

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

SUPERIOR COURT  
Commercial Division

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

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

– and –

**CHURCHILL ESTATES DEVELOPMENT LTD.**

– and –

**CP DEVELOPMENT LTD.**

– and –

**NORTH CALGARY LAND LTD.**

– and –

**HOMBURG MANAGEMENT (CANADA) INC.**

Debtors/Petitioners

– and –

**THE ENTITIES LISTED IN APPENDIX A**

Mises-en-cause

– and –

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

Monitor

**THIRTY-SIXTH REPORT TO THE COURT  
SUBMITTED BY SAMSON BÉLAIR/DELOITTE & TOUCHE INC.  
IN ITS CAPACITY AS MONITOR**  
*(Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended)*

## INTRODUCTION

1. On September 9, 2011, 1810040 Alberta Ltd. – formerly known as Homburg Invest Inc. (“**HII**”) and Homburg Shareco Inc. (“**Shareco**”) – and certain related entities (collectively, the “**Debtors**”) filed and obtained protection from their respective creditors under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) pursuant to an Order rendered by the Superior Court of Quebec (as amended and extended from time to time, the “**Initial Order**”).
2. Pursuant to the Initial Order, the Stay extends to the limited partnerships listed in Appendix A hereto (collectively, the “**Applicant Partnerships**” and, together with the Debtors, the “**HII Parties**”), including Homco Realty Fund (88) Limited Partnership (“**Homco 88**”).
3. Samson Bélair/Deloitte & Touche Inc. was appointed as monitor (the “**Monitor**”) under the CCAA.
4. Pursuant to the Initial Order, an initial stay of proceedings (the “**Stay**”) was granted until October 7, 2011 in favor of the HII Parties, which Stay has been extended from time to time by order of the Court. On May 5, 2014, the Court last extended the Stay up until August 29, 2014 (the “**Stay Period**”).
5. Since the Initial Order, the Monitor has filed reports with the Court and served same to the Service List from time to time. The Monitor filed thirty-five such Monitor’s reports (as well as some supplemental reports) prior to this thirty-six report of the Monitor (the “**Thirty-Sixth Report**”). Copies of all of the Monitor’s reports are available on the Monitor’s website at [www.deloitte.com/ca/homburg-invest](http://www.deloitte.com/ca/homburg-invest). The Monitor has also established a toll free number that is referenced on the Monitor’s website so that parties may contact the Monitor if they have questions with respect to the HII Parties’ restructuring under the CCAA.

## 6. PURPOSE OF THE THIRTY-SIXTH REPORT

7. This Thirty-Sixth Report is filed in the context of the *Amended Motion for the Issuance of (A) an Order Authorizing the Distribution of the Net Proceeds of the Sale of Assets of Homco 88 (Kai Towers) and (B) an Order Authorizing the Interim Distribution of Such Proceeds* filed by Stichting Homburg Bonds and 1028167 Alberta Ltd. on or about March 12, 2014 (the “**Bond 7 Motion**”) and the *Contestation of the Amended Motion for the Issuance of an Order Authorizing the Distribution of the Net Proceeds of the Sale of Assets of Homco 88 (Kai Towers)* filed by certain lien claimants, namely Kai Construction Group and Lafarge Canada Inc., on or about May 16, 2014 (the “**Lien Claimants’ Contestation**”) and, together with the Bond Motion, the “**Kai Proceedings**”). The Kai Proceedings pertain to the distribution of proceeds currently held in trust by the Monitor after the sale of the Kai Property by Homco 88 following the authorization of this Court.
8. This Thirty-Sixth Report is intended to provide a general background and highlight certain observations of the Monitor in light of the factual elements raised in the Kai Proceedings.

## TERMS OF REFERENCE

9. In preparing this Thirty-Sixth Report, the Monitor has relied upon unaudited financial information, the HII Parties’ records, the amended motion for an Initial Order dated September 9, 2011, and all subsequent motions filed with the Court and exhibits in support of same, its discussions with management of the HII Parties and the HII Parties’ and the Monitor’s legal advisors. While the Monitor has analyzed the information, some in draft form, submitted in the limited time available, the Monitor has not performed an audit or otherwise verified such information.

10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not otherwise defined in this Thirty-Sixth Report are as defined in the previous reports of the Monitor or in the HII/Shareco Plan.

