

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC
COURT. No.: 500-11-041305-117

SUPERIOR COURT
Commercial Division

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

HOMBURG INVEST INC., a legal person, duly constituted under the *Business Corporations Act* (Alberta), having its registered office at 450, 1st Street SW, Suite 2500, Calgary, Alberta, T2P 5H1, and having a chief place of business at Suite 1010, 1 Place Alexis Nihon, Montreal, Quebec, H3Z 3B8

– and –

HOMBURG SHARECO INC., a legal person, duly constituted under the *Companies Act* (Nova Scotia), having its head office at 450, 1st Street SW, Suite 2500, Calgary, Alberta, T2P 5H1, and having a chief place of business at Suite 1010, 1 Place Alexis Nihon, Montreal, Quebec, H3Z 3B8

– and –

CHURCHILL ESTATES DEVELOPMENT LTD., a legal person, duly constituted under the *Business Corporations Act* (Alberta), having its head office at Unit 127, 6227-2nd Street SE, Calgary, Alberta, T2H 1J5, and having a chief place of business at Suite 1010, 1 Place Alexis Nihon, Montreal, Quebec, H3Z 3B8

– and –

INVERNESS ESTATES DEVELOPMENT LTD., a legal person, duly constituted under the *Business Corporations Act* (Alberta), having its head office at Unit 127, 6227-2nd Street SE, Calgary, Alberta, T2H 1J5, and having a chief place of business at Suite 1010, 1 Place Alexis Nihon, Montreal, Quebec, H3Z 3B8

– and –

CP DEVELOPMENT LTD., a legal person, duly constituted under the *Business Corporations Act* (Alberta), having its head office at Unit 127, 6227-2nd Street SE, Calgary, Alberta, T2H 1J5, and having a chief place of business at Suite 1010, 1 Place Alexis Nihon, Montreal, Quebec, H3Z 3B8

- and –

NORTH CALGARY LAND LTD., a legal person, duly constituted under the *Business Corporations Act* (Alberta), having its office at Unit 220, 3016-19th Street NE, Calgary, Alberta, T2E 6Y9 and having a chief place of business at Suite 1010, 1 Place Alexis Nihon, Montreal, Quebec, H3Z 3B8.

Debtors/Petitioners

THE ENTITIES LISTED IN APPENDIX A

Mis-en-cause

– and –

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
(Pierre Laporte, CA, CIRP, person in charge), having a place of business at 1 Place Ville Marie, Suite 3000, Montreal, Quebec, H3B 4T9

Monitor

**TWELFTH REPORT TO THE COURT
SUBMITTED BY SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
IN ITS CAPACITY AS MONITOR**

(Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended)

INTRODUCTION

1. On September 9, 2011, Homburg Invest Inc. (“**HI**”), Homburg Shareco Inc. (“**Shareco**”), Churchill Estates Development Ltd. (“**Churchill**”), Inverness Estates Development Ltd. (“**Inverness**”) and CP Development Ltd. (“**CP**”) (and later North Calgary Land Ltd.) (collectively, the “**Debtors**”) filed and obtained protection from their respective creditors under Sections 4, 5 and 11 of the *Companies' Creditors Arrangement Act* (the “**CCAA**”) pursuant to an Order rendered by this Honorable Court (as amended from time to time, the “**Initial Order**”).
2. Pursuant to the Initial Order, the Stay extend to the following limited partnerships which form an integral part of the business of the Debtors: 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 (following an

amendment to the Initial Order on October 7, 2011), Homco Realty Fund (96) Limited Partnership (following an amendment to the Initial Order on May 31, 2012), Homco Realty Fund (105) Limited Partnership, Homco Realty Fund (121) Limited Partnership, Homco Realty Fund (122) Limited Partnership, Homco Realty Fund (142) Limited Partnership and Homco Realty Fund (199) Limited Partnership (collectively, the “**Applicant Partnerships**” and, together with the Debtors, the “**HII Parties**”).

