Order”** means the Order of the Court under the CCAA obtained by the Petitioners on September 9, 2011 and as same may be amended, restated or varied from time to time;

**“Insolvent Person”** means a Person the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient, to enable payment of all its obligations, due and accruing due, or who is unable to meet its obligations generally as they become due;

**“Intercompany Claims”** means any Claim of any Homburg Group Member against any other Homburg Group Member, whether or not recorded in the usual and ordinary course in the books and records of the applicable Person;

**“Inverness”** means Inverness Estates Development Ltd., a corporation incorporated under the ABCA and a Petitioner;

**“ITA”** means the *Income Tax Act* (Canada), R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), as amended and any regulations thereunder;

**“KERP Claim”** means a claim of any Person under the KERPS;

**“KERP Fund”** means the monies held by the Monitor to pay the KERP Claims;

**“KERPS”** means the Key Employee Retention Plans approved by paragraph 32 of the Initial Order as amended and extended from time to time;

**“Letter of Instruction”** means a form to be completed by Affected Creditors (other than Convenience Class Creditors) that is to be delivered by such Affected Creditors to the Monitor in accordance with the Plan, which form shall set out (i) the registration details for the issuance of the Newco Common Shares to such Affected Creditors; (ii) the address to which such Affected Creditors' DRS Transaction Advice and other notices are to be mailed, and (if applicable) to which cash distributions in cheque form are to be delivered; and (iii) the IBAN number and other details for the account of such Affected Creditors to which cash distributions in wire transfer form are to be delivered;

**“Liabilities”** of a Person means all Indebtedness, obligations and other liabilities of that Person whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due;

**“Limited Partnership Agreement”** means an agreement between HII, as sole limited partner, and the relevant general partner or general partners of a Homco;

**“Liquidation Advisory Committee”** means the committee to be created under the Sanction and Vesting Order, comprised of three individual members, two of whom shall be nominated by Stichting Homburg Bonds and the third to be nominated by HII, with the powers, entitlements and duties set out therein and in the Plan;

**“Liquidation Charge”** means a prior ranking Charge created pursuant to the Sanction and Vesting Order against the Non-Core Business Assets in favour of the Monitor as security for the Liquidation Costs;

**“Liquidation Costs”** means the costs of liquidation or realization of the Non-Core Business Assets, including professional fees and disbursements;

**“Litigation Claim”** means any and all claims, actions, causes of action, demands, suits, rights, entitlements, litigation, arbitration, proceeding, hearing or complaint, whether known or unknown, reduced to judgment or not reduced to judgment, liquidated or unliquidated, contingent or non-contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, in law, equity or otherwise, based in whole or in part on any act or omission or other event occurring at any time, whether before, on or after the Filing Date which may be asserted by or on behalf of (i) HII, Shareco, Homco 190 LP, Homco 191 LP and Homco 199 LP against any and all third parties; or (ii) the Monitor, pursuant to Section 36.1 of the CCAA, or Sections 95 to 101 of the BIA; provided however that in no event shall a Litigation Claim be a Claim being released by the Plan;

**“Litigation Proceeds”** any proceeds or settlement or judgment arising from the Litigation Claims, net of any Litigation Reserve Costs;

**“Litigation Reserve”** means a Cash reserve in the amount of Five Hundred Thousand (\$500,000) dollars, approved by the Court in the Sanction and Vesting Order, which reserve shall be established and deposited by the Monitor into the Litigation Reserve Account for the purpose of paying the Litigation Reserve Costs;

**“Litigation Reserve Account”** means a segregated interest bearing trust account established by the Monitor to hold the Litigation Reserve;

**“Litigation Reserve Costs”** means professional fees, disbursements, judicial or extrajudicial costs or solicitor client costs of the Monitor (including of its legal counsel and other advisors) relating to the investigation and assessment of Creditor Causes of Action or Litigation Claims and the litigation or settlement of Litigation Claims;

**“Meeting Order”** means the Order, substantially in the form set out in Schedule “C” to the Plan, to be made by the Court under the CCAA that, among other things, sets the date for the Creditors’ Meeting, as same may be amended, restated or varied from time to time;

**“Monitor”** means Deloitte in its capacity as Court-appointed Monitor pursuant to the Initial Order;

**“Monitor’s Plan Completion Certificate”** means the certificate substantially in the form attached as Schedule “D” to the Sanction and Vesting Order;

**“Monitor’s Plan Implementation Date Certificate”** means a certificate substantially in the form appended as Schedule “A” to the Sanction and Vesting Order declaring that all of the conditions precedent to implementation of the Plan have been satisfied or waived and that all right, title and interest in and to the Core Business Assets have vested absolutely in Newco, free and clear of all Encumbrances, other than Core Business Creditor Claims, in accordance with the Sanction and Vesting Order;

**“Mortgage Bond Claim”** means any Claim of a debenture holder or Stichting Homburg Bonds arising under or in connection with the debentures issued under the Mortgage Bond Trust Indenture;

**“Mortgage Bond Proven Claim”** means a Mortgage Bond Claim that is a Proven Claim;

**“Mortgage Bond Trust Indenture”** means, collectively, a Trust Indenture dated as of December 15, 2002, between Shareco and Stichting Homburg Bonds, a Second Supplemental Indenture dated as of November 30, 2004, between Shareco and Stichting Homburg Bonds, a Third Supplemental Indenture dated as of December 31, 2004, between Shareco and Stichting Homburg Bonds, a Fourth Supplemental Indenture dated as of July 4, 2005, between Shareco and Stichting Homburg Bonds, a Fifth Supplemental Indenture dated as of July 1, 2005, between Shareco and Stichting Homburg Bonds, a Special Supplemental Indenture to the Second Supplement dated as of November 5, 2012, between Shareco and Stichting Homburg Bonds, a Special Supplemental Indenture to the Third Supplement dated as of November 5, 2012, between Shareco and Stichting Homburg Bonds, and a Special Supplemental Indenture to the Fifth Supplement dated as of November 5, 2012, between Shareco and Stichting Homburg Bonds, all of which are governed by the laws of the Province of Nova Scotia, the obligations under which are secured by the Mortgage Bond Trust Indenture Security;

**“Mortgage Bond Trust Indenture Security”** means the security, if any, granted by HII and/or Shareco, to the holders of notes issued under different series of the Mortgage Bond Trust Indenture, determined by the Monitor or the Court to be valid and opposable;

**“Mortgage Bond Trust Indenture Unsecured Claim”** means the aggregate amount outstanding as at the Filing Date in respect of each series of bonds issued under the Mortgage Bond Trust Indenture (including interest only accrued to the Filing Date) after realization of the Mortgage Bond Trust Indenture Security, as applicable, but excluding the Bond 5 Unsecured Claim;

**“Named Director”** means the following present and former directors and officers of the HII Group Entities: Jan Schönigh, James F. Miles, Walter Fitzgerald, Hartmut Fromm, Philip O’Brien, Edward Ovsenny, Jan Hielke Lamsma, Jan-Willem Wattel, Stephen Rosenhek, Jelle Martens, Peter van Jaarsveld and Rico Tel;

“**Newco**” means a new public liability company (*naamloze vennootschap*) to be incorporated under the laws of the Netherlands in the Pre-Plan Implementation Date Transactions for purposes of the Plan, including its subsidiaries if the context so requires;

“**Newco Assumed Portion of Corporate Creditor Disputed Claims**” means that portion of all Corporate Creditor Disputed Claims in respect of which Newco becomes a co-obligor with HII, the amount of which shall be deemed to be that percentage of the Final Adjusted Newco Note Amount equal to the aggregate of each Corporate Creditor’s pro rata share of the Newco Assumed Portion of Disputed Claims and the Newco Assumed Portion of Proven Claims;

“**Newco Assumed Portion of Corporate Creditor Proven Claims**” means that portion of all Corporate Creditor Proven Claims in respect of which Newco becomes a co-obligor with HII, the amount of which shall be deemed to be that percentage of the Final Adjusted Newco Note Amount equal to the aggregate of each Corporate Creditor’s pro rata share of the Newco Assumed Portion of Proven Claims and the Newco Assumed Portion of Disputed Claims;

“**Newco Assumed Portion of Disputed Claims**” means an amount equal to the Newco Assumed Portion of Non-Corporate Creditor Disputed Claims and the Newco Assumed Portion of Corporate Creditor Disputed Claims, which amount shall be subsequently adjusted to equal the finally determined value, if any, of such Creditors’ Proven Claims;

“**Newco Assumed Portion of Non-Corporate Creditor Disputed Claims**” means that portion of all Non-Corporate Creditor Disputed Claims in respect of which Newco becomes a co-obligor with HII, the amount of which shall be deemed to be that percentage of the Final Adjusted Newco Note Amount equal to the aggregate of each Non-Corporate Creditor’s pro rata share of the Newco Assumed Portion of Disputed Claims and the Newco Assumed Portion of Proven Claims;

“**Newco Assumed Portion of Non-Corporate Creditor Proven Claims**” means that portion of all Non-Corporate Creditor Proven Claims in respect of which Newco becomes a co-obligor with HII, the amount of which shall be deemed to be that percentage of the Final Adjusted Newco Note Amount equal to the aggregate of each Non-Corporate Creditor’s pro rata share of the Newco Assumed Portion of Proven Claims and the Newco Assumed Portion of Disputed Claims;

“**Newco Assumed Portion of Proven Claims**” means an amount equal to the Newco Assumed Portion of Non-Corporate Creditor Proven Claims and the Newco Assumed Portion of Corporate Creditor Proven Claims;

“**Newco Bond 5 Guarantee**” means the unsecured guarantee given by HII to Stichting Homburg Bonds for the benefit of the Bond 5 Claim Holders guaranteeing that the Bond 5 Claim Holders shall receive under the Plan or otherwise, distributions of Cash (including the Bond 5 Secured Claim Cash Payment) and Newco Common Shares with an aggregate minimum value equal to 50 per cent of the Bond 5 Claim;

“**Newco Bond 5 Guarantee Value**” means the fair market value of the Newco Bond 5 Guarantee on the Plan Implementation Date;

**“Newco Common Shares”** means the common shares issued by Newco pursuant to the Plan;

**“Newco Co-obligation Charge”** means a priority charge against HII’s shares of the Core BVs and of Homburg Baltic and any proceeds arising therefrom, which charge shall secure the obligations of HII to Newco under the HII Co-obligation Note;

**“Newco Incorporation Loan”** means the non-interest-bearing loan in the amount of EUR225,000 lent by HII from its Cash to the Incorporation Foundation for the purposes of incorporating Newco on the Plan Implementation Date pursuant to the Plan Transactions under the Plan;

**“Newco Incorporation Loan Note”** means the promissory note delivered by the Incorporation Foundation to HII to evidence the Newco Incorporation Loan;

**“Newco Note”** means the demand adjustable non-interest bearing unsecured promissory note to be issued by Newco in favour of HII as partial consideration for the transfer of Core Business Assets by HII to Newco, the principal amount of which shall be deemed to be equal to the Final Adjusted Newco Note Amount;

**“Newco Prospectus”** means a prospectus filed by or on behalf of Newco as required (whether by Applicable Law or by the relevant regulations of the Trading Platform) for the purposes of listing the Newco Common Shares on the Trading Platform;

**“Newco Un-Assumed Portion of Corporate Creditor Proven Claims”** means that portion of all Corporate Creditor Proven Claims less the Newco Assumed Portion of Corporate Creditor Proven Claims;

**“Newco Un-Assumed Portion of Non-Corporate Creditor Proven Claims”** means that portion of all Non-Corporate Creditor Proven Claims less the Newco Assumed Portion of Non-Corporate Creditor Proven Claims;

**“Newco Un-Assumed Portion of Proven Claims”** means the Newco Un-Assumed Portion of Non-Corporate Creditor Proven Claims and the Newco Un-Assumed Portion of Corporate Creditor Proven Claims;

**“Non-Core Bankrupt Business Entity Creditor Claim”** means a Non-Core Business Entity Creditor Claim against a Non-Core Business Entity that has been assigned or petitioned into bankruptcy;

**“Non-Core Business Asset Gross Proceeds”** means the proceeds realized from the liquidation or realization of Non-Core Business Assets;

**“Non-Core Business Asset Net Proceeds”** means the Non-Core Business Asset Gross Proceeds, net of the Asset Realization Costs;

**“Non-Core Business Asset Notes”** means, collectively, Note A (Non-Corporate Creditor) and Note B (Corporate Creditor);

**“Non-Core Business Assets”** means the HII Assets that are not Core Business Assets, including Bankruptcy Claims and Litigation Proceeds;

**“Non-Core Business Entity”** includes (i) any Cancos, other than any Amalgamating Canco and Homburg Baltic, and (ii) any Homco other than a Core Homco;

**“Non-Core Business Entity Creditor”** means a Person having a Non-Core Business Entity Creditor Claim, which shall be an Unaffected Creditor;

**“Non-Core Business Entity Creditor Claim”** means any Claim against a Non-Core Business Entity (which for greater certainty shall not include any Claim of a Non-Core Business Entity Creditor against HII or Shareco), which shall be an Unaffected Claim;

**“Non-Corporate Creditor”** means a Person having a Non-Corporate Creditor Claim, other than a Convenience Class Creditor;

**“Non-Corporate Creditor Claim”** means any unsecured Claim against HII and Shareco that is not a Corporate Creditor Claim;

**“Non-Corporate Creditor Disputed Claim”** means the face value of a Disputed Claim of a Non-Corporate Creditor;

**“Non-Corporate Creditor Proven Claim”** means a Proven Claim of a Non-Corporate Creditor;

**“North Calgary”** means North Calgary Land Ltd., a corporation incorporated under the ABCA and a Petitioner;

**“Note A (Non-Corporate Creditor)”** means the certificate of indebtedness being a global non-interest bearing variable note issued by HII and held by the Monitor on behalf of each holder of a Non-Corporate Creditor Proven Claim having a principal amount equal to the Non-Corporate Creditor’s Pro Rata Share of the Asset Realization Cash Pool, which note shall be secured by the Notes Charge;

**“Note B (Corporate Creditor)”** means the certificate of indebtedness being a global non-interest bearing variable note issued by HII and held by the Monitor on behalf of each holder of a Corporate Creditor Proven Claim having a principal amount equal to the Corporate Creditor’s Pro Rata Share of the Asset Realization Cash Pool, which note shall be secured by the Notes Charge;

**“Notes Charge”** means a charge ordered by the Court in the Sanction and Vesting Order over the Non-Core Business Assets in favour of the beneficiaries of the Non-Core Business Asset Notes;

**“Notice of Final Distribution”** means a notice to Affected Creditors to be published at least 30 days in advance of the Final Distribution Date in La Presse (French version), the Globe and Mail, the Calgary Herald and the Halifax Chronicle Herald (English version) and De Volkskrant, de Telegraaf and the NRC (all published in the Netherlands) (Dutch version) notifying Affected Creditors of the Final Distribution Date, substantially in the form of Schedule “C” to the Sanction and Vesting Order;

