

**SUPERIOR COURT
(Commercial Division)**

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

Date: August 21, 2014

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

**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 (105) LIMITED PARTNERSHIP

Petitioner

-and-

HOMCO REALTY FUND (52) LIMITED PARTNERSHIP ET AL.

Mises-en-cause

-and-

QUALEX-LANDMARK VENTURES INC., a corporation formed
under the Business Corporations Act (Alberta), having its
registered office at 1500, 850 2nd Street S.W. Calgary, Alberta,
T2P 0R8

Mise-en-cause

-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

AUTHORIZATION OF SALE AND VESTING ORDER (CRISTAL PROPERTY)

- [1] On reading the *Motion for an Authorization of Sale and a Vesting Order (Cristal Property)* (the "**Motion**"), and the affidavit and the exhibits in support thereof and the Thirty-Seventh Report of the Monitor;

FOR THESE REASONS, THE COURT:

- [2] **GRANTS** the Motion;
- [3] **DECLARES** that the service of the Motion constitutes good and sufficient service on all persons and further **DECLARES** that the Petitioners are relieved of any other requirements for service of the Motion;
- [4] **DECLARES** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion;
- [5] **RATIFIES** the "Irrevocable Offer to Purchase" (the "**Homco 105 Offer**") dated May 7, 2014 between the Monitor on behalf of HII (105) GP Inc. ("**HII (105) GP**"), in its capacity as general partner of Homco Realty Fund (105) Limited Partnership ("**Homco 105**"), and Qualex-Landmark Development Inc. ("**QDI**"), filed as Exhibit M-1 to the Motion, in respect of the following lands:

PLAN SA1

BLOCK 61

LOTS 21 TO 29 INCLUSIVE

EXCEPTION OUT OF LOTS 27 AND 28 ALL MINES AND MINERALS

TITLE NUMBER: 121 130 671


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

- [6] **PRAYS ACT** of the assignment of QDI's right, title, and interest in and to the Homco 105 Offer to Qualex-Landmark Ventures Inc. ("**Qualex**") pursuant to an Assignment of Purchaser's Interest Under Irrevocable Offer to Purchase agreement entered into as of July 8, 2014, filed as Exhibit M-3 to the Motion;
- [7] **AUTHORIZES** and **APPROVES** the sale, transfer and assignment of the Lands to Qualex or its nominee (the "**Purchaser**") in accordance with the terms of the Homco 105 Offer (the "**Homco 105 Conveyance**") and **AUTHORIZES** HII (105) G.P., for and behalf of Homco 105, and Samson Bélair/Deloitte & Touche Inc., in its capacity of Monitor to the Debtors and without any personal or corporate liability (the "**Monitor**") to take any and all actions necessary to proceed with the Homco 105 Conveyance to the Purchaser of the Lands including, without limiting the generality of the foregoing, to execute any and all documents that may be necessary or useful to the consummation of such sale of the Lands (the "**Homco 105 Transaction**");

- [8] **ORDERS and DECLARES** that upon the delivery of a Monitor's certificate to the Purchaser confirming payment of the full purchase price contemplated by the Homco 105 Transaction and that any conditions precedents thereto have been satisfied or waived (the "**Monitor's Certificate**"), which Monitor's Certificate shall be delivered and filed in this Court record forthwith after confirmation by Homco 105 and the Purchaser of payment of the full purchase price contemplated by the Homco 105 Transaction and the closing of the Homco 105 Transaction, all of Homco 105's rights, titles and interests in and to the Lands shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), mortgages, hypothecs, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations on any other personal property registry system or land title system (all of which are collectively referred to as "**Encumbrances**"), other than the "**Permitted Encumbrances**" listed in Schedule I of the Order to be rendered (the "**Permitted Encumbrances**"). For greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Lands, other than the Permitted Encumbrances, are hereby expunged and discharged as against the Lands;
- [9] **ORDERS** that upon the delivery of a certified copy of this Order and of the Monitor's Certificate to the Registrar of the Alberta Land Titles Office (the "**Registrar**") and a written request from the Purchaser's counsel to do so, the Registrar shall:
- (a) Cancel certificates of title number 121 130 671 in respect of the Lands (the "**Old Title**");
 - (b) Issue a new certificate of title in respect of the Lands in the name of the Purchaser (the "**New Title**"), which shall include only the Permitted Encumbrances listed in Schedule I to this Order; and
 - (c) Discharge any and all of the Discharged Encumbrances listed in Schedule II to this order (the "**Discharged Encumbrances**") from the New Title;
- [10] **ORDERS** that the Registrar shall perform the steps specified in paragraph 8 of this Order:
- (a) In the order specified in paragraph 8 of this Order; and
 - (b) Notwithstanding the requirements of section 191(1) of the *Land Titles Act*, R.S.A. 2000, c. L-4.
- [11] **ORDERS** that, upon the Registrar completing the steps identified in paragraph 10 of this Order, the Registrar shall forthwith make available to Homco 105 and the Purchaser a certified copy of the New Title.
- [12] **ORDERS** that the proceeds from the Homco 105 Transaction shall stand in the place and stead of the Lands, net of closings costs including real estate commissions, taxes, legal, conveyancing costs and other usual closing costs (the "**Net Proceeds**"), and that from and after the delivery of the Monitor's Certificate all Encumbrances (subject to

