

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

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

No.: 500-11-041305-117

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

**Homburg Invest Inc.
Homburg Shareco Inc.
Churchill Estates Development Ltd.
Inverness Estates Development Ltd.
CP Development Ltd.**

Debtors/Petitioners

-and-
HII GP Inc.

Petitioner

-and-
**Homco Realty Fund (52) Limited Partnership
Homco Realty Fund (88) Limited Partnership
Homco Realty Fund (89) Limited Partnership
Homco Realty Fund (92) Limited Partnership
Homco Realty Fund (94) Limited Partnership
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 (199) Limited Partnership**

-and-
CANMARC Real Estate Investment Trust, 1 Place
Alexis Nihon, Suite 1010, Montréal, Province of
Québec, H3Z 3B8

-and-
HCR Limited Partnership, 100 King Street West,
Suite 6600, Toronto, Province of Ontario, M5X 1B8

-and-
HCR LP (CP Calgary) Inc., 100 King Street West,
Suite 6600, Toronto, Province of Ontario, M5X 1B8

-and-
Caisse centrale Desjardins, 1170 Peel Street, Suite
300, Montréal, Province of Québec, H3B 0A9

-and-

The Registrar of the Register of Personal and Movable Real Rights, 1 Notre-Dame Street East, 7th Floor, Montréal, Province of Québec, H2Y 1B6

Mis-en-cause

-and-

Samson Bélair/Deloitte & Touche Inc.

Monitor

MOTION FOR AUTHORIZATION OF SALE AND FOR A VESTING ORDER

**(Sections 11 and 36 of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36, as amended)**

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:

Introduction

1. On September 9, 2011, the Honourable Louis J. Gouin, S.C.J. issued an order (as amended, the “**Initial Order**”) pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) in respect of Homburg Invest Inc. (“**HII**”), Homburg Shareco Inc., Churchill Estate Developments Ltd., Inverness Estates Developments Ltd. and CP Developments Ltd. (collectively the “**Debtors**”), as appears from the Court record;
2. Pursuant to the Initial Order, Samson Bélair/Deloitte & Touche Inc. was appointed as Monitor of the Debtors (the “**Monitor**”) and a stay of proceedings (the “**Stay of Proceedings**”) was granted from the date of the Initial Order until October 7, 2011;
3. On October 7, 2011, this Honourable Court issued an order (the “**First Extension Order**”) extending the Stay of Proceedings until December 9, 2011. On December 8, 2011, this Honourable Court issued a further order extending the Stay of Proceedings until March 16, 2012 (the “**Stay Period**”);
4. As appears from the Initial Order and the First Extension Order, the Stay of Proceedings was 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 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 (“**Homco 199**”) (together with the Debtors and the general partner of Homco 199, HII GP Inc., the “**HII Group**”);

5. The HII Group respectfully requests that this Honourable Court render the orders sought herein to, *inter alia*, authorize and approve the sale, transfer and assignment of the REIT Units (as defined below) to a purchaser in accordance with the terms of its offer and issue a vesting order and certain ancillary orders accordingly, which will allow the HII Group to obtain the best possible value from the REIT Units and allow the HII Group to advance with its restructuring efforts, the whole with a view to formulating and presenting a viable plan of arrangement or compromise to its creditors;

Background

6. In the spring of 2010, HII formed Homburg Canada Real Estate Investment Trust (now called CANMARC Real Estate Investment Trust, hereinafter “**CANMARC REIT**”) to hold most of the HII Group’s Canadian income-producing real estate properties. CANMARC REIT is an unincorporated open-ended real estate investment trust governed by the laws of Québec, which was 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;
7. In connection therewith, Homco Realty Fund (12) Limited Partnership (“**Homco 12**”), Homco Realty Fund (190) Limited Partnership (“**Homco 190**”), Homco Realty Fund (191) Limited Partnership (“**Homco 191**”) and Homco 199 (collectively, the “**2010 Vendors**”) sold all of their indirect interests in certain Canadian properties to Homburg Canada REIT Limited Partnership (“**Master LP**”), a subsidiary of CANMARC, pursuant to a Master Purchase Agreement made as of May 25, 2010 (the “**Master Purchase Agreement**”). Concurrently, Homco 199, on behalf of the 2010 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 CANMARC REIT pursuant to the terms of an Exchange Agreement between Homco 199, as transferor, CANMARC REIT, as transferee, and Homco 12, Homco 190 and Homco 191 dated as of May 25, 2010. The units of CANMARC REIT are traded on the TSX;
8. HII was also a party to the Master Purchase Agreement, as guarantor in relation to the indemnification granted by the Partnerships thereunder to Master LP. A copy of the Master Purchase Agreement is filed herewith as **Exhibit P-1**;

