

CANADA

SUPERIOR COURT  
(Commercial Division)

---

PROVINCE OF QUEBEC  
District of Montreal

No: 500-11-041238-110

IN THE MATTER OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED:

HART STORES INC./MAGASINS HART  
INC.

Petitioner

- and -

RSM RICHTER INC.

Monitor

---

### INITIAL ORDER

ON READING Hart Stores Inc./Magasins Hart Inc's (the "**Petitioner**") petition for an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the "**CCAA**") and the exhibits, the affidavit of Robert Harritt filed in support thereof (the "**Petition**"), the consent of RSM Richter Inc. to act as monitor, relying upon the submissions of counsel and being advised that the interested parties, including secured creditors who are likely to be affected by the charges created herein were given prior notice of the presentation of the Petition;

GIVEN the provisions of the CCAA;

#### WHEREFORE, THE COURT:

1. GRANTS the Petition;
2. ISSUES an order pursuant to the CCAA (the "**Order**"), divided under the following headings:

- Service
- Application of the CCAA and Appointment of the Monitor
- Effective Time
- Plan of Arrangement
- Stay of Proceedings against the Petitioner and the Property
- Stay of Proceedings against the Directors and Officers
- Possession of Property and Operations
- No Exercise of Rights or Remedies
- No Interference with Rights
- Continuation of Services
- Non-Derogation of Rights
- Interim Financing (DIP)
- Directors' and Officers' Indemnification
- Restructuring
- Powers of the Monitor
- Priorities and General Provisions Relating to CCAA Charges
- General;

**Service**

3. DECLARES that sufficient prior notice of the presentation of this Petition has been given by the Petitioner to interested parties, including the secured creditors who are likely to be affected by the charges created herein;

**Application of the CCAA and Appointment of Monitor**

4. DECLARES that the Petitioner is a debtor company to which the CCAA applies;
5. ORDERS that RSM Richter Inc. is hereby appointed to monitor the business and financial affairs of the Petitioner as an officer of this Court (the “**Monitor**”) with the powers more fully set out hereunder, and in particular in paragraph 34 of this Order;

**Effective time**

6. DECLARES that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard / Daylight Time on the date of this Order (the “**Effective Time**”);

**Plan of Arrangement**

7. DECLARES that the Petitioner shall have the authority to file with this Court and to submit to its creditors one or more plans of compromise or arrangement (collectively, the “**Plan**”) in accordance with the CCAA;

**Stay of Proceedings against the Petitioner and the Property**

8. ORDERS that, until and including September 29, 2011, or such later date as the Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Petitioner, or of its present and future assets, rights, undertakings or property of every nature and kind whatsoever, wherever situated, including all proceeds thereof (collectively, the “**Property**”) or affecting the Petitioner’s business operations and activities (the “**Business**”), including as provided in paragraph 11 hereinbelow except with leave of this Court on notice to the Petitioner, the Monitor and the DIP Lender (as herein defined). Any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsections 11.1 and 34(9) of the CCAA;

**Stay of Proceedings against the Directors and Officers**

9. ORDERS that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director, officer or executive who manages the business, commercial activities or internal affairs of the Petitioner, nor against any

person deemed to be a director or an officer of the Petitioner under subsection 11.03(3) CCAA (each, a “**Director**”, and collectively the “**Directors**”) in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Petitioner where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation;

**Possession of Property and Operations**

10. ORDERS that the Petitioner shall remain in possession and control of the Property, the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph 34 hereof;
11. ORDERS that the Petitioner shall continue to carry on its operations and financial affairs, including the business and affairs of any Person owned by the Petitioner or in which the Petitioner owns an interest, in a manner consistent with the commercially reasonable preservation thereof;
12. ORDERS that the Petitioner shall be authorized and empowered to continue to retain and employ the consultants, agents, experts, accountants, counsel and such other persons (collectively, the “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it may deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order;
13. ORDERS that, except as otherwise provided to the contrary herein, the Petitioner shall be entitled to pay all reasonable expenses incurred by it in carrying on the Business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
  - a) all expenses and capital expenditures reasonably necessary for the preservation of its Property or the Business; and

- b) payment for goods or services actually delivered or supplied to the Petitioner following the date of this Order;
14. ORDERS that the Petitioner shall be entitled to, but not compelled to, pay the following expenses incurred prior to this Order, with the prior approval of the Monitor:
- a) all outstanding and future wages, salaries, commissions, vacation pay, deferred-profit sharing plan contributions and other benefits, reimbursement of expenses (including, without limitation, amounts charged by employees to credit cards) and other amounts payable to current or future employees, officers or directors on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
  - b) all future amounts owing to or in respect of individuals working as independent contractors in connection with the Petitioner's business;
  - c) all outstanding amounts payable on or after the date of this Order in respect of (i) customer programs including, *inter alia*, rebates, adjustments, performance and volume discounts and (ii) billing errors, including duplicative invoicing, improper invoicing, duplicative payment, mispricing and various other billing and payment errors;
  - d) the fees and disbursements of any Assistants retained or employed by the Petitioner in respect of these proceedings, at their standard rates and charges; and
  - e) outstanding amounts that became due prior to this Order to creditors who have liens or rights of retention on assets held by them for the Petitioner or for the Petitioner on behalf of its clients, provided that said payments shall not exceed \$ 600,000.00 in the aggregate;
  - f) all outstanding amounts payable to customs authorities; and
  - g) all outstanding amounts payable in respect of gift-cards and other customer certificates;

**No Exercise of Rights or Remedies**

15. ORDERS that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of

the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court. Without limiting the generality of the foregoing, all Persons:

- a) are restrained from accelerating, altering, terminating, cancelling, suspending or modifying any agreements, contracts or arrangements or the rights of the Petitioner;
- b) are restrained from refusing to renew or extend agreements, contracts or arrangements or the rights of the Petitioner by reason only of the filing or the insolvency of the Petitioner;
- c) are restrained from modifying, suspending or otherwise interfering with the supply of any goods, services or other benefits including, without limitation, any directors' and officers' insurance, any telephone numbers, any form of communication, banking or financial services and any oil, gas, water, steam, electricity or other utility supply; and
- d) shall continue to perform and observe the terms and conditions contained in all agreements, contracts or arrangements, so long as the Petitioner pays the normal prices or charges for such goods and services received after the date of this Order as such prices or charges become due in accordance with normal payment practices or as may be hereafter negotiated and agreed by the Petitioner with the consent of the Monitor, without having to provide any guarantee, security or deposit whether by way of cash, letter of credit, stand-by fees or similar items;

16. ORDERS that no public or private utility may discontinue or seek to discontinue service to the Petitioner, without a specific order of this Court, notwithstanding any disagreement with the Petitioner as to the payment terms applicable for services rendered after the date of the present Order;

17. DECLARES that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Petitioner or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioner

becomes bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”) is appointed in respect of the Petitioner, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioner in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA;

**No Interference with Rights**

18. ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioner and the Monitor, or with leave of this Court;

