

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

No.: 500-11-041305-117

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

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

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

**Debtors / Petitioners**

-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**

**Mis-en-cause**

-and-

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

**Monitor**

**THIRD MOTION TO EXTEND THE STAY PERIOD**

**(Section 11.02 of the *Companies' Creditors Arrangement Act*, 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 MONTRÉAL,  
THE PETITIONERS RESPECTFULLY SUBMIT AS FOLLOWS:**

## I. INTRODUCTION

1. On September 9, 2011, the Honourable Louis J. Gouin, S.C.J. 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., Churchill Estates Development Ltd., Inverness Estates Development Ltd. and CP Development Ltd. (collectively the “**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 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 until December 9, 2011. On December 8, 2011, this Court further extended the Stay of Proceedings until March 16, 2012 (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 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 (collectively and together with the Debtors, the “**HII Group**”);
5. The HII Group respectfully requests that this Honourable Court extend the Stay Period until May 31, 2012;
6. The HII Group has made and continues to make significant efforts to stabilize its business, address the concerns of all stakeholders and take steps towards an operational restructuring, as more fully described below;

## II. OPERATIONS AND RESTRUCTURING EFFORTS

7. The Debtors have continued to expend significant effort in stabilizing their business operations and maintaining the normal course of business, in the context of the CCAA process. Highlights of the most significant activities of the Debtors are provided below. The Debtors refer the stakeholders and the Court to the Seventh Report of the Monitor filed on February 17, 2012 (the “**Seventh Monitor’s Report**”), in the Court record, as well as to the Eighth Report of the Monitor to be filed in support of the present motion (the “**Monitor’s Eighth Report**”) for a complete description of these activities;

**A. Closing of the Purchase Agreement**

8. On January 12, 2012, this Honourable Court approved the Purchase Agreement entered into by certain members of the HII Group and the HCI Group (as defined in the *Motion for approval of a Purchase Agreement and for ancillary orders*, in the Court record);
9. On February 17, 2012, the parties proceeded with the closing of the transactions contemplated by the Purchase Agreement. As provided by the Purchase Agreement, the HCI Group is collaborating with the HII Group in the context of the restructuring, including to determine the most efficient manner to exercise the options contemplated therein;
10. HII and the Monitor, together with their respective Dutch, German and Canadian counsel, have identified the most tax efficient structure which will align the corporate structure with underlying economic interests, the whole with a view to maximizing full and direct control over HII's partnership structure in the context of the restructuring. As provided under the Purchase Agreement, HII currently intends to present a motion before this Honourable Court for authorization to proceed with the implementation of certain options before the end of March 2012, subject to the receipt of an advanced tax ruling sought from Dutch tax authorities;

**B. Sale of CANMARC REIT units**

11. On November 28, 2011, Cominar Real Estate Investment Trust ("**Cominar REIT**") launched an unsolicited bid to acquire all of the issued and outstanding units of CANMARC Real Estate Investment Trust ("**CANMARC REIT**"), as more fully appears from the *Motion for authorization of sale and for a vesting order* dated January 19, 2012 and the Sixth Report of the Monitor, in the Court record. HII retained a financial advisor to assess its options;
12. On January 16, 2012, CANMARC REIT and Cominar REIT jointly announced that they had entered into a Support Agreement for the acquisition by Cominar REIT of all the issued and outstanding units of CANMARC REIT for a per unit consideration of \$16.50 in cash or 0.7607 unit of Cominar REIT, subject to certain conditions (the "**Cominar Offer**");
13. Following receipt and review of the report of its financial advisor, RBC Dominion Securities Inc., HII's board of directors authorized HII to dispose of its CANMARC REIT units on January 19, 2012, by tender to the Cominar Offer or by otherwise selling them for a cash consideration of no less than \$16.50 per unit, subject to the approval of this Honourable Court. On January 20, 2012, this Honourable Court authorized this disposition (the "**REIT Units Order**");
14. In the following week, HII sold one million CANMARC REIT units on the open market for \$16.51 per unit and tendered the balance (7,813,866 units) to the Cominar Offer;
15. In connection with the disposition of all units, HII received aggregate net proceeds of \$144,523,450. Pursuant to the REIT Units Order:

- (a) An amount of \$21,450,000 is held in trust by Osler Hoskin & Harcourt LLP as security for certain obligations of HII;
- (b) An amount of \$10,000,000 was funded to HII for liquidity requirements during the restructuring process; and
- (c) The balance, namely the amount of \$113,073,450, is to be held by HII in a segregated interest-bearing account.