Bought Deal

9. On August 23, 2011, HII announced that it had entered into an agreement to sell 3,000,000 units in CANMARC REIT (the “**Bought Deal Units**”) on a bought deal basis to a syndicate of underwriters at \$11.50 per unit for gross proceeds of \$34,500,000 (the “**Bought Deal**”);
10. The Bought Deal was negotiated and concluded on an arm’s length basis and the price represented the fair market value of the Bought Deal Units at the time;

11. This Honourable Court was informed of the contemplated Bought Deal, and of its necessity to generate liquidity to be used by the HII Group to carry out its restructuring, when it issued the Initial Order on September 9, 2011;
12. The Monitor was aware of the terms of the Bought Deal, including the concurrent reduction of HII's line of credit with HSBC Bank Canada and was of the view that the transaction was in the best interests of HII Group's stakeholders;
13. As planned, the Bought Deal closed on September 13, 2011, following which the HII Group retained an interest in 8,813,866 issued and outstanding CANMARC REIT units (the "**REIT Units**"), representing approximately 16.1% of all such units. As of the date hereof, Homco 199 holds all the REIT Units in its own name, while the other 2010 Vendors now hold related intercompany loans. Also as of the date hereof, the HII Group, through Homco 199, is the largest single unitholder of CANMARC REIT;

Takeover Bid

14. On November 28, 2011, Cominar Real Estate Investment Trust ("**Cominar REIT**") announced that it was seeking to purchase all issued and outstanding REIT Units for a purchase price per REIT Unit of \$15.30 in cash or 0.7054 units of Cominar REIT (the "**Initial Price**"), representing a premium of approximately 15% over the closing price of the REIT Units on the TSX on November 25, 2011, the last trading day prior to Cominar's announcement (the "**Last Pre-Offer Trading Day**"), as more fully appears from a press release of Cominar (as defined below) dated November 28, 2011, filed in support hereof as **Exhibit P-2**;
15. On December 2, 2011, Cominar REIT, acting through a group of subsidiaries (collectively with Cominar REIT, "**Cominar**") officially released an unsolicited offer to purchase all issued and outstanding CANMARC REIT units that they do not already own, as more fully appears from the Offer to Purchase filed herewith as **Exhibit P-3**. Under the Offer to Purchase and subject to its terms, Cominar was offering the Initial Price;
16. In response to this offer, CANMARC REIT announced that it adopted a new unitholder rights plan (in addition to its existing unitholder rights plan), which effectively prevented Cominar from accumulating more units;
17. On December 13, 2011, CANMARC REIT officially announced that its Board of Trustees unanimously recommended the rejection of this offer;
18. On January 16, 2012, Cominar increased its offer to \$16.50 in cash or 0.7607 units of Cominar REIT for each unit of CANMARC REIT and the offer was extended to January 27, 2012 at 3 p.m. (Toronto time), subject to the terms of the Notice of Variation and Extension, filed herewith as **Exhibit P-4** (the "**Cominar Offer**");
19. The Cominar Offer is fully supported by CANMARC REIT's Board of Trustees, as more fully appears from a joint press release of CANMARC REIT and Cominar dated January 16, 2012, filed in support hereof as **Exhibit P-5**;

Financial Advisor

20. Given its large stake in CANMARC REIT and the imperative to obtain the best value possible from the REIT Units, HII retained RBC Dominion Securities Inc. (“RBC”) to be its financial advisor for this specific matter;
21. As more fully appears from the engagement letter with RBC (the “**Engagement Letter**”), RBC’s remuneration is composed of a Retainer Fee, a Transaction Fee and a Completion Fee (each capitalized term as defined in the Engagement Letter). The Transaction Fee is only payable if a transaction occurs with respect to the REIT Units and will vary depending on the price obtained by the HII Group. A copy of the Engagement Letter is filed herewith under seal as **Exhibit P-6**;
22. The HII Group respectfully requests that this Honourable Court ratify the Engagement Letter and authorize any payment due thereunder by HII to RBC in accordance with its terms;
23. RBC provided the HII Group with a report relating to the Cominar Offer, which included, *inter alia*, a NAV (net asset value) analysis of CANMARC REIT, an AFFO (adjusted funds from operation) accretion analysis of the acquisition by Cominar REIT of CANMARC REIT, a precedent transaction analysis as well as a public comparable analysis. The report also reviewed the alternatives to the initial Cominar offer, and concluded that the value of the Cominar Offer, as amended, was within the range of the values derived from the aforementioned analyses.

