

C A N A D A

PROVINCE OF QUEBEC  
District of Montreal

SUPERIOR COURT  
(Commercial Division)

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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.**, a legal person having its head office at 900 Place Paul-Kane, in the City and District of Laval, Province of Québec, H7C 2T2 and a place of business at 7852 Boulevard Champlain in the City and District of Montreal, Borough of LaSalle, Province of Quebec, H8P 1B3

Petitioner

- and -

**RSM RICHTER INC.**, a legal person having a place of business at 2, Place Alexis-Nihon, in the City and District of Montreal, Province of Québec, H3Z 3C2

Monitor

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**PETITION FOR THE ISSUANCE OF  
AN INITIAL ORDER**

(Sections 4, 5 and 11 of the *Companies' Creditors Arrangement Act*,  
R.S.C. 1985, C-36, as amended)

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**TO ONE OF THE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, THE PETITIONER SUBMITS THE FOLLOWING:**

1. The Petitioner hereby seeks, for the reasons more fully explained hereinafter, the issuance of an Initial Order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA");
  2. The Petitioner seeks the protection of the CCAA to facilitate the reorganization of its business and affairs due to an ongoing liquidity crisis and because it has become insolvent as it is unable to pay its debts as they become due in the ordinary course of business;
- I. Petitioner's Corporate Structure and History**
3. The Petitioner is a Canadian public company which operates a chain of department stores in Eastern Canada. Its common shares are listed on the Toronto Stock Exchange;
  4. The chief executive and head office of the Petitioner is located at 900 Place Paul-Kane, Laval, Quebec (the "**Laval Building**") where the Petitioner carries out its administration, purchasing, advertising, warehousing and distribution operations from its head office;
  5. The Petitioner was constituted by a Certificate of Amalgamation issued pursuant to the *Canada Business Corporations Act* (the "**CBCA**") on October 25, 1984. However, it traces its history to the opening by Mr. Harry Hart of the first Hart department store in 1960, in the then-rural community of Rosemère, Quebec;
  6. Prior to July 12, 2000, the Petitioner operated through three separate business segments: a computer division, a communications division and a department store division;
  7. Pursuant to a Plan of Arrangement under the CBCA approved by the shareholders of the Petitioner on June 15, 2000, the Petitioner transferred its computer division and communications division to the shareholders of the Petitioner and changed its name from Hartco Enterprises Inc. to Hart Stores Inc. / Magasins Hart Inc.;
  8. As mentioned, the Petitioner's common shares are publicly held, however, H & N Family Subco Inc., a related entity, is the beneficial holder of the majority of the outstanding common shares of the Petitioner, holding approximately 60% of the common shares of the Petitioner;

9. A wholly owned subsidiary of the Petitioner, 4277503 Canada Inc. ("**427 Canada**"), was constituted on March 11, 2005 under the CBCA;
10. 427 Canada is the owner of the Laval Building in which the Petitioner's head office and warehouse are located, which is leased to the Petitioner at market rates;
11. At this time, 427 Canada will not be seeking Court protection under the CCAA, as its only material liability is a hypothecary loan originally made by the Toronto-Dominion Bank, which is secured by an immovable hypothec charging the Laval Building (the "**TD Loan**"). The rent paid by the Petitioner is sufficient to cover all payments to be made under the TD Loan, plus municipal and school taxes and all other operating expenses and costs relating to the Laval Building;

## II. **Petitioner's Business**

12. From a business founded over 50 years ago, the Petitioner currently operates ninety-two (92) general department stores in the secondary and tertiary markets under the names "Hart", "Géant des Aubaines" and "Bargain Giant" in Quebec, Ontario, Newfoundland and Labrador, New Brunswick and Nova Scotia;
13. The regional distribution of the stores is as follows:

a) Québec	58 stores;
b) Ontario	16 stores;
c) New Brunswick	5 stores;
d) Nova Scotia	2 stores;
e) Newfoundland and Labrador	11 stores;
14. The stores' sales are seasonal, with sales peaking during the 4<sup>th</sup> quarter, particularly during the Christmas period. The stores increase inventory levels during peak selling periods, and place their orders for those periods approximately three (3) to six (6) months in advance. Thus, orders for the important Christmas shopping season need to be completed by the end of August / early September;
15. The Petitioner leases premises for each of its department stores. The stores range in size from 16,000 square feet to 45,000 square feet and the average store size is 26,000 square feet;

