

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

No. : 500-11-041305-117

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

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

1810040 ALBERTA LTD. (formerly known as  
HOMBURG INVEST INC. and HOMBURG  
SHARECO INC.) et al.

Debtors

- and -

THE ENTITIES LISTED ON ANNEX I

Mises-en-cause

- and -

STICHTING HOMBURG BONDS

-and -

1028167 ALBERTA LTD.

Petitioners

- and -

SAMSON BELAIR/DELOITTE & TOUCHE INC.

Monitor

MOTION FOR THE ISSUANCE OF AN ORDER AUTHORIZING A  
DISTRIBUTION OF THE REMAINING NET PROCEEDS RESULTING FROM THE  
SALE OF HOMCO REALTY FUND (52) LIMITED PARTNERSHIP'S ASSETS (THE  
HOMBURG SPRINGS EAST PROPERTY)

TO THE HONORABLE LOUIS GOUIN, J.S.C., OR TO ONE OF THE HONORABLE  
JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN  
AND FOR THE JUDICIAL DISTRICT OF MONTREAL, THE PETITIONERS  
SUBMITS THE FOLLOWING:

I. BACKGROUND

1. On September 9, 2011, 1810040 Alberta Ltd. (formerly known as Homburg Invest Inc.) ("HII") and Homburg Shareco Inc. ("ShareCo") and certain related entities filed and obtained protection from their respective creditors under the *Companies' Creditors Arrangement Act* ("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, Samson Belair/Deloitte & Touche Inc. (the "Monitor") was appointed as Monitor and a stay of proceedings (the "Stay of Proceedings") was issued from the date of the Initial Order until October 7, 2011, which Stay of Proceedings was extended on several occasions, and most recently until August 31, 2015, as appears from the Court record.
3. The Initial Order was also amended on several occasions, notably, to extend its protection to certain additional applicant debtors, as well as to a number of limited partnerships (the "Limited Partnerships") related to the Petitioners, including Homco Realty Fund (52) Limited Partnership ("Homco 52"). The Debtors, together with the Limited Partnerships are collectively referred to as the "HII Group").

## II. ORDER SOUGHT

4. Stichting Homburg Bonds ("SHB"), acting in its capacity as indenture trustee representing the holders of Series 4 Bonds (as defined below), hereby seeks the issuance of an order by this Court authorizing and directing the Monitor to proceed with the distribution of the remaining net proceeds resulting from the sale of the Homburg Springs East Property (as defined below) to the holders of Series 4 Bonds.

## III. THE FACTS

### A. The Sale of the Homburg Springs East Property

5. The "Homburg Springs East Property" is a section of development land located at the northern limit of the City of Calgary, Alberta. This zone is presently undeveloped and is mainly composed of vacant fields, with a long term development horizon.
6. The Homburg Springs East Property consists of vacant lands and constitutes the sole material asset of Homco 52.
7. As mentioned in past Monitor's reports, the Homburg Springs East Property constituted a non-core asset which was not intended to form part of the restructured portfolio of the HII Group and as such, a sale process was initiated in relation to same.
8. On December 11, 2014, a conditional offer to acquire the Homburg Springs East Property was received from 1845417 Alberta Ltd. (the "Purchaser").
9. On February 16, 2015, after certain negotiations with the Purchaser and considering the fact that the Homburg Springs East Property had been up for sale for over two (2) years, the HII Group, with the approval of the Liquidation

Advisory Committee and of the representatives of SHB, in its capacity as secured creditor of Homco 52, determined that the offer submitted by the Purchaser (as revised the "Offer") should be accepted.

10. On February 24, 2015, following communications between the parties regarding the terms of the Offer, the Purchaser confirmed its approval with respect to the terms thereof, and same was formally executed by all parties on March 12, 2015.
11. On May 13, 2015, the HII Group filed a *Motion for an Authorization of Sale and a Vesting Order (Homburg Springs East Property)* (the "**Sale Approval Motion**"), in which it requested from this Court the authorization to proceed with the sale of Homburg Springs East Property to the Purchaser, as appears from the Court record.
12. The Sale Approval Motion was approved by this Court on May 15, 2015, and this Court rendered the *Authorization of Sale and Vesting Order (Homburg Springs East Property)* (the "**Vesting Order**"), as appears from the Court record.