**Continuation of Services**

19. ORDERS that during the Stay Period and subject to paragraph 15 hereof and subsection 11.01 of the CCAA, all Persons having verbal or written agreements with the Petitioner or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utilities or other goods or services made available to the Petitioner, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Petitioner, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner, with the consent of the Monitor, or as may be ordered by this Court;

20. ORDERS that, notwithstanding anything else contained herein and subject to subsection 11.01 of the CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioner on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Petitioner;
21. ORDERS that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Petitioner with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent: (a) Wells Fargo Capital Finance Corporation Canada (“WF”), as the secured lender to the Petitioner prior to the Effective Time, from applying collections and other amounts received by the Petitioner from time to time after the Effective Time in permanent reduction of the amounts owed by the Petitioner to WF under the credit facilities provided by WF to the Petitioner prior to the Effective Time; or (b) any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by the Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Petitioner’s account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn;

#### **Non-Derogation of Rights**

22. ORDERS that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the “**Issuing Party**”) at the request of the Petitioner shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from these proceedings, the facts related therein, or from this



Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid;

**Interim Financing (DIP)**

23. ORDERS that the Petitioner be and is hereby authorized to borrow, repay and reborrow from Wells Fargo Capital Finance Corporation Canada, as the DIP lender herein (the “**DIP Lender**”) such amounts from time to time as the Petitioner may consider necessary or desirable, up to a maximum principal amount of \$ 20,000,000 outstanding at any time, subject to the terms and conditions as set forth in the DIP Commitment Letter entered into between the Petitioner and the DIP Lender dated as of August 30, 2011 (the “**DIP Commitment Letter**”) and in the DIP Financing Documents (as defined hereinafter), to fund the ongoing expenditures of the Petitioner and to pay such other amounts as are permitted by the terms of the Order and the DIP Financing Documents (as defined hereinafter) (the “**DIP Facility**”);
24. DECLARES that the communication of a redacted version of the DIP Commitment Letter as Exhibit R-7 to the Petition is proper and sufficient, a copy of such Exhibit R-7 being appended hereto as Schedule “**A**”;
25. ORDERS that the unredacted version of the DIP Commitment Letter filed with this Court be kept confidential and under seal in the Court Record;
26. ORDERS that the Petitioner is hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the “**DIP Financing Documents**”) as may be required by the DIP Lender in connection with the DIP Facility and the DIP Commitment Letter, and the Petitioner is hereby authorized to perform all of its obligations under the DIP Financing Documents;
27. ORDERS that the Petitioner shall pay to the DIP Lender, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all reasonable fees and disbursements of counsel and all other

reasonably required advisers to or agents of the DIP Lender on a full indemnity basis (the “**DIP Lender Expenses**”)) under the DIP Financing Documents and shall perform all of its other obligations to the DIP Lender pursuant to the DIP Commitment Letter, the DIP Financing Documents and the Order;

28. DECLARES that all of the Property of the Petitioner is hereby subject to a charge and security for an aggregate amount of \$ 20,000,000 (such charge and security is referred to herein as the “**DIP Lender Charge**”) in favour of the DIP Lender as security for all obligations of the Petitioner to the DIP Lender with respect to all amounts owing (including principal, interest and the DIP Lender Expenses) under or in connection with the DIP Commitment Letter and the DIP Financing Documents. The DIP Lender Charge shall have the priority established by paragraphs 45 and 46 of this Order;

29. ORDERS that the claims of ~~WF, pursuant to the credit facilities extended to the Petitioner prior to the Effective Time, and~~ the DIP Lender, pursuant to the DIP Financing Documents, shall not be compromised or arranged pursuant to the Plan or these proceedings and ~~WF, and~~ the DIP Lender, shall for all purposes be treated as unaffected creditors <sup>can</sup> in these proceedings and in any Plan; MC.  
KS

30. ORDERS that the DIP Lender may:

- a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the DIP Lender Charge and the DIP Financing Documents in all jurisdictions where it deems it is appropriate; and
- b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to the Petitioner if the Petitioner fails to meet the provisions of the DIP Commitment Letter and the DIP Financing Documents;

31. ORDERS that the DIP Lender shall not take any enforcement steps under the DIP Financing Documents or the DIP Lender Charge without providing at least five (5) business days written notice (the “**Notice Period**”) of a default thereunder to the Petitioner, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon

expiry of such Notice Period, the DIP Lender shall be entitled to take any and all steps under the DIP Financing Documents and the DIP Lender Charge and otherwise permitted at law, but without having to send any demands under Section 244 of the BIA;

32. ORDERS that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs 23 to 31 hereof unless either (a) notice of a motion for such order is served on the DIP Lender and the Petitioner by the moving party within seven (7) days after that party was served with or otherwise notified of the Order or (b) the DIP Lender applies for or consents to such order;

#### **Directors' and Officers' Indemnification**

33. ORDERS that the Petitioner shall indemnify its Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioner after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 of the CCAA;

#### **Restructuring**

34. DECLARES that, to facilitate the orderly restructuring of its business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioner shall have the right, subject to approval of the Monitor or further order of the Court, to:
- a) permanently or temporarily cease, downsize or shut down any of its operations or locations as it deems appropriate and make provision for the consequences thereof in the Plan;
  - b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 of the

CCAA, and under reserve of subparagraph (c);

- c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$ 200,000 or \$ 1,000,000 in the aggregate;
- d) terminate the employment of such of its employees or temporarily or permanently lay off such of its employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioner and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Petitioner may determine;
- e) settle claims of customers and suppliers that are in dispute;
- f) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of its agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Petitioner and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and
- g) subject to section 11.3 of the CCAA, assign any rights and obligations of Petitioner;

35. DECLARES that, if a notice of disclaimer or resiliation is given to a landlord of the Petitioner pursuant to section 32 of the CCAA and subsection 34f) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Petitioner and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioner, provided nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith. If a landlord disputes any such disclaimer or resiliation, the Petitioner shall not be required to pay any rent or other charges due to the landlord under the affected lease (collectively, the “**Rent**”) pending the resolution

of such dispute, other than the Rent payable for the notice period provided under subsection 32(5) of the CCAA, and the disclaimer or resiliation of the affected lease shall be without prejudice to the Petitioner's claim to the fixtures under the lease;

36. ORDERS that the Petitioner shall provide to any relevant landlord notice of the Petitioner's intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the affected landlord disputes the Petitioner's right to remove the fixtures, such fixtures shall remain in the premises pending resolution of the issue between the Petitioner, the affected landlord and any affected secured creditor, or by further order of this Court upon motion made by the Petitioner, and served on the landlord, the Monitor and any affected secured creditor at least two (2) days prior to its presentation. If the Petitioner has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between the Petitioner and the landlord;
37. DECLARES that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, the Petitioner is permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in its possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to its advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioner or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or

implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner;

