

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-041305-117

DATE: February 6, 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.

Debtors / Petitioners

- and -

HOMCO REALTY FUND (96) LIMITED PARTNERSHIP
HOMCO REALTY FUND (69) LIMITED PARTNERSHIP
HOMCO REALTY FUND (70) LIMITED PARTNERSHIP
HOMCO REALTY FUND (98) LIMITED PARTNERSHIP
HOMCO REALTY FUND (102) LIMITED PARTNERSHIP

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 (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
HOMCO REALTY FUND (61) LIMITED PARTNERSHIP
CASTELLO DEVELOPMENT LTD.

**COMINAR REAL ESTATE INVESTMENT TRUST / FONDS DE PLACEMENT IMMOBILIER
COMINAR**

HSBC BANK OF CANADA

THE ALBERTA REGISTRAR OF LAND TITLES

GIUSTI GROUP LIMITED PARTNERSHIP

TRI/JAY ELECTRIC LTD.

HARRIS STEEL SERVICES LIMITED

Mis-en-cause

- and -

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

ORDER GRANTING NINTH EXTENSION OF THE STAY PERIOD, AMENDMENTS TO THE INITIAL ORDER (HOMCO 61 & CASTELLO), AUTHORIZATIONS OF SALE (HOMCO 92 AND HOLMAN GRAND HOTEL), A VESTING ORDER (CENTRON PARK) AND AUTHORIZATION TO FILE ADDITIONAL INTERCOMPANY CLAIMS

[1] The Petitioners present a *Motion for an extension of the stay period, amendments to the Initial Order (Homco 61 & Castello), authorizations of sale (Homco 92 and Holman Grand Hotel), a vesting order (Centron Park) and for authorization to file additional intercompany claims* dated February 4, 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 Nineteenth Report dated February 5, 2013;

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

FOR THESE REASONS, THE COURT:

GENERAL

[1] **GRANTS** the present *Motion for an extension of the stay period, amendments to the Initial Order (Homco 61 & Castello), authorizations of sale (Homco 92 and Holman Grand Hotel), a vesting order (Centron Park) and for authorization to file additional intercompany claims* (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;

EXTENSION OF THE STAY PERIOD

- [4] **EXTENDS** the Stay Period (as defined in the Initial Order and as extended from time to time) to February 28, 2013, the whole subject to the terms of the Initial Order;

HOMCO 61

- [5] **DECLARES** that as of the date of this Order, Homco Realty Fund (61) Limited Partnership ("**Homco 61**") shall be deemed to be an Applicant Partnership under the Initial Order;

- [6] **DECLARES** that the Claims Process Order rendered in the present file on April 30, 2012 (the "**Claims Process Order**") applies *mutatis mutandis* to Homco 61 provided that, as regards Homco 61 only:

- (a) All references in the Claims Process Order to "HII Group" or "HII Group Entity", shall be deleted and replaced with "Homco 61" 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 February 22, 2013 or, for Creditors with Subsequent Restructuring Claims, the later of February 22, 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 61 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 before paragraph [6.26.1]:

[6.26.0] "**Homco 61**" means Homco Realty Fund (61) 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 February 8, 2013;

[12] **ORDERS** that on a Business Day, on or before February 12, 2013, the Monitor shall cause to be published the Notice to Creditors in the Calgary Herald;

[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 February 8, 2013;

CASTELLO DEVELOPMENT LTD.

[7] **DECLARES** that as of the date of this Order, Castello Development Ltd. ("**Castello**") shall be deemed to be a Mise-en-cause under the Initial Order;

[8] **DECLARES** that the Claims Process Order applies *mutatis mutandis* to Castello provided that, as regards Castello only:

(a) All references in the Claims Process Order to "HII Group" or "HII Group Entity", shall be deleted and replaced with "Castello" 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 February 22, 2013 or, for Creditors with Subsequent Restructuring Claims, the later of February 22, 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, resiliation, repudiation, termination or restructuring by of any contract, lease or other agreement, including any employment agreement, provided that Castello 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]:

[6.26.A] "**Castello**" means Castello Development Ltd.;

(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 February 8, 2013;

[12] **ORDERS** that on a Business Day, on or before February 12, 2013, the Monitor shall cause to be published the Notice to Creditors in the Calgary Herald;

- [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 February 8, 2013;

