

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-041305-117

DATE: April 26, 2013

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

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

**HOMBURG INVEST INC.
HOMBURG SHARECO INC.
CHURCHILL ESTATES DEVELOPMENT LTD.
INVERNESS ESTATES DEVELOPMENT LTD.
CP DEVELOPMENT LTD.
NORTH CALGARY LAND LTD.
HOMBURG MANAGEMENT (CANADA) INC.**
Debtors/Petitioners

- and -

**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 (105) LIMITED PARTNERSHIP
HOMCO REALTY FUND (121) LIMITED PARTNERSHIP
HOMCO REALTY FUND (122) LIMITED PARTNERSHIP
HOMCO REALTY FUND (142) LIMITED PARTNERSHIP
HOMCO REALTY FUND (190) LIMITED PARTNERSHIP
HOMCO REALTY FUND (191) LIMITED PARTNERSHIP
HOMCO REALTY FUND (199) LIMITED PARTNERSHIP
CASTELLO DEVELOPMENT LTD.**

Mises-en-cause

- and -

HOMCO REALTY FUND (83) LIMITED PARTNERSHIP
Mise-en-cause

- and -

KANGCORP INC.
Mise-en-cause

- and -

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
Monitor

**ORDER FOR AMENDMENTS TO THE INITIAL ORDER, A VESTING ORDER
(HOMCO 83) AND EXTENSION OF THE STAY PERIOD**

[1] The Petitioners present a *Motion for amendments to the Initial Order, a vesting order (Homco 83) and extension of the stay period* dated April 23, 2013 (the "**Motion**") pursuant to sections 11, 11.02 and 36 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**");

[2] **CONSIDERING** the Motion and affidavit in support thereof, and the representations of counsel;

[3] **CONSIDERING** the Monitor's Twenty Second Report dated April 25th, 2013;

[4] **CONSIDERING** the provisions of the CCAA;

FOR THESE REASONS, THE COURT:

1. **GRANTS** the *Motion for amendments to the Initial Order, a vesting order (Homco 83) and extension of the stay period* (the "**Motion**");
2. **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;
3. **DECLARES** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion;
4. **DECLARES** that as of the date of this Order, Homco Realty Fund (83) Limited Partnership ("**Homco 83**") shall be deemed to be an Applicant Partnership under the Initial Order;
5. **DECLARES** that the Claims Process Order rendered in the present file on April 30, 2012 (the "**Claims Process Order**") applies *mutatis mutandis* to Homco 83 provided that, as regards Homco 83 only:
 - (a) All references in the Claims Process Order to "HII Group" or "HII Group Entity", shall be deleted and replaced with "Homco 83" as the circumstances require;
 - (b) The definition of "**Claims Bar Date**" in paragraph [6.11] of the Claims Process Order shall be amended as follows:

[6.11] "**Claims Bar Date**" means 5:00 p.m. (Eastern Prevailing Time) on May 17, 2013 or, for Creditors with Subsequent Restructuring Claims, the later of May 17, 2013 at 5:00 p.m. (Eastern Prevailing Time) or (ii) fifteen (15) Calendar Days after the date of receipt by the Creditor of a notice of disclaimer, rescission, repudiation, termination or restructuring by of any contract, lease or other agreement, including any employment agreement, provided that Homco 83 shall not send any such notice after the date that is thirty (30) Calendar Days prior to the meeting of creditors to be held in

respect of the Plan; or such other date as may be ordered by the Court;

- (c) The following definition shall be added to the Claims Process Order, immediately after paragraph [6.26.0]:

[6.26.0.1] "**Homco 83**" means Homco Realty Fund (83) Limited Partnership;

- (d) Paragraphs [11], [12] and [13] of the Claims Process Order shall be amended as follows:

[11] **ORDERS** that the Monitor shall cause a Claims Package to be sent to each Known Creditor by regular prepaid mail on or before May 1, 2013;

[12] **ORDERS** that on a Business Day, on or before May 3, 2013, the Monitor shall cause to be published the Notice to Creditors in The Guardian (published in Charlottetown, Prince Edward Island);

[13] **ORDERS** that the Monitor shall cause the Claims Package, which includes the Notice to Creditors, to be posted on the Website on or before May 1, 2013;

6. **APPROVES** and **RATIFIES** the Purchase and Sale Agreement dated April 18, 2013 (the "**Northumberland PSA**") entered into by Homburg L.P. Management Inc. (in its capacity as the general partner of Homco 83) and Kangcorp Inc. ("**Kangcorp**"), as it may be amended with the consent of Samson Bélair/Deloitte & Touche Inc., in its capacity of Monitor to the Debtors and without any personal or corporate liability (the "**Monitor**"), in respect of the Units;

