

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
COURT. No.: 500-11-041305-117

SUPERIOR COURT
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.**)

– and –

CHURCHILL ESTATES DEVELOPMENT LTD.

– and –

NORTH CALGARY LAND LTD.

– and –

HOMBURG MANAGEMENT (CANADA) INC.

Debtors/Petitioners

– and –

THE ENTITIES LISTED IN APPENDIX A

Mises-en-cause

– and –

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

**THIRTY-SEVENTH REPORT TO THE COURT
SUBMITTED BY SAMSON BÉLAIR/DELOITTE & TOUCHE INC.**

IN ITS CAPACITY AS MONITOR

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

INTRODUCTION

1. On September 9, 2011, 1810040 Alberta Ltd. (formerly known as Homburg Invest Inc.) and Homburg Shareco Inc. (“**HII**”) and certain related entities (collectively, the “**Debtors**”) filed and obtained protection from their respective creditors under the *Companies' Creditors Arrangement*

Act (the “**CCAA**”) pursuant to an Order rendered by the Superior Court of Quebec (as amended and extended from time to time, the “**Initial Order**”).

2. Pursuant to the Initial Order (as amended), the Stay extends to the entities listed in Appendix A hereto (collectively, the “**Applicant Partnerships**” and, together with the Debtors, the “**HII Parties**”), including in particular, for the purpose of this report, Homco Realty Fund (105) Limited Partnership (“**Homco 105**”).
3. Samson Bélair/Deloitte & Touche Inc. was appointed as monitor (the “**Monitor**”) under the CCAA.
4. Pursuant to the Initial Order, an initial stay of proceedings (the “**Stay**”) was granted until October 7, 2011 in favor of the HII Parties, which Stay has been extended from time to time by order of the Court. On May 5, 2014, the Court last extended the Stay up until August 29, 2014.
5. Since the Initial Order, the Monitor has filed reports with the Court and served same to the Service List from time to time. The Monitor filed thirty-seventh such Monitor’s reports (as well as some supplemental reports) prior to this thirty-seventh Monitor’s report (the “**Thirty-Seventh Report**”). Copies of all of the Monitor’s reports are available on the Monitor’s website at www.deloitte.com/ca/homburg-invest. The Monitor has also established a toll free number that is referenced on the Monitor’s website so that parties may contact the Monitor if they have questions with respect to the HII Parties’ restructuring under the CCAA.

PURPOSE OF THE THIRTY-SEVENTH REPORT

6. This Thirty-Seventh Report is intended to provide an update and information regarding the sale of the Cristal property held by Homco 105 (the “**Cristal Property**”) and to support the proposed transaction in relation thereto (the “**Cristal Transaction**”).
7. This Thirty-Seventh Report is structured as follows:
 - I- The Cristal Property and the proposed Cristal Transaction;
 - II- Conclusions and Recommendations.

TERMS OF REFERENCE

8. In preparing this Thirty-Seventh Report, the Monitor has relied upon unaudited financial information, the HII Parties’ records, the amended motion for an Initial Order dated September 9, 2011, and all subsequent motions filed with the Court (collectively, the “**Debtors’ Motions**”) and exhibits in support of same, its discussions with management of the HII Parties (“**Management**”) and the HII Parties’ and the Monitor’s legal advisors. While the Monitor has analyzed the information, some in draft form, submitted in the limited time available, the Monitor has not performed an audit or otherwise verified such information. Forward looking financial information included in this Thirty-Seventh Report is based on assumptions of Management regarding future events, and actual results achieved will vary from this information and such variations may be material.
9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not otherwise defined in this Thirty-Seventh Report are as defined in the previous reports of the Monitor and the Debtors’ Motions.

