

**THIS SECOND SUPPLEMENTAL INDENTURE** made as of the 30<sup>th</sup> day of November, 2004,

BETWEEN:

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

- and -

**STICHTING HOMBURG MORTGAGE BOND,**  
a foundation incorporated under the laws of The Netherlands  
(hereinafter called the "Trustee"),

**WHEREAS** in and by an indenture (hereinafter called the "Principal Indenture") made as of the 15<sup>th</sup> day of December, 2002 between the Corporation and the Trustee, provision was made for the issuance of bonds of the Corporation (hereinafter sometimes called "Bonds") to an unlimited principal amount;

**AND WHEREAS** pursuant to the provisions of the Principal Indenture, the Corporation issued Bonds to the aggregate principal amount of \$20,000,000 in lawful money of Canada or the equivalent thereof in Euros designated as Homburg Mortgage Bond 1 Bonds (hereinafter called the "Series 1 Bonds"), of which Series 1 Bonds in the aggregate principal amount of \$20,000,000 in lawful money of Canada or the equivalent thereof in Euros are now outstanding;

**AND WHEREAS** pursuant to the provisions of a Supplemental Indenture dated as of April 25, 2003 (hereinafter called the "First Supplement"), the Corporation issued Bonds to the aggregate principal amount of €30,000,000 designated as Homburg Mortgage Bond 2 Bonds (hereinafter called the "Series 2 Bonds"), of which Series 2 Bonds in the aggregate principal amount of €30,000,000 are now outstanding;

**AND WHEREAS** the Corporation is desirous of issuing under the provisions of the Principal Indenture, as a different series, additional Bonds in the aggregate principal amount of €20,010,000:

**AND WHEREAS** all necessary resolutions have been passed by the Corporation authorizing the issuance of and specifying the particulars and provisions to be expressed in such additional Bonds and authorizing this Second Supplemental Indenture;

**AND WHEREAS** the Principal Indenture as supplemented by the First Supplement and this Second Supplemental Indenture is hereinafter sometimes called the "Trust Deed";

**AND WHEREAS** the foregoing recitals are made as representations and statements of fact by the Corporation and not by the Trustee;

**NOW THEREFORE THIS SECOND SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby agreed and declared as follows:

#### SERIES 4 BONDS

1. The additional Bonds to be issued hereunder shall consist of €20,010,000 principal amount of Bonds designated as Homburg Mortgage Bond 4 Bonds (hereinafter called the "Series 4 Bonds"); shall be dated as of the 1<sup>st</sup> day of December, 2004; shall mature on the 30<sup>th</sup> day of November, 2011; shall bear interest at the rate of 7.5% per annum from the 1<sup>st</sup> day of December, 2004, payable half-yearly on the 30<sup>th</sup> day of June and the 31<sup>st</sup> day of December in each year after as well as before maturity and after as well as before default, with interest on overdue interest at the said rate. The principal of the Series 4 Bonds, interest thereon and premium (if any) shall be payable in Euros at ABN AMRO Bank at its Amersfoort, The Netherlands branch. The Series 4 Bonds shall be issued as fully registered Bonds in denominations of €15,000. Series 4 Bonds of any of the denominations and forms herein authorized may be exchanged for other Bonds of the same series as provided in Section 2.12 of the Principal Indenture.

The Series 4 Bonds and the certificate of the Trustee to be endorsed on the Series 4 Bonds shall be substantially in the form set forth in Appendix A hereto with such appropriate insertions, omissions, substitutions and variations as may be required or permitted under the terms of the Trust Deed.

#### REDEMPTION AND PURCHASE OF SERIES 4 BONDS

2. The Corporation, while not in default under the Trust Deed and subject as hereinafter provided, shall have the right at its option at any time to redeem before maturity all of the outstanding Series 4 Bonds or from time to time to redeem before maturity any of the outstanding Series 4 Bonds (in the manner provided and in accordance with and subject to the provisions of Section 4.1 and Sections 4.6 to 4.12 inclusive of the Principal Indenture and the provisions hereinafter set forth, provided that if the provisions of this Second Supplemental Indenture and the Principal Indenture conflict with respect to the redemption of Series 4 Bonds, the provisions of this Second Supplemental Indenture shall prevail) at 100% of the principal amount thereof, together in all cases with interest on such principal amount of Series 4 Bonds to be redeemed accrued to the date specified for redemption (the price, including accrued interest, at which Series 4 Bonds may be redeemed at any given time pursuant to this Section 2 being hereinafter called the "redemption price"); provided always that the Corporation shall not, and the Corporation hereby covenants with the Trustee that it will not, call Series 4 Bonds for redemption in whole or in part on or before the 1<sup>st</sup> day of December, 2009.

3. The Corporation may redeem all or any of the outstanding Series 4 Bonds as follows:

(a) the Corporation shall send a notice (the "Redemption Notice") to all Series 4 Bond bondholders by letter or circular sent postage prepaid, addressed to each bondholder at the last

address appearing upon one of the registers hereinbefore mentioned, and mailed not less than 45 and not more than 70 days prior to the date specified for redemption (the "Redemption Date"), provided always that the accidental omission to mail any such letter or circular to or the non-receipt of any such letter or circular by any such holder or holders shall not invalidate or otherwise prejudicially affect the redemption of such Series 4 Bonds;

(b) the Redemption Notice shall:

- (i) state the amount of Series 4 Bonds which the Corporation shall redeem on the Redemption Date (the "Redemption Amount");
- (ii) state that each Series 4 Bond bondholder must elect to either retain his Series 4 Bond or to have his Series 4 Bond redeemed by the Corporation by returning an Election Form (as hereinafter defined) not less than 30 days prior to the Redemption Date;
- (iii) provide an election form on which the Series 4 Bond bondholder may elect to either "retain Series 4 Bond" or "have Series 4 Bond redeemed by Corporation" (the "Election Form"); and
- (iv) include a postage prepaid envelope addressed to the Corporation;

(c) if the Corporation receives Election Forms indicating Series 4 Bond bondholders who have elected to have their Series 4 Bonds redeemed by the Corporation which total an amount of Series 4 Bonds which is:

- (i) equal to or in excess of the Redemption Amount, the Corporation shall redeem the Series 4 Bonds of those bondholders who elected to have the Corporation redeem their Series 4 Bonds on a pro rata basis in an amount equal to the Redemption Amount; or
- (ii) less than the Redemption Amount, the Corporation shall (A) redeem all of the Series 4 Bonds of those bondholders who elected to have the Corporation redeem their Series 4 Bonds in their Election Notices; and (B) redeem the Series 4 Bonds of those bondholders who have not elected to have the Corporation redeem their Series 4 Bonds in an amount equal to the balance of the Redemption Amount on a pro rata basis, such that the total amount redeemed is equal to the Redemption Amount;

provided that the Corporation shall determine the course of action it shall take under this Section 3(c) not more than 20 days and not less than 12 days prior to the Redemption Date, and further provided that if the Election Form of a Series 4 Bond bondholder has not been received by the date which is not less than 30 days prior to the Redemption Date, such bondholder shall be deemed to have elected not to have the Corporation redeem its Series 4 Bonds.

4. Where Series 4 Bonds are to be redeemed on a pro rata basis, the Series 4 Bonds so to be redeemed shall be selected by the Trustee on a pro rata basis to the nearest multiple of €1,000 in accordance with the principal amount of Series 4 Bonds registered in the name of each holder.

5. At any time when the Corporation is not in default under the Trust Deed and would be entitled to redeem Series 4 Bonds under the foregoing provisions of this Second Supplemental Indenture, the Corporation may purchase Series 4 Bonds in the market or by private contract, provided that the prices at which such Series 4 Bonds may be purchased shall not exceed the redemption price (including accrued interest) at which such Series 4 Bonds could, at the time of purchase, be redeemed by the Corporation, plus costs of purchase.

6. Series 4 Bonds so redeemed or purchased as aforesaid shall be forthwith delivered to the Trustee for cancellation and shall be cancelled and destroyed and no Bonds shall be issued in substitution therefor except as permitted by Section 4.4 of the Principal Indenture. If required by the Corporation, the Trustee shall from time to time furnish to it a destruction certificate setting out the numbers and denominations of the Series 4 Bonds so destroyed.

## MORTGAGE AND CHARGE

### SPECIFIC CHARGE

7. In consideration of the premises and of €1.00 paid by the Trustee (the receipt and sufficiency of which is hereby acknowledged) and to secure the due payment of all principal moneys, interest and premium, if any, on the Series 4 Bonds from time to time issued and certified hereunder and all of the other moneys for the time being and from time to time owing on the Series 4 Bonds, the Corporation hereby assigns and transfers the assets outlined in Appendix B attached hereto (the “Homburg Mortgage Bond 4 Collateral”) to the Trustee to be held by the Trustee on behalf of the holders of the Series 4 Bonds in accordance with the terms hereof. The Corporation hereby covenants that it will not create, issue, incur, assume or allow to exist any mortgage, hypothec, charge, pledge, lien, security interest or other encumbrance upon the Homburg Mortgage Bond 4 Collateral or any part thereof ranking or purporting to rank in priority to or *pari passu* with the assignment and transfer hereby created.

The Trustee shall be the joint and several creditor (“*hoofdelijk schuldeiser*”) together with each Series 4 Bond bondholder of each obligation of the Corporation towards any such Series 4 Bond bondholder hereunder and accordingly, the Trustee will have its own independent right to demand performance by the Corporation of such obligation and the Trustee will hold the Homburg Mortgage Bond 4 Collateral to secure its rights as joint and several creditor of such obligations. However, any discharge of the Corporation for any such obligation to the Trustee or a Series 4 Bond bondholder shall to the same extent discharge the Corporation *vis-à-vis* the other party, and a Series 4 Bond bondholder and the Trustee shall not by virtue of this clause be entitled to pursue the Corporation for the same obligation.

Without limiting or affecting the Trustee’s rights against the Corporation (whether under this clause or under any other provision of the Second Supplemental Indenture), the Trustee agrees with each Series 4 Bond bondholder that, subject to what is set out in the next sentence,

any amounts that the Trustee receives in the exercise of its rights as a joint and several creditor of the Series 4 Bond bondholders will be received by it for the benefit of, and with the purpose of passing it on to, the Series 4 Bond bondholders. However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Trustee's right to act in order to protect or preserve rights hereunder, as contemplated by the provisions of this Second Supplemental Indenture (or to perform any act reasonably incidental to any of the foregoing).

#### HABENDUM

8. To have and to hold the Homburg Mortgage Bond 4 Collateral and all the rights hereby conferred unto the Trustee, its successors and assigns, forever, but in trust, nevertheless, for the uses and purposes and with the powers and authorities and subject to the terms and conditions mentioned and set forth in this Second Supplemental Indenture.

#### LIMITED RECOURSE

9. Neither the Trustee nor the holders of the Series 4 Bonds shall have any claim whatsoever against any of the assets of the Corporation other than the Homburg Mortgage Bond 4 Collateral and the recourse of the Trustee and the holders of the Series 4 Bonds against the Corporation in respect of the payment of all principal, premium, if any, interest and any other amounts owing under the Series 4 Bonds shall be limited to the amount, if any, recoverable in respect of the Homburg Mortgage Bond 4 Collateral.

#### BONDS SEPARATELY SECURED

10. All of the Series 4 Bonds shall be equally and rateably entitled to the benefits of the Homburg Mortgage Bond 4 Collateral.

#### SECURITY EFFECTIVE NOTWITHSTANDING DATE OF ADVANCE

11. The mortgages and charges hereby created or provided to be created shall be and shall be deemed to be effective and shall take effect whether the moneys hereby secured or any part thereof be advanced before or after or at the same time as the issue of any of the Bonds intended to be secured thereby or before or after or upon the date of the execution of this Second Supplemental Indenture.

#### TITLE AND REGISTRATION

12. The Corporation hereby covenants with the Trustee:

(a) that it will forthwith and from time to time do, execute, acknowledge and deliver all acts, deeds, trust deeds of hypothec, mortgage and pledge, documents, instruments, assurances and things which, in the opinion of Counsel or of the Trustee, are necessary or advisable to assign the Homburg Mortgage Bond 4 Collateral to the Trustee and to enable the Trustee to register the charges herein all public offices of registration to preserve, protect and perfect the security herein and its priority; and

(b) that, after the security hereby created shall have become enforceable and the Trustee shall have determined or become bound to enforce the same, it will from time to time execute and do all such assurances and things as the Trustee may reasonably require for facilitating the realization of the Homburg Mortgage Bond 4 Collateral and for exercising all the powers, authorities and discretions hereby conferred upon the Trustee and for confirming to any purchaser of any of the Homburg Mortgage Bond 4 Collateral, whether sold by the Trustee hereunder or by judicial proceedings, the title to the property so sold, and that it will execute all notices and directions as the Trustee may consider expedient.

#### PARTIAL DEFEASANCE

13. Upon payment to the holders of the Series 4 Bonds of the principal thereof, premium, if any, and interest thereon (including interest on amounts in default), the Homburg Mortgage Bond 4 Collateral shall revert to and revest in the Corporation and the Trustee shall execute such documents and instruments as the Corporation may reasonably require in order to evidence such partial release.

#### GUARANTEE BY HOMBURG INVEST INC.

14. The obligations of the Corporation under the Bonds are guaranteed pursuant to a guarantee (the "LP Guarantee") substantially in the form set out in Appendix D of the Principal Indenture (the "Guarantee Agreement") executed by the Guarantor. If an Event of Default pursuant to Section 13.1 of the Principal Indenture shall have occurred and is continuing, the Trustee shall forthwith, and in any event not less than two (2) Business Days following such Event of Default, provide notice to the Guarantor of such Event of Default and shall demand payment from the Guarantor in respect of any such Event of Default.

#### GUARANTEE BY LIMITED PARTNERSHIP

15. The obligations of the Corporation under the Series 4 Bonds are guaranteed pursuant to a guarantee (the "LP Guarantee") substantially in the form set out in Appendix C of this Second Supplemental Indenture executed by Homco Realty Fund (52) Limited Partnership (hereinafter called the "Limited Partnership"). If an Event of Default pursuant to Section 13.1 of the Principal Indenture in relation to the Series 4 Bonds shall have occurred and is continuing, the Trustee shall forthwith, and in any event not less than two (2) Business Days following such Event of Default, provide notice to the Limited Partnership of such Event of Default and shall demand payment from the Limited Partnership in respect of any such Event of Default.

As collateral security for its obligations under the LP Guarantee, the Limited Partnership has agreed to grant a collateral mortgage (the "Collateral Mortgage") in the principal amount of that amount of Canadian Dollars which is equivalent to €20,010,000 in favour of the Trustee mortgaging its interest in the lands and premises known as "Homburg Springs", consisting of 141 acres located at #566 M.D. Rocky View, Alberta (the "Homburg Springs Property"). The Collateral Mortgage shall also contain a provision automatically postponing the priority of the charge contained in the Collateral Mortgage to all advances made by the present holder of the

first mortgage on the Homburg Springs Property or any successor first mortgage lender in respect of the Homburg Springs Property up to a maximum principal amount of Canadian \$20,000,000.

The Trustee may from time to time in its absolute discretion, and without the requirement to obtain the consent of the holders of any of the Bonds (including, without limitation, the holders of the Series 4 Bonds), release and discharge any part of the Homburg Springs Property from the charge contained in the Collateral Mortgage to permit the sale of such property by the Limited Partnership in the ordinary course of business, including to HII or to an entity controlled by HII, provided that:

- (A) if there is a prior ranking first mortgage on the Homburg Springs Property to an arm's length party, the proceeds of sale are disbursed
  - (i) to such first mortgage holder in an amount required for the first mortgage holder to grant a partial release of their interest in such property as negotiated between the first mortgage holder and the Trustee, and
  - (ii) after payment to the first mortgage holder as hereinbefore provided, the amount which is equal to the Series 4 Bond bondholder's debt divided by the first mortgage holder's debt multiplied by the payment to the first mortgage holder is disbursed to the trust account maintained by the Limited Partnership for the benefit of the Series 4 Bond bondholders (the "Limited Partnership Trust Account") and the remaining proceeds of sale are disbursed to the Limited Partnership, for use by the Limited Partnership in its day-to-day operations;
- (B) if there is no prior ranking first mortgage on the Homburg Springs Property to an arm's length party, two-thirds (2/3) of the proceeds of sale are disbursed to the Limited Partnership Trust Account and one-third (1/3) of the proceeds of sale are disbursed to the Limited Partnership, for use by the Limited Partnership in its day-to-day operations.

The funds in the Limited Partnership Trust Account may be used by the Limited Partnership to:

- (a) purchase replacement real property from an arm's length party, provided that the Trustee consents to such purchase, or
- (b) loaned to HII for the purchase of real property by HII or for use in the day-to-day operations of HII, provided that HII provides a collateral mortgage to the Limited Partnership over real property belonging to HII in an amount which is not more than eighty percent (80%) of the appraised value of such property less the amount of any prior mortgages that may be outstanding on such property. The maximum amount that may be loaned to HII under this formula is ninety percent (90%) of the determined maximum amount.

SPECIAL COVENANTS APPLICABLE WHILE  
SERIES 4 BONDS ARE OUTSTANDING

16. The Corporation hereby covenants that so long as any of the Series 4 Bonds remain outstanding, the Corporation will not create, issue, incur, assume or allow to exist any mortgage, hypothec, pledge, charge, lien, encumbrance, security interest or other security, whether fixed or floating, on the Homburg Mortgage Bond 4 Collateral ranking in priority to or pari passu with the assignment and transfer hereby created.

FURTHER ASSURANCE

17. The mortgages and charges created by this Supplemental Indenture are by way of further assurance to the Trustee and are not in substitution for any similar provision contained in the Principal Indenture.

INDENTURE SUPPLEMENTAL TO PRINCIPAL INDENTURE

18. This Second Supplemental Indenture is supplemental to the Principal Indenture and the Principal Indenture and the Bonds issued thereunder shall henceforth be read in conjunction with this Second Supplemental Indenture and the Principal Indenture and this Second Supplemental Indenture shall henceforth have effect so far as practicable as if all the provisions of the Principal Indenture and of this Second Supplemental Indenture were contained in the one instrument and, unless otherwise herein expressly provided or unless there is something in the subject matter or context hereof inconsistent therewith, the expressions used in this Second Supplemental Indenture and in the Series 4 Bonds and not otherwise defined shall have the same meaning as is ascribed to corresponding expressions in the Principal Indenture.

ACCEPTANCE OF TRUST BY TRUSTEE

19. The Trustee hereby accepts the trusts in this Second Supplemental Indenture declared and created and agrees to perform the same upon the terms and conditions hereinbefore set out, but subject to the provisions of the Principal Indenture.

EXECUTION AND FORMAL DATE

20. This Second Supplemental Indenture may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. For the purpose of convenience, this Second Supplemental Indenture may be referred to as bearing formal date the 30<sup>th</sup> day of November, 2004, irrespective of the actual date of execution hereof.

Appendices A, B and C to this Second Supplemental Indenture shall be deemed to be incorporated herein and to form part hereof.

**IN WITNESS WHEREOF** this Second Supplemental Indenture has been executed by the parties hereto under their respective corporate seals.

**HOMBURG SHARECO INC.**

By: \_\_\_\_\_

**STICHTING HOMBURG MORTGAGE BOND**

By: \_\_\_\_\_

[697478.4]

## APPENDIX A

### Form of Homburg Mortgage Bond 4

1.1 The Homburg Mortgage Bond 4 bonds, the certificate of the Trustee and the registration panel shall be in both the English language and the Dutch language, in the forms provided in Sections 1.2 and 1.3.

1.2 The English language portions of the text of the Homburg Mortgage Bond 4 bonds, the certificate of the Trustee and the registration panel shall be substantially as follows:

No.

€15,000.

#### **HOMBURG SHARECO INC.**

(Incorporated under the *Companies Act* (Nova Scotia))

Homburg Mortgage Bond 4

Due: November 30, 2011.

HOMBURG SHARECO INC. (hereinafter called the "Corporation") for value received hereby acknowledges itself indebted and promises to pay to the registered holder hereof on November 30, 2011 or on such earlier date as the principal amount hereof may become due in accordance with the provisions of the Trust Indenture hereinafter mentioned, the principal sum of FIFTEEN THOUSAND EUROS, together with such further amount, if any, as may be payable by way of premium, on presentation and surrender of this Bond at ABN AMRO Bank at its Amersfoort, The Netherlands branch at the holder's option, and to pay interest on the principal amount hereof from December 1, 2004, or from the last interest payment date to which interest has been paid or made available for payment on the outstanding Bonds, whichever is later, at any of the said places, in like money half-yearly on June 30<sup>th</sup> and December 31<sup>st</sup> in each year, at the rate of 7.5% per annum (unless this Bond shall have been previously redeemed in accordance with the provisions of the Trust Indenture); and should the Corporation at any time make default in the payment of any principal, premium or interest, to pay interest on the amount in default at the same rate after as well as before maturity, default or judgement, in like money, at any of the said places and half-yearly on the same dates. Interest hereon shall be payable (except at maturity or on redemption when interest may at the option of the Corporation be paid on surrender hereof) by cheque or wire transfer to the registered holder hereof as provided in the Trust Indenture and the mailing of such cheque or wire transfer shall satisfy and discharge the liability for interest on this Bond to the extent of the sum represented thereby plus the amount of any tax which the Corporation is required to and does withhold therefrom unless such cheque be not paid on presentation.