**Powers of the Monitor**

38. ORDERS that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

- a) shall, without delay, (i) publish once a week for two (2) consecutive weeks in La Presse and the Globe & Mail newspapers a notice containing the information prescribed under the CCAA and (ii) within five (5) business days after the date of this Order (A) post on the Monitor's website (the "**Website**") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioner of more than \$ 1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;
- b) shall monitor the Petitioner's receipts and disbursements;
- c) shall assist the Petitioner, to the extent required by the Petitioner, in dealing with its creditors and other interested Persons during the Stay Period;
- d) shall assist the Petitioner, to the extent required by the Petitioner, in pursuing all avenues to finance or refinance, market, convey, transfer / dispose of or assign, in whole or in part, the Property or the Business subject to sections 11.3 and 36 of the CCAA;
- e) shall assist the Petitioner, to the extent required by the Petitioner, with the preparation of its cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- f) shall advise and assist the Petitioner, to the extent required by the Petitioner, to review the Petitioner's business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- g) shall assist the Petitioner, to the extent required by the Petitioner, with the Restructuring and in its negotiations with its creditors and other interested Persons and with the holding and administering of any meetings held to

consider the Plan;

- h) shall report to the Court on the state of the business and financial affairs of the Petitioner or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;
- i) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- j) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- k) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- l) may act as a "foreign representative" of the Petitioner or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;
- m) may give any consent or approval as may be contemplated by the Order or the CCAA;
- n) shall report to the DIP Lender on such matters relating to the DIP Financing, or the Property subject to the DIP Lender's Charge, as required by the DIP Commitment Letter or as the DIP Lender may otherwise request of the Monitor, acting reasonably; and
- o) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time;

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioner, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Petitioner;

39. ORDERS that the Petitioner and its Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and

Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioner in connection with the Monitor's duties and responsibilities hereunder;

40. DECLARES that the Monitor may provide creditors and other relevant stakeholders of the Petitioner with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioner's counsel. In the case of information that the Monitor has been advised by the Petitioner is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioner unless otherwise directed by this Court;
41. DECLARES that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioner or continues the employment of the Petitioner's employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA;
42. DECLARES that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven (7) days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 38j) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph;
43. ORDERS that the Petitioner shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioner's legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested;
44. DECLARES that the Monitor, the Monitor's legal counsel, if any, the Petitioner's legal counsel, as security for the professional fees and disbursements incurred



both before and after the making of the Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in all of the Property of the Petitioner to the extent of the aggregate amount of \$ 500,000 (the “**Administration Charge**”), having the priority established by paragraphs 45 and 46 hereof;

**Priorities and General Provisions Relating to CCAA Charges**

45. DECLARES that the priorities of the Administration Charge and the DIP Lender Charge (collectively, the “**CCAA Charges**”), as between them with respect to any Property to which they apply, shall be as follows:
  - a) first, the Administration Charge; and
  - b) second, the DIP Lender Charge;
46. DECLARES that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the “**Encumbrances**”) affecting the Property charged by such Encumbrances;
47. ORDERS that the filing, registration or perfection of each of the CCAA Charges shall not be required, and that each of the CCAA Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to each of the CCAA Charges coming into existence, notwithstanding any such failure to file, register, record or perfect;
48. ORDERS that, except as otherwise expressly provided for herein, the Petitioner shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioner obtains the prior written consent of the Monitor and the prior approval of the Court;
49. DECLARES that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioner, notwithstanding any

requirement for the consent of any party to any such charge or to comply with any condition precedent;

50. DECLARES that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Petitioner (a “**Third Party Agreement**”), and notwithstanding any provision to the contrary in any Third Party Agreement:

- a) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by the Petitioner of any Third Party Agreement to which it is a party; and
- b) any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges;

51. DECLARES that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Petitioner pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law;

52. DECLARES that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioner and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioner, for all purposes;

**General**

53. ORDERS that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Petitioner or of the Monitor in relation to the Business or Property of the Petitioner, without first obtaining leave of this Court, upon five (5) days written notice to the Petitioner's counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings;
54. DECLARES that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioner under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement;
55. DECLARES that, except as otherwise specified herein, the Petitioner and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioner and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail;
56. DECLARES that the Petitioner and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email

addresses, provided that the Petitioner shall deliver “hard copies” of such materials upon request to any party as soon as practicable thereafter;

57. DECLARES that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Petitioner and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings;
58. DECLARES that the Petitioner or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other;
59. DECLARES that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Petitioner, to Counsel to the Petitioner (Heenan Blaikie LLP, c/o Michael J. Hanlon, Claude Pelletier and Nicolas Plourde); to the Monitor (RSM Richter Inc., c/o Benoit Gingues and Philip Manel); to counsel for the DIP Lender (Goodmans LLP, c/o L. Joseph Latham, and Lavery deBilly LLP, c/o Jean-Yves Simard); and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order, such application or motion shall be filed during the Stay Period ordered by this Order, unless otherwise ordered by this Court;

Michael J. Hanlon                      mhanlon@heenan.ca  
Claude Pelletier                      cppetier@heenan.ca  
Nicolas Plourde                      nplourde@heenan.ca  
Heenan Blaikie, LLP  
1250 René-Lévesque Blvd. West  
Suite 2500  
Montreal, Quebec, H3B 4Y1

Philip Manel                              pmanuel@rsmrichter.com  
Benoit Gingues                        bgingues@rsmrichter.com

RSM RICHTER INC.  
2, Place Alexis-Nihon  
Suite 1820  
Montreal, Quebec, H3Z 3C2

L. Joseph Latham                      jlatham@goodmans.ca  
GOODMANS LLP  
333 Bay Street  
Suite 3400  
Toronto, Ontario, M5H 2S7

Jean-Yves Simard                      jysimard@lavery.ca  
LAVERY deBILLY LLP  
1 Place Ville-Marie  
Suite 4000  
Montreal, Quebec, H3B 4M4

60.    DECLARES that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
61.    DECLARES that the Monitor, with the prior consent of the Petitioner, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose;
62.    REQUESTS the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
63.    ORDERS the provisional execution of the Order notwithstanding any appeal.

30, août, 2011

M Caland  
JCS

Honorable Jean-Yves Lalonde  
JCS

COPIE CONFORME

*Julie Perrier*

JULIE PERRIER

Greffière adjointe

**Schedule "A"**

**Redacted DIP Commitment Letter**

(See attached)

## DIP COMMITMENT LETTER

Dated as of August 30, 2011

WHEREAS, the DIP Lender (as defined below) has agreed to provide Hart Stores Inc. / Magasins Hart Inc. funding in order to assist with certain restructuring obligations of the Borrower (as defined below) in the context of its proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") in accordance with the terms set out herein;

NOW THEREFORE, the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

**DIP BORROWER:** Hart Stores Inc. / Magasins Hart Inc. (the "**Borrower**").

**DIP LENDER:** Wells Fargo Capital Finance Corporation Canada (the "**DIP Lender**").

**PURPOSE:** To provide for the short-term liquidity needs of the Borrower while under CCAA protection, as more fully set forth herein.

