

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
COURT. No.: 500-11-041305-117

S U P E R I O R C O U R T
Commercial Division

**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

- and -

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

Mise en cause

- and -

DELOITTE RESTRUCTURING INC. (formerly
known as **SAMSON BÉLAIR/DELOITTE &
TOUCHE INC.**)

Monitor

**SUPPLEMENTAL REPORT TO THE FIFTY-SIXTH REPORT TO THE COURT
SUBMITTED BY DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS MONITOR
(Newco Bond 5 Guarantee)**

(Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended)

INTRODUCTION AND PURPOSE OF THIS REPORT

1. This is a supplemental report to the Fifty-Sixth Report of the Monitor dated April 13, 2021 in the CCAA Proceedings (the "**Supplemental Fifty-Sixth Report**"). Capitalized terms not otherwise defined in this Supplemental Fifty-Sixth Report are as defined in the Fifty-Sixth Report, the Plans, the previous Monitors' reports and the Debtors' Motions.
2. The Supplemental Fifty-Sixth Report is issued following a letter submitted to the CCAA Court and sent to the Monitor by four Bondholders on April 14, 2021 (the "**April 14th Letter by Four Bondholders**"), regarding the issue of the Newco Bond 5 Guarantee mentioned in such letter.
3. The purpose of this Supplemental Fifty-Sixth Report is to inform the Court in regard to the Newco Bond 5 Guarantee executed by Geneba Properties N.V. on March 24, 2014,

to the benefit of Stichting Homburg Bonds in its capacity as trustee to the holders of the Series 5 Bonds, and the value of the actual distributions made to the Bond 5 Claim Holders under the HII/Shareco Plan.

4. This Supplemental Fifty-Sixth Report is structured as follows:

- I- The Bond 5 Secured Claim Settlement Agreement and the Newco Bond 5 Guarantee;
- II- Recovery of the Bond 5 Claim Holders 36 months following PID;
- III- Additional observations; and,
- IV- Conclusions.

I. THE BOND 5 SECURED CLAIM SETTLEMENT AGREEMENT AND THE NEWCO BOND 5 GUARANTEE

- 5. On October 24 and October 25, 2012, as namely indicated in the Sixteenth Report of the Monitor dated October 6, 2012, the Series 5 Mortgage Bondholders were invited to a Bondholders' Meeting organized by Stichting Homburg Bonds. At this meeting, the Series 5 Mortgage Bondholders were asked to vote a resolution to authorize the Stichting Homburg Bonds to enter into a supplemental indenture which provided terms related to the settlement of the secured portions of their claims. The Series 5 Mortgage Bondholders voted in favour of the proposed resolution, as namely indicated in the Eighteenth Report of the Monitor dated December 18, 2012.
- 6. On November 5, 2012, in conformity with the resolution adopted at the meeting of the Series 5 Mortgage Bondholders, Homburg Shareco Inc. and the Stichting Homburg Bonds executed a special supplement indenture to the Third Supplement dated December 31, 2004 (the "**Special Supplemental Indenture to the Third Supplement**"). A copy of the Special Supplemental to the Third Supplement is attached as Appendix A to this Supplement Fifty-Sixth Report.
- 7. The Special Supplemental Indenture to the Third Supplement provides, amongst other things, that the Series 5 Security would be released by Stichting Homburg Bonds forthwith upon receipt of:
 - i. A cash payment of 2,250,000 EUR payable upon PID (the "**Cash Payment**'");
 - ii. An unsecured non-interest bearing corporate guarantee by HII or its successor (the "**Corporate Guarantee**") in favour of Bond 5 Claim Holders which will guarantee distributions (in cash and equity and including the Cash Payment) to the Bond 5 Claim Holders of a minimum aggregate amount equal to 50% of the "Deficiency Claim", defined as the claim of a Bond 5 Claim Holders for voting and distribution purposes under the eventual plan of arrangement (being the unsecured portion of their claim, calculated as the deficiency between the total claim of the Bond 5 Claim Holdings, excluding any post-filing interest, and the Cash Payment). Any amounts owing under the Corporate Guarantee would be payable no later than 36 months following PID; and,
 - iii. For purposes of the calculation of the distributions, the value of any equity distribution under the CCAA plan will be as set forth in the third party appraisals provided to the Monitor and disclosed by the Monitor in its report to the Creditors in support of the CCAA Plan.

8. The terms of the Special Supplemental to the Third Supplement Indenture are referred to as the "**Bond 5 Secured Claim Settlement Agreement**" in the HII/Shareco Plan. The "Corporate Guarantee" provided therein is referred to as the "**Newco Bond 5 Guarantee**".
9. On March 24, 2014, at the time of PID and as required by the Third Supplemental to the Third Supplement Indenture / Bond 5 Secured Claim Settlement Agreement and provided by the HII/Shareco Plan, the Newco Bond 5 Guarantee was provided, and the document executed by Geneba Properties N.V. to the benefit of Stichting Homburg Bonds in its capacity as trustee of the Bond 5 Claim Holders. A copy of the Newco Bond 5 Guarantee is attached as Appendix B to this Supplemental Fifty-Sixth Report.
10. Sections 2.1, 2.2 and 2.3 of the Newco Bond 5 Guarantee address the guarantee in regard of the "**Shortfall Amount**", to reach 50% of the Deficiency Claim (i.e. the Bond 5 Unsecured Claim), and can be summarized as follows:
 - i. In the event that the aggregate value of the actual distributions made to the Bond 5 Claim Holders under the HII/Shareco Plan (including the Bond 5 Secured Cash Payment and other cash distributions, and the Newco Common Shares) up to and including the distributions made on the Final Distribution Date are less than 50% of the Bond 5 Unsecured Claim, Geneba Properties N.V. guarantees the payment of the Shortfall Amount;
 - ii. The Shortfall Amount would be payable under the Newco Bond 5 Guarantee by no later than 36 months following PID, being March 27, 2017, provided that a demand was made by the trustee Stichting Homburg Bonds, accompanied by a written confirmation of the Monitor confirming the Shortfall Amount.

