

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-041305-117

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

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

**Homburg Invest Inc.  
Homburg Shareco Inc.  
Churchill Estates Development Ltd.  
CP Development Ltd.  
North Calgary Land Ltd.  
Homburg Management (Canada) Inc.**  
**Debtors / Petitioners**

-and-

**Homco Realty Fund (52) Limited Partnership  
Homco Realty Fund (61) Limited Partnership  
Homco Realty Fund (83) 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 (142) Limited Partnership  
Homco Realty Fund (190) Limited Partnership  
Homco Realty Fund (191) Limited Partnership  
Homco Realty Fund (199) Limited Partnership  
Castello Development Ltd.**

**Mises-en-cause**

-and-

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

**Monitor**

**MOTION FOR EXTENSION OF THE STAY PERIOD, INCREASE OF THE FUNDING  
CHARGE (HOMCO 88) AND ACCESS TO RESTRICTED CASH  
(Sections 11, 11.02 and 11.52 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985)**

**TO THE HONOURABLE JUSTICE LOUIS J. GOUIN OR TO ONE OF THE  
HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL  
DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE  
PETITIONERS RESPECTFULLY SUBMIT AS FOLLOWS:**

## I. INTRODUCTION

1. On September 9, 2011, the Honourable Louis J. Gouin, J.S.C. issued an order (the “**Initial Order**”) pursuant to the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) in respect of Homburg Invest Inc. (“**HII**”), Homburg Shareco Inc. (“**Shareco**”), Churchill Estates Development Ltd., Inverness Estates Development Ltd. (“**Inverness**”) and CP Development Ltd. (collectively the “**Initial Debtors**”) as appears from the Court record;
2. Pursuant to the Initial Order, Samson Bélair/Deloitte & Touche Inc. (the “**Monitor**”) was appointed as Monitor of the Initial Debtors and a stay of proceedings (the “**Stay of Proceedings**”) was issued from the date of the Initial Order until October 7, 2011;
3. On October 7, 2011, this Court issued an order (the “**First Extension Order**”) extending the Stay of Proceedings. Since then, this Court has further extended the Stay of Proceedings, most recently until March 11, 2014 (the “**Stay Period**”), as appears from the Court record;
4. As appears from the Initial Order and the First Extension Order, the Stay of Proceedings was initially extended in favour of the following limited partnerships: Homco Realty Fund (52) Limited Partnership (“**Homco 52**”), Homco Realty Fund (88) Limited Partnership (“**Homco 88**”), Homco Realty Fund (89) Limited Partnership, Homco Realty Fund (92) Limited Partnership, Homco Realty Fund (94) Limited Partnership (“**Homco 94**”), Homco Realty Fund (105) Limited Partnership (“**Homco 105**”), Homco Realty Fund (121) Limited Partnership (“**Homco 121**”), Homco Realty Fund (122) Limited Partnership (“**Homco 122**”), Homco Realty Fund (142) Limited Partnership and Homco Realty Fund (199) Limited Partnership (collectively the “**Initial Mises-en-cause**”);
5. On May 31, 2012, this Court issued an order amending the Initial Order to add North Calgary Land Ltd. (“**NCLL**”) as a Petitioner and Homco Realty Fund (96) Limited Partnership (“**Homco 96**”) as an Applicant Partnership thereunder. On December 14, 2012, this Court issued a further order amending the Initial Order to add Homco Realty Fund (190) Limited Partnership (“**Homco 190**”) and Homco Realty Fund (191) Limited Partnership (“**Homco 191**”) as Applicant Partnerships;
6. By Order of the Court made on February 6, 2013, the Initial Order was further amended to add Homco Realty Fund (61) Limited Partnership (“**Homco 61**”) as an additional Applicant Partnership and Castello Development Ltd. (“**Castello**”) as a mise-en-cause. On March 14, 2013, the Initial Order was further amended to add Homburg Management (Canada) Inc. (“**HMCI**”) as an additional Petitioner. On April 26, 2013, this Court issued a further order amending the Initial Order to add Homco Realty Fund (83) Limited Partnership (“**Homco 83**”) as Applicant Partnership. Finally, on July 11, 2013, this Court discontinued the stay of proceedings in respect of Homco 122 and on September 30, 2013, this Court discontinued the stay of proceedings in respect of Inverness (NCLL, Homco 96, Homco 190, Homco 191, Homco 61, Castello, HMCI, Homco 83, the Initial Debtors and the Initial Mises-en-cause (excluding Homco 122 and Inverness) are collectively referred to as the “**HII Group**”);