Position of the HII Group

24. In light of the current Cominar Offer, on January 17, 2012, CANMARC REIT issued a Notice of Change to Trustees’ Circular recommending acceptance of the Cominar Offer, filed herewith as **Exhibit P-7**;
25. Following a review of RBC’s recommendation and in the interest of all of the HII Group’s stakeholders, on January 19, 2012, HII’s Board of Directors resolved to approve the sale of all REIT Units currently held by Homco 199. The Monitor supports this position, as appears from the Monitor’s Sixth Report to the Court, to be filed in support hereof (the “**Sixth Report**”).
26. The HII Group respectfully requests that this Honourable Court authorize the HII Group, and in particular Homco 199, to tender the REIT Units to the Cominar Offer or otherwise sell them for a cash consideration of no less than \$16.50 per unit, and render the necessary vesting orders in accordance with the conclusions hereof;

Encumbrances on Certain REIT Units

27. Pursuant to the Master Purchase Agreement, Homco 199 has agreed to indemnify Master LP, a subsidiary of CANMARC REIT, for certain representations and warranties set out therein up to a maximum amount of \$116,250,000, including certain representations and warranties related to tax matters specified at section 5.1(d) of the Master Purchase Agreement (the “**Tax Indemnity Obligations**”);

28. Pursuant to the Master Purchase Agreement, CANMARC REIT was to obtain updated environmental site assessments for certain purchased properties. To the extent any such assessment indicated environmental contamination or other issues, the 2010 Vendors are obligated to pay to Master LP the cost of further investigations, remediation and/or monitoring, and is required to pre-fund the estimated cost relating thereto (the “**Remediation Cost Obligations**”);
29. Pursuant to a moveable hypothec agreement between CANMARC REIT (then known as Homburg Canada Real Estate Investment Trust) and Homco 199 dated May 25, 2010, as amended and restated as of August 18, 2011 (the “**Moveable Hypothec Agreement**”), Homco 199 hypothecated and pledged 600,000 REIT units (the “**Head Leases and Tax Units**”) in favour of CANMARC REIT, together with all proceeds therefrom for the principal sum of \$6,000,000 together with interest at the rate of 25% per annum, calculated semi-annually and not in advance, to secure certain head lease obligations and the Tax Indemnity Obligations. A copy of the Moveable Hypothec Agreement is filed in support hereof as **Exhibit P-8**;
30. To secure the Remediation Cost Obligations and the Tax Indemnity Obligations, Homco 199 hypothecated and pledged a further 400,000 REIT units under the Movable Hypothec Agreement in favour of CANMARC REIT (the “**Remediation and Tax Units**”), together with all proceeds therefrom, for the principal sum of \$4,000,000 together with interest at the rate of 25% per annum, calculated semi-annually and not in advance;
31. Pursuant to a moveable hypothec agreement (the “**Centron Moveable Hypothec Agreement**” and jointly with the Movable Hypothec Agreement, the “**Hypothec Agreements**”) dated as of August 18, 2011, an additional 300,000 REIT Units (the “**Centron Head Lease Units**”) have been pledged by Homco 199 in favour of HCR Limited Partnership, a wholly-owned limited partnership of CANMARC REIT, (together with its general partner HCR LP (CP Calgary) Inc. and CANMARC REIT, “**CANMARC**”), to secure certain head lease obligations, for the principal sum of \$5,000,000 together with interest at the rate of 25% per annum, calculated semi-annually and not in advance. A copy of the Centron Moveable Hypothec Agreement is filed in support hereof as **Exhibit P-9**;
32. Pursuant to the Hypothec Agreements, Osler, Hoskin & Harcourt LLP (the “**Custodian**”) was appointed custodian of the Pledged REIT Units (as defined below);
33. As more fully appears from an extract of the Register of Personal and Movable Real Rights (“**RPMRR**”), filed in support hereof as **Exhibit P-10** and summarized in Annex II hereof, there is a movable hypothec on two accounts held by Homco 199 with Caisse centrale Desjardins (“**Desjardins**”). These accounts were put in place in early 2011 to hold REIT Units in the context of a bridge loan. As of the date hereof, the bridge loan has been fully repaid, there are no outstanding obligations to Desjardins and there are no REIT Units in the accounts. By inadvertence, the parties simply never proceeded with the radiation of the Desjardins hypothec at the RPMRR. Accordingly, Homco 199 respectfully requests that the Registrar of the RPMRR be ordered, upon presentation of a true copy of this order and of the Monitor’s Certificate (as defined in the conclusions

hereof), to proceed with the total cancellation, release and discharge of Desjardins' hypothec described in Annex II, pursuant to the conclusions hereof;