This Bond is one of a series designated as Homburg Mortgage Bond 4 bonds (herein sometimes called the "Homburg Mortgage Bond 4 bonds") of the Corporation

issued and to be issued under and secured by a Second Supplemental Indenture dated as of November 30, 2004, being supplemental to a Trust Indenture (herein collectively called the "Trust Indenture") dated as of December 15, 2002, both made between the Corporation and Stichting Homburg Mortgage Bond (hereinafter called the "Trustee"), as Trustee.

The aggregate principal amount of Bonds which may be issued under the Trust Indenture is (subject to the restrictions, conditions and limitations set out in the Trust Indenture) unlimited and may consist of several series payable in different currencies, bearing different rates of interest and varying as to the terms on which they may be redeemed and otherwise as specified in the Trust Indenture. Bonds which have been authorized for issue are:

- a. \$20,000,000 Homburg Mortgage Bond Series 1 bonds in the aggregate principal amount of \$20,000,000 in lawful money of Canada or the equivalent thereof in Euros, maturing on December 15, 2009;
- b. €30,000,000 aggregate principal amount of Homburg Mortgage Bond 2 bonds maturing on April 25, 2010;
- c. €20,010,000 aggregate principal amount of Homburg Mortgage Bond 4 bonds maturing on November 30, 2011 (of which this is one).

This Homburg Mortgage Bond 4 bond and all other Homburg Mortgage Bond 4 bonds now or hereafter certified and issued under the Trust Indenture rank *pari passu* and are secured equally and rateably by the Homburg Mortgage Bond 4 Collateral (as defined in the Trust Indenture) and the recourse of the holders of the Homburg Mortgage Bond 2 bonds against the Corporation is limited to the amount, if any, recoverable in respect of the Homburg Mortgage Bond 4 Collateral. Reference is hereby made to the Trust Indenture for particulars of the nature and extent of the security created thereby, the rights of the holders of the Bonds and of the Corporation and of the Trustee in respect thereof and the terms and conditions upon which the Bonds are issued, secured and held, to all of which the holder of this Bond by acceptance hereof assents.

The Bonds are issuable in denominations of €15,000.

This Bond is subject to redemption in part (such part being €1,000 or a multiple thereof) and notation of such partial redemption may be made on the reverse hereof all as more fully provided in the Trust Indenture. Redemption of the Homburg Mortgage Bond 4 bonds involves a process wherein notice of the redemption is given to the bondholders and an election is provided to bondholders such that bondholders may indicate their preference as to whether they wish to retain or have their Homburg Mortgage Bond 4 bonds redeemed by the Corporation. The election made by the bondholders may or may not be followed by the Corporation, all as more fully provided in the Trust Indenture.

Except as hereinafter provided, the Homburg Mortgage Bond 4 bonds are redeemable at any time on or after December 1, 2009 and prior to maturity, in whole at any time or in part from time to time at the option of the Corporation, on not less than 45 and not more than 70 days notice at a redemption price equal to 100% of the principal

amount thereof, together with accrued and unpaid interest to the date fixed for redemption.

The principal amount hereof may also become or be declared due before stated maturity in the events, in the manner and with the effect provided in the Trust Indenture.

The Trust Indenture contains provisions making binding upon all holders of Bonds outstanding thereunder resolutions passed at meetings of such holders held in accordance with such provisions and instruments in writing signed by the holders of a specified majority of Bonds outstanding.

Upon presentation at the principal office of the Trustee at Soest, The Netherlands, subject to the provisions of the Trust Indenture and upon compliance with the reasonable requirements of the Trustee, Bonds may be transferred by the registered holder thereof or his executors, administrators or other legal representatives or his or their attorney duly appointed in writing but no such transfer of a Bond shall be valid unless it has been duly noted thereon.

This Bond shall not become obligatory for any purpose until it shall have been certified by the Trustee for the time being under the Trust Indenture.

IN WITNESS WHEREOF HOMBURG SHARECO INC. has caused its corporate seal to be hereunto affixed and this Bond to be signed by its President and its Secretary as of November 30, 2004.

**HOMBURG SHARECO INC.**

by \_\_\_\_\_ C.S.  
\*

TRUSTEE'S CERTIFICATE

This Bond is one of the Homburg Mortgage Bond 4 bonds referred to in the Trust Indenture within mentioned.

**STICHTING HOMBURG  
MORTGAGE BOND**

By: \_\_\_\_\_

REGISTRATION PANEL

(No writing hereon except by the Trustee or other Registrar)

Date and Place of Registration	In Whose Name Registered	Signature of Trustee or Other Registrar
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1.3 The Dutch language portions of the text of the Homburg Mortgage Bond 4 bonds, the certificate of the Trustee and the registration panel shall be substantially as follows:

[insert Dutch translation of Homburg Mortgage Bond 4 bond form]

## **APPENDIX B**

### **The Homburg Mortgage Bond 4 Collateral consists of:**

An Assignment to the Trustee by the Corporation of a Pledge it has received from Homburg Invest Inc., such Pledge being a Pledge by Homburg Invest Inc. of all of its Limited Partnership Units in Homco Realty Fund (52) Limited Partnership.

## APPENDIX C

### GUARANTEE AGREEMENT

**GUARANTEE AGREEMENT** dated as of November 30, 2004, made by Homco Realty Fund (52) Limited Partnership (herein called the “Guarantor”) in favor of Stichting Homburg Mortgage Bond (the “Trustee”), as trustee under that certain Trust Indenture dated as of December 15, 2002 (the “Principal Indenture”), as supplemented by that certain Supplemental Indenture dated as of April 25, 2003 (the “First Supplement”) and as supplemented by that certain Second Supplemental Indenture dated November 30, 2004 (the “Second Supplement”) (the Principal Indenture, the First Supplement and the Second Supplement being collectively referred to as the “Agreement”), each between Homburg Shareco Inc., a Nova Scotia company (the “Company”) and the Trustee pursuant to which the Company has today issued Homburg Mortgage Bond 4 bonds (the “Series 4 Bonds”).

**WHEREAS**, the Second Supplement provides that the Guarantor shall guarantee the obligations of the Company to the Trustee on behalf of the Series 4 Bond bondholders in respect of the Series 4 Bonds;

**NOW THEREFORE**, in consideration of the premises, the Guarantor hereby agrees as follows:

**SECTION 1. Defined Terms.** The following terms, as used herein, shall have the following meanings:

(a) **“Business Day”** means any day of the year other than a Saturday, Sunday or other day on which banks are required or authorized to close in Halifax, Nova Scotia.

(b) **“Governmental Entity”** means any (i) federal, provincial, state, municipal, local or other government, governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign, or (ii) any subdivision or authority of any of the foregoing.

(c) **“Holders”** means the Persons entered in the registers for the Series 4 Bonds as holders thereof, such registers being maintained pursuant to the Agreement.

(d) **“Person”** means any individual, corporation, partnership, association, trust, limited liability company or any other entity or organization.

**SECTION 2. Guarantee.** The Guarantor hereby unconditionally and irrevocably guarantees, as principal and not merely as surety, the full and punctual payment when due (whether at stated maturity, upon acceleration or otherwise) of the principal, premium, if any, Additional Amounts (as defined herein), if any, and interest on each Series 4 Bond and all other amounts payable by the Company under the Agreement in respect of the Series 4 Bonds; provided, however, that the payment of interest on overdue installments of interest is guaranteed only to the extent permitted by law (such amounts, the **“Guaranteed Obligations”**). All payments to be made by the

Guarantor pursuant to this Section 2 shall be made on or before five (5) business days following receipt of demand therefor by the Trustee or, to the extent permitted by Section 14 hereof, any Holder.

**SECTION 3. Guarantee Absolute.** The Guarantor agrees that the guarantee contained in this Guarantee Agreement is a guarantee of payment and not of collection or collectibility, and the Guarantor's obligation to pay the Guaranteed Obligations hereunder shall be primary, absolute and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(i) any extension of the time or times for the payment of the Guaranteed Obligations, renewal, settlement, compromise, waiver or release in respect of any obligation of the Company under the Agreement or any Series 4 Bond, by operation of law or otherwise;

(ii) any modification or amendment of or supplement to the Agreement or any Series 4 Bond;

(iii) any change in the corporate existence, structure or ownership of the Company, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Company or its assets or any resulting release or discharge of any obligation of the Company contained in the Agreement or any Series 4 Bond;

(iv) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Company, the Trustee, any Holder or any other Person, whether in connection herewith or any unrelated transactions;

(v) any invalidity, illegality, irregularity or unenforceability for any reason of the Agreement or any Series 4 Bond or in any part thereof as regards the Company, or any provision of applicable law or regulation purporting to prohibit the payment by the Company of the principal of or interest on any Series 4 Bond or any other amount payable by the Company under the Agreement;

(vi) any other act or omission to act or delay of any kind by the Company, the Trustee, any Holder or any other Person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge or defence of the Guarantor's obligations hereunder;

(vii) any contest by the Company or any Person as to the amount of the Guaranteed Obligations;

(viii) the absence of any action to enforce the Agreement or the Series 4 Bonds;

(ix) the recovery of any judgment against the Company or any action to enforce the same;

(x) any dealings with the security which the Trustee or any Holder holds or may hold pursuant to the terms and conditions of the Agreement, including the taking, giving up or exchange of securities, the variation or realization thereof and the granting of releases and discharges, including, without limitation, the release of any of the Homburg Springs Property pursuant to Section 15 of the Second Supplement; or

(xi) any invalidity, non-perfection or unenforceability of any security held by the Trustee or any Holder in support of the Guaranteed Obligations, or any irregularity or defect in the manner or procedure by which the Trustee or any Holder realizes on such security.

**SECTION 4. Representations and Warranties.** The Guarantor hereby represents and warrants as of the date hereof that:

**Authorization; No Contravention.** The execution, delivery and performance by the Guarantor of this Guarantee Agreement (i) are within its powers, have been duly authorized by all necessary corporate action, require no action by or in respect of, or filing with, any governmental body, agency or official, and do not contravene its constituent documents, and (ii) do not contravene, or constitute a default under, any provision of applicable law or regulation, as amended from time to time, or of any judgment, injunction, order, decree, agreement or other instrument binding upon the Guarantor or result in or require the creation or imposition of any lien on any asset of the Guarantor other than any contravention, default or lien which would not have a material adverse effect on the ability of the Guarantor to perform its obligations under this Guarantee Agreement.

**Binding Effect.** This Guarantee Agreement constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as such enforceability may be limited by the effect of any bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

**Litigation.** There is no action, suit or proceeding pending against the Guarantor or, to the knowledge of the Guarantor, threatened against the Guarantor before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision (i) which would have a material adverse effect on the ability of the Guarantor to perform its obligations under this Guarantee Agreement, or (ii) which in any manner draws into question the enforceability or validity of this Guarantee Agreement.

**SECTION 5. Manner of Payment.** All payments to be made by the Guarantor hereunder shall be made to the Trustee for application in accordance with Section 13.10 of the Principal Indenture.

**SECTION 6. Enforcement of Guarantee.** The Guarantor agrees that the Trustee or any Holder (but subject always to the provisions of Section 12 hereof) need

not seek or exhaust their recourse against the Company or any other Person or realize on any security they may hold in respect of the Guaranteed Obligations before being entitled to payment under this Guarantee Agreement.

**SECTION 7. Waiver.** The Guarantor hereby irrevocably waives promptness, diligence, acceptance hereof, presentment, demand, protest and any and all other notice not provided for herein and any requirement that at any time the Trustee, any Holder (but subject always to the provisions of Section 12 hereof) or any other Person exhaust any right or take any action against the Company or any other Person and any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge, release or defense of the Guarantor or that might otherwise limit recourse against the Guarantor.

**SECTION 8. Waiver of Subrogation.** Until payment in full of the Guaranteed Obligations, the Guarantor irrevocably waives any and all rights to which it may be entitled, by operation of law or otherwise, upon making any payment hereunder to be subrogated to the rights of the payee against the Company with respect to such payment or otherwise to be reimbursed, indemnified or exonerated by the Company in respect thereof.

**SECTION 9. Notices.** All notices and other communications provided for or permitted hereunder shall be made as follows:

If to the Guarantor: Homco Realty Fund (52) Limited Partnership

c/o Suite 200, 11 Akerley Boulevard  
Dartmouth, Nova Scotia, Canada B3B 1V1  
Attention:  
Fax No.: (902) 469-6776

If to the Company, the Trustee or any Holder, as specified in Article 17 of the Principal Indenture.

**SECTION 10. No Waiver; Remedies.** No failure on the part of the Trustee or any Holder (but subject always to the provisions of Section 13 hereof) to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**SECTION 11. Continuing Guarantee; Reinstatement in Certain Circumstances.** The guarantee contained in this Guarantee Agreement is a continuing guarantee and the Guarantor's obligations hereunder shall (i) remain in full force and effect until the indefeasible payment in full of the Guaranteed Obligations, (ii) be binding upon the Guarantor and its successors and assigns, and (iii) enure to the benefit of and be enforceable by the Trustee and, subject always to the provisions of Section 13 hereof, any Holder and their respective successors and permitted assigns; provided, however, that this Guarantee Agreement shall not be construed to create any right in any

Person other than the Trustee and, subject always to the provisions of Section 13 hereof, any Holder and their respective successors and permitted assigns or to be a contract in whole or in part for the benefit of any Person other than the Trustee and, subject to the provisions of Section 13 hereof, the Holders and their respective successors and permitted assigns. If at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of the Company or otherwise, the obligations of the Guarantor hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

**SECTION 12. Stay of Acceleration.** If acceleration of the time for payment of any Guaranteed Obligation is stayed upon the insolvency, bankruptcy or reorganization of the Company, all such amounts otherwise subject to acceleration under the terms of the Agreement shall nonetheless be payable by the Guarantor hereunder to the Trustee or, to the extent permitted by Section 13 hereof, the Holders forthwith on demand.

**SECTION 13. Holders May Not Enforce.** No Holder shall have the right to institute any suit, action or proceeding against the Guarantor for any default hereunder except in the manner and subject to the conditions, *mutatis mutandis*, set forth in Section 13.5 of the Principal Indenture, it being understood and intended that no one or more of the Holders shall have any right in any manner whatsoever to enforce any right hereunder or pursuant hereto by any action except as aforesaid and that all powers and trusts hereunder shall be exercised and all proceedings at law or in equity shall be instituted, had and maintained by the Trustee, except as aforesaid.

**SECTION 14. Expenses.** The Guarantor shall pay, or reimburse, the Trustee and the Holders for all costs and expenses including, without limitation, reasonable attorneys' fees and disbursements reasonably incurred by it in connection with the enforcement of this Guarantee Agreement; provided, however, that the Guarantor shall only be required to pay, or reimburse, for the reasonable attorneys' fees and disbursements for one counsel for the Trustee and the Holders.

**SECTION 15. No Withholding.** Any and all payments made by the Guarantor pursuant to the provisions of this Guarantee Agreement shall be made without withholding or deduction for, or on account of, any current or future taxes imposed by or on behalf of Canada or any political subdivision thereof unless such taxes are required by law or by the administration thereof to be withheld or deducted, in which case the Guarantor shall pay such amounts ("Additional Amounts") as may be necessary, so that the net amount received by the Holder (including Additional Amounts) after such withholding or deduction will not be less than the amount the Holder would have received if such taxes had not been withheld or deducted, provided, however, that no such Additional Amounts will be payable in respect of, among others, the following:

(a) any tax, assessment or other governmental charge which would not have been so imposed but for (i) the existence of any present or former connection between such Holder (or between a fiduciary, settlor or beneficiary of, or a person holding power over, such Holder, if such Holder is an estate or trust or a member or shareholder of such Holder, if such Holder is a partnership or corporation) and Canada, including, without

limitation, such Holder (or such fiduciary, settlor, beneficiary or person holding a power over such Holder) being or having been a citizen or resident or treated as a resident thereof or being or having been engaged in a trade or business or present therein or having had a permanent establishment therein, or (ii) such Holder's current or former status as a personal holding company, a foreign personal holding company, a controlled foreign corporation that is related to the Guarantor through stock ownership, a foreign tax-exempt organization for Canadian tax purposes or as a corporation which accumulates earnings to avoid Canadian income tax;

(b) any tax, assessment or other governmental charge which would not have been so imposed but for the presentation by the Holder of any Series 4 Bond for payment on a date more than 60 days after the date on which such payment became due and payable or the date on which payment thereof is duly provided for, whichever occurs later;

(c) any estate, inheritance, gift, sales, transfer, personal property or any similar tax, assessment or other governmental charge;

(d) any tax, assessment or other governmental charge which is payable otherwise than by deduction or withholding from payments of, or payments under the Guarantee in respect of principal, interest or any Additional Amount on any Series 4 Bond;

(e) any tax, assessment or other governmental charge imposed on interest received by any person holding, actually or constructively, 10% or more of the total combined voting power of all classes of stock of the Guarantor entitled to vote;

(f) any tax, assessment or other governmental charge imposed on a Holder that is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada); or

(g) any tax, assessment or governmental charge imposed by reason of the failure of the Holder or beneficial owner of the Series 4 Bond to deliver, upon reasonable demand by the Guarantor, any form or document that may be required or reasonably requested in order to allow the Guarantor to make a payment to the Holder without any deduction or withholding for or on account of any tax.

The provisions of this Section 15 shall survive the termination of this Guarantee Agreement.

**SECTION 16. Judgment Currency.** If for the purposes of obtaining judgment in any court it is necessary to convert all or any part of the Guaranteed Obligations or any other amount due to the Trustee or any Holder in respect of the Guarantor's obligations under this Guarantee Agreement in any currency (the "Original Currency") into Euros (the "Other Currency"), the Guarantor, to the fullest extent that it may effectively do so, agrees that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Trustee or any Holder, as the case may be, could purchase the Original Currency with the Other Currency on the Business Day preceding that on which final judgment is paid or satisfied.

The obligations of the Guarantor in respect of any sum due in the Original Currency from it to the Trustee or any Holder shall, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Trustee or any Holder of any sum adjudged to be so due in such Other Currency the Trustee or any Holder may, in accordance with its normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Trustee or any Holder in the Original Currency, the Guarantor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Trustee or any Holder against such loss, and if the amount of the Original Currency so purchased exceeds the sum originally due to the Trustee or any Holder in the Original Currency, the Trustee or any Holder, as the case may be, agrees to remit such excess to the Guarantor.

**SECTION 17. Governing Law.** This Guarantee Agreement shall be governed by, and construed in accordance with, the laws of the Province of Nova Scotia, without regard to the choice-of-law principles of Nova Scotia that would require the application of the laws of a jurisdiction other than Nova Scotia.

**SECTION 18. Severability.** Any provision of this Guarantee Agreement which is illegal, invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating the remaining provisions hereof and any such illegality, invalidity, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**SECTION 19. Entire Agreement.** This Guarantee Agreement embodies the entire agreement of the Guarantor with respect to the subject matter hereof and supersedes any prior written or oral agreements and understandings relating to the subject matter hereof and thereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guarantee Agreement to be duly executed and delivered by its officers thereunto duly authorized as of the date first above written.