same being finally determined pursuant to the Claims Process Order rendered by this Court on April 30, 2012, as amended and supplemented from time to time), including without limitation the HII Funding Charge but other than the Permitted Encumbrances, shall attach to the Net Proceeds from the sale of the Lands with the same priority as they had with respect to the Lands immediately prior to the sale, as if the Lands had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale;

- [13] For greater certainty, **ORDERS** that the Net Proceeds shall stand in the place and stead of the Lands and any holder of the Encumbrances ("**Encumbrancers**") may assert their claims against the Net Proceeds with the same right and priority that the Encumbrancers had against the Lands immediately prior to this Order, as if the Lands had not been sold and had remained in the possession and control of Homco 105;
- [14] **AUTHORIZES** HII (105) GP, for and on behalf of Homco 105, to pay Homburg Invest Inc. ("**HII**"), out of the Net Proceeds, the amount of the claim secured by a land mortgage on the Lands originally granted to HSBC Bank Canada, as assigned and subrogated to HII (the "**HII Secured Payout**");
- [15] **PRAYS ACT** of the fact the Net Proceeds of the Homco 105 Transaction, less the HII Secured Payout, will be held by the Monitor and distributed at a time to be determined, in accordance with creditors' respective ranks and applicable law;
- [16] **DECLARES** that the Order sought constitutes the only authorization required to proceed with the Homco 105 Transaction and the Homco 105 Conveyance and, for greater certainty, **DECLARES** that the parties involved in the Homco 105 Transaction are exempted from requiring or obtaining any formal valuation or authorization that may have been required from any person or authority whatsoever;
- [17] **DECLARES** that this Order shall have full force and effect in all of the provinces and territories in Canada;
- [18] **REQUESTS** the aid and recognition of any Court or administrative body in Canada (including, without limitation, the Alberta Court of Queen's Bench), or elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [19] **THE WHOLE** without costs.



LOUIS J. GOUIN, J.S.C.

SCHEDULE I

PERMITTED ENCUMBRANCES

General Encumbrances

1. the exceptions and qualifications contained in Section 61 (1) of the *Land Titles Act* (Alberta);
2. any subsisting reservations, limitations, provisos, conditions or exceptions, including royalties, contained in the original grant from the Crown of any land or interests therein;
3. minor encroachments onto or from neighbouring lands which do not materially impact the marketability of the Land;
4. encumbrances for real property taxes (which term includes charges, rates and assessments, and other governmental charges or levies) or charges for electricity, power, gas, water and other services and utilities in connection with the Lands so long as the same are dealt with as appropriate in the Adjustments; and
5. the provisions of applicable law, including by-laws, regulations, ordinances and similar instruments relating to development and zoning.

SCHEDULE II

DISCHARGED ENCUMBRANCES

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
061 435 632	20/10/2006	MORTGAGE MORTGAGEE – HSBC BANK CANADA (as assigned and subrogated to Homburg Invest Inc.) ORIGINAL PRINCIPAL AMOUNT: \$5,400,000.00