16. As of the date hereof, the Petitioner has approximately 1,488 active employees, of which 876 work full-time and 612 work part-time. Approximately 1,349 employees are sales associates in the stores, while some 56 employees work in the Laval warehouse, and 83 employees staff the headquarters;
17. During peak season, the Petitioner may hire additional temporary staff;
18. None of the employees are unionized, nor is there a pension plan established in favour of the employees, but there is a deferred profit sharing plan;

### III. **Financial Situation**

19. The Petitioner's principal secured lender is Wells Fargo Capital Finance Corporation Canada, formerly known as Wachovia Capital Finance Corporation (Canada), and before that as Congress Financial Corporation ("**Wells Fargo**"), which has made a credit facility (the "**Existing Wells Facility**") available to the Petitioner pursuant to a Loan Agreement dated June 15, 2000, (as amended, the "**Loan Agreement**");
20. Repayment of the indebtedness of the Petitioner towards Wells Fargo is secured by first-ranking movable hypothecs and security interests on virtually all of the Petitioner's present and future movable and personal property, as more fully described in the attached extracts of the Register of Personal and Movable Real Rights and the equivalent registries of the common law provinces with respect to the Petitioner, *en liasse*, **Exhibit R - 1**;
21. In addition, the Petitioner has entered into leases or similar arrangements with respect to certain specific movable or personal property, though these are not material in light of the Petitioner's overall indebtedness, as more fully shown in the aforementioned registry extracts, Exhibit R-1;
22. Historically, the Petitioner has been a profitable company, growing from a few stores mainly located in the Province of Quebec, to the 92 stores it currently operates throughout Eastern Canada;
23. However, for the fiscal year ended January 29, 2011, the Petitioner recorded a net loss of \$ 1,712,000, compared to net earnings of \$ 1,600,000 in fiscal 2010. Sales decreased by 2.7 % compared to fiscal 2010 to close at \$ 174,700,000. Same-store sales decreased by 4.4 % compared to fiscal 2010 for the full year, the whole as more fully appears

from the Petitioner's audited consolidated financial statements<sup>1</sup> for that period, a copy of which is communicated in support of this motion as **Exhibit R-2**;

24. Overall results were negatively affected by the reduced consumer spending reflected in the 3<sup>rd</sup> and 4<sup>th</sup> quarters of fiscal year ended January 29, 2011. The Petitioner attributes the decrease in net earnings mainly to the impact of lower value in same-store sales, higher salaries due to minimum wage increases and additional costs related to the implementation of a new point-of-sale and inventory merchandising system;
25. Sales and net earnings continued to decline in a dramatic fashion during the first quarter of fiscal year 2012, being the period ending May 1, 2011. The Petitioner recorded sales of \$ 29.7 million, a 15.1 % decrease in comparison to sales of \$ 35.0 million for the same period in the previous year, as more fully appears from the Petitioner's quarterly report to the shareholders for the period ending May 1, 2011, a copy of which is communicated herewith as **Exhibit R-3**;
26. Consequently, for the first quarter ended May 1, 2011, the Petitioner reported a net loss of \$ 3,494,000 compared to a net loss of \$ 1,430,000 for the same period in the previous year;
27. The unusually cold spring weather and the resulting decrease in customer traffic were the most important factors responsible for the decrease in sales in the first quarter of 2011. The cold weather also greatly impacted many weather-related categories of inventory including fashion and seasonal products;
28. At the end of the first quarter, the Petitioner's indebtedness towards Wells Fargo stood at \$ 24,262,000, in comparison to \$ 13,665,000 at the same date the previous year, while accounts payable and accrued liabilities rose from \$ 30,636,000 to \$ 32,024,000 with respect to the same date the previous year;

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<sup>1</sup> Although the financial statements, Exhibit R-2, are prepared on a consolidated basis, 427 Canada has no activities other than the owning and management of the Laval Building, and no material indebtedness other than the TD Loan. Accordingly, the financial statements accurately reflect the operations of the Petitioner, once adjustment is made for the TD Loan and the Laval Building.