**HOMCO REALTY FUND (52) LIMITED  
PARTNERSHIP, BY ITS GENERAL  
PARTNER, HOMBURG L.P. MANAGEMENT  
INC.**

By: \_\_\_\_\_

**THIS THIRD SUPPLEMENTAL INDENTURE** made as of the 31<sup>st</sup> day of December, 2004,

BETWEEN:

**HOMBURG SHARECO INC.,**

a company incorporated under the laws of the Province of Nova Scotia  
(hereinafter called the "Corporation")

- and -

**STICHTING HOMBURG MORTGAGE BOND,**

a foundation incorporated under the laws of The Netherlands  
(hereinafter called the "Trustee")

**WHEREAS** in and by an indenture (hereinafter called the "Principal Indenture") made as of the 15<sup>th</sup> day of December, 2002 between the Corporation and the Trustee, provision was made for the issuance of bonds of the Corporation (hereinafter sometimes called "Bonds") to an unlimited principal amount;

**AND WHEREAS** pursuant to the provisions of the Principal Indenture, the Corporation issued Bonds to the aggregate principal amount of \$20,000,000 in lawful money of Canada or the equivalent thereof in Euros designated as Homburg Mortgage Bond 1 Bonds (hereinafter called the "Series 1 Bonds"), of which Series 1 Bonds in the aggregate principal amount of \$20,000,000 in lawful money of Canada or the equivalent thereof in Euros are now outstanding;

**AND WHEREAS** pursuant to the provisions of a Supplemental Indenture dated as of April 25, 2003 (hereinafter called the "First Supplement"), the Corporation issued Bonds to the aggregate principal amount of €30,000,000 designated as Homburg Mortgage Bond 2 Bonds (hereinafter called the "Series 2 Bonds"), of which Series 2 Bonds in the aggregate principal amount of €30,000,000 are now outstanding;

**AND WHEREAS** pursuant to the provisions of a Supplemental Indenture dated as of November 30, 2004 (hereinafter called the "Second Supplement"), the Corporation issued Bonds to the aggregate principal amount of €20,010,000 designated as Homburg Mortgage Bond 4 Bonds (hereinafter called the "Series 4 Bonds"), of which Series 4 Bonds in the aggregate principal amount of €20,010,000 are now outstanding;

**AND WHEREAS** the Corporation is desirous of issuing under the provisions of the Principal Indenture, as a different series, additional Bonds in the aggregate principal amount of €20,010,000;

**AND WHEREAS** all necessary resolutions have been passed by the Corporation authorizing the issuance of and specifying the particulars and provisions to be expressed in such additional Bonds and authorizing this Third Supplemental Indenture;

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

**AND WHEREAS** the foregoing recitals are made as representations and statements of fact by the Corporation and not by the Trustee;

**NOW THEREFORE THIS THIRD SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby agreed and declared as follows:

#### SERIES 5 BONDS

1. The additional Bonds to be issued hereunder shall consist of €20,010,000 principal amount of Bonds designated as Homburg Mortgage Bond 5 Bonds (hereinafter called the "Series 5 Bonds"); shall be dated as of the 31<sup>st</sup> day of December, 2004; shall mature on the 31<sup>st</sup> day of December, 2011; shall bear interest at the rate of 7.5% per annum from the 31<sup>st</sup> day of December, 2004, payable half-yearly on the 30<sup>th</sup> day of June and the 31<sup>st</sup> day of December in each year after as well as before maturity and after as well as before default, with interest on overdue interest at the said rate. The principal of the Series 5 Bonds, interest thereon and premium (if any) shall be payable in Euros at ABN AMRO Bank at its Amersfoort, The Netherlands branch. The Series 5 Bonds shall be issued as fully registered Bonds in denominations of €15,000. Series 5 Bonds of any of the denominations and forms herein authorized may be exchanged for other Bonds of the same series as provided in Section 2.12 of the Principal Indenture.

The Series 5 Bonds and the certificate of the Trustee to be endorsed on the Series 5 Bonds shall be substantially in the form set forth in Appendix A hereto with such appropriate insertions, omissions, substitutions and variations as may be required or permitted under the terms of the Trust Deed.

#### REDEMPTION AND PURCHASE OF SERIES 5 BONDS

2. The Corporation, while not in default under the Trust Deed and subject as hereinafter provided, shall have the right at its option at any time to redeem before maturity all of the outstanding Series 5 Bonds or from time to time to redeem before maturity any of the outstanding Series 5 Bonds (in the manner provided and in accordance with and subject to the provisions of Section 4.1 and Sections 4.6 to 4.12 inclusive of the Principal Indenture and the provisions hereinafter set forth, provided that if the provisions of this Third Supplemental Indenture and the Principal Indenture conflict with respect to the redemption of Series 5 Bonds, the provisions of this Third Supplemental Indenture shall prevail) at 100% of the principal amount thereof, together in all cases with interest on such principal amount of Series 5 Bonds to be redeemed accrued to the date specified for redemption (the price, including accrued interest,

at which Series 5 Bonds may be redeemed at any given time pursuant to this Section 2 being hereinafter called the "redemption price"); provided always that the Corporation shall not, and the Corporation hereby covenants with the Trustee that it will not, call Series 5 Bonds for redemption in whole or in part on or before the 1<sup>st</sup> day of January, 2010.

3. The Corporation may redeem all or any of the outstanding Series 5 Bonds as follows:

(a) the Corporation shall send a notice (the "Redemption Notice") to all Series 5 Bond bondholders (the "Series 5 Bondholders") by letter or circular sent postage prepaid, addressed to each bondholder at the last address appearing upon one of the registers hereinbefore mentioned, and mailed not less than 45 and not more than 70 days prior to the date specified for redemption (the "Redemption Date"), provided always that the accidental omission to mail any such letter or circular to or the non-receipt of any such letter or circular by any such holder or holders shall not invalidate or otherwise prejudicially affect the redemption of such Series 5 Bonds;

(b) the Redemption Notice shall:

- (i) state the amount of Series 5 Bonds which the Corporation shall redeem on the Redemption Date (the "Redemption Amount");
- (ii) state that each Series 5 Bondholder must elect to either retain his Series 5 Bond or to have his Series 5 Bond redeemed by the Corporation by returning an Election Form (as hereinafter defined) not less than 30 days prior to the Redemption Date;
- (iii) provide an election form on which the Series 5 Bondholder may elect to either "retain Series 5 Bond" or "have Series 5 Bond redeemed by Corporation" (the "Election Form"); and
- (iv) include a postage prepaid envelope addressed to the Corporation;

(c) if the Corporation receives Election Forms indicating Series 5 Bondholders who have elected to have their Series 5 Bonds redeemed by the Corporation which total an amount of Series 5 Bonds which is:

- (i) equal to or in excess of the Redemption Amount, the Corporation shall redeem the Series 5 Bonds of those bondholders who elected to have the Corporation redeem their Series 5 Bonds on a pro rata basis in an amount equal to the Redemption Amount; or
- (ii) less than the Redemption Amount, the Corporation shall (A) redeem all of the Series 5 Bonds of those bondholders who elected to have the Corporation redeem their Series 5 Bonds in their Election Notices; and (B) redeem the Series 5 Bonds of those bondholders who have not elected to have the Corporation redeem their Series 5 Bonds in an amount equal to

the balance of the Redemption Amount on a pro rata basis, such that the total amount redeemed is equal to the Redemption Amount;

provided that the Corporation shall determine the course of action it shall take under this Section 3(c) not more than 20 days and not less than 12 days prior to the Redemption Date, and further provided that if the Election Form of a Series 5 Bondholder has not been received by the date which is not less than 30 days prior to the Redemption Date, such bondholder shall be deemed to have elected not to have the Corporation redeem its Series 5 Bonds.

4. Where Series 5 Bonds are to be redeemed on a pro rata basis, the Series 5 Bonds so to be redeemed shall be selected by the Trustee on a pro rata basis to the nearest multiple of €1,000 in accordance with the principal amount of Series 5 Bonds registered in the name of each holder.

5. At any time when the Corporation is not in default under the Trust Deed and would be entitled to redeem Series 5 Bonds under the foregoing provisions of this Third Supplemental Indenture, the Corporation may purchase Series 5 Bonds in the market or by private contract, provided that the prices at which such Series 5 Bonds may be purchased shall not exceed the redemption price (including accrued interest) at which such Series 5 Bonds could, at the time of purchase, be redeemed by the Corporation, plus costs of purchase.

6. Series 5 Bonds so redeemed or purchased as aforesaid shall be forthwith delivered to the Trustee for cancellation and shall be cancelled and destroyed and no Bonds shall be issued in substitution therefor except as permitted by Section 4.4 of the Principal Indenture. If required by the Corporation, the Trustee shall from time to time furnish to it a destruction certificate setting out the numbers and denominations of the Series 5 Bonds so destroyed.

## MORTGAGE AND CHARGE

### SPECIFIC CHARGE

7. In consideration of the premises and of €1.00 paid by the Trustee (the receipt and sufficiency of which is hereby acknowledged) and to secure the due payment of all principal moneys, interest and premium, if any, on the Series 5 Bonds from time to time issued and certified hereunder and all of the other moneys for the time being and from time to time owing on the Series 5 Bonds, the Corporation hereby assigns and transfers the assets outlined in Appendix B attached hereto (the "Homburg Mortgage Bond 5 Collateral") to the Trustee to be held by the Trustee on behalf of the holders of the Series 5 Bonds in accordance with the terms hereof. The Corporation hereby covenants that it will not create, issue, incur, assume or allow to exist any mortgage, hypothec, charge, pledge, lien, security interest or other encumbrance upon the Homburg Mortgage Bond 5 Collateral or any part thereof ranking or purporting to rank in priority to or *pari passu* with the assignment and transfer hereby created.

The Trustee shall be the joint and several creditor ("hoofdelijk schuldeiser") together with each Series 5 Bondholder of each obligation of the Corporation towards any such Series 5 Bondholder hereunder and accordingly, the Trustee will have its own independent right to demand performance by the Corporation of such obligation and the Trustee will hold the

Homburg Mortgage Bond 5 Collateral to secure its rights as joint and several creditor of such obligations. However, any discharge of the Corporation for any such obligation to the Trustee or a Series 5 Bondholder shall to the same extent discharge the Corporation vis-à-vis the other party, and a Series 5 Bondholder and the Trustee shall not by virtue of this clause be entitled to pursue the Corporation for the same obligation.

Without limiting or affecting the Trustee's rights against the Corporation (whether under this clause or under any other provision of this Third Supplemental Indenture), the Trustee agrees with each Series 5 Bondholder that, subject to what is set out in the next sentence, any amounts that the Trustee receives in the exercise of its rights as a joint and several creditor of the Series 5 Bondholders will be received by it for the benefit of, and with the purpose of passing it on to, the Series 5 Bondholders. However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Trustee's right to act in order to protect or preserve rights hereunder, as contemplated by the provisions of this Third Supplemental Indenture (or to perform any act reasonably incidental to any of the foregoing).

#### HABENDUM

8. To have and to hold the Homburg Mortgage Bond 5 Collateral and all the rights hereby conferred unto the Trustee, its successors and assigns, forever, but in trust, nevertheless, for the uses and purposes and with the powers and authorities and subject to the terms and conditions mentioned and set forth in this Third Supplemental Indenture.

#### LIMITED RECOURSE

9. Neither the Trustee nor the holders of the Series 5 Bonds shall have any claim whatsoever against any of the assets of the Corporation other than the Homburg Mortgage Bond 5 Collateral and the recourse of the Trustee and the holders of the Series 5 Bonds against the Corporation in respect of the payment of all principal, premium, if any, interest and any other amounts owing under the Series 5 Bonds shall be limited to the amount, if any, recoverable in respect of the Homburg Mortgage Bond 5 Collateral.

#### BONDS SEPARATELY SECURED

10. All of the Series 5 Bonds shall be equally and rateably entitled to the benefits of the Homburg Mortgage Bond 5 Collateral.

#### SECURITY EFFECTIVE NOTWITHSTANDING DATE OF ADVANCE

11. The mortgages and charges hereby created or provided to be created shall be and shall be deemed to be effective and shall take effect whether the moneys hereby secured or any part thereof be advanced before or after or at the same time as the issue of any of the Bonds intended to be secured thereby or before or after or upon the date of the execution of this Third Supplemental Indenture.

## TITLE AND REGISTRATION

12. The Corporation hereby covenants with the Trustee:

(a) that it will forthwith and from time to time do, execute, acknowledge and deliver all acts, deeds, trust deeds of hypothec, mortgage and pledge, documents, instruments, assurances and things which, in the opinion of Counsel or of the Trustee, are necessary or advisable to assign the Homburg Mortgage Bond 5 Collateral to the Trustee and to enable the Trustee to register the charges herein in all public offices of registration to preserve, protect and perfect the security herein and its priority; and

(b) that, after the security hereby created shall have become enforceable and the Trustee shall have determined or become bound to enforce the same, it will from time to time execute and do all such assurances and things as the Trustee may reasonably require for facilitating the realization of the Homburg Mortgage Bond 5 Collateral and for exercising all the powers, authorities and discretions hereby conferred upon the Trustee and for confirming to any purchaser of any of the Homburg Mortgage Bond 5 Collateral, whether sold by the Trustee hereunder or by judicial proceedings, the title to the property so sold, and that it will execute all notices and directions as the Trustee may consider expedient.

## PARTIAL DEFEASANCE

13. Upon payment to the holders of the Series 5 Bonds of the principal thereof, premium, if any, and interest thereon (including interest on amounts in default), the Homburg Mortgage Bond 5 Collateral shall revert to and revest in the Corporation and the Trustee shall execute such documents and instruments as the Corporation may reasonably require in order to evidence such partial release.

## GUARANTEE BY HOMBURG INVEST INC.

14. The obligations of the Corporation under the Bonds are guaranteed pursuant to a guarantee substantially in the form set out in Appendix D of the Principal Indenture (the "Guarantee Agreement") executed by the Guarantor. If an Event of Default pursuant to Section 13.1 of the Principal Indenture shall have occurred and is continuing, the Trustee shall forthwith, and in any event not less than two (2) Business Days following such Event of Default, provide notice to the Guarantor of such Event of Default and shall demand payment from the Guarantor in respect of any such Event of Default.

## GUARANTEE BY LIMITED PARTNERSHIP

15 The obligations of the Corporation under the Series 5 Bonds are guaranteed pursuant to a guarantee (the “LP Guarantee”) substantially in the form set out in Appendix C of this Third Supplemental Indenture executed by Homco Realty Fund (53) Limited Partnership (hereinafter called the “Limited Partnership”). If an Event of Default pursuant to Section 13.1 of the Principal Indenture in relation to the Series 5 Bonds shall have occurred and is continuing, the Trustee shall forthwith, and in any event not less than two (2) Business Days following such Event of Default, provide notice to the Limited Partnership of such Event of Default and shall demand payment from the Limited Partnership in respect of any such Event of Default.

As collateral security for its obligations under the LP Guarantee, the Limited Partnership has agreed to grant a collateral mortgage (the “Collateral Mortgage”) in the principal amount of that amount of Canadian Dollars which is equivalent to €20,010,000 in favour of the Trustee mortgaging its interest in the lands and premises known as “Homburg Gateway to the North”, consisting of 275 acres located at Calgary, Alberta, or such other property of similar value as may be purchased by the Limited Partnership (the “Homco 53 Property”). The Collateral Mortgage shall also contain a provision automatically postponing the priority of the charge contained in the Collateral Mortgage to all advances made by any holder of a first mortgage on the Homco 53 Property up to a maximum principal amount of Canadian \$20,000,000.

The Trustee may from time to time in its absolute discretion, and without the requirement to obtain the consent of the holders of any of the Bonds (including, without limitation, the holders of the Series 5 Bonds), release and discharge any part of the Homco 53 Property from the charge contained in the Collateral Mortgage to permit the sale of such property by the Limited Partnership in the ordinary course of business, including to Homburg Invest Inc. (“HII”) or to an entity controlled by HII, provided that:

- (A) if there is a prior ranking first mortgage on the Homco 53 Property to an arm’s length party, the proceeds of sale are disbursed
  - (i) to such first mortgage holder in an amount required for the first mortgage holder to grant a partial release of their interest in such property as negotiated between the first mortgage holder and the Trustee, and
  - (ii) after payment to the first mortgage holder as hereinbefore provided, the amount which is equal to the Series 5 Bondholder’s debt divided by the first mortgage holder’s debt multiplied by the payment to the first mortgage holder is disbursed to the trust account maintained by the Limited Partnership for the benefit of the Series 5 Bondholders (the “Limited Partnership Trust Account”) and the remaining proceeds of sale are disbursed to the Limited Partnership, for use by the Limited Partnership in its day-to-day operations;
- (B) if there is no prior ranking first mortgage on the Homco 53 Property to an arm’s length party, two-thirds (2/3) of the proceeds of sale are disbursed to the Limited

Partnership Trust Account and one-third (1/3) of the proceeds of sale are disbursed to the Limited Partnership, for use by the Limited Partnership in its day-to-day operations.

The funds in the Limited Partnership Trust Account may be used by the Limited Partnership to:

- (a) purchase replacement real property from an arm's length party, provided that the Trustee consents to such purchase, or
- (b) loaned to HII for the purchase of real property by HII or for use in the day-to-day operations of HII, provided that HII provides a collateral mortgage to the Limited Partnership over real property belonging to HII in an amount which is not more than eighty percent (80%) of the appraised value of such property less the amount of any prior mortgages that may be outstanding on such property. The maximum amount that may be loaned to HII under this formula is ninety percent (90%) of the amount of the collateral mortgage provided by HII.

#### SPECIAL COVENANTS APPLICABLE WHILE SERIES 5 BONDS ARE OUTSTANDING

16. The Corporation hereby covenants that so long as any of the Series 5 Bonds remain outstanding, the Corporation will not create, issue, incur, assume or allow to exist any mortgage, hypothec, pledge, charge, lien, encumbrance, security interest or other security, whether fixed or floating, on the Homburg Mortgage Bond 5 Collateral ranking in priority to or pari passu with the assignment and transfer hereby created.

#### FURTHER ASSURANCE

17. The mortgages and charges created by this Third Supplemental Indenture are by way of further assurance to the Trustee and are not in substitution for any similar provision contained in the Principal Indenture.

#### INDENTURE SUPPLEMENTAL TO PRINCIPAL INDENTURE

18. This Third Supplemental Indenture is supplemental to the Principal Indenture and the Principal Indenture and the Bonds issued thereunder shall henceforth be read in conjunction with this Third Supplemental Indenture and the Principal Indenture and this Third Supplemental Indenture shall henceforth have effect so far as practicable as if all the provisions of the Principal Indenture and of this Third Supplemental Indenture were contained in the one instrument and, unless otherwise herein expressly provided or unless there is something in the subject matter or context hereof inconsistent therewith, the expressions used in this Third Supplemental Indenture and in the Series 5 Bonds and not otherwise defined shall have the same meaning as is ascribed to corresponding expressions in the Principal Indenture.

ACCEPTANCE OF TRUST BY TRUSTEE

19. The Trustee hereby accepts the trusts in this Third Supplemental Indenture declared and created and agrees to perform the same upon the terms and conditions hereinbefore set out, but subject to the provisions of the Principal Indenture.

EXECUTION AND FORMAL DATE

20. This Third Supplemental Indenture may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. For the purpose of convenience, this Third Supplemental Indenture may be referred to as bearing formal date the 31<sup>st</sup> day of December, 2004, irrespective of the actual date of execution hereof.

Appendices A, B and C to this Third Supplemental Indenture shall be deemed to be incorporated herein and to form part hereof.

**IN WITNESS WHEREOF** this Third Supplemental Indenture has been duly executed by the parties hereto.

**HOMBURG SHARECO INC.**

By: \_\_\_\_\_

**STICHTING HOMBURG MORTGAGE BOND**

By: \_\_\_\_\_

## APPENDIX A

### Form of Homburg Mortgage Bond 5

1.1 The Homburg Mortgage Bond 5 bonds, the certificate of the Trustee and the registration panel shall be in both the English language and the Dutch language, in the forms provided in Sections 1.2 and 1.3.

1.2 The English language portions of the text of the Homburg Mortgage Bond 5 bonds, the certificate of the Trustee and the registration panel shall be substantially as follows:

No. €15,000

#### **HOMBURG SHARECO INC.**

(Incorporated under the *Companies Act* (Nova Scotia))

Homburg Mortgage Bond 5

Due: December 31, 2011.

HOMBURG SHARECO INC. (hereinafter called the "Corporation"), for value received, hereby acknowledges itself indebted and promises to pay to the registered holder hereof on December 31, 2011, or on such earlier date as the principal amount hereof may become due in accordance with the provisions of the Trust Indenture hereinafter mentioned, the principal sum of FIFTEEN THOUSAND EUROS, together with such further amount, if any, as may be payable by way of premium, on presentation and surrender of this Bond at ABN AMRO Bank at its Amersfoort, The Netherlands branch at the holder's option, and to pay interest on the principal amount hereof from January 1, 2005, or from the last interest payment date to which interest has been paid or made available for payment on the outstanding Bonds, whichever is later, at any of the said places, in like money half-yearly on June 30<sup>th</sup> and December 31<sup>st</sup> in each year, at the rate of 7.5% per annum (unless this Bond shall have been previously redeemed in accordance with the provisions of the Trust Indenture); and should the Corporation at any time make default in the payment of any principal, premium or interest, to pay interest on the amount in default at the same rate after as well as before maturity, default or judgement, in like money, at any of the said places and half-yearly on the same dates. Interest hereon shall be payable (except at maturity or on redemption when interest may at the option of the Corporation be paid on surrender hereof) by cheque or wire transfer to the registered holder hereof as provided in the Trust Indenture and the mailing of such cheque or wire transfer shall satisfy and discharge the liability for interest on this Bond to the extent of the sum represented thereby plus the amount of any tax which the Corporation is required to and does withhold therefrom unless such cheque be not paid on presentation.

This Bond is one of a series designated as Homburg Mortgage Bond 5 bonds (herein sometimes called the "Homburg Mortgage Bond 5 bonds") of the Corporation issued and to be issued under and secured by a Third Supplemental Indenture dated as of December 31, 2004, being supplemental to a Trust Indenture (herein collectively called the "Trust Indenture") dated

as of December 15, 2002, both made between the Corporation and Stichting Homburg Mortgage Bond (hereinafter called the "Trustee"), as Trustee.

