

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

SUPERIOR COURT

Commercial Division

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

No: 500-11-041305-117

**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 3700 Canterra Tower, 400 Third Avenue SW, Calgary, Alberta, T2P 4H2 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 3700 Canterra Tower, 400 Third Avenue SW, Calgary, Alberta, T2P 4H2 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 *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 *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 *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

Petitioners

-and-

THE ENTITIES LISTED IN ANNEX I

Mis-en-cause

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC., a legal person duly constituted under the *Canada Business Corporations Act*, having its place of business at 1 Place Ville Marie, Suite 3000, Montreal, Quebec, H3B 4T9

Monitor

**AMENDED MOTION FOR AN INITIAL ORDER PURSUANT TO
SECTIONS 4, 5, 11 AND FOLLOWING OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT ("CCAA")
R.S.C. 1985 c. C-36**

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, THE PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

INTRODUCTION

1. Homburg Invest Inc. ("**HII**"), Homburg ShareCo Inc. ("**ShareCo**"), Churchill Estates Development Ltd. ("**Churchill**"), Inverness Estates Development Ltd. ("**Inverness**") and CP Development Ltd. ("**CP**", and together with HII, ShareCo, (199) GP, Churchill and Inverness, the "**Petitioners**") seek protection under the CCAA to facilitate the reorganization of their business and operations including the restructuring of their capital structure;
2. While Homburg Realty Fund (199) Limited Partnership ("**Partnership (199)**") and are not petitioners in these proceedings, they seek to have the stay of proceedings extended to them as they form an integral part of the business and assets of Petitioners (with their ownership of units of Homburg Canada Real Estate Investment Trust ("**Homburg Canada REIT**")). In addition, Partnership 199 has guaranteed certain obligations of HII;
3. In addition, while Homburg Realty Fund (52) Limited Partnership ("**Partnership (52)**"), Homburg Realty Fund (53) Limited Partnership ("**Partnership (53)**"), Homburg Realty Fund (88) ("**Partnership (88)**"), Homburg Realty Fund (89) Limited Partnership ("**Partnership (89)**"), Homburg Realty Fund (92) Limited Partnership ("**Partnership**

(92”), Homburg Realty Fund (105) Limited Partnership (“**Partnership (105)**”), Homburg Realty Fund (121) Limited Partnership (“**Partnership (121)**”), Homburg Realty Fund (122) Limited Partnership (“**Partnership (122)**”) and Homburg Realty Fund (142) (“**Partnership (142)**”) and together with Partnership (199), Partnership (52), Partnership (53), Partnership (88), Partnership (89), Partnership (92), Partnership (105), Partnership (121) and Partnership (122), the “**Applicant Partnerships**”) are not petitioners in these proceedings, they seek to have the stay of proceedings extended to them as they also form an integral part of the business and assets of Petitioners and have either guaranteed certain obligations of ShareCo, HII or benefit from guarantees from HII;

BACKGROUND

Company Overview

(a) HII

4. HII is an international real estate investment and development company existing under the *Business Corporations Act* (Alberta) (the “**ABCA**”);
5. HII’s registered office is located at 3700 Canterra Tower, 400 Third Avenue SW, Calgary, Alberta T2P 4H2;
6. HII’s chief place of business is located in Montreal as the President and Chief Executive Officer of HII, Jan Schöningh, is based in Montreal and is responsible for the day-to-day decision-making for HII and its subsidiaries. The Chief Financial Officer, Jamie Miles, and the CEO meet on a regular basis in Montreal to discuss the business and affairs of HII. Accordingly, the mind and management of the HII group is located in Montreal;
7. Although the chief place of business of the HII group is located in Montreal, Quebec as described above, in certain filings and press releases, HII has identified its head office as being in Halifax, Nova Scotia;
8. HII directly or indirectly owns a diversified portfolio of real estate, including office, retail, industrial and hospitality in Canada, Europe (Germany, Baltic States and the Netherlands) and the United States. HII also indirectly owns land assets for development in Calgary and Edmonton, Alberta and Charlottetown, Prince Edward Island;
9. In addition to the foregoing, as indicated above, as at the date hereof, HII (through Partnership (199)) owns approximately 23.1% of Homburg Canada REIT, as described in greater detail below. Homburg Canada REIT owns significant assets in the Province of Quebec including landmark properties such as Place Alexis Nihon and Gare Centrale CN;
10. The board of directors of HII regularly holds its meetings in Montreal. The Annual Meeting of Shareholders is scheduled to take place today at 10 am in Montreal;
11. On April 22nd 2011, HII received an instruction from the Authority for Financial Markets (“**AFM**”) in the Netherlands, which *inter alia*, instructed HII to remove HII’s

controlling shareholder Richard Homburg as a decision maker and a person of influence in HII;

12. HII is regulated in the Netherlands as an investment fund (collective investment scheme) licensed by the AFM;
13. The issues raised by the AFM revolve primarily around Richard Homburg and have a significant adverse effect on HII and its ability to continue operating in the normal course, the whole as more fully described below;
14. On March 22, 2011, Richard Homburg announced his resignation as Chairman of the board, Chief Executive Officer and Director of HII. Jan Schöningh, formerly President of North American operations of HII, took over as President and Chief Executive Officer of HII;
15. Until July 29, 2011, Homburg Canada Incorporated (“**Homburg Canada**”) provided property and asset management services to HII in consideration for the payment by HII of certain management fees pursuant to the terms of a master property and asset management agreement dated May 28, 2009, as amended from time to time (the “**Master Property and Asset Management Agreement**”);
16. Homburg Canada is a company indirectly controlled by Richard Homburg (the former Chairman and Chief Executive Officer of HII);
17. On July 28, 2011, two days following the board’s decision to not proceed with the Revised Non-Binding Proposal (as defined below), without any prior notice nor cause, Homburg Canada terminated the employment of certain key employees, including the President and CEO and the CFO of HII and cut off all access to emails and records of Homburg Canada, which access is essential to run the affairs of HII;
18. On or about July 29, 2011, HII terminated the Master Property and Asset Management Agreement with immediate effect as a result of gross negligence. In response, Homburg Canada has brought a claim against HII and its subsidiaries in the amount of approximately \$27 million. HII and its subsidiaries intend to vigorously contest this claim;
19. Following termination of the Master Property and Asset Management Agreement on July 29, 2011, Mr. Schöningh and Mr. Miles are now direct employees of HII, together with approximately 16 other employees responsible for finance and administration duties;
20. HII continues its efforts to internalize all necessary resources to effectively operate its business;
21. In connection with its direct ownership of the Holman Grand Hotel, HII also has approximately 30 employees for a total of approximately 46 employees;
22. The Class A Subordinate Voting Shares and the Class B Multiple Voting Shares of HII are listed and posted for trading on the Toronto Stock Exchange (“**TSX**”) under the

symbols HII.A and HII.B, respectively. The Class A Shares are also listed and posted for trading on Eurolist by NYSE Euronext under the symbol HII;

23. Richard Homburg holds approximately 46.2% of the outstanding Class A Shares and Class B Shares. The remaining Class A Shares and Class B Shares are held by investors across Canada, the United States and Europe;

(b) ShareCo

24. ShareCo is a wholly-owned subsidiary of HII formed for the purpose of raising capital for HII and is the issuer of the Mortgage Bonds (as defined below). ShareCo has no asset;

(c) Applicant Partnerships

25. HII GP Inc. ("**(199) GP**") acts as the general partner of Partnership (199) and Homburg L.P. Management Inc. ("**Homburg Management**") acts as the general partner of the other Applicant Partnerships. HII is the sole limited partner of Partnership (199) and the other Applicant Partnerships;

(d) Development Entities

26. Churchill, Inverness, CP, Partnership (52), Partnership (88), Partnership (89), Partnership (94), Partnership (105), Partnership (121) and Partnership (122) own and develop real estate in, Calgary, Alberta. The chief of business for each of these entities is located in Montreal, Quebec;

CORPORATE STRUCTURE

27. A chart illustrating the basic structure of HII and its holdings is attached as **Exhibit P-1**;
28. The majority of HII's real estate assets are held through limited partnerships (the "**Partnerships**");
29. Each of the Partnerships has a general partner (the "**General Partner**") and one or more limited partners (the "**Limited Partners**"). The General Partner for substantially all of the Partnerships is Homburg Management;
30. HII is the sole Limited Partner of all of the Partnerships (including the Applicant Partnerships, except for certain of the Partnerships (the "**Minority Partnerships**") in which HII holds a minority interest;
31. In addition to the Partnerships, HII has, *inter alia*, the following direct subsidiaries:
 - (a) HII owns, directly or indirectly, 100% of 6 real estate development companies (including Churchill, Inverness and CP);
 - (b) HII owns 100% of the issued and outstanding shares of Homburg (U.S.) Incorporated, a Nova Scotia company. Homburg (U.S.) Incorporated is the parent company of Homburg Holdings (U.S.) Inc., a U.S. company which owns 11 properties in Texas and Colorado, and an 80% interest in 9 properties located in