II. THE ACTUAL RECOVERY OF BOND 5 CLAIM HOLDERS 36 MONTHS FOLLOWING PID

11. In March 2017, the Monitor proceeded with the calculation of the "aggregate value of the actual distributions made to the Bond 5 Claim Holders under the HII/Shareco Plan, or otherwise, of Cash (including the Cash Payment) and Newco Common Shares, collectively", in order to determine whether this value was less than 50% of the amount of the Bond 5 Unsecured Claim, such that there would have been a "Shortfall Amount" pursuant to the Newco Bond 5 Guarantee. Since the Final Distribution Date had not taken place at this time, the Monitor only included the value of the distributions actually made during the period of 36 months following PID.
12. For purpose of this calculation, the value used for the Newco Common Shares, is the value that was used at PID, based on the most recent valuation of the Core Business Assets available at PID, namely September 30, 2013, based on independent valuations obtained at the time. This initial per share value of approximately Euro 5.00 per share was established at the time of the initial distribution, which value increased following PID as some Disputed Claims were resolved, resulting in the cancellation of Newco Common Shares issued at PID. This value was also supported by the Information Memorandum filed with NPEX by Geneba Properties N.V. on March 24, 2014.
13. Based on the actual distributions made as of March 21, 2017, as defined in the Newco Bond 5 Guarantee, the Monitor calculated that the value of the recovery of the Bond 5 Claim Holders is 57,63% of the Bond 5 Unsecured Claim, namely above 50%. The

Monitor concluded that there was no Shortfall Amount to be claimed under the Newco Bond 5 Guarantee, and advised Stichting Homburg Bonds accordingly and provided the latter with its calculation and explanations.

14. The calculation done by the Monitor as of March 21, 2017 is attached as Appendix C of the Supplemental Fifty-Sixth Report. This calculation considered only the distributions (cash and shares) made as of March 21, 2017.

III. ADDITIONAL OBSERVATIONS

15. In addition to the calculation made as per the Newco Bond 5 Guarantee, and while this is not in accordance with the terms of said guarantee, the Monitor calculated the actual recovery of the Non-Electing Bond 5 Claim Holders who held their Geneba shares until the 2017 One-Time Cash Offer. The Monitor was able to make such calculation as Geneba proceeded to an interim distribution in December of 2016 and that 99,6% the Geneba depositary receipts (Geneba shares) were sold to Fraser properties in September 2017, as part of the 2017 One-Time Cash Offer. Taking into account all the cash distributions made pursuant to the HII/Shareco Plan (from the Bond 5 Secured Claim Cash Payment, the Cash Pool, the Asset Realization Cash Pool, including the upcoming Final Distribution), the Geneba interim distribution to the holders of the Geneba shares and the cash recovered by the 2017 One-Time Cash Offer, the total recovery of a Bond 5 Claim Holder is approximately 52% of its Bond 5 Unsecured Claim.
16. As indicated in the confidential note to Stichting Homburg Bonds which was shared with the signatories of the April 14th Letter by Four Bondholders and attached as Appendix D under seal to the Fifty-Sixth Report, the Monitor already advised the signatories of its position that, based on the terms of the Special Supplemental Indenture to the Third Supplement and of the Newco Bond 5 Guarantee, no amount was owing under the Newco Bond 5 Guarantee.

IV. CONCLUSION

17. For the reasons elaborated in this Supplemental Fifty-Sixth Report, the Monitor concluded in 2017 and continues to conclude that there is no Shortfall Amount which would have justified a claim against Geneba as per the Newco Bond 5 Guarantee.

The Monitor respectfully submits this Supplemental Fifty-Sixth Report to the Court.

DATED AT MONTREAL, this 14th day of April, 2021.



Pierre Laporte, FCPA, FCA, CIRP, LIT
Senior Vice-President

DELOITTE RESTRUCTURING INC.
In its capacity as Court-Appointed Monitor

Appendix A

THIS SPECIAL SUPPLEMENTAL INDENTURE TO THE THIRD SUPPLEMENT made as of November 5, 2012

BETWEEN:

HOMBURG SHARECO INC., a company incorporated under the laws of the Province of Nova Scotia (the "**Corporation**")

AND

STICHTING HOMBURG BONDS, a foundation incorporated under the laws of the Netherlands (the "**Trustee**")

WHEREAS in and by an indenture (hereinafter called the "**Principal Indenture**") made as of December 15, 2002 between the Corporation and the Trustee, provision was made for the issuance of bonds of the Corporation;

AND WHEREAS pursuant to a Third Supplemental Indenture dated as of December 31, 2004 (as amended, the "**Third Supplement**"), the Corporation issued bonds in a principal amount of €20,010,000 designated as Homburg Mortgage Bond 5 Bonds (the "**Series 5 Bonds**");

AND WHEREAS the Third Supplement provides *inter alia* that amounts owing in connection with the Series 5 Bonds shall be secured by (collectively, the "**Series 5 Security**");

- a. a guarantee by Homco Realty Fund (69) Limited Partnership ("**Homco 69**") and Homco Realty Fund (70) Limited Partnership ("**Homco 70**") in favour of the Trustee (the "**Homcos Guarantee**");
- b. an assignment to the Trustee by the Corporation of the pledge the Corporation received from Homburg Invest Inc. ("**HII**") consisting of all the limited partnership units owned by HII in Homco 69 and Homco 70 to be held on behalf of the holders of Series 5 Bonds to secure the payment of amounts owing in connection with the Series 5 Bonds.