“NSCA” means the Nova Scotia *Companies Act*, R.S., c. 81, as amended;

“NSLPA” means Nova Scotia *Limited Partnerships Act*, R.S., c. 259, as amended;

“Order” means any order of the Court, or any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority;

“Person” is to be broadly interpreted and includes an individual, a partnership, a corporation, a trust, a joint venture, any Governmental Authority, any trade union, any employee association or any incorporated or unincorporated entity or association of any nature and the executors, administrators, or other representatives of an individual in such capacity;

“Petitioners” means HII, Shareco, Churchill, Inverness, CP Development, North Calgary, and each of them being a “Petitioner”;

“Plan” means the joint Plan of Compromise and Reorganization filed by HII and Shareco under the CCAA and the ABCA, as such Plan may be amended, varied or supplemented from time to time by HII and Shareco as approved by the Monitor, all in accordance with the terms hereof;

“Plan Charges” means the Administration Charge, the Notes Charge and the Liquidation Charge as continued and amended by and created by the Sanction and Vesting Order and which are intended to survive the Plan Implementation Date, but shall not include the Newco Co-obligation Charge;

“Plan Filing Date” means the date on which the Plan is filed with the Court;

“Plan Implementation Date” means the Business Day on which all of the conditions precedent to the implementation of the Plan have been fulfilled or, to the extent permitted pursuant to the terms and conditions of the Plan, waived, as evidenced by the Monitor’s Plan Implementation Date Certificate to be filed with the Court;

“Plan Sanction Date” means the date that the Sanction and Vesting Order is made by the Court;

“Plan Transactions” means the transactions and steps considered necessary or desirable to give effect to the transactions contemplated in the Plan, including those set out in Article 10 hereof, which steps and transactions may include one or more incorporations, mergers, amalgamations, consolidations, arrangements, continuations, restructurings, conversions, liquidations, winding ups, dissolutions, transfers, reorganizations, repayments, redemptions, exchanges, cancellations, discharges or other transactions;

“Plan Transactions Notice” means one or more notices setting out and detailing substantially all of the Plan Transactions to be posted on the Website on or before the Plan Transactions Notice Filing Date with notice of such posting in each instance forthwith provided to the Service List (as such notice may thereafter be modified, amended, varied or supplemented in accordance with the Plan) provided that a final Plan

Transactions Notice will be posted on the Website no later than on the Plan Implementation Date with notice of such posting forthwith provided to the Service List;

**“Plan Transactions Notice Filing Date”** means the date which shall be at least 10 days prior to the date set forth in the Meeting Order as the deadline for the return of proxies to the Monitor in connection with the Creditors’ Meeting, which date shall be confirmed by a notice posted on the Website and forthwith provided to the Service List;

**“Post-Filing Trade Payables”** means post-Filing Date payables that were incurred by the HII Group Entities (i) after the Filing Date and before the Plan Implementation Date, (ii) in the ordinary course of business, and (iii) in compliance with the Initial Order and other Orders issued in connection with the CCAA Proceedings;

**“Pre-Plan Implementation Date Transactions”** means those transactions to be effected prior to the Plan Implementation Date, including, without limitation, the transactions that are more particularly described in Schedule “B”;

**“Proof of Claim”** means the form to be completed and filed by a Creditor, pursuant to the Claims Process Order, by the applicable Claims Bar Date setting forth its applicable Claim;

**“Property”** means all present and future assets, shares, units, rights, undertakings, and properties of any Person, whether Real Property or personal property, moveable or immovable, tangible or intangible, of any nature and kind whatsoever and wherever situated, and whether held directly or indirectly, and which for greater certainty shall include Real Property Interests, and including all proceeds thereof;

**“Pro Rata Share”** means on the Initial Distribution Date and any subsequent Distribution Date, as applicable:

- (a) with respect to the Newco Common Shares, the Cash Pool and the Asset Realization Cash Pool, that number of Newco Common Shares or amount of cash from the Cash Pool or Asset Realization Cash Pool, respectively, that is equal to (i) the amount of the Affected Creditor’s Proven Claim (or where appropriate, the face value of the Affected Creditor’s Disputed Claim), divided by (ii) the sum of: (A) the aggregate amount of all Proven Claims held by Affected Creditors (other than Convenience Class Creditors); and (B) the aggregate amount of all Disputed Claims held by Affected Creditors (other than Convenience Class Creditors); and
- (b) with respect to the Stichting Advances, that portion of the Stichting Advances that is equal to: (i) the amount of the Corporate Bond Proven Claim or the Mortgage Bond Proven Claim, divided by (ii) the aggregate of all amounts constituting Proven Claims of Affected Creditors (other than Convenience Class Creditors);

**“Proven Claim”** means a Claim of an Affected Creditor finally determined for voting and distribution purposes in accordance with the Claims Process Order and the Meeting Order;

**“Real Property”** means lands, tenements and hereditaments excluding leases;

**“Real Property Interests”** means any direct or indirect legal, beneficial or equitable interest in Real Property wherever situate;

**“Record Date”** has the meaning ascribed thereto in the Meeting Order;

**“Released Party”** means a Person who is released pursuant to Section 11.1 of the Plan, including for greater certainty an HII Released Party (as defined therein) and a non-HII Released Party (as defined therein);

**“Reorganization Transaction”** means the sequential steps to be effected on the Plan Implementation Date as set out in Section 10.3 of the Plan;

**“Required Majority”** means a majority in number of Affected Creditors who represent at least two-thirds in value of the Voting Claims of such Affected Creditors who actually vote on the Resolution (in person or by proxy) at the Creditors’ Meeting or were deemed to vote on the Resolution;

**“Reserve Adjustment”** means an increase in one or more Cash Reserves, as applicable, in such amount(s) as the Monitor may determine to be necessary or desirable, in its sole and unfettered discretion, which increase shall be funded from the Cash Pool Account on or after the Plan Implementation Date and allocated by the Monitor to the applicable Cash Reserve;

**“Reserves”** means collectively the Cash Reserves and the Disputed Claims (Newco Share) Reserve as authorized by the Sanction and Vesting Order;

**“Resolution”** means the resolution approving the Plan presented to the Affected Creditors for consideration at the Creditors’ Meeting;

**“Restructuring Claim”** means any Claim arising as a result of or in connection with the disclaimer, rescission, repudiation, termination or restructuring by any HII Group Entity of any contract, lease or other agreement or obligation, including any employment agreement, after the Filing Date but on or before April 30, 2012; provided that “Restructuring Claim” shall not include an Excluded Claim or Subsequent Restructuring Claim;

**“RETT”** means “real estate transfer taxes” and includes any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, levied on, or measured by, transfers of land and buildings and other structures, including component parts, as well as other property assimilated to real or immoveable property for these purposes;

**“Sanction and Vesting Order”** means the Order to be granted by the Court as contemplated under the Plan which, *inter alia*, approves and sanctions the Plan and the transactions contemplated thereunder, vests title in and to the Core Business Assets in Newco free and clear of all Encumbrances other than the Core Business Asset Creditor Claims and grants the Plan Charges, which shall be a Final Order;

**“Service List”** means the service list posted on the Website, as may be amended from time to time;

**“Shareco”** means Homburg Shareco Inc., a corporation incorporated under the NSCA and a Petitioner;

**“Shareco Creditor”** means a Person having a Shareco Creditor Claim;

**“Shareco Creditor Claim”** means any Claim against Shareco, and in the case of Stichting Homburg Bonds, means the Mortgage Bond Trust Indenture Unsecured Claim;

**“Stay of Proceedings”** means the stay of proceedings created by the Initial Order as amended and extended by further Orders of the Court from time to time;

**“Stichting Advances”** means all amounts advanced by the Petitioners to counsel and advisors to the Corporate Indenture Trustees (other than Stichting Homburg Capital Securities) from time to time pursuant to the Funding Order;

**“Stichting Homburg Bonds”** means the trustee under the Corporate Bond Trust Indenture and the Mortgage Bond Trust Indenture (formerly Stichting Homburg Mortgage Bond);

**“Stichting Homburg Capital Securities”** means the trustee under the Capital Securities Trust Indenture;

**“Subsequent Restructuring Claim”** means any Claim arising as a result of or in connection with the disclaimer, rescission, repudiation, termination or restructuring by any HII Group Entity of any contract, lease or other agreement, including any employment agreement, after April 30, 2012;

**“Subsidiary”** shall have the same meaning as such term is used in the ABCA;

**“Swiss Bondco”** means Swiss Bondco Inc., a company that is incorporated under the NSCA to be continued as an Alberta corporation;

**“Taberna Claim”** means the aggregate Claim as set out in the Proof of Claim filed by Wells Fargo (in respect of the Taberna Indentures) pursuant to the Claims Process Order;

**“Taberna Indentures”** means, collectively: (i) an Indenture dated July 26, 2006 for the issuance of US\$20,000,000 of notes due 2036 between HII and Wells Fargo, (ii) an Indenture dated July 26, 2006 for the issuance of EUR25,000,000 of notes due 2036 between HII and Wells Fargo, (iii) an Exchange Agreement dated February 28, 2011 among HII, Taberna Preferred Funding VIII, Ltd., Taberna Europe CDO I P.L.C and Taberna Europe CDO II P.L.C., (iv) an Amended and Restated Supplemental Indenture dated February 28, 2011 for the issuance of US\$12,000,000 due 2036 between HII and Wells Fargo on behalf of the Taberna VI noteholders; (v) an Indenture dated February 28, 2011 for the issuance of US\$8,000,000 of notes due 2036 between HII and Wells Fargo on behalf of the Taberna VIII noteholders; and (vi) an Indenture dated February 28, 2011 for the issuance of EUR25,000,000 of notes due 2036 between HII and Wells Fargo on behalf of the Taberna Europe I noteholders and the Taberna Europe II noteholders;

**“Taberna Order”** means a Final Order of the Court addressing the distribution entitlement of the holders of the Taberna Claim under the Plan in respect of the Taberna Claim and authorizing and directing HII and the Monitor to rely on such Order in connection with the Plan;

**“Tax”** means any and all taxes including all income, sales, use, goods and services, harmonized sales, value added, capital gains, RETT, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property, and personal property taxes and other taxes, customs, duties, fees, levies, imposts and other assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan contributions, employment insurance and unemployment insurance payments and workers' compensation premiums, together with any instalments with respect thereto, and any interest, penalties, fines, fees, other charges and additions with respect thereto;

**“Tax Claims”** means claims of any Taxing Authorities against HII and Shareco arising from and after the Plan Implementation Date;

**“Tax Obligation”** means any amount of Tax owing by a Person to a Taxing Authority including RETT;

**“Tax Statutes”** shall have the meaning ascribed thereto in Subsection 12.2(s) of the Plan;

**“Taxing Authorities”** means anyone of Her Majesty the Queen, Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof and any Canadian or non-Canadian government, regulatory authority, government department, agency, commission, bureau, minister, court, tribunal or body or regulation making entity exercising taxing authority or power, and **“Taxing Authority”** means any one of the Taxing Authorities, as well as any corresponding taxing authorities of a foreign jurisdiction including Valsts Ieņēmumu Dienests (Latvia), Maksu- ja Tolliamet (Estonia), Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos (Lithuania), the Belastingdienst (Holland) and the Finanzamt (Germany);

**“Trading Platform”** such unilateral, multilateral, regulated or unregulated trading platform as may agreed by HII, the Monitor and Stichting Homburg Bonds;

**“Transfer Restrictions”** means any and all restrictions on the transfer of shares, limited partnership or other units or interests in Real Property including rights of first refusal, rights of first offer, shotgun rights, purchase options, change of control consent rights, puts or forced sales provisions or similar rights of shareholders or lenders in respect of such interests;

**“Trustee in Bankruptcy”** means any trustee in bankruptcy, interim receiver, receiver, receiver and manager, custodian, sequestrator, administrator, monitor or liquidator or any other Person with similar powers that is appointed in respect of any member of the HII Group Entities or of any Property;

**“Unaffected Claims”** means the Excluded Claims, the Employee Priority Claims, the Government Priority Claims, the Cash Management Lender Claims, the Bond 5 Secured Claim, the HSBC Secured Claim, the Amalgamating Canco Creditor Claims, the Core Business Creditor Claims, the Non-Core Business Entity Creditor Claims, the Homburg Baltic Limited Partnership Creditor Claims, the Homco 190 Loan, the Homco 191 Loan, the Homco 199 Loan, and the Administrative Reserve Costs;

**“Unaffected Creditors”** means a Creditor who has an Unaffected Claim, but only in respect of and to the extent of such Unaffected Claim;

**“Un-assumed Portion of Corporate Creditor Proven Claim”** means that portion of each Corporate Creditor’s Proven Claim in respect of which Newco does not become a co-obligor with HII;

**“Un-assumed Portion of Non-Corporate Creditor Proven Claim”** means that portion of each Non-Corporate Creditor’s Proven Claim in respect of which Newco does not become a co-obligor with HII;

**“Un-assumed Portion of Proven Claims”** means the aggregate of the Un-assumed Portion of Non-Corporate Creditor Proven Claims and the Un-assumed Portion of Corporate Creditor Proven Claims;

**“Unsecured Creditors’ Class”** means the sole class of Affected Creditors entitled to vote on the Plan at the Creditors’ Meeting;

**“Voting Claim”** means the amount of the Affected Claim of an Affected Creditor as finally determined for voting purposes in accordance with paragraph 30 of the Claims Process Order and the Meeting Order entitling such Affected Creditor to vote at the Creditors’ Meeting in accordance with the provisions of the Meeting Order, the Plan and the CCAA, and includes, for greater certainty, a Proven Claim;

**“Website”** means <http://www.deloitte.com/ca/homburg-invest>;

**“Wells Fargo”** means Wells Fargo Bank, N.A. the trustee under the Taberna Indentures;

**“Withholding Obligation”** has the meaning ascribed thereto in Section 8.13(c).

## **1.2 Certain Rules of Interpretation**

For the purposes of the Plan:

- (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;
- (b) any reference in the Plan to an Order or an existing document or exhibit filed or to be filed means such Order, document or exhibit as it may have been or may be amended, modified, or supplemented;

- (c) unless otherwise specified, all references to (i) currency and to “\$” or “Cdn\$” are to Canadian dollars; and (ii) “EUR” are to Euros, except as otherwise indicated;
- (d) the division of the Plan into “Articles” and “Sections” and the insertion of a Table of Contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of “Articles” and “Sections” or otherwise intended as complete or accurate descriptions of the content thereof;
- (e) references in the Plan to “Articles”, “Sections”, “Subsections” and “Schedules” are references to Articles, Sections, Subsections and Schedules of or to the Plan;
- (f) the use of words in the singular or plural, or with a particular gender, including a definition, shall not limit the scope or exclude the application of any provision of the Plan or a Schedule hereto to such Person (or Persons) or circumstances as the context otherwise permits;
- (g) the words “includes” and “including” and similar terms of inclusion shall not, unless expressly modified by the words “only” or “solely”, be construed as terms of limitation, but rather shall mean “includes but is not limited to” and “including but not limited to”, so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (h) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;
- (i) the terms “the Plan”, “hereof”, “herein”, “hereto”, “hereunder” and similar expressions shall be deemed to refer generally to the Plan and not to any particular “article”, “section” or other portion of the Plan and include any documents supplemental hereto; and
- (j) the word “or” is not exclusive.