29. A number of the Petitioner's stores are not profitable, or are at the very least underperforming, and the cost of maintaining these stores only adds to the Petitioner's mounting losses;
30. The Petitioner's financial results for the second quarter ended July 31, 2011 are not yet available but it is expected that the Petitioner will sustain a further net loss, and sales continue their downward trend, with an expected decrease of nearly 16 % compared to sales for the same period in the previous year;
31. Since January 1, 2011, the Petitioner's decline in sales, compounded by inventory purchases made in anticipation of better sales and broader customer tastes, have led to a significant build-up of excess inventory of considerable value, that will be difficult to sell in the ordinary course of its business;
32. It is anticipated that as at August 1, 2011, the value of the Petitioner's inventory was \$ 67,224,000, being some \$ 9,000,000 greater than the inventory value at that time on August 1, 2010, as more fully appears from the Petitioner's Report to Shareholders for financial quarter ended August 1, 2010, a copy of which is filed herewith as **Exhibit R-4**;
33. As a result of the foregoing, the Petitioner's indebtedness as of the date hereof is as follows:

<b>Existing Wells Facility</b> Advances (not including face value of outstanding letters of credit totalling US \$ 319,479.62 and C \$ 200,000)	<b>\$ 29,059,350</b>
<b>Trade Payables and accrued liabilities</b> (calculated as at August 24, 2011)	<b>\$ 23,100,000</b>
<b>TOTAL:</b>	<b>\$ 52,100,000</b>

34. The Petitioner's employees are paid on a periodic basis as is customary in the jurisdiction in which they work. The Petitioner is current in the payment of benefits and vacation pay to its employees for the last pay period ending before the filing of this Motion. Applicable source deductions from employee salaries are made, as required in various

jurisdictions, and these deductions are remitted to the appropriate governmental authorities, where applicable, and are also current.

35. The Petitioner's aggregate gross payroll obligations amount to approximately \$ 1,500,000 every two weeks, with the next payroll becoming due on September 8, 2011;
36. In addition to its ongoing payroll obligations, the Petitioner's aggregate rental payments with respect to leased real estate, being the stores and the Laval Building, total \$ 1,600,000 per month, due on the first day of each month. Though the Petitioner is current in its rental payments, the next rental payments are due on September 1, 2011;
37. The Petitioner's current availability under the Existing Wells Facility is, as of the date hereof, approximately \$ 4,500,000, which is insufficient to allow it to satisfy its current obligations, as more fully appears from the foregoing;
38. As a result, the Petitioner has become unable to make payment of its obligations as they become due;
39. The Existing Wells Facility matures on October 31, 2011, and will not be renewed;
40. While the Petitioner has sought to refinance its affairs with another lender, its efforts have been unsuccessful and management has concluded that it will not be able to refinance its affairs under current circumstances prior to October 31, 2011;
41. In view of the foregoing, and the Petitioner's inability to meet its current obligations as they become due, the Petitioner has concluded that it must seek the protection of the Court to restructure its affairs under the CCAA;
42. In light of the above, it is submitted that the Petitioner is a "debtor company" within the definition of the CCAA;

#### **IV. Proposed Restructuring**

43. The Petitioner believes that its business is viable and can return to being profitable over time, and wishes to avail itself of the provisions of the CCAA in order to reorganize its financial situation and operations;
44. However, given the current liquidity crisis, and the pressures brought to bear on the Petitioner by its suppliers and other stakeholders, it is impossible for the Petitioner to reorganize its affairs without the protection offered by the CCAA;

