

**SUPERIOR COURT**  
**(Commercial Division)**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

NO: 500-11-041305-117

DATE: November 8, 2012

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

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***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.**

Debtors / Petitioners

- and -

**HOMCO REALTY FUND (52) 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 (199) LIMITED PARTNERSHIP**

Mises-en-cause

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

Monitor

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**ORDER GRANTING FUNDING CHARGES (HOMCO 52 AND HOMCO 88)**

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[1] The Petitioners present a *Motion for approval of funding charges (Homco 52 and Homco 88)* dated November 6, 2012 (the "**Motion**") pursuant to sections 11 and 11.52 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 Seventeenth Report dated November 7, 2012;

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

**FOR THESE REASONS, THE COURT:**

[5] **GRANTS** the *Motion for approval of funding charges (Homco 52 and Homco 88)* (the "**Motion**");

[6] **DECLARES** that all capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion;

[7] **APPROVES** and **RATIFIES** the execution of the 4 and 7 Supplemental Indentures by HII, Shareco, Homco Realty Fund (52) Limited Partnership ("**Homco 52**") and Homco Realty Fund (88) Limited Partnership ("**Homco 88**") and **AUTHORIZES** the transactions contemplated therein;

[8] **AUTHORIZES** HII to continue to provide advances to Homco 52 to cover all fees, costs and expenses of Homco 52 (including a maximum amount of \$100,000 (one hundred thousand Canadian Dollars) to cover professional fees of HII's counsel and the Monitor and its counsel in relation to the sale process of the Homco 52 Property (as defined hereunder), which professional fees, for greater certainty, exclude the broker's commissions and fees (all fees, costs and advances as and from September 1, 2012 shall be referred to herein as the "**H52 Advances**");

[9] **ORDERS** that the H52 Advances shall be reimbursed in full by Homco 52, in priority to the reimbursement or payment of any amounts to any other creditor, on the earlier of (i) disposition of the Homco 52 Property (as defined below) or (ii) Plan Implementation Date (as defined in any CCAA plan of arrangement to be filed by HII) or (iii) appointment of a receiver to the Homco 52 Property or (iv) bankruptcy of Homco 52 or (v) transfer of at least a third (in value) of all outstanding Bonds 4 or the voting rights relating thereto by the present owners of Bonds 4 to any third parties;

[10] **ORDERS** and **DECLARES** that all of the moveable and immoveable property of Homco 52 (the "**Homco 52 Property**") is hereby subject to a first ranking charge and security in the amount of \$125,000 (one hundred and twenty five thousand Canadian Dollars) in favour of HII as security for the obligation to reimburse the H52 Advances to HII (the "**Homco 52 Funding Charge**"). For greater certainty and without limiting the generality of the foregoing, the Homco 52 Property includes the following real property located in the Province of Alberta:

THE NORTH WEST QUARTER OF SECTION ELEVEN (11)  
 TOWNSHIP TWENTY SIX (26)  
 RANGE ONE (1)  
 WEST OF THE FIFTH MERIDIAN CONTAINING 64.7 HECTARES  
 (160 ACRES) MORE OR LESS

EXCEPTING:

PLAN NUMBER	HECTARES	ACRES
ROAD WIDENING 8210192	0.415	1.03
DESCRIPTIVE 0412402	5.259	13.00

EXCEPTING THEREOUT ALL MINES AND MINERALS

ESTATE: FEE SIMPLE

MUNICIPALITY: CITY OF CALGARY

REFERENCE NUMBER: 041 357 324

[11] **AUTHORIZES** HII to continue to provide advances to Homco 88 to cover all fees, costs and expenses of Homco 88 (including a maximum amount of \$100,000 (one hundred thousand Canadian Dollars) to cover professional fees of HII's counsel and the Monitor and its counsel in relation to the sale process of the Homco 88 Property (as defined hereunder), which professional fees, for greater certainty, exclude the broker's commissions and fees (all fees, costs and advances as and from September 1, 2012 shall be referred to herein as the "**H88 Advances**");