**B. The Distribution of the Net Proceeds Resulting From the Sale of the Homburg Springs East Property**

*(i) The Initial Distribution*

13. As indicated in the Sale Approval Motion, in late October 2012, the Bond 4 Claim Holders had voted in favour of a resolution providing that the costs and expenses related to the sale process and the carrying costs in connection with the Homburg Springs East Property would be reimbursed out of the sale proceeds of such property. A special supplemental indenture in that regard was entered into between Shareco and SHB on November 5, 2012 (the "**November 2012 Supplemental Indenture**").
14. In this context, as appears from the Court record, on November 6, 2012, the HII Group filed a *Motion for Approval of Funding Charges* (the "**Funding Charge Motion**"), requesting, *inter alia*, the issuance by this Court, of an order approving a priority charge in favour of HII (the "**Homco 52 Funding Charge**") in an amount of \$125,000, against the Homburg Springs East Property in order to secure the advances to be made by HII (the "**H52 Advances**") in order to cover all fees, costs and expenses of Homco 52 (including a maximum amount of \$100,000 to cover professional fees, excluding the broker's commission) in relation to the sale process related to the Homburg Springs East Property.
15. On November 8, 2012, this Court granted the Funding Charge Motion and rendered the *Order Granting Funding Charges (Homco 52 and Homco 88)* approving, *inter alia*, the Homco 52 Funding Charge, as appears from the Court record.
16. As appears from the Vesting Order, this Court authorized the Monitor to distribute to HII, out of the net proceeds resulting from the sale of the Homburg

Springs East Property, the outstanding H52 Advances secured by the Homco 52 Funding Charge (the "**Initial Distribution**").

17. This Court also rendered the following order, as part of the Vesting Order:

*"[15] PRAYS ACT of the fact that the remaining Net Proceeds of the Homco 52 Transaction, after payment of the 'H52 Advances', will be held by the Monitor and distributed at a time to be determined, in accordance with creditors' respective ranks and applicable law;"*

18. Accordingly, once the Initial Distribution will have been made, it is estimated that the Monitor will hold at least \$4,983,950 (the "**Remaining Net Proceeds**") which will need to be distributed to Homco 52's creditors in accordance with their respective ranks and applicable law. The estimated Remaining Net Proceeds is calculated on the basis of the Homburg Springs East Property's purchase price (\$5,108,950), less the maximum amount of the H52 Advances secured by the Homco 52 Funding Charge (\$125,000).

*(ii) The Request for a Distribution of the Remaining Net Proceeds*

19. As appears from a copy of the land registry pertaining to the Homburg Springs East Property, a copy of which was filed in support of the Sale Approval Motion, the only parties having a security registered against such property are the following:
- a) HSBC Bank Canada ("**HSBC**"); and
  - b) 1028167 Alberta Ltd. ("**1028167**"), acting as trustee to SHB.
20. No builders' lien or other security interests are registered against the Homburg Springs East Property.
21. Although the land registry shows a mortgage in favour of HSBC registered against the Homburg Springs East Property, no amount is owed by Homco 52 to HSBC, as appears from the Sale Approval Motion.
22. In fact, HSBC did not file any proof of claim against Homco 52 as part of the claims process ordered by this Court on April 30, 2012 and conducted by the HII Group and the Monitor in the course of the present CCAA proceedings.
23. Accordingly, the only secured creditors of Homco 52 are the "Bond 4 Claim Holders" (i.e. the holders of the Series 4 Mortgage Bonds), pursuant to a mortgage (the "**Homco 52 Mortgage**") dated January 11, 2005, granted by Homco 52 in favour of 1028167, acting as trustee of SHB, indenture trustee to the Bond 4 Claim Holders.
24. As appears from paragraph 16 of the Sale Approval Motion and paragraph 14 of the Funding Charge Motion, respectively:

- a) the total amount of the Bond 4 Claim Holders' claim against Homco 52 and HII which was accepted by the HII Group and the Monitor is \$27,663,405.33; and
  - b) counsels for the Monitor have issued an opinion confirming that the Homco 52 Mortgage which secures the payment of the above amount is valid and enforceable.
25. In light of the foregoing, the Petitioners submit that it is appropriate under the circumstances to order a distribution of the Remaining Net Proceeds.