**DIP FACILITY AND MAXIMUM AMOUNT:** Cdn\$20,000,000 (the "**Maximum Amount**") super priority credit facility (the "**DIP Facility**"). Fundings shall be deposited into the Borrower's current account with a financial institution approved by the DIP Lender (the "**Borrower's Account**"), and withdrawn by the Borrower in accordance with the terms hereof. In addition, the amount made available under the DIP Facility shall not, at any time, exceed the Borrowing Base (as defined below).

Advances under the DIP Facility will be made available to the Borrower by way of revolving prime based loans denominated in Canadian Dollars (the "**Cdn\$ Advances**") and in United States dollars (the "**US\$ Advances**", together with the Cdn\$ Advances, the "**DIP Advances**").

Initial Draw:

Upon the granting of the Initial CCAA Order (in form and substance acceptable to the DIP Lender in its sole and absolute discretion) and the satisfaction of the additional conditions precedent noted below, the Borrower shall be authorized to make an initial draw under the DIP Facility in a maximum amount of Cdn\$100,000 (the "**Initial Draw**").

Advances shall be made to the Borrower from the DIP Facility by the DIP Lender in accordance with the conditions set out under the paragraph below entitled "Availability Under DIP Facility".

**FUNDING CONDITIONS UNDER THE DIP** After the Court enters the Initial CCAA Order approving the terms of the DIP Facility (in form and substance acceptable to the



**FACILITY:**

DIP Lender in its sole and absolute discretion), and the satisfaction of the additional conditions precedent noted below, the DIP Lender shall fund DIP Advances on the terms and conditions set out in this Commitment Letter (the "**DIP Funding**"), provided, however, that the DIP Lender shall not be obligated to provide any DIP Funding if any one or more of the following occurs: (i) the Initial CCAA Order has been vacated, stayed or otherwise caused to become ineffective or is amended in a manner not acceptable to the DIP Lender (in its sole and absolute discretion); or (ii) a Default or Event of Default (each as defined below) has occurred and is continuing under the DIP Facility.

**REPAYMENT:**

The DIP Facility shall be repayable in full on the earlier of: (i) the occurrence of any Event of Default hereunder that is continuing; and (ii) November 4, 2011 (the earlier date being the "**Maturity Date**"). The Maturity Date may be extended at the request of the Borrower and with the consent of the DIP Lender for such period and on such terms and conditions as the Borrower and the DIP Lender may agree.

The commitment in respect of the DIP Facility shall expire on the Maturity Date and all amounts outstanding under the DIP Facility shall be repaid in full no later than the Maturity Date, without the DIP Lender being required to make demand upon the Borrower or to give notice that the DIP Facility has expired and the obligations are due and payable.

**CASH FLOW PROJECTIONS:**

Prior to the execution of this Commitment Letter, the Borrower shall have provided to the DIP Lender cash flow projections, to be attached as Schedule "A" hereto, in form and substance satisfactory to the DIP Lender, reflecting the projected cash requirements of the Borrower from August 30, 2011 through the period ending October 16, 2011 calculated on a weekly basis (the "**CCAA Cash Flow**").

The Borrower, with the assistance of the Monitor, shall keep the DIP Lender apprised on a weekly basis of its cash flow requirements by providing subsequent cash flow projections, in form and substance satisfactory to the DIP Lender and the Monitor, by no later than 5:00 p.m. (Montreal time) on the Tuesday of each week and containing a comparison of the previous week's actual cash flow to the projections for that week (individually, a "**Cash Flow Projection**" and together with the CCAA Cash Flow and the 13-Week Cash Flow (as defined below), collectively, the "**Cash Flow Projections**").

The Borrower covenants and agrees to provide to the DIP Lender 13-week cash flow projections, in form and substance satisfactory

to the DIP Lender, reflecting the projected cash requirements of the Borrower from September 19, 2011 through the period ending December 11, 2011 calculated on a weekly basis (the "13-Week Cash Flow") by no later than 5:00 p.m. (Montreal time) on September 20, 2011. The parties agree that this Commitment Letter shall be amended to reflect additional cash requirements of the Borrower and other terms and conditions, and Court approval shall be sought for such amendments before they become effective.

**AVAILABILITY UNDER  
DIP FACILITY:**

Subject to, and upon the terms and conditions contained herein, the DIP Lender agrees to make DIP Advances to the Borrower from time to time in the amounts requested by the Borrower up to an amount (the "Borrowing Base") equal to:

- (i) the lesser of (x) sixty-five (65%) percent of the Cost of Eligible Inventory and (y) eighty-eight (88%) percent of the amount obtained by multiplying the Cost of Eligible Inventory by the Net Recovery Cost Percentage;

less

- (ii) the aggregate of:

- (A) the aggregate amount of obligations outstanding under the Pre-Filing Credit Facility (including Letter of Credit Accommodations) and the DIP Facility; and
- (B) any Availability Reserves,

provided that the aggregate outstanding amount of DIP Advances shall not exceed the Maximum Amount.

Letter of Credit Accommodations will not be available under the DIP Facility.

Each DIP Advance (including the Initial Draw) shall be made by the DIP Lender to the Borrower as soon as practicable after satisfaction of all of the following conditions precedent:

- (a) Delivery to the DIP Lender by the Monitor of the daily cash monitoring schedules in support of the proposed DIP Advance;
- (b) Each DIP Advance (together with all previous DIP Advances) must be no greater than the Cash Flow Projections approved by the DIP Lender and reviewed by the Monitor, subject always to the Borrowing Base and Maximum Amount under the DIP Facility and the terms and conditions hereof;

- (c) With the exception of the Initial Draw, delivery to the DIP Lender of a drawdown certificate, in substantially the form set out in Schedule "B" hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the drawdown is within the relevant Cash Flow Projections approved by the DIP Lender and reviewed by the Monitor, and that the Borrower is in compliance with the DIP Credit Documentation (as defined below) and the Restructuring Court Orders (as defined below); and
- (d) there is no Default or Event of Default that has occurred and is continuing.

All proceeds of DIP Advances shall be deposited into the Borrower's Account.

Notwithstanding the foregoing, to the extent that an additional cash need arises in the Borrower's business that is not contemplated in the Cash Flow Projections, the Borrower, in consultation with and as recommended by the Monitor, may request a DIP Advance from the DIP Lender by providing written particulars relating to such emergency cash need, which DIP Advance shall be in the sole and absolute discretion of the DIP Lender and shall be made from the DIP Facility and deposited into the Borrower's Account.

**PREPAYMENTS:**

Subject to the terms herein, including the provisions under the paragraph below entitled "Mandatory Repayments of Pre-Filing Credit Facility", the Borrower may prepay without notice or penalty any amounts outstanding under the DIP Facility at any time prior to the Maturity Date.

**INTEREST RATE:**

Cdn\$ Advances: Canadian Prime Rate plus 2.25% per annum.