**C. *Inverness Estates and Churchill Estates***

- 16. HII, through its subsidiaries, Churchill Estates Development Ltd. (“**Churchill**”) and Inverness Estates Development Ltd. (“**Inverness**”), is the owner of finished condominium units respectively in Calgary and Grande Prairie, Alberta;
- 17. Since the Initial Order was issued, Churchill and Inverness have continued to sell units in the ordinary course of business;
- 18. Churchill and Inverness have been remitting the net proceeds of sale of the mortgaged condominium units to the only secured creditor for those assets, Romspen Investment Corp. (“**Romspen**”);
- 19. On December 1, 2011, Romspen filed a *Motion for an Order Lifting the Stay of Proceedings against Churchill Estates Development Ltd. and Inverness Estates Development Ltd. for the Purpose of Commencing Mortgage Foreclosure Proceedings against Real Property in the Province of Alberta* (the “**Foreclosure Motion**”), in the Court record. The HII Group and the Monitor contested this Motion;
- 20. The hearing on the Foreclosure Motion took place on January 20, 2012. On January 23, 2012, this Honourable Court dismissed the Motion, as more fully appears from the judgment, in the Court record;
- 21. On February 13, 2012, Romspen filed a *Motion for Leave to Appeal* of that judgment. The hearing on that Motion occurred on March 1, 2012 and the Motion has been taken under advisement by the Court of Appeal;
- 22. As more fully appears from the Seventh Monitor’s Report, on December 20, 2011, Inverness received a bulk purchase offer for certain of its units. On February 7, 2012, Inverness received a revised offer for bulk purchase of the balance of the units (jointly, the “**Bulk Purchase Offer**”);
- 23. HII and the Monitor are currently analysing the Bulk Purchase Offer. It is anticipated that a final decision will be made shortly in this regard, with consultation of Romspen, and that permission to proceed with the transactions under the Bulk Purchase Offer will be sought from this Honourable Court accordingly;

**D. *Canoxy Place***

24. On September 29, 2011, HII disclaimed a lease relating to Canoxy Place in Calgary, Alberta, with prior approval of the Monitor;
25. Following contestations by the landlord and certain sub-tenants of Canoxy Place, HII filed an *Amended motion for an order confirming the re-assignment and assignment of certain agreements and the release of HII's obligations under these agreements* (the "**Canoxy Motion**"), in the Court record, on November 10, 2011;
26. On December 5, 2011, this Honourable Court granted the Canoxy Motion and dismissed the contestation of Statoil Canada Ltd. ("**Statoil**"), with costs, in a judgment which is executory notwithstanding appeal;
27. On December 22, 2011, Statoil filed a *Motion for leave to appeal* of that judgment, which remains executory as at the date hereof. The hearing on that Motion occurred on March 1, 2012 and the Motion has been taken under advisement by the Court of Appeal;

**E. *Sale of interest in Cedar Joint Venture***

28. Through its indirect subsidiary Homburg Holdings (U.S.) Inc. ("**HHUS**"), HII holds an interest in several shopping centres located in the United States, in a joint venture with Cedar Shopping Centers Inc;
29. Prior to the filing of the current proceedings under the CCAA, on February 15, 2011, HII announced its intention to dissolve the joint venture and sell its indirect interest therein. Accordingly, HHUS retained TD Securities Inc., as financial advisor, and CBRE Inc. to conduct an extensive marketing and auction process;
30. The marketing and auction process has now been completed and, on February 17, 2012, HHUS executed an agreement with the selected purchaser. The closing of the transactions contemplated thereunder are conditional upon the approval of the Monitor and certain loan servicers. The Monitor is currently completing its due diligence in respect of this transaction, as will appear from the Monitor's Eighth Report;