7. **DECLARES** that the Units consist of the following real property located in Queens County, at 135 Pownal Street, Charlottetown, Province of Prince Edward Island:

Unit 201	PID 1802180
Unit 203	PID 1802206
Unit 204	PID 1802214
Unit 208	PID 1802255
Unit 301	PID 1802271
Unit 304	PID 1802305
Unit 307	PID 1802339
Unit 401	PID 1802362

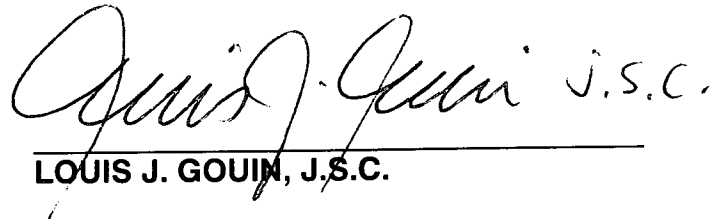
Unit 407	PID 1802420
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8. **AUTHORIZES** and **APPROVES** the sale, transfer and assignment of the Units to Kangcorp in accordance with the terms of the Northumberland PSA (the "**Northumberland Conveyance**") and **AUTHORIZES** the HII Group, including without limitation Homco 83 and the Monitor, to take any and all actions necessary to proceed with the Northumberland Conveyance 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 Northumberland Conveyance (the "**Bulk Sale**");
9. **ORDERS** and **DECLARES** that upon the filing of a Monitor's certificate in this Court record confirming payment of the full purchase price contemplated by the Bulk Sale and the closing of the Bulk Sale (the "**Monitor's Certificate**"), which Monitor's Certificate shall be delivered and filed in this Court record forthwith after confirmation by Homco 83 and Kangcorp of payment of the full purchase price contemplated by the Bulk Sale and the closing of the Bulk Sale, all of Homco 83's rights, title and interests in and to the Units shall vest absolutely in Kangcorp, 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 this Order. For greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Units, other than the Permitted Encumbrances, are hereby expunged and discharged as against the Units;
10. **DECLARES** that this Order constitutes the only authorization required by the HII Group to proceed with the Bulk Sale and, for greater certainty, **DECLARES** that the parties involved in the Bulk Sale are exempted from requiring or obtaining any formal valuation or authorization that may have been required from any person or authority whatsoever;
11. **ORDERS** and **DECLARES** that, notwithstanding:
- (a) the pendency of these proceedings;
 - (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") in respect of the HII Group and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the HII Group;

the Bulk Sale shall be binding on any trustee in bankruptcy that may be appointed in respect of the HII Group and shall not be void or voidable and shall not be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA, article 1631 and following of the Civil Code of Québec, S.Q. 1991, c. 64 or any other applicable federal or provincial legislation nor shall they be deemed to be oppressive transactions or conduct justifying any oppression remedy under any applicable statute;

12. **EXTENDS** the Stay Period (as defined in the Initial Order and as extended from time to time) to June 7, 2013, the whole subject to the terms of the Initial Order;
13. **ORDERS** the sealing of the Northumberland PSA;
14. **ORDERS** the provisional execution of this Order notwithstanding any appeal therefrom and without the necessity of furnishing any security;
15. **THE WHOLE WITHOUT COSTS.**

 J.S.C.

LOUIS J. GOUIN, J.S.C.

Hearing date : April 26, 2013

Me Martin Desrosiers
Me Sandra Abitan
Me Julien Morissette
Osler, Hoskin & Harcourt LLP
Counsel to Petitioners

SCHEDULE I – PERMITTED ENCUMBRANCES

1. 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 any of the Units that (i) have accrued but are not yet due and owing or, if due and owing, are adjusted for pursuant to the terms of the Northumberland PSA, or (ii) the validity of which is being contested in good faith.
2. Registered easements, rights-of-way, restrictive covenants and servitudes and other similar rights in land granted to, reserved or taken by any governmental authority or public utility; or any registered subdivision, development, servicing, site plan or other similar agreement with any governmental authority or public utility.
3. Facility sharing, cost sharing, tunnel, pedway, servicing, parking, reciprocal and other similar agreements with neighbouring landowners and/or governmental authorities.
4. Restrictive covenants, private deed restrictions, and other similar land use controls or agreements.
5. Encroachments by any of the Units over neighbouring lands that are permitted under agreements with neighbouring landowners and encroachments over any of the Units by improvements of neighbouring landowners.
6. Any subsisting reservations, limitations, provisos, conditions or exceptions contained in the original grants of the Units from the Crown.
7. Any rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or the Province of Prince Edward Island.
8. The provisions of applicable laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning.
9. Any title defects, irregularities, easements, servitudes, encroachments, reservations, rights-of-way or other discrepancies in title or possession relating to the Units.