US\$ Advances: US Prime Rate plus 2.25% per annum.

Interest on DIP Advances shall be calculated in the same manner as under the Pre-Filing Credit Facility and shall be paid to the DIP Lender by the Borrower monthly in arrears on the first day of each calendar month.

**DIP LENDER FEES:**

The Borrower shall pay to the DIP Lender monthly an unused line fee at a rate equal to 0.15% per annum calculated upon the amount by which the Maximum Amount exceeds the average daily principal balance of the outstanding DIP Advances during the immediately preceding month (or part thereof) while the DIP Facility is in effect, which fee shall be payable on the first day of each month in arrears commencing on September 1, 2011. Any accrued and unpaid unused line fees shall be paid on the Maturity Date.

**DIP SECURITY:**

All obligations of the Borrower under or in connection with the DIP Facility and this Commitment Letter and any other definitive documentation in respect of the DIP Facility that are in form and substance satisfactory to the DIP Lender in its absolute discretion (collectively, the "**DIP Credit Documentation**") shall be secured by a first super priority charge (subject only to (i) any charge, encumbrance or security arising by operation of, and given priority over the DIP Security by, any applicable statutory law and (ii) the Administration Charge) over all present and after-acquired property, assets and undertakings of the Borrower, and ahead of and senior to all other creditors, interest holders, lien holders and claimants of any kind whatsoever, pursuant to a Court ordered charge under the CCAA (the "**DIP Priority Charge**") and any Additional DIP Security Documents (as defined below).

**MANDATORY  
REPAYMENTS OF PRE-  
FILING CREDIT  
FACILITY:**

Recognizing the nature of the Pre-Filing Credit Facility, including the security granted by the Borrower in connection therewith, the Borrower covenants and agrees that all cash receipts of the Borrower received during the course of the CCAA Proceedings shall be forthwith applied to repay any outstanding obligations under the Pre-Filing Credit Facility. The Pre-Filing Credit Facility shall be repaid by the Borrower in the currency in which the applicable obligations thereunder were obtained by the Borrower and, for greater certainty, all existing arrangements between the Borrower and the DIP Lender relating to foreign exchange matters shall continue to apply to the repayment of all obligations under the Pre-Filing Credit Facility.

**ADDITIONAL  
CONDITIONS  
PRECEDENT TO DIP  
FUNDING TO THE  
BORROWER:**

- (a) The Court shall have granted and entered the Initial CCAA Order in form and substance satisfactory to the DIP Lender, which order shall, without limitation, include:
- (i) provisions approving this Commitment Letter and the DIP Facility created herein and the execution and delivery by the Borrower of such other documents as the DIP Lender deems necessary or appropriate, acting reasonably;
  - (ii) provisions granting to the DIP Lender the DIP Priority Charge;
  - (iii) provisions authorizing and directing the Borrower to execute and deliver such loan and security documents relating to the DIP Facility and such security documents evidencing the DIP Priority Charge in such form and substance as the DIP Lender may reasonably require;

- (iv) provisions authorizing the DIP Lender to effect registrations, filings and recordings wherever in their discretion they deem appropriate regarding the DIP Priority Charge;
  - (v) provisions confirming that the DIP Priority Charge, the documents delivered pursuant hereto (including, without limitation, the Additional DIP Security Documents) (collectively, the “DIP Security”) shall have priority over all present and future charges, encumbrances and security, whether legal or equitable, other than (i) any charge, encumbrance or security arising by operation of, and given priority over the DIP Security by, any applicable statutory law, and (ii) the Administration Charge;
  - (vi) provisions providing that the DIP Priority Charge shall be valid and effective to secure all of the obligations of the Borrower to the DIP Lender without the necessity of the making of any registrations or filings and whether or not any other documents are executed by the Borrower and/or the DIP Lender pursuant hereto; and
  - (vii) provisions declaring that the granting of the DIP Priority Charge and all other documents executed and delivered to the DIP Lender as contemplated herein, including, without limitation, all actions taken to perfect, record and register the DIP Priority Charge, do not constitute conduct meriting an oppression remedy, settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions under any applicable federal or provincial legislation;
- (b) The DIP Lender shall have received (i) the CCAA Cash Flow, and the same shall be in form and substance satisfactory to the DIP Lender and the Monitor; and (ii) weekly updates of the Borrower’s cash flow requirements by providing subsequent Cash Flow Projections;
  - (c) The DIP Lender shall be satisfied that the Borrower has complied with and is continuing to comply in all material respects with all applicable laws, regulations and policies in relation to its business;

- (d) The DIP Lender shall be satisfied that there are no Liens ranking ahead of the DIP Security, except as provided for herein or as arising by operation of law in the ordinary course of business without any contractual grant of security; and
- (e) The DIP Lender shall be satisfied with the establishment of blocked account arrangements with TD Bank (or such other financial institution approved by the DIP Lender) in respect of the Borrower.

For greater certainty, the DIP Lender shall not be obligated to advance or otherwise make available any funds pursuant to this Commitment Letter unless and until all of the foregoing conditions have been satisfied and all the foregoing documentation and confirmations have been obtained, in a form and content satisfactory to the DIP Lender.

**REPRESENTATIONS AND WARRANTIES:**

The Borrower represents and warrants to the DIP Lender, upon which the DIP Lender relies in entering into this Commitment Letter and the other DIP Credit Documentation, that:

- (a) The transactions contemplated by this Commitment Letter and other DIP Credit Documentation, including the DIP Security:
  - (i) are within the powers of the Borrower;
  - (ii) have been duly authorized by all necessary corporate approval;
  - (iii) have been duly executed and delivered by or on behalf of the Borrower;
  - (iv) upon the granting of the Initial CCAA Order, constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their terms;
  - (v) upon the granting of the Initial CCAA Order, do not require the consent or approval of, registration or filing with, or any other action by, any governmental authority, other than filings that may be made to register or otherwise record the DIP Security; and
  - (vi) will not violate the charter documents or by-laws of the Borrower or any applicable law relating to such party;
- (b) The business operations of the Borrower have been and

will continue to be conducted in compliance with all laws of each jurisdiction in which business has been or is carried on; and

- (c) The Borrower has obtained all licenses and permits required for the operation of its business, which licenses and permits remain in full force and effect. No proceedings have been commenced or threatened to revoke or amend any of such licenses or permits.