AND WHEREAS the Third Supplement also provides that amounts owing in connection with the Series 5 Bonds shall be guaranteed by HII in favour of the Trustee;

AND WHEREAS the Principal Indenture as supplemented by the Third Supplement and this Special Supplemental Indenture to the Third Supplement is hereafter sometimes called the "**Trust Deed**";

AND WHEREAS on September 9, 2011 (the "**CCAA Filing Date**") HII, the Corporation, Churchill Estates Development Ltd., Inverness Estates Development Ltd., and CP Development Ltd. (collectively with such additional affiliated debtors later added to the proceedings, the "**Petitioners**"), filed an application with the Quebec Superior Court, Commercial Division for the District of Montreal (the "**CCAA Court**") for relief and commenced proceedings (the "**CCAA Case**") under the *Companies' Creditors Arrangement Act* (Canada), as amended (the "**CCAA**") and a CCAA initial order was issued on the CCAA Filing

Date (together with all extensions, modifications and amendments thereto, the “**Initial Order**”) under the supervision of Samson Bélair/Deloitte & Touche Inc. (the “**Monitor**”);

AND WHEREAS (i) the CCAA Court issued a claims process order on April 30, 2012 (the “**Claims Process Order**”) pursuant to which all creditors of the Petitioners were required to file claims with the Monitor and (ii) the Trustee has filed claims pursuant to the Claims Process Order for the Series 5 Bonds, providing that a portion thereof is secured by the collateral identified in the filed claims and for unsecured deficiency claims for any balance which would remain,

AND WHEREAS this Special Supplemental Indenture to the Third Supplement seeks to confirm the terms pursuant to which the Series 5 Security will be released;

AND WHEREAS valuations by two external valuers have been obtained in respect of the properties owned indirectly by Homco 69 and Homco 70;

AND WHEREAS the Corporation has indicated that it has or intends to cause each of the following events to occur:

- a. it shall (i) file a plan of reorganization, compromise or arrangement in the context of the CCAA Case (the “**CCAA Plan**”), as well as a motion (the “**CCAA Meeting Motion**”) seeking Court approval for the calling of meetings of creditors to vote on the CCAA Plan, and (ii) hold such meeting in accordance with an order of the CCAA Court (the “**CCAA Meeting Order**”) approving the CCAA Meeting Motion and calling of meetings of creditors to vote on the CCAA Plan; and
- b. it shall consummate the transactions contemplated by and implement the CCAA Plan;

AND WHEREAS all necessary resolutions have been passed by the Corporation authorizing the issuance of and specifying the particulars and provisions of this Special Supplemental Indenture to the Third Supplement;

AND WHEREAS capitalized terms have the same meaning as set out in the Trust Deed except where such capitalized terms are defined herein.

NOW THEREFORE THIS SPECIAL SUPPLEMENTAL INDENTURE TO THE THIRD SUPPLEMENT WITNESSES and it is hereby agreed and declared, pursuant to Article 19 of the Principal Indenture, as follows:

1. Amendment of Series 5 Bonds. The Trust Deed is hereby amended and supplemented as follows:
 - (a) The Series 5 Security will be released by the Trustee forthwith upon receipt by the Trustee of the following (the “**Redemption Price**”):
 - (i) a cash payment in the amount of €2,250,000 (the “**Cash Payment**”) payable upon the implementation of the CCAA Plan; and

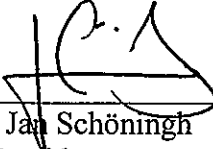
- (ii) an unsecured non-interest bearing corporate guarantee (the “**Corporate Guarantee**”) by HII or its successor (“**Newco**”) in favour of the holders of Series 5 Bonds which will guarantee distributions (in cash and equity and including the Cash Payment) to the holders of Series 5 Bonds of a minimum aggregate amount equal to 50% of the Deficiency Claim (as defined below). Following CCAA Plan implementation, all payments owing under the Corporate Guarantee, if any, shall be made in cash in accordance with the terms and condition of the Corporate Guarantee to be agreed upon between HII or Newco, the Monitor and the Trustee. For greater certainty, all amounts owing under the Corporate Guarantee shall be payable no later than 36 months following the implementation of the Plan.
- (b) The deficiency claim of the Trustee and the holders of Series 5 Bonds for the purposes of voting on and distribution under the CCAA Plan will be as determined pursuant to the Claims Process Order and the CCAA Plan (the “**Deficiency Claim**”). For greater certainty, in no event shall the Deficiency Claim include any amount in respect of interest owing following the CCAA Filing Date.
- (c) For purposes of the calculation of the distributions, the value of any equity distribution under the CCAA Plan will be as set forth in the third party appraisals provided to the Monitor and disclosed by the Monitor in its report to the creditors in support of the CCAA Plan.
2. Powers of the Trustee. Without limiting the terms of the Trust Deed, as previously and as hereby supplemented, or the powers and rights of the Trustee thereunder, the Trustee shall be authorized to take all such actions and sign all such documents as may be necessary or desirable in its discretion to give effect to this Special Supplemental Indenture to the Third Supplement.
3. Confirmation, Ratification and Exculpation. Without limiting Section 16.8 of the Trust Deed, the Trustee’s actions and decisions in connection with or based upon this Special Supplemental Indenture to the Third Supplement, and whether before or after its effectiveness, are hereby confirmed and ratified. On the date on which the CCAA Plan is implemented, the Trustee and its employees, representatives, and attorneys (each, a “**Released Party**”) shall be released, acquitted, and forever discharged from any and all claims, causes of action, suits, debts, liens, obligations, liabilities, demands, losses, costs and expenses (including attorney’s fees) of any kind, character, or nature whatsoever, which may be claimed or which may hereafter arise out of or in connection with any acts of such persons committed in connection with the execution and consummation of this Special Supplemental Indenture to the Third Supplement, provided that nothing herein shall release or discharge a Released Party from gross negligence, willful misconduct or gross fault.
4. Trust Deed Continues in Effect. In all other respects the Trust Deed shall remain in full force and effect unamended.