### **1.3 Time**

For purposes of the Plan, unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean prevailing local time in Montreal, Quebec, Canada, unless otherwise stipulated.

### **1.4 Date and Time for any Action**

For purposes of the Plan:

- (a) In the event that any date on which any action is required to be taken under the Plan by any Person is not a Business Day, that action shall be required to be taken on the next succeeding day which is a Business Day, and any reference to an

event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day; and

- (b) Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day.

### **1.5 Successors and Assigns**

The Plan shall be binding upon and shall enure to the benefit of the heirs, administrators, executors, legal personal representatives, liquidators, receivers and trustees in bankruptcy, successors and assigns of any Person or party named or referred to in the Plan.

### **1.6 Governing Law**

The Plan shall be governed by and construed in accordance with the laws of the Province of Quebec and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of the Plan and all proceedings taken in connection with the Plan and its provisions shall be subject to the exclusive jurisdiction of the Court.

### **1.7 Governing Language**

In the event of any conflict, inconsistency, ambiguity or difference between the English version of the Plan and any translations thereof, the English version shall govern and be paramount, and the applicable provision in the translation thereof shall be deemed to be amended to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

### **1.8 Identification of Core Business Assets as at Plan Filing Date**

Schedule "E" identifies the Core Business Assets as at the Plan Filing Date.

### **1.9 Schedules**

The following are the Schedules to the Plan, which are incorporated by reference into the Plan and form a part of it:

Schedule "A"	Articles of Reorganization
Schedule "B"	Pre-Plan Implementation Date Transactions
Schedule "C"	Meeting Order
Schedule "D"	Homcos
Schedule "E"	Core Business Assets as at the Plan Filing Date

## **ARTICLE 2 PURPOSE AND EFFECT OF THE PLAN**

### **2.1 Purpose and Background**

- (a) The purpose of the Plan is to:
- (i) effect a compromise, settlement and payment of all Affected Claims as finally determined for voting and distribution purposes pursuant to the Claims Process Order, the Meeting Order and the Plan;
  - (ii) streamline the structure and operation of the Business to maintain the Core Business Assets as a core portfolio of profitable properties in Europe and to identify and assess monetization opportunities within a reasonable timeframe; and
  - (iii) facilitate an orderly liquidation of Non-Core Business Assets over a reasonable period of time;
- all in the expectation that all Persons with an economic interest in HII's Business will derive a greater benefit from the implementation of the Plan than would result from a bankruptcy of the Business in its entirety.
- (b) The circumstances and events leading up to the Plan are described in the Information Circular circulated to Affected Creditors prior to and in connection with the Creditors' Meeting, in accordance with the Meeting Order.

### **2.2 Persons Affected**

The Plan provides for a coordinated reorganization of the Business and a compromise of the Affected Claims. The Plan will become effective at the Effective Time on the Plan Implementation Date. On the Plan Implementation Date, each Affected Claim will be fully and finally compromised, released, settled and discharged. The Plan shall be binding on and enure to the benefit of HII, the Homburg Group Members, the Affected Creditors, the Released Parties and all other Persons named or referred to in, or subject to, the Plan.

### **2.3 Persons Not Affected**

For greater certainty, the Plan does not affect the Unaffected Creditors with respect to and to the extent of their Unaffected Claims. Nothing in the Plan shall affect the Homburg Group Members' rights and defences, both legal and equitable, with respect to any Unaffected Claims including, but not limited to, all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims.

### **2.4 Equity Claims**

All Persons holding Equity Claims, including the Claims of holders of HII Class A Shares and holders of HII Class B Shares, shall not be entitled to vote at or attend the Creditors' Meeting, and shall not receive a distribution under the Plan or otherwise receive anything in respect of their HII Class A Shares and/or HII Class B Shares. At the Effective Time on the Plan

Implementation Date, all Equity Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred and all HII's Existing Authorized Capital shall be deemed to be surrendered for cancellation and shall be deemed to be cancelled without compensation as set forth in the Plan.

## **2.5 Capital Securities Claims**

None of Stichting Homburg Capital Securities or the holders of the Capital Securities Claims shall be entitled to vote at or attend the Creditors' Meeting, and shall not receive any distribution under the Plan. At the Effective Time on the Plan Implementation Date, the Capital Securities Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred.

### **ARTICLE 3 CLASSIFICATION OF CREDITORS, VOTING CLAIMS AND RELATED MATTERS**

#### **3.1 Classification of Creditors**

For the purposes of considering, voting on and receiving distributions under the Plan, the Affected Creditors shall constitute a single class, the "**Unsecured Creditors' Class**".

#### **3.2 Claims of Affected Creditors**

- (a) Affected Creditors with Affected Claims that were less than or equal to Cdn\$10,000 in the aggregate as at the Claims Bar Date shall file a Convenience Class Claim Declaration with the Monitor on or before the deadline set out in the Meeting Order. If any such Affected Creditor:
  - (i) makes a Convenience Class Claim Election in its Convenience Class Claim Declaration, or does not return a Convenience Class Claim Declaration to the Monitor by the deadline set out in the Meeting Order, such Affected Creditor shall be deemed to vote in favour of the Plan and shall be entitled to receive only the Cash Elected Amount and no other entitlement under the Plan;
  - (ii) does not make a Convenience Class Claim Election in its Convenience Class Claim Declaration, such Affected Creditor shall be entitled to vote their Voting Claims at the Creditors' Meeting in respect of the Plan and shall be entitled to receive the rights and distributions provided for under and pursuant to the Plan;
- (b) Affected Creditors with Affected Claims that were greater than Cdn\$10,000 in the aggregate as at the Claims Bar Date shall:
  - (i) not be entitled to make a Convenience Class Claim Election;

- (ii) be entitled to vote their Voting Claims at the Creditors' Meeting in respect of the Plan; and
- (iii) be entitled to receive the rights and distributions provided for under and pursuant to the Plan.

### **3.3 Unaffected Claims**

Unaffected Claims shall not be compromised under the Plan. No holder of an Unaffected Claim shall:

- (a) be entitled to vote on the Plan or attend at any Creditors' Meeting; or
- (b) be entitled to or receive distributions in respect of such Unaffected Claims, unless specifically provided for under and pursuant to the Plan.

### **3.4 Priority Claims**

The Employee Priority Claims and the Government Priority Claims, if any, shall be paid on or after the Plan Implementation Date from the Administrative Reserve pursuant to and in accordance with Section 10.3(o) of the Plan, the Sanction and Vesting Order and the CCAA.

### **3.5 Creditors' Meeting**

The Creditors' Meeting shall be held in accordance with the Plan, the Claims Process Order, the Meeting Order and any further Order of the Court. The only Persons entitled to attend the Creditors' Meeting are representatives of the Homburg Group Members and their respective legal counsel and advisors, the Monitor and its legal counsel, the Corporate Indenture Trustees (other than Stichting Homburg Capital Securities) and their respective legal counsel and advisors, and all other Persons, including the other holders of proxies, entitled to vote at the Creditors' Meeting and their legal counsel and advisors.

### **3.6 Voting**

Each Affected Creditor in the Unsecured Creditors' Class who is entitled to vote at the Creditors' Meeting, pursuant to and in accordance with the Claims Process Order, the Meeting Order, the Plan and the CCAA, shall be entitled to one vote equal to the dollar value of its Affected Claim determined as a Voting Claim. Corporate Creditors under the Corporate Indentures who have beneficial ownership of a Voting Claim as of the Record Date (other than holders of a Capital Securities Claim) shall be entitled to vote on the Plan at the Creditors' Meeting pursuant to and in accordance with the Meeting Order. Holders of Intercompany Claims shall not be entitled to vote on the Plan.

### **3.7 Procedure for Valuing Voting Claims**

The procedure for valuing Voting Claims and resolving disputes and entitlements to voting is set forth in the Claims Process Order, the Meeting Order, the Plan and the CCAA. HII and the Monitor shall have the right to seek the assistance of the Court in valuing any Voting Claim in accordance with the Claims Process Order, the Meeting Order and the Plan, if required, and to ascertain the result of any vote on the Plan.

### **3.8 Approval by Creditors**

In order to be approved, the Plan must receive the affirmative vote in the Required Majority of the Unsecured Creditors' Class.

### **3.9 Guarantees and Similar Covenants**

No Person who has a Claim under a Guarantee, surety, indemnity or similar covenant in respect of any Claim which is compromised under the Plan (such compromised Claim being the "Principal Claim"), or who has any right to claim over in respect of or to be subrogated to the rights of any Person in respect of a Principal Claim shall:

- (a) be entitled to any greater rights as against HII than the Person holding the Principal Claim;
- (b) be entitled to vote on the Plan to the extent that the Person holding the Principal Claim is voting on the Plan; or
- (c) be entitled to receive any distribution under the Plan to the extent that the Person holding the Principal Claim is receiving a distribution.

## **ARTICLE 4 CASH POOL, CASH RESERVES AND KERP FUNDS**

### **4.1 Creation of the Cash Pool**

On the Plan Implementation Date, HII and Shareco shall deliver to the Monitor by way of wire transfer(s) (in accordance with wire transfer instructions provided by the Monitor at least three (3) Business Days prior to the Plan Implementation Date) the aggregate of all their Cash net of the Cash Reserves pursuant to Section 10.3(1)(ii) of the Plan, which Cash shall be held by the Monitor as the Cash Pool. The Monitor shall hold the Cash Pool in the Cash Pool Account for distribution to Affected Creditors with Proven Claims and Disputed Claims (to the extent such Disputed Claims subsequently become Proven Claims) pursuant to and in accordance with the Plan.

### **4.2 The Administrative Reserve**

- (a) On the Plan Implementation Date, HII and Shareco shall deliver to the Monitor by way of wire transfer(s) (in accordance with wire transfer instructions provided by the Monitor at least three (3) Business Days prior to the Plan Implementation Date) the amount of the Administrative Reserve. The Monitor shall hold the Administrative Reserve in the Administrative Reserve Account for the purpose of paying the Administrative Reserve Costs in accordance with the Plan, with any remaining balance to be contributed to the Cash Pool for distribution to the Affected Creditors with Proven Claims and Disputed Claims (to the extent such Disputed Claims subsequently become Proven Claims) pursuant to and in accordance with the Plan.

- (b) The Monitor shall pay the Administrative Reserve Costs from the Administrative Reserve Account as same become due from and after the Plan Implementation Date.

#### **4.3 The Disputed Claims (Cash) Reserve**

On the Plan Implementation Date, HII and Shareco shall deliver to the Monitor by way of wire transfer(s) (in accordance with wire transfer instructions provided by the Monitor at least three (3) Business Days prior to the Plan Implementation Date) the amount of the Disputed Claims (Cash) Reserve. The Monitor shall hold the Disputed Claims (Cash) Reserve in the Disputed Claims Reserve Account for the purpose of paying amounts to Affected Creditors in respect of their Disputed Claims which have become Proven Claims in accordance with the Plan, the Claims Process Order and the Meeting Order, with any remaining balance (once all Disputed Claims have been finally determined) to be contributed by the Monitor to the Cash Pool for distribution to the Affected Creditors with Proven Claims in accordance with the Plan.

#### **4.4 The Litigation Reserve**

On the Plan Implementation Date, HII and Shareco shall deliver to the Monitor by way of wire transfer(s) (in accordance with wire transfer instructions provided by the Monitor at least three (3) Business Days prior to the Plan Implementation Date) the amount of the Litigation Reserve. The Monitor shall hold the Litigation Reserve in the Litigation Reserve Account for the purpose of paying and shall pay the Litigation Reserve Costs, with any remaining balance to be contributed by the Monitor with the approval of the Liquidation Advisory Committee to the Cash Pool for distribution to the Affected Creditors with Proven Claims and Disputed Claims (to the extent that such Disputed Claims subsequently become Proven Claims) in accordance with the Plan.

#### **4.5 The KERP Funds**

On the Plan Implementation Date, the Monitor shall continue to hold the KERP Funds for payment in accordance with the KERPS, and the Monitor shall pay the KERPS to the holders of proven KERP Claims in accordance with their entitlements.

### **ARTICLE 5 DISPUTED CLAIMS (NEWCO SHARES) RESERVE**

#### **5.1 Disputed Claims (Newco Shares) Reserve**

On the Plan Implementation Date, the Disputed Claims (Newco Shares) Reserve shall be established by the Monitor from the Newco Common Shares issued to the Monitor or its designate which Disputed Claims (Newco Shares) Reserve shall be held by the Monitor or its designate on behalf of and for the purposes of distributing such Newco Common Shares to Affected Creditors (other than Convenience Class Creditors) in respect of their Disputed Claims which have become Proven Claims in accordance with the Plan, the Claims Process Order and the Meeting Order, with any remaining Newco Common Shares to be transferred by the Monitor or its designate to Newco for cancellation for no consideration.

## **5.2 No Liability**

The Monitor or its designate shall hold the Newco Common Shares issued to it on the Initial Distribution Date in respect of an Affected Creditor's Disputed Claim pursuant to Section 8.2 of the Plan until the earlier of:

- (a) a transfer of such Newco Common Shares to such Affected Creditor on a Distribution Date in respect of its Proven Claim, in the event such Affected Creditor's Disputed Claim becomes a Proven Claim, in whole or in part, in accordance with Section 9.2(a) of the Plan; or
- (b) the Final Distribution Date, in the event such Affected Creditor's Disputed Claim, in whole or in part, is finally determined to be invalid, in which case the portion of such Newco Common Shares relating to such invalid Disputed Claim shall be donated to Newco for cancellation for no consideration in accordance with Section 9.3 of the Plan.

The Monitor or its designate shall have no authority to transfer Newco Common Shares to any Person other than in accordance with the Plan. The Monitor or its designate shall have no personal liability relating to holding the Newco Common Shares in the Disputed Claims (Newco Shares) Reserve, including without limitation for any loss arising out of fluctuations in the market value of the Newco Common Shares while held in the Disputed Claims (Newco Shares) Reserve, other than its obligation to transfer shares from the Disputed Claims (Newco Shares) Reserve pursuant to and in accordance with the Plan. The Monitor or its designate shall not exercise any voting rights in respect of the Newco Common Shares.