**AFFIRMATIVE  
COVENANTS:**

The Borrower covenants and agrees to do the following:

- (a) Allow the DIP Lender full access to the books and records of the Borrower and cause management thereof to fully co-operate with the DIP Lender;
- (b) Use reasonable efforts to keep the DIP Lender apprised on a timely basis of all material developments with respect to the business and affairs of the Borrower and the CCAA Proceedings;
- (c) Deliver to the DIP Lender the reporting and other information from time to time reasonably requested by the DIP Lender and as set out herein (including, without limitation, the Cash Flow Projections and summaries of sales and accounts receivable and any information pertaining to non-debtor affiliates and/or subsidiaries of the Borrower) at the reasonable times requested and in form and substance satisfactory to the DIP Lender;
- (d) Use the proceeds of the DIP Facility only for the purposes of the short-term liquidity needs of the Borrower in a manner consistent with the restrictions set out herein and the Cash Flow Projections;
- (e) Comply with the provisions of the Court orders made in connection with the CCAA Proceedings (collectively, the **"Restructuring Court Orders"** and each a **"Restructuring Court Order"**); provided that if any such Restructuring Court Order contravenes this Commitment Letter or the DIP Credit Documentation in a manner detrimental to the DIP Lender, the same shall be an Event of Default hereunder;
- (f) Preserve, renew and keep in full force its corporate existence and its material licenses;
- (g) Maintain at all times adequate insurance coverage of such type, in such amounts and against such risks as is prudent for a business of an established reputation with financially sound and reputable insurers in coverage and scope

acceptable to the DIP Lender, confirm and ensure that the DIP Lender is listed as the loss payee on all insurance policies and forward the DIP Lender copies of same as soon as practicable after the execution hereof;

- (h) Conduct all activities in accordance with the Cash Flow Projections previously approved by the DIP Lender and reviewed by the Monitor and the credit limits established under the DIP Facility as set out hereunder;
- (i) Duly and punctually pay or cause to be paid to the DIP Lender all principal, interest, fees and other amounts payable by it under this Commitment Letter or under any other DIP Credit Documentation on the dates, at the places and in the amounts and manner set forth in such documents;
- (j) Forthwith notify the DIP Lender of the occurrence of any Default or Event of Default, or of any event or circumstance that may constitute a material adverse change from the Cash Flow Projections;
- (k) Comply in all material respects with all applicable laws, rules and regulations applicable to its business, including, without limitation, environmental laws;
- (l) Execute and deliver loan and collateral security documentation in a manner satisfactory in all respects to the DIP Lender, including, without limitation, such security agreements, financing statements, discharges, opinions or other documents and information, in form and substance satisfactory to the DIP Lender as may be requested by the DIP Lender in connection with the DIP Facility (collectively, the **“Additional DIP Security Documents”**);
- (m) Deliver to the DIP Lender Borrowing Base certificates and all other collateral reports (including weekly updates of inventory values and related slow-moving allowances) required to be delivered under the Pre-Filing Credit Facility on a weekly basis within three (3) Business Days after the end of each week;
- (n) Ensure that 4277503 Canada Inc. (**“4277503”**) provides the DIP Lender with access to the facility leased by the Borrower from 4277503 in Laval, Quebec on terms acceptable to the DIP Lender;
- (o) Conduct any store closings and store liquidation processes in a manner acceptable to the DIP Lender; and



(p) [REDACTED]

**NEGATIVE COVENANTS:** The Borrower covenants and agrees not to do the following other than with the prior written consent of the DIP Lender:

- (a) Transfer, lease or otherwise dispose of all or any part of its property, assets or undertaking over Cdn\$100,000 at any one time or through a series of related transactions, or more than Cdn\$300,000 in the aggregate during the period of the DIP Facility (excluding dispositions in the ordinary course of business), without the prior written consent of the DIP Lender and the Court. For greater certainty, in the case of any transfer, lease or disposition of any property, assets or undertaking of the Borrower, or any affiliates or subsidiaries thereof, all proceeds of such transfer, lease or disposition sale shall be subject to the provisions herein under the paragraph entitled "Mandatory Repayments" to the extent applicable;
- (b) Other than in respect of the Pre-Filing Credit Facility or leases of specific personal property (which the Borrower, in consultation with the Monitor and the DIP Lender, determine are necessary for the continued operation of the Borrower's business), make any payment of principal or interest in respect of existing (pre-filing) borrowed money;
- (c) Create or permit to exist indebtedness for borrowed money other than existing (pre-filing) debt, debt contemplated by this DIP Facility and post-filing trade payables in the ordinary course of business;
- (d) Enter into any transaction with any affiliate or subsidiary or any of its or their directors or senior or executive officers or senior management, or enter into or assume any employment, consulting or analogous agreement or arrangement with any of its or their directors or senior or executive officers or senior management, or make any payment to any of its or their directors or senior or executive officers or senior management (other than current wages or salaries to directors or officers pursuant to existing agreements and current rental payments to 4277503 pursuant to the existing lease, all as permitted under the Cash Flow Projections);
- (e) Make any investments or acquisitions of any kind, direct or indirect, in any business or otherwise where to do so

would be inconsistent with the Cash Flow Projections;

- (f) Make any payments outside the ordinary course of business, subject always to the Cash Flow Projections delivered hereunder and the maximum availability under the DIP Facility. For greater certainty, no payments shall be used to reduce any existing (pre-filing) indebtedness or trade or unsecured liabilities of the Borrower (other than in respect of the Pre-Filing Credit Facility, accrued payroll and vacation pay or as required by law, including, without limitation, the Restructuring Court Orders), with the exception only of existing (pre-filing) leases of personal property (which the Borrower, in consultation with the Monitor and the DIP Lender, determine are necessary for the continued operation of the Borrower's business), and critical vendor payments as approved by the DIP Lender and as contemplated in the Cash Flow Projections;
- (g) Make any payments on account of bonuses or new retainers (other than payments in respect of amounts subject to the Administration Charge) or establish or create any trust accounts;
- (h) Permit any new Liens to exist on any of its properties or assets other than the Administration Charge and Liens in favour of the DIP Lender as contemplated by this Commitment Letter and other DIP Credit Documentation and inchoate or statutory Liens;
- (i) Create or permit to exist any other claim, administrative or otherwise, which is senior to or *pari passu* with the super priority claims of the DIP Lender, other than as provided in the Administration Charge;
- (j) Amalgamate, consolidate with or merge into, or enter into any similar transaction with any other entity;
- (k) Make any capital expenditures; and
- (l) Other than as permitted by the Restructuring Court Orders and the Cash Flow Projections, make any payments of bonuses of any kind whatsoever to any directors, officers or employees of the Borrower.

**INDEMNITY AND  
RELEASE:**

The Borrower agrees to indemnify and hold harmless the DIP Lender and each of its directors, officers, employees, agents, attorneys, advisors and affiliates (all such persons and entities being referred to hereafter as "**Indemnified Persons**") from and against any and all actions, suits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or

expenses of any kind or nature whatsoever which may be incurred by or asserted against or involve any Indemnified Person as a result of or arising out of or in any way related to or resulting from the CCAA Proceedings, any bankruptcy or insolvency proceedings, this Commitment Letter or any other DIP Credit Documentation, and, upon demand, to pay and reimburse any Indemnified Person for any reasonable legal or other out-of-pocket expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding (including, without limitation, any inquiry or investigation) or claim (whether or not any Indemnified Person is a party to any action or proceeding out of which any such expenses arise); provided, however, the Borrower shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability to the extent it resulted from the gross negligence or wilful misconduct of such Indemnified Person as finally determined by a court of competent jurisdiction.