7. The HII Group respectfully requests that this Honourable Court render the orders sought herein to, *inter alia*:
  - (a) Extend the Stay Period until May 3, 2014;
  - (b) Increase the funding charge as regards Homco 88; and
  - (c) Grant access to the required amount of Restricted Cash (as defined below);

## **II. IMPLEMENTATION OF THE PLANS OF ARRANGEMENT**

8. On May 30, 2013, affected creditors voted overwhelmingly in favour of the Second Joint Amended and Restated Plan of Compromise and Reorganization of HII and Shareco and the Restated Plan of Compromise of Homco 61 (the “**Homco 61 Plan**”);
9. On June 5, 2013, HII and Shareco filed a Third Amended and Restated Plan of Compromise and Reorganization (the “**HII/Shareco Plan**” and together with the Homco 61 Plan, the “**Plans**”);
10. Also on June 5, 2013, this Honourable Court sanctioned the Plans, as appears from the Court record. The HII Group, the Monitor and their advisors have been working diligently in order to finalize and execute all arrangements and consents required to implement the Plans, the whole with a view to proceeding to implementation of the Plans as soon as possible;
11. HII is pleased to report that, on the date hereof, Dutch counsel for HII and Geneba Properties N.V. (“**Geneba**”) were advised that the Dutch Autoriteit Financiële Markten granted the licence Geneba was awaiting to act as an investment institution without a separate manager;
12. HII, the Monitor and their respective advisors are now able to finalize all arrangements required to proceed with implementation of the Plans, including the finalization of financing arrangements with Skandinaviska Enskilda Banken (SEB). HII anticipates that the closing of all required transactions should take place in the coming weeks;

## **III. OPERATIONS AND RESTRUCTURING EFFORTS**

13. Since the last extension of the Stay Period, the HII Group has continued to make significant progress. Highlights of the most significant activities of the HII Group are provided below. The HII Group refers the stakeholders and the Court to the Thirty Third Report of the Monitor to be filed in support of the present motion (the “**Monitor’s Thirty Third Report**”) for a complete description of these activities;

### **A. *Dispositions of non-core properties***

14. As previously disclosed to the Court, HSBC Bank Canada (“**HSBC**”) is currently financing three properties in Canada: Henderson Farms (Homco 121), Cristal Towers (Homco 105), and Points North (NCLL);

15. As regards Points North and Cristal Towers, sales processes are ongoing and any sale is subject to the approval of this Court. HSBC is kept informed of any material developments in the ongoing sale processes;
16. As to Henderson Farms, as previously disclosed to the Court, Homburg Canada Inc. has raised certain issues relating to the property. Discussions as to the best course of action are ongoing and the Court will be kept apprised of any developments;
17. As previously reported to the Court, Homburg Holdings (U.S.) Inc. (“**HHUS**”) entered into a Purchase and Sale Agreement to sell its four remaining properties, located in Colorado Springs. The potential purchaser has terminated the Agreement. HHUS and its broker are therefore continuing to market the property to previously interested parties. Highlights with respect to other properties located in North America are as follows:
  - (a) The sales processes for Homburg Springs East (Homco 52) and Homburg Springs West (Homco 94) are ongoing; and
  - (b) The sale of the last remaining condominium unit held by Castello closed in February;
18. The process relating to sale of non-core properties in Canada and the United States, and any related issues, will not have any impact the Plan Implementation Date;

**B. *Litigation with Homburg Canada Inc. et al.***

19. Counsel for the HII Group in Barbados, Nova Scotia and Colorado continued to advance the legal proceedings pending in each of these jurisdictions. Hearing dates have been set for May 1, 2014 within the Nova Scotia proceedings and for March 11 and 14, 2014 in connection with the Barbados proceedings. As of the date hereof, there are no other material developments to report to the Court;

**IV. CASTELLO DEVELOPMENT LTD.**

20. Castello is a corporation governed by the laws of Alberta and is a wholly owned subsidiary of HII. Castello formerly held condominium units in a tower known as Castello in Calgary, Alberta. As indicated above, the sale of the last unit held by Castello recently closed;
21. As of the date hereof, Castello is insolvent and no longer holds any material real property. HII, in cooperation with the Monitor, has determined that it would be appropriate to proceed with a bankruptcy of this entity. Accordingly, HII is not seeking an extension of the stay of proceedings in respect of Castello, such that it may file a voluntary assignment in bankruptcy;