Pennsylvania and Massachusetts through a joint venture with Cedar Shopping Centers, Inc. (“**Cedar**”), a real estate investment trust listed on the New York Stock Exchange (NYSE: CDR);

- (c) HII owns 100% of the issued and outstanding shares of ShareCo;
- (d) HII owns 100% of the issued and outstanding shares of Homburg Invest USA Limited which holds part of HII’s investment in Cedar;
- (e) HII owns 100% of the issued and outstanding shares of Homburg Baltic LP Inc., which through local country entities, owns 53 properties located in the Baltic States (Estonia, Lithuania and Latvia);
- (f) HII owns 100% of the issued and outstanding shares of 7924372 Canada Inc. which holds 3 million units of Homburg Canada REIT;

OVERVIEW OF OPERATIONS

- 32. HII’s principal business activities include the management and development of real estate across four sectors - office, retail, industrial and hospitality;
- 33. As at the date hereof, HII derives approximately 85% of its property revenue from Europe and approximately 15% from North America;
- 34. In addition, HII has 13 development projects located in Alberta and Prince Edward Island. Of these development projects, 7 are under construction or in the final stages of development planning;
- 35. In addition to the above-noted activities, HII, through Partnership (199)’s ownership interest in Homburg Canada REIT, receives cash distributions from time to time from Homburg Canada REIT (as described below). These cash distributions are an essential component of HII’s cash flow management activities;

SALE OF CANADIAN INCOME PRODUCING PROPERTIES

- 36. In May 2010, HII formed Homburg Canada REIT to hold all of HII’s Canadian income-producing real estate properties. Homburg Canada REIT is an unincorporated open-ended real estate investment trust governed by the laws of Quebec, established on March 30, 2010 pursuant to a declaration of trust dated as of March 30, 2010, as amended and restated as of May 25, 2010;
- 37. In connection therewith, Partnership (12), Partnership (190), Partnership (191) and Partnership (199) (collectively, the “**Vendors**”) sold all of their indirect interests in certain Canadian properties to Homburg Canada REIT Limited Partnership (“**Master LP**”), a subsidiary of Homburg Canada REIT, pursuant to a Master Purchase Agreement made as of May 25, 2010 (the “**HII Master Purchase Agreement**”). In connection therewith, Partnership (199), on behalf of the Vendors, was issued 15,291,206 Class A limited partnership units in Master LP. The 15,291,206 Class A limited partnership units were immediately exchanged for 15,291,206 trust units of Homburg Canada REIT pursuant to the terms of an Exchange Agreement between Partnership (199), as

transferor, Homburg Canada REIT, as transferee, and Partnership (12), Partnership (190) and Partnership (191) dated as of May 25, 2010. The units the Homburg Canada REIT are traded on the TSX;

38. HII was also a party to the HII Master Purchase Agreement, as guarantor in relation to the indemnification granted by the Partnerships thereunder to Master LP. A copy of the HII Master Purchase Agreement is attached as **Exhibit P-2**;

AFM MATTERS

39. In November 2009, the AFM and the central bank of the Netherlands, De Nederlandsche Bank (the “**DNB**”), commenced mutual investigations into HII as a result of certain irregularities. In relation thereto, on November 19, 2009, the AFM sent a letter to HII requesting information relating to the structure and control of HII, the announced restructuring of HII’s business, the consequences of same for the shareholders and bondholders of HII, and HII’s liquidity;
40. HII’s responses were deemed inadequate by the AFM. Accordingly, on April 29, 2010 the AFM imposed an order subject to penalty for non-compliance. Subsequently, HII and the AFM have exchanged a series of letters relating to further information requests by the AFM and the AFM’s intentions;
41. The AFM raised significant concerns regarding Richard Homburg. On April 22, 2011, HII received an instruction from the AFM requiring HII to ensure that Mr. Homburg no longer acts as policymaker of HII or as a person of influence until his integrity is considered to be beyond doubt following an assessment by a Dutch supervisor. The same instruction also required HII to appoint two directors or officers who were residents of the Netherlands;
42. The Board of Directors of HII could not legally reduce the control Mr. Homburg exercised over HII through his shareholdings or compel Mr. Homburg to reduce this control. Accordingly, despite efforts to conform to the instruction to the extent permitted by Canadian law, HII was unable to fully comply with the AFM instruction;
43. On April 22, 2011, the AFM, along with the DNB, issued a joint instruction ordering HII to submit an adequate and clear plan of control regarding HII, addressing the decision-making process and risk control in which the strategic goals are clearly set out and clear choices are made with a view towards long-term goals;
44. The AFM had also previously indicated to HII that it was contemplating appointing a “silent monitor” who would supervise the implementation of these instructions by HII. The appointment of a silent monitor is a regulatory tool under the laws of the Netherlands requiring the board of directors (a) to cooperate with the silent monitor, (b) to exercise its powers only subject to the silent monitor’s approval, and (c) to follow the silent monitor’s instructions. HII informed the AFM that Canadian corporate law and, in particular, the obligations of its directors thereunder, would prevent the effective appointment of a silent monitor.

45. On August 11, 2011, the AFM advised HII that it intends to revoke its license as a result of, *inter alia*, the following:
 - (a) Richard Homburg, whose integrity is not beyond doubt, still has a substantial influence over HII. As such, HII has not complied with the April 22, 2011 AFM instruction;
 - (b) The AFM has concerns regarding the financial situation of HII considering, amongst other things, the fact that various bonds must be redeemed by HII by the end of 2011;
 - (c) The AFM is of the opinion that HII has not fully complied with the April 22, 2011 joint instruction regarding the plan of control; and
 - (d) HII has made it impossible for the AFM to carry out its supervision duties, including because it is not possible for the AFM to impose a silent monitor. The AFM indicated that the laws of Canada are, in this respect, impeding its supervision of HII.
46. HII has been given until September 15, 2011 to respond to the AFM's intention to revoke its license and to provide its views on how to satisfactorily address the AFM's concerns;
47. HII believes that it will not be able to effectively restructure under the CCAA without a licence from the AFM;
48. As indicated below, HII believes that the appointment of the Monitor will assist in addressing the AFM's concerns identified above which will facilitate HII's restructuring under the CCAA;
49. The AFM correspondence is drafted in Dutch. HII's Dutch counsel has provided HII with an English translation thereof. A copy of the AFM correspondence and the corresponding translation will be filed under seal at the hearing of the present Motion as **Exhibits P A to P E**. In view of the sensitive and confidential nature of the AFM correspondence and the fact that disclosure of its specific terms may negatively affect and be detrimental to HII's CCAA proceedings, and thereby cause prejudice to HII and to its stakeholders, HII hereby requests an order that Exhibits P A to P E remain under seal until further order of this court;

POWER OF ATTORNEY

50. On July 6, 2011, in order to assist HII in complying with the AFM instruction, Richard Homburg and Homburg Finance A.G. ("**HFAG**") (a company controlled by Richard Homburg) signed a power of attorney (the "**POA**") appointing the President of HII, and failing his ability to act, the Chief Financial Officer of HII, as their attorney to vote on the election or removal of directors of HII, as appears from a copy of the POA attached in support of the present motion as **Exhibit P-3** ;
51. The POA provides that Richard Homburg and HFAG shall, not less than seven (7) days before the date of a meeting, execute or cause to be executed such form of proxy and other assurances and instruments as may be required by applicable law from time to time to confirm that the attorney is entitled to vote the shares and that in the event that Richard

Homburg or HFAG fails to deliver such form of proxy to the attorney as foresaid, then Richard Homburg or HFAG, as applicable, shall be conclusively deemed to have granted to the attorney an irrevocable power of attorney to execute such form of proxy for and on behalf of such shareholder of HII;