5. Execution in Counterparts, etc. This Special Supplemental Indenture to the Third Supplement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear date as of the date hereinbefore written.

[Signature pages follow immediately]

IN WITNESS WHEREOF the parties hereto have duly executed these presents by the hands of their proper officers on their behalf.

HOMBURG SHARECO INC.

Per: 

Name: Jan Schönningh
Title: President

STICHTING HOMBURG BONDS

Per:

Name:
Title:

IN WITNESS WHEREOF the parties hereto have duly executed these presents by the hands of their proper officers on their behalf.

HOMBURG SHARECO INC.

Per:

Name:

Title:

STICHTING HOMBURG BONDS

Per: 

Name:

Title:

J.M. HOGESIAC
TRUSTEE
5 November 2012

IN WITNESS WHEREOF the parties hereto have duly executed these presents by the hands of their proper officers on their behalf.

HOMBURG SHARECO INC.

Per:

Name:


Title:

STICHTING HOMBURG BONDS

Per:

Name:

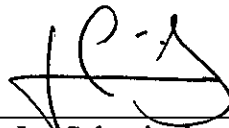
Title:



M.F.J. DE VRIES
DIRECTOR

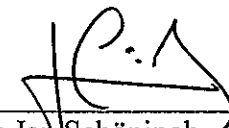
AND WITH THE INTERVENTION OF:

HOMBURG INVEST INC.

Per: 

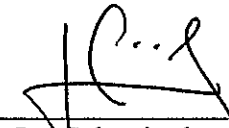
Name: Jan Schöningh
Title: President and Chief Executive Officer

HOMCO REALTY FUND (69) LIMITED PARTNERSHIP, herein acting and represented by its general partner **HII (69) GP INC.**

Per: 

Name: Jan Schöningh
Title: President

HOMCO REALTY FUND (70) LIMITED PARTNERSHIP, herein acting and represented by its general partner **HII (70) GP INC.**

Per: 

Name: Jan Schöningh
Title: President

Appendix B

DATE: March 24, 2014

GUARANTEE

(Newco Bond 5 Guarantee)

TO: STICHTING HOMBURG BONDS

(together with its successors and assigns, the "**Trustee**")

RECITALS:

- A. Homburg Shareco Inc. ("**Shareco**") has issued certain bonds (the "**Series 5 Bonds**") pursuant to the terms of an Indenture dated as of December 15, 2002 between Shareco and the Trustee and a Third Supplemental Indenture dated as of December 31, 2004 between Shareco and the Trustee (as amended, the "**Third Supplement**");
- B. The Third Supplement provides, *inter alia*, that amounts owing in connection with the Series 5 Bonds shall be secured by: (i) a guarantee from Homco Realty Fund (69) Limited Partnership ("**Homco 69 LP**") and Homco Realty Fund (70) Limited Partnership ("**Homco 70 LP**") in favour of the Trustee; and (ii) an assignment to the Trustee by Shareco of the pledge Shareco received from Homburg Invest Inc. ("**HII**") consisting of all of the limited partnership units owned by HII in Homco 69 LP and Homco 70 LP;
- C. On September 9, 2011, HII, Shareco, Churchill Estates Development Ltd., Inverness Estates Development Ltd. and CP Development Ltd. (together with HII and Shareco, the "**Petitioners**") filed for and obtained protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an initial order (as amended, restated or varied from time to time, the "**Initial Order**") made by the Superior Court of Quebec (Commercial Division) (the "**Court**");
- D. The Initial Order originally declared that, although not a Petitioner, each of *mis-en-cause* 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 shall enjoy the protections and authorizations provided by the Initial Order (such partnerships collectively referred to in the Initial Order as the "**Applicant Partnerships**");
- E. By further Orders of the Court, the Initial Order was amended to add North Calgary Land Ltd. and Homburg Management (Canada) Inc. as Petitioners, Castello Development Ltd. as a *mis-en-cause*, and Homco Realty Fund (61) Limited Partnership, Homco Realty Fund (83) Limited Partnership, Homco Realty Fund (96) Limited Partnership, Homco Realty Fund (190) Limited Partnership and Homco Realty Fund (191) Limited Partnership as Applicant Partnerships thereunder;

- F. Pursuant to the Initial Order, the Petitioners and the Applicant Partnerships (collectively, the “**HII Group Entities**”) were authorized to file with the Court and to submit to their creditors one or more plans of compromise or arrangement under the CCAA (a “**Plan**”);
- G. Pursuant to an Order of the Court made on April 30, 2012 (as amended, restated or varied from time to time, the “**Claims Process Order**”), the HII Group Entities were authorized to conduct a claims process for the identification and quantification of claims against the HII Group Entities;
- H. The Trustee has filed claims for the Series 5 Bonds pursuant to the Claims Process Order against Shareco on an unsecured basis and against HII on a secured basis asserting that the aggregate amount owing to the Bond 5 Claim Holders is approximately €21.63 million on account of principal, interest and expenses which claim is still subject to final determination by the Court;
- I. In contemplation of the filing of a Plan, Shareco and the Trustee entered into the Bond 5 Secured Claim Settlement Agreement pursuant to which the parties thereto agreed that the Bond 5 Claim Holders shall release the Bond 5 Secured Claim and related security forthwith upon receipt of: (i) the Bond 5 Secured Claim Cash Payment; and (ii) an unsecured, non-interest bearing guarantee issued by HII, or its successor, to the Trustee for the benefit of the Bond 5 Claim Holders guaranteeing that the Bond 5 Claim Holders shall receive under the Plan, or otherwise, distributions of cash (including the Bond 5 Secured Claim Cash Payment) and equity in an aggregate minimum value equal to 50% of the Bond 5 Unsecured Claim;
- J. By Order dated June 5, 2013 (as amended, supplemented or otherwise modified from time to time, the “**HII/Shareco Sanction and Vesting Order**”), the Court, *inter alia*, sanctioned and approved the Third Joint Amended and Restated Plan of Compromise and Reorganization of HII and Shareco dated June 5, 2013 pursuant to the CCAA (as amended, restated, supplemented or otherwise modified from time to time, the “**HII/Shareco Plan**”);
- K. The provisions of the Bond 5 Secured Claim Settlement Agreement are reflected in the HII/Shareco Plan, which provides at section 12.3(A)(f) thereof that HII (together with its successors and assigns, the “**Guarantor**”) shall provide this Guarantee to the Trustee, which Guarantee shall be assumed by Geneva Properties N.V. (“**Newco**”) pursuant to section 12.3(B)(n)(viii) of the HII/Shareco Plan;
- L. The Guarantor now wishes to provide this Guarantee, to take effect at Plan Implementation Date, to the Trustee to effectuate and evidence the completion of the foregoing step pursuant to and in accordance with, in all respects, the Bond 5 Secured Claim Settlement Agreement and sections 12.3A(f) and 12.3(B) (n)(viii) of the HII/Shareco Plan;

