

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
(sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
1985, c. C-36, as amended)

No.: 500-11-041305-117

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

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

Debtors

-and-

**HOMCO REALTY FUND (94) LIMITED
PARTNERSHIP**

Petitioner

-and-

**HOMCO REALTY FUND (52) LIMITED
PARTNERSHIP et al.**

-and-

JAYRIC PROPERTY CORP INC., a corporation
formed under the *Business Corporations Act*
(Alberta), having its registered office at 3150,
114 Ave. SE, Calgary, Alberta, T2Z 3V6

-and-

**THE ALBERTA REGISTRAR OF LAND TITLES,
710 – 4th Avenue S.W., Calgary, Alberta, T2P 0K3**

Mis-en-cause

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor/Petitioner

**MOTION FOR AN AUTHORIZATION OF SALE AND A VESTING ORDER
(HOMBURG SPRINGS WEST PROPERTY)**

(Section 36 of the *Companies' Creditors Arrangement Act*)

**TO THE HONOURABLE JUSTICE LOUIS J. GOUIN OR TO ONE OF THE HONOURABLE
JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION IN AND FOR
THE JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONER RESPECTFULLY SUBMITS
AS FOLLOWS:**

I. INTRODUCTION

1. On September 9, 2011, 1810040 Alberta Ltd. (formerly known as Homburg Invest Inc.) and Homburg Shareco Inc. (“**HII**”) and certain related entities filed and obtained protection from their respective creditors under the Companies’ Creditors Arrangement Act 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 (as amended), the Stay extends to “Mises-en-cause” related to HII, including in particular, for the purpose of this Motion, Homco Realty Fund (94) Limited Partnership (“**Homco 94**”);
3. Pursuant to the Initial Order, Samson Bélair/Deloitte & Touche Inc. was appointed as court-appointed monitor (the “**Monitor**”);
4. The Initial Order has been extended from time to time, most recently until August 31, 2015.
5. On or about February 5, 2013, HII filed a plan of compromise and reorganization (as amended and restated from time to time, the “**Plan**”).
6. The Plan was approved by the “Affected Creditors” of HII on May 30, 2013, and sanctioned by an order of this Court rendered on June 5, 2013 (the “**Sanction Order**”);
7. The implementation of the Plan remained subject to the meeting of certain conditions precedent and, from March 24, 2014 to March 27, 2014, the “Plan Implementation Date” took place;
8. The Plan and the Sanction Order provide for the Monitor to liquidate the “Non-Core Business Entities’ Assets”, subject to the approval of the “Liquidation Advisory Committee”, formed of Mr. Jan Schöningh (former CEO of HII), Mr. Karel De Vries (representative of Stichting Homburg Bonds) and Mr. Gabriel De Alba (representative of Catalyst).
9. The Plan further provides for the creation of an “Asset Realization Cash Pool” in which the “Non-Core Business Asset Net Proceeds” are deposited, for the ultimate benefit of HII’s creditors under the Plan.
10. The “Non-Core Business Entities’ Assets” include the real property of Homco 94 being the object of the present Motion, referred to as the “**Homburg Springs West Property**”;
11. The Monitor is seeking the Court’s approval for the sale of the Homburg Springs West Property to Jayric Property Corp. (“**Jayric**”), the assignee of Telsec Property Corporation (“**Telsec**”), for a purchase price of \$5,560,000 and pursuant to the terms and conditions contemplated by the “Irrevocable Offer to Purchase” dated February 24, 2015 between the Monitor on behalf of HII (94) GP Inc. in its capacity as general partner of Homco 94 and Telsec, a copy of which is communicated herewith as **Exhibit M-1**, and respectfully requests that this Honourable Court render the order sought herein to authorize and approve the sale, transfer and assignment of the Homburg Springs West Property to Jayric;

II. HOMCO 94 / HOMBURG SPRINGS WEST PROPERTY

A. The Homburg Springs West Property

12. The Homburg Springs West Property is a section of development land located at the northern limit of the City of Calgary, Alberta. This zone is presently undeveloped and is mainly composed of vacant fields, with a long term development horizon.
13. The Homburg Springs West Property consists of vacant lands and constitutes the sole material asset of Homco 94.
14. There is no mortgage or other security interest registered against the Homburg Springs West Property.