## FACTUAL BACKGROUND TO THE KAI PROCEEDINGS

### *July 2005: Issuance of Series 7 Bonds and Corresponding Initial Guarantees and Security*

11. Bonds were issued in series by Shareco (as it then existed, prior to its amalgamation with HII in order to form 1810040 Alberta Ltd., as part of the Plan Transactions) pursuant to a Trust Indenture (the “**Principal Indenture**”), dated December 15, 2002, between Shareco and Stichting Homburg Mortgage Bonds (now Stichting Homburg Bonds) (the “**Trustee**”). The Principal Indenture provides that Shareco may issue bonds in one or more series upon such terms and conditions as may from time to time be set out in one or more supplemental indentures.
12. A Fifth Supplemental Indenture, dated as of July 1, 2005, between Shareco and the Trustee (the “**Fifth Supplemental Indenture**”), provides for the issuance by Shareco of Series 7 Bonds in the principal amount of €31,230,000 with interest accruing thereon at the rate of 7.25% per annum with a stated maturity date of June 30, 2012.
13. The Fifth Supplemental Indenture provides that amounts owing in connection with the Series 7 Bonds shall be secured by the following collateral security to be held by the Trustee for the benefit of the Bondholders:
- (a) a guarantee by HII (as it then existed, prior to its amalgamation with Shareco in order to form 1810040 Alberta Ltd., as part of the Plan Transactions);
  - (b) a guarantee by Homco Realty Fund (62) Limited Partnership (“**Homco 62**”) and Homco Realty Fund (67) Limited Partnership (“**Homco 67**”) in favour of the Trustee secured by a mortgage on an immovable located in Alberta known as the “Costello/Centurion Towers” (the “**Costello Mortgage**”); and
  - (c) an assignment by Shareco of the pledge Shareco received from HII consisting of all of HII’s Limited Partnership units in Homco 62 and Homco 67 (the “**Homburg Mortgage Bond 7 Collateral**”).

### *Proceeds from the Issuance of the Series 7 Bonds*

14. As part of the forensic review conducted in the course of the CCAA proceedings, at the request of the Trustee as mentioned in previous Monitor’s Reports, a review of the use of the proceeds from the issuance of the various series of Bonds was undertaken by the Monitor and Deloitte’s forensic team.
15. Such review revealed that the proceeds from the issuance of the Series 6 Bonds (secured *inter alia* by a guarantee from Homco 61) and Series 7 Bonds were received during the same period and in the same bank account. The analysis of the use of said proceeds had to be done concurrently as it was not possible to segregate the funds received from the issuance of the Series 6 and the Series 7 Bonds.
16. As shown in the table below, the HII Group raised €32.2 million from each of the Series 6 and Series 7 Bonds’ issuance.

Bond Series	Period of Receipt	Euros Received (in millions)	3% Issue Fees	Face Value (Euro in millions)
HB6	September 2005 to December 2005	32.2	0.9	31.3
HB7	September 2005 to December 2005	32.2	0.9	31.3
<b>Total</b>		<b>64.4</b>	<b>1.8</b>	<b>62.6</b>

17. The proceeds from the issuance of the Series 6 and Series 7 Bonds were received in four (4) separate tranches in the Homburg Shareco Euro bank account, totaling approximately €64.4 million, as follows:
- On September 20, 2005 - €30.5 million
  - On September 23, 2005 - €30.8 million
  - On November 1, 2005 - €1.8 million
  - On December 1, 2005 - €183,271
18. The proceeds from the issuance of the Series 6 and Series 7 Bonds were used for various investments and expenses of the HII Group, including an amount of \$13.55M paid to the HII Group's counsel in trust for the acquisition of the Kai Property on or about October 19, 2005. A review of the documents registered at the Land Titles Office indicated that the Kai Property was originally acquired on November 1<sup>st</sup>, 2005, by Homburg Kai Development Ltd., then an entity affiliated to HII, for a price of \$13.98M, and was transferred from Homburg Kai Development Ltd. to Homco 88 as of January 1<sup>st</sup>, 2007 (although the registration is dated from November 2007), for a price of \$18.66M.

**January 2008: Replacement of Security Granted by Homco 62 and Homco 67**

19. At the beginning of 2008, the Costello Mortgage was discharged following the sale of the lands secured thereby. The Fifth Supplemental Indenture was amended pursuant to a Special Supplemental Indenture dated January 15, 2008 (the "**Special Supplemental Indenture**") entered into between Shareco and the Trustee. The Special Supplemental Indenture provides that as an alternative to the Costello Mortgage and the security interest in the Homco 62 Units and the Homco 67 Units, the Trustee would accept:
- (a) a guarantee executed by Homco 88 secured by a real property mortgage registered against title to the Kai Property;
  - (b) a pledge of the limited partnership units owned by HII in Homco 88; and
  - (c) a pledge of a promissory note issued by Homco 88 in favour of HII.
20. The Special Supplemental Indenture contains the following recitals:
- AND WHEREAS Homco 62/67 have entered into an agreement to sell the Costello/Centurion Towers and will repay indebtedness owing by Homco 62/67 to HII pursuant to two promissory notes [...] in favour of each of Homco 62/67 dated July 4, 2005 and each in the principal amounts of Euros 15,278,820 representing proceeds of the Series 7 Bonds advanced by the Trustee to the Shareco and loaned by Shareco to HII pursuant to a promissory note dated July 4, 2005 in the principal amount of Euros 31,230,000;*

