

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:**

**1810040 Alberta Ltd. (formerly known as
Homburg Invest Inc. and Homburg Shareco Inc.)
Debtor / Petitioner**

-and-

**Homco Realty Fund (61) Limited Partnership
Mise-en-cause**

-and-

**Deloitte Restructuring Inc. (formerly known as
Samson Bélair/Deloitte & Touche Inc.)**

Monitor

APPLICATION FOR EXTENSION OF THE STAY PERIOD

(Sections 11 and 11.02 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

**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
PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:**

I. INTRODUCTION

1. On September 9, 2011, 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 in respect of Homburg Invest Inc. (“**HII**”), Homburg Shareco Inc. (“**Shareco**”), 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. (now known as Deloitte Restructuring 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 Honourable 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 December 20, 2019 (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 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;
5. On May 31, 2012, this Court issued an order amending the Initial Order to add North Calgary Land Ltd. as a Petitioner and Homco Realty Fund (96) Limited Partnership 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 and Homco Realty Fund (191) Limited Partnership 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. as a mise-en-cause. On March 14, 2013, the Initial Order was further amended to add Homburg Management (Canada) Inc. 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 as an Applicant Partnership;
7. By subsequent orders of the Court, the Stay of Proceeding was discontinued for certain entities such that only 1810040 Alberta Ltd. (formerly HII and Shareco prior to their amalgamation) and Homco 61 (jointly referred to as the “**HII Group**”) remain subject to the Stay Proceedings as of the date hereof;
8. In light of recent developments, the HII Group respectfully requests that this Honourable Court extend the Stay Period until February 28, 2020;

II. DISTRIBUTIONS UNDER THE PLANS OF ARRANGEMENT

9. As appears from the Court record, the Plan of Compromise and Reorganization of HII and Shareco, as amended and restated from time to time (the “**HII/Shareco Plan**”) and the restated Plan of Compromise of Homco 61 (collectively the “**Plans**”) have been approved and sanctioned by this Honourable Court and implemented. Unless otherwise defined herein, all capitalized terms are as defined in the HII/Shareco Plan;
10. Since July 10, 2019, when this Honourable Court issued the last order extending the Stay Period (the “**Last Extension Order**”), the Monitor has not proceeded with any additional distributions to the Affected Creditors nor the Homco 61 Affected Creditors, other than distributions to creditors who had not received their entitlement to past distributions due to missing or erroneous coordinates;
11. As will appear from the Fifty-Second Report of the Monitor to be served and filed on or about the date hereof (the “**Monitor’s Fifty-Second Report**”), the current intention of the

Monitor is that the next distribution of the Asset Realization Cash Pool be the final distribution under the terms of the Plans;

III. WINDING-UP EFFORTS

12. Since the last extension of the Stay Period, the HII Group has continued to work on the disposition of its remaining non-core property and deal with remaining issues, with a view of finalizing the process. Highlights of the most significant activities of the HII Group are provided below;
 - A. *Disposition of the remaining non-core property*
13. Since the Last Extension Order, the HII Group has continued its efforts to realize the substantial potential equity in the last remaining European non-core property;
14. As previously disclosed to the Court and in light of changes in market conditions, HII determined that the property held by Homco Realty Fund (123) Limited Partnership (“**Homco 123**”) in the Netherlands could potentially generate material value for the Affected Creditors under the HII/Shareco Plan;
15. As further detailed in the Monitor’s Fifty-Second Report, the HII Group and the Monitor are working together to monetize Homco 123’s property before the final distribution. The process has been slowed down by delays in court proceedings regarding environmental and safety permits issues, but these permits were issued in November 2019;
16. Notwithstanding the limited time available since the issuance of the permits, Homco 123 has received verbal indications of interest which support the view that there would be substantial potential equity in its property. The HII Group and the Monitor intend to continue their sale efforts, with a goal of obtaining a firm offer for the property within the extension of the Stay Period sought herein;
17. As previously reported to the Court, the Homco 123 property is cashflow positive, such that property costs are currently not assumed by Affected Creditors. Further, the property’s secured lender Propertize also has an interest in the current sale process being fruitful. Propertize previously agreed that 50% of the costs to be incurred by the HII Group during the Stay Period sought herein be funded from Homco 123’s bank account, on which it holds a pledge. This correspondingly reduces the financial downside for Affected Creditors in the event that Homco 123’s potential equity cannot be realized, which downside is nominal in comparison with the potential upside for Affected Creditors. The HII Group has received verbal confirmation that this agreement with Propertize will remain in place;
18. The Monitor supports the arrangement described in the previous paragraph and has consulted the Liquidation Advisory Committee (“**LAC**”), which represents the largest creditors including the bondholders;

