

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

SUPERIOR COURT
(Commercial Division)

(sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
1985, c. C-36, as amended)

No.: 500-11-041305-117

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

**1810040 ALBERTA LTD. (formerly known as
HOMBURG INVEST INC. and HOMBURG
SHARECO INC.)**

-and-

**CHURCHILL ESTATES DEVELOPMENT LTD.
et al.**

Debtors

-and-

NORTON ROSE FULBRIGHT CANADA LLP,
with a place of business located at 400 3rd
Avenue SW, Suite 3700, Calgary, Alberta, T2P
4H2;

Respondent

-and-

DELOITTE RESTRUCTURING INC.

Monitor / Applicant

-and-

**THE OWNERS: CONDOMINIUM PLAN
0713076,** with its place of business located at
701 3rd Avenue SW, Calgary, Alberta, T2P 5R3;

Mis-en-Cause

**APPLICATION FOR THE PAYMENT TO THE MONITOR OF CERTAIN SUMS HELD
IN TRUST IN RESPECT OF HOLDBACKS (CHURCHILL ESTATES)**

(Section 11 of the *Companies' Creditors Arrangement Act*)

**TO THE HONOURABLE JUSTICE LOUIS J. GOUIN OF THE SUPERIOR COURT,
SITTING IN COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF
MONTRÉAL, THE MONITOR RESPECTFULLY SUBMITS AS FOLLOWS:**

I. PROCEDURAL BACKGROUND

1. On September 9, 2011, 1810040 Alberta Ltd. (formerly known as Homburg Invest Inc. and Homburg Shareco Inc.) (“**HII**”), along with certain related parties, including Churchill Estates Development Ltd. (“**Churchill**”) filed and obtained protection from their respective creditors under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) pursuant to an order rendered by the Superior Court of Quebec (the “**CCAA Court**”) (as amended from time to time, the “**Initial Order**”);
2. Pursuant to the Initial Order, Deloitte Restructuring Inc. (formerly known as Samson Bélair/Deloitte & Touche Inc.) (the “**Monitor**”) was appointed as court-appointed monitor in the CCAA proceedings;
3. On April 30, 2012, the CCAA Court issued a claims process order in connection namely with all “Claims” (as defined in such order) against Churchill (the “**Claims Process Order**”);
4. On February 5, 2013, HII filed a plan of compromise and reorganization under the CCAA, which plan has since been amended from time to time (as amended from time to time and as it may be further amended, the “**Plan**”);
5. On May 30, 2013, the required majority of creditors of HII voted in favour of the Plan and, on June 5, 2013, the CCAA Court rendered an order approving and sanctioning the Plan (the “**Sanction Order**”);
6. Between March 24 and March 27, 2014, in accordance with the Plan and the Sanction Order, the implementation of the Plan took place (the “**Plan Implementation Date**”);
7. The Plan provides *inter alia* for the creation of an “Asset Realization Cash Pool” in which the “Non-Core Business Asset Net Proceeds” are deposited, for the ultimate benefit of HII’s creditors under the Plan;
8. The Sanction Order (paragraph 85 in particular) *inter alia* grants the Monitor exclusive authority and power to deal with the “Non-Core Business Entities’ Assets”, including to execute, assign, issue and endorse documents of whatever nature in respect of any of the Non-Core Business Entities’ Assets, whether in the Monitor’s name or in the name and on behalf of any HII Group Entity (including Churchill);
9. The Monitor respectfully asks the CCAA Court to issue an order for the payment of certain “Non-Core Business Entities’ Assets”, namely in respect of certain funds in an amount of \$110,302.61 held in trust by the Respondent Norton Rose Fulbright LLP (“**NRF**”), representing holdbacks for common area deficiencies that were identified in 2007 pursuant to a cost consultant’s report in connection with the Churchill Estates Condominium project (in Calgary, Alberta) held by Churchill (the “**Holdback Funds in Trust**”);

II. PAYMENT TO THE MONITOR OF CHURCHILL OF THE HOLDBACK FUNDS IN TRUST

10. On June 2, 2016, NRF sent an email to the Monitor's general email address created for the purpose of the CCAA proceedings, advising of certain funds being held in trust by NRF, including the Holdback Funds in Trust, as appears from a copy of an email from the Respondent dated June 2, 2016, communicated herewith as **Exhibit R-1**. The Monitor was not aware of the Holdback Funds in Trust prior to this email;
11. The present Application is only with respect to the Holdback Funds in Trust, and no other funds held in trust by NRF (including the remainder of the deposit held in connection with the purchase of a condominium forming part of the settlement agreement approved by the CCAA Court on June 4, 2014);
12. NRF asked the Monitor to confirm if the work regarding the identified common area deficiencies related to the Holdback Funds in Trust (the "**Work**") had been completed, as well as for any report confirming that such Work was completed;
13. The Monitor sought to obtain information regarding the Work contemplated by the Holdback Funds in Trust, and the information gathered by the Monitor indicated the Work was completed was completed in 2009. However, no official work completion certificate was retrieved;
14. It is noteworthy to mention that, as part of the claims process conducted pursuant to the Claims Process Order, The Owners: Condominium Plan 0713076 (the "**Condominium Corporation**") filed a proof of claim against Churchill in connection with certain alleged construction deficiencies, but not against the Holdback Funds in Trust or otherwise in connection with the non-completion of the Work;
15. Still, the Monitor enquired on the nature and entitlement to the Holdback Funds in Trust, and communicated with the Condominium Corporation's counsel in this regard, as namely reported in the 45th Report of the Monitor filed in the CCAA Court record;
16. On December 9, 2016, the Condominium Corporation's counsel confirmed that the Work had been completed by the developer and not the Condominium Corporation, which only had completed work post-completion, being the object of its proof of claim (unsecured). As such, the Condominium Corporation is not advancing a claim with respect to the Holdback Funds in Trust (other than a claim for its *pro rata* share as an unsecured creditor), as appears from a copy of the letter from the Condominium Corporation's counsel dated December 9, 2016, communicated herewith as **Exhibit R-2**;
17. On February 22, 2017, NRF confirmed that no interest is accruing on the Holdback Funds in Trust, such that the amount of same is still \$110,302.61.