3. Samson Bélair/Deloitte & Touche Inc. was appointed as monitor (the “**Monitor**”) under the CCAA.
4. Pursuant to the Initial Order, an initial stay of proceedings (the “**Stay**”) was granted until October 7, 2011 in favor of the Debtors, which Stay has been extended from time to time by order of the Court. On May 31, 2012, the Court last extended the Stay, up until August 31, 2012 (the “**Stay Period**”).
5. Since the Initial Order, the Monitor has filed reports with the Court and served same to the service list from time to time. The Monitor filed eleven such Monitor’s reports prior to this twelfth Monitor’s Report. A copy of all of the Monitor’s reports is available on the Monitor’s website at www.deloitte.com/ca/homburg-invest. The Monitor has also established a toll free number that is referenced on the Monitor’s website so that parties may contact the Monitor if they have questions with respect to the HII Parties’ restructuring under the CCAA.

PURPOSE OF THE TWELFTH REPORT

6. This twelfth report of the Monitor (“**Twelfth Report**”) is intended to provide the Monitor’s view on the Debtors’ Motion for approval of the exercise of certain options granted in the Purchase Agreement.

TERMS OF REFERENCE

7. In preparing this Twelfth Report, the Monitor has relied upon audited and unaudited financial information, the HII Parties’ records, the amended motion for an Initial Order dated September 9, 2011, subsequent motions filed with the Court (collectively, the “**Debtors’ Motions**”) and exhibits in support of same, its discussions with management of the HII Parties (“**Management**”) and the HII Parties’ and the Monitor’s legal advisors. While the Monitor has analyzed the information, some in draft form, submitted in the limited time available, the Monitor has not performed an audit or otherwise verified such information. Forward looking financial information included in this Twelfth Report is based on assumptions of Management regarding future events, and actual results achieved will vary from this information and such variations may be material.
8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not otherwise defined in this Twelfth Report are as defined in the previous reports of the Monitor and the Debtors’ Motions.

I- EXERCISE OF CERTAIN OPTIONS

9. As described in the Second Report, the Fourth Report and the Fifth Report, HII’s Control Issues result from the fact that Homburg L.P. Management (“**HLPM**”), an entity indirectly controlled by Richard Homburg through Homburg Canada Inc., is the general partner of virtually all of the limited partnerships which form part of HII’s business (collectively, the “**Partnerships**”) and of which HII is the sole limited partner.

10. As described in the Fifth Report, after a careful evaluation of the potential alternatives available to HII to address the Control Issues and following the due diligence conducted since the execution of the Purchase Agreement, the Monitor concluded that the Purchase Agreement constituted the best alternative under the circumstances to rapidly and effectively address the Control Issues and accelerate HII's restructuring for a number of reasons, including those set forth in the Fourth Report and the Fifth Report.
11. As described in the Ninth Report, on January 12, 2012, the Court rendered the Purchase Agreement Approval Order. The Purchase Agreement provides for, *inter alia*, the following options granted to the HII Group (each an "**Option**" and collectively the "**Options**"):
 - a. The option to purchase or otherwise obtain (directly or indirectly) title to the shares of:
 - i. HLPM;
 - ii. the Baltic GPs (namely the general partners of the Estonian, Latvian and Lithuanian limited partnerships (the "**Baltic Partnerships**") holding legal (registered) title to certain HII's assets); and
 - iii. any European subsidiary of the Partnerships (the "**European Entities**");
 - b. The option to require the transfer of the legal (registered) title to the properties held by HLPM, the Baltic GPs and any European Entities; and
 - c. The option to require the resignation of any or all General Partners of any of the Partnerships or of the Baltic Partnerships, to require their replacement by any entity and/or to effect amendments to the Limited Partnership Agreements in respect of the Partnerships and/or Baltic Partnerships.
12. On February 17, 2012, in conformity with the Purchase Agreement Approval Order, the closing of the transaction between the HCI Group and the HII Group contemplated by the Purchase Agreement occurred.
13. The Options are designed to allow, *inter alia*, the HII Group to address the Control Issues and properly structure the transfer of the control of the General Partners and any assets of the Partnerships and Baltic Partnerships held directly or indirectly by the General Partners on behalf of the Partnerships, Baltic Partnerships or the European Entities, with a view to minimizing any negative tax consequences for the Partnerships, the Baltic Partnerships and HII, including in particular any real estate transfer tax relating to the assets, especially those located in the Netherlands and Germany.
14. As described in the Tenth Report on April 30, 2012, the HII Group completed the First Option Exercise, as described at paragraph 31 of the Ninth Report and as authorized by the Court in its order dated April 11, 2012. As discussed at length in previous reports, the exercise of these options enabled HII to resolve the control issues without triggering payments of real estate transfer taxes in Germany, the Netherlands or PEI.
15. The First Option Exercise specifically carved out the Baltic Partnerships given that the HII Group and the Monitor had yet to finalize their analysis for these entities.

