

# SUPERIOR COURT

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No.: 500-11-041305-117

DATE: January 20, 2012

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**PRESENT: THE HONOURABLE LOUIS J. GOUIN, J.S.C.**

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

**HOMBURG INVEST INC.**

**HOMBURG SHARECO INC.**

**CHURCHILL ESTATES DEVELOPMENT LTD.**

**INVERNESS ESTATES DEVELOPMENT LTD.**

**CP DEVELOPMENT LTD.**

Debtors / Petitioners

- and -

**HII GP INC.**

Petitioner

- and -

**HOMCO REALTY FUND (52) LIMITED PARTNERSHIP**

**HOMCO REALTY FUND (88) LIMITED PARTNERSHIP**

**HOMCO REALTY FUND (89) LIMITED PARTNERSHIP**

**HOMCO REALTY FUND (92) LIMITED PARTNERSHIP**

**HOMCO REALTY FUND (94) LIMITED PARTNERSHIP**

**HOMCO REALTY FUND (105) LIMITED PARTNERSHIP**

**HOMCO REALTY FUND (121) LIMITED PARTNERSHIP**

**HOMCO REALTY FUND (122) LIMITED PARTNERSHIP**

**HOMCO REALTY FUND (142) LIMITED PARTNERSHIP**

**HOMCO REALTY FUND (199) LIMITED PARTNERSHIP**

**CANMARC REAL ESTATE INVESTMENT TRUST**

JG2270

HCR LIMITED PARTNERSHIP

HCR LP (CP CALGARY) INC.

CAISSE CENTRALE DESJARDINS

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS

Mis-en-cause

- and -

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

### JUDGMENT

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- [1] The Petitioners present a *Motion for authorization of sale and for a vesting order* dated January 19, 2012 (the "**Motion**") pursuant to sections 11 and 36 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 ("**CCAA**");
- [2] **CONSIDERING** the Motion, the exhibits and affidavit in support thereof, and the representations of counsel;
- [3] **CONSIDERING** the Monitor's Sixth Report dated January 19, 2012;
- [4] **CONSIDERING** the provisions of the CCAA;

#### FOR THESE REASONS, THE COURT:

- [5] **GRANTS** the present Motion for authorization of sale and for a vesting order (the "**Motion**");
- [6] **DECLARES** that the time for service of the Motion is hereby abridged such that the Motion is properly presentable;
- [7] **DECLARES** that the service of the Motion constitutes good and sufficient service on all persons and further **DECLARES** that the Petitioners are relieved of any other requirements for service of the Motion;
- [8] **DECLARES** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion;
- [9] **AUTHORIZES** HII GP Inc. ("**HII GP**"), in its capacity as the general partner of Homco Realty Fund (199) Limited Partnership ("**Homco 199**"), to tender the issued and outstanding units (the "**Homco 199 Units**") in Homburg Canada Real Estate Investment Trust (now known as CANMARC Real Estate Investment Trust and hereinafter "**CANMARC REIT**") that are held by Homco 199, for sale and **AUTHORIZES** HII GP, in its capacity as the general partner of

Homco 199, to instruct Osler, Hoskin and Harcourt LLP (the "**Custodian**"), in its capacity as the custodian of the Pledged REIT Units (as defined below), to tender the Pledged REIT Units (collectively with the Homco 199 Units, the "**REIT Units**"), for and on behalf of Homco 199, for sale;