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Guarantor agrees as follows:

ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions

Wherever used in this Guarantee (including in the Recitals), all capitalized terms used and not defined have the meanings ascribed to them in the HII/Shareco Plan and the following words and terms have the following meanings:

“**Guaranteed Obligations**” has the meaning specified in Section 2.1; and

“**Shortfall Amount**” has the meaning specified in Section 2.1.

1.2 Certain Rules of Interpretation

In this Guarantee:

- (a) **Consent** – Whenever a provision of this Guarantee requires an approval or consent and the approval or consent is not delivered within the applicable time limit then, unless otherwise specified, the party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.
- (b) **Governing Law** – This Guarantee is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Quebec and the federal laws of Canada applicable in the Province of Quebec.
- (c) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Guarantee.
- (d) **Including** – Where the word “including” or “includes” is used in this Guarantee, it means “including (or includes) without limitation”.
- (e) **No Strict Construction** – The language used in this Guarantee is the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.
- (f) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and *vice versa* and words importing gender include all genders.
- (g) **Severability** – If, in any jurisdiction, any provision of this Guarantee or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to that jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Guarantee and without affecting the validity or

enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.

- (h) **Statutory References** – A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, revises, restates, supplements or supercedes any such statute or any such regulation.
- (i) **Time** – Time is of the essence in the performance of the parties’ respective obligations under this Guarantee.
- (j) **References to Guarantee** – The term “this Guarantee” refers to this guarantee including all schedules, amendments, supplements, extensions, renewals, replacements, novations or restatements from time to time, in each case as permitted, and references to “Articles” or “Sections” means the specified Articles or Sections of this Guarantee.
- (k) **Paramountcy** – If there is a conflict, inconsistency, ambiguity or difference between any provision of this Guarantee, the Bond 5 Secured Claim Settlement Agreement and/or the HII/Shareco Plan, the provisions of the HII/Shareco Plan shall prevail, and such provision of this Guarantee shall be amended to the extent only to eliminate any such conflict, inconsistency, ambiguity or difference. Any right or remedy in this Guarantee which may be in addition to the rights or remedies contained in the HII/Shareco Plan shall not constitute a conflict, inconsistency, ambiguity or difference.

1.3 Entire Agreement

This Guarantee, the Bond 5 Secured Claim Settlement Agreement and the HII/Shareco Plan constitute the entire agreement between the parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the parties in connection with the subject matter of this Guarantee and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral, whether statutory or otherwise, between the parties in connection with the subject matter of this Guarantee except as specifically set forth in this Guarantee, the Bond 5 Secured Claim Settlement Agreement and the HII/Shareco Plan.

ARTICLE 2 GUARANTEE

2.1 Guarantee of Shortfall Amount

In the event that the aggregate value of the actual distributions made to the Bond 5 Claim Holders (including the Electing Creditors) under the HII/Shareco Plan, or otherwise, of Cash (including the Bond 5 Secured Claim Cash Payment) and Newco Common Shares, collectively,

up to and including the distributions made on the Final Distribution Date are less than 50% of the Bond 5 Unsecured Claim (the “**Shortfall Amount**”), the Guarantor unconditionally and irrevocably guarantees to the Trustee for the benefit of the Bond 5 Claim Holders (including Electing Creditors) the payment of such Shortfall Amount (the “**Guaranteed Obligations**”).

2.2 Payment of Shortfall Amount

- (a) In the event of a Shortfall Amount, the Guarantor shall unconditionally render payment or performance of the Guaranteed Obligations upon demand made on it in accordance with the terms of this Guarantee.
- (b) Provided that demand is made on the Guarantor in accordance with the terms of this Guarantee, payment and satisfaction in full of the Guaranteed Obligations must be made by the Guarantor by no later than 36 months following Plan Implementation Date.
- (c) In the event the Shortfall Amount is paid by the Guarantor prior to the Final Distribution Date, the Guarantor shall be entitled to receive any subsequent distributions that would have been otherwise made to the Bond 5 Claim Holders pursuant to the HII/Shareco Plan up to an amount equal to the Shortfall Amount. For greater certainty, once the Guarantor has been reimbursed the Shortfall Amount, the Bond 5 Claim Holders shall be entitled to receive any subsequent distributions to be made pursuant to the HII/Shareco Plan.
- (d) Nothing but payment and satisfaction in full of the Guaranteed Obligations shall release the Guarantor from its obligations under this Guarantee.