**V. FUNDING CHARGE FOR HOMCO 88**

22. As previously disclosed to the Court, Homco 88’s main asset (“**Kai Towers**”) secures the indebtedness due by the HII Group under the Homburg Mortgage Bond 7 bonds (“**Series**

**7 Bonds**”). As more fully appears *inter alia* from the *Motion for approval of funding charges (Homco 52 and Homco 88)* dated November 6, 2012, in the Court record, it became apparent that proceeds from the sale of Kai Towers would not cover amounts due to holders of Series 7 Bonds and that any recovery for Homco 88’s unsecured creditors, including HII, was unlikely. However, for practical reasons, holders of Series 7 Bonds approved a resolution providing that the HII Group and the Monitor would conduct the sale process for Kai Towers and that associated costs would be funded by HII;

23. Accordingly, on November 8, 2012, this Honourable Court rendered the Order granting funding charges (Homco 52 and Homco 88) which, *inter alia*, granted HII a first ranking charge in the amount of \$385,000 (ranking ahead of all existing encumbrances, other than the movable and immovable security of HSBC Bank Canada) as security for repayment of all fees, costs and expenses of Homco 88, including professional fees of HII’s counsel and the Monitor and its counsel, as well as broker fees, in relation to the sale process of Kai Towers (the “**Homco 88 Funding Charge**”). A maximum amount of \$100,000 of this charge was to cover professional fees of HII’s counsel and the Monitor and its counsel in relation to the sale process of the Homco 88 Property (the “**Homco 88 Professional Fee Cap**”);
24. The sales process took significantly longer than anticipated, primarily due to several extensions of the due diligence period requested by a party interested in purchasing the property and also due to a flood which severely affected the city of Calgary, where Kai Towers are located. On November 18, 2013, the Court granted the Authorization of Sale and Vesting Order (Kai Towers), in the Court record, authorizing Homco 88 (acting through its general partner) to sell Kai Towers to The Statesman Group of Companies Ltd., or its nominee (“**Statesman**”), for a purchase price of \$30 million. The sale closed on December 19, 2013;
25. As well, there is currently a dispute between Statesman, on one hand, and Homco 88 and the Monitor, on the other hand, regarding the entitlement to a security deposit of \$426,000 made with the City of Calgary on behalf of Homco 88 in May 2007;
26. HSBC Bank Canada, holding first ranking security on Kai Towers, was paid in full after the sale. HII was also reimbursed for the advances it made to Homco 88 (up to an amount of \$385,000) guaranteed by the Homco 88 Funding Charge. As for other creditors, the Authorization of Sale and Vesting Order (Kai Towers) was without prejudice to any rights they may have to the sale proceeds. It has now become apparent that there will be a debate before this Honourable Court between the holders of Series 7 Bonds and certain parties alleging they held valid liens on Kai Towers which would have been carried over to the sale proceeds. Each group believes it has priority over the other and the actual validity of the liens may need to be debated before the Court;
27. Given, *inter alia*, that the sale process took significantly longer than anticipated, that prior to the distribution of the proceeds there will be Court proceedings to determine entitlement and rank, and that there is currently a dispute over the entitlement to the above mentioned security deposit, the Homco 88 Funding Charge is insufficient to cover all advances made and to be made to Homco 88 by HII to cover the fees, costs and expenses of Homco 88 and the Homco 88 Professional Fee Cap is insufficient to cover all

professional fees of HII's counsel and the Monitor and its counsel in relation to the sale process of the Homco 88 Property;

28. HII submits that orderly conclusion of this matter is in the interest of all stakeholders. Accordingly, HII respectfully requests that this Court increase the Homco 88 Funding Charge by \$200,000, with a corresponding increase to the Homco 88 Professional Fee Cap, as more detailed in the conclusions hereof;

