

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-041305-117

DATE: November 18, 2013

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

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

HOMBURG INVEST INC.

Debtor/ Petitioner

-and-

HOMBURG REALTY FUND (88) LIMITED PARTNERSHIP

Petitioner

-and-

HOMBURG SHARECO INC.

CHURCHILL ESTATES DEVELOPMENT LTD.

CP DEVELOPMENT LTD.

NORTH CALGARY LAND LTD.

HOMBURG MANAGEMENT (CANADA) INC.

Debtors

- and -

HOMCO REALTY FUND (52) LIMITED PARTNERSHIP

HOMCO REALTY FUND (61) LIMITED PARTNERSHIP

HOMCO REALTY FUND (83) 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 (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 -

THE STATESMAN GROUP OF COMPANIES LTD. ET AL.

Mises-en-cause

- and -

SAMSON BÉLAIR/DELOITTE & TOUCHE INC.

Monitor

AUTHORIZATION OF SALE AND VESTING ORDER (KAI TOWERS)

[1] The Petitioners present a *Motion for authorization of sale and vesting order (Kai Towers)* dated November 7, 2013 (the "**Motion**") pursuant to sections 11 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-Eighth Report dated November 8, 2013;

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

FOR THESE REASONS, THE COURT:

[5] **GRANTS** the Motion;

[6] **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;

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

[8] **RATIFIES** the offer to purchase entered into by HII (88) GP Inc. ("**HII (88) GP**"), for and on behalf of Homco Realty Fund (88) Limited Partnership ("**Homco 88**"), and The Statesman Group of Companies Ltd. ("**Statesman Group**") in respect of Kai Towers (the "**Homco 88 Offer**");

[9] **DECLARES**, for greater certainty, that Kai Towers include, without limitation, the following real property located in the Province of Alberta:

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	
TITLE NUMBER: 121 130 576				

(the "**Kai Towers Lands**");

[10] **AUTHORIZES** and **APPROVES** the sale, transfer and assignment of Kai Towers, including without limitation the Kai Towers Lands, to Statesman Group or its nominee (the "**Purchaser**") in accordance with the terms of the Homco 88 Offer

(the "**Homco 88 Conveyance**"), and **AUTHORIZES** the HII Group, including without limitation HII (88) G.P., for and on behalf of Homco 88, 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 88 Conveyance to the Purchaser of the Kai Towers 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 Kai Towers Lands (the "**Homco 88 Transaction**");

[11] **ORDERS** and **DECLARES** that upon the delivery of a Monitor's certificate to Statesman Group confirming payment of the full purchase price contemplated by the Homco 88 Transaction and that any conditions precedent 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 88 and Statesman Group of payment of the full purchase price contemplated by the Homco 88 Transaction and the closing of the Homco 88 Transaction, all of Homco 88's rights, titles and interests in and to the Kai Towers 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 Kai Towers Lands, other than the Permitted Encumbrances, are hereby expunged and discharged as against the Kai Towers Lands;

[12] **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 121 130 576 in respect of the Kai Towers Lands (the "**Old Title**");
- (b) Issue a new certificate of title in respect of the Kai Towers 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;

[13] **ORDERS** that the Registrar shall perform the steps specified in paragraph [12] of this Order:

- (a) In the order specified in paragraph [12] of this Order; and
- (b) Notwithstanding the requirements of section 191(1) of the *Land Titles Act*, R.S.A. 2000, c. L-4.

[14] **ORDERS** that, upon the Registrar completing the steps identified in paragraphs [12] and [13] of this Order, the Registrar shall forthwith make available to Homco 88 and Statesman Group a certified copy of the New Title.

[15] **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 Statesman Group;

[16] **ORDERS** that the proceeds from the sale of the Kai Towers Lands shall stand in the place and stead of the Kai Towers Lands, net of closing 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 Kai Towers Lands with the same priority as they had with respect to the Kai Towers Lands immediately prior to the sale, as if the Kai Towers 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;

[17] For greater certainty, **ORDERS** that the Net Proceeds shall stand in the place and stead of the Kai Towers 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 Kai Towers Lands immediately prior to this Order in respect of the Kai Towers Lands, as if the Kai Towers Lands had not been sold and had remained in the possession and control of Homco 88;

[18] **AUTHORIZES** HII (88) GP, for and on behalf of Homco 88, to pay the Net Proceeds arising out of the Homco 88 Transaction to HSBC Bank Canada up to the amount of its claim secured by a Land Mortgage on the Kai Towers Lands (the "**HSBC Payout**") and to HII in respect to the HII Advance;


[19] **PRAYS ACT** of the fact that the Net Proceeds of the Homco 88 Transaction, less the HSBC Payout, will be distributed to other creditors at a time to be determined, in accordance with creditors' respective ranks and applicable law;

[20] **DECLARES** that this Order constitutes the only authorization required by the HII Group to proceed with the Homco 88 Transaction and the Homco 88 Conveyance and, for greater certainty, **DECLARES** that the parties involved in the Homco 88 Transaction are exempted from requiring or obtaining any formal valuation or authorization that may have been required from any person or authority whatsoever;

[21] **DECLARES** that this Order shall have full force and effect in all of the provinces and territories in Canada;

[22] **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 this Order;

[23] **THE WHOLE** without costs.