Shifting of CANMARC Encumbrances to certain Net Proceeds

34. The HII Group requests permission to tender the pledged Head Lease Units, Centron Head Lease Units and Additional Lease Units that are the object of the Hypothec Agreements (collectively, the "**Pledged REIT Units**") for sale provided that the security on the Pledged REIT Units be replaced by security on the cash proceeds resulting from the sale of the Pledged REIT Units, net of the pro-rated payment due by HII to RBC under the Engagement Letter in respect of such Pledged REIT Units (the "**Net Pledged REIT Unit Proceeds**"), with the same priority as CANMARC had with respect to the Pledged REIT Units immediately prior to the tender and sale of such Pledged REIT Units;
35. Accordingly, the HII Group respectfully requests that this Honourable Court declare that the security on the Pledged REIT Units currently held by CANMARC be replaced by security on the Net Pledged REIT Unit Proceeds; order the Net Pledged REIT Unit Proceeds to be pro-rated among the Head Lease Units, the Centron Head Lease Units and the Additional Lease Units, respectively, upon receipt, resulting in a Net Head Lease Pool, a Net Centron Head Lease Pool and a Net Additional Lease Pool (collectively, the "**Pledged Unit Pools**"); order each of the Pledged Unit Pools to be distributed separately to the Custodian; and authorize the Custodian to deposit and hold each of the Pledged Unit Pools in three separate trust accounts;
36. The foregoing is without admission by the Monitor as to the validity of the security granted pursuant to the Hypothec Agreements and without prejudice to and under strict reserve of the rights of the Monitor to obtain an independent legal opinion with respect thereto. The foregoing is also without admission by the HII Group as to the existence or quantum of any claim relating to the Hypothec Agreements and/or the Master Purchase Agreement;

Conclusion

37. As discussed above, the tender and sale of the REIT Units is in the best interest of the HII Group and its stakeholders as it will provide the HII Group with more liquid assets during the course of its restructuring;
38. The Cominar Offer represents a premium of approximately 24% over the closing price of the REIT Units on the TSX the Last Pre-Offer Trading Day;
39. RBC and the Monitor support the sale transaction. As appears from the Sixth Report, the Monitor also supports the present Motion;
40. The present Motion is urgent given the facts set out above and in particular, the expiry of the Cominar Offer on January 27, 2012;
41. Considering the urgency of the matter, it is important that the Order to be rendered pursuant to this Motion be executory notwithstanding appeal;

42. Given the confidential and sensitive nature of the Engagement Letter, it is requested that this exhibit be filed and remain under seal until further order of this Court;
43. The HII Group has acted and continues to act in good faith and with due diligence and the HII Group respectfully submits that this Motion should be granted in accordance with its conclusions;
44. The present Motion is well founded in fact and in law;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

1. **GRANT** the present Motion for authorization of sale and for a vesting order (the “**Motion**”);
2. **DECLARE** that the time for service of the Motion is hereby abridged such that the Motion is properly presentable;
3. **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;
4. **DECLARE** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion;
5. **AUTHORIZE** HII GP Inc. (“**HII GP**”), in its capacity as the general partner of Homco Realty Fund (199) Limited Partnership (“**Homco 199**”), to tender the issued and outstanding units (the “**Homco 199 Units**”) in Homburg Canada Real Estate Investment Trust (now known as CANMARC Real Estate Investment Trust and hereinafter “**CANMARC REIT**”) that are held by Homco 199, for sale and **AUTHORIZE** HII GP, in its capacity as the general partner of Homco 199, to instruct Osler, Hoskin and Harcourt LLP (the “**Custodian**”), in its capacity as the custodian of the Pledged REIT Units (as defined below), to tender the Pledged REIT Units (collectively with the Homco 199 Units, the “**REIT Units**”), for and on behalf of Homco 199, for sale;
6. **AUTHORIZE** and **APPROVE** the sale, transfer and assignment of the REIT Units to the purchaser thereof in accordance with the terms of the Cominar Offer or otherwise for a cash consideration of no less than \$16.50 per unit (the “**Conveyance**”) and **AUTHORIZE** the HII Group and Samson Bélair/Deloitte & Touche Inc., in its capacity of Monitor to the Debtors and without any personal or corporate liability (the “**Monitor**”) to take any and all actions necessary to proceed with the Conveyance to the purchaser of the REIT Units including, without limiting the generality of the foregoing, to execute any and all documents that may be necessary or useful to the consummation of such sale of the REIT Units (the “**Transaction**”);
7. **AUTHORIZE** the HII Group to:
 - (a) execute and deliver any documents and assurances governing or giving effect to the Transaction as the HII Group, in its discretion, may deem to be reasonably

necessary or advisable to conclude the Transaction, and all such documents and assurances are hereby ratified, approved and confirmed; and