The indemnities granted under this Commitment Letter shall survive any termination of the DIP Facility.

**EVENTS OF DEFAULT:**

The occurrence of any one or more of the following events shall constitute an event of default ("**Event of Default**") under this Commitment Letter:

- (a) The entry of an order dismissing the CCAA Proceedings or lifting the stay in the CCAA Proceedings to permit the enforcement of any security against the Borrower, the appointment of a receiver, interim receiver or similar official, an assignment in bankruptcy, or the making of a bankruptcy order or receiving order against or in respect of the Borrower, other than in respect of a non-material asset not required for the operations of the Borrower's business and which is subject to a priority Lien;
- (b) The entry of an order granting any other claim super priority status or a Lien equal or superior to that granted to the DIP Lender other than the Administration Charge;
- (c) The entry of an order staying, reversing, vacating or otherwise modifying the DIP Credit Documentation, any Restructuring Court Order or the entry of an order by the Court having the equivalent effect, without the prior written consent of the DIP Lender;
- (d) Failure of the Borrower to pay (i) interest or fees when due under this Commitment Letter or any other DIP Credit Documentation, (ii) principal when due under the DIP Facility, or (iii) legal and advisor fees of the DIP Lender

within five (5) Business Days of being invoiced therefore (if applicable);

- (e) Failure of the Borrower to comply with any negative covenants in this Commitment Letter or any other DIP Credit Documentation;
- (f) Failure of the Borrower to perform or comply with any term or covenant under this Commitment Letter or any other DIP Credit Documentation (other than as set out in subparagraphs (d) and (e) above);
- (g) The Borrower ceases to carry on business in the ordinary course, except where such cessation occurs in connection with a sale of all or substantially all of the assets of the Borrower or other restructuring or reorganization of the Borrower, which has been consented to by the DIP Lender;
- (h) The Cash Flow Projections are not acceptable to the DIP Lender or are not delivered to the DIP Lender within the requisite time frame set out herein;
- (i) Failure of the Borrower to comply with the Cash Flow Projections further to which there is an occurrence of more than a 10% negative variance (the "**Permitted Threshold**"), on a cumulative rolling four (4) week basis in the total receipts or total disbursements line items, in the Cash Flow Projections, which testing shall begin two (2) weeks after the date hereof with the first cumulative testing date being September 13, 2011 (2 weeks), the second cumulative testing date being September 20, 2011 (3 weeks) and, thereafter, testing shall be on a cumulative rolling four (4) week basis, provided however, that no Event of Default will be deemed to have occurred when such negative variance is offset by a positive variance, in the total receipts or the total disbursement line items, as the case may be, such that the net effect on the net cash flow would be within the Permitted Threshold;
- (j) Any representation or warranty by the Borrower shall be incorrect or misleading in any material respect when made;
- (k) The filing of any pleading by the Borrower seeking any of the matters set forth in clauses (a) through (c);
- (l) Failure of the Borrower to comply with the Restructuring Timeline set out under section (p) above in the paragraph entitled "Affirmative Covenants";

- (m) Failure of the Borrower to deliver the 13-Week Cash Flow to the DIP Lender by 5:00 p.m. (Montreal time) on September 20, 2011; or
- (n) An event of default has occurred under any of the DIP Credit Documentation.

**REMEDIES:**

Upon the occurrence of an Event of Default, the DIP Lender may

- (a) Declare the obligations in respect of the DIP Credit Documentation to be immediately due and payable;
- (b) Apply to a court for the appointment of an interim receiver or a receiver and manager of the undertaking, property and assets of the Borrower, or for the appointment of a trustee in bankruptcy of the Borrower;
- (c) Exercise the powers and rights of a secured party under the *Personal Property Security Act* (Ontario) or any legislation of similar effect applicable to the DIP Security; and
- (d) Exercise all such other rights and remedies under the DIP Credit Documentation and the Restructuring Court Orders.

For greater certainty, the DIP Lender shall have customary remedies under the DIP Credit Documentation, including, but not limited to, the right to realize on all or part of the DIP Security without the necessity of obtaining further relief or order from the Court, subject to applicable law.

**DIP LENDER  
APPROVALS:**

Any consent, approval (including, without limitation, any approval of or authorization for any waiver under or any amendment to any of the DIP Credit Documentation), instruction or other expression of the DIP Lender under any of the DIP Credit Documentation may be obtained by an instrument in writing signed by the DIP Lender (which instrument in writing, for greater certainty, may be delivered by facsimile or other electronic transmission).

**INVENTORY  
APPRAISALS AND FIELD  
EXAMINATIONS:**

The Borrower acknowledges that the DIP Lender may require the delivery of inventory appraisals or conduct field examinations or audits whenever it considers necessary or desirable in its sole and unfettered discretion upon prior written notice (with notice by email deemed to be sufficient for this purpose) to the Borrower of not less than 24 hours. The Borrower shall be responsible for the costs of all inventory appraisals and field examinations.

**CURRENCY:**

The DIP Facility shall be repaid by the Borrower as required under this Commitment Letter in the currency in which the DIP

Facility was obtained by the Borrower. Any payment on account of an amount payable under any DIP Credit Documentation in a particular currency (the "**proper currency**") made to or for the account of the DIP Lender in a currency (the "**other currency**") other than the proper currency, whether pursuant to a judgment or order of any court or tribunal or otherwise, shall constitute a discharge of the Borrower's obligation under such DIP Credit Documentation only to the extent of the amount of the proper currency which the DIP Lender is able, in the normal course of its business within one (1) Business Day after receipt by it of such payment, to purchase with the amount of the other currency so received. If the amount of the proper currency which the DIP Lender is so able to purchase is less than the amount of the proper currency originally due to it under such DIP Credit Documentation, the Borrower shall indemnify and save the DIP Lender harmless from and against any loss or damage arising as a result of such deficiency.

**TAXES:**

All payments by the Borrower under the DIP Credit Documentation to the DIP Lender, including any payments required to be made from and after the exercise of any remedies available to the DIP Lender upon an Event of Default, shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country, but excluding any reduction for any amount required to be paid by the Borrower under subsection 224(1.2) of the *Income Tax Act* (Canada) or a similar provision of that or any other taxation statute (collectively "**Taxes**"); provided, however, that if any Taxes are required by applicable law to be withheld ("**Withholding Taxes**") from any interest or other amount payable to the DIP Lender under any DIP Credit Documentation, the amount so payable to the DIP Lender shall be increased to the extent necessary to yield to the DIP Lender on a net basis after payment of all Withholding Taxes, the amount payable under such DIP Credit Documentation at the rate or in the amount specified in such DIP Credit Documentation and the Borrower shall provide evidence satisfactory to the DIP Lender that the Taxes have been so withheld and remitted.