**WHEREFORE, MAY THIS COURT:**

- [1] **GRANT** the Motion.
- [2] **EXEMPT**, if applicable, the Petitioners, Stichting Homburg Bonds ("SHB") and 1028167 Alberta Ltd. ("1028167"), from having to serve the Motion and from any notice or delay of presentation;
- [3] **AUTHORIZE AND DIRECT** the Monitor to distribute to the holders of the Homburg Mortgage Bond 4 (the "**Series 4 Bonds**"), within twenty (20) days of this Order, all net proceeds, in capital and in interest, resulting from the sale the Homburg Springs East Property (as defined in the Motion) after the Initial Distribution (as defined in the Motion) will have been made (the "**Remaining Net Proceeds**"), which Remaining Net Proceeds are currently held in escrow by the Monitor;
- [4] **ORDER** that notwithstanding:
  - a) the proceedings under the CCAA;
  - b) any petitions for a receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition; or
  - c) the provisions of any federal or provincial legislation;the distribution of the Remaining Net Proceeds in accordance with this Order is to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it give rise to an oppression or any other remedy;
- [5] **AUTHORIZE** the Monitor to take any and all steps which the Monitor, in its sole discretion and in consultation with the Petitioners, may deem necessary in order to give effect to the above orders;

- [6] **ORDER** the provisional execution of this order notwithstanding appeal and without the necessity of furnishing any security;

**WITHOUT COSTS**, save in case of contestation.

Montréal, May 26, 2015

*Stikeman Elliott LLP*

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STIKEMAN ELLIOTT LLP  
Attorneys for the Petitioners

**ANNEX I  
APPLICANT PARTNERSHIPS**

1. HOMCO REALTY FUND (52) LIMITED PARTNERSHIP
2. HOMCO REALTY FUND (61) LIMITED PARTNERSHIP
3. HOMCO REALTY FUND (83) LIMITED PARTNERSHIP
4. HOMCO REALTY FUND (88) LIMITED PARTNERSHIP
5. HOMCO REALTY FUND (89) LIMITED PARTNERSHIP
6. HOMCO REALTY FUND (92) LIMITED PARTNERSHIP
7. HOMCO REALTY FUND (94) LIMITED PARTNERSHIP
8. HOMCO REALTY FUND (96) LIMITED PARTNERSHIP
9. HOMCO REALTY FUND (105) LIMITED PARTNERSHIP
10. HOMCO REALTY FUND (121) LIMITED PARTNERSHIP
11. HOMCO REALTY FUND (142) LIMITED PARTNERSHIP
12. HOMCO REALTY FUND (190) LIMITED PARTNERSHIP
13. HOMCO REALTY FUND (191) LIMITED PARTNERSHIP
14. HOMCO REALTY FUND (199) LIMITED PARTNERSHIP
15. CASTELLO DEVELOPMENT LTD.

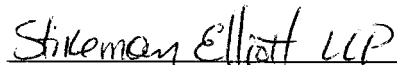
**NOTICE OF PRESENTATION**

**TO:** Service List

**TAKE NOTICE** that the *Motion for the Issuance of an Order authorizing a distribution of the remaining net proceeds resulting from the sale of Homco Realty Fund (52) Limited Partnership's Assets (The Homburg Springs East Property)* will be presented for adjudication before one of the Honourable Judges of Superior Court, sitting in practice in and for the District of Montréal, in the Montréal Courthouse, 1 Notre-Dame Street East, Thursday, May 28, 2015 at 9:00 AM in a Room to be determined and communicated to you.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, May 26, 2015



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STIKEMAN ELLIOTT LLP  
Attorneys for the Petitioners



**SUPERIOR COURT**

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N° 500-11-041305-117

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BS0350

File: 131425-1001

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MOTION FOR THE ISSUANCE OF AN ORDER  
AUTHORIZING A DISTRIBUTION OF THE  
NET PROCEEDS RESULTING FROM THE SALE  
OF THE NET PROCEEDS OF HOMCO REALTY  
FUND (52) LIMITED PARTNERSHIP  
(HOMBURG SPRINGS EAST PROPERTY)

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ORIGINAL

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