HOMCO 92 TRANSACTION

- [9] **APPROVES** and **RATIFIES** the Purchase Agreement entered into by Homco Realty Fund (92) Limited Partnership ("**Homco 92**") and Mogema B.V. ("**Mogema**") on February 6, 2013, filed in support of the Motion, as it may be amended with the Monitor's consent (the "**Purchase Agreement**");
- [10] **AUTHORIZES** and **APPROVES** the sale, transfer and assignment of the Homco 92 Building to the Purchaser in accordance with the terms of the Purchase Agreement (the "**Homco 92 Conveyance**") and **AUTHORIZES** the HII Group, including without limitation Homco 92, 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 92 Conveyance to the Purchaser of the Homco 92 Building 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 Homco 92 Building (the "**Homco 92 Transaction**");
- [11] **AUTHORIZES** Homco 92 to pay the net sale proceeds arising out of the Homco 92 Transaction to FGH Bank N.V. up to the amount of its secured claim in respect of Homco 92;
- [12] **DECLARES** that this Order constitutes the only authorization required by the HII Group to proceed with the Homco 92 Transaction and the Homco 92 Conveyance and, for greater certainty, **DECLARES** that the parties involved in the Homco 92 Transaction are exempted from requiring or obtaining any formal valuation or authorization that may have been required from any person or authority whatsoever;

SETTLEMENT WITH COMINAR REIT

- [13] **PRAYS ACT** of the Settlement and **AUTHORIZES** the HII Group to make payments thereunder;

CENTRON PARK TRANSACTION

- [14] **APPROVES** and **RATIFIES** the Offer to Purchase entered into on February 5, 2013 by CP Development Ltd. ("**CP Ltd.**") and Cominar Real Estate Investment Trust / Fonds de placement immobilier Cominar ("**Cominar**") through its nominee HCR LP (CP Calgary) Inc., filed under seal in support of the Motion, as it may be amended with the Monitor's consent, in respect of the Centron Park Buildings (the "**CP Offer**");
- [15] **DECLARES**, for greater certainty, that the Centron Park Buildings include, without limitation, the following real property located in the Province of Alberta:

<p>CONDOMINIUM PLAN 1012452 UNIT 3 AND 1807 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS TITLE NUMBER: 101 179 570 +2</p>
<p>CONDOMINIUM PLAN 1012452 UNIT 4 AND 2089 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS TITLE NUMBER: 101 179 570 +3</p>
<p>CONDOMINIUM PLAN 1012452 UNIT 5 AND 3515 UNDIVIDED ONE TEN THOUSANDTH SHARES IN THE COMMON PROPERTY EXCEPTING THEREOUT ALL MINES AND MINERALS TITLE NUMBER: 101 179 570 +4</p>

(collectively the “**Centron Park Lands**”);

- [16] **AUTHORIZES** and **APPROVES** the sale, transfer and assignment of the Centron Park Buildings, including without limitation the Centron Park Lands, to HCR LP (CP Calgary) Inc., 455 du Marais Street, Québec City, Province of Québec, G1M 3A2 (the “**Purchaser**”) in accordance with the terms of the CP Offer (the “**CP Conveyance**”) and **AUTHORIZES** the HII Group, including without limitation CP Ltd., 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 CP Conveyance to the Purchaser of the Centron Park 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 Centron Park Lands (the “**CP Transaction**”);
- [17] **ORDERS** and **DECLARES** that upon the delivery of a Monitor’s certificate to Cominar confirming payment of the full purchase price contemplated by the CP 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 CP Ltd. and Cominar of payment of the full purchase price contemplated by the CP Transaction and the closing of the CP Transaction, all of the CP Ltd.’ rights, title and interests in and to the Centron Park 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 this Order (the "**Permitted Encumbrances**"). For greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Centron Park Lands, other than the Permitted Encumbrances, are hereby expunged and discharged as against the Centron Park Lands subject to paragraph [21] of this Order;

[18] **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 Cominar's counsel to do so, the Registrar shall:

- (a) Cancel certificates of title number 101 179 570 +2, 101 179 570 +3 and 101 179 570 +4 in respect of the Centron Park Lands (the "**Old Title**");
- (b) Issue a new certificate of title in respect of the Centron Park Lands in the name of the Purchaser (the "**New Title**"), which shall include the Permitted Encumbrances listed in Schedule I to this Order; and
- (c) Discharge any and all of the Encumbrances from the New Title that are not Permitted Encumbrances;

[19] **ORDERS** that the Registrar shall perform the steps specified in paragraph [18] of this Order:

- (a) In the order specified in paragraph [18] of this Order; and
- (b) Notwithstanding the requirements of section 191(1) of the *Land Titles Act*, R.S.A. 2000, c. L-4;

[20] **ORDERS** that, for information purposes only, a copy of the Monitor's Certificate shall be filed in this Court's record no later than the second business day after being delivered to Cominar;

[21] **ORDERS** that the net proceeds from the sale of the Centron Park Lands shall stand in the place and stead of the Centron Park Lands, 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), other than the Permitted Encumbrances, shall attach to the net proceeds from the sale of the Centron Park Lands with the same priority as they had with respect to the Centron Park Lands immediately prior to the sale, as if the Centron Park 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;

- [22] **AUTHORIZES** and **ORDERS** CP Ltd. to pay the net sale proceeds arising out of the CP Transaction to HSBC Bank Canada up to the amount of its secured claim in respect of CP Ltd.;
- [23] **DECLARES** that this Order constitutes the only authorization required by the HII Group to proceed with the CP Transaction and the CP Conveyance and, for greater certainty, **DECLARES** that the parties involved in the CP Transaction are exempted from requiring or obtaining any formal valuation or authorization that may have been required from any person or authority whatsoever;
- [24] **DECLARES** that the CP Offer contains confidential information and shall be sealed in the court file in these proceedings and shall not form part of the public record;