**FURTHER ASSURANCES:**

The Borrower shall at its expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the DIP Lender may reasonably request for the purpose of giving effect to this Commitment Letter and the DIP Security, perfecting, protecting and maintaining the Liens created by the

DIP Security establishing compliance with the representations, warranties and conditions of this Commitment Letter or any other DIP Credit Documentation.

**ENTIRE AGREEMENT;  
CONFLICT:**

This Commitment Letter, including the schedules hereto and the DIP Credit Documentation, constitutes the entire agreement between the parties relating to the subject matter hereof. To the extent that there is any inconsistency between this Commitment Letter and any of the other DIP Credit Documentation, this Commitment Letter shall govern. In the event of any inconsistency between any DIP Credit Documentation and a Restructuring Court Order, the Restructuring Court Order shall govern.

**AMENDMENTS,  
WAIVERS, ETC.:**

No waiver or delay on the part of the DIP Lender in exercising any right or privilege hereunder or under any other DIP Credit Documentation will operate as a waiver hereof or thereof unless made in writing and signed by an authorized officer of the DIP Lender.

**ASSIGNMENT:**

The DIP Lender may assign this Commitment Letter and its rights and obligations hereunder, in whole or in part, to any party acceptable to the DIP Lender in its sole and absolute discretion. Neither this Commitment Letter nor any right and obligation hereunder may be assigned by the Borrower.

**SEVERABILITY:**

Any provision in any DIP Credit Documentation which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**COUNTERPARTS AND  
FACSIMILE  
SIGNATURES:**

This Commitment Letter may be executed in any number of counterparts and by facsimile or other electronic transmission, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this Commitment Letter by signing any counterpart of it.

**GOVERNING LAW AND  
JURISDICTION:**

This Commitment Letter shall be governed by, and construed in accordance with, the laws of the Province of Quebec and the federal laws of Canada applicable therein. The Borrower irrevocably submits to the non-exclusive courts of the Province of Quebec, waives any objections on the ground of venue or forum non conveniens or any similar grounds, and consents to service of process by mail or in any other manner permitted by relevant law.

**DEFINITIONS:**

Capitalized terms not otherwise defined herein shall have the following meanings:

**“Administration Charge”** has the meaning ascribed to such term in the Initial CCAA Order;

**“Availability Reserves”** has the meaning ascribed to such term under the Pre-Filing Credit Facility and shall also include the following:

- (a) an amount of Cdn\$375,000 as of the date hereof, such amount to be increased by Cdn\$125,000 as of the opening of business on the Monday of each week hereafter to a maximum of Cdn\$1,500,000;
- (b) the amount of the Administration Charge; and
- (c) such other availability reserves as the DIP Lender may from time to time establish in its sole discretion;

**“Business Day”** means each day other than a Saturday or Sunday or a statutory or civic holiday that banks are open for business in Montreal, Quebec, Canada or Boston, Massachusetts, United States;

**“Canadian Prime Rate”** has the meaning ascribed to such term under the Pre-Filing Credit Facility;

**“CCAA Proceedings”** means the proceedings in respect of the Borrower before the Court commenced pursuant to the CCAA;

**“Cost of Eligible Inventory”** has the meaning ascribed to such term under the Pre-Filing Credit Facility;

**“Court”** means the Quebec Superior Court of Justice, Commercial Division, for the Judicial District of Montreal, Quebec, Canada;

**“Default”** means an event which, with the giving notice and/or lapse of time would constitute an Event of Default (as defined herein);

**“Eligible Inventory”** has the meaning ascribed to such term under the Pre-Filing Credit Facility;

**“Initial CCAA Order”** means the Order of the Court dated August 30, 2011 granting the Borrower protection under the CCAA;

**“Liens”** means all mortgages, charges, encumbrances, hypothecs, liens and security interests of any kind or nature whatsoever;

**“Monitor”** means RSM Richter Inc., in its capacity as monitor as appointed under the Initial CCAA Order; and



**“Net Recovery Cost Percentage”** has the meaning ascribed to such term under the Pre-Filing Credit Facility;

**“Pre-Filing Credit Facility”** means the credit facility contemplated under the Loan Agreement dated June 15, 2000 between Wells Fargo Capital Finance Corporation Canada (formerly known as Wachovia Capital Finance Corporation (Canada)) and Hart Stores Inc. / Magasins Hart Inc., as amended, modified, supplemented, extended, renewed, restated or replaced from time to time; and

**“US Prime Rate”** has the meaning ascribed to such term under the Pre-Filing Credit Facility.

**[Remainder of page intentionally left blank.]**

IN WITNESS HEREOF, the parties hereby execute this Commitment Letter as at the date first above mentioned.

**HART STORES INC. / MAGASINS HART  
INC., as Borrower**

Per: \_\_\_\_\_

Name:

Title:

I have authority to bind the corporation.

**WELLS FARGO CAPITAL FINANCE  
CORPORATION CANADA, as DIP Lender**

Per: \_\_\_\_\_

Name:

Title:

I have authority to bind the corporation.

V5999186

**SCHEDULE "A"**

**CCAA Cash Flow**

**[REDACTED: CCAA Cash Flow]**

2014

**SCHEDULE "B"**

**Form of Drawdown Certificate**

**DRAWDOWN CERTIFICATE**

TO: Wells Fargo Capital Finance Corporation Canada (the "DIP Lender")

FROM: Hart Stores Inc. / Magasins Hart Inc. (the "Borrower")

DATE: ●, 2011

1. This certificate is delivered to you, as DIP Lender, in connection with a request for a DIP Advance pursuant to the commitment letter made as of August 30, 2011 between, *inter alia*, the Borrower and the DIP Lender, as amended, supplemented, restated or replaced from time to time (the "Commitment Letter"). All defined terms used, but not otherwise defined, in this certificate shall have the respective meanings set forth in the Commitment Letter, unless the context requires otherwise.
2. The Borrower hereby requests a DIP Advance as follows:
  - (a) Date of DIP Advance: \_\_\_\_\_
  - (b) Proposed amount of DIP Advance (Cdn\$): \_\_\_\_\_
3. All of the representations and warranties of the Borrower as set forth in the Commitment Letter are true and accurate as at the date hereof, as though made on and as of the date hereof.
4. All of the covenants of the Borrower contained in the Commitment Letter together with all of the conditions precedent to the DIP Advance hereby requested and contained in the Commitment Letter, and all other terms and conditions contained in the Commitment Letter to be complied with by the Borrower, not properly waived in writing by or on behalf of the DIP Lender, have been fully complied with.
5. In addition to the foregoing, the Borrower is in compliance with the DIP Credit Documentation, including, without limitation, the Restructuring Court Orders.
6. The DIP Advance hereby requested is within the relevant Cash Flow Projections approved by the DIP Lender and reviewed by the Monitor.
7. No Default or Event of Default has occurred and is continuing nor will any such event occur as a result of the DIP Advance hereby requested.

**HART STORES INC. / MAGASINS HART  
INC.**

Per: \_\_\_\_\_

Name:

Title:

I have authority to bind the corporation.