The aggregate principal amount of Bonds which may be issued under the Trust Indenture is (subject to the restrictions, conditions and limitations set out in the Trust Indenture) unlimited and may consist of several series payable in different currencies, bearing different rates of interest and varying as to the terms on which they may be redeemed and otherwise as specified in the Trust Indenture. Bonds which have been authorized for issue are:

- (a) \$20,000,000 Homburg Mortgage Bond 1 bonds in the aggregate principal amount of \$20,000,000 in lawful money of Canada or the equivalent thereof in Euros, maturing on December 15, 2009;
- (b) €30,000,000 aggregate principal amount of Homburg Mortgage Bond 2 bonds maturing on April 25, 2010;
- (c) €20,010,000 aggregate principal amount of Homburg Mortgage Bond 4 bonds maturing on November 30, 2011;
- (d) €20,010,000 aggregate principal amount of Homburg Mortgage Bond 5 bonds maturing on December 31, 2011 (of which this is one).

This Homburg Mortgage Bond 5 bond and all other Homburg Mortgage Bond 5 bonds now or hereafter certified and issued under the Trust Indenture rank *pari passu* and are secured equally and rateably by the Homburg Mortgage Bond 5 Collateral (as defined in the Third Supplemental Indenture) and the recourse of the holders of the Homburg Mortgage Bond 5 bonds against the Corporation is limited to the amount, if any, recoverable in respect of the Homburg Mortgage Bond 5 Collateral. Reference is hereby made to the Trust Indenture for particulars of the nature and extent of the security created thereby, the rights of the holders of the Bonds and of the Corporation and of the Trustee in respect thereof and the terms and conditions upon which the Bonds are issued, secured and held, to all of which the holder of this Bond by acceptance hereof assents.

The Bonds are issuable in denominations of €15,000.

This Bond is subject to redemption in part (such part being €1,000 or a multiple thereof) and notation of such partial redemption may be made on the reverse hereof all as more fully provided in the Trust Indenture. Redemption of the Homburg Mortgage Bond 5 bonds involves a process wherein notice of the redemption is given to the bondholders and an election is provided to bondholders such that bondholders may indicate their preference as to whether they wish to retain or have their Homburg Mortgage Bond 5 bonds redeemed by the Corporation. The election made by the bondholders may or may not be followed by the Corporation, all as more fully provided in the Trust Indenture.

Except as hereinafter provided, the Homburg Mortgage Bond 5 bonds are redeemable at any time on or after January 1, 2010 and prior to maturity, in whole at any time or in part from time to time at the option of the Corporation, on not less than 45 and not more than 70 days notice at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest to the date fixed for redemption.

The principal amount hereof may also become or be declared due before stated maturity in the events, in the manner and with the effect provided in the Trust Indenture.

The Trust Indenture contains provisions making binding upon all holders of Bonds outstanding thereunder resolutions passed at meetings of such holders held in accordance with such provisions and instruments in writing signed by the holders of a specified majority of Bonds outstanding.

Upon presentation at the principal office of the Trustee at Soest, The Netherlands, subject to the provisions of the Trust Indenture and upon compliance with the reasonable requirements of the Trustee, Bonds may be transferred by the registered holder thereof or his executors, administrators or other legal representatives or his or their attorney duly appointed in writing but no such transfer of a Bond shall be valid unless it has been duly noted thereon.

This Bond shall not become obligatory for any purpose until it shall have been certified by the Trustee for the time being under the Trust Indenture.

IN WITNESS WHEREOF HOMBURG SHARECO INC. has caused its corporate seal to be hereunto affixed and this Bond to be signed by its President and its Secretary as of December 31, 2004.

**HOMBURG SHARECO INC.**

by \_\_\_\_\_

c.s. \*

by \_\_\_\_\_

TRUSTEE'S CERTIFICATE

This Bond is one of the Homburg Mortgage Bond 5 bonds referred to in the Trust Indenture within mentioned.

**STICHTING HOMBURG  
MORTGAGE BOND**

By: \_\_\_\_\_

REGISTRATION PANEL

(No writing hereon except by the Trustee or other Registrar)

Date and Place of Registration	In Whose Name Registered	Signature of Trustee or Other Registrar
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1.3 The Dutch language portions of the text of the Homburg Mortgage Bond 5 bonds, the certificate of the Trustee and the registration panel shall be substantially as follows:

[insert Dutch translation of Homburg Mortgage Bond 5 bond form]

## **APPENDIX B**

### **The Homburg Mortgage Bond 5 Collateral consists of:**

An assignment to the Trustee by the Corporation of a pledge it has received from Homburg Invest Inc., such pledge being a pledge by Homburg Invest Inc. of all of its limited partnership units in Homco Realty Fund (53) Limited Partnership.

## APPENDIX C

### GUARANTEE AGREEMENT

**GUARANTEE AGREEMENT** dated as of December 31, 2004, made by Homco Realty Fund (53) Limited Partnership (herein called the “Guarantor”) in favor of Stichting Homburg Mortgage Bond (the “Trustee”), as trustee under that certain Trust Indenture dated as of December 15, 2002 (the “Principal Indenture”), as supplemented by that certain Supplemental Indenture dated as of April 25, 2003 (the “First Supplement”), that certain Second Supplemental Indenture dated November 30, 2004 (the “Second Supplement”) and that certain Third Supplemental Indenture dated December 31, 2004 (the “Third Supplement”) (the Principal Indenture, the First Supplement, the Second Supplement and the Third Supplement being collectively referred to as the “Agreement”), each between Homburg ShareCo Inc., a Nova Scotia company (the “Company”), and the Trustee pursuant to which the Company has today issued Homburg Mortgage Bond 5 bonds (the “Series 5 Bonds”).

**WHEREAS**, the Third Supplement provides that the Guarantor shall guarantee the obligations of the Company to the Trustee on behalf of the Series 5 Bond bondholders in respect of the Series 5 Bonds;

**NOW THEREFORE**, in consideration of the premises, the Guarantor hereby agrees as follows:

**SECTION 1. Defined Terms.** The following terms, as used herein, shall have the following meanings:

(a) **“Business Day”** means any day of the year other than a Saturday, Sunday or other day on which banks are required or authorized to close in Halifax, Nova Scotia.

(b) **“Governmental Entity”** means any (i) federal, provincial, state, municipal, local or other government, governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign, or (ii) any subdivision or authority of any of the foregoing.

(c) **“Holders”** means the Persons entered in the registers for the Series 5 Bonds as holders thereof, such registers being maintained pursuant to the Agreement.

(d) **“Person”** means any individual, corporation, partnership, association, trust, limited liability company or any other entity or organization.

**SECTION 2. Guarantee.** The Guarantor hereby unconditionally and irrevocably guarantees, as principal and not merely as surety, the full and punctual payment when due (whether at stated maturity, upon acceleration or otherwise) of the principal, premium, if any, Additional Amounts (as defined herein), if any, and interest on each Series 5 Bond and all other amounts payable by the Company under the Agreement in respect of the Series 5 Bonds; provided, however, that the payment of interest on overdue installments of interest is guaranteed only to the extent permitted by law (such amounts, the **“Guaranteed Obligations”**). All payments to be made by the Guarantor pursuant to this Section 2 shall be made on or before five

(5) business days following receipt of demand therefor by the Trustee or, to the extent permitted by Section 13 hereof, any Holder.

**SECTION 3. Guarantee Absolute.** The Guarantor agrees that the guarantee contained in this Guarantee Agreement is a guarantee of payment and not of collection or collectibility, and the Guarantor's obligation to pay the Guaranteed Obligations hereunder shall be primary, absolute and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(i) any extension of the time or times for the payment of the Guaranteed Obligations, renewal, settlement, compromise, waiver or release in respect of any obligation of the Company under the Agreement or any Series 5 Bond, by operation of law or otherwise;

(ii) any modification or amendment of or supplement to the Agreement or any Series 5 Bond;

(iii) any change in the corporate existence, structure or ownership of the Company, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Company or its assets or any resulting release or discharge of any obligation of the Company contained in the Agreement or any Series 5 Bond;

(iv) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Company, the Trustee, any Holder or any other Person, whether in connection herewith or any unrelated transactions;

(v) any invalidity, illegality, irregularity or unenforceability for any reason of the Agreement or any Series 5 Bond or in any part thereof as regards the Company, or any provision of applicable law or regulation purporting to prohibit the payment by the Company of the principal of or interest on any Series 5 Bond or any other amount payable by the Company under the Agreement;

(vi) any other act or omission to act or delay of any kind by the Company, the Trustee, any Holder or any other Person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge or defence of the Guarantor's obligations hereunder;

(vii) any contest by the Company or any Person as to the amount of the Guaranteed Obligations;

(viii) the absence of any action to enforce the Agreement or the Series 5 Bonds;

(ix) the recovery of any judgment against the Company or any action to enforce the same;

(x) any dealings with the security which the Trustee or any Holder holds or may hold pursuant to the terms and conditions of the Agreement, including the taking, giving up or exchange of securities, the variation or realization thereof and the granting

of releases and discharges, including, without limitation, the release of any of the Homco 53 Property pursuant to Section 15 of the Third Supplement; or

(xi) any invalidity, non-perfection or unenforceability of any security held by the Trustee or any Holder in support of the Guaranteed Obligations, or any irregularity or defect in the manner or procedure by which the Trustee or any Holder realizes on such security.

**SECTION 4. Representations and Warranties.** The Guarantor hereby represents and warrants as of the date hereof that:

**Authorization; No Contravention.** The execution, delivery and performance by the Guarantor of this Guarantee Agreement (i) are within its powers, have been duly authorized by all necessary corporate action, require no action by or in respect of, or filing with, any governmental body, agency or official, and do not contravene its constituent documents, and (ii) do not contravene, or constitute a default under, any provision of applicable law or regulation, as amended from time to time, or of any judgment, injunction, order, decree, agreement or other instrument binding upon the Guarantor or result in or require the creation or imposition of any lien on any asset of the Guarantor other than any contravention, default or lien which would not have a material adverse effect on the ability of the Guarantor to perform its obligations under this Guarantee Agreement.

**Binding Effect.** This Guarantee Agreement constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as such enforceability may be limited by the effect of any bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

**Litigation.** There is no action, suit or proceeding pending against the Guarantor or, to the knowledge of the Guarantor, threatened against the Guarantor before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision (i) which would have a material adverse effect on the ability of the Guarantor to perform its obligations under this Guarantee Agreement, or (ii) which in any manner draws into question the enforceability or validity of this Guarantee Agreement.

**SECTION 5. Manner of Payment.** All payments to be made by the Guarantor hereunder shall be made to the Trustee for application in accordance with Section 13.10 of the Principal Indenture.

**SECTION 6. Enforcement of Guarantee.** The Guarantor agrees that the Trustee or any Holder (but subject always to the provisions of Section 13 hereof) need not seek or exhaust its recourse against the Company or any other Person or realize on any security it may hold in respect of the Guaranteed Obligations before being entitled to payment under this Guarantee Agreement.

**SECTION 7. Waiver.** The Guarantor hereby irrevocably waives promptness, diligence, acceptance hereof, presentment, demand, protest and any and all other notice not provided for

herein and any requirement that at any time the Trustee, any Holder (but subject always to the provisions of Section 12 hereof) or any other Person exhaust any right or take any action against the Company or any other Person and any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge, release or defense of the Guarantor or that might otherwise limit recourse against the Guarantor.

**SECTION 8. Waiver of Subrogation.** Until payment in full of the Guaranteed Obligations, the Guarantor irrevocably waives any and all rights to which it may be entitled, by operation of law or otherwise, upon making any payment hereunder to be subrogated to the rights of the payee against the Company with respect to such payment or otherwise to be reimbursed, indemnified or exonerated by the Company in respect thereof.

**SECTION 9. Notices.** All notices and other communications provided for or permitted hereunder shall be made as follows:

If to the Guarantor: Homco Realty Fund (53) Limited Partnership  
c/o Suite 200, 11 Akerley Boulevard  
Dartmouth, Nova Scotia, Canada B3B 1V1  
Attention:  
Fax No.: (902) 469-6776

If to the Company, the Trustee or any Holder, as specified in Article 17 of the Principal Indenture.

**SECTION 10. No Waiver; Remedies.** No failure on the part of the Trustee or any Holder (but subject always to the provisions of Section 13 hereof) to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**SECTION 11. Continuing Guarantee; Reinstatement in Certain Circumstances.** The guarantee contained in this Guarantee Agreement is a continuing guarantee and the Guarantor's obligations hereunder shall (i) remain in full force and effect until the indefeasible payment in full of the Guaranteed Obligations, (ii) be binding upon the Guarantor and its successors and assigns, and (iii) enure to the benefit of and be enforceable by the Trustee and, subject always to the provisions of Section 13 hereof, any Holder and their respective successors and permitted assigns; provided, however, that this Guarantee Agreement shall not be construed to create any right in any Person other than the Trustee and, subject always to the provisions of Section 13 hereof, any Holder and their respective successors and permitted assigns or to be a contract in whole or in part for the benefit of any Person other than the Trustee and, subject to the provisions of Section 13 hereof, the Holders and their respective successors and permitted assigns. If at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of the Company or otherwise, the obligations of the Guarantor hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

**SECTION 12. Stay of Acceleration.** If acceleration of the time for payment of any Guaranteed Obligation is stayed upon the insolvency, bankruptcy or reorganization of the Company, all such amounts otherwise subject to acceleration under the terms of the Agreement shall nonetheless be payable by the Guarantor hereunder to the Trustee or, to the extent permitted by Section 13 hereof, the Holders forthwith on demand.

**SECTION 13. Holdings May Not Enforce.** No Holder shall have the right to institute any suit, action or proceeding against the Guarantor for any default hereunder except in the manner and subject to the conditions, *mutatis mutandis*, set forth in Section 13.5 of the Principal Indenture, it being understood and intended that no one or more of the Holders shall have any right in any manner whatsoever to enforce any right hereunder or pursuant hereto by any action except as aforesaid and that all powers and trusts hereunder shall be exercised and all proceedings at law or in equity shall be instituted, had and maintained by the Trustee, except as aforesaid.

**SECTION 14. Expenses.** The Guarantor shall pay, or reimburse, the Trustee and the Holders for all costs and expenses including, without limitation, reasonable attorneys' fees and disbursements reasonably incurred by it in connection with the enforcement of this Guarantee Agreement; provided, however, that the Guarantor shall only be required to pay, or reimburse, for the reasonable attorneys' fees and disbursements for one counsel for the Trustee and the Holders.

**SECTION 15. No Withholding.** Any and all payments made by the Guarantor pursuant to the provisions of this Guarantee Agreement shall be made without withholding or deduction for, or on account of, any current or future taxes imposed by or on behalf of Canada or any political subdivision thereof unless such taxes are required by law or by the administration thereof to be withheld or deducted, in which case the Guarantor shall pay such amounts ("Additional Amounts") as may be necessary, so that the net amount received by the Holder (including Additional Amounts) after such withholding or deduction will not be less than the amount the Holder would have received if such taxes had not been withheld or deducted, provided, however, that no such Additional Amounts will be payable in respect of, among others, the following:

(a) any tax, assessment or other governmental charge which would not have been so imposed but for (i) the existence of any present or former connection between such Holder (or between a fiduciary, settlor or beneficiary of, or a person holding power over, such Holder, if such Holder is an estate or trust or a member or shareholder of such Holder, if such Holder is a partnership or corporation) and Canada, including, without limitation, such Holder (or such fiduciary, settlor, beneficiary or person holding a power over such Holder) being or having been a citizen or resident or treated as a resident thereof or being or having been engaged in a trade or business or present therein or having had a permanent establishment therein, or (ii) such Holder's current or former status as a personal holding company, a foreign personal holding company, a controlled foreign corporation that is related to the Guarantor through stock ownership, a foreign tax-exempt organization for Canadian tax purposes or as a corporation which accumulates earnings to avoid Canadian income tax;

(b) any tax, assessment or other governmental charge which would not have been so imposed but for the presentation by the Holder of any Series 4 Bond for payment on a date more

than 60 days after the date on which such payment became due and payable or the date on which payment thereof is duly provided for, whichever occurs later;

(c) any estate, inheritance, gift, sales, transfer, personal property or any similar tax, assessment or other governmental charge;

(d) any tax, assessment or other governmental charge which is payable otherwise than by deduction or withholding from payments of, or payments under the Guarantee in respect of, principal, interest or any Additional Amount on any Series 5 Bond;

(e) any tax, assessment or other governmental charge imposed on interest received by any person holding, actually or constructively, 10% or more of the total combined voting power of all classes of stock of the Guarantor entitled to vote;

(f) any tax, assessment or other governmental charge imposed on a Holder that is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada); or

(g) any tax, assessment or governmental charge imposed by reason of the failure of the Holder or beneficial owner of the Series 5 Bond to deliver, upon reasonable demand by the Guarantor, any form or document that may be required or reasonably requested in order to allow the Guarantor to make a payment to the Holder without any deduction or withholding for or on account of any tax.

The provisions of this Section 15 shall survive the termination of this Guarantee Agreement.

**SECTION 16. Judgment Currency.** If for the purposes of obtaining judgment in any court it is necessary to convert all or any part of the Guaranteed Obligations or any other amount due to the Trustee or any Holder in respect of the Guarantor's obligations under this Guarantee Agreement in any currency (the "Original Currency") into Euros (the "Other Currency"), the Guarantor, to the fullest extent that it may effectively do so, agrees that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Trustee or any Holder, as the case may be, could purchase the Original Currency with the Other Currency on the Business Day preceding that on which final judgment is paid or satisfied.

The obligations of the Guarantor in respect of any sum due in the Original Currency from it to the Trustee or any Holder shall, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Trustee or any Holder of any sum adjudged to be so due in such Other Currency the Trustee or any Holder may, in accordance with its normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Trustee or any Holder in the Original Currency, the Guarantor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Trustee or any Holder against such loss, and if the amount of the Original Currency so purchased exceeds the sum originally due to the Trustee or any Holder in the Original Currency, the Trustee or any Holder, as the case may be, agrees to remit such excess to the Guarantor.

**SECTION 17. Governing Law.** This Guarantee Agreement shall be governed by, and construed in accordance with, the laws of the Province of Nova Scotia, without regard to the

choice-of-law principles of Nova Scotia that would require the application of the laws of a jurisdiction other than Nova Scotia.

**SECTION 18. Severability.** Any provision of this Guarantee Agreement which is illegal, invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating the remaining provisions hereof and any such illegality, invalidity, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**SECTION 19. Entire Agreement.** This Guarantee Agreement embodies the entire agreement of the Guarantor with respect to the subject matter hereof and supersedes any prior written or oral agreements and understandings relating to the subject matter hereof and thereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guarantee Agreement to be duly executed and delivered by its officers thereunto duly authorized as of the date first above written.

**HOMCO REALTY FUND (53) LIMITED  
PARTNERSHIP, BY ITS GENERAL PARTNER,  
HOMBURG L.P. MANAGEMENT INC.**

By: \_\_\_\_\_

**THIS FOURTH SUPPLEMENTAL INDENTURE** made as of the 1<sup>st</sup> day of July, 2005,

BETWEEN:

**HOMBURG SHARECO INC.,**

a company incorporated under the laws of the Province of Nova Scotia

(hereinafter called the "Corporation")

- and -

**STICHTING HOMBURG MORTGAGE BOND,**

a foundation incorporated under the laws of The Netherlands

(hereinafter called the "Trustee")

**WHEREAS** in and by an indenture (hereinafter called the "Principal Indenture") made as of the 15<sup>th</sup> day of December, 2002 between the Corporation and the Trustee, provision was made for the issuance of bonds of the Corporation (hereinafter sometimes called "Bonds") to an unlimited principal amount;

**AND WHEREAS** pursuant to the provisions of the Principal Indenture, the Corporation issued Bonds to the aggregate principal amount of \$20,000,000 in lawful money of Canada or the equivalent thereof in Euros designated as Homburg Mortgage Bond 1 Bonds (hereinafter called the "Series 1 Bonds"), of which Series 1 Bonds in the aggregate principal amount of \$20,000,000 in lawful money of Canada or the equivalent thereof in Euros are now outstanding;

**AND WHEREAS** pursuant to the provisions of a Supplemental Indenture dated as of April 25, 2003 (hereinafter called the "First Supplement"), the Corporation issued Bonds to the aggregate principal amount of €30,000,000 designated as Homburg Mortgage Bond 2 Bonds (hereinafter called the "Series 2 Bonds"), of which Series 2 Bonds in the aggregate principal amount of €30,000,000 are now outstanding;

**AND WHEREAS** pursuant to the provisions of a Supplemental Indenture dated as of November 30, 2004 (hereinafter called the "Second Supplement"), the Corporation issued Bonds to the aggregate principal amount of €20,010,000 designated as Homburg Mortgage Bond 4 Bonds (hereinafter called the "Series 4 Bonds"), of which Series 4 Bonds in the aggregate principal amount of €20,010,000 are now outstanding;

**AND WHEREAS** pursuant to the provisions of a Supplemental Indenture dated as of December 31, 2004 (hereinafter called the "Third Supplement"), the Corporation issued Bonds to the aggregate principal amount of €20,010,000 designated as Homburg Mortgage Bond 5 Bonds (hereinafter called the "Series 5 Bonds"), of which Series 5 Bonds in the aggregate principal amount of €20,010,000 are now outstanding;

**AND WHEREAS** the Corporation is desirous of issuing under the provisions of the Principal Indenture, as a different series, additional Bonds in the aggregate principal amount of €31,230,000;

**AND WHEREAS** all necessary resolutions have been passed by the Corporation authorizing the issuance of and specifying the particulars and provisions to be expressed in such additional Bonds and authorizing this Fourth Supplemental Indenture;

**AND WHEREAS** the Principal Indenture as supplemented by the First Supplement, the Second Supplement, the Third Supplement and this Fourth Supplemental Indenture is hereafter sometimes called the "Trust Deed";

**AND WHEREAS** the foregoing recitals are made as representations and statements of fact by the Corporation and not by the Trustee;

**NOW THEREFORE THIS FOURTH SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby agreed and declared as follows:

#### SERIES 6 BONDS

1. The additional Bonds to be issued hereunder shall consist of €31,230,000 principal amount of Bonds designated as Homburg Mortgage Bond 6 Bonds (hereinafter called the "Series 6 Bonds"); shall be dated as of the 1<sup>st</sup> day of July, 2005; shall mature on the 30<sup>th</sup> day of June, 2012; shall bear interest at the rate of 7.5% per annum from the 1<sup>st</sup> day of July, 2005, payable half-yearly on the 30<sup>th</sup> day of June and the 31<sup>st</sup> day of December in each year after as well as before maturity and after as well as before default, with interest on overdue interest at the said rate. The principal of the Series 6 Bonds, interest thereon and premium (if any) shall be payable in Euros at ABN AMRO Bank at its Amersfoort, The Netherlands branch. The Series 6 Bonds shall be issued as fully registered Bonds in denominations of €15,000. Series 6 Bonds of any of the denominations and forms herein authorized may be exchanged for other Bonds of the same series as provided in Section 2.12 of the Principal Indenture.