- (b) take steps as are, in the opinion of the HII Group, necessary or incidental to the performance of its obligations under and pursuant to the Transaction;
8. **RATIFY** the Engagement Letter and **AUTHORIZE** the payment by HII to RBC of any payments contemplated under the Engagement Letter in accordance with its terms;
9. **ORDER** and **DECLARE** that upon the delivery of a certificate from the Monitor to the purchaser of the REIT Units, substantially in the form attached as Annex I to the Order to be rendered pursuant to the present Motion (the “**Monitor’s Certificate**”), the REIT Units (including any and all rights, title and interest related thereto) shall vest absolutely and exclusively in the purchaser thereof free and clear of and from any and all encumbrances, liens, claims, liabilities (direct, indirect, absolute or contingent), disputes, debts, obligations, rights, titles, interests, security interests, charges (including any and all charges created pursuant to the Debtors’ proceedings pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36), pledges, mortgages, hypothecations, hypothecs, judgments, trusts or deemed trusts, executions, writs of seizure and sale, options, adverse claims, prior claims, assignments, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, levies, priorities, remedies from facts which exist as of the date of the transaction, or any other claims or encumbrances of any nature whatsoever and howsoever arising, in each case whether known or unknown, whether contractual, statutory or legal, by operation of law or equity or otherwise, whether perfected, attached, registered or filed, whether secured, unsecured or otherwise (each of which being reference to as an “**Encumbrance**” and collectively, the “**Encumbrances**”), including without limitation, the Encumbrances listed on Annex II;
10. **ORDER** the Monitor to file with the Court a copy of the Monitor’s Certificate as soon as reasonably practicable after delivery thereof to the purchaser of the REIT Units;
11. **ORDER** the Registrar of the Register of Personal and Movable Real Rights, upon presentation of the required applications, a true copy of this order, payment of the prescribed fees, if any, and presentation of the Monitor’s Certificate, to cancel, radiate and discharge the registration of all moveable encumbrances listed on Annex II hereto, such that all of the REIT Units are no longer affected by movable encumbrances;
12. **ORDER** that for the purpose of determining the nature and priority of the Encumbrances, the proceeds from the sale of any and all right, title and interest of the HII Group in and to the REIT Units, net of the payments due to be paid by HII to RBC under the Engagement Letter (the “**Net Proceeds**”), shall stand in the place and stead of the REIT Units, and that from and after the delivery of the Monitor’s Certificate, all Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the REIT Units immediately prior to the sale, as if the REIT Units had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale;

13. **DECLARE** that in accordance with paragraphs 34 and 35 of the Motion, the Pledged REIT Units currently held by CANMARC REIT and HCR LP (CP Calgary) Inc. in its capacity as general partner of HCR Limited Partnership shall be replaced by the Net Pledged REIT Unit Proceeds;
14. **ORDER** the Net Pledged REIT Unit Proceeds to be pro-rated among the Head Lease Units, the Centron Head Lease Units and the Additional Lease Units, respectively, upon receipt, resulting in a Net Head Lease Pool, a Net Centron Head Lease Pool and a Net Additional Lease Pool (collectively, the “**Pledged Unit Pools**”);
15. **ORDER** each of the Pledged Unit Pools to be distributed separately to the Custodian and **AUTHORIZE** the Custodian to deposit and hold each of the Pledged Unit Pools in three separate trust accounts until full and final settlement of any claim CANMARC may have, to the extent the same is secured in accordance with the Hypothec Agreements, until further order of the Court;
16. **DECLARE** that upon the filing of the Monitor’s Certificate with the office of this Court, the Transaction and any other document to be executed for the purposes of the Transaction, pursuant to the Order to be rendered pursuant to the present Motion, constitutes a sale by a public officer acting under judicial authority as per the provisions of the *Code of Civil Procedure*, R.S.Q., c. C-25;
17. **DECLARE** that the Transaction shall be considered as a forced sale as per the provisions of the *Civil Code of Québec*, S.Q. 1991, c. 64 (the “**Civil Code**”);
18. **EXEMPT** the HII Group and the Monitor from the requirement, if any, to seek and obtain shareholders’ approval pursuant to any federal or provincial legislation with regard to the consummation of the Transaction;
19. **DECLARE** that the Order sought constitutes the only authorization required by the HII Group to proceed with the Transaction and the Conveyance and, for greater certainty, **DECLARE** that the parties involved in the Transaction are exempted from requiring or obtaining any formal valuation or authorization that may have been required from any person or authority whatsoever;
20. **ORDER** and **DECLARE** that, notwithstanding:
 - (a) the pendency of these proceedings;
 - (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) in respect of the HII Group and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of the HII Group;

the Conveyance shall be binding on any Trustee in bankruptcy that may be appointed in respect of the HII Group and shall not be void or voidable and shall not be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA, article 1631 and following of the Civil Code or

any other applicable federal or provincial legislation nor shall they be deemed to be oppressive transactions or conduct justifying any oppression remedy under any applicable statute;

21. **DECLARE** that the Order to be rendered pursuant to the present Motion shall have full force and effect in all of the provinces and territories in Canada;
22. **ORDER** the sealing of the Engagement Letter;
23. **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.

MONTREAL, January 19, 2012

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP

Attorneys for the Petitioners

ANNEX I
MONITOR'S CERTIFICATE

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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

No.: 500-11-041305-117

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Caisse centrale Desjardins
The Registrar of the Register of Personal and
Movable Real Rights**

Mis-en-cause

-and-

Samson Bélair/Deloitte & Touche Inc.

