

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

SUPERIOR COURT
Commercial Division

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

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

– and –

CHURCHILL ESTATES DEVELOPMENT LTD.

– and –

NORTH CALGARY LAND LTD.

– and –

HOMBURG MANAGEMENT (CANADA) INC.

Debtors/Petitioners

– and –

THE ENTITIES LISTED IN APPENDIX A

Mis-en-cause

– and –

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

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

INTRODUCTION

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

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

2. Pursuant to the Initial Order (as amended), the stay extends to the entities listed in Appendix A hereto (collectively, the “**Applicant Partnerships**” and, together with the Debtors, the “**HII Parties**”), including in particular, for the purpose of this report, Homco Realty Fund (52) Limited Partnership (“**Homco 52**”).
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 February 26, 2015, the Court last extended the Stay up until August 31, 2015.
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 forty (40) such Monitor’s reports (as well as some supplemental reports) prior to this forty-first Monitor’s report (the “**Forty-first Report**”). Copies of all of the Monitor’s reports are available on the Monitor’s website at www.deloitte.com/ca/homburg-invest. The Monitor has also established a toll free number that is referenced on the Monitor’s website so that parties may contact the Monitor if they have questions with respect to the HII Parties’ restructuring under the CCAA.

PURPOSE OF THE FORTY-FIRST REPORT

6. This Forty-first Report is intended to provide an update and information regarding the sale of the Homburg Springs East property held by Homco 52 (the “**HSE Property**”) and to support the proposed transaction in relation thereto (the “**HSE Transaction**”).
7. This Forty-first Report is structured as follows:
 - I- The HSE Property and the proposed HSE Transaction;
 - II- Conclusion and recommendation.

TERMS OF REFERENCE

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

I. THE HSE PROPERTY AND THE PROPOSED HSE TRANSACTION

10. The HSE Property, which is the sole material asset of Homco 52, is a section of development land located at the northern limit of the City of Calgary. This zone is presently undeveloped and is mainly composed of vacant fields. The HSE Property presently consists mainly of vacant land in respect of which no significant improvements have been made.
11. The HSE Property is adjacent to the HSW Property (owned by Homco 94) which is being discussed in the Fortieth Report and was the object of the *Authorization of Sale and Vesting Order (Homburg Springs West Property)* rendered by the Court on April 17, 2015.
12. As further described in the Monitor's *Motion for an Authorization of Sale and Vesting Order (Homburg Springs East Property)*, the HSE Property is secured in favor of the Bond 4 Claim Holders. A mortgage is also registered in favor of HSBC Bank Canada, but the latter has no claim against Homco 52.
13. As indicated in the Seventeenth Report, given the security in favor of the Bond 4 Claim Holders and the amount of their claim, no equity for Homco 52's unsecured creditors was expected to be realized out of the sale of the HSE Property. It is in this context that, in the course of a meeting of bondholders held at the end of October 2012, the Bond 4 Claim Holders voted in favor of a resolution providing that the costs and expenses related to the sale process and the carrying costs in connection with the Homburg Springs East Property shall be reimbursed out of the sale proceeds of said property and, on November 8, 2012, the *Order Granting Funding Charges (Homco 52 and Homco 88)* was rendered by the Court.
14. As mentioned in past Monitor's reports, in the course of the CCAA proceedings, the HII Group, in consultation with the Monitor, determined that its Canadian properties, including the HSE Property, constituted non-core assets that would not form part of the restructured portfolio. As such, a sale process was initiated in relation to said non-core assets.
15. In late November 2012, as mentioned in the Eighteenth Report, the Monitor and CBRE finalized a listing agreement for the sale of the HSE Property. The asking price was set at \$14.0M.
16. In the summer of 2013, as mentioned in the Twenty-Sixth Report, HII and the Monitor renewed the broker agreement and amended the listing price for the HSE Property, reducing it to \$10.950M. This decision was made in consultation with the broker and in light of the fact that no parties had manifested any interest on the HSE Property during the first 8-month period of the marketing and sale process.
17. On December 11, 2014, after the Plan Implementation Date and the constitution of the Liquidation Advisory Committee, a conditional offer to acquire the HSE Property was received from 1845417 Alberta Ltd. ("**1845417 Alberta**"), an affiliate of the Walton International Group Inc. ("**Walton**"), which owns other properties in the region. The offer was for an amount significantly lower than the asking price and included several conditions that were not acceptable to the Liquidation Advisory Committee and the representative of Stichting Homburg Bonds, the trustee of the Bond 4 Claim Holders. The Monitor was instructed to solicit an improved offer from 1845417 Alberta.
18. During a meeting with the representatives of Walton held in late January 2015, the Monitor informed it of the concerns of the Monitor, the Liquidation Advisory Committee and the representative of the Stichting Homburg Bonds with respect to its offer and solicited an improved offer. On January 28, 2015, 1845417 Alberta advised the Monitor that it was ready to submit an improved offer to acquire the HSE Property, providing for a purchase price of \$5,108,950.