52. On August 1, 2011, Richard Homburg and HFAG sent a letter to HII requesting the replacement of the POA by another power of attorney to the same effect, but replacing the president and CFO of HII by Jan Lamsma and requesting HII's cooperation in relation to same, as appears from a copy of the letter attached in support of the present motion as **Exhibit P-4** ;
53. HII did not respond to this request;
54. On August 3, 2011, HII received a document purporting to revoke the POA, signed by Richard Homburg and HFAG, as appears from a copy of said document attached in support of the present motion as **Exhibit P 5**;
55. On August 4, 2011, HII's counsel sent an email to Richard Homburg and HFAG's counsel contesting the purported revocation of the POA;
56. On August 4, 2011, Richard Homburg, HCI and HFAG's counsel sent a letter to HII's counsel advising that they had withdrawn their previous correspondence relating to the revocation of the POA and stating that they will allow the POA to remain in place, as appears from a copy of said letter attached in support of the present Motion as **Exhibit P 6**;
57. At the end of business on September 2, 2011, being seven (7) days prior to the annual meeting of shareholders to be held on September 9, 2011, no form of proxy or other documents had been received by HII or HII's transfer agent and registrar as required by the terms of the POA;
58. On September 7, 2011, James F. Miles, acting in accordance with the terms of the POA and the irrevocable power of attorney conferred by the POA, delivered to HII's transfer agent and registrar a proxy on behalf of each of Richard Homburg and HFAG to vote the shares held by them on their behalf with respect to the election of directors of HII, as appears from a copy of the proxy attached in support of the present Motion as **Exhibit P-7**;
59. During a meeting held on September 8, 2011, the special advisor to Stichting Homburg Bonds and Stichting Homburg Capital Securities (together, the "**Trustees**"), the trustees of the Mortgage Bonds and Capital Securities A issued by HII, Harm Kranenberg tabled a draft unsigned power of attorney to counsel for HII, purporting to grant a voting power of attorney to the Trustees to vote the shares of Mr. Homburg and HFAG, as appears from a copy of the power of attorney attached in support of the present Motion as **Exhibit P 8**;
60. On the same day, Mr. Kranenberg also sent HII a draft agreement entitled "Heads of Agreement" to be entered into by Homburg Canada and various other entities through

which Richard Homburg indirectly holds securities of HII and securities of the Homburg Management;

61. Pursuant to this agreement, two “stichtings” (foundations) under Dutch law would be incorporated and all shares in the capital of Homburg Management and Uni-Invest Holdings N.V. would be transferred to these stichtings. The board of directors of each of these stichtings would consist of Mr. Knuvers, the representative of each of the Trustees, as well as another independent director nominated by him;
62. The proposed transfer to these stichtings, which purports to be contemplated in order to comply with the AFM’s instructions, would in fact effectively transfer control over almost all of the Partnerships to the holders of the Corporate Bonds and the Mortgage Bonds;
63. Until he was replaced by Mr. Knuvers, Mr. Kranenberg was the representative of the Trustees. He resigned from this position due to a conflict of interest;
64. In discussions with management of HII, Mr. Kranenberg made it clear that he had been in discussions with Mr. Homburg and that the proposal was the result of negotiations between Mr. Homburg and the Trustees and their special advisor, Mr. Kranenberg. He also indicated that following the Annual Shareholders Meeting, he expected to be appointed as the new chief executive officer of HII;
65. On September 8, 2011, following the above noted meeting, counsel for the Trustees sent a letter to counsel for HII, alleging that the Trustees had been granted a power of attorney to vote the shares of Mr. Homburg and HFAG, which revokes the POA, as appears from a copy of the letter attached in support of the present motion as **Exhibit P 9**;

RICHARD HOMBURG NON-BINDING PROPOSALS

66. On May 11, 2011, HII announced that its Board of Directors had received a non-binding proposal from Richard Homburg and Homburg Canada to eliminate Mr. Homburg’s control block in HII, internalize management and optimize HII’s consolidated balance sheet. The Board of Directors of HII established an independent committee of the Board (the “**Independent Committee**”) to consider the proposal and any alternatives available to HII;
67. On June 7, 2011, Mr. Homburg submitted a revised non-binding proposal (the “**Revised Non-Binding Proposal**”) to privatize HII through the acquisition by Homburg Canada of all of the issued and outstanding shares of HII not owned or controlled by Mr. Homburg;
68. Ultimately, after careful consideration, including the report and recommendation of the Independent Committee, HII determined that the Revised Non-Binding Proposal was not in the best interests of HII as it could not be implemented as proposed. To the knowledge of HII, the financing required for the implementation of the Revised Non-Binding Proposal was never committed. Furthermore, the Revised Non-Binding Proposal involved the use of HII’s most liquid assets, namely the units of Homburg Canada REIT, as a means to finance the privatization which, if implemented would have seriously impaired HII’s financial flexibility and accordingly HII’s creditors;

69. On July 29, 2011, Homburg Canada announced its intention to launch a takeover bid offer for all of the issued and outstanding shares of HII not owned or controlled, directly or indirectly, by Homburg Canada;
70. On August 26, 2011, Homburg Canada issued a news release stating that it would not follow through on its announced intention to make an offer for all outstanding shares of HII not already owned or controlled, directly or indirectly, by Homburg Canada. HII never received a formal binding offer from Homburg Canada or Richard Homburg.;

BOUGHT DEAL FINANCING

71. On August 23, 2011, HII announced that it had entered into an agreement to sell 3,000,000 units in Homburg Canada REIT (the “**Bought Deal Units**”) on a bought deal basis to a syndicate of underwriters at \$11.50 per unit for gross proceeds of \$34.5 million (the “**Bought Deal**”);
72. The Bought Deal is scheduled to close on September 13, 2011, following which HII’s retained interest, through *inter alia*, Partnership (199) or 7924371 Canada Inc., in the total number of issued and outstanding Homburg Canada REIT units will be reduced to 16.4%;
73. The Bought Deal was negotiated and concluded on an arm’s length basis and represents the fair market value of the Bought Deal Units. The Bought Deal Units are unencumbered;
74. It is imperative that the closing of the Bought Deal proceed as planned and on schedule so that Petitioners will have sufficient liquidity to carry out their restructuring initiatives under the CCAA;
75. Notwithstanding the termination of the Master Property and Asset Management Agreement and the consequential appointment of (199) GP as the general partner of Partnership (199), Management LP, the former general partner of Partnership (199), an entity controlled by Richard Homburg, as described above, attempted on several occasions to disrupt and prevent the successful pursuit and completion of the Bought Deal, including by communicating directly with the lead underwriter. As indicated herein, it is critical that HII complete the Bought Deal in order to have sufficient liquidity to continue to operate and in order to reduce its line of credit upon closing of the Bought Deal, in accordance with its arrangements with HSBC;
76. As indicated above, HII is the sole limited partner of Partnership (199) and is entitled to deal with its assets without any interference by its former asset manager, Management LP, whose actions are oppressive and prejudicial to HII and its stakeholders, including its creditors;
77. The Monitor is aware of the terms of the Bought Deal, including the concurrent reduction of HII’s line of credit with HSBC and is of the view that the transaction is in the best interests of Petitioners' stakeholders and should be completed as scheduled to enable Petitioners to proceed with their restructuring under the CCAA;

MATERIAL INDEBTEDNESS

HII

(a) Corporate Bonds

78. HII is a party to a Trust Indenture made as of June 1, 2006 (the “**Corporate Bonds Trust Indenture**”) with Stichting Homburg Bond, a foundation incorporated under the laws of the Netherlands, as trustee. Pursuant to the Trust Indenture, HII may issue unlimited corporate bonds in one or more series (the “**Corporate Bonds**”), the terms and conditions of which are governed by the Corporate Bonds Trust Indenture and a supplemental indenture relating to such series of Corporate Bonds. A copy of the Corporate Bonds Trust Indenture is attached as **Exhibit P-10**;
79. There are currently four series of Corporate Bonds outstanding as summarized in the chart below: (i) Homburg Bond 8 bonds (“**HB8**”); (ii) Homburg Bond 9 bonds (“**HB9**”); (iii) Homburg Bond 10 bonds (“**HB10**”); and (iv) Homburg Bond 11 bonds (“**HB11**”). The Corporate Bonds mature between May 2013 and January 2015 and interest is payable semi-annually on June 30 and December 31;

<u>Bond Series</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>Amount</u>
HB8	May 31, 2013	7.00%	€50,010,000
HB9	October 31, 2013	7.00%	€60,000,000
HB10	February 15, 2014	7.25%	€100,005,000
HB11	January 15, 2015	7.25%	€100,005,000

80. HII may at any time: (a) redeem the bonds for cash at 100% of the principal amount plus accrued and unpaid interest and other amounts payable to the date of purchase; (b) purchase the bonds in the open market or by tender or by private contract in an amount not exceeding 100% of the principal amount plus accrued and unpaid interest and other amounts payable to the date of purchase; or (c) exchange some or all of the outstanding bonds for Homburg Capital Securities A (described below) or any other securities, as HII may decide;

(b) Taberna Notes

81. On February 28, 2011, HII entered into a Junior Subordinated Indenture with Wells Fargo Bank, N.A., as Trustee (“**Wells Fargo**”) for the issuance of €25 million junior subordinated notes due 2036. In connection therewith, HII issued two junior subordinated promissory notes: (a) note no. D-1 in the amount €20 million in favour of Taberna Europe CDO I P.L.C. or its registered assigns (the “**First Taberna Note**”); and (b) note no. D-2 issued in favour of Taberna Europe CDO II P.L.C. or its registered assigns (the “**Second Taberna Note**”). Both Notes provide for interest payable quarterly in arrears on January 30, April 30, July 30 and October 30 of each year beginning on April 30, 2011.

