

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.
North Calgary Land Ltd.
Homburg Management (Canada) Inc.**

Debtors / Petitioners

-and-

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

Mises-en-cause

-and-

Samson Bélair/Deloitte & Touche Inc.

Monitor

**MOTION FOR EXTENSION OF THE STAY PERIOD, AUTHORIZATION TO FILE
AN ADDITIONAL INTERCOMPANY CLAIM AND ACCESS TO RESTRICTED CASH
(Sections 11 and 11.02 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985)**

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

I. INTRODUCTION

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

7. The HII Group respectfully requests that this Honourable Court render the orders sought herein to:
 - (a) Extend the Stay Period until December 2, 2013;
 - (b) Authorize the HII Group to file the Northumberland Additional Intercompany Claim (as defined below); and
 - (c) Grant the HII Group access to additional funds;

The whole in order for the HII Group to continue its operations and implement the Plans (as defined below);

II. IMPLEMENTATION OF THE PLANS OF ARRANGEMENT

8. On May 30, 2013, affected creditors voted overwhelmingly in favour of the Second Joint Amended and Restated Plan of Compromise and Reorganization of HII and Shareco and the Restated Plan of Compromise of Homco 61 (the “**Homco 61 Plan**”);
9. On June 5, HII and Shareco filed a Third Amended and Restated Plan of Compromise and Reorganization (the “**HII/Shareco Plan**” and together with the Homco 61 Plan, the “**Plans**”);
10. On June 5, 2013, this Honourable Court sanctioned the Plans, as appears from the Court record. The HII Group, the Monitor and their advisors have been working diligently in order to allow for the implementation of the transactions which will occur on Plan Implementation Date (as defined in the Plans) and diligently seeking all authorizations necessary therefor;
11. As detailed below, the HII Group, the Monitor and their respective advisors have been working to finalize arrangements with and consents of the mortgage lenders of the Core Business Assets (as defined in the Plans) required to implement the Plans and have been negotiating the terms of the closing documents with the relevant parties, and diligently drafting same, the whole with a view to proceeding to implementation of the Plans as soon as possible;

A. Tax ruling

12. As previously disclosed to the Court, a request for the issuance by the Canada Revenue Agency (the “**CRA**”) of an advance income tax ruling, a condition precedent to the implementation of the Plans, was filed in the spring of 2013. The tax advisors of both the HII Group and the Monitor have been in continued communication with the CRA to facilitate the finalisation of the tax ruling request;
13. The HII Group is pleased to report that a final and satisfactory advance tax ruling was received from the CRA on September 25, 2013;

B. *Geneba licence application*

14. As previously disclosed to the Court, the entity identified as Newco in the Plans was incorporated as Geneba Properties N.V. (“**Geneba**”) under the laws of the Netherlands on July 11, 2013. Dutch counsel for HII and Geneba have been in regular discussions with, and have submitted numerous documents to, the Dutch Autoriteit Financiële Markten (“**AFM**”) regarding the application for a licence as a property investment company;
15. As also previously disclosed to the Court, in light of the enactment on July 22, 2013 of the European Alternative Investment Fund Managers Directive (“**AIFMD**”) and of the three Level 2 Regulations supplementing it, the HII Group and Geneba had to amend certain documents already filed and file some additional documents. All the amended and additional documents have now been filed with the AFM;
16. The HII Group, Geneba and the Monitor have remained in constant communications with the AFM in order to keep it apprised of the developments, to address any of its requests or concerns, the whole with the objective of accelerating the AFM licence issuance process to the extent possible. The HII Group and the Monitor remain confident that the AFM licence will be issued to Geneba, and, based on their communications with the AFM and subject to any impediments, believe that such issuance could potentially occur as soon as by the end of October 2013;