AND WHEREAS HII wishes to advance the proceeds of the repayment of the indebtedness of Homco 62/67 to Homco Realty Fund (88) Limited Partnership (“Homco 88”) as a loan;

AND WHEREAS Homco 88 intends to use the proceeds of the loan from HII to purchase and construct the proposed KAI Towers located at Calgary, Alberta, which according to appraisal information provided to the Trustee, will have a completed value of approximately \$231,050,000 CND;

AND WHEREAS the Corporation wishes to replace the collateral security of the Costello Mortgage with the collateral security represented by a guarantee and a collateral mortgage (the “KAI Mortgage”) in the principal amount of that amount of Canadian Dollars which is equivalent to Euros 31,230,000 from Homco 88 charging lands and premises known as the KAI Towers together with a pledge (the “Pledge Agreement”) by HII of (i) a promissory note by Homco 88 in favour of HII in respect of the loan proceeds, and (ii) all units owned by HII in Homco 88 [...]

21. Homco 88 executed a guarantee in favour of the Trustee on January 15, 2008, which guarantee was secured by a mortgage against the Kai Property (the “**Bond 7 Kai Mortgage**”). In essence, the Bond 7 Kai Mortgage was granted to the Bond 7 holders in replacement of the security they were holding since 2005 given the fact that the assets secured by said security were being sold and that the Series 7 Bonds were not being reimbursed.

#### ***2008-2011: Development of the Kai Property***

22. Starting in 2008 and up and until the CCAA filing, Homco 88 undertook planning, development and construction of the Kai Property.
23. As at the date of the CCAA filing, a six-storey parkade had been constructed on the Kai Property, but all other construction work ceased shortly after the CCAA filing.
24. Homco 88, like many of the other HII Group entities, did not have a separate bank account and, as such, all investments and expenses incurred in connection with the Kai Property were paid by HII and recorded as intercompany advances from HII to Homco 88. Such advances were made out of HII operating accounts, the same in which, *inter alia*, the proceeds of the issuance of the different series of Bonds, including the Series 7 Bonds, were deposited, at least in part, from time to time.
25. As at the date of the CCAA filing, the total advances made by HII to Homco 88 in connection *inter alia* with the acquisition of the Kai Property and the planning, development and construction work in connection with said property totalled more than \$80M. These advances remained owed by Homco 88 to HII as at the CCAA filing date.

#### ***Fall 2011 – Summer 2012: Construction Liens Registered Against the Kai Property and Claims Process under the CCAA***

26. A review of the searches of the registrations against the Kai Property reveal a number of builders’ liens and, as part of the claims process conducted in the course of the CCAA proceedings, the Monitor received proofs of claim against Homco 88 from most of the registered lien claimants (the “**Lien Claims**”), including some for amounts lesser than the amounts of the registered liens and some others for which the quantum was reduced, as follows:

Instrument Number	Registration Date	Lienor	Amount	Proof of claim filed?
111 230 196	Sept 8, 2011	C&T Reinforcing Steel Co. (Alberta)	\$1,072,888.00	Yes, \$1,072,888.00
111 242 915	Sept 21, 2011	Lafarge Canada Inc.	\$425,564.06	Yes, \$426,518.15
111 245 527	Sept 23, 2011	Norr Architects Planners	\$172,741.52	Yes, \$182,887.61
111 251 174	Sept 29, 2011	Giusti Group Limited Partnership	\$904,023.67	Yes, 904,023.67 (reduced to \$722,898.67; no appeal of the Notice of revision)
111 258 833	Oct 7, 2011	Morwest Crane & Services Ltd.	\$112,944.58	Yes, \$133,990.65
111 259 163	Oct 7, 2011	Curtis Engineering Associates Ltd.	\$19,084.25	No
111 282 444	Oct 31, 2011	Peter Ross AB Ltd.	\$117,136.27	Yes, \$90,556.09
111 289 658	Nov 7, 2011	Dominion Protection Services Ltd.	\$73,413.90	Yes, \$84,203.90 (reduced to \$73,413.90; no appeal of the Notice of revision)
111 318 037	Dec 6, 2011	Watts Mechanical Services Ltd.	\$58,388.01	Yes, \$58,388.00
121 111 382	May 9, 2012	Kai Construction Corporation	\$1,502,053.87	Yes, 742,069.66
<b>TOTAL:</b>			<b>\$4,458,238.13</b>	<b>\$3,503,610.73</b> (after the Notices of Revision)

