

**SUPERIOR COURT  
(Commercial Division)**



CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
No.: 500-11-041305-117

**Date: May 15, 2015**

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

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**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-

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

**Petitioner**

-and-

**HOMCO REALTY FUND (61) LIMITED PARTNERSHIP ET AL.**

**Mises-en-cause**

-and-

**1845417 ALBERTA LTD.**, a corporation formed under the  
Business Corporations Act (Alberta), having its registered office at  
2300, 605 - 5 Avenue SW, T2P 3H5, Calgary, Alberta,

**Mise-en-cause**

-and-

**THE ALBERTA REGISTRAR OF LAND TITLES**, 710 - 4<sup>th</sup>  
Avenue S.W., Calgary, Alberta, T2P 0K3

**Mis-en-cause**

-and-

**SAMSON BÉLAIR/DELOITTE & TOUCHE INC.**

**Monitor/Petitioner**

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**AUTHORIZATION OF SALE AND VESTING ORDER  
(HOMBURG SPRINGS EAST PROPERTY)**

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- [1] **CONSIDERING** the Monitor's *Motion for an Authorization of Sale and a Vesting Order (Homburg Springs East Property)* (the "**Motion**"), the affidavit and the exhibits in support thereof, and the Forty-First Report of the Monitor;
- [2] **CONSIDERING** the provisions of the *Companies' Creditors Arrangement Act*;

**FOR THESE REASONS, THE COURT:**

- [3] **GRANTS** the Motion;
- [4] **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;
- [5] **DECLARES** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion;
- [6] **RATIFIES** the "Irrevocable Offer to Purchase" (the "**Homco 52 Offer**") between the Monitor on behalf of HII (52) GP Inc. ("**HII (52) GP**"), in its capacity as general partner of Homco Realty Fund (52) Limited Partnership ("**Homco 52**"), and **1845417 ALBERTA LTD.** dated February 24, 2015 (and formally executed by all of the parties on March 12, 2015), filed as Exhibit M-1 to the Motion, in respect of the following lands:

THE NORTH WEST QUARTER OF SECTION ELEVEN (11)			
TOWNSHIP TWENTY SIX (26)			
RANGE ONE (1)			
WEST OF THE FIFTH MERIDIAN CONTAINING 64.7 HECTARES			
(160 ACRES) MORE OR LESS			
EXCEPTING:			
PLAN	NUMBER	HECTARES	ACRES
ROAD WIDENING	8210192	0.415	1.03
DSCRIPTIVE	0412402	5.259	13.00
EXCEPTING THEREOUT ALL MINES AND MINERALS			

together with any buildings, structures and fixed improvements situated thereon (collectively, the "**Lands**");

- [7] **AUTHORIZES** and **APPROVES** the sale, transfer and assignment of the Lands to 1845417 Alberta Ltd. or its nominee (the "**Purchaser**") in accordance with the terms of the Homco 52 Offer (the "**Homco 52 Conveyance**") and **AUTHORIZES** HII (52) G.P., for and behalf of Homco 52, 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 Homco 52 Conveyance to the Purchaser of the Lands 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 Lands (the "**Homco 52 Transaction**");

- [8] **ORDERS** and **DECLARES** that upon the delivery of a Monitor's certificate to the Purchaser confirming payment of the full purchase price contemplated by the Homco 52 Transaction and that any conditions precedents thereto have been satisfied or waived (the "**Monitor's Certificate**"), which Monitor's Certificate shall be delivered and filed in this Court record forthwith after confirmation by Homco 52 and the Purchaser of payment of the full purchase price contemplated by the Homco 52 Transaction and the closing of the Homco 52 Transaction, all of Homco 52's rights, titles and interests in and to the Lands shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), mortgages, hypothecs, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations on any other personal property registry system or land title system (all of which are collectively referred to as "**Encumbrances**"), other than the "**Permitted Encumbrances**" listed in Schedule I of this Order (the "**Permitted Encumbrances**"). For greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Lands, other than the Permitted Encumbrances, are hereby expunged and discharged as against the Lands;
- [9] **ORDERS** that upon the delivery of a certified copy of this Order and of the Monitor's Certificate to the Registrar of the Alberta Land Titles Office (the "**Registrar**") and a written request from the Purchaser's counsel to do so, the Registrar shall:
- (a) Cancel certificates of title number 121 130 702 in respect of the Lands (the "**Old Title**"); and
  - (b) Issue a new certificate of title in respect of the Lands in the name of the Purchaser (the "**New Title**"), which shall include only the Permitted Encumbrances listed in Schedule I to this Order.
- [10] **ORDERS** that the Registrar shall perform the steps specified in paragraph 9 of this Order, in the order specified in said paragraph 9, and notwithstanding the requirements of section 191(1) of the *Land Titles Act*, R.S.A. 2000, c. L-4.
- [11] **ORDERS** that, upon the Registrar completing the steps identified in paragraphs 9 and 10 of this Order, the Registrar shall forthwith make available to Homco 52 and the Purchaser a certified copy of the New Title.
- [12] **ORDERS** that the proceeds from the Homco 52 Transaction shall stand in the place and stead of the Lands, net of closings costs including real estate commissions, taxes, legal, conveyancing costs and other usual closing costs (the "**Net Proceeds**"), and that from and after the delivery of the Monitor's Certificate any Encumbrances (subject to same being finally determined pursuant to the Claims Process Order rendered by this Court on April 30, 2012, as amended and supplemented from time to time), other than the Permitted Encumbrances, shall attach to the Net Proceeds from the sale of the Lands with the same priority as they had with respect to the Lands immediately prior to the sale, as if the Lands had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale;