## **ARTICLE 6 REALIZATION OF NON-CORE BUSINESS ASSETS**

### **6.1 Realization of Non-Core Business Assets**

Pursuant to the Plan and the Sanction and Vesting Order, from and after the Plan Implementation Date, the Monitor:

- (a) shall take control and manage any bank accounts of any of the Non-Core Business Entities;
- (b) shall liquidate or realize any of the Non-Core Business Assets with the prior approval of the Liquidation Advisory Committee;
- (c) shall pay the Asset Realization Costs from the Non-Core Business Asset Gross Proceeds;
- (d) shall contribute any Non-Core Business Asset Net Proceeds to the Asset Realization Cash Pool for payment to Affected Creditors (other than Convenience Class Creditors) with Proven Claims and Disputed Claims (to the extent such Disputed Claims subsequently become Proven Claims) pursuant to and in accordance with the Plan;

- (e) shall determine whether any Non-Core Business Entity is in fact or has become an Insolvent Person and should be assigned into bankruptcy with the prior approval of the Liquidation Advisory Committee;
- (f) may assign or cause to be assigned any Non-Core Business Entity which is not yet in bankruptcy proceedings into bankruptcy and, to the extent that such Non-Core Business Entity is incorporated or formed under Canadian federal or provincial law, the Monitor shall be entitled but not obligated to act as Trustee in Bankruptcy thereof;
- (g) may on behalf of HII or any Homburg Group Member, prepare, file, negotiate and if necessary litigate any Bankruptcy Claim in any bankruptcy estate of a Non-Core Business Entity, whether or not the Monitor is also acting as Trustee in Bankruptcy of such Non-Core Business Entity; and
- (h) shall receive distributions in respect of any Bankruptcy Claim and contribute any such distributions to the Asset Realization Cash Pool for distribution to Affected Creditors (other than Convenience Class Creditors) with Proven Claims and Disputed Claims (to the extent such Disputed Claims subsequently become Proven Claims) pursuant to and in accordance with the Plan.

## **6.2 Litigation Claims**

On the Plan Implementation Date, pursuant to the Sanction and Vesting Order:

- (a) all Litigation Claims shall be administered by the Monitor on behalf and for the benefit of the Affected Creditors;
- (b) the Monitor, upon direction of the Liquidation Advisory Committee, and the exercise of their collective reasonable business judgment, shall in an efficient and responsible manner take all advisable steps to investigate and assess any Litigation Claim or Creditor Cause of Action and the Monitor shall report to the Liquidation Advisory Committee in respect of such Litigation Claim or Creditor Cause of Action, it being understood that the Monitor shall not bear any liability in respect of Litigation Claims and Creditor Causes of Action, whether or not asserted;
- (c) the Monitor shall be authorized but not obligated to prosecute and/or settle any Litigation Claim on prior consultation with and the approval of the Liquidation Advisory Committee;
- (d) any Litigation Proceeds shall be contributed by the Monitor to the Asset Realization Cash Pool and deposited to the Cash Pool Account for distribution to Affected Creditors (other than Convenience Class Creditors) with Proven Claims and Disputed Claims (to the extent such Disputed Claims subsequently become Proven Claims) pursuant to and in accordance with the Plan;
- (e) the Litigation Reserve Costs shall be reimbursed from the Litigation Reserve; and

- (f) prior to the Final Distribution Date, upon determination by the Liquidation Advisory Committee that no Litigation Claims or Creditor Causes of Action remain to be investigated or that no Litigation Claims remain to be prosecuted by the Monitor, any amounts remaining in the Litigation Reserve shall be contributed by the Monitor to the Cash Pool for distribution to Affected Creditors with Proven Claims pursuant to and in accordance with the Plan.

### **6.3 Non-Core Business Entity Creditors**

For greater certainty, Non-Core Business Entity Creditors shall be Unaffected Creditors under the Plan. Any liquidation or realization of Non-Core Business Assets, including for greater certainty of any Real Property Interests, shall be subject to Non-Core Business Entity Creditor Claims, which Non-Core Business Entity Creditor Claims shall be satisfied in full or otherwise provided for by the Monitor to the satisfaction of such Non-Core Business Entity Creditors or in the event of a bankruptcy otherwise dealt with in accordance with Applicable Laws.

### **6.4 Creation of Asset Realization Cash Pool**

From and after the Plan Implementation Date, the Monitor shall establish the Asset Realization Cash Pool from the Non-Core Business Asset Net Proceeds, which shall be net of the Disputed Claims (Asset Realization) Reserve, and such Asset Realization Cash Pool shall be deposited to the Cash Pool Account.

### **6.5 The Disputed Claims (Asset Realization) Reserve**

After the Plan Implementation Date, as authorized and directed by the Sanction and Vesting Order, the Monitor shall establish the Disputed Claims (Asset Realization) Reserve from the Non-Core Business Asset Net Proceeds. The Disputed Claims (Asset Realization) Reserve shall be held by the Monitor in the Disputed Claims Reserve Account, from which the Monitor shall pay amounts to Affected Creditors (other than Convenience Class Creditors) in respect of their Disputed Claims which have become Proven Claims in accordance with the Plan, the Claims Process Order and the Meeting Order.

### **6.6 The Administration Charge**

The Administration Charge shall continue secure the Bankruptcy Trustee Fees in connection with the bankruptcy of any Non-Core Business Entity to the extent that there is insufficient value in such bankruptcy estate to satisfy such Bankruptcy Trustee Fees.

## **ARTICLE 7 LIQUIDATION ADVISORY COMMITTEE**

### **7.1 Constitution of Liquidation Advisory Committee**

The Liquidation Advisory Committee shall be constituted on the Plan Implementation Date pursuant to the Sanction and Vesting Order and the Plan. The Monitor shall meet with the Liquidation Advisory Committee at least quarterly or more frequently as the Liquidation Advisory Committee deems necessary or prudent. The members of the Liquidation Advisory

Committee shall be entitled to reasonable compensation for their fees and disbursements relating to their service on the Liquidation Advisory Committee in an amount to be agreed upon by such members and the Monitor, which fees and disbursements shall form part of the Administrative Reserve Costs to be funded from the Administrative Reserve Account.

## **7.2 Liquidation or Realization of Non-Core Business Assets**

The Monitor shall consult with the Liquidation Advisory Committee and keep it apprised regarding the liquidation or realization of the Non-Core Business Assets. In particular, the Monitor shall advise the Liquidation Advisory Committee of the terms of any proposed sale of any Non-Core Business Asset and shall require the approval of the Liquidation Advisory Committee to complete such sale. In the event that the approval of the Liquidation Advisory Committee is not forthcoming, the Monitor shall so advise the Court and seek instructions thereon.

## **7.3 Bankruptcy of Non-Core Business Entities**

The Monitor shall apprise the Liquidation Advisory Committee of the assignment into bankruptcy of any Non-Core Business Entity.

## **7.4 Litigation Claims**

Pursuant to Section 6.2 of the Plan, the Monitor shall consult with and require the approval of the Liquidation Advisory Committee with respect to the commencement, prosecution or settlement of any Litigation Claim.

# **ARTICLE 8 PROVISIONS REGARDING DISTRIBUTIONS AND PAYMENTS**

## **8.1 Distributions to Affected Creditors**

The Affected Creditors with Proven Claims shall receive the distributions provided herein in full satisfaction of such Proven Claims, and on the Plan Implementation Date, all Affected Claims will be affected and compromised, settled, released and discharged in accordance with the terms of the Plan, the Sanction Order and Vesting Order and the CCAA. From and after the Plan Implementation Date, the Convenience Class Creditors with Proven Claims shall receive the Cash Elected Amount in respect of their Convenience Class Claims and the remaining Affected Creditors with Proven Claims shall receive their respective Pro Rata Share of the following:

- (a) The Newco Common Shares;
- (b) The Cash Pool; and
- (c) The Asset Realization Cash Pool.

## 8.2 Distribution Mechanics – Newco Common Shares

In order to effect the distribution of Newco Common Shares on the Initial Distribution Date to Affected Creditors (other than Convenience Class Creditors) with Proven Claims and to the Monitor in respect of Disputed Claims, the following steps will be taken from and after the Plan Implementation Date (and where reference is made to the Monitor holding Newco Common Shares, it is holding same on behalf of Affected Creditors (other than Convenience Class Creditors) with Disputed Claims that are finally determined to be Proven Claims):

- (a) On or before the Distribution Materials Record Date, the Monitor shall send a blank Letter of Instruction by prepaid first class mail, courier, email or facsimile to each Affected Creditor (other than a Convenience Class Creditor) who has a Proven Claim (and at the same time to an Affected Creditor (other than a Convenience Class Creditor) with a Disputed Claim in order that the Distribution Materials Record Date take effect) to the address for such Affected Creditor specified in such Affected Creditor's Proof of Claim, or as evidenced by any assignment or transfer in accordance with Sections 8.11 and 8.12 of the Plan; provided however, that in the case of the Corporate Creditors having Corporate Creditor Claims under the Corporate Indentures, the Monitor shall send by email, facsimile, and/or courier a blank Letter of Instruction to each Corporate Indenture Trustee for completion on behalf of such Corporate Creditors;
- (b) Each Affected Creditor (other than a Convenience Class Creditor), including each Corporate Indenture Trustee on behalf of its respective Corporate Creditors, shall deliver to the Monitor a duly completed and executed Letter of Instruction that must be received by the Monitor at least seven (7) days before the Plan Implementation Date or such other date as the Monitor may agree;
- (c) The Monitor shall deliver a direction to Newco or its agent, as applicable, directing Newco or its agent, as applicable, to issue Newco Common Shares to (A) Affected Creditors (other than Convenience Class Creditors) with Proven Claims, or (B) the Monitor or its designate in respect of Affected Creditors (other than Convenience Class Creditors) with Disputed Claims. The direction shall be based on information received by the Monitor in accordance with paragraphs (a) and (b) above and Newco and the Monitor shall be entitled to rely on such information as is without verifying same. The direction to be delivered shall include the following information:
  - (i) registration and delivery details of each Affected Creditor listed therein entitled to receive Newco Common Shares on such Distribution Date; and
  - (ii) the number of Newco Common Shares to be issued by Newco to each Affected Creditor listed therein on such Distribution Date;
- (d) Newco or its agent, as applicable (at the expense of HII) shall cause the Trading Platform or its connected clearing system, to record in its book entry system the total number of Newco Common Shares that are to be issued to all Affected Creditors (other than Convenience Class Creditors) with Proven Claims pursuant to and in accordance with the Plan, and shall send to such Affected Creditor a

DRS Transaction Advice to the address for such Affected Creditor specified in such Affected Creditor's Letter of Instruction;

- (e) Newco, or its agent, as applicable (at the expense of HII), shall cause the Trading Platform or its connected clearing system to record in its book entry system the total number of Newco Common Shares that are to be issued to the Monitor or its designate in respect of the Disputed Claims and to be deposited to the Disputed Claims (Newco Shares) Reserve, and held by the Monitor or its designate for distribution pursuant to and accordance with the Plan, and shall deliver to the Monitor a DRS Transaction Advice;
- (f) If a Homburg Group Member is an Affected Creditor with a Proven Claim and entitled to receive Newco Common Shares on the Initial Distribution Date and such Claim is classified as a Corporate Creditor Claim, Newco shall issue such Newco Common Shares to Incorporation Foundation which shall have given an irrevocable power of attorney to its Dutch notary to immediately thereafter transfer such Newco Common Shares to such Homburg Group Member;
- (g) With respect to the distributions to be made to Affected Creditors (other than Convenience Class Creditors) with Proven Claims pursuant to the Plan, no fractional Newco Common Shares will be issued. Recipients of Newco Common Shares will have their share entitlements adjusted downwards to the nearest whole number of Newco Common Shares to eliminate any such fractions and no compensation will be given for the fractional interest. On the Final Distribution Date, to the extent any Newco Common Shares remain with the Monitor or its designate as a result of the downward adjustments to eliminate fractions made in connection with the issuance of Newco Common Shares on such day, those remaining Newco Common Shares shall be transferred to Newco for no consideration and will subsequently be cancelled; and
- (h) An Affected Creditor (other than a Convenience Class Creditor) with a Proven Claim that does not return a Letter of Instruction to the Monitor shall be deemed to direct the Monitor to cause such Affected Creditor's Newco Common Shares to be recorded (to the extent possible) in the book entry system of the Trading Platform in accordance with the information set out in such Affected Creditor's Proof of Claim and otherwise in Newco's shareholders register.

### **8.3 Distribution Mechanics – Cash Pool**

- (a) From and after the Initial Distribution Date and each subsequent Distribution Date, the Cash Pool shall be distributed by the Monitor, on behalf and for the account of HII and Shareco, as follows:
  - (i) each Convenience Class Creditor with a Proven Claim shall receive a distribution from the Cash Pool in an amount equal to the Cash Elected Amount in accordance with the Convenience Class Claim Declaration filed by or on behalf of such Affected Creditor (or in the absence of a Convenience Class Claim Declaration in accordance with such Affected Creditors' Proof of Claim); and

- (ii) after the payments in Section 8.3(a)(i) above, each Affected Creditor (other than a Convenience Class Creditor) with a Proven Claim shall receive a distribution from the remaining Cash Pool in an amount equal to its Pro Rata Share of such Cash Pool in accordance with the Letter of Instruction filed by or on behalf of such Affected Creditor (or in the absence of a Letter of Instruction in accordance with such Affected Creditor's Proof of Claim).
- (b) Notwithstanding any other provision in the Plan, each holder of a Proven Claim that is a Corporate Bond Claim or a Mortgage Bond Claim shall receive on the Initial Distribution Date a distribution from the Cash Pool in the amount of its Pro Rata Share of the Cash Pool (after distributions to Convenience Class Creditors with Proven Claims) that is net of an amount equal to each such holder's Pro Rata Share of the Stichting Advances, and the obligation of the Petitioners to pay such Stichting Advances shall be deemed to have been satisfied in full.

#### **8.4 Distribution Mechanics –Asset Realization Cash Pool and Non-Core Business Asset Notes**

- (a) The Monitor shall hold the Non-Core Business Asset Notes on behalf of the Affected Creditors (other than Convenience Class Creditors) with Proven Claims until such time as the Asset Realization Cash Pool has been distributed in full by the Monitor.
- (b) The Asset Realization Cash Pool shall be distributed by the Monitor, on behalf of and for the account of HII, on a Distribution Date as follows:
  - (i) Each Affected Creditor (other than a Convenience Class Creditor) with a Proven Claim shall receive a distribution by the Monitor from the Asset Realization Cash Pool in the amount of its Pro Rata Share of such Asset Realization Cash Pool in accordance with the Letter of Instruction filed by or on behalf of such Affected Creditor (or in the absence of a Letter of Instruction in accordance with such Affected Creditor's Proof of Claim); and
  - (ii) Upon each distribution on a Distribution Date, the amounts evidenced under each of the Non-Core Business Asset Notes shall be reduced by the amounts of such distributions to such Affected Creditors.