Monitor

MONITOR'S CERTIFICATE

(pursuant to the judgment rendered on January ●, 2012)

Pursuant to an Order of the Honourable Louis J. Gouin, S.C.J. of the Superior Court of Québec (the “**Court**”) dated September 9, 2011 (the “**Initial Order**”), Samson Bélair/Deloitte & Touche Inc. was appointed monitor (the “**Monitor**”) of Homburg Invest Inc. (“**HII**”), Homburg Shareco Inc., Churchill Estates Development Ltd., Inverness Estates Development Ltd. and CP Development Ltd. (collectively, the “**Debtors**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”);

Pursuant to the Initial Order, as amended, Homco Realty Fund (52) Limited Partnership, Homco Realty Fund (88) Limited Partnership, Homco Realty Fund (89) Limited Partnership, Homco Realty Fund (92) Limited Partnership, Homco Realty Fund (94) Limited Partnership, 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 (“**Homco 199**”) also benefit from the stay of proceedings granted thereby under the CCAA;

Pursuant to an Order of the Court dated January ●, 2012 (the “**Authorization of Sale and Vesting Order**”) the Court, *inter alia*, authorized and approved the transaction and conveyance of the REIT Units by and between HII and Homco 199 on the one hand, and ● on the other hand (the “**Purchaser**”), and provided for, among other things, the vesting in the Purchaser of the HII Group's right, title and interest in and to the REIT Units free and clear of any and all Encumbrances, the whole in accordance with the Authorization of Sale and Vesting Order, which vesting is to be effective with respect to the REIT Units upon the delivery by the Monitor to the Purchaser of this certificate;

Unless otherwise indicated herein, capitalized terms have the meaning set out in the Authorization of Sale and Vesting Order;

THE MONITOR HEREBY CERTIFIES that:

1. It has received written confirmation from each of HII, Homco 199 and the Purchaser that the closing of the Transaction has occurred; and
2. **[The Transaction has been completed to the satisfaction of the Monitor.]**

MADE AT MONTRÉAL, THIS ● DAY OF JANUARY, 2012.

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.,
in its capacity as Court-Appointed Monitor of the Debtors

Per: _____

Name:

Title:

ANNEX II
ENCUMBRANCES ON CERTAIN REIT UNITS

A conventional hypothec without delivery granted by Homco Realty Fund (199) Limited Partnership in favour of Caisse Centrale Desjardins and registered at the Register of Personal and Movable Real Rights at 2:14 p.m. on February 11, 2011 under number 11-0091465-0001.

AFFIDAVIT

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


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

AND I HAVE SIGNED

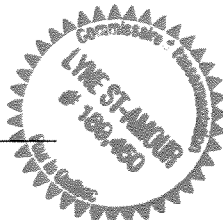


James F. Miles

SOLEMNLY DECLARED BEFORE ME
ON THE NINETEENTH DAY OF JANUARY 2012



LYNE ST-AMOUR
COMMISSIONER OF OATHS FOR
THE PROVINCE OF QUÉBEC



NOTICE OF PRESENTATION

- TO : McCARTHY TÉTRAULT LLP Attorneys for the Monitor
1000 De La Gauchetière Street West, Suite 2500
Montréal QC H3B 0A2
Me Mason Poplaw
Me Jocelyn Perreault
Me Miguel Bourbonnais
email : mpoplaw@mccarthy.ca
jperreault@mccarthy.ca
mbourbonnais@mccarthy.ca
- TO : BENNETT JONES LLP Attorneys for Penn West
4500 Bankers Hall East
855 2nd Street West
Calgary AB T2P 4K7
Me Kenneth T. Lenz
email : lenzk@bennettjones.com
- TO : BENNETT JONES LLP Attorneys for Statoil Canada Limited
4500 Bankers Hall East
855 2nd Street West
Calgary AB T2P 4K7
Me Chris Simard
email : simardc@bennettjones.com
- TO : LANGLOIS KRONSTRÖM DESJARDINS LLP Attorneys for Statoil Canada Limited
1002 Sherbrooke Street West
28th Floor
Montréal QC H3A 3L6
Me Gerry Apostolatos
Me Dimitri Maniatis
Me Stefan Chripounoff
email : gerry.apostolatos@lkd.ca
dimitri.maniatis@lkd.ca
stefan.chripounoff@lkd.ca
- TO : BLAKES, CASSELS & GRAYDON LLP Attorneys for Homburg Canada Inc. and Homburg L.P. Management Inc.
1000 Sherbrooke Street West, Suite 2700
Montréal QC H3A 3G4
Me Francis Rouleau
Me Simon Seida
email : francis.rouleau@blakes.com
simon.seida@blakes.com

