

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-041305-117

**SUPERIOR COURT**  
(Commercial Division)

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

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

**Homburg Invest Inc.**

**Debtor / Petitioner**

-and-

**Homburg Shareco Inc.**

**Churchill Estates Development Ltd.**

**Inverness Estates Development Ltd.**

**CP Development Ltd.**

**North Calgary Land Ltd.**

**Homburg Management (Canada) Inc.**

**Debtors**

-and-

**Homco Realty Fund (52) Limited Partnership**  
**Homco Realty Fund (61) Limited Partnership**  
**Homco Realty Fund (83) Limited Partnership**  
**Homco Realty Fund (88) Limited Partnership**  
**Homco Realty Fund (89) Limited Partnership**  
**Homco Realty Fund (92) Limited Partnership**  
**Homco Realty Fund (94) Limited Partnership**  
**Homco Realty Fund (96) Limited Partnership**  
**Homco Realty Fund (105) Limited Partnership**  
**Homco Realty Fund (121) Limited Partnership**  
**Homco Realty Fund (122) Limited Partnership**  
**Homco Realty Fund (142) Limited Partnership**  
**Homco Realty Fund (190) Limited Partnership**  
**Homco Realty Fund (191) Limited Partnership**  
**Homco Realty Fund (199) Limited Partnership**  
**Castello Development Ltd.**

**Mises-en-cause**

-and-

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

**Monitor**

**MOTION FOR APPROVAL OF THE VALBONNE 5 BRIDGE LOAN**  
**(Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985)**

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

**I. INTRODUCTION**

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

7. The HII Group respectfully requests that this Honourable Court authorize HII to advance the Valbonne 5 Bridge Loan (as defined below), as set forth in the conclusions herein;

## II. CORPORATE STRUCTURE AND ASSETS

8. HII is the sole limited partner of Homco 110, a limited partnership governed by the laws of Nova Scotia. Its general partner is HII (110) GP Inc., a wholly-owned subsidiary of HII;
9. Homco Realty Fund (110) Limited Partnership owns Valbonne Real Estate 5 B.V. ("**Valbonne 5**"), a private limited liability company governed by Dutch law. Valbonne 5, in turn, owns as limited partner a 93.3% interest in MoTo Objekt Campeon GmbH & Co KG ("**MoTo**"), a limited partnership governed by German law. The general partner and other limited partners of MoTo are third parties;
10. MoTo owns the Campeon complex ("**Campeon**") in Neubiberg, a suburb of Munich, Germany. Campeon serves as the headquarters of Infineon Technologies AG, one of the world's largest semiconductor manufacturers. Campeon is the HII Group's single largest asset and is designated as a Core Business Asset that will become the property of Newco should the HII/Shareco Plan be approved by the Court and implemented (as such terms are defined in the *Re-amended motion for an order for the convening, holding and conduct of the HII/Shareco Creditors' Meeting and other relief*, in the Court record);

## III. FINANCING STRUCTURE AND TAX OBLIGATIONS

11. In 2010, Valbonne 5 borrowed approximately €45 million (the "**Loan**") from Falcon Private Bank Ltd. ("**Falcon**"), which Loan is secured by a pledge of the shares of Valbonne 5, as evidenced by a separate pledge agreement. The current balance outstanding in respect of the Loan is approximately €26 million;
12. Prior to the Filing Date, MoTo would generally distribute approximately €3.6 million to Valbonne 5 on a quarterly basis (the "**Quarterly Distribution**"). Out of this amount, approximately €500,000 of interest was paid to Falcon on a quarterly basis. The rest of the funds would flow up to HII. As and when required, HII would proceed to pay any taxes due by Valbonne 5;
13. The term of Loan expired subsequent to the Filing Date, at which time Falcon consented to extend the term of the Loan only on a full cash sweep basis. In other words, since the renewal of the Loan, the Quarterly Distribution was used almost exclusively to pay interest and pay down the principal of the Loan;
14. Given the historical treatment of the Quarterly Distribution, including following the Filing Date, Valbonne 5 has no available cash on hand to address any required payments. The next Quarterly Distribution from MoTo should be received by Valbonne 5 during the last week of June 2013;
15. Valbonne 5 currently owes approximately €420,000 to German tax authorities and approximately €740,000 to Dutch tax authorities. A further amount of approximately