45. Indeed, certain suppliers are threatening to discontinue deliveries if they are not paid forthwith or are seeking revised payment terms;
46. In fact, at least one supplier has taken proceedings to have its sale of merchandise to the Petitioner rescinded, and has seized the property subject to the sale, as more fully appears from the motion to institute proceedings in resolution of sale and revendication of merchandise, dated August 23, 2011, the writ of seizure before judgment in revendication relating thereto, and the documents filed in support thereof, *en liasse*, **Exhibit R-5**;
47. The Petitioner, assisted by its advisors, continues to assess its restructuring alternatives, and it is too early for it to put forward a definite restructuring plan;
48. However, it is clear that a viable reorganization will require the rationalization of its operations by the closing of unprofitable stores, the reduction of excess inventory, a reduction in personnel and concentration on successful markets so as to limit operating costs;
49. With respect to stores to be closed, the Petitioner has identified approximately 12 stores that are underperforming and shall be closed (the "**Targeted Stores**"). As the Petitioner further develops its restructuring plan, further closures may be necessary;
50. It is intended that the leases relating to the Targeted Stores will be repudiated with the Monitor's approval or assigned in accordance with the CCAA, and claims of landlords resulting from the repudiation or disclaimer of leases will be dealt with under the plan to be filed by the Petitioner;
51. Excess existing inventory held at the warehouse and in the Targeted Stores will be assembled and liquidated in a manner acceptable to the Monitor and Wells Fargo. Going forward, the remaining stores will be stocked with new inventory;
52. As a result of the closure of the Targeted Stores, there will be significant employee terminations, and it is intended that the affected employees' claims relating thereto will be dealt with under the plan to be filed by the Petitioner;
53. While such terminations are unavoidable in a restructuring, a successful restructuring should allow for the continued operation of a large majority of the stores, and the preservation of a considerable amount of jobs in a number of jurisdictions;



54. Finally, the Petitioner's restructuring will be overseen by its new chief operating officer, Robert Farah, who begins his mandate on September 6, 2011, and who will also act as the Petitioner's chief restructuring officer. Mr. Farah was, until 2007, the Petitioner's Chief Financial Officer, and has intimate knowledge of the Petitioner's business and operations;
55. Mr. Farah is set to begin on September 6, 2011, and Mr. Robert Harritt, the Petitioner's current Chief Financial Officer, will oversee the restructuring in the interim;
56. As soon as these measures are implemented, the Petitioner intends to develop and file a formal plan of compromise or arrangement under the CCAA and submit same to its creditors for approval;
57. The Petitioner has prepared cash flow projections for the next five-week period, accompanied by the report containing the Petitioner's representations, and RSM Richter Inc.'s, the proposed monitor, report, copies of which are communicated in support hereof, *en liasse*, as **Exhibit R-6**;

#### V. **Relief Sought**

58. Given the foregoing, the Petitioner believes it is entitled to the protection of the CCAA, and hereby requests that an initial order be rendered in accordance with the conclusions set out below, and containing the relief more fully described therein;
59. Should the requested relief not be granted, the Petitioner is very concerned that certain suppliers, creditors and other stakeholders will take actions that will jeopardize the Petitioner's restructuring efforts, and indeed its very existence, to the detriment of its other creditors, customers, employees and other affected stakeholders;
60. The preservation of the status quo will allow the Petitioner to reorganize its affairs in an orderly fashion, so as to preserve its business and prepare a plan that will treat all creditors fairly and equitably;
61. It is believed that a successful restructuring will be to the benefit of all creditors, as their recovery will be significantly reduced were the Petitioner to cease its operations and liquidate its assets;

#### A. **Appointment of Monitor**

62. RSM Richter Inc. consents to act as Monitor to the Petitioner pursuant to Section 11.7 of the CCAA, and the Petitioner asks that it be granted the powers and duties more fully set in the conclusions of this Motion, and that it report to the Court on the matters more fully described therein;