Interest accrues at 8.035% per annum until July 30, 2016, and thereafter at a variable rate equal to EURIBOR plus 3.85%;

82. On the same date, HII entered into a second Junior Subordinated Indenture with Wells Fargo for the issuance of \$8 million junior subordinated notes due 2036. In connection therewith, HII issued one junior subordinated promissory note no. D-1 in favour of Hare & Co. (as nominee for the CDO Trustee of Taberna Preferred Funding VIII, Ltd.) or its registered assigns (the "**Third Taberna Note**"). The Third Taberna Note provides for interest payable quarterly in arrears on January 30, April 30, July 30 and October 30 of each year beginning on April 30, 2011. Interest accrues at 9.475% per annum until July 30, 2016, and thereafter at a variable rate equal to EURIBOR plus 3.85%;
83. Also on the same date, HII entered into an Amended and Restated Junior Subordinated Supplemental Indenture with Wells Fargo to amend and restate the Junior Subordinated Indenture dated as of July 26, 2006 for the issuance of \$12 million junior subordinated notes due 2036. In connection therewith, Taberna Preferred Funding VI, Ltd. as the holder of 100% of the outstanding securities under the prior indenture (the "**Fourth Taberna Note**", and together with the First Taberna Note, the Second Taberna Note and the Third Taberna Note, the "**Taberna Notes**"), agreed to be bound by the terms of the Amended and Restated Junior Subordinated Supplemental Indenture. Interest on the Fourth Taberna Note is payable on the unpaid principal amount of the Fourth Taberna Note at 9.475% per annum until July 30, 2016, and thereafter at a variable rate equal to EURIBOR plus 3.85%. Such payments are made quarterly in arrears on January 30, April 30, July 30 and October 30 of each year;
84. All of the Taberna Notes require interest only payments until maturity in 2036. In connection with the Taberna Notes, HII was obligated to post Letters of Credit in favour of Wells Fargo as security for payments due in respect of the Notes as follows:
 - (a) First Taberna Note and Second Taberna Note – Letter of Credit in the amount of \$1,232,978,11;
 - (b) Third Taberna Note – Letter of Credit in the amount of \$306,808.76; and
 - (c) Fourth taberna Note – Letter of Credit in the amount of \$460,213.14;
85. Copies of the Taberna Notes are appended as **Exhibit P-11**;
 - (c) **Perpetual Debt**
86. HII has also issued Homburg Capital Securities A. These are 99-year unsecured and subordinated debt obligations bearing interest at 9.5% per year, payable quarterly in arrears until maturity on February 27, 2018 (the "**Perpetual Debt**"). Accrued interest is payable, at HII's option, in cash or by issuing a fixed number of fully paid non-assessable series of Class A Preferred Shares of HII. As at the date hereof, there are 26,766 Perpetual Debt securities outstanding;
 - (d) **Obligations Relating to Homburg Canada REIT**

87. In addition to the foregoing, HII retains certain obligations in connection with the creation of Homburg Canada REIT, including the following:
- (a) Pursuant to section 5.1(d) of the HII Master Purchase Agreement, Partnership (199) has agreed to indemnify Master LP for all representations and warranties set out therein up to a maximum amount of \$116.25 million, save and except for those representations and warranties relating to taxes (the “**Indemnity Obligations**”). HII guaranteed the Indemnity Obligations under the HII Master Purchase Agreement;
 - (b) HII entered into certain head leases, each dated May 25, 2010, with respect to three of the properties sold by HII to Homburg Canada REIT pursuant to the HII Master Purchase Agreement (CN Central Station Complex, Confederation Court Complex and Financial Tour) (collectively, the “**May 25 Leases**”). Similarly, around June 2011, HII entered into a head lease with respect to the Centron Park Complex in Calgary, Alberta indirectly acquired by Homburg Canada REIT (the “**Centron Lease**” and, together with the May 25 Leases, the “**Head Leases**”). Each of the Head Leases has a five year term, during which HII is responsible for annual minimum rent, together with the cost of all tenant improvements, tenant inducements and/or leasing commissions for new tenants (the “**Head Lease Obligations**”). Homburg Canada REIT is obliged to use commercially reasonable efforts to lease, and HII may sublease, each of the premises subject to the Head Leases in whole or in part, to mutually acceptable tenants. Where the Head Leases premises have been leased or subleased to a third party, HII is liable to account to Homburg Canada REIT for any shortfall of annual minimum rent; and
 - (c) HII also entered into a ground lease dated May 25, 2010 with respect to certain lands in the Confederation Court Complex for the purpose of constructing a hotel building. The ground lease is for a term of 25 years at a base rent of \$186,000 per year;
 - e) **HSBC Indebtedness**

88. As of the date hereof, HII is also indebted to HSBC Bank Canada in the amount of approximately 15 million dollars under an operating loan (the “**Operating Loan**”). All amounts owing under the Operating Loan are secured by a pledge of 3 million units of Homburg Canada REIT. Gross advances under the Operating Loan were initially capped at the amount of 7.5 million dollars but were temporarily increased to 22.5 million dollars last Friday, September 2, 2011, in advance and in consideration of the Bought Deal on the basis that HSBC will be partially reimbursed from the proceeds of the Bought Deal to reduce the advances under the Operating Loan to 5 million dollars on or no later than September 16, 2011;

ShareCo

89. ShareCo is a party to a Trust Indenture dated as of December 15, 2002 (the “**Mortgage Bond Trust Indenture**”) with Stichting Homburg Mortgage Bond, a foundation incorporated under the laws of the Netherlands, as Trustee. Pursuant to the Mortgage Bond Trust Indenture, ShareCo may issue unlimited mortgage bonds in one or more

series (the “**Mortgage Bonds**”), the terms and conditions of which are governed by the Mortgage Bond Trust Indenture and a supplemental indenture relating to such series of Mortgage Bonds. A copy of the Mortgage Bond Trust Indenture is attached as **Exhibit P-12**;

90. The obligations of ShareCo under the Mortgage Bonds are guaranteed by HII pursuant to a guarantee agreement made by HII in favour of the Trustee dated as of December 15, 2002 (the “**Mortgage Bond Guarantee**”). Pursuant to the Mortgage Bond Guarantee, HII unconditionally and irrevocably guaranteed the payment on demand of principal, premium if any, interest on each Mortgage Bond and other amounts payable by ShareCo under the Mortgage Bond Trust Indenture (the “**Mortgage Bond Guaranteed Obligations**”). In connection with the provision of the Guarantee, HII receives an annual guarantee fee from ShareCo equal to the maximum amount of Mortgage Bond Guaranteed Obligations outstanding at any time during the year;
91. There are currently four series of Mortgage Bonds outstanding as summarized in the chart below: (i) Homburg Mortgage Bond 4 bonds (“**HMB4**”); (ii) Homburg Mortgage Bond 5 bonds (“**HMB5**”); (iii) Homburg Mortgage Bond 6 bonds (“**HMB6**”); and (iv) Homburg Mortgage Bond 7 bonds (“**HMB7**”). The Mortgage Bonds mature between November 2011 and June 2012 and interest is payable semi-annually on June 30 and December 31;

<u>Bond Series</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>Amount</u>
HMB4	November 30, 2011	7.50%	€20,010,000
HMB5	December 31, 2011	7.50%	€20,010,000
HMB6	June 30, 2012	7.50%	€31,230,000
HMB7	June 30, 2012	7.25%	€31,230,000

92. In addition to the Mortgage Bond Guarantee, each series of Mortgage Bonds is collateralized by way of a pledge by ShareCo of a pledge received by ShareCo from HII in all of the limited partnership units of a specific Partnership, together with a guarantee and collateral mortgage by such Partnership up to the maximum principal amount of the Mortgage Bond series;
93. Specifically, HMB4 is secured by a pledge by ShareCo of all of HII’s units in Partnership (52) and a collateral mortgage by Partnership (52) over “Homburg Springs” in Calgary, Alberta up to Canadian dollar equivalent of €20,010,000;
94. HMB5 is secured by a pledge by ShareCo of a pledge of all of HII’s units in Partnership (53) and a collateral mortgage by Partnership (53) over “Homburg Gateway to the North” in Calgary, Alberta up to Canadian dollar equivalent of €20,010,000;
95. HMB6 is secured by a pledge by ShareCo of a pledge of all of HII’s units in Partnerships (71), (72), (73), (74), (76), (84), (85), (92) and (120);
96. Finally, HMB7 is secured by a pledge by ShareCo of all of HII’s units in Partnership (62), Partnership (67) and Partnership (88);

Partnership (199)