C. *NPEX*

17. As previously disclosed to the Court, the Geneba shares to be issued pursuant to the HII/Shareco Plan will trade on the Nederlandsche Participatie Exchange (“**NPEX**”) platform. Since the HII Group last reported to the Court, the Monitor has made substantial progress on the logistics of the opening of NPEX accounts for future shareholders;
18. On September 25, 2013, NPEX approved the prospectus, subject only to review of any subsequent and material changes, and approved the trading of the Geneba shares on NPEX, following implementation of the Plans;

D. *Exemption applications with Canadian securities regulators*

19. As previously reported to the Court, counsel to HII and Geneba are working with counsel to The Catalyst Capital Group Inc. (“**Catalyst**”), who have submitted an application to Canadian securities regulators for exemptive relief relating to the grant of the put right to future holders of Geneba shares. Following further discussions with the Canadian securities regulators, it was agreed that certain technical amendments to the plan (which the HII Group intends to file in due course) could obviate the need for the requested relief and that the conditions to the put right could be removed; counsel to Catalyst therefore intend to withdraw this application;
20. Geneba has also applied to Canadian securities regulators to cease to be a reporting issuer in Canada following the Plan Implementation Date and for a related exemption relating to

resales of Geneba shares by Canadian residents. Following the filing of the applications, counsel to HII and Geneba have received and responded to initial comments from Canadian securities regulators. Decisions on these applications are pending;

III. OPERATIONS AND RESTRUCTURING EFFORTS

21. Since the last extension of the Stay Period, the HII Group has continued to make significant progress, notably finalizing agreements with certain mortgage lenders, the whole as more fully set forth below;
22. Highlights of the most significant activities of the HII Group are provided below. The HII Group refers the stakeholders and the Court to the Twenty-Seventh Report of the Monitor to be filed in support of the present motion (the “**Monitor’s Twenty-Seventh Report**”) for a complete description of these activities;
23. Several meetings have taken place since the last extension hearing with the various mortgage lenders of the European properties to finalize the restructuring of the HII Group loan portfolio. Significant developments are as follows:
 - (a) Documentation of the renegotiated terms of the loan advanced by Skandinaviska Enskilda Banken AB (“**SEB**”) to Homburg Baltic LP Inc. and certain of its affiliates in respect of properties located in Estonia, Latvia and Lithuania (the “**Baltic Portfolio**”) is being finalized with SEB. The HII Group is currently also finalizing the entering into by SEB of three long term leases for properties situated in each of Estonia, Latvia and Lithuania which collectively represent over 74% of the aggregate rent value of the entire Baltic Portfolio. Key documents are nearly final and, subject to an agreement on ancillary documentation (such as standard security documents), HII anticipates that all documents will be executed shortly;
 - (b) Documentation outlining the terms of the revised agreement with both Bank of Scotland and HSH Nordbank AG has been circulating between counsel for the parties. Negotiations will continue with a goal of finalizing documentation of the agreements in the coming days or weeks;
24. Highlights of new developments with respect to properties located in North America are as follows:
 - (a) Castello completed the sale of one of its two condominium units. Remediation work currently conducted on the remaining unit should be completed in October;
 - (b) Potential purchasers of the properties held by Homco 88 (Kai Mortensen Towers) and Homco 105 (Cristal Towers) are progressing with their due diligence. Provided it is satisfactory, the HII Group anticipates it will request the Court’s authorization in order to proceed with the sales during the extension of the Stay Period sought herein;

- (c) Homburg Holdings (U.S.) Inc. (“**HHUS**”) is continuing to market four properties located in Colorado Springs. The HII Group recently received an offer for these properties, which it is currently reviewing with the Monitor’s assistance. Sale agreements are in place for the last two properties HHUS holds in Texas; it is currently anticipated the transactions will close by the end of October;
25. The process relating to the sale of non-core properties in Canada and the United States, and any related issues, will not have any impact the Plan Implementation Date;
26. As will more fully appear from the Monitor’s Twenty-Seventh Report, the HII Group is continuing to diligently review its structure as and when appropriate. In furtherance of this goal, the dissolutions of Homco 92 and Homco 122 will be finalized on or about the date hereof;