16. As appears from the Second Report and Fourth Report, the Baltic real estate assets, namely fifty-four properties located in Lithuania, Latvia and Estonia, are held indirectly or directly through five wholly-owned partnerships of Homburg Baltic LP Inc., a direct wholly-owned subsidiary of HII. For the majority of the Baltic properties, the legal or registered owners is one of four of the aforesaid partnerships. The fifth partnership indirectly holds the remaining Baltic properties through another limited partnership of which it is the sole limited partner. This other partnership in turn is the legal or registered owner of said remaining Baltic properties.
17. Following an extensive analysis of the Options and in consultation with the Monitor and respective counsel HII determined that, as of the date hereof, the most efficient and effective way to restructure the Baltic Partnerships would be as set forth below;
18. Essentially, the HII Group intends to:
 - a. Incorporate or make use of inactive direct or indirect wholly owned subsidiaries of HII, to act as general partners (each of which will be the general partner of no more than one Partnership) (each a “New Baltic GP”); and
 - b. Replace each of the Baltic GPs with a New Baltic GP or, alternatively, add a New Baltic GP to each Baltic Partnership;(collectively referred to as the “**Second Option Exercise**”).
19. HII has received a legal opinion from its counsel in the Baltic States, which was confirmed by the Monitor’s legal counsel, to the effect that there will be no material tax consequences to the Second Option Exercise;
20. The Second Option Exercise will allow the HII Group to complete a second major step in the reorganization of its corporate structure which will facilitate the continuance of the negotiations with its secured lender for the Baltic Properties, SEB Bank, and relevant third parties, the whole with a view to advancing the restructuring and ultimately formulating a plan of arrangement for HII Group stakeholders;

II- CONCLUSION AND RECOMMENDATIONS

21. It is the Monitor’s view that the HII Parties have acted in good faith and with due diligence in accordance with the Initial Order.
22. It is the Monitor’s view that, for the reasons elaborated in Section I of this Twelfth Report, that the Second Option Exercise should be approved and that the motion for approval of the exercise of certain options should therefore be granted by the Court.
23. Based on the Monitor’s discussions with the HII Parties’ representatives, it is the Monitor’s opinion that the HII Parties have acted and continue to act in good faith and with due diligence, and will continue to work towards the development of a viable plan of arrangement.

The Monitor respectfully submits to the Court this, its Twelfth Report.

DATED AT MONTREAL, this 18th day of June 2012.

A handwritten signature in black ink, appearing to read 'Pierre Laporte', with a large, stylized flourish at the end.

Pierre Laporte, CPA, CA, CIRP
President

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
In its capacity as Court-Appointed Monitor

APPENDIX

APPENDIX A

THE ENTITIES Mis en Cause

HOMCO REALTY FUND (52) LIMITED PARTNERSHIP
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HOMCO REALTY FUND (142) LIMITED PARTNERSHIP
HOMCO REALTY FUND (199) LIMITED PARTNERSHIP