97. As indicated above, pursuant to the HII Master Purchase Agreement, Partnership (199) has agreed to indemnify Master LP, a subsidiary of Homburg Canada REIT, for certain representations and warranties set out therein;
98. Pursuant to the HII Master Purchase Agreement, Homburg Canada REIT was to obtain updated environmental site assessments for certain purchased properties. To the extent any such assessment indicated environmental contamination or other issues since the most recent Phase I or Phase II ESA Report, the vendors are obligated to pay to Master LP the cost of further investigations, remediation and/or monitoring required to address such issues, and is required to pre-fund the estimated cost relating thereto (the “**Remediation Cost Obligations**”);
99. Pursuant to a moveable hypothec agreement between Homburg Canada REIT and Partnership (199) dated May 25, 2010, as amended and restated as of August 18, 2011 (the “**Moveable Hypothec Agreement**”), Partnership (199) hypothecated and pledged 600,000 units of Homburg Canada REIT (the “**Head Leases Units**”) in favour of Homburg Canada REIT, together with all proceeds therefrom for the principal sum of \$6 million together with interest at the rate of 25% per annum, calculated semi-annually and not in advance, to secure the Head Lease Obligations and the Indemnity Obligations.
100. Pursuant to a moveable hypothec agreement (the “**Centron Moveable Hypothec Agreement**”) dated as of August 18, 2011, an additional 300,000 units of Homburg Canada REIT (the “**Centron Head Lease Units**”) have been pledged by Partnership (199) in favour of HCR LP (CP Calgary), a wholly-owned limited partnership of Homburg Canada REIT, to secure the obligations under the Centron Lease, for the principal sum of 5 million dollars together with interest at the rate of 25% per annum, calculated semi-annually and not in advance;
101. To secure the Remediation Cost Obligations and the Indemnity Obligations, Partnership (199) hypothecated and pledged a further 400,000 units of Homburg Canada REIT under the Movable Hypothec Agreement in favour of Homburg Canada REIT, together with all proceeds therefrom, for the principal sum of \$4 million together with interest at the rate of 25% per annum, calculated semi-annually and not in advance;
102. The Moveable Hypothec Agreement provides that one-fifth of the Head Leases Units are released on each anniversary of the Movable Hypothec Agreement provided no Event of Default has occurred thereunder. Accordingly, to date, the Head Leases Units have been reduced by 120,000 units;

Churchill

103. The indebtedness of Churchill as of the date hereof is in the approximate amount of \$7.5 million representing amounts owing to Churchill’s mortgage lender;
104. HII has guaranteed the obligations of Churchill to the mortgage lender;
105. Churchill also has approximately \$175,000 of unsecured trade liabilities;

Inverness

106. The indebtedness of Inverness as of the date hereof is in the approximate amount of \$3.4 million representing amounts owing to Inverness' mortgage lender;
107. HII has guaranteed the obligations of Inverness to the mortgage lender;
108. Inverness also has approximately \$67,000 of unsecured trade liabilities;

CP

109. The indebtedness of CP as of the date hereof is in the approximate amount of \$8.8 million representing amounts owing to CP's mortgage lender;
110. HII has guaranteed the obligations of CP to the mortgage lender;
111. CP also has approximately \$10.1 million of unsecured trade liabilities;

FINANCIAL POSITION

112. HII reports its financial results on a consolidated basis, which reports are prepared in accordance with International Financial Reporting Standards. HII released its most recent unaudited interim consolidated financial statements for the six months ending June 30, 2011 (the "**Q2 2011 Report**") on August 15, 2011. Unless specified otherwise, all amounts noted herein are in Canadian dollars;
113. A copy of the Q2 2011 Report is attached as **Exhibit P-13**. A copy of HII's audited consolidated financial statements for the fiscal-year ended December 31, 2010 is attached as **Exhibit P-14**;
114. Notwithstanding the steps that HII has taken to restructure its operations, HII's continuous operating losses on a consolidated basis and high leverage have placed HII and its subsidiaries in a precarious financial situation;
115. As of today's date, Petitioners' financial position continues to deteriorate such that Petitioners' projected cash requirements indicate that Petitioners shall face a liquidity crisis in the relatively short term;

REASONS FOR SEEKING CCAA PROTECTION

116. The financial condition of HII continues to deteriorate. HII will not be able to meet its obligations as and when they become due. Certain creditors have also started to institute legal proceedings to recover their claims;
117. Despite its best efforts, HII has not been able to fully comply with the AFM's instructions. Petitioners are hopeful that the appointment of the Monitor will address the primary concerns of the AFM, including, in particular, its desire to appoint a "silent monitor" and the reduction of Mr. Homburg's control over HII. In addition to the duties and obligations of the Monitor as prescribed by law, Petitioners respectfully submit that the Monitor be afforded the additional powers provided in the conclusions hereof in

respect of the AFM, including the right of the Monitor to communicate directly with the AFM with regards to any matters concerning the HII group of companies;

118. It is imperative that HII retain full control of its assets including, without limitation, in its equity interests in each limited partnership for the benefit of its stakeholder including all of its creditors;
119. As at June 30, 2011, HII was in default of the interest coverage and net worth financial covenants set out in the junior subordinated note indentures relating to the Taberna Notes. As a result of the defaults, the holders of the Taberna Notes are in a position to declare the principal amount of the Taberna Notes to be immediately due and payable. Accordingly, a stay of proceedings is required to prevent enforcement proceedings against HII in respect of the Taberna Notes;
120. Further, under sections 13.1(f) and (g) of the Mortgage Bond Trust Indenture, HII's petition for protection under the CCAA constitutes an Event of Default entitling the Trustee of the Mortgage Bonds to accelerate amounts due and owing under HMB4, HMB5, HMB6 and HMB7. Accordingly, a stay of proceedings is required to prevent enforcement proceedings against HII, ShareCo and certain of the applicant partnerships in respect of the Mortgage Bonds;
121. Finally, HII's petition for protection under the CCAA constitutes an Event of Default under the Head Leases, entitling Homburg Canada REIT to enforce against the Head Leases Units held as security under the Moveable Hypothec Agreement and entitling Homburg Canada REIT to indirectly, through HCR LP (CP Calgary), enforce against the Centron Head Lease Units held as security under the Centron Moveable Hypothec Agreement;

CASH MANAGEMENT

122. In the ordinary course of its business, HII uses essentially one bank account by region (Canada, Euro zone and Baltics) and centralizes cash management by collecting funds and paying expenses for all the operating entities of the corporate group on a regional basis. All rent revenue and all mortgage payments, including utilities payments, are done from the centralized bank account on a regional basis;
123. Disrupting the cash management system would impair the ability of the Petitioners and other members of the HII group to carry on business in the ordinary course, as the partnerships and entities directly or indirectly held by HII presently have no individualized cash management system which allow them to collect proceeds and pay expenses;
124. During the restructuring, HII proposes to create a new bank account for each Petitioner in order to decentralize all banking operations for each Petitioner. In doing so, HII will be able to maintain current records of all cash movement occurring during the stay period and this will allow the Monitor to adequately supervise same;

125. For the entities and partnerships of the Homburg group which are not seeking the protection of this Honourable Court, HII will continue to handle all banking transactions and expense payments in the ordinary course of business;

FUNDING OF THE PETITIONERS

126. Petitioners have conducted a non-consolidated projected cash flow analysis to determine the amounts required to finance their operations for the next 13 weeks, on a weekly basis, the whole as appears from said cash flow projections. Attached in support of the present Motion as **Exhibit P-15** is a statement reflecting this analysis (the “**Cash Flow Projections**”);
127. As set out in the Cash Flow Projections, Petitioners’ principal uses of cash during these proceedings will consist of expenditures necessary to maintain ongoing operations and pay professional fees and disbursements;
128. As set out in the Cash Flow Projections, the proceeds of the Bought Deal have been included and are required in order for Petitioners to have sufficient liquidity, as set out above;

DIRECTORS, OFFICERS AND EMPLOYEES

Board of Directors

129. Even though Petitioners intend to comply with all applicable laws and regulations, including the timely remittance of deductions at source and federal and provincial sales tax, Petitioners’ directors are nevertheless concerned about the potential for their personal liability in the context of the restructuring;
130. A successful restructuring of Petitioners will only be possible with the continued participation of Petitioners’ boards of directors, management and employees. These personnel are essential to the ongoing viability of Petitioners’ business, and the successful restructuring thereof;
131. Petitioners maintain directors’ and officers’ liability insurance (the “**D&O Insurance**”) for the directors and officers of Petitioners. The current D&O Insurance policy provides \$10,000,000 in aggregate coverage. The D&O Insurance expires in June 2012. The current amount of coverage provided by the D&O Insurance may not be sufficient to protect the directors of Petitioners from all of the potential directors’ liabilities;
132. Petitioners are not currently in a position to secure adequate additional directors and officers liability insurance, notably in light of their financial situation;
133. There are also contractual indemnities which have been given to the directors by Petitioners. Funds may be insufficient to satisfy those indemnities should the directors of Petitioners be found liable for the full amount of the potential directors’ liabilities;
134. Petitioners believe that the indemnification insurance presently in place is insufficient and inadequate in view of the additional risks resulting from the present proceedings;

135. Absent the protections sought in the conclusions of the present Motion, Petitioners are concerned that one or more of their directors and key employees will be forced to resign from their posts, which would jeopardize the continuation of Petitioners' business operations, and the successful restructuring;
136. Accordingly, Petitioners request that the initial order to be granted include the director protections sought in the conclusions of the present Motion, namely, the orders related to the indemnification and charge of the conclusions sought;
137. The amount of such charge was established by Petitioners and reviewed by the Monitor, taking into account *inter alia* all employees related liabilities;