#### **8.5 The Capital Securities Claims and the Taberna Claim**

- (a) Notwithstanding any other provision in the Plan, the holders of the Capital Securities Claims shall not be entitled to receive any distribution on account of the Capital Securities Claims under the Plan, but for greater certainty the Capital Securities Claims shall be affected, compromised, settled, released, discharged, cancelled and barred under the Plan.

- (b) Notwithstanding any other provision in the Plan, HII and the Monitor shall comply with the Taberna Order in making any distributions on account of the Taberna Claim under the Plan.

## **8.6 Administrative Reserve Costs**

On the Plan Implementation Date, the Administrative Reserve Account will be funded in accordance with Section 4.2(a) of the Plan and the Sanction and Vesting Order and the Monitor shall pay the Administrative Reserve Costs from and after the Plan Implementation Date in accordance with the Plan.

## **8.7 Currency**

Unless specifically provided for in the Plan or the Sanction and Vesting Order, for the purposes of voting or distribution under the Plan, a Claim shall be denominated in Canadian dollars and all payments and distributions to the Affected Creditors on account of their Proven Claims shall be made in Canadian dollars. Any Claim in a currency other than Canadian dollars must be converted to Canadian dollars, and such amount shall be regarded as having been converted at the noon spot rate of exchange quoted by the Bank of Canada for exchanging such currency to Canadian dollars as at the Filing Date, which rate is Cdn\$1.3626: EUR1.0000, and Cdn\$0.9971: US\$1.

## **8.8 Interest**

Interest shall not accrue or be paid on Affected Claims after the Filing Date, and no holder of an Affected Claim shall be entitled to interest accruing on or after the Filing Date and any Claims in respect of interest accruing on or after the Filing Date shall be deemed to be forever extinguished and released.

## **8.9 Treatment of Undeliverable Distributions**

If any Affected Creditor's distribution by way of cheque or wire transfer is returned as undeliverable or is not cashed, no further distributions to such Affected Creditor shall be made unless and until the Monitor is notified by such Affected Creditor of such Affected Creditor's current address or wire particulars, at which time all such distributions shall be made to such Affected Creditor without interest. All claims for undeliverable or un-cashed distributions in respect of Proven Claims must be made on or before the deadline specified in the Monitor's Notice of Final Distribution, after which date the Proven Claims of any Affected Creditor or successor of such Affected Creditor with respect to such unclaimed or un-cashed distributions shall be forever discharged and forever barred, without any compensation therefor, notwithstanding any Applicable Laws to the contrary, at which time the Cash amount held by the Monitor in relation to such Proven Claim shall be returned to the Cash Pool or the Asset Realization Cash Pool as the case may be. Nothing contained in the Plan shall require the Monitor to attempt to locate any holder of a Proven Claim.

#### **8.10 Assignment of Claims for Voting and Distribution Purposes – Prior to the Creditors’ Meeting**

Subject to any restrictions contained in Applicable Laws, an Affected Creditor (other than a Convenience Class Creditor) may transfer or assign the whole of its Claim prior to the Creditors’ Meeting provided that HII shall not be obliged to deal with any such transferee or assignee as an Affected Creditor in respect thereof, including allowing such transferee or assignee to vote at the Creditors’ Meeting, unless and until actual notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been received by HII and the Monitor prior to 5:00 p.m. on the day that is at least three (3) Business Days prior to the Record Date. Thereafter, such transferee or assignee shall, for all purposes in accordance with the Claims Process Order and the Meeting Order constitute an Affected Creditor and shall be bound by any and all notices previously given to the transferor or assignor in respect of such Claim. For greater certainty, partial transfers or assignments of Claims shall not be recognized by HII or the Monitor.

#### **8.11 Assignment of Claims for Distribution Purposes After the Creditors’ Meeting – Non-Corporate Creditors**

Subject to any restrictions contained in Applicable Laws, an Affected Creditor (other than a Corporate Creditor or a Convenience Class Creditor) may transfer or assign the whole of its Claim after the Creditors’ Meeting provided that the Monitor shall not be obliged to make distributions to any such transferee or assignee or otherwise deal with such transferee or assignee as an Affected Creditor in respect thereof unless and until actual notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment and a duly completed and executed Letter of Instruction has been received by HII and the Monitor; thereafter, such transferee or assignee shall, for all purposes in accordance with Claims Process Order, the Meeting Order and the Plan constitute an Affected Creditor and shall be bound by notices given and steps taken in respect of such Claim. For greater certainty, partial transfers or assignments of Claims shall not be recognized by HII or the Monitor.

#### **8.12 Assignment of Claims for Distribution Purposes After the Creditors’ Meeting – Corporate Creditors**

Subject to any restrictions contained in Applicable Laws, notwithstanding anything to the contrary herein, those Corporate Creditors who have a beneficial ownership of a Claim shall not be restricted from transferring or assigning the whole of their respective Claims at any time, provided that neither HII nor the Monitor shall be obliged to make distributions, if any, in respect of a Corporate Creditor’s Proven Claim to any such transferee or assignee or otherwise deal with such transferee or assignee as an Affected Creditor with a Proven Claim in respect thereof, unless and until actual notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been received by HII and the Monitor together with a Letter of Instruction; thereafter, such transferee or assignee shall, for all purposes in accordance with Claims Process Order, the Meeting Order and the Plan constitute an Affected Creditor and shall be bound by notices given and steps taken in respect of such Claim. For greater certainty, partial transfers or assignments of Claims shall not be recognized by HII or the Monitor.

### **8.13 Tax Matters**

- (a) Any terms and conditions of any Affected Claims which purport to deal with the ordering of or grant priority of payment of principal, interest, penalties or other amounts shall be deemed to be void and ineffective (for greater certainty without any impact on any inter-lender arrangements).
- (b) All distributions made by the Monitor pursuant to this Plan shall be first in consideration for the outstanding principal amount of such Affected Claims and secondly in consideration for accrued and unpaid interest and penalties, if any, which form part of such Claims. Notwithstanding any provisions of the Plan, each Affected Creditor that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax Obligations imposed by any Taxing Authority on account of such distribution.
- (c) The Monitor shall be entitled to deduct and withhold from any distribution, payment or consideration otherwise payable to any Affected Creditor or to any Person on behalf of any Affected Creditor such amounts (a “**Withholding Obligation**”) as the Monitor is required to deduct and withhold with respect to such payment under the ITA, or any provision of federal, provincial, territorial, state, local or foreign tax law, in each case, as amended or succeeded.
- (d) To the extent that amounts are so withheld or deducted and paid over to the applicable Taxing Authority, such withheld or deducted amounts shall be treated for all purposes of the Plan as having been paid to such Person as the remainder of the payment in respect of which such withholding and deduction were made. For greater certainty, no distribution, payment or other consideration shall be made to or on behalf of a holder of a Proven Claim pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Monitor for the payment and satisfaction of any Withholding Obligations imposed on the Monitor by any Taxing Authority.

## **ARTICLE 9**

### **PROCEDURE FOR DISTRIBUTIONS REGARDING DISPUTED CLAIMS AND FINAL DISTRIBUTIONS**

#### **9.1 No Distribution Pending Allowance**

Notwithstanding any other provision of the Plan, no issuance of Newco Common Shares shall be made by Newco to Affected Creditors with Disputed Claims, and no payments, distributions or transfers of Cash or Newco Common Shares shall be made by the Monitor or its designate with respect to all or any portion of a Disputed Claim unless and to the extent such Disputed Claim has become a Proven Claim, in whole or in part (and for greater certainty a Convenience Class Creditor shall not be entitled to receive Newco Common Shares).

## **9.2 Distributions After Disputed Claims Resolved – Interim Distribution Dates**

- (a) From and after the Plan Implementation Date, on the last Business Day of every month (or more or less frequently as the Monitor may determine in its sole and unfettered discretion), the Monitor or its designate shall transfer that number of Newco Common Shares corresponding to the finally determined amount of each Disputed Claim (other than a Convenience Class Claim) that has become a Proven Claim in whole or in part, on or before the third Business Day prior to a Distribution Date (other than the Final Distribution Date), from the Disputed Claims (Newco Share) Reserve, to such each Affected Creditor (other than a Convenience Class Creditor) whose Disputed Claim has been finally resolved and has become a Proven Claim (i) whereby such Affected Creditor shall be deemed to make a share premium contribution on the Newco Common Shares it receives equal to the amount of its pro rata share of the Newco Assumed Portion of Disputed Claims that has been finally resolved and has become a Proven Claim, which then is satisfied in full by setting off such obligation against such pro rata share of the Newco Assumed Portion of Disputed Claims that has been finally resolved and has become a Proven Claim, and (ii) such that after giving effect to that distribution and any prior distributions, each such Affected Creditor shall have received its Pro Rata Share of Newco Common Shares as at such Distribution Date,
  
- (b) From and after the Plan Implementation Date, on the last Business Day of every month (or more or less frequently as the Monitor may determine in its sole and unfettered discretion), the Monitor on behalf of HII shall distribute to each Affected Creditor with a Disputed Claim that has become a Proven Claim in whole or in part, on or before the third Business Day prior to a Distribution Date (other than the Final Distribution Date), in the case of all Affected Creditors, the appropriate amount of Cash from the Disputed Claims (Cash) Reserve, and in addition, in the case of all Affected Creditors (other than the Convenience Class Creditors), the appropriate amount of Cash from the Disputed Claims (Asset Realization) Reserve, in respect of such Proven Claim, such that after giving effect to that distribution and any prior distributions, each such Affected Creditor on such Distribution Date shall have received its Pro Rata Share of the Cash Pool and the Asset Realization Cash Pool, as applicable, as at such Distribution Date.

## **9.3 Distributions After Disputed Claims Resolved – Final Distribution Date**

On the Final Distribution Date:

- (a) Any remaining Newco Common Shares held by the Monitor in the Disputed Claims (Newco Share) Reserve that are not to be distributed to Affected Creditors shall be transferred to Newco by the Monitor for cancellation for no consideration;
  
- (b) The Monitor shall pay any final Administrative Reserve Costs;
  
- (c) The Monitor shall contribute and aggregate the following amounts to the Cash Pool:

- (i) any balance remaining in the Cash Reserves; and
- (ii) any balance remaining in the Asset Realization Cash Pool;
- (d) Thereafter, any Cash in the Cash Pool shall be paid to the Affected Creditors (other than the Convenience Class Creditors) with Proven Claims on a pro rata basis such that after giving effect to that distribution and any prior distributions, each such Affected Creditor on such Final Distribution Date shall have received its Pro Rata Share of the Cash Pool; and
- (e) Any Disputed Claims to the extent that they are finally determined in accordance with the Claims Process Order or the Court to be invalid such that they have not become Proven Claims on or before the Final Distribution Date shall be forever compromised, released, discharged, cancelled and barred, without any compensation therefor.

## **ARTICLE 10**

### **HII GROUP ENTITIES' REORGANIZATION**

#### **10.1 Corporate Authorizations**

The adoption, execution, delivery, implementation and consummation of all matters contemplated under the Plan involving corporate action of any of the Homburg Group Members will occur and be effective as of the Plan Implementation Date, and will be authorized and approved under the Plan and by the Court, where appropriate, as part of the Sanction and Vesting Order, in all respects and for all purposes without any requirement of further action by shareholders, directors or officers of such Homburg Group Member. All necessary approvals to take actions shall be deemed to have been obtained from the directors or the shareholders of the Homburg Group Member, as applicable, including the deemed passing by any class of shareholders of any resolution or special resolution and no shareholders' agreement or agreement between a shareholder and another Person limiting in any way the right to vote shares held by such shareholder or shareholders with respect to any of the steps contemplated by the Plan shall be effective and shall be deemed to have no force and effect.

#### **10.2 Pre-Plan Implementation Date Transactions**

HII and Shareco shall implement or cause to be implemented the Pre-Plan Implementation Date Transactions prior to the Plan Implementation Date.

#### **10.3 Plan Implementation Date Transactions**

Subject to Section 10.4 and any Plan Transactions Notice, the following steps, transactions, compromises, releases and discharges to be effected in the implementation of the Plan shall occur, and be deemed to have occurred sequentially in the following order without any further act or formality, on the Plan Implementation Date beginning at the Effective Time:

- (a) Homburg Baltic Transactions:

- (i) HII incorporates HII Baltic Subco under the NSCA and HII subscribes for ten (10) common shares of HII Baltic Subco for Cdn\$10;
  - (ii) HII assigns the Homburg Baltic Intercompany Loan to HII Baltic Subco in consideration for additional common shares of HII Baltic Subco; and
  - (iii) HII Baltic Subco is wound up into HII pursuant to Section 137 of the NSCA, and the Homburg Baltic Intercompany Loan shall be deemed to be extinguished; and
- (b) Intercompany Amalgamations – Shareco and Amalgamating Cancos:
- (i) Each of Shareco, Homburg Invest USA, Homburg US and Swiss Bondco shall be exported from the NSCA and imported to Alberta under the ABCA; and
  - (ii) Shareco and each Amalgamating Canco shall collectively undertake a short form vertical amalgamation pursuant to Section 184 of the ABCA with HII and shall continue as HII and the Shareco Creditor Claims and the Amalgamating Canco Creditor Claims shall be assumed by HII, and only the Amalgamating Canco Creditor Claims shall be Unaffected Claims; and
- (c) Dissolution of Core Homcos and Transfer of Core Homco Assets to HII:
- (i) Each Core Homco shall be deemed to be dissolved in accordance with its applicable Limited Partnership Agreement and the NSLPA and its respective Notice to Cancel the Certificate of Limited Partnership shall be filed and recorded in the office of the Registrar of Joint Stock Companies;
  - (ii) Each Core Homco GP shall be deemed to be dissolved and its Certificate of Dissolution filed and recorded in accordance with the NSCA;
  - (iii) Upon such deemed dissolution, each Core Homco's Core Homco Assets shall be deemed to be transferred to and vested in HII free and clear of all Encumbrances except the Core Homco Creditor Claims, and its respective Core Homco Liabilities shall be deemed to be assumed by HII and the Core Homco Creditor Claims shall be Unaffected Claims; and
  - (iv) HII shall issue the Newco Bond 5 Guarantee to Stichting Homburg Bonds; and
- (d) Newco becomes Co-Obligor:
- (i) Newco enters into the Assumption Agreement and thereunder becomes co-obligor with HII for the Newco Assumed Portion of Proven Claims and the Newco Assumed Portion of Disputed Claims, and waives any rights of or entitlement to contribution, indemnity or subrogation against HII in respect of the original obligations of HII so assumed by Newco, but for

greater certainty such waiver shall not affect the principal amount of the HII Co-Obligation Note;