The Series 6 Bonds and the certificate of the Trustee to be endorsed on the Series 6 Bonds shall be substantially in the form set forth in Appendix A hereto with such appropriate insertions, omissions, substitutions and variations as may be required or permitted under the terms of the Trust Deed.

#### REDEMPTION AND PURCHASE OF SERIES 6 BONDS

2. The Corporation, while not in default under the Trust Deed and subject as hereinafter provided, shall have the right at its option at any time to redeem before maturity all of the outstanding Series 6 Bonds or from time to time to redeem before maturity any of the outstanding Series 6 Bonds (in the manner provided and in accordance with and subject to the provisions of Section 4.1 and Sections 4.6 to 4.12 inclusive of the Principal Indenture and the provisions hereinafter set forth, provided that if the provisions of this Fourth Supplemental Indenture and the Principal Indenture conflict with respect to the redemption of Series 6 Bonds,

the provisions of this Fourth Supplemental Indenture shall prevail) at 100% of the principal amount thereof, together in all cases with interest on such principal amount of Series 6 Bonds to be redeemed accrued to the date specified for redemption (the price, including accrued interest, at which Series 6 Bonds may be redeemed at any given time pursuant to this Section 2 being hereinafter called the "redemption price"); provided always that the Corporation shall not, and the Corporation hereby covenants with the Trustee that it will not, call Series 6 Bonds for redemption in whole or in part on or before the 2<sup>nd</sup> day of July, 2010.

3. The Corporation may redeem all or any of the outstanding Series 6 Bonds as follows:

(a) the Corporation shall send a notice (the "Redemption Notice") to all Series 6 Bond bondholders (the "Series 6 Bondholders") by letter or circular sent postage prepaid, addressed to each bondholder at the last address appearing upon one of the registers hereinbefore mentioned, and mailed not less than 45 and not more than 70 days prior to the date specified for redemption (the "Redemption Date"), provided always that the accidental omission to mail any such letter or circular to or the non-receipt of any such letter or circular by any such holder or holders shall not invalidate or otherwise prejudicially affect the redemption of such Series 6 Bonds;

(b) the Redemption Notice shall:

- (i) state the amount of Series 6 Bonds which the Corporation shall redeem on the Redemption Date (the "Redemption Amount");
- (ii) state that each Series 6 Bondholder must elect to either retain his Series 6 Bond or to have his Series 6 Bond redeemed by the Corporation by returning an Election Form (as hereinafter defined) not less than 30 days prior to the Redemption Date;
- (iii) provide an election form on which the Series 6 Bondholder may elect to either "retain Series 6 Bond" or "have Series 6 Bond redeemed by Corporation" (the "Election Form"); and
- (iv) include a postage prepaid envelope addressed to the Corporation;

(c) if the Corporation receives Election Forms indicating Series 6 Bondholders who have elected to have their Series 6 Bonds redeemed by the Corporation which total an amount of Series 6 Bonds which is:

- (i) equal to or in excess of the Redemption Amount, the Corporation shall redeem the Series 6 Bonds of those bondholders who elected to have the Corporation redeem their Series 6 Bonds on a pro rata basis in an amount equal to the Redemption Amount; or
- (ii) less than the Redemption Amount, the Corporation shall (A) redeem all of the Series 6 Bonds of those bondholders who elected to have the Corporation redeem their Series 6 Bonds in their Election Notices; and (B) redeem the Series 6 Bonds of those bondholders who have not elected to have the Corporation redeem their

Series 6 Bonds in an amount equal to the balance of the Redemption Amount on a pro rata basis, such that the total amount redeemed is equal to the Redemption Amount;

provided that the Corporation shall determine the course of action it shall take under this Section 3(c) not more than 20 days and not less than 12 days prior to the Redemption Date, and further provided that if the Election Form of a Series 6 Bondholder has not been received by the date which is not less than 30 days prior to the Redemption Date, such bondholder shall be deemed to have elected not to have the Corporation redeem its Series 6 Bonds.

4. Where Series 6 Bonds are to be redeemed on a pro rata basis, the Series 6 Bonds so to be redeemed shall be selected by the Trustee on a pro rata basis to the nearest multiple of €1,000 in accordance with the principal amount of Series 6 Bonds registered in the name of each holder.

5. At any time when the Corporation is not in default under the Trust Deed and would be entitled to redeem Series 6 Bonds under the foregoing provisions of this Fourth Supplemental Indenture, the Corporation may purchase Series 6 Bonds in the market or by private contract, provided that the prices at which such Series 6 Bonds may be purchased shall not exceed the redemption price (including accrued interest) at which such Series 6 Bonds could, at the time of purchase, be redeemed by the Corporation, plus costs of purchase.

6. Series 6 Bonds so redeemed or purchased as aforesaid shall be forthwith delivered to the Trustee for cancellation and shall be cancelled and destroyed and no Bonds shall be issued in substitution therefor except as permitted by Section 4.4 of the Principal Indenture. If required by the Corporation, the Trustee shall from time to time furnish to it a destruction certificate setting out the numbers and denominations of the Series 6 Bonds so destroyed.

## MORTGAGE AND CHARGE

### SPECIFIC CHARGE

7. In consideration of the premises and of €1.00 paid by the Trustee (the receipt and sufficiency of which is hereby acknowledged) and to secure the due payment of all principal moneys, interest and premium, if any, on the Series 6 Bonds from time to time issued and certified hereunder and all of the other moneys for the time being and from time to time owing on the Series 6 Bonds, the Corporation hereby assigns and transfers the assets outlined in Appendix B attached hereto (the “Homburg Mortgage Bond 6 Collateral”) to the Trustee to be held by the Trustee on behalf of the holders of the Series 6 Bonds in accordance with the terms hereof. The Corporation hereby covenants that it will not create, issue, incur, assume or allow to exist any mortgage, hypothec, charge, pledge, lien, security interest or other encumbrance upon the Homburg Mortgage Bond 6 Collateral or any part thereof ranking or purporting to rank in priority to or *pari passu* with the assignment and transfer hereby created.

The Trustee shall be the joint and several creditor (“*hoofdelijk schuldeiser*”) together with each Series 6 Bondholder of each obligation of the Corporation towards any such Series 6 Bondholder hereunder and accordingly, the Trustee will have its own independent right to

demand performance by the Corporation of such obligation and the Trustee will hold the Homburg Mortgage Bond 6 Collateral to secure its rights as joint and several creditor of such obligations. However, any discharge of the Corporation for any such obligation to the Trustee or a Series 6 Bondholder shall to the same extent discharge the Corporation vis-à-vis the other party, and a Series 6 Bondholder and the Trustee shall not by virtue of this clause be entitled to pursue the Corporation for the same obligation.

Without limiting or affecting the Trustee's rights against the Corporation (whether under this clause or under any other provision of this Fourth Supplemental Indenture), the Trustee agrees with each Series 6 Bondholder that, subject to what is set out in the next sentence, any amounts that the Trustee receives in the exercise of its rights as a joint and several creditor of the Series 6 Bondholders will be received by it for the benefit of, and with the purpose of passing it on to, the Series 6 Bondholders. However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Trustee's right to act in order to protect or preserve rights hereunder, as contemplated by the provisions of this Fourth Supplemental Indenture (or to perform any act reasonably incidental to any of the foregoing).

#### HABENDUM

8. To have and to hold the Homburg Mortgage Bond 6 Collateral and all the rights hereby conferred unto the Trustee, its successors and assigns, forever, but in trust, nevertheless, for the uses and purposes and with the powers and authorities and subject to the terms and conditions mentioned and set forth in this Fourth Supplemental Indenture.

#### LIMITED RECOURSE

9. Neither the Trustee nor the holders of the Series 6 Bonds shall have any claim whatsoever against any of the assets of the Corporation other than the Homburg Mortgage Bond 6 Collateral and the recourse of the Trustee and the holders of the Series 6 Bonds against the Corporation in respect of the payment of all principal, premium, if any, interest and any other amounts owing under the Series 6 Bonds shall be limited to the amount, if any, recoverable in respect of the Homburg Mortgage Bond 6 Collateral.

#### BONDS SEPARATELY SECURED

10. All of the Series 6 Bonds shall be equally and rateably entitled to the benefits of the Homburg Mortgage Bond 6 Collateral.

#### SECURITY EFFECTIVE NOTWITHSTANDING DATE OF ADVANCE

11. The mortgages and charges hereby created or provided to be created shall be and shall be deemed to be effective and shall take effect whether the moneys hereby secured or any part thereof be advanced before or after or at the same time as the issue of any of the Bonds intended to be secured thereby or before or after or upon the date of the execution of this Fourth Supplemental Indenture.

## TITLE AND REGISTRATION

12. The Corporation hereby covenants with the Trustee:

(a) that it will forthwith and from time to time do, execute, acknowledge and deliver all acts, deeds, trust deeds of hypothec, mortgage and pledge, documents, instruments, assurances and things which, in the opinion of Counsel or of the Trustee, are necessary or advisable to assign the Homburg Mortgage Bond 6 Collateral to the Trustee and to enable the Trustee to register the charges herein in all public offices of registration to preserve, protect and perfect the security herein and its priority; and

(b) that, after the security hereby created shall have become enforceable and the Trustee shall have determined or become bound to enforce the same, it will from time to time execute and do all such assurances and things as the Trustee may reasonably require for facilitating the realization of the Homburg Mortgage Bond 6 Collateral and for exercising all the powers, authorities and discretions hereby conferred upon the Trustee and for confirming to any purchaser of any of the Homburg Mortgage Bond 6 Collateral, whether sold by the Trustee hereunder or by judicial proceedings, the title to the property so sold, and that it will execute all notices and directions as the Trustee may consider expedient.

## PARTIAL DEFEASANCE

13. Upon payment to the holders of the Series 6 Bonds of the principal thereof, premium, if any, and interest thereon (including interest on amounts in default), the Homburg Mortgage Bond 6 Collateral shall revert to and revest in the Corporation and the Trustee shall execute such documents and instruments as the Corporation may reasonably require in order to evidence such partial release.

## GUARANTEE BY HOMBURG INVEST INC.

14. The obligations of the Corporation under the Bonds are guaranteed pursuant to a guarantee substantially in the form set out in Appendix D of the Principal Indenture (the "Guarantee Agreement") executed by the Guarantor. If an Event of Default pursuant to Section 13.1 of the Principal Indenture shall have occurred and is continuing, the Trustee shall forthwith, and in any event not less than two (2) Business Days following such Event of Default, provide notice to the Guarantor of such Event of Default and shall demand payment from the Guarantor in respect of any such Event of Default.

## GUARANTEE BY LIMITED PARTNERSHIP

15 The obligations of the Corporation under the Series 6 Bonds are guaranteed pursuant to a guarantee (the “LP Guarantee”) substantially in the form set out in Appendix C of this Fourth Supplemental Indenture executed by Homco Realty Fund (61) Limited Partnership (hereinafter called the “Limited Partnership”). If an Event of Default pursuant to Section 13.1 of the Principal Indenture in relation to the Series 6 Bonds shall have occurred and is continuing, the Trustee shall forthwith, and in any event not less than two (2) Business Days following such Event of Default, provide notice to the Limited Partnership of such Event of Default and shall demand payment from the Limited Partnership in respect of any such Event of Default.

As collateral security for its obligations under the LP Guarantee, the Limited Partnership has agreed to grant a collateral mortgage (the “Collateral Mortgage”) in the principal amount of that amount of Canadian Dollars which is equivalent to €31,230,000 in favour of the Trustee mortgaging its interest in the lands and premises known as “Homburg Harris Centre” located in Calgary, Alberta, or such other property of similar value as may be purchased by the Limited Partnership (the “Homco 61 Property”). The Collateral Mortgage shall also contain a provision automatically postponing the priority of the charge contained in the Collateral Mortgage to all advances made by any holder of a first mortgage on the Homco 61 Property up to a maximum principal amount of Canadian \$125,000,000.

The Trustee may from time to time in its absolute discretion, and without the requirement to obtain the consent of the holders of any of the Bonds (including, without limitation, the holders of the Series 6 Bonds), release and discharge any part of the Homco 61 Property from the charge contained in the Collateral Mortgage to permit the sale of such property by the Limited Partnership in the ordinary course of business, including to Homburg Invest Inc. (“HII”) or to an entity controlled by HII, provided that:

- (A) if there is a prior ranking first mortgage on the Homco 61 Property to an arm’s length party, the proceeds of sale are disbursed
  - (i) to such first mortgage holder in an amount required for the first mortgage holder to grant a partial release of their interest in such property as negotiated between the first mortgage holder and the Trustee, and
  - (ii) after payment to the first mortgage holder as hereinbefore provided, the amount which is equal to the Series 6 Bondholder’s debt divided by the first mortgage holder’s debt multiplied by the payment to the first mortgage holder is disbursed to the trust account maintained by the Limited Partnership for the benefit of the Series 6 Bondholders (the “Limited Partnership Trust Account”) and the remaining proceeds of sale are disbursed to the Limited Partnership, for use by the Limited Partnership in its day-to-day operations;
- (B) if there is no prior ranking first mortgage on the Homco 61 Property to an arm’s length party, two-thirds (2/3) of the proceeds of sale are disbursed to the Limited

Partnership Trust Account and one-third (1/3) of the proceeds of sale are disbursed to the Limited Partnership, for use by the Limited Partnership in its day-to-day operations.

The funds in the Limited Partnership Trust Account may be used by the Limited Partnership to:

- (a) purchase replacement real property from an arm's length party, provided that the Trustee consents to such purchase, or
- (b) loaned to HII for the purchase of real property by HII or for use in the day-to-day operations of HII, provided that HII provides a collateral mortgage to the Limited Partnership over real property belonging to HII in an amount which is not more than eighty percent (80%) of the appraised value of such property less the amount of any prior mortgages that may be outstanding on such property. The maximum amount that may be loaned to HII under this formula is ninety percent (90%) of the amount of the collateral mortgage provided by HII.

#### SPECIAL COVENANTS APPLICABLE WHILE SERIES 6 BONDS ARE OUTSTANDING

16. The Corporation hereby covenants that so long as any of the Series 6 Bonds remain outstanding, the Corporation will not create, issue, incur, assume or allow to exist any mortgage, hypothec, pledge, charge, lien, encumbrance, security interest or other security, whether fixed or floating, on the Homburg Mortgage Bond 6 Collateral ranking in priority to or pari passu with the assignment and transfer hereby created.

#### FURTHER ASSURANCE

17. The mortgages and charges created by this Fourth Supplemental Indenture are by way of further assurance to the Trustee and are not in substitution for any similar provision contained in the Principal Indenture.

#### INDENTURE SUPPLEMENTAL TO PRINCIPAL INDENTURE

18. This Fourth Supplemental Indenture is supplemental to the Principal Indenture and the Principal Indenture and the Bonds issued thereunder shall henceforth be read in conjunction with this Fourth Supplemental Indenture and the Principal Indenture and this Fourth Supplemental Indenture shall henceforth have effect so far as practicable as if all the provisions of the Principal Indenture and of this Fourth Supplemental Indenture were contained in the one instrument and, unless otherwise herein expressly provided or unless there is something in the subject matter or context hereof inconsistent therewith, the expressions used in this Fourth Supplemental Indenture and in the Series 6 Bonds and not otherwise defined shall have the same meaning as is ascribed to corresponding expressions in the Principal Indenture.

ACCEPTANCE OF TRUST BY TRUSTEE

19. The Trustee hereby accepts the trusts in this Fourth Supplemental Indenture declared and created and agrees to perform the same upon the terms and conditions hereinbefore set out, but subject to the provisions of the Principal Indenture.

EXECUTION AND FORMAL DATE

20. This Fourth Supplemental Indenture may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. For the purpose of convenience, this Fourth Supplemental Indenture may be referred to as bearing formal date the 1<sup>st</sup> day of July, 2005, irrespective of the actual date of execution hereof.

Appendices A, B and C to this Fourth Supplemental Indenture shall be deemed to be incorporated herein and to form part hereof.

**IN WITNESS WHEREOF** this Fourth Supplemental Indenture has been duly executed by the parties hereto.

**HOMBURG SHARECO INC.**

By: \_\_\_\_\_

**STICHTING HOMBURG MORTGAGE BOND**

By: \_\_\_\_\_

## APPENDIX A

### Form of Homburg Mortgage Bond 6

1.1 The Homburg Mortgage Bond 6 bonds, the certificate of the Trustee and the registration panel shall be in both the English language and the Dutch language, in the forms provided in Sections 1.2 and 1.3.

1.2 The English language portions of the text of the Homburg Mortgage Bond 6 bonds, the certificate of the Trustee and the registration panel shall be substantially as follows:

No. €15,000

#### **HOMBURG SHARECO INC.**

(Incorporated under the *Companies Act* (Nova Scotia))

Homburg Mortgage Bond 6

Due: June 30, 2012.

HOMBURG SHARECO INC. (hereinafter called the "Corporation"), for value received, hereby acknowledges itself indebted and promises to pay to the registered holder hereof on June 30, 2012, or on such earlier date as the principal amount hereof may become due in accordance with the provisions of the Trust Indenture hereinafter mentioned, the principal sum of FIFTEEN THOUSAND EUROS, together with such further amount, if any, as may be payable by way of premium, on presentation and surrender of this Bond at ABN AMRO Bank at its Amersfoort, The Netherlands branch at the holder's option, and to pay interest on the principal amount hereof from July 1, 2005, or from the last interest payment date to which interest has been paid or made available for payment on the outstanding Bonds, whichever is later, at any of the said places, in like money half-yearly on June 30<sup>th</sup> and December 31<sup>st</sup> in each year, at the rate of 7.5% per annum (unless this Bond shall have been previously redeemed in accordance with the provisions of the Trust Indenture); and should the Corporation at any time make default in the payment of any principal, premium or interest, to pay interest on the amount in default at the same rate after as well as before maturity, default or judgement, in like money, at any of the said places and half-yearly on the same dates. Interest hereon shall be payable (except at maturity or on redemption when interest may at the option of the Corporation be paid on surrender hereof) by cheque or wire transfer to the registered holder hereof as provided in the Trust Indenture and the mailing of such cheque or wire transfer shall satisfy and discharge the liability for interest on this Bond to the extent of the sum represented thereby plus the amount of any tax which the Corporation is required to and does withhold therefrom unless such cheque be not paid on presentation.

This Bond is one of a series designated as Homburg Mortgage Bond 6 bonds (herein sometimes called the "Homburg Mortgage Bond 6 bonds") of the Corporation issued and to be issued under and secured by a Fourth Supplemental Indenture dated as of July 1, 2005, being supplemental to a Trust Indenture (herein collectively called the "Trust Indenture") dated as of

December 15, 2002, both made between the Corporation and Stichting Homburg Mortgage Bond (hereinafter called the "Trustee"), as Trustee.

The aggregate principal amount of Bonds which may be issued under the Trust Indenture is (subject to the restrictions, conditions and limitations set out in the Trust Indenture) unlimited and may consist of several series payable in different currencies, bearing different rates of interest and varying as to the terms on which they may be redeemed and otherwise as specified in the Trust Indenture. Bonds which have been authorized for issue are:

- (a) \$20,000,000 Homburg Mortgage Bond 1 bonds in the aggregate principal amount of \$20,000,000 in lawful money of Canada or the equivalent thereof in Euros, maturing on December 15, 2009;
- (b) €30,000,000 aggregate principal amount of Homburg Mortgage Bond 2 bonds maturing on April 25, 2010;
- (c) €20,010,000 aggregate principal amount of Homburg Mortgage Bond 4 bonds maturing on November 30, 2011;
- (d) €20,010,000 aggregate principal amount of Homburg Mortgage Bond 5 bonds maturing on December 31, 2011;
- (e) €31,230,000 aggregate principal amount of Homburg Mortgage Bond 6 bonds maturing on June 30, 2012 (of which this is one).