27. The Trustee, on behalf of the holders of the Series 7 Bonds, also filed a proof of claim against *inter alia* Homco 88, as did 1021867 Alberta Ltd. in its capacity as trustee to the Trustee. The Monitor considered these proofs of claim to be “duplicates” as ultimately having the same source of debt and beneficiaries.
28. The proof of claim was originally for an aggregate amount of \$45,882,601. The Monitor sent a Notice of Revision to reduce the aggregate amount of this claim to \$43,154,126, and the decision of the Monitor in this regard was confirmed by the judgment of the CCAA Court rendered on March 17, 2014, which has since become final. The claim filed on behalf of the holders of the Series 7 Bonds against Homco 88 is secured by the Bond 7 Kai Mortgage.
29. Also as part of the claims process of Homco 88, the Monitor received a proof of claim from HII in the amount of \$81,961,778 representing the advances made by HII to Homco 88 over the years in

connection with the acquisition of the Kai Property by Homco 88 and the planning, development and construction work in connection with said property.

***December 2013: Sale of the Kai Property and ensuing Kai Proceedings***

30. On November 18, 2013, the CCAA Court authorized the sale of the Kai Property for \$30.0 million, pursuant to an Approval and Vesting Order. The closing of the sale occurred on December 19, 2013.
31. The Monitor subsequently filed with the CCAA Court a copy of the Monitor's Certificate in conformity with the terms of the Approval and Vesting Order, such that all "Encumbrances" on the Kai Property (other than "Permitted Encumbrances") have transferred to the "Net Proceeds" – as such terms are defined in the Approval and Vesting Order and after payment of HSBC and of HII (in respect of the HII Advance secured by a charge over the Kai Property) as authorized by said order – "*with the same priority as they had with respect to the KAI Property immediately prior to the sale, as if the KAI Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale*".
32. The remaining Net Proceeds that are currently held in trust by the Monitor amount to approximately \$23M.
33. The Encumbrances that have been transferred on said Net Proceeds include the Bond 7 Kai Mortgage and the registered builders' liens relating to the Lien Claims (to the extent that same are found to be valid). The Kai Proceedings arise in order to determine the priority between said Encumbrances since the remaining Net Proceeds are insufficient to pay both the claim of the holders of the Series 7 Bonds secured by the Bond 7 Kai Mortgage and the Lien Claims.
34. Since the issue of the priority between the Bond 7 Kai Mortgage and the Lien Claims is to be determined under applicable Alberta law, the Monitor asked Alberta counsel to prepare an expert report on Alberta law regarding this issue of the priority.
35. If the Bond 7 Kai Mortgage is found to rank ahead of the Lien Claims, there will be no distribution available to the holders of said Lien Claims. For this reason, as previously indicated to the Court, the Monitor has yet, at this stage, to proceed to a review and analysis in order to determine the validity of the registered builders' liens in connection with the Lien Claims, as such determination could be moot. This review and analysis would only be performed by the Monitor in the event that it is found that the Lien Claims rank ahead of the Bond 7 Kai Mortgage.

***Interim Distribution of a portion of the remaining Net Proceeds to the holders of the Series 7 Bonds***

36. On June 20, 2014, the Court rendered an order authorizing an interim distribution of a portion of the remaining Net Proceeds to the holders of the Series 7 Bonds.
37. The amount of the authorized interim distribution is \$16,819,846 and contemplates (i) a reserve of \$4,403,369 for the Lien Claims (representing the aggregate amount of the proofs of claim filed by the lien claimant, namely \$3,503,611 as shown in the table above, plus 25%) and (ii) a reserve of \$2M representing the estimated portion of the advances made by HII to the Trustee pursuant to the Funding Order that is expected to be assumed by the holders of the Series 7 Bonds and deducted from their aggregate recovery from the HII Parties.
38. This interim distribution is expected to be completed by the Monitor prior to July 10, 2014.

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

DATED AT MONTREAL, this 26th day of June, 2014.

A handwritten signature in black ink, appearing to read 'Pierre Laporte', written in a cursive style.

Pierre Laporte, CPA, CA, CIRP  
President

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