- TO : BLAKES, CASSELS & GRAYDON LLP
199 Bay Street
Toronto ON M5J 1A1
Me Pam Huff
Me Milly Chow
email : pam.huff@blakes.com
milly.chow@blakes.com
- Attorneys for Homburg Canada Inc. and Homburg L.P. Management Inc.
- TO : BORDEN LADNER GERVAIS LLP
1000 De La Gauchetière Street West, Suite 900
Montreal QC H3B 5H4
- Me Josef G. A. Krüger, Q.C.
Me Matti Lemmens
Me Mathieu Lévesque
email : jkruger@blg.com
mlemmens@blg.com
malevesque@blg.com
- Attorneys for BOS Solutions Ltd., Canadian Tabular Services Inc., Premier Petroleum Corp, Moe Hannah McNeill LLP
- TO : BURNET, DUCKWORTH & PALMER LLP
525 8th Avenue SW, Suite 2400
Calgary AB T2P 1G1
- Attorneys for Keywest Projects Ltd., MHI Fund Management Inc., Neotechnology Consultants Ltd., Logan Completion Systems Inc., CE Franklin Ltd.
- Me Douglas S. Nishimura
Me Simina Ionescu-Mocanu
email : dsn@bdplaw.com
sionescu@bdplaw.com
- TO : DAVIES WARD PHILLIPS & VINEBERG LLP
1501 McGill College Avenue, 26th floor
Montréal QC H3A 3N9
Me Denis Ferland
Me Christian Lachance
email : dferland@dwpv.com
clachance@dwpv.com
- Attorneys for HSBC
- TO : DICKINSON WRIGHT LLP
222 Bay St., 18th Floor, PO Box 124
Toronto ON M5K 1H1
Me David P. Preger
email : dpreger@dickinsonwright.com
- Attorneys for Romspen Investment Corporation
- joint appearance with De Grandpré

TO: DE GRANDPRÉ JOLI-CŒUR LLP
2000 McGill College Avenue, Suite 1600
Montréal QC H3A 3H3

Me Anne Lefebvre
email: a.lefebvre@djclegal.com

Attorneys for Romspen
Investment Corporation

joint appearance with Dickson

TO : FASKEN MARTINEAU DUMOULIN LLP
Tour de la Bourse
800 Place Victoria, PO Box 242, Suite 3700
Montréal QC H4Z 1E9

Attorneys for CANMARC
REIT (formerly Homburg
Canada REIT), Homburg
Canada REIT Limited
Partnership, Homburg Canada
REIT GP Inc., HCR Limited
Partnership, HCR LP (CP
Calgary) Inc. and, in their
capacity a trustees of
CANMARC REIT, Karen A.
Prentice, Frank W. Matheson,
James F. Miles, Wayne Heuff,
John Levitt and Gérard A.
Limoges

Me Luc Morin
Me Robert Paré
Me Edmond Lamek
Me Alain Riendeau
email : lmorin@fasken.com
rpare@fasken.com
elamek@fasken.com
ariendeau@fasken.com

TO : FISHMAN FLANZ MELAND PAQUIN LLP
1250 René Lévesque Boulevard West, Suite 4100
Montréal QC H3B 4W8

Me Mark E. Meland
email : mmeland@ffmp.ca

Attorneys for Cadillac Fairview
Corporation Limited

TO : FRASER MILNER CASGRAIN LLP
1 Place Ville Marie, Suite 3900
Montréal QC H3B 4M7

Me Louis Dumont
Me Stephanie Campbell
Me Martin Poulin
email : louis.dumont@fmc-law.com
stephanie.campbell@fmc-law.com
martin.poulin@fmc-law.com

Attorneys for Tucker Wireline
Services Canada Inc.

- TO : HEENAN BLAIKIE LLP
215 9th Avenue SW, Suite 1900
Calgary AB T2P 1K3
Me Caireen E. Hanert
email : chanert@heenan.ca
Attorneys for Surge Energy Inc.
- TO : HEENAN BLAIKIE LLP
1250 René Lévesque Boulevard West, Suite 2500
Montréal QC H3B 4Y1
Me Michael Hanlon
email : mhanlon@heenan.ca
Attorneys for Surge Energy Inc.
- TO : KUGLER KANDESTIN LLP
1 Place Ville Marie, Suite 2101
Montréal QC H3B 2C6
Me Gordon Levine
email : glevine@kugler-kandestin.com
Attorneys for Avison Young
Real Estate Alberta Inc.
- TO : MCLEOD DICKSON LLP
3700 Canterra Tower, 400 3rd Ave SW
Calgary AB T2P 4H2
Me Judson Virtue
email : Jud.Virtue@macleoddixon.com
Attorneys for bcIMC Realty
Corporation
- TO : NORTON ROSE OR LLP
1 Place Ville Marie, Suite 2500
Montréal QC H3B 1R1
Me Sylvain Rigaud
Me Arnold Cohen
Me Philippe Giraldeau
email : sylvain.rigaud@nortonrose.com
arnold.cohen@nortonrose.com
philippe.giraldeau@nortonrose.com
Attorneys for Taberna Europe
CDO I PLC, Taberna Europe
CDO II PLC, Taberna Preferred
Funding VIII, Ltd and Taberna
Preferred Funding VI, Ltd.
- TO : STIKEMAN ELLIOTT LLP
1155 René Lévesque Boulevard West, 40th floor
Montréal QC H3B 3V2
Me Guy P. Martel
Me Joseph Reynaud
Me Warren Katz
Me Charles Nadeau
email : gmartel@stikeman.com
jreynaud@stikeman.com
wkatz@stikeman.com
cnadeau@stikeman.com
Attorneys for Trustees