**B. Interim Financing with Wells Fargo**

63. During the restructuring process, the Petitioner needs to ensure that it will have sufficient liquidity for working capital purposes, to fund its ongoing restructuring activities, and to reassure suppliers that it will meet its obligations during the CCAA proceedings;
64. To that end, the Petitioner's principal secured creditor, Wells Fargo, has agreed to provide the Petitioner with funding to meet its short-term liquidity needs while under CCAA protection pursuant to a DIP credit facility (the "**DIP Facility**"), where advances would be tied to the actual cash needs of the Petitioner on a going forward basis, the whole in accordance with, and subject to, the terms and conditions set out in a draft DIP Commitment Letter to be dated as of August 30, 2011, a redacted copy of which is communicated herewith, under seal, as **Exhibit R-7**. An unredacted copy of the DIP Commitment Letter has been remitted to the proposed monitor, and will be filed with the Court under seal;
65. Under the terms of the DIP Commitment Letter, it is contemplated that (i) no further advances would be made under the Existing Wells Facility, (ii) recognizing the asset based lending nature of the Existing Wells Facility, cash receipts received by the Petitioner during the CCAA proceedings would be applied in permanent reduction of the Existing Wells Facility, and (iii) advances made under the DIP Facility would fund the purchase of new inventory, as well as all other costs and disbursements to be incurred by the Petitioner during the initial five-week period covered by the cash-flow statement, Exhibit R-6;
66. During that initial five-week period, the Petitioner will further develop its restructuring plan as well as a cash-flow statement covering a period commensurate with the expected duration of the restructuring process, at which point the term, amount and duration of the DIP Facility will be considered and revised by the parties, and a further application would be made to this Court to approve such modifications, as may be required, to the terms set out in the DIP Commitment Letter;
67. As can be seen from the cash-flow statement, Exhibit R-6, the expenses to be financed by the DIP Facility are strictly related to the operations of the Petitioner's business, limited to what is necessary to maintain operations in the ordinary course while under CCAA protection, and fluctuate in accordance with the Petitioner's needs on a week-to-week basis;
68. The DIP Facility is a revolving facility having a maximum loan limit of \$ 20,000,000, subject to a borrowing base calculation, as more fully set out in the DIP Commitment Letter;

69. The interest rates and unused line fees payable to Wells Fargo, in its capacity as DIP Lender, are set out in the DIP Commitment Letter. It is notable that no arrangement fees are required in the DIP Commitment Letter;
70. Advances under the DIP Facility:
- a) are subject to the satisfaction of certain conditions precedent set out in the DIP Commitment Letter;
  - b) would be secured by a Court-ordered charge on a super-priority basis over all of the Petitioner's present and future property (the "**DIP Charge**");
  - c) the DIP Charge would rank ahead of all other charges and encumbrances, except the Administrative Charge, as herein defined; and
  - d) are to be repaid by November 4, 2011, so long as no event of default has occurred thereunder, unless extended by the DIP Lender;
71. If the DIP Facility is not authorized by this Honourable Court, the Petitioner will lack sufficient credit to sustain its operations, be unable to operate its business in the normal course and be prevented from successfully restructuring its affairs;
72. No creditor will be materially prejudiced should the DIP Facility be authorized by this Honourable Court, as the Petitioner's total level of secured debt will not significantly increase, it will allow the Petitioner's restructuring efforts to continue, and the Petitioner believes, will allow it to successfully restructure its affairs;
73. As disclosed by the extracts of the movable property security registries, Exhibit R-1, a number of parties have registered leases, leasing agreements, instalment sales and similar charges against the Petitioner (the "**Movable Leases**"). The Petitioner intends to keep such leases current, or return the property subject to those Movable Leases during the restructuring process, such that the secured creditors holding same will neither be materially prejudiced, nor are they likely to be affected by the DIP Charge or the Administration Charge, as hereafter defined;
74. Other than Wells Fargo, the Petitioner has no other secured creditors who are likely to be affected by the DIP Charge;

**C. Administration Charge**

75. The Petitioner also seeks the creation of a court-ordered charge in the amount of \$ 500,000 to secure the payment of, *inter alia*, the fees and disbursements of the Monitor, its legal counsel and the Petitioner's legal counsel (the "**Administration Charge**"), which charge shall affect the property of the Petitioner, and have the priority more fully set out in the conclusions of this Motion;
76. The creation and the amount of the Administrative Charge, as well as the priority to be given to same, are consented to by Wells Fargo, and no other secured creditor is likely to be affected by same;

**VI. Conclusions**

77. The Initial Order being sought by the Petitioner is based on the Montreal Bar suggested standard CCAA Initial Order (the "**Standard Order**"). A version comparing the Standard Order and the proposed Initial Order is communicated as **Exhibit R-8**;
78. For the reasons set forth above, the Petitioner believes it is both appropriate and necessary that the relief being sought be granted. With such relief, the Petitioner will be able to restructure its business and affairs to maximize long term value for the benefit of all stakeholders;
79. Considering the urgency of the situation, the Petitioner respectfully submits that the notices given for the presentation of this Motion are proper and sufficient;