## **VI. ACCESS TO RESTRICTED CASH**

29. On January 20, 2012, this Honourable Court rendered a judgment authorizing the sale of Canmarc REIT units (the "**REIT Units**") held by Homco Realty Fund (199) L.P. (the "**REIT Units Sale Order**"). As previously disclosed, the REIT Units were sold and resulted in proceeds of approximately \$145 million (the "**REIT Units Proceeds**");
30. The REIT Units Sale Order provided that HII shall be entitled to have access to the REIT Units Proceeds for an amount of up to \$10 million (the "**Accessible Cash**") for the purposes of funding the liquidity requirements of the HII Group during its restructuring under the CCAA and that all further funding requirements are to be approved by further order of this Honourable Court;
31. As of the date hereof, the REIT Units Proceeds, less the Accessible Cash and the commission paid to HII's financial advisor pursuant to the REIT Units Sale Order, constitute restricted cash (the "**Restricted Cash**");
32. In light of liquidity requirements, this Honourable Court authorized the HII Group to access additional amounts of Restricted Cash, totalling \$50.935 million, as follows:
  - (a) \$6 million on April 11, 2012;
  - (b) \$11 million on May 31, 2012;
  - (c) \$5.2 million on July 18, 2012;
  - (d) \$3 million on September 14, 2012;
  - (e) \$8.1 million on October 10, 2012;
  - (f) \$4.95 million on August 29, 2013;
  - (g) \$6.8 million on September 30, 2013;
  - (h) \$2.585 million on December 18, 2013; and
  - (i) \$3.3 million on January 17, 2014;
33. The HII Group's estimated liquidity requirements for the period ending May 3, 2014 are such that, in light of the circumstances described above, access to an additional amount of Restricted Cash will be required, namely an estimated sum of approximately \$2.4

million, in order to have sufficient liquidity to implement the Plans and meet its ongoing obligations, without using alternate sources of financing, as will appear from HII's the Monitor's Thirty Third Report to be filed in support of this motion;

34. In light of the foregoing, it is respectfully requested that this Honourable Court authorize HII to have access to an incremental amount of up to \$2.4 million of Restricted Cash to allow it to continue its operations and ultimately implement the Plans, the whole in the best interest of its stakeholders;

## VII. CONCLUSION

35. HII is of the view that providing the relief requested herein is appropriate in the present circumstances. Accordingly, HII respectfully requests that this Honourable Court render the orders contained in the conclusions herein;
36. As will appear from the Monitor's Thirty Third Report, the Monitor supports the present Motion;
37. The HII Group has acted, and continues to act, in good faith and with the utmost diligence;
38. The present motion is well founded in fact and law.

### WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

1. **GRANT** the present *Motion for extension of the stay period, increase of the funding charge (Homco 88) and access to Restricted Cash* (the "**Motion**");
2. **EXTEND** the Stay Period (as defined in the Initial Order rendered by the Court on September 9, 2011 and as extended from time to time) to and including May 3, 2014, except in respect of Castello Development Ltd.;
3. **AMEND** the Order granting funding charges (Homco 52 and Homco 88) dated November 8, 2012 and **REPLACE** paragraph 11 and the first sentence of paragraph 13 of the said Order with the following:

[11] **AUTHORIZES** HII to continue to provide advances to Homco 88 to cover all fees, costs and expenses of Homco 88 (including a maximum amount of \$300,000 (three hundred thousand Canadian Dollars) to cover professional fees of HII's counsel and the Monitor and its counsel in relation to the sale process of the Homco 88 Property (as defined hereunder), which professional fees, for greater certainty, exclude the broker's commissions and fees (all fees, costs and advances as and from September 1, 2012 shall be referred to herein as the "**H88 Advances**");

[13] **ORDERS** and **DECLARES** that, subject to the next paragraph, all of the moveable and immoveable property of Homco 88 (the "**Homco 88 Property**") is hereby subject to a first ranking charge and security in the amount of \$585,000 (five hundred and eighty five thousand Canadian Dollars) in favour of HII as

security for the obligation to reimburse the H88 Advances to HII (the “**Homco 88 Funding Charge**”).

4. **ORDER** that Homburg Invest Inc. shall be entitled to have access to an incremental amount of up to \$2,400,000 (two million four hundred thousand dollars) of the Restricted Cash (as defined in the Motion) for the purposes of funding the liquidity requirements of the HII Group during its restructuring under the Companies Creditors’ Arrangement Act, R.S.C. 1985, c. C-36; all further funding requirements to be approved by further order of the Court;

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

MONTREAL, March 7, 2014

*Osler, Hoskin & Harcourt LLP*

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**OSLER, HOSKIN & HARCOURT LLP**

Attorneys for the Debtors and Mises-en-cause

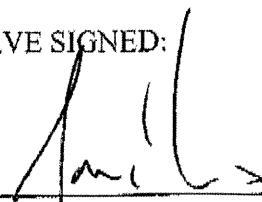


**AFFIDAVIT**


I the undersigned, James F. Miles, domiciled and residing at 29 Coventry Lane, Dartmouth, Nova Scotia, B2V 2K2, solemnly declare the following:

1. I am the Vice-President and Chief Financial Officer of Homburg Invest Inc. and duly authorized representative of the Petitioners for the purpose hereof;
2. I have taken cognizance of the attached Motion;
3. All of the facts alleged in the said motion are true.