IV. ADDITIONAL INTERCOMPANY CLAIM

27. On April 23, 2013, this Honourable Court rendered an order adding Homco 83 as mis-en-cause under the Initial Order. This order also established a Claims Bar Date (as defined in the Claims Process Order rendered on April 30, 2012) of May 17, 2013 for all claims against Homco 83 (the “**Homco 83 Claims Bar Date**”);
28. HII has a claim in the amount of \$5,829,655.22 against Homco 83 (the “**Northumberland Additional Intercompany Claim**”), which relates to advances made by HII for the “**Northumberland**” condominium project, specifically for construction which was completed prior to the Homco 83 Claims Bar Date. HII prepared its proof of claim prior to the Homco 83 Claims Bar Date but, due to an administrative error, it only filed this claim with the Monitor on May 28, 2013;
29. The HII Group submits that it would be in the best interest of the restructuring and most fair to the mass of creditors of Homco 83 that the HII Group be permitted to file the Northumberland Additional Intercompany Claim;
30. As of the Homco 83 Claims Bar Date, the Monitor had been aware for several months of the existence of this intercompany claim, which had been part of its global review of intercompany financing within the HII Group;
31. As previously disclosed to the Court, the only other material creditor of Homco 83 is the Northumberland condominium corporation, Queens County Condominium Corporation #10 (“**QCCC#10**”), which filed a claim on the basis of alleged construction deficiencies. QCCC#10 is already aware of the existence of the Northumberland Additional Intercompany Claim and the HII Group submits that it would not be unduly prejudiced by its late filing. The HII Group intends to serve the present motion on counsel for QCCC#10;
32. Accordingly, the HII Group respectfully requests permission to file the Northumberland Additional Intercompany Claim with the Monitor, notwithstanding the Claims Bar Date, as provided for in the conclusions herein. The Monitor has advised HII that it does not object to this request;

V. INVERNESS ESTATES DEVELOPMENT LTD.

33. Inverness is a corporation governed by the laws of Alberta and is a wholly owned subsidiary of HII. Inverness formerly held condominium units in a project known as Inverness Estates in Grande Prairie, Alberta. By way of an order rendered on April 11, 2012 by this Court, authorized Inverness to proceed with a bulk sale of all remaining units in its possession, which sale has since closed;
34. As of the date hereof, Inverness is insolvent and no longer holds any real property. HII, in cooperation with the Monitor, has determined that it would be appropriate to proceed with a bankruptcy of this entity. Accordingly, HII is not seeking an extension of the stay of proceedings in respect of Inverness, such that it may file a voluntary assignment in bankruptcy;

VI. ACCESS TO RESTRICTED CASH

35. On January 20, 2012, this Honourable Court rendered a judgment authorizing the sale of Canmarc REIT units (the “**REIT Units**”) held by Homco Realty Fund (199) L.P. (the “**REIT Units Sale Order**”). As previously disclosed, the REIT Units were sold and resulted in proceeds of approximately \$145 million (the “**REIT Units Proceeds**”);
36. The REIT Units Sale Order provided that HII shall be entitled to have access to the REIT Units Proceeds for an amount of up to \$10 million (the “**Accessible Cash**”) for the purposes of funding the liquidity requirements of the HII Group during its restructuring under the CCAA and that all further funding requirements are to be approved by further order of this Honourable Court;
37. As of the date hereof, the REIT Units Proceeds, less the Accessible Cash and the commission paid to HII’s financial advisor pursuant to the REIT Units Sale Order, constitute restricted cash (the “**Restricted Cash**”);
38. In light of liquidity requirements, this Honourable Court authorized the HII Group to access additional amounts of Restricted Cash, totalling \$38.25 million, as follows:
 - (a) \$6 million on April 11, 2012;
 - (b) \$11 million on May 31, 2012;
 - (c) \$5.2 million on July 18, 2012;
 - (d) \$3 million on September 14, 2012;
 - (e) \$8.1 million on October 10, 2012; and
 - (f) \$4.95 million on August 29, 2013;
39. The HII Group’s estimated liquidity requirements for the 9-week period ending December 2, 2013 are such that access to an additional amount of Restricted Cash will be

required, namely an estimated sum of approximately \$6.8 million, in order to have sufficient liquidity to pursue its restructuring efforts and meet its ongoing obligations, without using alternate sources of financing, as will appear from HII's cash flow forecast to be included with the Monitor's Twenty-Seventh Report;