LOUIS J. GOUIN, J.S.C.

Hearing date : November 18, 2013

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

SCHEDULE I – PERMITTED ENCUMBRANCES

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
6073KE	17/09/1968	EASEMENT "EXTENDED BY, OVER THE EAST 1.5 INCHES OF LOT 6"
811 009 294	19/01/1981	CAVEAT CAVEATOR – THE CITY OF CALGARY
5803KE	04/09/1988	EASEMENT "WEST 1.5 INCHES OF LOT 10, SUBJECT TO, IN FAVOR OF LOTS 7,8 & 9"
111 018 397	24/01/2011	CAVEAT RE: EASEMENT

SCHEDULE II – DISCHARGED ENCUMBRANCES

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
081 075 643	28/02/2008	MORTGAGE MORTGAGEE – 1028167 ALBERTA LTD. ORIGINAL PRINCIPAL AMOUNT: \$45,000,000
081 298 559	14/08/2008	CAVEAT RE: AGREEMENT CHARGING LAND CAVEATOR – CONNAUGHT CENTER LTD.
101 367 967	20/12/2010	MORTGAGE MORTGAGEE – HSBC BANK CANADA ORIGINAL PRINCIPAL AMOUNT : \$15,000.000
101 367 968	20/12/2010	CAVEAT RE: ASSIGNMENT OF RENTS AND LEASES CAVEATOR – HSBC BANK CANADA
101 367 969	20/12/2010	POSTPONEMENT OF MORT 081075643 TO MORT 101367967 CAVE 101367968
101 367 970	20/12/2010	POSTPONEMENT OF CAVE 081298559 TO MORT 101367967 CAVE 101367968
111 230 196	08/09/2011	BUILDER'S LIEN LIENOR – C. & T. REINFORCING STEEL CO. (ALBERTA) LTD. AMOUNT: \$1,072,888
111 242 915	21/09/2011	BUILDER'S LIEN LIENOR – LAFARGE CANADA INC. AMOUNT: \$425,564
111 245 527	23/09/2011	BUILDER'S LIEN LIENOR – NORR ARCHITECTS PLANNERS AMOUNT: \$176, 741
111 251 174	29/09/2011	BUILDER'S LIEN LIENOR – GIUSTI GROUP LIMITED PARTNERSHIP AMOUNT: \$904,023

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
111 258 833	07/10/2011	BUILDER'S LIEN LIENOR – MORWEST CRANE & SERVICES LTD. AMOUNT: \$112,944
111 259 163	07/10/2011	BUILDER'S LIEN LIENOR – CURTIS ENGINEERING ASSOCIATES LTD. AMOUNT: \$19,084
111 282 444	31/10/2011	BUILDER'S LIEN LIENOR – PETER ROSS AB LTD. AMOUNT: \$117,136
111 289 658	07/11/2011	BUILDER'S LIEN LIENOR – DOMINION PROTECTION SERVICES LTD. AMOUNT: \$73,413
111 318 037	06/12/2011	BUILDER'S LIEN LIENOR – WATTS MECHANICAL SERVICES LTD. AMOUNT: \$58,388
121 002 776	04/01/2012	CERTIFICATE OF LIS PENDENS AFFECTS INSTRUMENT: 111230196
121 061 638	14/03/2012	CERTIFICATE OF LIS PENDENS AFFECTS INSTRUMENT: 111242915
121 066 218	20/03/2012	CERTIFICATE OF LIS PENDENS AFFECTS INSTRUMENT: 111245527
121 099 245	27/04/2012	CERTIFICATE OF LIS PENDENS AFFECTS INSTRUMENT: 111282444
121 111 382	09/05/2012	BUILDER'S LIEN LIENOR – KAI CONSTRUCTION CORPORATION. AMOUNT: \$1,502,053
121 134 266	01/06/2012	CERTIFICATE OF LIS PENDENS AFFECTS INSTRUMENT: 111318037
121 277 460	23/10/2012	CERTIFICATE OF LIS PENDENS AFFECTS INSTRUMENT: 121111382
121 326 962	13/12/2012	CAVEAT RE : AGREEMENT CHARGING LAND CAVEATOR – HOMBURG INVEST INC.