Employees

138. The retention of key employees has been and continues to be of vital importance to the HII during its restructuring efforts;
139. HII has or will put in place seven individual retention agreements (collectively the "**KERP**") with a goal of encouraging certain existing employees (the "**Eligible Employees**"), who are critical to the preservation of HII enterprise value, to remain within the organization;
140. HII believes that the continued employment of the Eligible Employees is crucial to its successful restructuring, in view of their experience, expertise and the critical role they have played and will continue to play in connection with the restructuring;
141. HII also believes that absent the establishment of an incentive plan in favour of the Eligible Employees, they are likely to seek other employment opportunities. The departure of any of the Eligible Employees would undermine all restructuring efforts;
142. HII's directors have approved the KERP;
143. Under the KERP, each of the Eligible Employees is eligible to receive a prescribed amount (the "**Incentive Payments**") consisting of retention, vacation and severance entitlements provided that the Eligible Employee remains actively employed by HII;
144. Resignation by an Eligible Employee or termination by HII, for cause ("**Serious Reason**"), will result in the loss of any future payment of the Incentive Payments. However, each Eligible Employee will still be entitled to payments of the Incentive Payments if their employment is terminated for any reason other than cause;
145. The KERP was reviewed by the Monitor;
146. HII and the Monitor believe that the KERP provides appropriate and reasonable incentive for the retention of the Eligible Employees, and HII seek this Honourable Court's approval of continuation of the KERP, in order to assist HII and the Petitioners in their efforts to complete their restructuring under the CCAA;
147. Petitioners hereby request that amounts sufficient to provide for the payments to be made to the Eligible Employees under the KERP, in accordance with the terms thereof, be

remitted by HII to the Monitor, to be held in escrow by the Monitor, for the benefit of the Eligible Employees;

148. The total amount owing under the KERP as at the date hereof is in the approximate amount of \$1.8 million dollars;
149. A copy of the KERP and all related documents will be filed under seal at the hearing of the present Motion as **Exhibit P 16** . In view of the sensitive and confidential nature of the KERP and the fact that disclosure of its specific terms may negatively affect and be detrimental to HII's CCAA proceedings, and thereby cause prejudice to HII and to its stakeholders, HII hereby requests an order that Exhibit P 16 remain under seal until further order of this court;

APPOINTMENT OF THE MONITOR

150. Petitioners request that this Honourable Court appoint Samson Belair Deloitte & Touche Inc. to be the Monitor, in accordance with the provisions of the CCAA and the Order to be rendered by the Court;
151. Pierre Laporte is the holder of a licence to act as trustee within the meaning of subsection 2(1) of the BIA, and thus is qualified to act as monitor in the proceedings herein, and has agreed to act in that capacity, on terms consistent with the orders sought herein;
152. In addition to any powers or obligations provided for by the CCAA, Petitioners hereby request that this Honourable Court grant the Monitor the powers, rights and obligations detailed in the conclusions of this Motion;
153. As the Monitor will testify at the hearing of the present proceedings, the Monitor supports the terms and use of the KERP and the indemnification and charge on the property of the Petitioners granted in favour of the directors and officers of Petitioners;
154. It is contemplated in the Order that the Monitor and its counsel, counsel to Petitioners, and financial advisors to Petitioners, will be granted the right to receive a Court-ordered charge on the property of Petitioners for services rendered to the Petitioners (the "**Administration Charge**") up to a maximum amount of \$3,000,000 in respect of their respective fees and disbursements;

CONCLUSIONS SOUGHT

155. The Boards of Directors of Petitioners have authorized the filing of the present Motion;
156. Petitioners require the interim relief requested in this Motion in order to pursue their restructuring initiatives;
157. As appears from the conclusions hereof, the Directors' Charge and the Administration Charge are to rank after any secured indebtedness of Petitioners. Accordingly, Petitioners respectfully submit that no prior notice of the present filing to any secured creditors of Petitioners is necessary;

158. Given that the Petitioners have acted and are acting in good faith and with due diligence, Petitioners respectfully submit that this Motion should be granted in accordance with its conclusions;
159. The present Motion is well founded in fact and law;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

1. **GRANT** the Motion.
2. **DECLARE** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Petition;
3. **ISSUE** an order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (respectively the "**Order**" and the "**CCAA**"), divided under the following headings:
 - (a) Service
 - (b) Application of the CCAA
 - (c) Effective Time
 - (d) Plan of Arrangement
 - (e) Stay of Proceedings against the Petitioners and the Property
 - (f) Stay of Proceedings against the Directors and Officers
 - (g) Possession of Property and Operations
 - (h) No Exercise of Rights or Remedies
 - (i) No Interference with Rights
 - (j) Continuation of Services
 - (k) Non-Derogation of Rights
 - (l) Directors' and Officers' Indemnification and Charge
 - (m) Restructuring
 - (n) Powers of the Monitor
 - (o) Priorities and General Provisions Relating to CCAA Charges
 - (p) General

Service

4. **DECLARE** that the time for service of the Motion is hereby abridged and hereby dispense Petitioners with further service thereof.
5. **DECLARE** that sufficient prior notice of the presentation of this Motion has been given by Petitioners to the Trustees.

Application of the CCAA

6. **DECLARE** that Petitioners are debtor companies to which the CCAA applies and **DECLARE** that, although not a Petitioner, Homburg Realty Fund (199) Limited Partnership ("**Partnership (199)**"), Homburg Realty Fund (52) Limited Partnership ("**Partnership (52)**"), Homburg Realty Fund (53) Limited Partnership ("**Partnership (53)**"), Homburg Realty Fund (88) ("**Partnership (88)**"), Homburg Realty Fund (89) Limited Partnership ("**Partnership (89)**"), Homburg Realty Fund (105) Limited Partnership ("**Partnership (105)**"), Homburg Realty Fund (121) Limited Partnership ("**Partnership (121)**"), Homburg Realty Fund (122) Limited Partnership ("**Partnership (122)**") and Homburg Realty Fund (142) ("**Partnership (142)**") and together with Partnership (199), Partnership (52), Partnership (53), Partnership (88), Partnership (89), Partnership (105), Partnership (121) and Partnership (122) (collectively the "**Applicant Partnerships**") and 7924372 Canada Inc. shall enjoy the protections and authorizations provided by this Order.

Effective time

7. **DECLARE** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order (the "**Effective Time**").

Plan of Arrangement

8. **ORDER** that Petitioners and the Applicant Partnerships (collectively, the "**Homburg Parties**") shall have the authority to file with this Court and to submit to their creditors one or more plans of compromise or arrangement (collectively, the "**Plan**") in accordance with the CCAA.

Stay of Proceedings against the Petitioners and the Property

9. **ORDER** that, until and including October 7, 2011, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Homburg Parties, or affecting the Homburg Parties' business operations and activities (the "**Business**") or the Property (as defined herein below), except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Homburg Parties or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court. In accordance with subsection 11.1 CCAA, such stay of Proceedings shall not affect a regulatory body's investigation in respect of the Homburg Parties or a Proceeding taken by or before the regulatory body other than the enforcement of a payment ordered by the regulatory body or the Court.

Stay of Proceedings against the Directors and Officers

10. **ORDER** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Homburg Parties nor against any person deemed to be a director or an officer of the Homburg Parties under subsection 11.03(3) CCAA (each, a “**Director**”, and collectively the “**Directors**”) in respect of any claim against such Director that arose prior to the Effective Time and that relates to any obligation of the Homburg Parties where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation until further order of this Court or until the Plan, if one is filed, is sanctioned by the Court or refused by the creditors or the Court.