40. Temporary delays in obtaining funds held by certain North American subsidiaries of the HII Group have resulted in a significant reduction of available cash. However, this is a timing difference which will not, in and of itself, affect creditors' anticipated recoveries;
41. In light of the foregoing, it is respectfully requested that this Honourable Court authorize HII to have access to an incremental amount of up to \$6.8 million of Restricted Cash to allow it to implement the Plans, the whole in the best interest of its stakeholders;

VII. CONCLUSION

42. 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;
43. As will appear from the Monitor's Twenty-Seventh Report, the Monitor supports the present Motion;
44. The HII Group has acted, and continues to act, in good faith and with the utmost diligence;
45. The present motion is well founded in fact and law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

1. **GRANT** the present *Motion for extension of the stay period, authorization to file an additional intercompany claim and access to Restricted Cash* (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. **DECLARE** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion;
4. **EXTEND** the Stay Period (as defined in the Initial Order rendered by the Court on September 9, 2011 and as extended from time to time) to and including December 2, 2013, except with respect to Inverness Estates Development Ltd.;
5. **AUTHORIZE** the HII Group to file the Northumberland Additional Intercompany Claim with the Monitor and **ORDER** that the filing thereof shall have been validly made, notwithstanding the Claims Bar Date (as defined in the orders rendered by the Court on April 30, 2012 and April 23, 2013);

6. **ORDER** that Homburg Invest Inc. shall be entitled to have access to an incremental amount of up to \$6,800,000 (six million eight hundred thousand dollars) of the Restricted Cash for the purposes of funding the liquidity requirements of the HII Group during its restructuring under the *Companies Creditors' Arrangement Act*, R.S.C. 1985, c. C-36; all further funding requirements to be approved by further order of the Court;

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

MONTRÉAL, September 26, 2013

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP

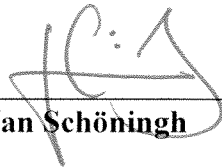
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AFFIDAVIT

I the undersigned, Jan Schöningh, domiciled and residing at 597 Avenue Roslyn, Westmount, Quebec, H3Y 2V1, solemnly declare the following:


1. I am the President and Chief Executive 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 extension of the stay period, authorization to file an additional intercompany claim and access to Restricted Cash*;
3. All of the facts alleged in the said motion are true.

AND I HAVE SIGNED:



Jan Schöningh

SOLEMNLY DECLARED BEFORE ME
IN MONTRÉAL, QUÉBEC ON THE
26TH DAY OF SEPTEMBER 2013.



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



NOTICE OF PRESENTATION

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**Attorneys for Queens County
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TAKE NOTICE that the *Motion for extension of the stay period, authorization to file an additional intercompany claim and access to Restricted Cash* will be presented for hearing and allowance in the Superior Court, commercial division, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on September 30, 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, September 26, 2013

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP

Attorneys for the Debtors and Mises-en-cause

No: 500-11-041305-117

SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL

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

HOMBURG INVEST INC. ET AL.

Debtors/Petitioners

-and-

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

Mises-en-cause

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

**MOTION FOR EXTENSION OF THE STAY
PERIOD, AUTHORIZATION TO FILE AN
ADDITIONAL INTERCOMPANY CLAIM AND
ACCESS TO RESTRICTED CASH (Sections 11
and 11.02 of the Companies' Creditors Arrangement
Act, R.S.C., 1985), AFFIDAVIT, NOTICE OF
PRESENTATION**

ORIGINAL

Mtre. Martin Desrosiers

Mtre. Sandra Abitan

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