[12] **ORDERS** that the H88 Advances shall be reimbursed in full by Homco 88, in priority to the reimbursement or payment of any amounts to any other creditor except amounts due to HSBC Bank Canada in connection with the HSBC Kai Security (as defined below) which shall be paid in priority, on the earlier of (i) disposition of the Homco 88 Property (as defined below) or (ii) Plan Implementation Date (as defined in any CCAA plan of arrangement to be filed by HII) or (iii) appointment of a receiver to the Homco 88 Property or (iv) bankruptcy of Homco 88 or (v) transfer of at least a third (in value) of all outstanding Bonds 7 or the voting rights relating thereto by the present owners of Bonds 7 to any third parties;

[13] **ORDERS** and **DECLARES** that, subject to the next paragraph, all of the moveable and immoveable property of Homco 88 (the "**Homco 88 Property**") is hereby subject to a first ranking charge and security in the amount of \$385,000 (three hundred and eighty five thousand Canadian Dollars) in favour of HII as security for the obligation to reimburse the H88 Advances to HII (the "**Homco 88 Funding Charge**"). For greater certainty and without limiting the generality of the foregoing, the Homco 88 Property includes the following real property located in the Province of Alberta (the "**Kai Mortensen Parcel**");

PLAN A1  
BLOCK 77  
LOTS 1 TO 14 INCLUSIVE  
EXCEPTING THEREOUT (AS TO SURFACE ONLY):

PLAN NUMBER	HECTARES (ACRES)	MORE OR LESS
ROAD 8110937	0.003	0.01

ATS REFERENCE: 5; 1; 24; 16  
ESTATE: FEE SIMPLE

MUNICIPALITY: CITY OF CALGARY

REFERENCE NUMBER: 071 184 582

[14] **ORDERS** and **DECLARES** that, as regards the Kai Mortensen Parcel only, the Homco 88 Funding Charge shall rank behind the movable and immovable security registered by HSBC Bank Canada against the assets of Homco 88, including without limitation the mortgage registered on the Kai Mortensen Parcel on December 20, 2010 under registration number 101 367 967 and the General Security Agreement executed on November 12, 2010 (to the extent that the said General Security Agreement is not declared unenforceable by final judgment of a Court of competent jurisdiction) (the "**HSBC Kai Security**");

[15] **DECLARES** that, except as provided in the previous paragraph, the Homco 52 Funding Charge and the Homco 88 Funding Charge shall rank ahead of any and all encumbrances, liens, claims, liabilities (direct, indirect, absolute or contingent), disputes, debts, obligations, rights, titles, interests, security interests, charges (including any and all charges created pursuant to the Debtors' proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36), pledges, mortgages, hypothecations, hypothecs, judgments, trusts or deemed trusts, executions, writs of seizure and sale, options, adverse claims, prior claims, assignments, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, levies, priorities, remedies from facts which exist as of the date of the transaction, or any other claims or encumbrances of any nature whatsoever and howsoever arising, in each case whether known or unknown, whether contractual, statutory or legal, by operation of law or equity or otherwise, whether perfected, attached, registered or filed, whether secured, unsecured or otherwise;


[16] **ORDERS** that the claims of H11 pursuant to the H52 Advances and the H88 Advances shall not be compromised or arranged pursuant to any plan of arrangement or compromise (a "**Plan**") or these proceedings and H11, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan;

[17] **ORDERS** that Hll may, notwithstanding any other Order of the Court, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Homco 52 Funding Charge and the Homco 88 Funding Charge in any office of public record in all jurisdictions where deemed appropriate;

[18] **PRAYS ACT** of the Monitor's Seventeenth Report;

[19] **ORDERS** provisional execution of the present order, notwithstanding appeal;

[20] **THE WHOLE WITHOUT COSTS.**

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LOUIS J. GOUIN, J.S.C.

Hearing date : November 8, 2012

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