B. Sale Process and Offer to Purchase

15. 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 Homburg Springs west 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.
16. In late November 2012, as mentioned in the Eighteenth Monitor's Report, the Monitor and CBRE finalized a listing agreement for the sale of the HSW Property. The asking price was set at \$13.5M.
17. In the summer of 2013, as mentioned in the Twenty-Sixth Monitor's Report, HII and the Monitor renewed the broker agreement and amended the listing price for the HSW Property, reducing it to \$10.425M. This decision was made in consultation with the broker and in light of the fact that no parties had manifested any interest on the HSW Property during the first 8-month period of the marketing and sale process.
18. In August 2014, a conditional offer to acquire the HSW Property was received from a first offeror (the "**First Offeror**"). 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 solicited an improved offer. The Monitor informed the First Offeror of the concerns of the Monitor and the Liquidation Advisory Committee with respect to its offer. In mid-January 2015, the First Offeror informed the Monitor that their investors could not meet the conditions set by the Liquidation Advisory Committee and were reassessing their interest in the HSW Property.
19. On December 11, 2014, a conditional offer to acquire the HSW Property was received from a second offeror (the "**Second Offeror**"). The offer was for an amount significantly lower than the asking price and included certain conditions that were not acceptable to the Liquidation Advisory Committee. The Monitor informed the Second Offeror of the concerns of the Monitor and the Liquidation Advisory Committee with respect to its offer, and solicited an improved offer. On January 28, 2015, the Second Offeror advised the Monitor that it was offering to slightly increase the purchase price included in its original offer.

20. On February 2, 2015, a third offeror, Telsec, provided the Monitor with an offer to purchase the HSW Property. This offer contemplated a higher purchase price and similar conditions compared to the revised offer of the Second Offeror.
21. Following the receipt of the concurrent offers of the Second Offeror and of Telsec, the Monitor, under the instructions of the Liquidation Advisory Committee, asked both offerors to submit their best offer by February 12, 2015. Both offerors renewed their offers on February 12, 2015, with no change on the price being offered, while indicating that they could be flexible on other conditions.
22. On February 16, 2015, considering (i) the fact that the HSW Property listing price had already been reduced, (ii) the fact that the HSW Property had been for sale for more than two years and that several months of negotiations, including offers and counter-offers from three different parties, had elapsed, and (iii) the confirmation from the First Offeror and the Second Offeror that they would not provide an improved offer on the HSW Property, the Liquidation Advisory Committee determined that Telsec's offer should be accepted.
23. On or about February 24, 2015, Telsec submitted the Irrevocable Offer to Purchase (M-1).
24. The Irrevocable Offer to Purchase (M-1) provides for the sale of the Homburg Springs West Property at a price of \$5,560,000 and was subject, *inter alia*, to a 60-day due-diligence period (the "**Homco 94 Transaction**"), as appears from the Offeror's Conditions Precedent contained in section 7 of the Irrevocable Offer to Purchase (M-1);
25. On or about April 2, 2015, Telsec waived the Offerors Conditions Precedent, as appears from the a copy of the Waiver of Conditions and Amending Agreement, communicated herewith as **Exhibit M-2**, and assigned its interest under the Irrevocable Offer to Purchase to Jayric, as appears from the a copy of the Assignment and Assumption of Purchase Agreement, communicated herewith as **Exhibit M-3**;
26. The equity to be realized pursuant to the contemplated transaction will be distributed to Homco 94's unsecured creditors (which, according to the claims process conducted in the course of the CCAA proceedings, only includes HII), in the course of the bankruptcy of Homco 94 or otherwise;
27. The recovery to be made by HII as a result of this transaction will form part of the "Asset Realization Cash Pool" to be distributed to HII's creditors in accordance with the Plan;
28. As appears from the Fortieth Report of the Monitor, the Monitor is of the view that the terms of the Homco 94 Transaction are reasonable and favourable to Homco 94 and HII, and their creditors, given that, *inter alia*:
 - (a) It is congruent with the Plan's goal, *i.e.* to dispose of non-core assets to the benefit of HII's creditors;
 - (b) A process to maximize the value of the Homburg Springs West Property was conducted by Homco 94 under the supervision of the Monitor;

- (c) The \$5,560,000 purchase price falls within the range of valuation of the Homburg Springs West Property obtained by the Monitor;
 - (d) The Homco 94 Transaction will allow for a substantial distribution to the unsecured creditor of Homco 94, namely HII; and
 - (e) The recoveries made by HII resulting from the Homco 94 Transaction will form part of the Asset Realization Cash Pool for the benefit of the Affected Creditors under the Plan.
29. Accordingly, the Monitor respectfully requests that this Court authorize the sale of the Homburg Springs West Property, ratify the Irrevocable Offer to Purchase, and grant a vesting order congruent with the conclusions included in the draft *Authorization of Sale and Vesting Order (Homburg Springs West Property)* filed herewith as **Exhibit M-4**;

III. CONCLUSION

30. In light of the foregoing, the Monitor respectfully submits that the Homco 94 Transaction is in the best interest of Homco 94 and its stakeholders, including principally HII.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT:

GRANT the present *Motion for an Authorization of Sale and a Vesting Order (Homburg Springs West Property)*;

GRANT the project *Authorization of Sale and Vesting Order (Homburg Springs West Property)*, communicated herewith as **Exhibit M-4**;

THE WHOLE WITHOUT COSTS, save in the event of contestation.