€420,000 will become due to German tax authorities in mid-June 2013 (collectively, the “**Tax Obligations**”). Valbonne 5 will not have sufficient cash in its account to fund the Tax Obligations until receipt of the June Quarterly Distribution from MoTo. However, it is in the interest of Valbonne 5 to pay the Tax Obligations immediately, thus reducing accruing penalties and interest;

#### **IV. BRIDGE LOAN**

16. Given that the property owned by Valbonne 5 has been designated as a Core Business Asset and in fact represents the single most important asset in the HII portfolio (and, following the implementation of the HII/Shareco Plan, the Newco portfolio), Valbonne 5 has renegotiated the terms of the Loan in connection with the implementation of the HII/Shareco Plan. It is expected that the documentation in connection with same will be finalized in the coming days. The renewal terms provide for a release of the cash sweep following the June 2013 Quarterly Distribution;
17. Although Falcon will not advance any cash to Valbonne 5 to satisfy the Tax Obligations, it has agreed that Valbonne 5 shall be entitled to retain such amounts as may be necessary from the June 2013 Quarterly Distribution to pay the Tax Obligations in full;
18. Falcon has confirmed that should the HII Group lend the necessary funds to Valbonne 5 to satisfy the Tax Obligations, it will authorize Valbonne 5 to refund all such amounts (including interest) to the HII Group by no later than June 30, 2013;
19. In light of the foregoing, the HII Group respectfully requests that this Honourable Court authorize HII to lend the aggregate amount of €1.6 million to Valbonne 5 on an interim basis (the “**Valbonne 5 Bridge Loan**”), to be repaid immediately upon receipt by Valbonne 5 of the June 2013 Quarterly Distribution;
20. The Valbonne 5 Bridge Loan, which will allow for the immediate payment of all outstanding Tax Obligations, is in the best interests of all stakeholders. The Valbonne 5 Bridge Loan will ensure that Valbonne 5 meets all of its outstanding obligations to all relevant tax authorities and accordingly maintain and preserve all of the value in Valbonne 5 for the creditors of HII;

#### **V. CONCLUSION**

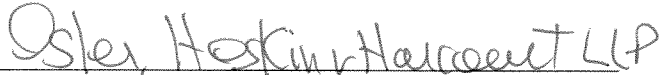
21. HII is of the view that providing the relief requested herein is appropriate in the present circumstances. Accordingly, HII respectfully requests that this Honourable Court render the orders contained in the conclusions herein;
22. The Monitor supports the present Motion;
23. The HII Group has acted, and continues to act, in good faith and with the utmost diligence.

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

1. **GRANT** the present *Motion for approval of the Valbonne 5 bridge loan* (the “**Motion**”);
2. **DECLARE** that the service of the Motion constitutes good and sufficient service on all persons and further **DECLARE** that the Petitioners are relieved of any other requirements for service of the Motion;
3. **AUTHORIZE** Homburg Invest Inc. (“**HII**”) to lend the aggregate sum of €1,600,000 (the “**Bridge Loan**”) to Valbonne Real Estate 5 B.V. (“**Valbonne 5**”) for the sole purpose of satisfying any obligations Valbonne 5 may have to any tax authorities ;
4. **ORDER** that HII shall only extend the Bridge Loan if the terms thereof provide that:
  - (a) Valbonne 5 will pay interest on the Bridge Loan at no less than a rate of 4% per annum; and
  - (b) The Bridge Loan will be repaid by Valbonne 5 in full no later than July 1, 2013;
5. **ORDER** the provisional execution of the Order notwithstanding any appeal therefrom and without the necessity of furnishing any security;