I. THE CRISTAL PROPERTY AND THE PROPOSED CRISTAL TRANSACTION

10. As mentioned in the Fifteenth Report, the Cristal Property, which is the sole material asset of Homco 105, is a section of development land located in the beltline community of Calgary immediately south of the central business district. This zone is mainly for mixed-use development. The Cristal Property presently consists mainly of land in respect of which no significant improvements have been made.
11. As mentioned in the Fifteenth Report, after analyzing the recommendations provided in a report prepared by a real estate firm and after consulting with various real estate professionals, the HII Parties, along with the Monitor, determined that the best course of action for the HII Parties was to begin a sale process with respect to the Cristal Property.
12. As mentioned in the Eighteenth Report, the Monitor and CBRE finalized a listing agreement. The asking price was set at \$8.5M.
13. In December 2012, an offer was received from a first offeror (the “**First Offeror**”). Following negotiations between the First Offeror and Homco 105 and the Monitor, a conditional purchase and sale agreement (“**First PSA**”) was signed by the parties on or about February 26, 2013. The First PSA included several conditions precedent, including a due diligence condition regarding the feasibility of the project, to be satisfied or waived by the First Offeror.
14. The due diligence period provided by the First PSA was extended several times, at the First Offeror’s request, for various reasons including the floodings in the Calgary area that occurred in the summer of 2013.
15. In October 2013, the First Offeror advised the Monitor that it remained unable to waive its condition regarding the feasibility of its intended project on the Cristal Property, and Homco 105 and the Monitor refused to further extend the due diligence period. The First PSA was consequently terminated on October 15, 2013, although the First Offeror was invited to continue its due diligence on a non-exclusive basis.
16. On October 18, 2013, CBRE relisted the Cristal Property at \$8.5M.
17. On February 24, 2014, an offer was received from Qualex-Landmark Developments Inc. (“**Qualex**”), a Calgary-based developer, for \$6.5M.
18. On May 2, 2014, after (i) several months of negotiations, including offers and counter-offers from the respective parties, and (ii) confirmation from the First Offeror that it no longer had an interest in the Cristal Property, the Monitor and CBRE determined that Homco 105 should counter-offer at a price of \$7,195,000. Such counter-offer was made to Qualex’s counsel, specifying that it was subject to the approval of the Liquidation Advisory Committee.
19. On May 7, 2014, Qualex submitted to the Monitor an Irrevocable Offer to Purchase (the “**Qualex PSA**”) providing, *inter alia*, for the sale of the Cristal Property to Qualex, in consideration of a purchase price of \$7,195,000 on an “as is where is basis” subject to the approval of the Court and subject to certain conditions precedent, including Qualex’s satisfaction with its due diligence review and inspection of the Cristal Property.
20. On May 13, 2014, the Liquidation Advisory Committee approved the sale of the Cristal Property pursuant to the terms of the Irrevocable Offer to Purchase and, on May 16, 2014, same was executed by the Monitor.

21. The Qualex PSA provided for a due diligence period of up to 60 days. On July 7, 2014, Qualex waived all conditions precedent in its favour set out in the Qualex PSA and, with the consent of the Monitor, assigned its interest in the Qualex PSA to Qualex-Landmark Ventures Inc. (“**Qualex Ventures**”).
22. As mentioned in several previous Reports of the Monitor, HSBC financed the Cristal Property development and held security thereon. Counsel for the Monitor delivered an opinion confirming that said security was valid. Following the Plan Implementation Date, pursuant to the HII/Shareco Plan, the outstanding balance of the loan secured by the land mortgage on the Cristal Property was at approximately \$5.5M. This loan was repaid in full by HII, as all of Homco 105’s obligations towards HSBC were guaranteed by HII, and HII had granted a security over its movable assets to secure such obligations as guarantor. This secured claim of HSBC represented an “Unaffected Claim” under the Plan.
23. Following the repayment of the loan which was made pursuant to an Assignment and Subrogation Agreement, HII is now subrogated in the rights of HSBC against Homco 105 and the Cristal Property. This loan is expected to be repaid in full to HII out of the sale proceeds. The "equity" realized in excess of this repayment will be available to repay the post-filing advances made by HII to Homco 105 and for distribution to the unsecured creditors of Homco 105. According to the claims process conducted in the course of the CCAA proceedings, the only unsecured creditor of Homco 105 is HII. The recoveries made by HII as a result of the Closing Transaction will form part of the Asset Realization Cash Pool.
24. The Monitor is of the view that the terms of the Cristal Transaction are reasonable and favourable to the HII Group and its stakeholders given, *inter alia*:
 - i. It is congruent with the HII Group’s restructuring plan, i.e. to dispose of non-core assets to the benefit of its creditor
 - ii. A process to maximize the value of the Cristal Property was conducted by Homco 105 under the supervision of the Monitor;
 - iii. The \$7,195,000 purchase price falls within the range of valuations of the Cristal Property obtained by the Monitor;
 - iv. The Cristal Transaction will satisfy Homco 105’s secured debt towards HII and allow for the repayment of the post-filing advances made by HII to Homco 105 and for a distribution to unsecured creditors of Homco 105 (which, according to the claims process conducted in the course of the CCAA proceedings, would only include HII); and
 - v. The distributions to HII resulting from the Homco 105 Transaction will form part of the Asset Realization Cash Pool for the benefit of the Affected Creditors under the Plan.
25. The conclusion of the Cristal Transaction is also supported by the Liquidation Advisory Committee.
26. It is the Monitor’s view that the HII Parties have acted in good faith and with due diligence in accordance with the Initial Order and the subsequent orders of the Court.

II. CONCLUSIONS AND RECOMMENDATIONS

27. It is the Monitor's opinion that, for the reasons further elaborated in this Thirty-Seventh Report, the Cristal Transaction should be approved and the vesting order should be granted by the Court.

The Monitor respectfully submits this Thirty-Seventh Report to the Court.

DATED AT MONTREAL, this 18th day of August, 2014.



Pierre Laporte, CPA, CA, CIRP
President

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
In its capacity as Court-Appointed Monitor