- [10] **AUTHORIZES** and **APPROVES** the sale, transfer and assignment of the REIT Units to the purchaser thereof in accordance with the terms of the Cominar Offer or otherwise for a cash consideration of no less than \$16.50 per unit (the "**Conveyance**") and **AUTHORIZES** the HII Group and Samson Bélair/Deloitte & Touche Inc., in its capacity of Monitor to the Debtors and without any personal or corporate liability (the "**Monitor**") to take any and all actions necessary to proceed with the Conveyance to the purchaser of the REIT Units including, without limiting the generality of the foregoing, to execute any and all documents that may be necessary or useful to the consummation of such sale of the REIT Units (the "**Transaction**");
- [11] **AUTHORIZES** the HII Group to:
- (a) execute and deliver any documents and assurances governing or giving effect to the Transaction as the HII Group, in its discretion, may deem to be reasonably necessary or advisable to conclude the Transaction, and all such documents and assurances are hereby ratified, approved and confirmed; and
  - (b) take steps as are, in the opinion of the HII Group, necessary or incidental to the performance of its obligations under and pursuant to the Transaction;
- [12] **RATIFIES** the Engagement Letter and **AUTHORIZES** the payment by HII to RBC of any payments contemplated under the Engagement Letter in accordance with its terms;
- [13] **ORDERS** and **DECLARES** that upon the delivery of a certificate from the Monitor to the purchaser of the REIT Units, substantially in the form attached as Annex I to this Order (the "**Monitor's Certificate**"), the REIT Units (including any and all rights, title and interest related thereto) shall vest absolutely and exclusively in the purchaser thereof free and clear of and from any and all encumbrances, liens, claims, liabilities (direct, indirect, absolute or contingent), disputes, debts, obligations, rights, titles, interests, security interests, charges (including any and all charges created pursuant to the Debtors' proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36), pledges, mortgages, hypothecations, hypothecs, judgments, trusts or deemed trusts, executions, writs of seizure and sale, options, adverse claims, prior claims, assignments, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, levies, priorities, remedies from facts which exist as of the date of the Transaction, or any other claims or encumbrances of any nature whatsoever and howsoever arising, in each case whether known or unknown, whether contractual, statutory or legal, by operation of law or equity or otherwise, whether perfected, attached, registered or filed,

whether secured, unsecured or otherwise (each of which being reference to as an “**Encumbrance**” and collectively, the “**Encumbrances**”), including without limitation, the Encumbrances listed on Annex II;

- [14] **ORDERS** the Monitor to file with the Court a copy of the Monitor’s Certificate as soon as reasonably practicable after delivery thereof to the purchaser of the REIT Units;
- [15] **ORDERS** the Registrar of the Register of Personal and Movable Real Rights, upon presentation of the required applications, a true copy of this order, payment of the prescribed fees, if any, and presentation of the Monitor’s Certificate, to cancel, radiate and discharge the registration of all moveable encumbrances listed on Annex II hereto, such that all of the REIT Units are no longer affected by movable encumbrances;
- [16] **ORDERS** that for the purpose of determining the nature and priority of the Encumbrances, the proceeds from the sale of any and all right, title and interest of the HII Group in and to the REIT Units, net of the payments due to be paid by HII to RBC under the Engagement Letter (the “**Net Proceeds**”), shall stand in the place and stead of the REIT Units, and that from and after the delivery of the Monitor’s Certificate, all Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the REIT Units immediately prior to the sale, as if the REIT Units had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale;
- [17] **DECLARES** that in accordance with paragraphs 34 and 35 of the Motion, the Pledged REIT Units currently held by CANMARC REIT and HCR LP (CP Calgary) Inc. in its capacity as general partner of HCR Limited Partnership shall be replaced by the Net Pledged REIT Unit Proceeds;
- [18] **ORDERS** that for the purpose of determining the nature and priority of the Encumbrances:
- (a) the Net Pledged REIT Unit Proceeds from the sale of any and all right, title and interest of the HII Group in and to the Head Lease and Tax Units (which units are evidenced by certificates No. GC4280443, No. GC4280444, GC4280445, GC4280446, GC4280447) (the “**Net Head Lease Pool**”) shall stand in the place and stead of the Head Lease and Tax Units and be subject to the same Encumbrances;
  - (b) the Net Pledged REIT Unit Proceeds from the sale of any and all right, title and interest of the HII Group in and to the Centron Head Lease Units (which units are evidenced by certificates No. GC4272653, No. GC4272654 and No. GC4272655) (the “**Net Centron Head Lease Pool**”) shall stand in the place and stead of the Centron Head Lease Units and be subject to the same Encumbrances; and

- (c) the Net Pledged REIT Unit Proceeds from the sale of any and all right, title and interest of the HII Group in and to the Remediation and Tax Units (which units are evidenced by certificate No. GC2360928) (the "**Net Additional Lease Pool**") and, collectively with the Net Head Lease Pool and the Net Centron Head Lease Pool, the "**Pledged Unit Pools**") shall stand in the place and stead of the Remediation and Tax Units and be subject to the same Encumbrances;

and that from and after the delivery of the Monitor's Certificate, all Encumbrances shall attach to the Net Pledged REIT Unit Proceeds with the same priority as they had with respect to the above Units immediately prior to the sale, as if these Units had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale and further **ORDERS** that the cancellation of any Encumbrance pursuant to this Order will not affect the rights and status of CANMARC REIT as creditor of any of the HII Group entities;