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

MONTRÉAL, June 3, 2013

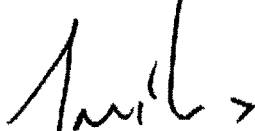
  
**OSLER, HOSKIN & HARCOURT LLP**  
Attorneys for the Debtors and Mises-en-cause

**AFFIDAVIT**

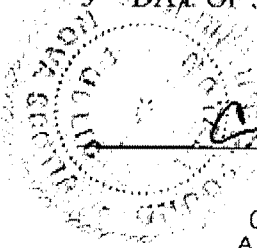
I the undersigned, **James F. Miles**, domiciled and residing at 29 Coventry Lane, Dartmouth, Nova Scotia, B2V 2K2, solemnly declare the following:

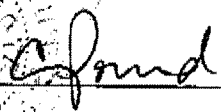
- 1. I am the Vice-President and Chief Financial Officer of Homburg Invest Inc. and duly authorized representative of the Petitioner for the purpose hereof;
- 2. I have taken cognizance of the attached *Motion for approval of the Valbonne 5 bridge loan*;
- 3. All of the facts alleged in the said motion are true.

AND I HAVE SIGNED:

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

SOLEMNLY DECLARED BEFORE ME  
IN HALIFAX, NOVA SCOTIA ON THE  
3<sup>RD</sup> DAY OF JUNE 2013.




  
 \_\_\_\_\_  
**CHRISTINE C. POUND**  
 A Notary Public in and for the  
 Province of Nova Scotia

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


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

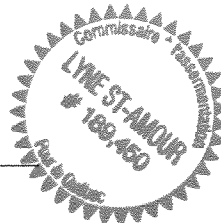
1. I am one of the attorneys of the Petitioner to the present *Motion for approval of the Valbonne 5 bridge loan* in Court file number 500-11-041305-117;
2. On June 3, 2013 at 8:33 a.m. (Montréal time), Osler, Hoskin & Harcourt LLP received by fax the Affidavit of James F. Miles, a duly authorized representative of the Petitioners, dated the same day;
3. The copy of the Affidavit attached hereto is a true copy of the Affidavit of James F. Miles received by fax from Christine C. Pound, from the city of Halifax, Province of Nova Scotia, from fax number 902-420-1417;
4. All of the facts alleged herein are true.

AND I HAVE SIGNED:

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

SOLEMNLY DECLARED BEFORE ME  
IN MONTRÉAL, QUÉBEC  
ON THE 3<sup>RD</sup> DAY OF JUNE 2013.

  
\_\_\_\_\_  
Lyne St-Amour  
COMMISSIONER FOR OATHS  
FOR THE PROVINCE OF QUÉBEC



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Inc. and Kai Construction  
Corp.**

**TAKE NOTICE** that the *Motion for approval of the Valbonne 5 bridge loan* will be presented for hearing and allowance in the Superior Court, commercial division, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on June 5, 2013, at 9:15 a.m., or so soon thereafter as counsel may be heard, and in a room to be announced.

**PLEASE ACT ACCORDINGLY.**

MONTRÉAL, June 3, 2013

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

No: 500-11-041305-117

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**SUPERIOR COURT**  
(Commercial Division)

DISTRICT OF MONTRÉAL

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

**HOMBURG INVEST INC.**

**Debtor/Petitioner**

**-and-**

**HOMBURG SHARECO INC. ET AL.**

**Debtors**

**-and-**

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

**Mises-en-cause**

**-and-**

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

**Monitor**

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**MOTION FOR APPROVAL OF THE VALBONNE  
5 BRIDGE LOAN (Section 11 of the *Companies'*  
*Creditors Arrangement Act*, R.S.C., 1985, c. C-36),  
AFFIDAVIT, ATTESTATION OF  
AUTHENTICITY, NOTICE OF PRESENTATION**

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**ORIGINAL**

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**Mtre. Martin Desrosiers**

**Mtre. Sandra Abitan**

**Osler, Hoskin & Harcourt LLP**

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