B. *Potential claim relating to Valbonne Real Estate 2 B.V. bankruptcy*

19. As previously reported to the Court, in March 2019, certain former direct or indirect directors (the “**Directors**”) of Valbonne Real Estate 2 B.V. (“**Valbonne 2**”), whom were in that position on or prior to Plan Implementation Date, received correspondence from Valbonne 2’s Dutch bankruptcy trustee. This correspondence, and a draft report appended thereto, suggested that the Directors may be personally liable to the estate of Valbonne 2, for an amount up to approximately 2.4 million Euros, in connection with certain transactions which were implemented in accordance with the HII/Shareco Plan and the HII/Shareco Sanction and Vesting Order;
20. The HII Group and the Directors vigorously disputed any liability in connection with the bankruptcy of Valbonne 2 and, with the assistance of Dutch counsel, sent a response to Valbonne 2’s trustee in August 2019;
21. In October 2019, Dutch counsel for the Directors received a letter from Valbonne 2’s trustee, indicating that he will not proceed with a claim against the Directors in connection with the transactions raised in the report received in March 2019. The HII Group understands that Valbonne 2’s bankruptcy file should be closed in the first half of 2020;

C. *Other Matters*

22. The HII Group continues to address all post-plan implementation matters, including the bankruptcies and dissolution of the various entities included in the HII Group, as appropriate, the whole with the support and assistance of the Monitor and Canadian and Dutch counsel, and with the approval of the LAC, as required under the Plans and the Sanction Orders. The HII Group is preparing to file assignments in bankruptcy for several remaining entities when appropriate. Furthermore, efforts are continuing in Europe in respect of certain bankruptcies and dissolutions;

IV. CONCLUSION

23. HII is of the view that providing the relief requested herein is appropriate in the present circumstances in order for the HII Group to finalize its affairs, deal with the remaining European non-core property, properly wind-down the few remaining entities and maximize the amount of the final distribution. Accordingly, HII respectfully requests that this Honourable Court grant the extension of the Stay Period sought in the present Application;
24. Considering notably the equity that the sale of Homco 123’s property could generate, as will appear from the Monitor’s Fifty-Second Report, the Monitor supports the present Application;
25. The HII Group has acted, and continues to act, in good faith and with due diligence;
26. The present Application is well founded in fact and law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

1. **GRANT** the present *Application for extension of the stay period*;
2. **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 February 28, 2020;

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

MONTRÉAL, December 17, 2019.

Osler, Hoskin & Harcourt LLP

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AFFIDAVIT

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

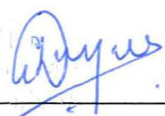
1. I am the President of 1810040 Alberta Ltd. and duly authorized representative of the Petitioner for the purpose hereof;
2. I have taken cognizance of the attached *Application for extension of the stay period*;
3. All of the facts alleged in the said application are true.

AND I HAVE SIGNED:




James F. Miles

SOLEMNLY DECLARED BEFORE ME
IN HALIFAX, NOVA SCOTIA ON THE
17TH DAY OF DECEMBER 2019.



DIVYA SUBRAMANIAN
A Barrister of the Supreme
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NOTICE OF PRESENTATION

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TAKE NOTICE that the *Application for extension of the stay period* which will be presented for hearing and allowance in the Superior Court, Commercial Division, in room 15.04 of the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on December 19, 2019, at 8:45 a.m., or so soon thereafter as counsel may be heard.

PLEASE ACT ACCORDINGLY.

MONTRÉAL, December 17, 2019.

Osler, Hoskin & Harcourt LLP

OSLER, HOSKIN & HARCOURT LLP
Attorneys for the Debtor and Mise-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:**

**1810040 ALBERTA LTD. (formerly known as Homburg
Invest Inc. and Homburg Shareco Inc.)**

Debtor/Petitioner

-and-

**HOMCO REALTY FUND (61) LIMITED
PARTNERSHIP**

Mise-en-cause

-and-

DELOITTE RESTRUCTURING INC.

Monitor

**APPLICATION FOR EXTENSION OF THE STAY
PERIOD (Sections 11 and 11.02 of the *Companies'*
Creditors Arrangement Act, R.S.C. 1985, c. C-36),
AFFIDAVIT, NOTICE OF PRESENTATION**

ORIGINAL

Code : BO 0323

o/f: 1131787

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