- (ii) In consideration for Newco entering into the Assumption Agreement, HII shall issue the HII Co-obligation Note in favour of Newco which shall be deemed to be secured by the Newco Co-obligation Charge; and
  - (iii) The aggregate amount of the Newco Assumed Portion of Proven Claims plus the Newco Assumed Portion of Disputed Claims and the amount outstanding under the HII Co-obligation Note shall each be deemed to be equal to the Final Adjusted Newco Note Amount; and
- (e) Dissolution of Homco 190 LP, Homco 191 LP and Homco 199 LP:
- (i) The following steps shall be taken prior to the dissolution of Homco 190 LP, Homco 191 LP and Homco 199 LP:
    - (A) Homco 199 LP shall be deemed to pay to Homco 191 LP the amount of the Homco 199 Cash Amount in a first partial repayment of the Homco 191 Loan and the Homco 191 Loan Promissory Note shall be deemed to be reduced accordingly;
    - (B) Homco 191 LP shall be deemed to make a return of capital to its sole limited partner, HII, in an amount equal to the Homco 199 Cash Amount;
    - (C) HII shall be deemed to pay to Homco 199 LP an amount equal to the Homco 199 Cash Amount in a first partial repayment of the Homco 199 Loan and the Homco 199 Loan shall be deemed to be reduced accordingly;
    - (D) Homco 199 LP shall be deemed to pay to Homco 191 LP an amount equal to the remaining balance of the Homco 191 Loan, in a second and final repayment of the Homco 191 Loan and the Homco 191 Loan Promissory Note shall be deemed to be satisfied in its entirety and such note shall be deemed to be cancelled;
    - (E) Homco 199 LP shall be deemed to pay to Homco 190 LP an amount equal to the Homco 199 Cash Amount less the amount of the final payment in D above, in a first partial repayment of the Homco 190 Loan and the Homco 190 Loan Promissory Note shall be deemed to be reduced accordingly;
    - (F) Homco 190 LP shall be deemed to make a return of capital to its sole limited partner, Homco 191 LP, in the amount equal to the partial repayment paid in E above;
    - (G) Homco 191 LP shall be deemed to make a return of capital to its sole limited partner, HII, in an amount equal to the Homco 199

Cash Amount (being the aggregate of the amounts paid in D and E above);

- (H) HII shall be deemed to pay to Homco 199 LP the amount equal to the Homco 199 Cash Amount (and being the aggregate of the amounts paid in D and F above), in a second partial repayment of the Homco 199 Loan and the Homco 199 Loan shall be deemed to be reduced accordingly;
  - (I) Homco 199 LP shall be deemed to pay to Homco 190 LP an amount equal to the remaining balance of the Homco 190 Loan, in a second and final repayment of the Homco 190 Loan, and the Homco 190 Loan Promissory Note shall be deemed to be satisfied in its entirety and such note shall be deemed to be cancelled;
  - (J) Homco 190 LP shall be deemed to make a return of capital to its sole limited partner, Homco 191 LP, in an amount equal to the amount paid in I above;
  - (K) Homco 191 LP shall be deemed to make a return of capital to its sole limited partner, HII, in an amount equal to the amount paid in I above;
  - (L) HII shall be deemed to pay to Homco 199 LP an amount equal to the amount paid in I above, in a third partial repayment of the Homco 199 Loan and the Homco 199 Loan shall be deemed to be reduced accordingly;
  - (M) Homco 199 LP shall be deemed to make a return of capital to its sole limited partner, HII, in an amount equal to the Homco 199 Cash Amount; and
  - (N) HII shall be deemed to pay Homco 199 LP an amount equal to the Homco 199 Cash Amount (as paid in M above), as a fourth and final payment made in full satisfaction of the Homco 199 Loan, and the Homco 199 Loan shall be deemed to be satisfied in its entirety; and
- (ii) The steps in A through N above shall be deemed to be executed or repeated (with as many conforming changes as may be necessary) as many times as is necessary based upon the amount of the Homco 199 Cash Amount, in order to repay the Homco 191 Loan, the Homco 190 Loan and the Homco 199 Loan in their entireties;
  - (iii) Each of Homco 190 LP, Homco 191 LP and Homco 199 LP shall be deemed to be dissolved in accordance with its respective Limited Partnership Agreement and the NSLPA and its respective Notice to Cancel

the Certificate of Limited Partnership shall be filed and recorded in the office of the Registrar of Joint Stock Companies;

- (iv) Each Homco GP of Homco 190 LP, Homco 191 LP and Homco 199 LP shall be deemed to be dissolved and its Certificate of Dissolution filed and recorded in accordance with the NSCA; and
- (v) Upon the deemed dissolution of each of Homco 190 LP, Homco 191 LP and Homco 199 LP, their respective assets including all Cash shall be deemed to be transferred to and vested in HII free and clear of Encumbrances and their respective liabilities which shall be deemed to be assumed by HII, and such liabilities shall be compromised under the Plan; and

(f) Treatment of Non-Corporate Creditors:

In the following Subparagraph 10.3(f), where reference is made to the Monitor holding Newco Common Shares, it is holding same on behalf of Affected Creditors (other than Convenience Class Creditors) with Disputed Claims that are finally determined to be Proven Claims:

- (i) The Non-Corporate Creditors with Proven Claims shall be deemed to subscribe for each such Non-Corporate Creditor's Pro Rata Share of Newco Common Shares, the entire subscription price for which shall be deemed to be an amount equal to the Newco Assumed Portion of Non-Corporate Creditor Proven Claims;
- (ii) The Monitor or its designate in respect of the Non-Corporate Creditors with Disputed Claims (based on the face value of such Disputed Claims or such lesser amount as shall be determined by the Monitor), shall be deemed to subscribe for each such Non-Corporate Creditor's Pro Rata Share of Newco Common Shares, the subscription price for which shall be equal to the nominal amount such Newco Common Shares;
- (iii) The Non-Corporate Creditors with Proven Claims will be and will be deemed to be obligated to pay the subscription price for the Newco Common Shares in Subparagraph 10.3(f)(i) above;
- (iv) The Monitor or its designate shall hold the Newco Common Shares subscribed for in Subparagraph 10.3(f)(ii) above in the Disputed Claims (Newco Shares) Reserve;
- (v) Newco shall issue the Newco Common Shares subscribed for in Subparagraph 10.3(f)(i) above by the Non-Corporate Creditors with Proven Claims to such Non-Corporate Creditors and their obligation to pay the subscription price in Subparagraph 10.3(f)(iii) above shall be deemed to be satisfied in full by setting off both such obligations against the Newco Assumed Portion of Non-Corporate Creditor Proven Claims

and such Newco Assumed Portion of Non-Corporate Creditor Proven Claims shall be deemed to be paid in full in accordance with the Plan;

- (vi) Newco shall issue the Newco Common Shares subscribed for in Subparagraph 10.3(f)(ii) above by the Monitor or its designate to the Monitor and the subscription price shall be paid up out of the share premium reserve of Newco; and
- (vii) The Newco Un-assumed Portion of Non-Corporate Creditor Proven Claims shall be deemed to be settled in accordance with the Plan, in consideration for which such Non-Corporate Creditors shall be entitled to receive in respect of such Newco Un-assumed Portion of Non-Corporate Creditor Proven Claims, (i) their Pro Rata Share of the Cash Pool and (ii) their Pro Rata Share of the Asset Realization Cash Pool, on repayment of the Note A (Non-Corporate Creditor) principal amount; and

(g) Acquisition of Control of HII:

- (i) HII shall file Articles of Reorganization under the ABCA and such Articles of Reorganization shall be deemed to give effect to the following steps or transactions:
  - (A) HII's articles of amalgamation shall be amended under the ABCA to create a new class of authorized HII New Common Shares;
  - (B) HII's articles of amalgamation shall be amended under the ABCA to cancel the authorized HII Class A Shares, the authorized HII Class B Shares, the authorized HII Class A Preferred Shares and the authorized HII Class B Preferred Shares;
  - (C) The short form vertical amalgamation of Shareco and each Amalgamating Canco with HII as more particularly set out above, with the name of the amalgamated entity to be a corporate number assigned under the ABCA; and
- (ii) Newco shall subscribe for and HII shall issue 100 HII New Common Shares to Newco, for the subscription purchase price of Cdn\$100. Such shares shall be deemed to be validly issued and outstanding as fully paid and non-assessable on the Plan Implementation Date;
- (iii) The outstanding HII Class A Shares and outstanding HII Class B Shares and all other outstanding equity securities of HII other than the HII New Common Shares are deemed to be surrendered for cancellation and shall be deemed to be cancelled without compensation, such deemed cancellation being deemed to have occurred immediately prior to the effectiveness of the amendment in Section 10.3(g)(i)(B);
- (iv) An amount of Cdn\$100 shall be deemed to be added to the stated capital account for the HII New Common Shares; and

- (v) The stated capital account for HII's Existing Authorized Capital shall be deemed to be reduced to zero for no consideration; and

(h) Treatment of Corporate Creditors:

In the following Subparagraph 10.3(h), where reference is made to the Monitor holding Newco Common Shares, it is holding same on behalf of Affected Creditors (other than Convenience Class Creditors) with Disputed Claims that are finally determined to be Proven Claims:

- (i) The Corporate Creditors with Proven Claims shall be deemed to subscribe for each such Corporate Creditor's Pro Rata Share of Newco Common Shares, the entire subscription price for which shall be deemed to be an amount equal to the Newco Assumed Portion of Corporate Creditor Proven Claims;
- (ii) The Monitor or its designate in respect of the Corporate Creditors with Disputed Claims (based on the face value of such Disputed Claims or such lesser amount as shall be determined by the Monitor), shall subscribe for each such Corporate Creditor's Pro Rata Share of Newco Common Shares, the subscription price for which shall be equal to the nominal amount of such Newco Common Shares;
- (iii) The Corporate Creditors with Proven Claims will be deemed to be obligated to pay to Newco the subscription price for the Newco Common Shares in Subparagraph 10.3(h)(i) above;
- (iv) The Monitor or its designate shall hold the Newco Common Shares subscribed for in Subparagraph 10.3(h)(ii) above in the Disputed Claims (Newco Shares) Reserve;
- (v) Newco shall issue the Newco Common Shares subscribed for by the Corporate Creditors with Proven Claims in Subparagraph 10.3(h)(i) above to such Corporate Creditors with Proven Claims, and the obligation of such Corporate Creditors to pay the subscription price in Subparagraph 10.3(h)(iii) shall be deemed to be satisfied in full by setting off both such obligations against the Newco Assumed Portion of Corporate Creditor Proven Claims, and such Newco Assumed Portion of Corporate Creditor Proven Claims shall be deemed to be paid in full in accordance with the Plan;
- (vi) Newco shall issue the Newco Common Shares subscribed for in Subparagraph 10.3(h)(ii) above by the Monitor to the Monitor or its designate and the subscription price shall be paid up out of the share premium reserve of Newco; and
- (vii) The Newco Un-assumed Portion of Corporate Creditor Proven Claims shall be deemed to be settled in accordance with the Plan, in consideration for which such Corporate Creditors shall be entitled to receive in respect

of such Newco Un-assumed Portion of Corporate Creditor Proven Claims, (i) their Pro Rata Share of the Cash Pool and (ii) their Pro Rata Share of the Asset Realization Cash Pool, on repayment of the Note B (Corporate Creditor) principal amount; and

(i) Repayment of Newco Incorporation Loan:

Upon the issuance of Newco Common Shares to Affected Creditors with Proven Claims in accordance with the Plan, Newco shall repurchase the preference shares held by the Incorporation Foundation for the sum of EUR225,000 and the Incorporation Foundation shall direct Newco to pay such amount to HII to repay the Newco Incorporation Loan on the Incorporation Foundation's behalf, following which payment the Newco Incorporation Loan Note shall be cancelled; and

(j) Homburg Baltic Luxembourg Continuance:

Homburg Baltic shall be exported from the NSCA and imported to Luxembourg under Luxembourg's Commercial Companies Act, 1915; and

(k) Transfer of Core Business Assets to Newco:

(i) Pursuant to and in accordance with the Sanction and Vesting Order, HII shall be deemed to transfer all of its right, title and interest in and to the Core Business Assets to Newco, and such Core Business Assets shall be deemed to be transferred to and shall vest in Newco, free and clear of all Encumbrances other than the Core Business Creditor Claims, and where any Real Property Interest is being vested directly in Newco, Newco shall assume and is deemed to assume the Core Homco Liabilities (and for greater certainty HII shall be deemed to have no liability in respect of such Core Homco Liabilities);

(ii) As consideration for such transfer by HII to Newco in Subparagraph (10.3)(k)(i) above, Newco shall issue the Newco Note to HII and assume HII's obligations under the Newco Bond 5 Guarantee and HII shall be released from such obligations and the security relating to the Bond 5 Secured Claim shall be deemed to be released and extinguished (and for greater certainty, the Bond 5 Unsecured Claim shall remain as an obligation of HII to be compromised as an Affected Claim under the Plan); and

(iii) The amounts owing under the HII Co-obligation Note and the Newco Note shall be deemed to be set off and the obligations thereunder shall be deemed to be satisfied in full and the HII Co-obligation Note and the Newco Note shall be deemed to be cancelled and the Newco Co-obligation Charge shall be deemed to be discharged; and

(l) Receipt of Newco Common Shares and Cash by Monitor:

- (i) Newco shall issue to the Monitor or its designate to be held on behalf of the Affected Creditors (other than Convenience Class Creditors) with Disputed Claims that are finally determined to be Proven Claims, that number of Newco Common Shares needed to establish the Disputed Claims (Newco Shares) Reserve;
  - (ii) HII and Shareco shall deliver to the Monitor the aggregate of all their Cash, together with the Cash Reserves;
  - (iii) The Monitor shall receive from HII and Shareco:
    - (A) the Administrative Reserve and shall deposit same into the Administrative Reserve Account;
    - (B) the Disputed Claims (Cash) Reserve and shall deposit same into the Disputed Claims Reserve Account;
    - (C) the Litigation Reserve and shall deposit same into the Litigation Reserve Account; and
  - (iv) The Monitor shall receive the Cash Pool from HII and Shareco and shall deposit same into the Cash Pool Account; and
- (m) Non-Core Business Asset Notes and Liquidation/Realization of Non-Core Business Assets:
- (i) HII shall issue Note A (Non-Corporate Creditor) to the Monitor to hold on behalf of each of the Non-Corporate Creditors evidencing each Non-Corporate Creditor's Pro Rata Share of the Asset Realization Cash Pool and which shall be repaid in full with the Asset Realization Cash Pool;
  - (ii) HII shall issue Note B (Corporate Creditor) to the Monitor to hold on behalf of each of the Corporate Creditors evidencing each Corporate Creditor's Pro Rata Share of the Asset Realization Cash Pool;
  - (iii) Pursuant to the Sanction and Vesting Order, the Notes Charge shall be deemed to secure HII's obligations to the Non-Corporate Creditors under Note A (Non-Corporate Creditor) and to the Corporate Creditors under the Note B (Corporate Creditor); and
  - (iv) HII shall be deemed to enter into sole shareholder declarations assuming the management of the business and affairs of the Non-Core Business Entities that are corporations and the corporate general partners of the Non-Core Business Entities that are Homcos; and
- (n) Directors and Officers: The Directors of the HII Group Entities, the Core Business Entities and the Non-Core Business Entities shall and shall be deemed to resign without any replacement and without requirement of further action on the part of such Directors; and