This Homburg Mortgage Bond 6 bond and all other Homburg Mortgage Bond 6 bonds now or hereafter certified and issued under the Trust Indenture rank *pari passu* and are secured equally and rateably by the Homburg Mortgage Bond 6 Collateral (as defined in the Fourth Supplemental Indenture) and the recourse of the holders of the Homburg Mortgage Bond 6 bonds against the Corporation is limited to the amount, if any, recoverable in respect of the Homburg Mortgage Bond 6 Collateral. Reference is hereby made to the Trust Indenture for particulars of the nature and extent of the security created thereby, the rights of the holders of the Bonds and of the Corporation and of the Trustee in respect thereof and the terms and conditions upon which the Bonds are issued, secured and held, to all of which the holder of this Bond by acceptance hereof assents.

The Bonds are issuable in denominations of €15,000.

This Bond is subject to redemption in part (such part being €1,000 or a multiple thereof) and notation of such partial redemption may be made on the reverse hereof all as more fully provided in the Trust Indenture. Redemption of the Homburg Mortgage Bond 6 bonds involves a process wherein notice of the redemption is given to the bondholders and an election is provided to bondholders such that bondholders may indicate their preference as to whether they wish to retain or have their Homburg Mortgage Bond 6 bonds redeemed by the Corporation. The election made by the bondholders may or may not be followed by the Corporation, all as more fully provided in the Trust Indenture.

Except as hereinafter provided, the Homburg Mortgage Bond 6 bonds are redeemable at any time on or after July 2, 2010 and prior to maturity, in whole at any time or in part from time to time at the option of the Corporation, on not less than 45 and not more than 70 days notice at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest to the date fixed for redemption.

The principal amount hereof may also become or be declared due before stated maturity in the events, in the manner and with the effect provided in the Trust Indenture.

The Trust Indenture contains provisions making binding upon all holders of Bonds outstanding thereunder resolutions passed at meetings of such holders held in accordance with such provisions and instruments in writing signed by the holders of a specified majority of Bonds outstanding.

Upon presentation at the principal office of the Trustee at Soest, The Netherlands, subject to the provisions of the Trust Indenture and upon compliance with the reasonable requirements of the Trustee, Bonds may be transferred by the registered holder thereof or his executors, administrators or other legal representatives or his or their attorney duly appointed in writing but no such transfer of a Bond shall be valid unless it has been duly noted thereon.

This Bond shall not become obligatory for any purpose until it shall have been certified by the Trustee for the time being under the Trust Indenture.

IN WITNESS WHEREOF HOMBURG SHARECO INC. has caused its corporate seal to be hereunto affixed and this Bond to be signed by its President and its Secretary as of July 1, 2005.

**HOMBURG SHARECO INC.**

by \_\_\_\_\_

by \_\_\_\_\_

c.S. \*

TRUSTEE'S CERTIFICATE

This Bond is one of the Homburg Mortgage Bond 6 bonds referred to in the Trust Indenture within mentioned.

**STICHTING HOMBURG  
MORTGAGE BOND**

By: \_\_\_\_\_

REGISTRATION PANEL

(No writing hereon except by the Trustee or other Registrar)

Date and Place of Registration	In Whose Name Registered	Signature of Trustee or Other Registrar
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1.3 The Dutch language portions of the text of the Homburg Mortgage Bond 6 bonds, the certificate of the Trustee and the registration panel shall be substantially as follows:

[insert Dutch translation of Homburg Mortgage Bond 6 bond form]

## **APPENDIX B**

### **The Homburg Mortgage Bond 6 Collateral consists of:**

An assignment to the Trustee by the Corporation of a pledge it has received from Homburg Invest Inc., such pledge being a pledge by Homburg Invest Inc. of all of its limited partnership units in Homco Realty Fund (61) Limited Partnership.

## APPENDIX C

### GUARANTEE AGREEMENT

**GUARANTEE AGREEMENT** dated as of July 1, 2005, made by Homco Realty Fund (61) Limited Partnership (herein called the “Guarantor”) in favor of Stichting Homburg Mortgage Bond (the “Trustee”), as trustee under that certain Trust Indenture dated as of December 15, 2002 (the “Principal Indenture”), as supplemented by that certain Supplemental Indenture dated as of April 25, 2003 (the “First Supplement”), that certain Second Supplemental Indenture dated November 30, 2004 (the “Second Supplement”), that certain Third Supplemental Indenture dated December 31, 2004 (the “Third Supplement”) and that certain Fourth Supplemental Indenture dated July 1, 2005 (the “Fourth Supplement”) (the Principal Indenture, the First Supplement, the Second Supplement, the Third Supplement and the Fourth Supplement are collectively referred to as the “Agreement”), each between Homburg ShareCo Inc., a Nova Scotia company (the “Company”), and the Trustee pursuant to which the Company has today issued Homburg Mortgage Bond 6 bonds (the “Series 6 Bonds”).

**WHEREAS**, the Fourth Supplement provides that the Guarantor shall guarantee the obligations of the Company to the Trustee on behalf of the Series 6 Bond bondholders in respect of the Series 6 Bonds;

**NOW THEREFORE**, in consideration of the premises, the Guarantor hereby agrees as follows:

**SECTION 1. Defined Terms.** The following terms, as used herein, shall have the following meanings:

(a) **“Business Day”** means any day of the year other than a Saturday, Sunday or other day on which banks are required or authorized to close in Halifax, Nova Scotia.

(b) **“Governmental Entity”** means any (i) federal, provincial, state, municipal, local or other government, governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign, or (ii) any subdivision or authority of any of the foregoing.

(c) **“Holders”** means the Persons entered in the registers for the Series 6 Bonds as holders thereof, such registers being maintained pursuant to the Agreement.

(d) **“Person”** means any individual, corporation, partnership, association, trust, limited liability company or any other entity or organization.

**SECTION 2. Guarantee.** The Guarantor hereby unconditionally and irrevocably guarantees, as principal and not merely as surety, the full and punctual payment when due (whether at stated maturity, upon acceleration or otherwise) of the principal, premium, if any, Additional Amounts (as defined herein), if any, and interest on each Series 6 Bond and all other amounts payable by the Company under the Agreement in respect of the Series 6 Bonds; provided, however, that the payment of interest on overdue installments of interest is guaranteed only to the extent permitted by law (such amounts, the **“Guaranteed Obligations”**). All

payments to be made by the Guarantor pursuant to this Section 2 shall be made on or before five (5) business days following receipt of demand therefor by the Trustee or, to the extent permitted by Section 13 hereof, any Holder.

**SECTION 3. Guarantee Absolute.** The Guarantor agrees that the guarantee contained in this Guarantee Agreement is a guarantee of payment and not of collection or collectibility, and the Guarantor's obligation to pay the Guaranteed Obligations hereunder shall be primary, absolute and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(i) any extension of the time or times for the payment of the Guaranteed Obligations, renewal, settlement, compromise, waiver or release in respect of any obligation of the Company under the Agreement or any Series 6 Bond, by operation of law or otherwise;

(ii) any modification or amendment of or supplement to the Agreement or any Series 6 Bond;

(iii) any change in the corporate existence, structure or ownership of the Company, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Company or its assets or any resulting release or discharge of any obligation of the Company contained in the Agreement or any Series 6 Bond;

(iv) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Company, the Trustee, any Holder or any other Person, whether in connection herewith or any unrelated transactions;

(v) any invalidity, illegality, irregularity or unenforceability for any reason of the Agreement or any Series 6 Bond or in any part thereof as regards the Company, or any provision of applicable law or regulation purporting to prohibit the payment by the Company of the principal of or interest on any Series 6 Bond or any other amount payable by the Company under the Agreement;

(vi) any other act or omission to act or delay of any kind by the Company, the Trustee, any Holder or any other Person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge or defence of the Guarantor's obligations hereunder;

(vii) any contest by the Company or any Person as to the amount of the Guaranteed Obligations;

(viii) the absence of any action to enforce the Agreement or the Series 6 Bonds;

(ix) the recovery of any judgment against the Company or any action to enforce the same;

(x) any dealings with the security which the Trustee or any Holder holds or may hold pursuant to the terms and conditions of the Agreement, including the taking,

giving up or exchange of securities, the variation or realization thereof and the granting of releases and discharges, including, without limitation, the release of any of the Homco 61 Property pursuant to Section 15 of the Fourth Supplement; or

(xi) any invalidity, non-perfection or unenforceability of any security held by the Trustee or any Holder in support of the Guaranteed Obligations, or any irregularity or defect in the manner or procedure by which the Trustee or any Holder realizes on such security.

**SECTION 4. Representations and Warranties.** The Guarantor hereby represents and warrants as of the date hereof that:

**Authorization; No Contravention.** The execution, delivery and performance by the Guarantor of this Guarantee Agreement (i) are within its powers, have been duly authorized by all necessary corporate action, require no action by or in respect of, or filing with, any governmental body, agency or official, and do not contravene its constituent documents, and (ii) do not contravene, or constitute a default under, any provision of applicable law or regulation, as amended from time to time, or of any judgment, injunction, order, decree, agreement or other instrument binding upon the Guarantor or result in or require the creation or imposition of any lien on any asset of the Guarantor other than any contravention, default or lien which would not have a material adverse effect on the ability of the Guarantor to perform its obligations under this Guarantee Agreement.

**Binding Effect.** This Guarantee Agreement constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as such enforceability may be limited by the effect of any bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

**Litigation.** There is no action, suit or proceeding pending against the Guarantor or, to the knowledge of the Guarantor, threatened against the Guarantor before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision (i) which would have a material adverse effect on the ability of the Guarantor to perform its obligations under this Guarantee Agreement, or (ii) which in any manner draws into question the enforceability or validity of this Guarantee Agreement.

**SECTION 5. Manner of Payment.** All payments to be made by the Guarantor hereunder shall be made to the Trustee for application in accordance with Section 13.10 of the Principal Indenture.

**SECTION 6. Enforcement of Guarantee.** The Guarantor agrees that the Trustee or any Holder (but subject always to the provisions of Section 13 hereof) need not seek or exhaust its recourse against the Company or any other Person or realize on any security it may hold in respect of the Guaranteed Obligations before being entitled to payment under this Guarantee Agreement.

**SECTION 7. Waiver.** The Guarantor hereby irrevocably waives promptness, diligence, acceptance hereof, presentment, demand, protest and any and all other notice not provided for herein and any requirement that at any time the Trustee, any Holder (but subject always to the provisions of Section 12 hereof) or any other Person exhaust any right or take any action against the Company or any other Person and any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge, release or defense of the Guarantor or that might otherwise limit recourse against the Guarantor.

**SECTION 8. Waiver of Subrogation.** Until payment in full of the Guaranteed Obligations, the Guarantor irrevocably waives any and all rights to which it may be entitled, by operation of law or otherwise, upon making any payment hereunder to be subrogated to the rights of the payee against the Company with respect to such payment or otherwise to be reimbursed, indemnified or exonerated by the Company in respect thereof.

**SECTION 9. Notices.** All notices and other communications provided for or permitted hereunder shall be made as follows:

If to the Guarantor: Homco Realty Fund (61) Limited Partnership  
c/o Suite 200, 11 Akerley Boulevard  
Dartmouth, Nova Scotia, Canada B3B 1V1  
Attention:  
Fax No.: (902) 469-6776

If to the Company, the Trustee or any Holder, as specified in Article 17 of the Principal Indenture.

**SECTION 10. No Waiver; Remedies.** No failure on the part of the Trustee or any Holder (but subject always to the provisions of Section 13 hereof) to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**SECTION 11. Continuing Guarantee; Reinstatement in Certain Circumstances.** The guarantee contained in this Guarantee Agreement is a continuing guarantee and the Guarantor's obligations hereunder shall (i) remain in full force and effect until the indefeasible payment in full of the Guaranteed Obligations, (ii) be binding upon the Guarantor and its successors and assigns, and (iii) enure to the benefit of and be enforceable by the Trustee and, subject always to the provisions of Section 13 hereof, any Holder and their respective successors and permitted assigns; provided, however, that this Guarantee Agreement shall not be construed to create any right in any Person other than the Trustee and, subject always to the provisions of Section 13 hereof, any Holder and their respective successors and permitted assigns or to be a contract in whole or in part for the benefit of any Person other than the Trustee and, subject to the provisions of Section 13 hereof, the Holders and their respective successors and permitted assigns. If at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of the

Company or otherwise, the obligations of the Guarantor hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

**SECTION 12. Stay of Acceleration.** If acceleration of the time for payment of any Guaranteed Obligation is stayed upon the insolvency, bankruptcy or reorganization of the Company, all such amounts otherwise subject to acceleration under the terms of the Agreement shall nonetheless be payable by the Guarantor hereunder to the Trustee or, to the extent permitted by Section 13 hereof, the Holders forthwith on demand.

**SECTION 13. Holdings May Not Enforce.** No Holder shall have the right to institute any suit, action or proceeding against the Guarantor for any default hereunder except in the manner and subject to the conditions, *mutatis mutandis*, set forth in Section 13.5 of the Principal Indenture, it being understood and intended that no one or more of the Holders shall have any right in any manner whatsoever to enforce any right hereunder or pursuant hereto by any action except as aforesaid and that all powers and trusts hereunder shall be exercised and all proceedings at law or in equity shall be instituted, had and maintained by the Trustee, except as aforesaid.

**SECTION 14. Expenses.** The Guarantor shall pay, or reimburse, the Trustee and the Holders for all costs and expenses including, without limitation, reasonable attorneys' fees and disbursements reasonably incurred by it in connection with the enforcement of this Guarantee Agreement; provided, however, that the Guarantor shall only be required to pay, or reimburse, for the reasonable attorneys' fees and disbursements for one counsel for the Trustee and the Holders.

**SECTION 15. No Withholding.** Any and all payments made by the Guarantor pursuant to the provisions of this Guarantee Agreement shall be made without withholding or deduction for, or on account of, any current or future taxes imposed by or on behalf of Canada or any political subdivision thereof unless such taxes are required by law or by the administration thereof to be withheld or deducted, in which case the Guarantor shall pay such amounts ("Additional Amounts") as may be necessary, so that the net amount received by the Holder (including Additional Amounts) after such withholding or deduction will not be less than the amount the Holder would have received if such taxes had not been withheld or deducted, provided, however, that no such Additional Amounts will be payable in respect of, among others, the following:

(a) any tax, assessment or other governmental charge which would not have been so imposed but for (i) the existence of any present or former connection between such Holder (or between a fiduciary, settlor or beneficiary of, or a person holding power over, such Holder, if such Holder is an estate or trust or a member or shareholder of such Holder, if such Holder is a partnership or corporation) and Canada, including, without limitation, such Holder (or such fiduciary, settlor, beneficiary or person holding a power over such Holder) being or having been a citizen or resident or treated as a resident thereof or being or having been engaged in a trade or business or present therein or having had a permanent establishment therein, or (ii) such Holder's current or former status as a personal holding company, a foreign personal holding company, a controlled foreign corporation that is related to the Guarantor through stock ownership, a foreign tax-exempt organization for Canadian tax purposes or as a corporation which accumulates earnings to avoid Canadian income tax;

(b) any tax, assessment or other governmental charge which would not have been so imposed but for the presentation by the Holder of any Series 6 Bond for payment on a date more than 60 days after the date on which such payment became due and payable or the date on which payment thereof is duly provided for, whichever occurs later;

(c) any estate, inheritance, gift, sales, transfer, personal property or any similar tax, assessment or other governmental charge;

(d) any tax, assessment or other governmental charge which is payable otherwise than by deduction or withholding from payments of, or payments under the Guarantee in respect of, principal, interest or any Additional Amount on any Series 6 Bond;

(e) any tax, assessment or other governmental charge imposed on interest received by any person holding, actually or constructively, 10% or more of the total combined voting power of all classes of stock of the Guarantor entitled to vote;

(f) any tax, assessment or other governmental charge imposed on a Holder that is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada); or

(g) any tax, assessment or governmental charge imposed by reason of the failure of the Holder or beneficial owner of the Series 6 Bond to deliver, upon reasonable demand by the Guarantor, any form or document that may be required or reasonably requested in order to allow the Guarantor to make a payment to the Holder without any deduction or withholding for or on account of any tax.

The provisions of this Section 15 shall survive the termination of this Guarantee Agreement.

**SECTION 16. Judgment Currency.** If for the purposes of obtaining judgment in any court it is necessary to convert all or any part of the Guaranteed Obligations or any other amount due to the Trustee or any Holder in respect of the Guarantor's obligations under this Guarantee Agreement in any currency (the "Original Currency") into Euros (the "Other Currency"), the Guarantor, to the fullest extent that it may effectively do so, agrees that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Trustee or any Holder, as the case may be, could purchase the Original Currency with the Other Currency on the Business Day preceding that on which final judgment is paid or satisfied.

The obligations of the Guarantor in respect of any sum due in the Original Currency from it to the Trustee or any Holder shall, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Trustee or any Holder of any sum adjudged to be so due in such Other Currency the Trustee or any Holder may, in accordance with its normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Trustee or any Holder in the Original Currency, the Guarantor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Trustee or any Holder against such loss, and if the amount of the Original Currency so purchased exceeds the sum originally due to the Trustee or any Holder in the Original Currency, the Trustee or any Holder, as the case may be, agrees to remit such excess to the Guarantor.

**SECTION 17. Governing Law.** This Guarantee Agreement shall be governed by, and construed in accordance with, the laws of the Province of Nova Scotia and the federal laws of Canada applicable therein, without regard to the choice-of-law principles of Nova Scotia that would require the application of the laws of a jurisdiction other than Nova Scotia.

**SECTION 18. Severability.** Any provision of this Guarantee Agreement which is illegal, invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating the remaining provisions hereof and any such illegality, invalidity, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**SECTION 19. Entire Agreement.** This Guarantee Agreement embodies the entire agreement of the Guarantor with respect to the subject matter hereof and supersedes any prior written or oral agreements and understandings relating to the subject matter hereof and thereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guarantee Agreement to be duly executed and delivered by its officers thereunto duly authorized as of the date first above written.

**HOMCO REALTY FUND (61) LIMITED  
PARTNERSHIP, BY ITS GENERAL PARTNER,  
HOMBURG L.P. MANAGEMENT INC.**

By: \_\_\_\_\_

**THIS FIFTH SUPPLEMENTAL INDENTURE** made as of the 1<sup>st</sup> day of July, 2005,

BETWEEN:

**HOMBURG SHARECO INC.,**

a company incorporated under the laws of the Province of Nova Scotia  
(hereinafter called the "Corporation")

- and -

**STICHTING HOMBURG MORTGAGE BOND,**

a foundation incorporated under the laws of The Netherlands  
(hereinafter called the "Trustee")

**WHEREAS** in and by an indenture (hereinafter called the "Principal Indenture") made as of the 15<sup>th</sup> day of December, 2002 between the Corporation and the Trustee, provision was made for the issuance of bonds of the Corporation (hereinafter sometimes called "Bonds") to an unlimited principal amount;

**AND WHEREAS** pursuant to the provisions of the Principal Indenture, the Corporation issued Bonds to the aggregate principal amount of \$20,000,000 in lawful money of Canada or the equivalent thereof in Euros designated as Homburg Mortgage Bond 1 Bonds (hereinafter called the "Series 1 Bonds"), of which Series 1 Bonds in the aggregate principal amount of \$20,000,000 in lawful money of Canada or the equivalent thereof in Euros are now outstanding;

**AND WHEREAS** pursuant to the provisions of a Supplemental Indenture dated as of April 25, 2003 (hereinafter called the "First Supplement"), the Corporation issued Bonds to the aggregate principal amount of €30,000,000 designated as Homburg Mortgage Bond 2 Bonds (hereinafter called the "Series 2 Bonds"), of which Series 2 Bonds in the aggregate principal amount of €30,000,000 are now outstanding;

**AND WHEREAS** pursuant to the provisions of a Supplemental Indenture dated as of November 30, 2004 (hereinafter called the "Second Supplement"), the Corporation issued Bonds to the aggregate principal amount of €20,010,000 designated as Homburg Mortgage Bond 4 Bonds (hereinafter called the "Series 4 Bonds"), of which Series 4 Bonds in the aggregate principal amount of €20,010,000 are now outstanding;

**AND WHEREAS** pursuant to the provisions of a Supplemental Indenture dated as of December 31, 2004 (hereinafter called the "Third Supplement"), the Corporation issued Bonds to the aggregate principal amount of €20,010,000 designated as Homburg Mortgage Bond 5 Bonds (hereinafter called the "Series 5 Bonds"), of which Series 5 Bonds in the aggregate principal amount of €20,010,000 are now outstanding;

**AND WHEREAS** pursuant to the provisions of a Supplemental Indenture dated as of July 1, 2005 (hereinafter called the "Fourth Supplement"), the Corporation issued Bonds to the aggregate principal amount of €31,230,000 designated as Homburg Mortgage Bond 6 Bonds (hereinafter called the "Series 6 Bonds"), of which Series 6 Bonds in the aggregate principal amount of €31,230,000 are now outstanding;

**AND WHEREAS** the Corporation is desirous of issuing under the provisions of the Principal Indenture, as a different series, additional Bonds in the aggregate principal amount of €31,230,000;

**AND WHEREAS** all necessary resolutions have been passed by the Corporation authorizing the issuance of and specifying the particulars and provisions to be expressed in such additional Bonds and authorizing this Fifth Supplemental Indenture;

**AND WHEREAS** the Principal Indenture as supplemented by the First Supplement, the Second Supplement, the Third Supplement, the Fourth Supplement and this Fifth Supplemental Indenture is hereafter sometimes called the "Trust Deed";

**AND WHEREAS** the foregoing recitals are made as representations and statements of fact by the Corporation and not by the Trustee;

**NOW THEREFORE THIS FIFTH SUPPLEMENTAL INDENTURE WITNESSES** and it is hereby agreed and declared as follows:

#### SERIES 7 BONDS

1. The additional Bonds to be issued hereunder shall consist of €31,230,000 principal amount of Bonds designated as Homburg Mortgage Bond 7 Bonds (hereinafter called the "Series 7 Bonds"); shall be dated as of the 1<sup>st</sup> day of July, 2005; shall mature on the 30<sup>th</sup> day of June, 2012; shall bear interest at the rate of 7.25% per annum from the 1<sup>st</sup> day of July, 2005, payable half-yearly on the 30<sup>th</sup> day of June and the 31<sup>st</sup> day of December in each year after as well as before maturity and after as well as before default, with interest on overdue interest at the said rate. The principal of the Series 7 Bonds, interest thereon and premium (if any) shall be payable in Euros at ABN AMRO Bank at its Amersfoort, The Netherlands branch. The Series 7 Bonds shall be issued as fully registered Bonds in denominations of €15,000. Series 7 Bonds of any of the denominations and forms herein authorized may be exchanged for other Bonds of the same series as provided in Section 2.12 of the Principal Indenture.