18. NRF has asked to be authorized to withhold an aggregate amount of \$2,625.00 (the "**Fee Holdback**") to be applied in payment of an outstanding invoice dated November 29, 2016, a copy of which is attached herewith as **Exhibit R-3**, as well as any future fees and disbursements (including taxes), as the case may be, to be incurred in connection with this matter;
19. NRF has agreed to disburse to the Monitor of Churchill the net sum of \$107,677.61 (representing the Holdback Funds in Trust less the Fee Holdback) following the issuance of an Order by the CCAA Court including the conclusions of the present Application;
20. The Condominium Corporation is also consenting to the release of the Holdback Funds in Trust to the Monitor of Churchill, with the understanding that said funds will be kept by the Monitor for a distribution to the creditors of Churchill, including the Condominium Corporation, pursuant to the applicable law;
21. The release of the Holdback Funds in Trust to the Monitor of Churchill will allow to increase the recovery of the unsecured creditors of Churchill, including HII which is the most important unsecured creditor. As such, the release of the Holdback Funds in Trust will ultimately benefit the creditors of HII, since all distributions to HII will form part of the "Asset Realization Cash Pool" to be distributed to the creditors pursuant to the Plan;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT:

GRANT the present *Application for the Payment to the Monitor of Certain Sums Held In Trust in Respect of Holdbacks (Churchill Estates)* (the "**Application**");

DECLARE that the time for any required service, notice or notification of the Application is hereby abridged and validated and that there has been good and sufficient service, notice or notification of the Application, and that any further service, notice or notification on any party is hereby dispensed with;

ORDER the Respondent Norton Rose Fulbright Canada LLP to pay the amount of \$107,677.61 (representing the Holdback Funds in Trust less the Fee Holdback) to Deloitte Restructuring Inc. in its capacity as Monitor of Churchill Estates Development Ltd., and **DECLARE** that, upon such payment, Norton Rose Fulbright Canada LLP will be released from any and all further liability in connection with the Holdback Funds in Trust (being understood that this declaration does not apply to any other funds held in trust);

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

MONTREAL, February 23, 2017



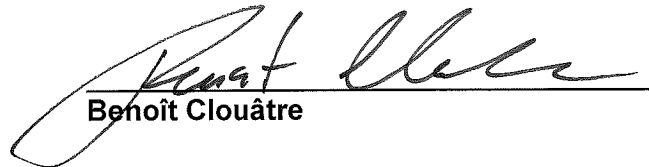
MCCARTHY TÉTRAULT LLP
Attorneys for the Monitor

AFFIDAVIT

I the undersigned, Benoît Clouâtre, Senior Vice-President of Deloitte Restructuring Inc., domiciled and residing for the purpose hereof at 1190 Avenue des Canadiens-de-Montréal, Suite 500, Montréal, QC H3B 0M7, solemnly declare the following:

1. I am a duly authorized representative of Deloitte Restructuring Inc. in its capacity of Monitor to 1810040 Alberta Ltd. (formerly known as Homburg Invest Inc. and Homburg Shareco Inc.) and Churchill Estates Development Ltd.;
2. All the facts alleged in the *Application for the Payment to the Monitor of Certain Sums Held In Trust in Respect of Holdbacks (Churchill Estates)* are true.

AND I HAVE SIGNED


Benoît Clouâtre

SWORN BEFORE ME AT THE CITY OF
TORONTO ON THE 23th DAY OF FEBRUARY 2017


COMMISSIONER FOR TAKING AFFIDAVITS



NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the *Application for the Payment to the Monitor of Certain Sums Held In Trust in Respect of Holdbacks (Churchill Estates)* will be presented for hearing and allowance in the Superior Court, Commercial Division, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on **February 24, 2017, at 9:15 a.m., and in a room to be determined.**

PLEASE ACT ACCORDINGLY.

MONTRÉAL, February 23, 2017



MCCARTHY TÉTRAULT LLP

Attorneys for the Monitor

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AFFIDAVIT AND NOTICE OF PRESENTATION**

ORIGINAL

Mtre Jocelyn Perreault
(514-397-7092)
Our file : 783416-437027

BC0847

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