2.3 Continuing Obligation

- (a) The only condition (and no other document, proof or action other than as specifically provided in this Guarantee is) necessary as a condition of the Guarantor honouring its obligations under this Guarantee shall be demand in writing by the Trustee to the Guarantor (with a copy to the Monitor) demanding payment of the Guaranteed Obligations accompanied by a written confirmation of the Monitor confirming (i) the Shortfall Amount, if any, and (ii) that the Final Distribution Date has occurred or that a period of 36 months has elapsed following the Plan Implementation Date. The Monitor shall have no liability in respect thereof except for any liability arising out of gross negligence or wilful misconduct. This Guarantee shall be a continuing guarantee and shall cover all the Guaranteed Obligations.
- (b) This liability of the Guarantor shall continue and be binding on the Guarantor, after as well as before default and after as well as before maturity of the Guaranteed Obligations, until all of the Guaranteed Obligations are fully paid and satisfied, regardless of:
 - (i) any amendment, supplement, restatement, extension, novation, renewal, replacement, continuation or waiver of this Guarantee, or any provision or term thereof;

- (ii) the enforceability, validity, perfection or effect of perfection or non-perfection of any security interest securing the Guaranteed Obligations;
- (iii) any of the Guaranteed Obligations or any security relating to the Guaranteed Obligations being or becoming illegal, invalid, void, voidable, unenforceable, ineffective or extinguished in any respect;
- (iv) any other act, event, omission or thing, or any delay to do any other act or thing, which may or might operate to discharge, impair or otherwise effect the liability of the Guarantor under this Guarantee or any of the rights, powers or remedies conferred upon the Trustee by the Bond 5 Secured Claim Settlement Agreement, this Guarantee, the HII/Shareco Plan or by law or equity; or
- (v) whether any payment of any of the Guaranteed Obligations has been made and where such payment is rescinded or must otherwise be returned upon the occurrence of any action or event, including the bankruptcy of the HII Group Entities or otherwise, all as though such payment had not been made.

2.4 Guarantee Unaffected

- (a) This Guarantee shall not be determined or affected, or the Trustee's rights under this Guarantee prejudiced by, the termination, compromise, reduction, extinguishment or disallowance of any of the Guaranteed Obligations by operation of law or otherwise, including without limitation, the bankruptcy, insolvency, winding-up, liquidation or dissolution of HII or any change in the name, business, powers, capital structure, constitution, objects, organization, directors or management of HII, with respect to transactions occurring either before or after such change.
- (b) This Guarantee shall bind the Person or Persons for the time being and from time to time carrying on the business now carried on by the Guarantor, notwithstanding any reorganization of the Guarantor or the amalgamation of the Guarantor with one or more other corporations including without limitation Newco (in this case, this Guarantee shall bind the resulting corporation and the term "Guarantor" shall include such resulting corporation).

2.5 Assignment of Guarantee

On Plan Implementation Date, and immediately following the completion of the Plan Transaction set out in section 12.3(B)(n)(viii) of the HII/Shareco Plan, HII shall assign, and Newco shall assume, all of HII's rights and obligations under this Guarantee as consideration for the transfer by HII to Newco of the HII Transferred Assets B pursuant to and in accordance with section 12.3(B)(n)(vii) of the HII/Shareco Plan, and the asset purchase agreement between HII and Newco relating thereto, without the necessity of any further action, and thereafter all references in this Guarantee to the "Guarantor" shall be deemed hereby to refer to Newco and its successors and assigns.

2.6 Release

- (a) Contemporaneous with the assignment and assumption of all of HII's rights and obligations under this Guarantee pursuant to Section 2.5 hereof, and in accordance with section 12.3(B)(n)(viii) of this HII/Shareco Plan, the Trustee, on its own behalf and on behalf of its subsidiary, affiliated, and associated corporations and entities, the Bond 5 Claim Holders, and all of their respective successors and assigns (collectively, the "**Releasors**"), shall be deemed hereby to forever release and discharge HII and its subsidiary, affiliated, and associated corporations and all of their respective officers, directors, servants, agents, employees, successors, heirs, attorneys, guardians, estate trustees, executors, trustees and assigns (the "**Releasees**") from any and all actual or potential actions, causes of action, claims, complaints or demands for payment, suits, debts, dues, accounts, bonds, statutory rights and obligations and contracts whatsoever, whether known or unknown, which the Releasors now have, ever had or may hereafter have against the Releasees by reason of any cause, matter or thing whatsoever existing at the date thereof relating to, arising out of or in connection with this Guarantee.
- (b) For greater certainty, the Trustee agrees that it shall not be entitled and shall not make any claims or demands or take any proceedings against any other person, corporation or entity which might claim over against the Releasees, or who might claim contribution or indemnity from the Releasees, in connection with the matters which are herein released. In the event that the Trustee hereafter makes any claims or demands or takes any other proceedings against the Releasees or against any person who may claim over or claim contribution or indemnity against the Releasees with respect to any of the matters herein released, this Section 2.6(b) together with the provisions of the HII/Shareco Plan may be raised as an estoppel and complete bar to any such claim, demand or proceeding.
- (c) For greater certainty, the Trustee acknowledges and declares that: (i) it has had a sufficient opportunity to read and consider the release contained herein and to obtain such advice in regard to it as the Trustee considered advisable; (ii) it fully understands the nature and effect of such release; (iii) it fully understands that the consideration for such release has been accepted; and (d) this Guarantee has been duly executed voluntarily.

ARTICLE 3 REPRESENTATIONS

3.1 Representation – Authority and Enforceability

The Guarantor represents and warrants to the Trustee that it has obtained all corporate and other authorizations, consents and approvals necessary for the granting and performance of this Guarantee and that this Guarantee is enforceable against the Guarantor in accordance with its terms.