The Series 7 Bonds and the certificate of the Trustee to be endorsed on the Series 7 Bonds shall be substantially in the form set forth in Appendix A hereto with such appropriate insertions, omissions, substitutions and variations as may be required or permitted under the terms of the Trust Deed.

#### REDEMPTION AND PURCHASE OF SERIES 7 BONDS

2. The Corporation, while not in default under the Trust Deed and subject as hereinafter provided, shall have the right at its option at any time to redeem before maturity all of the outstanding Series 7 Bonds or from time to time to redeem before maturity any of the outstanding Series 7 Bonds (in the manner provided and in accordance with and subject to the provisions of Section 4.1 and Sections 4.6 to 4.12 inclusive of the Principal Indenture and the provisions hereinafter set forth, provided that if the provisions of this Fifth Supplemental Indenture and the Principal Indenture conflict with respect to the redemption of Series 7 Bonds, the provisions of this Fifth Supplemental Indenture shall prevail) at 100% of the principal amount thereof, together in all cases with interest on such principal amount of Series 7 Bonds to be redeemed accrued to the date specified for redemption (the price, including accrued interest, at which Series 7 Bonds may be redeemed at any given time pursuant to this Section 2 being hereinafter called the "redemption price"); provided always that the Corporation shall not, and the Corporation hereby covenants with the Trustee that it will not, call Series 7 Bonds for redemption in whole or in part on or before the 2<sup>nd</sup> day of July, 2010.

3. The Corporation may redeem all or any of the outstanding Series 7 Bonds as follows:

(a) the Corporation shall send a notice (the "Redemption Notice") to all Series 7 Bond bondholders (the "Series 7 Bondholders") by letter or circular sent postage prepaid, addressed to each bondholder at the last address appearing upon one of the registers hereinbefore mentioned, and mailed not less than 45 and not more than 70 days prior to the date specified for redemption (the "Redemption Date"), provided always that the accidental omission to mail any such letter or circular to or the non-receipt of any such letter or circular by any such holder or holders shall not invalidate or otherwise prejudicially affect the redemption of such Series 7 Bonds;

(b) the Redemption Notice shall:

(i) state the amount of Series 7 Bonds which the Corporation shall redeem on the Redemption Date (the "Redemption Amount");

(ii) state that each Series 7 Bondholder must elect to either retain his Series 7 Bond or to have his Series 7 Bond redeemed by the Corporation by returning an Election Form (as hereinafter defined) not less than 30 days prior to the Redemption Date;

(iii) provide an election form on which the Series 7 Bondholder may elect to either "retain Series 7 Bond" or "have Series 7 Bond redeemed by Corporation" (the "Election Form"); and

(iv) include a postage prepaid envelope addressed to the Corporation;

(c) if the Corporation receives Election Forms indicating Series 7 Bondholders who have elected to have their Series 7 Bonds redeemed by the Corporation which total an amount of Series 7 Bonds which is:

(i) equal to or in excess of the Redemption Amount, the Corporation shall redeem the Series 7 Bonds of those bondholders who elected to have the Corporation redeem

their Series 7 Bonds on a pro rata basis in an amount equal to the Redemption Amount; or

- (ii) less than the Redemption Amount, the Corporation shall (A) redeem all of the Series 7 Bonds of those bondholders who elected to have the Corporation redeem their Series 7 Bonds in their Election Notices; and (B) redeem the Series 7 Bonds of those bondholders who have not elected to have the Corporation redeem their Series 7 Bonds in an amount equal to the balance of the Redemption Amount on a pro rata basis, such that the total amount redeemed is equal to the Redemption Amount;

provided that the Corporation shall determine the course of action it shall take under this Section 3(c) not more than 20 days and not less than 12 days prior to the Redemption Date, and further provided that if the Election Form of a Series 7 Bondholder has not been received by the date which is not less than 30 days prior to the Redemption Date, such bondholder shall be deemed to have elected not to have the Corporation redeem its Series 7 Bonds.

4. Where Series 7 Bonds are to be redeemed on a pro rata basis, the Series 7 Bonds so to be redeemed shall be selected by the Trustee on a pro rata basis to the nearest multiple of €1,000 in accordance with the principal amount of Series 7 Bonds registered in the name of each holder.

5. At any time when the Corporation is not in default under the Trust Deed and would be entitled to redeem Series 7 Bonds under the foregoing provisions of this Fifth Supplemental Indenture, the Corporation may purchase Series 7 Bonds in the market or by private contract, provided that the prices at which such Series 7 Bonds may be purchased shall not exceed the redemption price (including accrued interest) at which such Series 7 Bonds could, at the time of purchase, be redeemed by the Corporation, plus costs of purchase.

6. Series 7 Bonds so redeemed or purchased as aforesaid shall be forthwith delivered to the Trustee for cancellation and shall be cancelled and destroyed and no Bonds shall be issued in substitution therefor except as permitted by Section 4.4 of the Principal Indenture. If required by the Corporation, the Trustee shall from time to time furnish to it a destruction certificate setting out the numbers and denominations of the Series 7 Bonds so destroyed.

## MORTGAGE AND CHARGE

### SPECIFIC CHARGE

7. In consideration of the premises and of €1.00 paid by the Trustee (the receipt and sufficiency of which is hereby acknowledged) and to secure the due payment of all principal moneys, interest and premium, if any, on the Series 7 Bonds from time to time issued and certified hereunder and all of the other moneys for the time being and from time to time owing on the Series 7 Bonds, the Corporation hereby assigns and transfers the assets outlined in Appendix B attached hereto (the "Homburg Mortgage Bond 7 Collateral") to the Trustee to be held by the Trustee on behalf of the holders of the Series 7 Bonds in accordance with the terms hereof. The Corporation hereby covenants that it will not create, issue, incur, assume or allow to

exist any mortgage, hypothec, charge, pledge, lien, security interest or other encumbrance upon the Homburg Mortgage Bond 7 Collateral or any part thereof ranking or purporting to rank in priority to or pari passu with the assignment and transfer hereby created.

The Trustee shall be the joint and several creditor (“hoofdelijk schuldeiser”) together with each Series 7 Bondholder of each obligation of the Corporation towards any such Series 7 Bondholder hereunder and accordingly, the Trustee will have its own independent right to demand performance by the Corporation of such obligation and the Trustee will hold the Homburg Mortgage Bond 7 Collateral to secure its rights as joint and several creditor of such obligations. However, any discharge of the Corporation for any such obligation to the Trustee or a Series 7 Bondholder shall to the same extent discharge the Corporation vis-à-vis the other party, and a Series 7 Bondholder and the Trustee shall not by virtue of this clause be entitled to pursue the Corporation for the same obligation.

Without limiting or affecting the Trustee’s rights against the Corporation (whether under this clause or under any other provision of this Fifth Supplemental Indenture), the Trustee agrees with each Series 7 Bondholder that, subject to what is set out in the next sentence, any amounts that the Trustee receives in the exercise of its rights as a joint and several creditor of the Series 7 Bondholders will be received by it for the benefit of, and with the purpose of passing it on to, the Series 7 Bondholders. However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Trustee’s right to act in order to protect or preserve rights hereunder, as contemplated by the provisions of this Fifth Supplemental Indenture (or to perform any act reasonably incidental to any of the foregoing).

#### HABENDUM

8. To have and to hold the Homburg Mortgage Bond 7 Collateral and all the rights hereby conferred unto the Trustee, its successors and assigns, forever, but in trust, nevertheless, for the uses and purposes and with the powers and authorities and subject to the terms and conditions mentioned and set forth in this Fifth Supplemental Indenture.

#### LIMITED RECOURSE

9. Neither the Trustee nor the holders of the Series 7 Bonds shall have any claim whatsoever against any of the assets of the Corporation other than the Homburg Mortgage Bond 7 Collateral and the recourse of the Trustee and the holders of the Series 7 Bonds against the Corporation in respect of the payment of all principal, premium, if any, interest and any other amounts owing under the Series 7 Bonds shall be limited to the amount, if any, recoverable in respect of the Homburg Mortgage Bond 7 Collateral.

#### BONDS SEPARATELY SECURED

10. All of the Series 7 Bonds shall be equally and rateably entitled to the benefits of the Homburg Mortgage Bond 7 Collateral.

#### SECURITY EFFECTIVE NOTWITHSTANDING DATE OF ADVANCE

11. The mortgages and charges hereby created or provided to be created shall be and shall be deemed to be effective and shall take effect whether the moneys hereby secured or any part thereof be advanced before or after or at the same time as the issue of any of the Bonds intended to be secured thereby or before or after or upon the date of the execution of this Fifth Supplemental Indenture.

#### TITLE AND REGISTRATION

12. The Corporation hereby covenants with the Trustee:

(a) that it will forthwith and from time to time do, execute, acknowledge and deliver all acts, deeds, trust deeds of hypothec, mortgage and pledge, documents, instruments, assurances and things which, in the opinion of Counsel or of the Trustee, are necessary or advisable to assign the Homburg Mortgage Bond 7 Collateral to the Trustee and to enable the Trustee to register the charges herein in all public offices of registration to preserve, protect and perfect the security herein and its priority; and

(b) that, after the security hereby created shall have become enforceable and the Trustee shall have determined or become bound to enforce the same, it will from time to time execute and do all such assurances and things as the Trustee may reasonably require for facilitating the realization of the Homburg Mortgage Bond 7 Collateral and for exercising all the powers, authorities and discretions hereby conferred upon the Trustee and for confirming to any purchaser of any of the Homburg Mortgage Bond 7 Collateral, whether sold by the Trustee hereunder or by judicial proceedings, the title to the property so sold, and that it will execute all notices and directions as the Trustee may consider expedient.

#### PARTIAL DEFEASANCE

13. Upon payment to the holders of the Series 7 Bonds of the principal thereof, premium, if any, and interest thereon (including interest on amounts in default), the Homburg Mortgage Bond 7 Collateral shall revert to and revest in the Corporation and the Trustee shall execute such documents and instruments as the Corporation may reasonably require in order to evidence such partial release.

#### GUARANTEE BY HOMBURG INVEST INC.

14. The obligations of the Corporation under the Bonds are guaranteed pursuant to a guarantee substantially in the form set out in Appendix D of the Principal Indenture (the "Guarantee Agreement") executed by the Guarantor. If an Event of Default pursuant to Section 13.1 of the Principal Indenture shall have occurred and is continuing, the Trustee shall forthwith, and in any event not less than two (2) Business Days following such Event of Default, provide notice to the Guarantor of such Event of Default and shall demand payment from the Guarantor in respect of any such Event of Default.

## GUARANTEE BY LIMITED PARTNERSHIP

15 The obligations of the Corporation under the Series 7 Bonds are guaranteed pursuant to a guarantee (the “LP Guarantee”) substantially in the form set out in Appendix C of this Fifth Supplemental Indenture executed by Homco Realty Fund (62) Limited Partnership and Homco Realty Fund (67) Limited Partnership (hereinafter collectively called the “Limited Partnerships”). If an Event of Default pursuant to Section 13.1 of the Principal Indenture in relation to the Series 7 Bonds shall have occurred and is continuing, the Trustee shall forthwith, and in any event not less than two (2) Business Days following such Event of Default, provide notice to the Limited Partnerships of such Event of Default and shall demand payment from the Limited Partnerships in respect of any such Event of Default.

As collateral security for their obligations under the LP Guarantee, the Limited Partnerships have agreed to grant a collateral mortgage (the “Collateral Mortgage”) in the principal amount of that amount of Canadian Dollars which is equivalent to €31,230,000 in favour of the Trustee mortgaging their interest in the lands and premises known as the “Costello/Centurion Towers” located in Calgary, Alberta, or such other property of similar value as may be purchased by the Limited Partnerships (the “Homco Property”). The Collateral Mortgage shall also contain a provision automatically postponing the priority of the charge contained in the Collateral Mortgage to all advances made by any holder of a first mortgage on the Homco Property up to a maximum principal amount of Canadian \$5,000,000.

The Trustee may from time to time in its absolute discretion, and without the requirement to obtain the consent of the holders of any of the Bonds (including, without limitation, the holders of the Series 7 Bonds), release and discharge any part of the Homco Property from the charge contained in the Collateral Mortgage to permit the sale of such property by the Limited Partnerships in the ordinary course of business, including to Homburg Invest Inc. (“HII”) or to an entity controlled by HII, provided that:

- (A) if there is a prior ranking first mortgage on the Homco Property to an arm’s length party, the proceeds of sale are disbursed
  - (i) to such first mortgage holder in an amount required for the first mortgage holder to grant a partial release of their interest in such property as negotiated between the first mortgage holder and the Trustee, and
  - (ii) after payment to the first mortgage holder as hereinbefore provided, the amount which is equal to the Series 7 Bondholder’s debt divided by the first mortgage holder’s debt multiplied by the payment to the first mortgage holder is disbursed to the trust account maintained by the Limited Partnerships for the benefit of the Series 7 Bondholders (the “Limited Partnership Trust Account”) and the remaining proceeds of sale are disbursed to the Limited Partnerships, for use by the Limited Partnerships in their day-to-day operations;

- (B) if there is no prior ranking first mortgage on the Homco Property to an arm's length party, two-thirds (2/3) of the proceeds of sale are disbursed to the Limited Partnership Trust Account and one-third (1/3) of the proceeds of sale are disbursed to the Limited Partnerships, for use by the Limited Partnerships in their day-to-day operations.

The funds in the Limited Partnership Trust Account may be used by the Limited Partnerships to:

- (a) purchase replacement real property from an arm's length party, provided that the Trustee consents to such purchase, or
- (b) loaned to HII for the purchase of real property by HII or for use in the day-to-day operations of HII, provided that HII provides a collateral mortgage to the Limited Partnerships over real property belonging to HII in an amount which is not more than eighty percent (80%) of the appraised value of such property less the amount of any prior mortgages that may be outstanding on such property. The maximum amount that may be loaned to HII under this formula is ninety percent (90%) of the amount of the collateral mortgage provided by HII.

SPECIAL COVENANTS APPLICABLE WHILE  
SERIES 7 BONDS ARE OUTSTANDING

16. The Corporation hereby covenants that so long as any of the Series 7 Bonds remain outstanding, the Corporation will not create, issue, incur, assume or allow to exist any mortgage, hypothec, pledge, charge, lien, encumbrance, security interest or other security, whether fixed or floating, on the Homburg Mortgage Bond 7 Collateral ranking in priority to or pari passu with the assignment and transfer hereby created.

FURTHER ASSURANCE

17. The mortgages and charges created by this Fifth Supplemental Indenture are by way of further assurance to the Trustee and are not in substitution for any similar provision contained in the Principal Indenture.

INDENTURE SUPPLEMENTAL TO PRINCIPAL INDENTURE

18. This Fifth Supplemental Indenture is supplemental to the Principal Indenture and the Principal Indenture and the Bonds issued thereunder shall henceforth be read in conjunction with this Fifth Supplemental Indenture and the Principal Indenture and this Fifth Supplemental Indenture shall henceforth have effect so far as practicable as if all the provisions of the Principal Indenture and of this Fifth Supplemental Indenture were contained in the one instrument and, unless otherwise herein expressly provided or unless there is something in the subject matter or context hereof inconsistent therewith, the expressions used in this Fifth Supplemental Indenture and in the Series 7 Bonds and not otherwise defined shall have the same meaning as is ascribed to corresponding expressions in the Principal Indenture.

ACCEPTANCE OF TRUST BY TRUSTEE

19. The Trustee hereby accepts the trusts in this Fifth Supplemental Indenture declared and created and agrees to perform the same upon the terms and conditions hereinbefore set out, but subject to the provisions of the Principal Indenture.

EXECUTION AND FORMAL DATE

20. This Fifth Supplemental Indenture may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. For the purpose of convenience, this Fifth Supplemental Indenture may be referred to as bearing formal date the 1<sup>st</sup> day of July, 2005, irrespective of the actual date of execution hereof.

Appendices A, B and C to this Fifth Supplemental Indenture shall be deemed to be incorporated herein and to form part hereof.

**IN WITNESS WHEREOF** this Fifth Supplemental Indenture has been duly executed by the parties hereto.

**HOMBURG SHARECO INC.**

By: \_\_\_\_\_

**STICHTING HOMBURG MORTGAGE BOND**

By: \_\_\_\_\_

## APPENDIX A

### Form of Homburg Mortgage Bond 7

1.1 The Homburg Mortgage Bond 7 bonds, the certificate of the Trustee and the registration panel shall be in both the English language and the Dutch language, in the forms provided in Sections 1.2 and 1.3.

1.2 The English language portions of the text of the Homburg Mortgage Bond 7 bonds, the certificate of the Trustee and the registration panel shall be substantially as follows:

No. €15,000

#### **HOMBURG SHARECO INC.**

(Incorporated under the *Companies Act* (Nova Scotia))

Homburg Mortgage Bond 7

Due: June 30, 2012.

HOMBURG SHARECO INC. (hereinafter called the "Corporation"), for value received, hereby acknowledges itself indebted and promises to pay to the registered holder hereof on June 30, 2012, or on such earlier date as the principal amount hereof may become due in accordance with the provisions of the Trust Indenture hereinafter mentioned, the principal sum of FIFTEEN THOUSAND EUROS, together with such further amount, if any, as may be payable by way of premium, on presentation and surrender of this Bond at ABN AMRO Bank at its Amersfoort, The Netherlands branch at the holder's option, and to pay interest on the principal amount hereof from July 1, 2005, or from the last interest payment date to which interest has been paid or made available for payment on the outstanding Bonds, whichever is later, at any of the said places, in like money half-yearly on June 30<sup>th</sup> and December 31<sup>st</sup> in each year, at the rate of 7.25% per annum (unless this Bond shall have been previously redeemed in accordance with the provisions of the Trust Indenture); and should the Corporation at any time make default in the payment of any principal, premium or interest, to pay interest on the amount in default at the same rate after as well as before maturity, default or judgement, in like money, at any of the said places and half-yearly on the same dates. Interest hereon shall be payable (except at maturity or on redemption when interest may at the option of the Corporation be paid on surrender hereof) by cheque or wire transfer to the registered holder hereof as provided in the Trust Indenture and the mailing of such cheque or wire transfer shall satisfy and discharge the liability for interest on this Bond to the extent of the sum represented thereby plus the amount of any tax which the Corporation is required to and does withhold therefrom unless such cheque be not paid on presentation.

This Bond is one of a series designated as Homburg Mortgage Bond 7 bonds (herein sometimes called the "Homburg Mortgage Bond 7 bonds") of the Corporation issued and to be issued under and secured by a Fifth Supplemental Indenture dated as of July 1, 2005, being supplemental to a Trust Indenture (herein collectively called the "Trust Indenture") dated as of

December 15, 2002, both made between the Corporation and Stichting Homburg Mortgage Bond (hereinafter called the "Trustee"), as Trustee.