MONTRÉAL, April 15, 2015


MCCARTHY TÉTRAULT LLP
Attorneys for the Monitor

AFFIDAVIT

I the undersigned, Jean-François Nadon, Senior Vice President of Samson Bélair/Deloitte & Touche Inc., domiciled and residing for the purpose hereof at 1 Place Ville Marie, suite 3000, Montréal, Québec, H3B 4T9, solemnly declare the following:

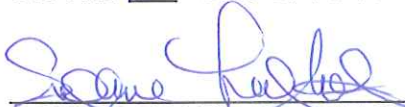
1. I am a duly authorized representative of Samson Bélair/Deloitte & Touche Inc. in its capacity of Monitor to Homburg Invest Inc. et als.;
2. All the facts alleged in the *Motion for an Authorization of Sale and a Vesting Order (Homburg Springs West Property)* are true.

AND I HAVE SIGNED



Jean-François Nadon

SOLEMNLY DECLARED BEFORE ME
ON THE 15th DAY OF APRIL 2015



COMMISSIONER OF OATHS
FOR THE PROVINCE OF QUÉBEC



NOTICE OF PRESENTATION

TO : SERVICE LIST

TAKE NOTICE that the *Motion for an Authorization of Sale and a Vesting Order (Homburg Springs West Property)* will be presented for hearing and allowance in the Superior Court, Commercial Division, at the Montréal Courthouse, 1 Notre-Dame Street East, Montréal, on **April 17, 2015, at a time to be confirmed**, or so soon thereafter as counsel may be heard, and in **room 16.12**.

PLEASE ACT ACCORDINGLY.

MONTRÉAL, April 15, 2015


MCCARTHY TÉTRAULT LLP
Attorneys for the Monitor

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PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
(sitting as a court designated pursuant to the
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1985, c. C-36, as amended)

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JAYRIC PROPERTY CORP INC., a corporation
formed under the Business Corporations Act
(Alberta), having its registered office at at 3150,
114 Ave. SE, Calgary, Alberta, T2Z 3V6

-and-

THE ALBERTA REGISTRAR OF LAND TITLES,
710 – 4th Avenue S.W., Calgary, Alberta, T2P 0K3

Mis-en-cause

-and-

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor/Petitioner

LIST OF EXHIBITS

(MOTION FOR AN AUTHORIZATION OF SALE AND A VESTING ORDER (HOMBURG SPRINGS WEST PROPERTY))

- Exhibit M-1: Copy of the "Irrevocable Offer to Purchase" dated February 24, 2015;
Exhibit M-2: Copy of the Waiver of Conditions and Amending Agreement dated
April 2, 2015;
Exhibit M-3: Copy of the Assignment and Assumption of Purchase Agreement dated
April 2, 2015;
Exhibit M-4: Copy of the draft *Authorization of Sale and Vesting Order (Homburg
Springs West Property)*.

MONTRÉAL, April 15, 2015


MCCARTHY TÉTRAULT LLP
Attorneys for the Monitor

N° 500-11-041305-117
SUPERIOR COURT (COMMERCIAL DIVISION)
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

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

1810040 ALBERTA LTD. (FORMERLY KNOWN AS HOMBURG INVEST INC. AND
HOMBURG SHARECO INC.) ET AL.

DEBTORS

-AND-
HOMCO REALTY FUND (94) LIMITED PARTNERSHIP

PETITIONER

-AND-
HOMCO REALTY FUND (52) LIMITED PARTNERSHIP ET AL.

-AND-
JAYRIC PROPERTY CORP INC.,

-AND-
THE ALBERTA REGISTRAR OF LAND TITLES, 710 - 4TH AVENUE S.W.,
CALGARY, ALBERTA, T2P 0K3

MIS-EN-CAUSE

-AND-
SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

MONITOR/PETITIONER

**MOTION FOR AN AUTHORIZATION OF SALE AND A
VESTING ORDER (HOMBURG SPRINGS WEST
PROPERTY), AFFIDAVIT, NOTICE OF
PRESENTATION, LIST OF EXHIBITS**

ORIGINAL

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(514-397-4155 / 514-397-7092)
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