ARTICLE 4 WAIVERS AND REMEDIES

4.1 Waivers

The Guarantor waives each of the following, to the fullest extent permitted by law:

- (a) any defence based upon:
 - (i) the lack of authority of HII; or
 - (ii) the unenforceability, invalidity, illegality or extinguishment of all or any part of the Guaranteed Obligations, or any security or other guarantee for the Guaranteed Obligations;
- (b) presentment, demand, protest and notice of any kind including, without limitation, notices of default and notice of acceptance of this Guarantee;
- (c) any claims, set-off, compensation or other rights that the Guarantor may have against the Trustee, whether or not related to the transactions contemplated by this Guarantee; and
- (d) all other rights and defences (legal or equitable) the assertion or exercise of which would in any way diminish the liability of the Guarantor under this Guarantee.

4.2 Trustee's Waiver

No term, condition or provision of this Guarantee or any right under this Guarantee or in respect of this Guarantee, shall be or shall be deemed to have been, waived by the Trustee, except by express written waiver signed by the Trustee, all such waivers to extend only to the particular circumstances specified in such waiver.

4.3 Trustee's Action or Inaction

Except as provided at law, no action or omission on the part of the Trustee in exercising or failing to exercise its rights under this Guarantee or in connection with or arising from all or part of the Guaranteed Obligations shall make the Trustee liable to the Guarantor for any loss occasioned to the Guarantor.

4.4 Trustee's Rights

The rights and remedies provided in this Guarantee are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights or remedies provided by law.

ARTICLE 5 GENERAL

5.1 Acknowledgements

The Guarantor acknowledges that it is providing this Guarantee at the request of Shareco and that it has satisfied itself and is not relying upon the Trustee in respect of all or any information with respect to the transaction under or related to the Bond 5 Secured Claim Settlement Agreement, the HII/Shareco Plan or this Guarantee. The Guarantor acknowledges that it has been provided with and has reviewed a copy of the Bond 5 Secured Claim Settlement Agreement and the HII/Shareco Plan.

5.2 Demand

The Trustee may make demand in writing to the Guarantor (with a copy to the Monitor) at any time and from time to time after the Final Distribution Date in accordance with Section 2.3(a).

5.3 Notices

Any notice, consent, approval, or demand, required or permitted to be given in connection with this Guarantee (in this Section referred to as a “**Notice**”) shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery) or transmitted by facsimile or e-mail:

- (a) In the case of a Notice to the Guarantor, at:

Homburg Invest Inc.
32 Akerley Boulevard
Dartmouth, Nova Scotia
B3B 1N1

Attention: Mr. Jan Schöningh, President and Chief Executive Officer
Mr. James F. Miles, Chief Financial Officer
Fax: (514) 841-9618
Email: jschonigh@hinvest.ca / jmiles@hinvest.ca

And at:

Geneba Properties N.V.
Wamberg 35-37, 1083 CW
Amsterdam, the Netherlands

Attention: Mr. M.A.H. van Deursen and Mr. P.P.G. de Jong
Email: mvandeursen@cyclusproperty.com / j-o@j-o.nl

With a copy to:

Osler, Hoskin & Harcourt LLP
1000 De La Gauchetière Street West

Suite 2100
Montréal, Québec
H3B 4W5

Attention: Mr. Vitale Santoro and Ms. Sandra Abitan
Fax: (514) 904-8101
Email: vsantoro@osler.com / sabitan@osler.com

(b) In the case of a Notice to the Trustee, at:

Stichting Homburg Bonds
P.O. Box 7817
1008 AA Amsterdam
The Netherlands

Attention: Karel F.J. de Vries
Fax: 31 736230861
Email: karelfjdevries@planet.nl

With a copy to:

Stikeman Elliott LLP
1155 René-Lévesque Boulevard West
Suite 4000
Montréal, Québec
H3B 3V2

Attention: Mr. Guy P. Martel
Fax: (514) 397-3222
Email: gmartel@stikeman.com

(c) In the case of a Notice to the Monitor, at:

Samson Bélair/Deloitte & Touche Inc.
1 Place Ville Marie
Suite 3000
Montréal, Québec
H3B 4T9

Attention: Mr. Pierre Laporte and Mr. Jean-François Nadon
Fax: (514) 390-4103
Email: pilaporte@deloitte.ca / jnadon@deloitte.ca

With a copy to:

McCarthy Tétrault LLP
1000 De La Gauchetière Street West
Suite 2500

Montréal, Québec

H3B OA2

Attention: Mr. Mason Poplaw and Mr. Clemens Mayr

Fax: (514) 875-6246

Email: mpoplaw@mccarthy.ca / cmayr@mccarthy.ca

Any Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day, then the Notice shall be deemed to have been given and received on the next Business Day.

5.4 No Representations

The Guarantor acknowledges that this Guarantee has been delivered free of any conditions and that there are no representations which have been made to the Guarantor affecting the Guarantor's liability under this Guarantee except as may be specifically embodied in this Guarantee and agrees that this Guarantee is in addition to and not in substitution for any other guarantee(s) held or which may subsequently be held by or for the benefit of the Trustee.

5.5 Further Assurances

The Guarantor shall at all times do all such things and provide all such reasonable assurances as may be required to give the Trustee the full benefit and effect of, or intended by this Guarantee, and shall provide such further documents or instruments required by the Trustee as may be reasonably necessary or desirable to effect the purpose of this Guarantee and carry out its provisions.

5.6 Assignment and Enurement

The Guarantor shall be entitled to assign all of its rights and obligations under this Guarantee in accordance with the terms of the HII/Shareco Plan and Section 2.5 hereof. This Guarantee shall enure to the benefit of the Trustee's successors (including any successor by reason of amalgamation) and permitted assigns, and shall be binding upon the Guarantor and its successors (including any successor by reason of amalgamation) and permitted assigns.

5.7 Amendment and Consents

No amendment, supplement, modification, waiver or termination of this Guarantee and, unless otherwise provided, no consent or approval by any party, is binding unless executed in writing by the party to be bound.