**F. *Developments at Campeon (Homco 110)***

31. Homco Realty Fund (110) L.P. ("**Homco 110**") owns 93.38% of MoTo Objekt Campeon GmbH & Co. KG ("**MoTo**"), which holds a large real estate complex in Germany. In recent years, the cash flow surpluses generated by Homco 110 have been an important source of income for HII;
32. The remaining shares of MoTo (the "**6.62% Interest**") are owned by Novella Grundstücks-Vermietungs GmbH ("**Novella**"), which has a right to put the said interest to Den Texhoek Pensioen B.V. ("**Texhoek**") until May 31, 2012. Texhoek has agreed to put the 6.62% Interest to Homco 110;
33. In February 2012, Homco 110 obtained an increase and extension of its loan with Falcon International Bank ("**Falcon**"), as will more fully appear from the Eighth Monitor's

Report. Conditions of the new agreement with Falcon (the “**New Falcon Agreement**”) include, *inter alia*, the purchase by Homco 110 of the 6.62% Interest prior to May 31, 2012 and a full cash sweep (after payment of operating expenses and payment to mortgage lenders) until repayment in full of the Falcon loan;

34. As will also appear from the Eighth Monitor’s Report, the purchase of the 6.62% Interest by Homco 110 would be for the amount of 7,800,000 Euros, subject to certain conditions. The HII Group and the Monitor are currently performing due diligence as to the value of the 6.62% Interest;
35. The New Falcon Agreement includes the amount required for the acquisition of the 6.62% Interest. However, this agreement requires Homco 110 to use any cash flow surplus (after the payment of all operating expenses and required payments to subordinate secured creditors) to reimburse the balance of the outstanding loan to be provided by Falcon;
36. Concurrently with due diligence efforts, the HII Group and the Monitor are accordingly searching for alternatives which would allow replacement of the New Falcon Agreement on more advantageous terms;

**G. *Virtual data room and cashflows***

37. HII continues to populate the virtual data room with all relevant information. All creditors that have signed a non-disclosure agreement in due form have been granted access to the data room accordingly. This includes representatives of the bondholder trustees and the Taberna noteholders;
38. In this regard, as reported to the Court previously, HII together with the Monitor, completed the significant exercise of preparing detailed cashflows for each property in the HII structure together with an analysis of the underlying loan and security documents. The cashflows have been posted in the data room and are accordingly, available for review by those who have access to same;

**H. *Stakeholder contacts***

39. HII, together with the Monitor, held many meetings and conference calls with the bondholder trustees in order to keep them abreast of the restructuring efforts in a timely manner. HII and the Monitor have also met and had numerous exchanges with various creditors to answer questions and provide information relating to the ongoing restructuring process;

**III. AFM DEVELOPMENTS**

40. The HII Group has worked continuously with the Monitor and Canadian and Dutch legal counsel to address the concerns of the Netherlands Authority of the Financial Market (the “**AFM**”) and specifically the AFM’s intention to revoke HII’s license as a financial institution (the “**License**”);

41. In order to comply with the AFM instructions, the HII Group reviewed and analysed its entire corporate structure with a view to ensuring that the independence of HII required by the AFM is appropriately reflected;
42. As more fully appears from the *Second motion to extend the stay period*, in the Court record, notwithstanding the diligence of the HII Group and the Monitor, on November 23, 2011, the AFM rendered a decision revoking the License (the “**Revocation**”);
43. In early January 2012, HII filed a notice of objection to the Revocation (the “**Objection**”), as indicated in the Fifth Report of the Monitor, in the Court record;
44. As appears from the Monitor’s Seventh Report, on February 23, 2012, HII attended a hearing before the review commission of the AFM to present the Objection and made further representations in support of maintaining its License in the context of its current restructuring for the benefit of all of its creditors, including its Dutch bondholders. A decision by the review committee is still pending;
45. HII intends to continue to vigorously contest the Revocation by all means available;