HOLMAN GRAND HOTEL ASSETS CONVEYANCE


- [25] **AUTHORIZES** HII to enter into the Holman Conveyance to an affiliate of Cominar on an "as is, where is" basis;

ADDITIONAL INTERCOMPANY CLAIMS

- [26] **AUTHORIZES** the HII Group, Homco Realty Fund (69) Limited Partnership, Homco Realty Fund (70) Limited Partnership, Homco Realty Fund (98) Limited Partnership and Homco Realty Fund (102) Limited Partnership and to file the Additional Intercompany Claims with the Monitor and **ORDERS** that the filing thereof shall have been validly made, notwithstanding the Claims Bar Date (as defined in the Claims Process Order rendered by the Court on April 30, 2012);

EXECUTION OF THIS ORDER

- [27] **DECLARES** that this Order shall have full force and effect in all of the provinces and territories in Canada;
- [28] **REQUESTS** the aid and recognition of any Court or administrative body in Canada (including, without limitation, the Alberta Court of Queen's Bench), the Netherlands or elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of this Order;
- [29] **ORDERS** the provisional execution of this Order notwithstanding any appeal therefrom and without the necessity of furnishing any security;
- [30] **THE WHOLE WITHOUT COSTS.**



LOUIS J. GOUIN, J.S.C.

Hearing date : February 6, 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 Property that (i) have accrued but are not yet due and owing or, if due and owing, are adjusted for pursuant to the terms of this Offer, 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 Properties over neighbouring lands that are permitted under agreements with neighbouring landowners and encroachments over any of the Properties by improvements of neighbouring landowners.
6. Any subsisting reservations, limitations, provisos, conditions or exceptions contained in the original grants of the Properties 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 Alberta.
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 Properties.
10. The following registered encumbrances:

Title number(s)	Encumbrance
101 179 570 +2 101 179 570 +3 101 179 570 +4	Stormwater Mutual Drainage Agreement between CP Developments Ltd. and CP Developments Ltd. made effective as of October 26, 2009 and registered under number 101 179 299 at the Land Titles Office pursuant to which a storm water catchment and drainage system was to be built on each of the lands. The lands are Plan 1012449, Block 4 Lot 2 and Property 400, Property 500 and Property 600 and 700. This agreement also prevents the owners from bringing an action to restrict or prohibit the flow of water from one land to the other.

Title number(s)	Encumbrance
101 179 570 +2 101 179 570 +3	Utility Right of Way Agreement between CP Development Ltd. and ATCO Gas made in 2009 and registered under number 101 179 301 at the Land Titles Office pursuant to which CP Development Ltd. as agree to grant an easement to construct, maintain, operate, repair and/or replace and renew a gas pipeline or pipelines under the lands of Property 400 and 500.
101 179 570 +2 101 179 570 +3 101 179 570 +4	Utility Right of Way between CP Development Ltd. and ENMAX Power Corporation dated November 12, 2009 and registered under number 101 179 304 at the Land Titles Office pursuant to which CP Development Ltd. as agree to grant an easement for the digging, putting down, taking up, relaying, connecting, disconnecting, constructing, repairing, replacing, maintaining, inspecting and operating an underground line for the transmission of electrical energy, telephone and communication lines under the lands of Property 400, Property 500 and Property 600 and 700.
101 179 570 +4	Utility Right of Way Agreement between CP Development Ltd. and ATCO Gas made June 14, 2011 and registered under number 111 165 052 at the Land Titles Office pursuant to which CP Development Ltd. as agree to grant an easement to construct, maintain, operate, repair and/or replace and renew a gas pipeline or pipelines over, across and under the lands of Property 600 and 700.
101 179 570 +2 101 179 570 +3 101 179 570 +4	Caveat Forbidding Registration dated June 15, 2010 registered under number 101 179 571 at the Land Titles Office pursuant to a Cross Access and Parking Easement Agreement dated January 4, 2010 between CP Development Ltd., CP Development Ltd. and the City of Calgary. This agreement allows for the mutual use of driveways, roadways, parking lots, and pedestrian and vehicular passage ways by the owners and occupants of all the units of the condominium (which includes Property 400, Property 500 and Property 600 and 700).
101 179 570 +2 101 179 570 +3 101 179 570 +4	Caveat Re: Restrictive Covenant registered as instrument no. 071 104 146.
101 179 570 +2 101 179 570 +3 101 179 570 +4	Caveat Re: Purchaser's Interest registered as instrument no. 111 162 467.
101 179 570 +2 101 179 570 +3 101 179 570 +4	Caveat Re: Lease Interest registered as instrument no. 111 184 718.