The aggregate principal amount of Bonds which may be issued under the Trust Indenture is (subject to the restrictions, conditions and limitations set out in the Trust Indenture) unlimited and may consist of several series payable in different currencies, bearing different rates of interest and varying as to the terms on which they may be redeemed and otherwise as specified in the Trust Indenture. Bonds which have been authorized for issue are:

- (a) \$20,000,000 Homburg Mortgage Bond 1 bonds in the aggregate principal amount of \$20,000,000 in lawful money of Canada or the equivalent thereof in Euros, maturing on December 15, 2009;
- (b) €30,000,000 aggregate principal amount of Homburg Mortgage Bond 2 bonds maturing on April 25, 2010;
- (c) €20,010,000 aggregate principal amount of Homburg Mortgage Bond 4 bonds maturing on November 30, 2011;
- (d) €20,010,000 aggregate principal amount of Homburg Mortgage Bond 5 bonds maturing on December 31, 2011;
- (e) €31,230,000 aggregate principal amount of Homburg Mortgage Bond 6 bonds maturing on June 30, 2012;
- (f) €31,230,000 aggregate principal amount of Homburg Mortgage Bond 7 bonds maturing on June 30, 2012 (of which this is one).

This Homburg Mortgage Bond 7 bond and all other Homburg Mortgage Bond 7 bonds now or hereafter certified and issued under the Trust Indenture rank pari passu and are secured equally and rateably by the Homburg Mortgage Bond 7 Collateral (as defined in the Fifth Supplemental Indenture) and the recourse of the holders of the Homburg Mortgage Bond 7 bonds against the Corporation is limited to the amount, if any, recoverable in respect of the Homburg Mortgage Bond 7 Collateral. Reference is hereby made to the Trust Indenture for particulars of the nature and extent of the security created thereby, the rights of the holders of the Bonds and of the Corporation and of the Trustee in respect thereof and the terms and conditions upon which the Bonds are issued, secured and held, to all of which the holder of this Bond by acceptance hereof assents.

The Bonds are issuable in denominations of €15,000.

This Bond is subject to redemption in part (such part being €1,000 or a multiple thereof) and notation of such partial redemption may be made on the reverse hereof all as more fully provided in the Trust Indenture. Redemption of the Homburg Mortgage Bond 7 bonds involves a process wherein notice of the redemption is given to the bondholders and an election is provided to bondholders such that bondholders may indicate their preference as to whether they wish to retain or have their Homburg Mortgage Bond 7 bonds redeemed by the Corporation. The election made by the bondholders may or may not be followed by the Corporation, all as more fully provided in the Trust Indenture.

Except as hereinafter provided, the Homburg Mortgage Bond 7 bonds are redeemable at any time on or after July 2, 2010 and prior to maturity, in whole at any time or in part from time to time at the option of the Corporation, on not less than 45 and not more than 70 days notice at a

redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest to the date fixed for redemption.

The principal amount hereof may also become or be declared due before stated maturity in the events, in the manner and with the effect provided in the Trust Indenture.

The Trust Indenture contains provisions making binding upon all holders of Bonds outstanding thereunder resolutions passed at meetings of such holders held in accordance with such provisions and instruments in writing signed by the holders of a specified majority of Bonds outstanding.

Upon presentation at the principal office of the Trustee at Soest, The Netherlands, subject to the provisions of the Trust Indenture and upon compliance with the reasonable requirements of the Trustee, Bonds may be transferred by the registered holder thereof or his executors, administrators or other legal representatives or his or their attorney duly appointed in writing but no such transfer of a Bond shall be valid unless it has been duly noted thereon.

This Bond shall not become obligatory for any purpose until it shall have been certified by the Trustee for the time being under the Trust Indenture.

IN WITNESS WHEREOF HOMBURG SHARECO INC. has caused its corporate seal to be hereunto affixed and this Bond to be signed by its President and its Secretary as of July 1, 2005.

**HOMBURG SHARECO INC.**

by \_\_\_\_\_

c.s. \*

by \_\_\_\_\_

TRUSTEE'S CERTIFICATE

This Bond is one of the Homburg Mortgage Bond 7 bonds referred to in the Trust Indenture within mentioned.

**STICHTING HOMBURG  
MORTGAGE BOND**

By: \_\_\_\_\_

REGISTRATION PANEL

(No writing hereon except by the Trustee or other Registrar)

Date and Place of Registration	In Whose Name Registered	Signature of Trustee or Other Registrar
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1.3 The Dutch language portions of the text of the Homburg Mortgage Bond 7 bonds, the certificate of the Trustee and the registration panel shall be substantially as follows:

[insert Dutch translation of Homburg Mortgage Bond 7 bond form]

## **APPENDIX B**

### **The Homburg Mortgage Bond 7 Collateral consists of:**

An assignment to the Trustee by the Corporation of a pledge it has received from Homburg Invest Inc., such pledge being a pledge by Homburg Invest Inc. of all of its limited partnership units in Homco Realty Fund (62) Limited Partnership and Homco Realty Fund (67) Limited Partnership.

## APPENDIX C

### GUARANTEE AGREEMENT

**GUARANTEE AGREEMENT** dated as of July 1, 2005, made by Homco Realty Fund (62) Limited Partnership and Homco Realty Fund (67) Limited Partnership (herein collectively called the “Guarantors”) in favor of Stichting Homburg Mortgage Bond (the “Trustee”), as trustee under that certain Trust Indenture dated as of December 15, 2002 (the “Principal Indenture”), as supplemented by that certain Supplemental Indenture dated as of April 25, 2003 (the “First Supplement”), that certain Second Supplemental Indenture dated November 30, 2004 (the “Second Supplement”), that certain Third Supplemental Indenture dated December 31, 2004 (the “Third Supplement”), that certain Fourth Supplemental Indenture dated July 1, 2005 (the “Fourth Supplement”) and that certain Fifth Supplemental Indenture dated July 1, 2005 (the “Fifth Supplement”) (the Principal Indenture, the First Supplement, the Second Supplement, the Third Supplement, the Fourth Supplement and the Fifth Supplement are collectively referred to as the “Agreement”), each between Homburg ShareCo Inc., a Nova Scotia company (the “Company”), and the Trustee pursuant to which the Company has today issued Homburg Mortgage Bond 7 bonds (the “Series 7 Bonds”).

**WHEREAS**, the Fifth Supplement provides that the Guarantors shall guarantee the obligations of the Company to the Trustee on behalf of the Series 7 Bond bondholders in respect of the Series 7 Bonds;

**NOW THEREFORE**, in consideration of the premises, the Guarantors hereby agree as follows:

**SECTION 1. Defined Terms.** The following terms, as used herein, shall have the following meanings:

(a) **“Business Day”** means any day of the year other than a Saturday, Sunday or other day on which banks are required or authorized to close in Halifax, Nova Scotia.

(b) **“Governmental Entity”** means any (i) federal, provincial, state, municipal, local or other government, governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign, or (ii) any subdivision or authority of any of the foregoing.

(c) **“Holders”** means the Persons entered in the registers for the Series 7 Bonds as holders thereof, such registers being maintained pursuant to the Agreement.

(d) **“Person”** means any individual, corporation, partnership, association, trust, limited liability company or any other entity or organization.

**SECTION 2. Guarantee.** The Guarantors hereby unconditionally and irrevocably jointly and severally guarantee, as principal and not merely as surety, the full and punctual payment when due (whether at stated maturity, upon acceleration or otherwise) of the principal, premium, if any, Additional Amounts (as defined herein), if any, and interest on each Series 7 Bond and all other amounts payable by the Company under the Agreement in respect of the

Series 7 Bonds; provided, however, that the payment of interest on overdue installments of interest is guaranteed only to the extent permitted by law (such amounts, the “**Guaranteed Obligations**”). All payments to be made by the Guarantors pursuant to this Section 2 shall be made on or before five (5) business days following receipt of demand therefor by the Trustee or, to the extent permitted by Section 13 hereof, any Holder.

**SECTION 3. Guarantee Absolute.** The Guarantors agree that the guarantee contained in this Guarantee Agreement is a guarantee of payment and not of collection or collectibility, and the Guarantors’ obligations to pay the Guaranteed Obligations hereunder shall be primary, absolute and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(i) any extension of the time or times for the payment of the Guaranteed Obligations, renewal, settlement, compromise, waiver or release in respect of any obligation of the Company under the Agreement or any Series 7 Bond, by operation of law or otherwise;

(ii) any modification or amendment of or supplement to the Agreement or any Series 7 Bond;

(iii) any change in the corporate existence, structure or ownership of the Company, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Company or its assets or any resulting release or discharge of any obligation of the Company contained in the Agreement or any Series 7 Bond;

(iv) the existence of any claim, set-off or other rights which the Guarantors may have at any time against the Company, the Trustee, any Holder or any other Person, whether in connection herewith or any unrelated transactions;

(v) any invalidity, illegality, irregularity or unenforceability for any reason of the Agreement or any Series 7 Bond or in any part thereof as regards the Company, or any provision of applicable law or regulation purporting to prohibit the payment by the Company of the principal of or interest on any Series 7 Bond or any other amount payable by the Company under the Agreement;

(vi) any other act or omission to act or delay of any kind by the Company, the Trustee, any Holder or any other Person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge or defence of the Guarantors’ obligations hereunder;

(vii) any contest by the Company or any Person as to the amount of the Guaranteed Obligations;

(viii) the absence of any action to enforce the Agreement or the Series 7 Bonds;

(ix) the recovery of any judgment against the Company or any action to enforce the same;

(x) any dealings with the security which the Trustee or any Holder holds or may hold pursuant to the terms and conditions of the Agreement, including the taking, giving up or exchange of securities, the variation or realization thereof and the granting of releases and discharges, including, without limitation, the release of any of the Homco Property pursuant to Section 15 of the Fifth Supplement; or

(xi) any invalidity, non-perfection or unenforceability of any security held by the Trustee or any Holder in support of the Guaranteed Obligations, or any irregularity or defect in the manner or procedure by which the Trustee or any Holder realizes on such security.

**SECTION 4. Representations and Warranties.** The Guarantors hereby represent and warrant as of the date hereof that:

**Authorization; No Contravention.** The execution, delivery and performance by the Guarantors of this Guarantee Agreement (i) are within their powers, have been duly authorized by all necessary corporate action, require no action by or in respect of, or filing with, any governmental body, agency or official, and do not contravene its constituent documents, and (ii) do not contravene, or constitute a default under, any provision of applicable law or regulation, as amended from time to time, or of any judgment, injunction, order, decree, agreement or other instrument binding upon the Guarantors or result in or require the creation or imposition of any lien on any asset of the Guarantors other than any contravention, default or lien which would not have a material adverse effect on the ability of the Guarantors to perform their respective obligations under this Guarantee Agreement.

**Binding Effect.** This Guarantee Agreement constitutes a legal, valid and binding obligation of the Guarantors, enforceable against the Guarantors in accordance with its terms, except as such enforceability may be limited by the effect of any bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

**Litigation.** There is no action, suit or proceeding pending against the Guarantors or, to the knowledge of the Guarantors, threatened against the Guarantors before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision (i) which would have a material adverse effect on the ability of the Guarantors to perform their respective obligations under this Guarantee Agreement, or (ii) which in any manner draws into question the enforceability or validity of this Guarantee Agreement.

**SECTION 5. Manner of Payment.** All payments to be made by the Guarantors hereunder shall be made to the Trustee for application in accordance with Section 13.10 of the Principal Indenture.

**SECTION 6. Enforcement of Guarantee.** The Guarantors agree that the Trustee or any Holder (but subject always to the provisions of Section 13 hereof) need not seek or exhaust its recourse against the Company or any other Person or realize on any security it may hold in respect of the Guaranteed Obligations before being entitled to payment under this Guarantee Agreement.

**SECTION 7. Waiver.** The Guarantors hereby irrevocably waive promptness, diligence, acceptance hereof, presentment, demand, protest and any and all other notice not provided for herein and any requirement that at any time the Trustee, any Holder (but subject always to the provisions of Section 12 hereof) or any other Person exhaust any right or take any action against the Company or any other Person and any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge, release or defense of the Guarantors or that might otherwise limit recourse against the Guarantors.

**SECTION 8. Waiver of Subrogation.** Until payment in full of the Guaranteed Obligations, the Guarantors irrevocably waive any and all rights to which they may be entitled, by operation of law or otherwise, upon making any payment hereunder to be subrogated to the rights of the payee against the Company with respect to such payment or otherwise to be reimbursed, indemnified or exonerated by the Company in respect thereof.

**SECTION 9. Notices.** All notices and other communications provided for or permitted hereunder shall be made as follows:

If to the Guarantors: Homco Realty Fund (62) Limited Partnership  
Homco Realty Fund (67) Limited Partnership

c/o Suite 200, 11 Akerley Boulevard  
Dartmouth, Nova Scotia, Canada B3B 1V1  
Attention:  
Fax No.: (902) 469-6776

If to the Company, the Trustee or any Holder, as specified in Article 17 of the Principal Indenture.

**SECTION 10. No Waiver; Remedies.** No failure on the part of the Trustee or any Holder (but subject always to the provisions of Section 13 hereof) to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**SECTION 11. Continuing Guarantee; Reinstatement in Certain Circumstances.** The guarantee contained in this Guarantee Agreement is a continuing guarantee and the Guarantors' obligations hereunder shall (i) remain in full force and effect until the indefeasible payment in full of the Guaranteed Obligations, (ii) be binding upon the Guarantors and their respective successors and assigns, and (iii) enure to the benefit of and be enforceable by the Trustee and, subject always to the provisions of Section 13 hereof, any Holder and their respective successors and permitted assigns; provided, however, that this Guarantee Agreement shall not be construed to create any right in any Person other than the Trustee and, subject always to the provisions of Section 13 hereof, any Holder and their respective successors and permitted assigns or to be a contract in whole or in part for the benefit of any Person other than the Trustee and, subject to the provisions of Section 13 hereof, the Holders and their respective successors and permitted assigns. If at any time any payment of any of the Guaranteed Obligations is

rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of the Company or otherwise, the obligations of the Guarantors hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

**SECTION 12. Stay of Acceleration.** If acceleration of the time for payment of any Guaranteed Obligation is stayed upon the insolvency, bankruptcy or reorganization of the Company, all such amounts otherwise subject to acceleration under the terms of the Agreement shall nonetheless be payable by the Guarantors hereunder to the Trustee or, to the extent permitted by Section 13 hereof, the Holders forthwith on demand.

**SECTION 13. Holdings May Not Enforce.** No Holder shall have the right to institute any suit, action or proceeding against the Guarantors for any default hereunder except in the manner and subject to the conditions, *mutatis mutandis*, set forth in Section 13.5 of the Principal Indenture, it being understood and intended that no one or more of the Holders shall have any right in any manner whatsoever to enforce any right hereunder or pursuant hereto by any action except as aforesaid and that all powers and trusts hereunder shall be exercised and all proceedings at law or in equity shall be instituted, had and maintained by the Trustee, except as aforesaid.

**SECTION 14. Expenses.** The Guarantors shall pay, or reimburse, the Trustee and the Holders for all costs and expenses including, without limitation, reasonable attorneys' fees and disbursements reasonably incurred by it in connection with the enforcement of this Guarantee Agreement; provided, however, that the Guarantors shall only be required to pay, or reimburse, for the reasonable attorneys' fees and disbursements for one counsel for the Trustee and the Holders.

**SECTION 15. No Withholding.** Any and all payments made by the Guarantors pursuant to the provisions of this Guarantee Agreement shall be made without withholding or deduction for, or on account of, any current or future taxes imposed by or on behalf of Canada or any political subdivision thereof unless such taxes are required by law or by the administration thereof to be withheld or deducted, in which case the Guarantors shall pay such amounts ("Additional Amounts") as may be necessary, so that the net amount received by the Holder (including Additional Amounts) after such withholding or deduction will not be less than the amount the Holder would have received if such taxes had not been withheld or deducted, provided, however, that no such Additional Amounts will be payable in respect of, among others, the following:

(a) any tax, assessment or other governmental charge which would not have been so imposed but for (i) the existence of any present or former connection between such Holder (or between a fiduciary, settlor or beneficiary of, or a person holding power over, such Holder, if such Holder is an estate or trust or a member or shareholder of such Holder, if such Holder is a partnership or corporation) and Canada, including, without limitation, such Holder (or such fiduciary, settlor, beneficiary or person holding a power over such Holder) being or having been a citizen or resident or treated as a resident thereof or being or having been engaged in a trade or business or present therein or having had a permanent establishment therein, or (ii) such Holder's current or former status as a personal holding company, a foreign personal holding company, a controlled foreign corporation that is related to either of the Guarantors through stock ownership,

a foreign tax-exempt organization for Canadian tax purposes or as a corporation which accumulates earnings to avoid Canadian income tax;

(b) any tax, assessment or other governmental charge which would not have been so imposed but for the presentation by the Holder of any Series 7 Bond for payment on a date more than 60 days after the date on which such payment became due and payable or the date on which payment thereof is duly provided for, whichever occurs later;

(c) any estate, inheritance, gift, sales, transfer, personal property or any similar tax, assessment or other governmental charge;

(d) any tax, assessment or other governmental charge which is payable otherwise than by deduction or withholding from payments of, or payments under the Guarantee in respect of, principal, interest or any Additional Amount on any Series 7 Bond;

(e) any tax, assessment or other governmental charge imposed on interest received by any person holding, actually or constructively, 10% or more of the total combined voting power of all classes of stock of the Guarantors entitled to vote;

(f) any tax, assessment or other governmental charge imposed on a Holder that is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada); or

(g) any tax, assessment or governmental charge imposed by reason of the failure of the Holder or beneficial owner of the Series 7 Bond to deliver, upon reasonable demand by the Guarantors, any form or document that may be required or reasonably requested in order to allow the Guarantors to make a payment to the Holder without any deduction or withholding for or on account of any tax.

The provisions of this Section 15 shall survive the termination of this Guarantee Agreement.

**SECTION 16. Judgment Currency.** If for the purposes of obtaining judgment in any court it is necessary to convert all or any part of the Guaranteed Obligations or any other amount due to the Trustee or any Holder in respect of the Guarantors' obligations under this Guarantee Agreement in any currency (the "Original Currency") into Euros (the "Other Currency"), the Guarantors, to the fullest extent that they may effectively do so, agree that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Trustee or any Holder, as the case may be, could purchase the Original Currency with the Other Currency on the Business Day preceding that on which final judgment is paid or satisfied.

The obligations of the Guarantors in respect of any sum due in the Original Currency from them to the Trustee or any Holder shall, notwithstanding any judgment in any Other Currency, be discharged only to the extent that on the Business Day following receipt by the Trustee or any Holder of any sum adjudged to be so due in such Other Currency the Trustee or any Holder may, in accordance with its normal banking procedures, purchase the Original Currency with such Other Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Trustee or any Holder in the Original Currency, the Guarantors agree, as a separate obligation and notwithstanding any such judgment, to indemnify the Trustee or any Holder against such loss, and if the amount of the Original Currency so purchased

exceeds the sum originally due to the Trustee or any Holder in the Original Currency, the Trustee or any Holder, as the case may be, agrees to remit such excess to the Guarantors.

**SECTION 17. Governing Law.** This Guarantee Agreement shall be governed by, and construed in accordance with, the laws of the Province of Nova Scotia and the federal laws of Canada applicable therein, without regard to the choice-of-law principles of Nova Scotia that would require the application of the laws of a jurisdiction other than Nova Scotia.

**SECTION 18. Severability.** Any provision of this Guarantee Agreement which is illegal, invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating the remaining provisions hereof and any such illegality, invalidity, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**SECTION 19. Entire Agreement.** This Guarantee Agreement embodies the entire agreement of the Guarantors with respect to the subject matter hereof and supersedes any prior written or oral agreements and understandings relating to the subject matter hereof and thereof.

IN WITNESS WHEREOF, the Guarantors have caused this Guarantee Agreement to be duly executed and delivered by their officers thereunto duly authorized as of the date first above written.

**HOMCO REALTY FUND (62) LIMITED  
PARTNERSHIP, BY ITS GENERAL PARTNER,  
HOMBURG L.P. MANAGEMENT INC.**

By: \_\_\_\_\_

**HOMCO REALTY FUND (67) LIMITED  
PARTNERSHIP, BY ITS GENERAL PARTNER,  
HOMBURG L.P. MANAGEMENT INC.**

By: \_\_\_\_\_

No.: 500-11-041305-117

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**SUPERIOR COURT  
(Commercial Division)**

**DISTRICT OF MONTRÉAL**

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

**HOMBURG INVEST INC. ET AL.**

**Debtors/Petitioners**

**-and-**

**HOMCO REALTY FUND (52) LIMITED PARTNERSHIP  
ET AL.**

**Mises-en-cause**

**-and-**

**STICHTING HOMBURG BONDS**

**Mise-en-cause**

**-and-**

**TABERNA PREFERRED FUNDING VI, LTD. ET AL.**

**Mises-en-cause**

**-and-**

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

**Monitor**

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**EXHIBIT P-4 (unsigned)**

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**COPY**

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**Mtre. Sandra Abitan  
Mtre. Martin Desrosiers  
Osler, Hoskin & Harcourt LLP  
1000 De La Gauchetière Street West, Suite 2100  
Montréal QC H3B 4W5  
Tel.: 514.904.8100 Fax: 514.904.8101**

Code: BO 0323 o/f: 1131787