AND I HAVE SIGNED:

  
\_\_\_\_\_  
**James F. Miles**

SOLEMNLY DECLARED BEFORE ME  
IN HALIFAX, NOVA SCOTIA ON THE  
7<sup>TH</sup> DAY OF MARCH 2014.


  
\_\_\_\_\_  
**SADIRA E. JAN**  
A Notary Public in and for  
the Province of Nova Scotia

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

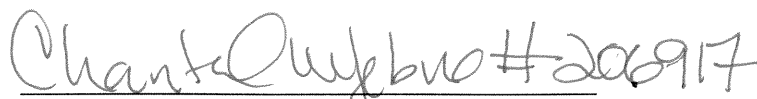
I, the undersigned, Julien Morissette, attorney, exercising my profession at Osler, Hoskin & Harcourt LLP, situated at 1000 De La Gauchetière Street West, Suite 2100, Montréal, Québec, solemnly declare the following:

1. I am one of the attorneys of the Petitioners to the present *Motion for extension of the stay period, increase of the funding charge (Homco 88) and access to Restricted Cash* in Court file number 500-11-041305-117;
2. On March 7<sup>th</sup>, 2014 at 1:59 p.m. (Montréal time), Osler, Hoskin & Harcourt LLP received by fax the Affidavit of Jamie Miles, a duly authorized representative of the Petitioners, dated the same day;
3. The copy of the Affidavit attached hereto is a true copy of the Affidavit of Jamie Miles received by fax from Sadira Jan from the city of Halifax, Nova Scotia from fax number 902-420-1417;
4. All of the facts alleged herein are true.

AND I HAVE SIGNED:

  
\_\_\_\_\_  
**Julien Morissette**

SOLEMNLY DECLARED BEFORE ME  
IN MONTRÉAL, QUÉBEC  
ON THE 7<sup>TH</sup> DAY OF MARCH 2014.

  
\_\_\_\_\_  
COMMISSIONER OF OATHS  
FOR THE PROVINCE OF QUÉBEC

## NOTICE OF PRESENTATION

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a trustees of Canmarc REIT  
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Frank W. Matheson, James F.  
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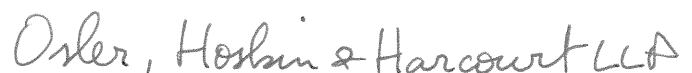
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**TAKE NOTICE** that the *Motion for extension of the stay period, increase of the funding charge (Homco 88) and access to Restricted Cash* will be presented for hearing and allowance in the Superior Court, Commercial Division, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on March 11, 2014, at 9:15 a.m., or so soon thereafter as counsel may be heard, and in a room to be announced.

**PLEASE ACT ACCORDINGLY.**

MONTRÉAL, March 7, 2014



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**OSLER, HOSKIN & HARCOURT LLP**  
Attorneys for the Debtors and Mises-en-cause

No: 500-11-041305-117

**SUPERIOR COURT**  
**(Commercial Division)**

DISTRICT OF MONTRÉAL

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

**HOMBURG INVEST INC. ET AL.**

*Debtors/Petitioners*

**-and-  
HOMCO REALTY FUND (S2) LIMITED  
PARTNERSHIP ET AL.**

*Mises-en-cause*

**-and-  
SAMSON BELAIR/DELOITTE & TOUCHE INC.**

*Monitor*

**MOTION FOR EXTENSION OF THE STAY PERIOD,  
INCREASE OF THE FUNDING CHARGE (HOMCO 88) AND  
ACCESS TO RESTRICTED CASH (Sections 11, 11.02 and 11.52  
of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.  
C-36), AFFIDAVIT, ATTESTATION OF AUTHENTICITY,  
NOTICE OF PRESENTATION**

**ORIGINAL**

**Mtre. Martin Destrosiers**

**Mtre. Sandra Abitan**

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