TO : NOVA SCOTIA SECURITIES COMMISSION
Enforcement Branch
CIBC Building
1809 Barrington Street, Suite 501
Halifax NS B3J 3K8
Me Stephanie Atkinson
email : atkinssj@gov.ns.ca

TO : DAVIES WARD PHILLIPS & VINEBERG LLP Attorneys for Cominar Real
1501 McGill College Avenue, 26th floor Estate Investment Trust
Montréal QC H3A 3N9
Me Louis-Martin O'Neill
email : lmoneill@dwpv.com

TO : CAISSE CENTRALE DESJARDINS
1170 Peel Street, Suite 300
Montréal QC H3B 0A9

TO : THE REGISTRAR OF THE REGISTER OF
PERSONAL AND MOVABLE REAL RIGHTS
1 Notre-Dame Street East, 7th Floor
Montréal QC H2Y 1B6

TAKE NOTICE that the *Motion for authorization of sale and for a vesting order* will be presented for hearing and allowance in the Superior Court, commercial division, in room 17.09 of the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on January 20, 2012, at 9:15 a.m. or so soon thereafter as counsel may be heard.

PLEASE ACT ACCORDINGLY.

MONTRÉAL, January 19, 2012

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Petitioners

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

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

No.: 500-11-041305-117

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

**Homburg Invest Inc.
Homburg Shareco Inc.
Churchill Estates Development Ltd.
Inverness Estates Development Ltd.
CP Development Ltd.**

Debtors/Petitioners

-and-

HII GP Inc.

Petitioner

-and-

**Homco Realty Fund (52) Limited Partnership
Homco Realty Fund (88) Limited Partnership
Homco Realty Fund (89) Limited Partnership
Homco Realty Fund (92) Limited Partnership
Homco Realty Fund (94) Limited Partnership
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 (199) Limited Partnership**

-and-

**CANMARC Real Estate Investment Trust
HCR Limited Partnership
HCR LP (CP Calgary) Inc.
Caisse centrale Desjardins
The Registrar of the Register of Personal and
Movable Real Rights**

Mis-en-cause

-and-

Samson Bélair/Deloitte & Touche Inc.

Monitor

LIST OF EXHIBITS

- P-1 Copy of the Master Purchase Agreement
- P-2 Press release of Cominar dated November 28, 2011
- P-3 Offer to Purchase dated December 2, 2011
- P-4 Notice of Variation and Extension dated January 16, 2012
- P-5 Joint press release of CANMARC REIT and Cominar dated January 16, 2012
- P-6 Copy of the Engagement Letter (*under seal*)
- P-7 Notice of Change to Trustees' Circular dated January 17, 2012
- P-8 Copy of the Moveable Hypothec Agreement
- P-9 Copy of the Centron Moveable Hypothec Agreement
- P-10 Extract of the Register of Personal and Movable Real Rights

MONTREAL, January 19, 2012

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP

Attorneys for the Petitioners

SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL

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

HOMBURG INVEST INC. & AL. Debtors/Petitioners
-and-
HII GP INC. Petitioner
-and-
HOMCO REALTY FUND (S2) LIMITED PARTNERSHIP & AL. Mis-en-cause
-and-
CANIMARC REAL ESTATE INVESTMENT TRUST Mis-en-cause
-and-
HCR LIMITED PARTNERSHIP Mis-en-cause
-and-
HCR LP (CP CALGARY) INC. Mis-en-cause
-and-
CAISSE CENTRALE DESJARDINS Mis-en-cause
-and-
THE REGISTRAR OF THE REGISTER OF PERSONAL AND
MOVABLE REAL RIGHTS Mis-en-cause
-and-
SAMSON BÉLAIR/DELOITTE & TOUCHE INC. Monitor

MOTION FOR AUTHORIZATION OF SALE
AND FOR A VESTING ORDER
(Sections 11 and 36 of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36, as amended), AFFIDAVIT, NOTICE OF
PRESENTATION, LIST OF EXHIBITS, EXHIBITS P-1 TO P-10

ORIGINAL

Mre. Martin Desrosiers
Mre. Sandra Abitan
Osler, Hoskin & Harcourt LLP
1000 De La Gauchetière Street West, Suite 2100
Montréal QC H3B 4W5
Tel: 514.904.8100 Fax: 514.904.8101
Code : BO 0323 n/d: 1131787