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

- [1] **GRANT** the Petition;
- [2] **ISSUE** 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] **DECLARE** 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] **DECLARE** that the Petitioner is a debtor company to which the CCAA applies;
- [5] **ORDER** 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 the Order to be rendered hereunder;

### **Effective time**

- [6] **DECLARE** that the Order to be rendered hereunder and all of its provisions are effective as of 12:01 a.m. Eastern Standard / Daylight Time on the date of the Order to be rendered hereunder (the "**Effective Time**");

### **Plan of Arrangement**

- [7] **DECLARE** 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] **ORDER** 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] **ORDER** 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] **ORDER** 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] **ORDER** 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] **ORDER** 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 the Order to be rendered hereunder;
- [13] **ORDER** 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 the Order to be rendered hereunder, and in carrying out the provisions of the Order to be rendered hereunder, 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 the Order to be rendered hereunder;
- [14] **ORDER** that the Petitioner shall be entitled to, but not compelled to, pay the following expenses incurred prior to the Order to be rendered hereunder, 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 the Order to be rendered hereunder, 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 the Order to be rendered hereunder 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 the Order to be rendered hereunder 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] **ORDER** 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 the Order to be rendered hereunder 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] **ORDER** 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 Order to be rendered hereunder;

[17] **DECLARE** 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 to be rendered hereunder 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] **ORDER** 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] **ORDER** 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 to be rendered hereunder 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] **ORDER** 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 the Order to be rendered hereunder, nor shall any Person be under any obligation on or after the date of the Order to be rendered hereunder to make further advance of money or otherwise extend any credit to the Petitioner;
- [21] **ORDER** 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 to be rendered hereunder 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] **ORDER** 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 to be rendered hereunder, 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 the Order to be rendered hereunder; 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] **ORDER** 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 to be rendered hereunder and the DIP Financing Documents (as defined hereinafter) (the "**DIP Facility**");
- [24] **DECLARE** that the communication of a redacted version of the DIP Commitment Letter as Exhibit R-7 to the Petition is proper and sufficient;
- [25] **ORDER** that the unredacted version of the DIP Commitment Letter filed with this Court be kept confidential and under seal in the Court Record;
- [26] **ORDER** 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] **ORDER** 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 to be rendered hereunder;
- [28] **DECLARE** 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 the Order to be rendered hereunder;
- [29] **ORDER** 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 in these proceedings and in any Plan;
- [30] **ORDER** that the DIP Lender may:
- a) notwithstanding any other provision of the Order to be rendered hereunder, 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] **ORDER** 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] **ORDER** 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 to be rendered hereunder or (b) the DIP Lender applies for or consents to such order;

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

- [33] **ORDER** 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] **DECLARE** 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] **DECLARE** 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 [34]f) of the Order to be rendered hereunder, 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] **ORDER** 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] **DECLARE** 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] **ORDER** 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 the Order to be rendered hereunder (A) post on the Monitor’s website (the “**Website**”) a notice containing the information prescribed under the CCAA, (B) make the Order to be rendered hereunder 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 to be rendered hereunder 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 to be rendered hereunder, 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 to be rendered hereunder 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 to be rendered hereunder 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 to be rendered hereunder 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] **ORDER** that the Petitioner and its Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order to be rendered hereunder 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] **DECLARE** 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] **DECLARE** 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] **DECLARE** 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 [38] hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph;
- [43] **ORDER** 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 to be rendered hereunder, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested;
- [44] **DECLARE** 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 to be rendered hereunder 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] **DECLARE** 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] **DECLARE** 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] **ORDER** 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] **ORDER** 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] **DECLARE** 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] **DECLARE** 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] **DECLARE** 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 to be rendered hereunder 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] **DECLARE** 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] **ORDER** 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] **DECLARE** that the Order to be rendered hereunder and any proceeding or affidavit leading to the Order to be rendered hereunder, 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] **DECLARE** 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] **DECLARE** 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] **DECLARE** 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] **DECLARE** 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 to be rendered hereunder on notice only to each other;
- [59] **DECLARE** that any interested Person may apply to this Court to vary or rescind the Order to be rendered hereunder 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 the Order to be rendered hereunder, unless otherwise ordered by this Court;

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Nicolas Plourde                    nplourde@heenan.ca  
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Suite 4000  
Montreal, Quebec, H3B 4M4

- [60] **DECLARE** that the Order to be rendered hereunder and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;
- [61] **DECLARE** 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 to be rendered hereunder 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] **REQUEST** 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 to be rendered hereunder;

[63] THE WHOLE without costs.