#### **IV. UPCOMING STEPS**

46. Together with the Monitor and respective legal advisors, the HII Group is continuing a comprehensive review of its operations and assets to identify all opportunities to restructure its business and operations in the context of the CCAA process;
47. It is also currently anticipated that an information meeting for the various bondholders will be held in the Netherlands in the week of May 7, 2012;
48. Preliminary meetings among HII, the Monitor and representatives of, respectively, the bondholder trustees and the Taberna noteholders were held on the date hereof to review the cashflows posted in the virtual data room and to discuss various restructuring alternatives;
49. HII and the Monitor also intend to hold preliminary meetings with the various lenders to commence discussions relating to their various loan portfolios, the whole in the context of restructuring said portfolios to the benefit of HII and its stakeholders;
50. As well, the HII Group and the Monitor are continuing to identify those matters which will form the object of a plan of compromise of arrangement under the CCAA;
51. In this context, the HII Group and the Monitor anticipate that they will be back before this Honourable Court on or prior to May 31, 2012, for the approval of a claims process;

#### **V. CONCLUSION**

52. The extension of the Stay Period is necessary in order to provide the Debtors an adequate period of time to continue their efforts with respect to the reorganization of their business and assets. The closing of the Purchase Agreement, discussed above, and improved

relationships with certain groups of bondholders are significant milestones. This has allowed the operational restructuring to continue in full force;

53. The Debtors will also continue negotiations with their stakeholders with a view to presenting a plan of compromise or arrangement under the CCAA. It is anticipated that the requested extension of the Stay Period until May 31, 2012 will afford the Debtors an adequate period of time to make material progress towards that objective;
54. As appears from the cash flow forecast, which will be included in the Monitor's Eighth Report, the Debtors are of the view that no creditor will suffer any undue prejudice from the extension of the Stay Period;
55. The Debtors have and continue to meet their post-filing obligations as and when they become due;
56. The Monitor has indicated that it will be filing the Monitor's Eighth Report which shall contain significant additional information in respect of the HII Group, their creditors, the corporate structure and the efforts deployed by the HII Group, the Monitor and their respective legal counsel to date in the context of the CCAA restructuring and which shall include its recommendations and a review of the cash flow forecasts of the Debtors up to and including June 2, 2012;
57. The HII Group is of the view that extending the Stay Period to May 31, 2012 is appropriate in the present circumstances;
58. The HII Group has acted, and continues to act, in good faith and with the utmost diligence;
59. As will appear in the Monitor's Eighth Report, the Monitor supports the present request for an extension of the Stay Period;
60. The Debtors respectfully request that this Honourable Court extend the Stay Period to May 31, 2012;
61. The present motion is well founded in fact and law.

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

**GRANT** the present *Third motion to extend the stay period* (the "**Motion**");

**DECLARE** that the present Motion was duly served, that the notices of presentation of the present Motion are sufficient and dispense the Debtors from any additional notice requirements;

**EXTEND** the Stay Period (as defined in the initial order granted by this Court in this matter on September 9, 2011 (the "**Initial Order**") and as extended from time to time) to May 31, 2012, the whole subject to the terms of the Initial Order, as amended;

**PRAY ACT** of the Monitor's Eighth Report;



**ORDER** provisional execution of the present order, notwithstanding appeal;

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

MONTRÉAL, March 14, 2012

*Osler, Hoskin & Harcourt LLP*  

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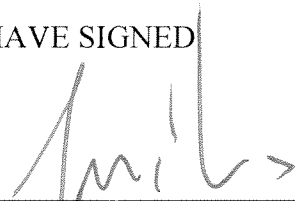
**OSLER, HOSKIN & HARCOURT LLP**  
Attorneys for the Debtors / Petitioners

**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 *Third motion to extend the stay period*;
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 FOURTEENTH DAY OF MARCH 2012.



COMMISSIONER OF OATHS FOR  
THE PROVINCE OF QUÉBEC



## NOTICE OF PRESENTATION

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**TAKE NOTICE** that the *Third motion to extend the stay period* will be presented for hearing and allowance in the Superior Court, commercial division, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on March 16, 2012, in room 16.12 at 9:15 a.m. or so soon thereafter as counsel may be heard.

**PLEASE ACT ACCORDINGLY.**

MONTRÉAL, March 14, 2011

*Osler, Hoskin & Harcourt LLP*  

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**OSLER, HOSKIN & HARCOURT LLP**  
Attorneys for the Debtors / Petitioners

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. & AL.

Debtors/Petitioners

-and-

HOMCO REALTY FUND (S2) LIMITED  
PARTNERSHIP & AL.

Mis-en-cause

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

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**MOTION TO EXTEND THE STAY PERIOD**  
(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

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