- [19] **ORDERS** each of the Pledged Unit Pools to be distributed separately to the Custodian and **AUTHORIZES** the Custodian to deposit and hold each of the Pledged Unit Pools in three separate trust accounts until full and final settlement of any claim CANMARC may have based on the Hypothec Agreements, until further agreement between the parties and the Monitor or further order of this Court;
- [20] **ORDER** that HII shall be entitled to have access to an amount of up to \$10,000,000 of the Net Proceeds (exclusive of the Net Pledged REIT Unit Proceeds) for the purposes of funding the liquidity requirements of the HII Group during its restructuring under the CCAA; all further funding requirements to be approved by further order of the Court;
- [21] **DECLARES** that upon the filing of the Monitor's Certificate with the office of this Court, the Transaction and any other document to be executed for the purposes of the Transaction, pursuant to this Order, constitutes a sale by a public officer acting under judicial authority as per the provisions of the *Code of Civil Procedure*, R.S.Q., c. C-25;
- [22] **DECLARES** that the Transaction shall be considered as a forced sale as per the provisions of the *Civil Code of Québec*, S.Q. 1991, c. 64 (the "**Civil Code**");
- [23] **EXEMPTS** the HII Group and the Monitor from the requirement, if any, to seek and obtain shareholders' approval pursuant to any federal or provincial legislation with regard to the consummation of the Transaction;
- [24] **DECLARES** that this Order constitutes the only authorization required by the HII Group to proceed with the Transaction and the Conveyance and, for greater certainty, **DECLARES** that the parties involved in the Transaction are exempted from requiring or obtaining any formal valuation or authorization that may have been required from any person or authority whatsoever;

[25] **ORDERS** and **DECLARES** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") in respect of the HII Group and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the HII Group;


the Conveyance shall be binding on any Trustee in bankruptcy that may be appointed in respect of the HII Group and shall not be void or voidable and shall not be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA, article 1631 and following of the Civil Code or any other applicable federal or provincial legislation nor shall they be deemed to be oppressive transactions or conduct justifying any oppression remedy under any applicable statute;

[26] **DECLARES** that this Order shall have full force and effect in all of the provinces and territories in Canada;

[27] **ORDERS** the sealing of the Engagement Letter;

[28] **ORDERS** the provisional execution of this Order notwithstanding any appeal therefrom and without the necessity of furnishing any security;

[29] **THE WHOLE WITHOUT COSTS.**

  
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**LOUIS J. GOUIN, J.S.C.**

Hearing date : January 20, 2012

**Me Martin Desrosiers**  
**Me Sandra Abitan**  
**Me Julien Morissette**  
Osler, Hoskin & Harcourt LLP  
Counsel to Petitioners

## MONITOR'S CERTIFICATE

(pursuant to the Order rendered January 20<sup>th</sup>, 2012)

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

Pursuant to the Initial Order, as amended, Homco Realty Fund (52) Limited Partnership, Homco Realty Fund (88) Limited Partnership, Homco Realty Fund (89) Limited Partnership, Homco Realty Fund (92) Limited Partnership, Homco Realty Fund (94) Limited Partnership, Homco Realty Fund (105) Limited Partnership, Homco Realty Fund (121) Limited Partnership, Homco Realty Fund (122) Limited Partnership, Homco Realty Fund (142) Limited Partnership and Homco Realty Fund (199) Limited Partnership (“**Homco 199**”) also benefit from the stay of proceedings granted thereby under the CCAA;

Pursuant to an Order of the Court dated January 20, 2012 (the “**Authorization of Sale and Vesting Order**”) the Court, *inter alia*, authorized and approved the transaction and conveyance of the REIT Units by and between HII and Homco 199 on the one hand, and ● on the other hand (the “**Purchaser**”), and provided for, among other things, the vesting in the Purchaser of the HII Group's right, title and interest in and to the REIT Units free and clear of any and all Encumbrances, the whole in accordance with the Authorization of Sale and Vesting Order, which vesting is to be effective with respect to the REIT Units upon the delivery by the Monitor to the Purchaser of this certificate;

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

**THE MONITOR HEREBY CERTIFIES** that:

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

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

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

Per:

\_\_\_\_\_  
Name:

Title:

ANNEX II

ENCUMBRANCES ON CERTAIN REIT UNITS

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