5.8 Submission to Jurisdiction

The Guarantor and the Trustee submit to the exclusive jurisdiction of the Court in any action, application, reference or other proceeding arising out of or related to this Guarantee and agree

that all claims in respect of any such actions, application, reference or other proceeding shall be heard in and determined by the Court.

5.9 Execution and Delivery

This Guarantee may be executed in counterparts and may be executed and delivered by facsimile or by other electronic form and all such counterparts shall together constitute one and the same agreement. The Guarantor acknowledges receiving a copy of this Guarantee.

5.10 Language

The parties confirm that it is their wish that this Guarantee, as well as any other documents relating to this Guarantee, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. *Les signataires confirment leur volonté que la présente convention, de même que tous les documents s'y rattachant, y compris tout avis, annexe et autorisation, soient rédigés en anglais seulement.*

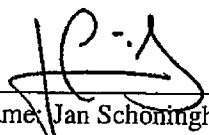
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-S1-

IN WITNESS OF WHICH HII has duly executed this Guarantee as of the date first written above.

HOMBURG INVEST INC.

By: _____


Name: Jan Schoningh

Title: President and Chief Executive
Officer

By: _____

Name: James F. Miles

Title: Vice-President and Chief
Financial Officer

IN WITNESS OF WHICH HII has duly executed this Guarantee as of the date first written above.

HOMBURG INVEST INC.

By: _____

Name: Jan Schöningh

Title: President and Chief Executive
Officer

By: _____

Name: James F. Miles

Title: Vice-President and Chief
Financial Officer

ACKNOWLEDGED AND AGREED with respect to Section 2.5 as of the date first written above.

GENEBA PROPERTIES N.V.

By: 

Name: M.A.H. van Deursen

Title: Director

By: 

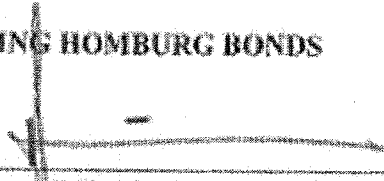
Name: P.P.G. de Jong

Title: Director

ACKNOWLEDGED AND AGREED as of the date first written above.

STICHTING HOMBURG BONDS

By:


Name: K.F.J. de Vries

Title: Director

By:


Name: W.O. de Jong

Title: Director

ACKNOWLEDGED with respect to Section 2.3(a) as of the date first written above.

**SAMSON BÉLAIR/DELOITTE &
TOUCHE INC.**, in its capacity as Court-
appointed Monitor of Homburg Invest Inc. and
not in its personal capacity

By:



Pierre Laporte

Appendix C

Appendix C

HMB5

Aggregate value of distributions made to the Bond 5 Claim Holders as of March 21, 2017 as per the Newco Bond 5 Guarantee

Calculation of % as per the Newco Bond 5 Guarantee for 1 bond (to determine whether there is a Shortfall Amount)

Ex: bondholder ID 356507

Bonds 5 unsecured claim allowed (Cad \$)	24 597 555,33
Bonds 5 secured claim allowed (Cad \$)	<u>3 065 850,00</u>
Bonds 5 total claim allowed amount (Cad \$)	27 663 405,33

(all the amounts above are as per the notice of revision or disallowance, confirmed by the CCAA Court on March 17, 2014)

Number of outstanding bonds 1334

1 bond unsecured claim allowed (Cad \$)	18 438,83
1 bond secured claim allowed (Cad \$)	<u>2 298,24</u>
1 bond total claim allowed (Cad \$)	20 737,07

DISTRIBUTION IN SHARES (for 1 bond 5)			
	Shares #1	Shares #2	Total
Nb of shares	662	70	732
Share value (Cad \$)	8,90	8,90	8,90
Recovery (Cad \$)	5 892,33	623,06	6 515,38
Exchange rate	1,5387	1,5387	1,5387

DISTRIBUTION IN CASH (for 1 Bond 5)					
Distribution	Secured portion	Cash Pool #1	Cash Pool #2	Cash Pool #3	Total
	NA	NA	NA	NA	732,00
	NA	NA	NA	NA	NA
Cash distribution (Cad \$)	2 595,26	889,88	338,06	288,27	4 111,47
Exchange rate (Euro to Cad)	1,5387				

Total distribution for 1 Bond 5 (Cad \$)

Distribution in shares	6 515,38
Distribution in cash	<u>4 111,47</u>
Total distribution	10 626,86

% as per the Newco Bond 5 Guarantee

Actual distribution made to the Bond 5 Claim	10 626,86
Bond 5 Unsecured Claim	18 438,83
% as per the Newco Bond 5 Guarantee	57,63%

Comments

As per the Newco Bond 5 Guarantee, in the event the aggregate value of the actual distributions made to the Bond 5 Claim Holders under the HII/Shareco Plan of cash (including the Bond 5 Secured Claim Cash Payment) and Newco Common Shares, collectively, up to and including the distributions made during the period of 36 months following the Plan Implementation Date ("PID") are less than 50% of the Bond 5 Unsecured Claim, the Guarantor unconditionally and irrevocably guarantees to the Trustee for the benefit of the Bond 5 Claim Holders the payment of the "Shortfall Amount".

This calculation as per the Newco Bond 5 Guarantee was done as of March 21, 2017, considering only the distributions (cash and shares) actually made as of this date, and establish that there is no Shortfall Amount. All future distributions would increase the %.

The calculation above does not take into account the repayments of the Stichting Advances made as per the Funding Order.

At PID, which took place from March 24, 2014 to March 27, 2014, the exchange rate used in order to determine the Geneva share value distributed (based on an Geneva equity value of €152,738,000) and the Cad \$ value of the Bond 5 Secured Claim Cash Payment (€2,250,000) is 1,5387.

The amounts of the claim and of the value of the distributions are denominated in Canadian dollars, as per article 9.8 of the HII/Shareco Plan.