19. As indicated in the Fortieth Monitor's Report, on February 2, 2015, the Monitor received from another offeror (the "**Other Offeror**") an offer to purchase the HSW Property.
20. Following the receipt of the offer on the HSW Property, the Monitor, under the instructions of the Liquidation Advisory Committee and the representative of Stichting Homburg Bonds (for the Homburg Springs East Property), asked 1845417 Alberta to submit its best offer on the HSE Property by February 12, 2015, and invited the Other Offeror to also submit an offer on the HSE Property by the same date. 1845417 Alberta renewed its offer on February 12, 2015, still at the price of \$5,108,950, while indicating that it could be flexible on other conditions, and the Other Offeror did not submit any offer on the HSE Property.
21. On February 16, 2015, considering (i) the fact that the HSE Property listing price had already been reduced, (ii) the fact that the HSE Property had been for sale for more than two years and that several weeks of negotiations had elapsed, and (iii) the confirmations from 1845417 Alberta that it would not submit a further improved offer and that the Other Offeror would not submit an offer on the HSE Property, the representative of Stichting Homburg Bonds, with the approval of the Liquidation Advisory Committee, determined that 1845417 Alberta's offer should be accepted.
22. The Monitor and its counsel then had communications with 1845417 Alberta regarding the conditions of the offer and, on February 24, 2015, 1845417 Alberta confirmed its approval to the irrevocable offer to purchase, which was formally executed by all parties on March 12, 2015 (the "**1845417 Alberta PSA**").
23. The 1845417 Alberta PSA provides *inter alia* for the sale of the HSE Property to 1845417 Alberta, in consideration of a purchase price of \$5,108,950 on an "as is where is basis" (the "**HSE Transaction**"), subject to the approval of the Court and subject to certain conditions precedent, including 1845417 Alberta's satisfaction with its due diligence review and inspection of the HSE Property.
24. The 1845417 Alberta PSA provided for a due diligence period of up to 45 days, and the parties agreed that such period would end on April 27, 2015 ("**Due diligence period**"). On April 16, 2015, the Offeror informed the Monitor that they would require an additional seven (7) days to allow them to waive all conditions precedent in its favor set out in the 1845417 Alberta PSA.
25. On April 21, 2015, the Monitor received an unsolicited offer ("**Unsolicited Offer**") from another party that was now interested in purchasing the HSE Property. The Monitor provided the Unsolicited Offer to the representative of Stichting Homburg Bonds.
26. On April 24, 2015, in light namely of the Unsolicited Offer, the Monitor, with the consent of the representative of Stichting Homburg Bonds, informed 1845417 Alberta that the request for the additional delay would not be granted.
27. On April 27, 2015, the Offeror waived all conditions precedent in its favor set out in the 1845417 Alberta PSA. The closing of the HSE Transaction is scheduled to occur in mid-June 2015.
28. According to the claims process conducted in the course of the CCAA proceedings, the only creditor of Homco 52, other than HII, are the Bond 4 Claim Holders represented by Stichting Homburg Bonds.

29. The Monitor is of the view that the terms of the HSE Transaction are reasonable to the HII Group and its stakeholders given, *inter alia*:
- i. It is congruent with the HII Group's restructuring plan, i.e. to dispose of non-core assets to the benefit of its creditors;
 - ii. A process to maximize the value of the HSE Property was conducted by Homco 52 under the supervision of the Monitor and in consultation with Stichting Homburg Bonds and the Liquidation Advisory Committee;
 - iii. The \$5,108,950 purchase price falls slightly lower than the range of valuations of the HSE Property obtained by the Monitor;
 - iv. The HSE Transaction will allow for a distribution to the Bond 4 Claim Holders as secured creditors of Homco 52;
 - v. The recoveries made by the Bond 4 Claim Holders resulting from the HSE Transaction will reduce their Affected Claim (unsecured) under HII's Plan, hence increasing the recovery of the other Affected Creditors under the Plan; and
 - vi. Stichting Homburg Bonds and the Liquidation Advisory Committee confirmed their agreement with the HSE Transaction.
30. It is the Monitor's view that the HII Parties have acted in good faith and with due diligence in accordance with the Initial Order and the subsequent orders of the Court.

II. CONCLUSION AND RECOMMENDATION

31. It is the Monitor's opinion that, for the reasons further elaborated in this Forty-first Report, the HSE Transaction should be approved and the vesting order should be granted by the Court.

The Monitor respectfully submits this Forty-first Report to the Court.

DATED AT MONTREAL, this 13th day of May, 2015.



Pierre Laporte, CPA, CA, CIRP
President

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
In its capacity as court-appointed Monitor

APPENDIX A

THE ENTITIES Mis-en-Cause

HOMCO REALTY FUND (52) LIMITED PARTNERSHIP
HOMCO REALTY FUND (61) LIMITED PARTNERSHIP
HOMCO REALTY FUND (88) LIMITED PARTNERSHIP
HOMCO REALTY FUND (89) LIMITED PARTNERSHIP
HOMCO REALTY FUND (92) LIMITED PARTNERSHIP
HOMCO REALTY FUND (94) LIMITED PARTNERSHIP
HOMCO REALTY FUND (96) LIMITED PARTNERSHIP
HOMCO REALTY FUND (121) LIMITED PARTNERSHIP