- (o) Payments by Monitor: The Monitor shall pay:
- (i) the following Administrative Reserve Costs from the Administrative Reserve on or after the Plan Implementation Date pursuant to the Sanction and Vesting Order and the CCAA:
    - (A) all fees and disbursements owing as at the Plan Implementation Date to counsel to the HII Group Entities, the Monitor, and counsel to the Monitor;
    - (B) all amounts on account of Employee Priority Claims;
    - (C) all amounts on account of Government Priority Claims;
    - (D) all amounts on account of Cash Management Lender Claims;
    - (E) all amounts on account of the Post-Filing Trade Payables;
    - (F) the Bond 5 Secured Claim Cash Payment;
    - (G) the HSBC Secured Claim; and
    - (H) Newco's costs incurred in respect of the issuance of the Newco Common Shares, including all financial advisory fees and expenses, legal fees and expenses, and fees and expenses paid to rating agencies; and
  - (ii) from the KERP Fund, all amounts owing to Persons on account of their KERP Claims; and
- (p) Distributions:
- The Monitor shall on behalf of HII and Shareco hold, maintain and administer:
- (i) the Cash Pool, the Asset Realization Cash Pool and the Cash Reserves, and shall hold same in escrow for the benefit of the Affected Creditors with Proven Claims, for distribution in accordance with the Plan;
  - (ii) the Non-Core Business Asset Notes; and
  - (iii) the Disputed Claims (Newco Share) Reserve in accordance with the Plan, which shall be held by the Monitor or its designate for the benefit of the Affected Creditors (other than Convenience Class Creditors) with Disputed Claims to the extent that their Disputed Claims become Proven Claims, for distribution in accordance with the Plan; and
- (q) Plan Charges:

The Sanction and Vesting Order shall provide for the following Plan Charges to be created on and to survive the Plan Implementation Date in the following order of priority:

- (i) The Directors' Charge shall be terminated, discharged and released as against the Charged Property and the Cash Pool Account;
- (ii) The Administration Charge shall continue and shall attach against the Cash Pool, the Asset Realization Cash Pool, the Cash Reserves, and the Non-Core Business Assets, and to no other assets of the Homburg Group Members;
- (iii) The Liquidation Charge shall attach against the Asset Realization Cash Pool, the Asset Realization Cost Reserve and the Disputed Claims (Asset Realization) Reserve, which Liquidation Charge shall rank behind the Administration Charge; and
- (iv) The Notes Charge shall attach against the Non-Core Business Assets and shall rank behind the Administration Charge and the Liquidation Charge; and
- (r) Compromise and Release: The compromises with the Affected Creditors and the Release of the Released Parties referred to in Article 11 shall become effective in accordance with the Plan.

#### **10.4 Plan Transactions**

HII and Shareco shall take actions as may be necessary or appropriate to effect the Plan Transactions as set forth in the Plan and as modified by any Plan Transactions Notice, including the transactions necessary or appropriate to simplify HII's and Shareco's structure and to effect a restructuring of the Business. Such actions may include, without limitation: (i) the execution and delivery of appropriate articles, agreements or other documents of incorporation, merger, amalgamation, consolidation, arrangement, continuation, restructuring, exchange, conversion, liquidation, winding-up, dissolution, transfer, reorganization, repayments, cancellations, discharges, or other transactions containing terms that are consistent with the terms of the Plan; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, including, where applicable, with respect to the assumption of liabilities upon the transfer or assignment of assets or liquidation or winding-up of any Homburg Group Member, Guarantee, or delegation of any property, right, privilege, liability, duty, or obligation on terms consistent with the terms of the Plan, in each case without the need to obtain any consent by any Person; (iii) the filing of appropriate articles, agreements, or other documents of incorporation, merger, amalgamation, consolidation, arrangement, continuation, restructuring, exchange, conversion, liquidation, winding-up, dissolution, transfer, reorganization, repayments, cancellations, discharges, or other transactions with the appropriate Governmental Authorities under Applicable Law; (iv) determining the manner and the sequence in which the Affected Claims are settled, compromised, or otherwise dealt with; and (v) all other actions that HII or Shareco may determine are necessary or appropriate to give effect to the Plan Transactions, including the making of filings or recordings in connection with the relevant Plan Transactions. HII and Shareco shall be permitted to implement certain of the Plan Transactions after the Plan

Implementation Date as contemplated in the Plan and as modified by any Plan Transactions Notice. The form of each Plan Transaction shall, where applicable, be determined by HII and Shareco and their successors party to any Plan Transaction, and shall be approved by the Monitor; provided, however, that HII and Shareco reserve the right to undertake transactions in lieu of or in addition to such Plan Transactions as HII and Shareco may deem necessary or appropriate under the circumstances and as approved by the Monitor. Notwithstanding the foregoing or any other provision of the Plan, the implementation of any of the Plan Transactions or other transactions undertaken in accordance with this Section shall not affect the distributions under the Plan and any such Plan Transactions or other transactions that are material shall be filed with the Court for approval.

## **ARTICLE 11 RELEASES**

### **11.1 Plan Releases**

- (a) On the Plan Implementation Date, HII, Shareco, Homco 190 LP, Homco 191 LP and Homco 199 LP, and their respective employees, legal counsel and agents and the Named Directors (being herein referred to individually as an “**HII Released Party**”) shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Affected Creditor or other Person may be entitled to assert, including any and all Claims in respect of the payment and receipt of proceeds and statutory liabilities of the Named Directors and employees of the HII Released Parties and any alleged fiduciary or other duty (whether such employees are acting as a Director, member or employee), whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan that are in any way relating to, arising out of or in connection with the Claims, the Business whenever or however conducted, the Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished by the Claims Process Order and all Claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the HII Entities’ obligations under the Plan or any related document), all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge (A) any HII Released Party if such HII Released Party is judged by the expressed terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct or (B) the Named Directors with respect to matters set out in Section 5.1(2) of the CCAA.

- (b) On the Plan Implementation Date, Stichting Homburg Bonds, Stichting Homburg Capital Securities, Stichting CanTrust and 1028167 Alberta Ltd. (collectively, the “**Foundation Entities**”), the Monitor, and Deloitte, and their respective directors, officers, employees, advisors, legal counsel and agents (being herein referred to individually as a “**Non-HII Released Party**”, and together with the HII Released Parties, the “**Released Parties**”) shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Affected Creditor or other Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan that are in any way relating to, arising out of or in connection with the Claims, the Business whenever or however conducted, the Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished by the Claims Process Order and all Claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the HII Entities’ obligations under the Plan or any related document), all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge (A) any Non-HII Released Party if such Non-HII Released Party is judged by the expressed terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct or (B) any of the Foundation Entities or their respective directors or officers (other than the Named Directors), employees, advisors, legal counsel and agents retained or employed prior to the Filing Date for any Claims in existence or relating to any period prior to the Filing Date.
- (c) The Sanction and Vesting Order will enjoin the prosecution, whether directly, derivatively or otherwise, of any Claim, obligation, suit judgment, damage, demand, debt, right, cause of action, liability or interest released, discharged, compromised or terminated pursuant to the Plan.

## ARTICLE 12

### COURT SANCTION, CONDITIONS PRECEDENT AND IMPLEMENTATION

#### 12.1 Application for Sanction and Vesting Order

If the Required Majority of the Affected Creditors approves the Plan, HII and Shareco shall apply for the Sanction and Vesting Order on or before the date set in the Meeting Order for the hearing of the Sanction and Vesting Order or such later date as the Court may set. The Sanction and Vesting Order shall not become effective until the Plan Implementation Date.

## 12.2 Sanction and Vesting Order

The Sanction and Vesting Order will have effect from and after the Effective Time on the Plan Implementation Date, and shall, among other things:

- (a) declare that (i) the Plan has been approved by the Required Majority of Affected Creditors with Proven Claims in conformity with the CCAA; (ii) the HII Group Entities have complied with the provisions of the CCAA and the Orders of the Court made in these proceedings in all respects; (iii) the Court is satisfied that the HII Group Entities have not done or purported to do anything that is not authorized by the CCAA; and (iv) the Plan and the Plan Transactions contemplated thereby are fair and reasonable;
- (b) declare that the Pre-Plan Implementation Date Transactions as conditions precedent to the Plan are approved and are deemed to have occurred and be effected in the sequential order as contemplated by Schedule “B” of the Plan;
- (c) authorize the Monitor and HII to agree to the amount of the Administrative Reserve prior to the Plan Implementation Date;
- (d) confirm the amount of the Disputed Claims (Cash) Reserve and the Litigation Reserve;
- (e) declare that as of the Effective Time, the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby are approved, binding and effective upon the HII Group Entities, all Affected Creditors, the Released Parties and all other Persons and Parties affected by the Plan as of the Effective Time;
- (f) grant to the Monitor the additional powers, duties and protections contemplated by and required under the Plan;
- (g) authorize the Monitor to perform its duties and functions and fulfil its obligations under the Plan to facilitate the implementation thereof;
- (h) authorize the Monitor, upon the direction of the Liquidation Advisory Committee, to investigate and assess any Litigation Claim and investigate any Creditor Cause of Action;
- (i) authorize the Monitor to prosecute and/or settle any Litigation Claim, on prior consultation with and the approval of the Liquidation Advisory Committee;
- (j) authorize and direct:
  - (i) HII and Shareco to create the Administrative Reserve, the Disputed Claims (Cash) Reserve, and the Litigation Reserve approved in the amounts specified in the Sanction and Vesting Order as agreed to among HII, Shareco and the Monitor, and to deliver same to the Monitor;

- (ii) the Monitor to receive such Cash Reserves and to deposit same in the respective accounts more particularly described in the Plan; and
- (iii) the Monitor from and after the Plan Implementation Date to create the Disputed Claims (Asset Realization) Reserve from the Non-Core Business Asset Net Proceeds;
- (k) declare that the Plan Transactions to be taken and the compromises and releases to be effected on the Plan Implementation Date are deemed to occur and to be effected in the sequential order contemplated by Section 10.3 of the Plan on the Plan Implementation Date, beginning at the Effective Time;
- (l) declare that all right, title and interest in and to the Core Business Assets have vested absolutely in Newco, free and clear of all Encumbrances, other than Core Business Creditor Claims, in accordance with the Sanction and Vesting Order;
- (m) compromise, discharge and release the Released Parties from any and all Affected Claims of any nature in accordance with the Plan, and declare that the ability of any Person to proceed against the Released Parties in respect of or relating to any Affected Claims shall be forever discharged and restrained, and all proceedings with respect to, in connection with or relating to such Affected Claims be permanently stayed, subject only to the right of Affected Creditors to receive distributions pursuant to the Plan in respect of their Affected Claims;
- (n) declare that any Affected Claim for which a Proof of Claim has not been filed by the Claims Bar Date in accordance with the Claims Process Order shall be forever barred and extinguished;
- (o) declare that the Stay of Proceedings and protections under the Initial Order be extended to, and including, the Final Distribution Date and, in addition to the parties currently protected thereunder, shall extend to the benefit of the Released Parties;
- (p) deem the remaining Directors of the HII Group Entities, including of the Petitioners, the Homco GPs, Homburg Baltic, Homburg US and Homburg Holdings (US) Inc., to have resigned without replacement on the Effective Time on the Plan Implementation Date;
- (q) declare that all distributions and payments by or at the direction of the Monitor, in each case on behalf of HII and Shareco, to the Affected Creditors with Proven Claims under the Plan are for the account of HII and Shareco and the fulfillment of their respective obligations under the Plan;
- (r) declare that the Monitor or its designate shall have no authority to transfer Newco Common Shares to any Person other than in accordance with the Plan and that it shall have no personal liability relating to holding the Newco Common Shares in the Disputed Claims (Newco Shares) Reserve, including without limitation for any loss arising out of fluctuations in the market value of the Newco Common Shares while held in the Disputed Claims (Newco Shares) Reserve, other than its

obligation to transfer shares from the Disputed Claims (Newco Shares) Reserve pursuant to and in accordance with the Plan;

- (s) declare that any distributions under the Plan and the Sanction and Vesting Order shall not constitute a “distribution” and the Monitor shall not constitute a “legal representative” or “representative” of the HII Group Entities for the purposes of Section 159 of the ITA, Section 270 of the Excise Tax Act, Section 14 of the Tax Administration Act (Quebec), and any other similar, federal, provincial or territorial tax legislation (the “**Tax Statutes**”) given that the Monitor is not a "legal representative" nor an "assignee" of HII and is only a disbursing agent under the Plan, and the Monitor in making such payments is not “distributing” nor shall it be considered to “distribute”, nor to have “distributed”, such funds for the purposes of the Tax Statutes and the Monitor shall not incur any liability under the Tax Statutes in respect of its making any payments, ordered or permitted under the Sanction and Vesting Order and is thereby forever released, remised and discharged from any Claims against it under the Tax Statutes or otherwise at law, arising in respect of payments made under the Plan and the Sanction and Vesting Order and any Claims of such nature are thereby forever barred;
- (t) declare that in no circumstances will the Monitor have any liability for any of the HII Group Entities’ tax liability regardless of how or when such liability may have arisen;
- (u) approve the constitution of the Liquidation Advisory Committee and authorize the Monitor to consult with and seek the approval of the Liquidation Advisory Committee as more particularly provided in the Plan;
- (v) approve the form of Monitor’s Plan Implementation Date Certificate, and declare that upon the satisfaction or waiver of the Conditions Precedent to implementation of the Plan set out in Section 12.3, the Monitor shall file the Monitor’s Plan Implementation Date Certificate;
- (w) provide for the creation of the Plan Charges which shall survive the Plan Implementation Date in the order of priority set out in the Plan:
- (x) approve the form of Monitor’s Plan Completion Certificate, and declare that the Monitor, in its capacity as Monitor, upon completion of its duties to effect distributions in accordance with the Plan, shall file with the Court the Monitor’s Plan Completion Certificate stating that all of its duties under the Plan and the Orders have been completed and thereupon, Deloitte shall be deemed to be discharged from its duties as Monitor of the HII Group Entities in the CCAA Proceedings and released of all claims relating to its activities as Monitor, the Liquidation Advisory Committee shall be discharged and the Plan Charges shall be released;
- (y) approve the Monitor’s form of Notice of Final Distribution;
- (z) authorize the Monitor (at its sole election) to seek an order of any court of competent jurisdiction to recognize the Plan and the Sanction and Vesting Order

and to confirm the Plan and the Sanction and Vesting Order as binding and effective in any appropriate foreign jurisdiction; and

- (aa) declare that HII and the Monitor may apply to the Court from time to time for advice and direction in respect of any matters arising from or under the Plan, including without limitation regarding the distribution mechanics and the Plan Transactions.