MONTREAL, August 29, 2011

**(S) HEENAN BLAIKIE S.E.N.C.R.L. SRL/LLP**

---

**HEENAN BLAIKIE LLP**  
Attorneys for the Petitioner

**COPIE CONFORME/TRUE COPY**

*Heenan Blaikie LLP*  
**HEENAN BLAIKIE S.E.N.C.R.L. SRL/LLP**

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**AFFIDAVIT**

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I, the undersigned, Robert Harritt, businessman, domiciled and residing for the purpose hereof at 900 Place Paul-Kane, in the City and District of Laval, Province of Québec, H7C 2T2, solemnly declares as follows:

1. That I am the Chief Financial Officer and duly authorized representative of the Petitioner;
2. That all the facts contained in the present Petition for the Issuance of an Initial Order are true;
3. That all the facts contained in this affidavit are true.

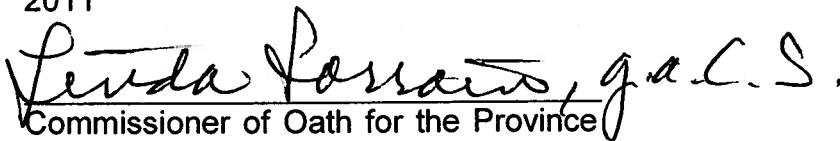
AND I HAVE SIGNED:



---

ROBERT HARRITT

Solemnly affirmed to before me, in the  
City of Montreal, this 30 day of August,  
2011

  
Commissioner of Oath for the Province  
of Quebec



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**NOTICE OF PRESENTATION**

---

**TO : Goodmans LLP**  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

**TO : Lavery deBilly LLP**  
Suite 4000  
1 Place Ville Marie  
Montreal QC H3B 4M4

Attorneys for Wells Fargo

**AND: RSM Richter Inc.**  
2 Place Alexis Nihon,  
Montréal (Québec) H3Z 3C2

**TAKE NOTICE** that the present Petition for the Issuance of an Initial Order will be presented for adjudication before one of the judges of the Superior Court, sitting in the Commercial Division, in and for the judicial district of Montreal, on August 30, 2011, at 9:30 o'clock, in room 12.61 of the Courthouse of Montreal, located at 1 Notre-Dame Street in the City of Montreal, Province of Quebec, or as soon thereafter as counsel may be heard.

**AND DO GOVERN YOURSELVES ACCORDINGLY.**

**MONTREAL, August 29, 2011**

**(S) HEENAN BLAIKIE S.E.N.C.R.L., SRL/LLP**

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**HEENAN BLAIKIE LLP**  
Attorneys for the Petitioner

**COPIE CONFORME/TRUE COPY**

*Heenan Blaikie LLP*  
**HEENAN BLAIKIE S.E.N.C.R.L., SRL/LLP**

500-11-041238 - 110

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**SUPERIOR COURT**  
(Commercial Division)

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**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

---

**PETITION FOR THE ISSUANCE OF AN  
INITIAL ORDER**  
(Section 4, 5 and 11 of the Companies'  
Creditors Arrangement Act, R.S.C. 1985, C-36,  
as amended)

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**COPY FOR :**  
**RSM RICHTER INC.**  
2 Place Alexis-Nihon, Suite 1820  
Montreal (Quebec) H3Z 3C2  
Attention : Philip Manel

---

Code: BJ-0039      Notre réf. : 043054.0112  
**M<sup>e</sup> Michael J. Hanlon**      Téléphone : 514 846-2376  
   Télécopieur : 514-921-1376

**Heenan Blaikie LLP**  
A V O C A T S / L A W Y E R S  
1250, boul. René-Lévesque Ouest, bureau 2500  
Montréal (Québec) H3B 4Y1