Possession of Property and Operations

11. **ORDER** that the Homburg Parties shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the “**Property**”). Subject to further order of this Court, the Homburg Parties shall continue to carry on their operations and enterprise in a manner consistent with the preservation of the Business and Property.
12. **ORDER** that, except as otherwise provided to the contrary herein and under the supervision of the Monitor, the Homburg Parties shall be entitled to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- (a) All expenses and capital expenditures reasonably necessary for the preservation of the Homburg Parties’ Property or Business including, without limitation, payments on account of insurance (including directors’ and officers’ insurance), maintenance and security services; and
 - (b) Payment for goods or services actually delivered or supplied to the Homburg Parties following the date of this Order.
13. **ORDER** that the Homburg Parties shall be entitled but not compelled to pay the following expenses incurred prior to this Order, with the prior approval of the Monitor:
- (a) All wages, salaries, management fees, commissions, vacation pay (when due), current service cost pension contributions and other benefits, and reimbursement of expenses (including, without limitation, amounts charged by employees to credit cards) payable to former or current employees, managers or Directors, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
 - (b) All amounts owing to or in respect of individuals working as independent contractors in connection with the Homburg Parties’ Business;

- (c) All amounts payable to third party custom brokers, agents, freight carriers, freight forwarders, shippers and creditors with the right to retain;
 - (d) All outstanding and future fees and disbursements of the Monitor, the Monitor's and the Homburg Parties' legal counsel, and any financial and other advisers retained by the Homburg Parties in respect of the Plan, the Restructuring or these proceedings; and
 - (e) Expenses and capital expenditures reasonably necessary for the preservation of the Homburg Parties' Property or the Business.
14. **ORDER** that, except as otherwise provided to the contrary herein, the Homburg Parties shall remit, in accordance with legal requirements, or pay:
- (a) Any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) Employment Insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes, together with the employer's share of Employment Insurance premiums, Canada Pension Plan contributions, Quebec Pension Plan contributions or other similar wage levy;
 - (b) Amounts accruing and payable by the Homburg Parties in respect of Employment Insurance, Canada Pension Plan, workers' compensation, employer health taxes and similar obligations of any jurisdiction with respect to employees;
 - (c) All goods and services or other applicable sales tax (collectively, "**Sales Tax**") required to be remitted by the Homburg Parties in connection with the sale of goods and services by the Homburg Parties, but only where such Sales Taxes are accrued or collected after the date of this Order; and
 - (d) Any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the business by the Homburg Parties.

No Exercise of Rights or Remedies

15. **ORDER** that during the Stay Period, and subject to subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Homburg Parties, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.

16. **DECLARE** that, to the extent any rights, obligations, prescription or time or limitation periods, including, without limitation, to file grievances, relating to the Homburg Parties or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights or obligations, or time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Homburg Parties become bankrupt or a receiver within the meaning of paragraph 243(2) of the BIA is appointed in respect of the Homburg Parties, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Homburg Parties in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

No Interference with Rights

17. **ORDER** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Homburg Parties, except with the written consent of the Homburg Parties and the Monitor, or with leave of this Court.

Continuation of Services

18. **ORDER** that during the Stay Period and subject to paragraph 19 hereof, all Persons having oral or written agreements with the Homburg Parties or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Homburg Parties, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Homburg Parties, and that the Homburg Parties shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Homburg Parties, without having to provide any security deposit or any other Security, in accordance with normal payment practices of the Homburg Parties or such other practices as may be agreed upon by the supplier or service provider and the Homburg Parties, with the consent of the Monitor, or as may be ordered by this Court.
19. **ORDER** that, notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Homburg Parties on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advances of money or otherwise extend any credit to the Homburg Parties.
20. **ORDER** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Homburg Parties with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction

or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by the Homburg Parties and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Homburg Parties' account(s) until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

Non-Derogation of Rights

21. **ORDER** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Homburg Parties shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

Directors' and Officers' Indemnification and Charge

22. **ORDER** that the Homburg Parties shall indemnify their Directors from all claims, costs, charges and expenses relating to any obligations or liabilities they may incur by reason of or in relation to their respective capacities as directors or officers of the Homburg Parties, on or after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or intentional fault as further detailed in Section 11.51 CCAA.
23. **ORDER** that the Directors of the Homburg Parties shall be entitled to the benefit of and are hereby granted a hypothec, mortgage, lien, charge and security interest in the Property to the extent of the aggregate amount of \$5,000,000 (the "**Directors' Charge**"), as security for the indemnity provided in paragraph 22 of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity on or after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs 40 and 41 herein.
24. **ORDER** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph 22 of this Order.

Restructuring

25. **DECLARE** that, to facilitate the orderly restructuring of its business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Homburg Parties shall have the right, subject to approval of the Monitor or further order of the Court, to:

- (a) Permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate and make provision for the consequences thereof in the Plan;
 - (b) Pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and under reserve of subparagraph (c);
 - (c) Convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$500,000 or \$1,000,000 in the aggregate;
 - (d) Terminate the employment of such of its employees or temporarily or permanently lay off such of its employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Homburg Parties and such employee, or failing such agreement make provision to deal with, any consequences thereof in the Plan, as the Homburg Parties may determine;
 - (e) Subject to the provisions of section 32 CCAA, disclaim or resiliate, any of their agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Homburg Parties and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and
 - (f) Subject to section 11.3 CCAA, assign any rights and obligations of Homburg Parties.
26. **DECLARE** that, if a notice of disclaimer or resiliation is given to a landlord of the Homburg Parties pursuant to section 32 of the CCAA and subsection 25(e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Homburg Parties and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Homburg Parties, provided nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.
27. **ORDER** that the Homburg Parties shall provide to any relevant landlord notice of the Homburg Parties' intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Homburg Parties have already vacated the leased premises, they shall not be considered to be in occupation of such location pending the resolution of any dispute between the Homburg Parties and the landlord.

28. **DECLARE** that, in order to facilitate the Restructuring, the Homburg Parties may, subject to approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute; and
29. **ORDER** that the terms of the Key Employee Retention Plans, Exhibit P-● (the “**KERPs**”) are hereby approved, and the Homburg Parties are hereby authorized to implement the KERPs.
30. **DECLARE** that the KERPs contain sensitive and confidential information and shall be sealed in the court file in these proceedings and segregated from, and not form part of, the public record.
31. **DECLARE** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Homburg Parties are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a “**Third Party**”), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Homburg Parties binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Homburg Parties or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Homburg Parties.

Powers of the Monitor

32. **ORDER** that Samson Bélair/Deloitte & Touche Inc. is hereby appointed to monitor the business and financial affairs of the Homburg Parties as an officer of this Court (the “**Monitor**”) and that the Monitor, in addition to the prescribed powers and obligations, referred to in section 23 CCAA:
 - (a) shall, without delay, (i) publish once a week for two (2) consecutive weeks or as otherwise directed by the Court, in La Presse, The Globe and Mail, the Calgary Herald and Halifax Chronicle Herald and (ii) within five (5) business days after the date of this Order (A) post on the Monitor’s website (the “**Website**”) a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Homburg Parties of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;

- (b) may assist the Homburg Parties, to the extent required by the Homburg Parties, in dealing with their creditors and other interested Persons during the Stay Period;
- (c) may assist the Homburg Parties, to the extent required by the Homburg Parties, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (d) may advise and assist the Homburg Parties, to the extent required by the Homburg Parties, to review the Homburg Parties' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (e) may assist the Homburg Parties, to the extent required by the Homburg Parties, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- (f) may report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- (g) may report to the Court on the state of the business and financial affairs of the Homburg Parties or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;
- (h) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (i) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- (j) may act as a "foreign representative" of the Homburg Parties in any proceedings outside of Canada;
- (k) may give any consent or approval as may be contemplated by the Order; and
- (l) shall perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

The Monitor shall not otherwise interfere with the business and financial affairs carried on by the Homburg Parties, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Homburg Parties.

33. **ORDER** that the Homburg Parties and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property,

including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Homburg Parties in connection with the Monitor's duties and responsibilities hereunder.

34. **DECLARE** that the Monitor may provide creditors and other relevant stakeholders of the Homburg Parties with information in response to requests made by them in writing addressed to the Monitor and copied to the Homburg Parties' counsel. In the case of information that the Monitor has been advised by the Homburg Parties is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Homburg Parties unless otherwise directed by this Court.
35. **DECLARE** that the Monitor shall fully cooperate with the Netherlands Authority for the Financial Markets (the "**AFM**"), and provide the AFM with any information in possession of the Monitor in response to any requests made by the AFM to the Monitor.
36. **DECLARE** that if the Monitor, in its capacity as Monitor, carries on the business of the Homburg Parties or continues the employment of the Homburg Parties' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
37. **DECLARE** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel.
38. **ORDER** that Homburg Parties shall pay the fees and disbursements of the Monitor, the Monitor's legal counsel, the Homburg Parties' legal counsel and other advisers, incurred in connection with or with respect to the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
39. **DECLARE** that the Monitor, the Monitor's legal counsel, if any, the Homburg Parties' legal counsel and the Monitor and the Homburg Parties' respective advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order in respect of these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a hypothec, mortgage, lien, charge and security interest in the Property to the extent of the aggregate amount of \$2,000,000 (the "**Administration Charge**"), having the priority established by paragraphs **40** and **41** hereof.

Priorities and General Provisions Relating to CCAA Charges

40. **DECLARE** that the priorities of the Administration Charge and Directors' Charge (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:
 - (a) first, the Administration Charge;
 - (b) second, the Directors' Charge.