### **12.3 Conditions Precedent to Implementation of a Plan**

The implementation of the Plan shall be conditional upon the fulfilment or waiver, where applicable, of the following conditions precedent on or before the Effective Time or the date specified therefor (collectively the “**Conditions Precedent**”):

- (a) The Pre-Plan Implementation Date Transactions shall have been effected in their entirety;
- (b) The requisite number of all Affected Creditors as determined by the Monitor shall have fulfilled all applications and registrations and shall have received all such registrations and authorizations as shall be required to allow such Affected Creditors to receive and trade any Newco Common Shares to which such Affected Creditors may be entitled in and through the Trading Platform;
- (c) HII and Shareco shall have satisfied their respective Post-Filing Trade Payables in the ordinary course or made provision in respect thereof in the Administrative Reserve to the satisfaction of the Monitor;
- (d) All material consents, declarations, rulings or approvals of or by any Governmental Authority as may be considered necessary by HII, Shareco and the Monitor in respect of the Plan Transactions shall have been obtained, including without limitation:
  - (i) The issuance of a licence by the AFM to Newco;
  - (ii) The approval of the Newco Prospectus by the applicable regulator or the Trading Platform (as applicable) in connection with the public listing of the Newco Common Shares;
  - (iii) HII shall have obtained advance rulings from the applicable Taxing Authorities approving the Pre-Plan Implementation Date Transactions and the Plan Transactions in response to the ruling requests submitted on HII’s behalf, that are acceptable to HII, Shareco, and the Monitor; and
  - (iv) The Trading Platform shall have confirmed in writing the admission to trading of the Newco Common Shares on the Trading Platform;
- (e) HII shall have obtained the necessary consents of the Core Business Creditors relating to the transfer of the Core Business Assets to Newco;

- (f) The Plan shall have been approved by the Required Majority of the Affected Creditors in the Unsecured Creditors' Class at the Creditors' Meeting;
- (g) The Sanction and Vesting Order shall have been granted by the Court in form satisfactory to HII and Shareco and the Monitor, and for greater certainty, shall be in full force and effect and not reversed, stayed, varied, modified, or amended.

#### **12.4 Monitor's Certificate**

Upon delivery of written notice from HII of the fulfilment or waiver of the conditions precedent to implementation of the Plan as set out in Section 12.3 of the Plan, the Monitor shall deliver the Monitor's Plan Implementation Date Certificate to HII. Following the Plan Implementation Date, the Monitor shall file such certificate with the Court and shall post a copy of same on the Website.

### **ARTICLE 13 GENERAL**

#### **13.1 Binding Effect**

On the Plan Implementation Date:

- (a) the Plan will become effective at the Effective Time and the Plan Transactions will be implemented;
- (b) the treatment of Affected Claims under the Plan shall be final and binding for all purposes and enure to the benefit of the HII Group Entities, all Affected Creditors, the Released Parties, the Named Directors and all other Persons and Parties named or referred to in, or subject to, the Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns;
- (c) all Affected Claims shall be and shall be deemed to be forever discharged and released, excepting only the obligations to make distributions in respect of such Affected Claims in the manner and to the extent provided for in the Plan;
- (d) each Person named or referred to in, or subject to the Plan, will be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety; and
- (e) each Person named or referred to in, or subject to the Plan, shall be deemed to have executed and delivered to HII all consents, releases, directions, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

#### **13.2 Waiver of Defaults**

From and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of the HII Group Entities then existing or previously committed by the HII Group Entities, or caused by the HII Group Entities, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any contract,

instrument, credit document, lease, guarantee, agreement for sale, deed, licence, permit or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and any of the HII Group Entities arising directly or indirectly from the filing by the HII Group Entities under the CCAA and the implementation of the Plan (including the Reorganization Transaction) and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under any such agreement shall be deemed to have been rescinded and of no further force or effect, provided that nothing shall be deemed to excuse the HII Group Entities from performing its obligations under the Plan or be a waiver of defaults by the HII Group Entities under the Plan and the related documents. This Section does not affect the rights of any Person to pursue any recoveries for a Claim that may be obtained from a guarantor (other than an HII Group Entity) and any security granted by such guarantor.

### **13.3 Claims Bar Date**

Nothing in the Plan extends or shall be interpreted as extending or amending the Claims Bar Date, or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Process Order.

### **13.4 Deeming Provisions**

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

### **13.5 Non-Consummation**

HII and Shareco reserve the right to revoke or withdraw the Plan at any time prior to the Plan Sanction Date with the consent of the Monitor. If HII and Shareco revoke or withdraw the Plan, or if the Sanction and Vesting Order is not issued or if the Plan Implementation Date does not occur, (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim), or any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against HII, Shareco or any other Person; (ii) prejudice in any manner the rights of HII or Shareco or any other Person in any further proceedings involving HII or Shareco; or (iii) constitute an admission of any sort by HII or Shareco or any other Person.

### **13.6 Modification of the Plan**

- (a) HII and Shareco reserve the right, at any time and from time to time, with the consent of the Monitor, both prior to and during the Creditors' Meeting or after the Creditors' Meeting, to amend, restate, modify and/or supplement the Plan; provided (i) if made prior to or at the Creditors' Meeting, such amendment shall be communicated to the Affected Creditors in the manner required by the Meeting Order, and (ii) if made following the Creditors' Meeting, such amendment shall be approved by the Court following notice to the Affected Creditors.
- (b) Notwithstanding Section 13.6(a), any amendment, restatement, modification or supplement may be made by HII and Shareco with the consent of the Monitor or

pursuant to an Order, at any time and from time to time, provided that it concerns a matter which, in the opinion of HII and Shareco, acting reasonably, is of an administrative nature required to better give effect to the implementation of the Plan and the Sanction and Vesting Order or to cure any errors, omissions or ambiguities and is not materially adverse to the financial or economic interests of the Affected Creditors.

- (c) Any amended, restated, modified or supplementary Plan or Plans filed with the Court and, if required by this Section, approved by the Court, shall, for all purposes, be and be deemed to be a part of, and incorporated, in the Plan.

### **13.7 Paramountcy**

Except with respect to the Unaffected Claims, from and after the Effective Time on the Plan Implementation Date, any conflict between:

- (a) the Plan; and
- (b) the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, bylaws of the HII Group Entities, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between any Person and the HII Group Entities as at the Plan Implementation Date;

will be deemed to be governed by the terms, conditions and provisions of the Plan and the Sanction and Vesting Order, which shall take precedence and priority.

### **13.8 Severability of Plan Provisions**

If, prior to the Plan Sanction Date, any term or provision of the Plan is held by the Court to be invalid, void or unenforceable, the Court, at the request of HII and Shareco and with the consent of the Monitor, shall have the power to either (a) sever such term or provision from the balance of the Plan and provide HII and Shareco with the option to proceed with the implementation of the balance of the Plan as of and with effect from the Plan Implementation Date, or (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, and provided that HII and Shareco proceed with the implementation of the Plan, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

### **13.9 Responsibilities of the Monitor**

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings with respect to the HII Group Entities and will not be responsible or liable for any obligations of the Homburg Group Members.

### 13.10 Different Capacities

Persons who are affected by the Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not affect such Person in any other capacity, unless expressly agreed by the Person in writing or unless its Claims overlap or are otherwise duplicative.

### 13.11 Notices

Any notice of other communication to be delivered hereunder must be in writing and reference the Plan and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail or by facsimile or email addressed to the respective Parties as follows:

If to HII and Shareco:

Homburg Invest Inc. and Homburg Shareco Inc.  
32 Akerley Boulevard  
Dartmouth, Nova Scotia  
B3B 1N1

Attention: Mr. Jan Schöningh, President and Chief Executive Officer  
and Mr. James F. Miles, Chief Financial Officer  
Fax: (514) 841-9618  
Email: jschonigh@hinvest.ca / jmiles@hinvest.ca

with a copy to:

Osler, Hoskin & Harcourt LLP  
1000 De la Gauchetiere Street West  
Suite 2100  
Montreal, Quebec  
H3B 4W5

Attention: Mr. Vitale Santoro and Ms Sandra Abitan  
Fax: (514) 904-8101  
Email: vsantoro@osler.com / sabitan@osler.com

If to a Creditor:

to the address or facsimile number or email address for such Creditor specified in the Proof of Claim or Letter of Instruction filed by such Creditor;

If to the Monitor:

Samson Belair/Deloitte & Touche Inc.  
1 Place Ville Marie  
Suite 3000  
Montreal, Quebec

H3B 4T9

Attention: Mr. Pierre Laporte and Mr. Jean-Francois Nadon  
Fax: (514) 390-4103  
Email: pilaporte@deloitte.ca / jnadon@deloitte.ca

with a copy to:

McCarthy Tetrault LLP  
1000 De la Gauchetiere Street West  
Suite 2500  
Montreal, Quebec  
H3B OA2

Attention: Mr. Mason Poplaw and Mr. Clemens Mayr  
Fax: (514) 875-6246  
Email: mpoplaw@mccarthy.ca / cmayr@mccarthy.ca

or to such other address as any party may from time to time notify the others in accordance with this Section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed or sent before 5:00 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

### **13.12 Further Assurances**

Each of the Persons named or referred to in, or subject to, the Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of the Plan and to give effect to the transactions contemplated herein.

**DATED** as of the 5<sup>th</sup> day of February, 2013.

## SCHEDULE “B”

### PRE-PLAN IMPLEMENTATION DATE TRANSACTIONS

The following Pre-Plan Implementation Date Transactions shall be effected, sequentially in the following order without any further act, or formality being taken and as shall be approved by the Sanction and Vesting Order prior to the Plan Implementation Date:

- (a) Incorporation of Newco:
  - (i) HII shall lend to the Incorporation Foundation the Newco Incorporation Loan, the loan proceeds of which shall be used by the Incorporation Foundation to subscribe for the initial share capital of Newco;
  - (ii) The Incorporation Foundation shall incorporate Newco under the laws of the Netherlands by subscribing for preference shares for the subscription price of EUR225,000; and
  - (iii) Newco shall have such characteristics (including capital structure protective measures and governance) as shall be appropriate in view of its size, the Trading Platform on which its shares are traded and its activities and as shall protect Newco and its stakeholders against undue interference, all in accordance with Applicable Law; and
  
- (b) Collapsing of BV Preferred Share Structure:
  - (i) Each BV Preferred Shareholder shall transfer its preferred shares of a Core BV to its respective co-shareholder Homco other than the BV Preferred Shareholders of Coët BV and Valbonne 2 BV;
  - (ii) Hofer Corporation NV shall transfer its preferred shares of Valbonne 2 BV to Stichting Coeval;
  - (iii) Homco 69 LP and Stichting Coeval shall resolve to amend the articles of association of Valbonne 2 BV to adjust Stichting Coeval’s preferred share entitlement;
  - (iv) Torvel BV shall transfer its preferred shares of Coët BV to Stichting Coeval; and
  - (v) Homco 70 LP and Stichting Coeval shall resolve to amend the articles of association of Coët BV to adjust Stichting Coeval’s preferred share entitlement; and
  
- (c) Voluntary Bankruptcies: In their discretion, HII and the Monitor may determine whether any Homburg Group Member is an Insolvent Person, and shall cause it to file an assignment into bankruptcy under the BIA or similar step under foreign

## PRE PLAN IMPLEMENTATION DATE TRANSACTIONS

(continued)

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bankruptcy legislation, naming Deloitte or any other Person as Trustee in Bankruptcy as applicable; and

- (d) Core BV's Upstream Loans: In their discretion, HII and the Monitor may determine to repay or satisfy a Core BV's intercompany loans or advances owing from its sole common shareholder Core Homco, including without limitation by way of return of capital, payment, set-off and forgiveness of debt; and
- (e) Information Circular: HII shall prepare the Information Circular and shall cause the Information Circular to be sent or otherwise made available to the Affected Creditors in accordance with the Meeting Order and any other Persons as may be required by the Court or under Applicable Law; and
- (f) Resignation of Directors: The existing directors of HII and Shareco shall resign effective immediately prior to the commencement of the Plan Transactions.

## SCHEDULE “D”

### HOMCOS

HII is the sole limited partner of the following Homcos:

<b><u>Defined Term</u></b>	<b><u>Meaning</u></b>
“Homco 52 LP”	Homco Realty Fund (52) Limited Partnership
“Homco 61 LP”	Homco Realty Fund (61) Limited Partnership
“Homco 69 LP”	Homco Realty Fund (69) Limited Partnership
“Homco 70 LP”	Homco Realty Fund (70) Limited Partnership
“Homco 71 LP”	Homco Realty Fund (71) Limited Partnership
“Homco 72 LP”	Homco Realty Fund (72) Limited Partnership
“Homco 73 LP”	Homco Realty Fund (73) Limited Partnership
“Homco 74 LP”	Homco Realty Fund (74) Limited Partnership
“Homco 76 LP”	Homco Realty Fund (76) Limited Partnership
“Homco 83 LP”	Homco Realty Fund (83) Limited Partnership
“Homco 84 LP”	Homco Realty Fund (84) Limited Partnership
“Homco 85 LP”	Homco Realty Fund (85) Limited Partnership
“Homco 86 LP”	Homco Realty Fund (86) Limited Partnership
“Homco 87 LP”	Homco Realty Fund (87) Limited Partnership
“Homco 89 LP”	Homco Realty Fund (89) Limited Partnership
“Homco 92 LP”	Homco Realty Fund (92) Limited Partnership
“Homco 94 LP”	Homco Realty Fund (94) Limited Partnership
“Homco 96 LP”	Homco Realty Fund (96) Limited Partnership
“Homco 98 LP”	Homco Realty Fund (98) Limited Partnership
“Homco 102 LP”	Homco Realty Fund (102) Limited Partnership
“Homco 105 LP”	Homco Realty Fund (105) Limited Partnership

<b><u>Defined Term</u></b>	<b><u>Meaning</u></b>
“Homco 110 LP”	Homco Realty Fund (110) Limited Partnership
“Homco 112 LP”	Homco Realty Fund (112) Limited Partnership
“Homco 113 LP”	Homco Realty Fund (113) Limited Partnership
“Homco 114 LP”	Homco Realty Fund (114) Limited Partnership
“Homco 115 LP”	Homco Realty Fund (115) Limited Partnership
“Homco 116 LP”	Homco Realty Fund (116) Limited Partnership
“Homco 117 LP”	Homco Realty Fund (117) Limited Partnership
“Homco 118 LP”	Homco Realty Fund (118) Limited Partnership
“Homco 119 LP”	Homco Realty Fund (119) Limited Partnership
“Homco 120 LP”	Homco Realty Fund (120) Limited Partnership
“Homco 121 LP”	Homco Realty Fund (121) Limited Partnership
“Homco 122 LP”	Homco Realty Fund (122) Limited Partnership
“Homco 123 LP”	Homco Realty Fund (123) Limited Partnership
“Homco 142 LP”	Homco Realty Fund (142) Limited Partnership