- [13] For greater certainty, **ORDERS** that the Net Proceeds shall stand in the place and stead of the Lands and any holder of the Encumbrances ("**Encumbrancers**") may assert their claims against the Net Proceeds with the same right and priority that the Encumbrancers had against the Lands immediately prior to this Order, as if the Lands had not been sold and had remained in the possession and control of Homco 52;
- [14] **AUTHORIZES** the Monitor to pay to HII, out of the Net Proceeds, the outstanding "H52 Advances" secured by the "Homco 52 Funding Charge" granted by this Court as part of the *Order Granting Funding Charges (Homco 52 and Homco 88)* rendered on November 8, 2012;
- [15] **PRAYS ACT** of the fact that the remaining Net Proceeds of the Homco 52 Transaction, after payment of the outstanding "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;
- [16] **DECLARES** that this Order constitutes the only authorization required to proceed with the Homco 52 Transaction and the Homco 52 Conveyance and, for greater certainty, **DECLARES** that the parties involved in the Homco 52 Transaction are exempted from requiring or obtaining any formal valuation or authorization that may have been required from any person or authority whatsoever;
- [17] **DECLARES** that this Order shall have full force and effect in all of the provinces and territories in Canada;
- [18] **REQUESTS** the aid and recognition of any Court or administrative body in Canada (including, without limitation, the Alberta Court of Queen's Bench), or elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of this Order;
- [19] **ORDERS** the provisional execution of this order notwithstanding appeal and without the necessity of furnishing any security;

**THE WHOLE** without costs.



LOUIS J. GOUIN, J.S.C.

**COPIE CONFORME**

  
**Greffier adjoint**

**SCHEDULE I****PERMITTED ENCUMBRANCES****General Encumbrances:**

1. the exceptions and qualifications contained in Section 61(1) of the *Land Titles Act* (Alberta);
2. any subsisting reservations, limitations, provisos, conditions or exceptions, including royalties, contained in the original grant from the Crown of any land or interests therein;
3. minor encroachments onto or from neighbouring lands which do not materially impact the marketability of the Land;
4. encumbrances for real property taxes (which term includes charges, rates and assessments, and other governmental charges or levies) or charges for electricity, power, gas, water and other services and utilities in connection with the Lands;
5. registered easements, rights-of-way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any Governmental Authority or public utility; or any registered subdivision, development, servicing, site plan or other similar agreement with any Governmental Authority or public utility;
6. facility sharing, cost sharing, tunnel, pedway, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or Governmental Authorities;
7. restrictive covenants, private deed restrictions, and other similar land use controls or agreements;
8. any rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or the Province of Alberta;
9. the provisions of applicable laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning; and
10. any title defects, irregularities, easements, reservations, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Lands

**Specific Encumbrances:**

1. Zoning regulations registered on October 20, 1977 as instrument number 771 147 064;
2. Utility right of way in favour of ATCO Gas and Pipelines Ltd. registered on June 27, 1991 as instrument number 911 137 688;
3. Utility right of way in favour of AGT Limited registered on October 29, 1991 as instrument number 911 244 547;
4. Caveat re: Roadway in favour of Her Majesty the Queen in right of Alberta as represented by the Minister of Transportation registered on July 9, 2004 as instrument number 041 257 458.