41. **DECLARE** that, each of the CCAA Charges shall rank after any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting the Property but before unsecured claims.
42. **ORDER** that, except as otherwise expressly provided for herein, the Homburg Parties shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Homburg Parties obtain the prior written consent of the Monitor and the prior approval of the Court.
43. **DECLARE** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Homburg Parties, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
44. **DECLARE** that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges and that the KERPs and payments made or to be made thereunder, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Homburg Parties or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Homburg Parties; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Homburg Parties (a “**Third Party Agreement**”), and notwithstanding any provision to the contrary in any Third Party Agreement:
 - (a) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by the Homburg Parties of any Third Party Agreement to which they are a party; and
 - (b) any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.
45. **DECLARE** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any application for a bankruptcy order filed pursuant to the BIA in respect of the Homburg Parties and any bankruptcy order allowing such application or any assignment in bankruptcy made or deemed to be made in respect of the Homburg Parties, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Homburg Parties pursuant to the Order, the granting of the CCAA Charges and the payment of any amounts under the KERPs, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.
46. **DECLARE** that the CCAA Charges shall be valid and enforceable as against all Property of the Homburg Parties and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Homburg Parties,

for all purposes without any further publication, registration or other formality and DECLARE that any payments made or to be made under the KERPs shall be valid and enforceable as against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Homburg Parties, for all purposes.

General

47. **ORDER** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Homburg Parties or of the Monitor, without first obtaining leave of this Court, upon seven (7) days written notice to the Homburg Parties' counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
48. **DECLARE** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Homburg Parties under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
49. **DECLARE** that, except as otherwise specified herein, the Homburg Parties are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Homburg Parties and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.
50. **DECLARE** that the Homburg Parties and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Homburg Parties shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
51. **DECLARE** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Homburg Parties and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys.
52. **DECLARE** that the Homburg Parties or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other.
53. **DECLARE** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon seven (7) days notice to the Homburg Parties, the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order:

- (i) Sandra Abitan and Martin Desrosiers
OSLER, HOSKIN & HARCOURT LLP
1000 De La Gauchetière Street West, Suite 2100
Montréal QC H3B 4W5
Counsel for the Homburg Parties
Email: sabitan@osler.com and mdesrosiers@osler.com

- (ii) Pierre Laporte
SAMSON BÉLAIR/DELOITTE TOUCHE INC.
1 Place Ville-Marie, Suite 3000
Montréal QC H3B 5K1
Monitor
Email: pilaporte@deloitte.ca

- (iii) Mason Poplaw
MCCARTHY TÉTRAULT LLP
1000, De La Gauchetière Street West, Suite 2500
Montréal QC H3B 0A2
Counsel for the Monitor
Email: mpoplaw@mccarthy.ca

- 54. **DECLARE** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

- 55. **DECLARE** that the Monitor, with the prior consent of the Homburg Parties, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Monitor shall be the foreign representative of the Homburg Parties. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

- 56. **REQUEST** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.

- 57. **ORDER** the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security.

THE WHOLE WITHOUT COSTS, save and except in the case of contestation.

MONTREAL, September 9, 2011

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP

Attorneys for the Petitioners

HOMBURG INVEST INC.

HOMBURG SHARECO INC.

CHURCHILL ESTATES DEVELOPMENT LTD.

INVERNESS ESTATES DEVELOPMENT LTD.

CASTELLO DEVELOPMENT LTD.

CP DEVELOPMENT LTD.

THE ENTITIES LISTED IN ANNEX I

ANNEX I: MIS-EN-CAUSE ENTITIES

Homburg Realty Fund (199) Limited Partnership

Homburg Canada Real Estate Investment Trust

Homburg Realty Fund (52) Limited Partnership

Homburg Realty Fund (53) Limited Partnership

Homburg Realty Fund (88)

Homburg Realty Fund (89) Limited Partnership

Homburg Realty Fund (105) Limited Partnership

Homburg Realty Fund (121) Limited Partnership

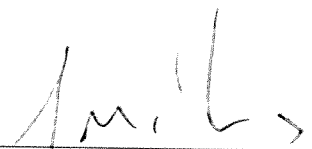
Homburg Realty Fund (122) Limited Partnership

AFFIDAVIT

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

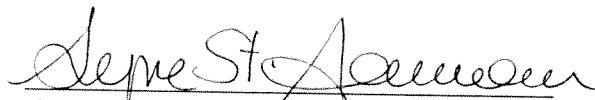
1. I am the Vice-President and Chief Financial Officer of Homburg Invest Inc. and duly authorized representative of the Petitioners for the purpose hereof;
2. I have taken cognizance of the attached Amended Motion for Initial Order;
3. All the facts alleged in the said Motion are true.

AND I HAVE SIGNED:



James F. Miles

SOLEMNLY DECLARED BEFORE ME
on the 9th day of September, 2011.



COMMISSIONER FOR OATHS
FOR THE PROVINCE OF QUÉBEC



NOTICE OF PRESENTATION

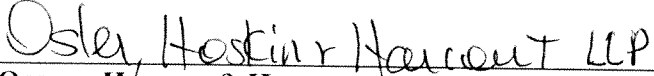
TO: Stikeman, Elliott LLP
1155 René-Lévesque Blvd. West
Montreal, Quebec

Attention: Me Guy P. Martel
Me Warren Katz
Facsimile: (514) 397-3222

TAKE NOTICE that the attached *Motion for an Initial Order Pursuant to Section 11 and following of the Companies' Creditors Arrangement Act* will be presented for hearing and allowance in room 15.04 at 2:15 p.m. at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on September 9, 2011, or so soon thereafter as Counsel may be heard.

PLEASE ACT ACCORDINGLY.

MONTRÉAL, September 9, 2011.



OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Petitioners
HOMBURG INVEST INC.
HOMBURG SHARECO INC.
CHURCHILL ESTATES DEVELOPMENT LTD.
INVERNESS ESTATES DEVELOPMENT LTD.
CASTELLO DEVELOPMENT LTD.
CP DEVELOPMENT LTD.
THE ENTITIES LISTED IN ANNEX I

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

SUPERIOR COURT

Commercial Division

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

No: 500-11-041305-117

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

HOMBURG INVEST INC.,

- and -

HOMBURG SHARECO INC.,

- and -

**CHURCHILL ESTATES DEVELOPMENT
LTD.**

- and -

**INVERNESS ESTATES DEVELOPMENT
LTD.**

- and -

CP DEVELOPMENT LTD.

Petitioners

-and-

THE ENTITIES LISTED IN ANNEX I

Mis-en-cause

-and-

**SAMSON BÉLAIR/DELOITTE & TOUCHE
INC.**

Monitor

LIST OF EXHIBITS

- P-1 Corporate chart;
- P-2 HII Master Purchase Agreement;
- P-3 Power of Attorney dated July 6, 2011
- P-4 Letter dated August 1, 2011 regarding the replacement of the Power of Attorney;
- P-5 Letter dated August 3, 2011 regarding the revocation of the Power of Attorney;
- P-6 Letter dated August 4, 2011 regarding the withdrawing of the revocation of the Power of Attorney;
- P-7 Copy of the Proxy;
- P-8 Trustees' Power of Attorney dated September 8, 2011;
- P-9 Letter dated September 8, 2011 from Trustees' counsel;
- P-10 Corporate Bonds Trust Indenture;
- P-11 Taberna Notes;
- P-12 Mortgage Bond Trust Indenture;
- P-13 Unaudited consolidated financial statements for the sixmonths ending June 30, 2011;
- P-14 Audited consolidated financial statements;
- P-15 Cash Flow Projections;

LIST OF SEALED EXHIBITS

- P-16 Copy of the Key Employees Retention Plans
- P-A AFM Instruction dated April 22, 2011, regarding the plan of control;
- P-B AFM Instruction dated April 22, 2011, regarding the control of Richard Homburg;
- P-C AFM Intention to issue an instruction dated August 11, 2011 regarding the revocation of HII's License;
- P-D HII Press Release regarding the intention of the AFM to revoke HII's license;
- P-E HII Press Release regarding the extension granted by AFM before revoking HII's License.

MONTREAL, September 9, 2011.

Osler, Hoskin & Harcourt, LLP
OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Petitioners

No: 500-11-041305-117

SUPERIOR COURT
(Commercial Division)
DISTRICT DE MONTRÉAL

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

**HOMBURG INVEST INC. and
HOMBURG SHARECO INC. and
CHURCHILL ESTATES DEVELOPMENT LTD. and
INVERNESS ESTATES DEVELOPMENT LTD. and
CP DEVELOPMENT LTD.**

Petitioners

-and-

THE ENTITIES LISTED IN ANNEX A

Mis-en-cause

and

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

**AMENDED MOTION FOR AN INITIAL ORDER
PURSUANT TO SECTIONS 4,5,11 AND FOLLOWING
OF THE COMPANIES' CREDITORS ARRANGEMENT
ACT ("CCAA") (R.S.C. 1985 c. C-36), AFFIDAVIT,
NOTICE OF PRESENTATION, LIST OF EXHIBITS**

ORIGINAL

**M^c Sandra Abitan
M^c Martin Desrosiers**
Osler, Hoskin & Harcourt, s.e.n.c.r.l./s.r.l.
1000 rue de La Gauchetière ouest, Bureau 2100
Montréal (Québec) H3B 4W5
Tél: 514.904.8100 Téléc.: 514.904.8101

Code : BO 0323 n/d: 1131787