

C A N A D A

PROVINCE OF QUEBEC
District of Montreal

S U P E R I O R C O U R T
(Commercial Division)

No: 500-11-041238-110

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

HART STORES INC./MAGASINS HART
INC.,

Petitioner

- and -

RSM RICHTER INC.,

Monitor

**MOTION FOR AN ORDER AUTHORIZING AN AGENCY AGREEMENT FOR
THE SALE OF EXCESS INVENTORY**

(Sections 9,11, and 36 of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, C-36, as amended)

TO THE HONOURABLE JUSTICE JEAN-YVES LALONDE OR TO ONE OF
THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE
COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF
MONTREAL, THE PETITIONER SUBMITS THE FOLLOWING:

1. By this Motion, the Petitioner seeks an Order:
 - a) Approving the Agency Agreement dated as of October 17, 2011, entered into between Tiger Capital Group, LLC ("**Tiger**") and the Petitioner, pursuant to which Tiger shall conduct a liquidation sale (the "**Sale**") of the Petitioner's inventory (the "**Agency Agreement**") located in 32 stores which the Petitioner has determined will be closed and their leases terminated or assigned

(the "**Closing Stores**"), the whole as more fully appears from a copy of the Agency Agreement, which is provided to the Court under seal, as **Exhibit R-1**;

- b) Authorizing the Petitioner to consummate the transactions contemplated by the Agency Agreement, and execute any and all documents necessary or desirable to give effect thereto;
- c) Authorizing the conduct of the Sale in accordance with the terms of the Agency Agreement;
- d) Creating a charge in favour of Tiger to secure the performance of Petitioner's obligations under the Agency Agreement;
- e) Rendering such other orders as are necessary to give effect to the above;

I. PROCEDURAL BACKGROUND

- 2. On August 30, 2011, the Petitioner initiated proceedings under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), pursuant to which this Court issued an Initial Order (the "**Initial Order**"), the whole as appears from the Court record;
- 3. By order rendered on September 28, 2011 (the "**Renewal Order**"), the Initial Order was extended until November 4, 2011, as appears from the Court record;
- 4. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Initial Order and the Renewal Order, as the case may be;

II. PROCESS LEADING TO THE AGENCY AGREEMENT

- 5. During the month of September 2011, the Petitioner identified some 26 stores that it intended to close, and whose leases would be sold or assigned as part of its restructuring efforts, and whose inventory would need to be liquidated;
- 6. It was determined by Petitioner that in order to maximize liquidation values, immediately monetize the value of its inventory located in the Closing Stores, and allow the Petitioner to focus on other aspects of its restructuring, that the Sale of that inventory be conducted by speciality liquidators;
- 7. To that end, the Petitioner, with the assistance of the Monitor, identified 13

liquidators (the “**Proposed Liquidators**”) who were likely to have an interest for the inventory located in the Closing Stores, and set up a process, managed by the Monitor, by which those liquidators were invited to submit proposals for the conduct of the Sale. A redacted copy of the Monitor’s report on the liquidation solicitation process is filed herewith, as **Exhibit R-2**, and a full copy is provided to the Court;

8. On September 15, 2011, an invitation was sent by email to the Proposed Liquidators, inviting them to submit their respective proposals for the inventory located in the initial 26 Closing Stores, a copy of which is submitted herewith as **Exhibit R-3**;
9. Upon execution of the confidentiality agreement attached to the solicitation email, with such minor variations as were deemed acceptable by the undersigned attorneys, the Proposed Liquidators were given access to a virtual data room containing relevant information with respect to the Closing Stores and the inventory. A copy of the form of confidentiality agreement is submitted herewith as **Exhibit R-4**;
10. Of the 13 Proposed Liquidators, 11 signed a confidentiality agreement (the “**Interested Liquidators**”), and were given access to the virtual data room, whose content was proposed by the Monitor and approved by the Petitioner, based on the anticipated needs of the Proposed Liquidators. The index of documents found in the data room is submitted herewith as **Exhibit R-5**;
11. On September 23, 2011, the Monitor provided the Interested Liquidators with a request for proposals (the “**RFP**”), and a draft agency agreement, as more fully appears from copies of those documents, which are submitted herewith as **Exhibits R-6**, and **R-7** respectively;
12. The RFP served to inform the Interested Liquidators on the terms and conditions on which they should submit proposals, while the draft agency agreement served to inform them as to the form and content of the proposals sought by the Petitioner, and to facilitate comparisons between the various proposals received;
13. Certain requests for further information or further details regarding the inventory were received by the Monitor, and the information provided in response to those requests was posted to the data room, and made available to all Interested Liquidators;
14. On September 26, the Interested Liquidators were advised that three stores would be removed from the pool of Closing Stores;

15. Ultimately, by the deadline of October 5, 2011, five proposals were received for the conduct of the Sale, the salient features of which are summarized in the Monitor's report, and which proposals took the form of revised drafts of the form of agency agreement, plus exhibits;
16. Tiger, a party unrelated to the Petitioner and dealing at arm's length from the Petitioner, submitted a proposal whose terms were much more favourable than the other offers received, as more fully appears in the Monitor's report, and the summaries of the five proposals received appended thereto as Appendix F (under seal);
17. On October 6, 2011, the Petitioner decided to close a further 9 stores, bringing the total Closing Stores to 32;
18. As Tiger was the highest bidder on the initial 23 Closing Stores, Tiger was invited to submit an additional proposal for the said additional 9 stores;
19. On October 11, 2011, Tiger submitted a summary offer for the additional stores, the key terms of which are summarized in the Monitor's report, and in Appendix G thereto (under seal);

III. THE AGENCY AGREEMENT

20. As the proposal submitted by Tiger was significantly better than the other offers, the Monitor and the Petitioner had further negotiations with Tiger, to clarify certain aspects of the draft agency agreement accompanying Tiger's offer, leading ultimately to a proposed transaction with respect to all 32 Closing Stores, as contemplated by the Agency Agreement, Exhibit R-1;
21. The Agency Agreement, Exhibit R-1, has been accepted by the Petitioner, and recommended by the Monitor, subject to this Court's approval of same;
22. The material terms of the Agency Agreement are as follows:
 - a) Tiger will conduct on behalf of the Petitioner a store-closing or similar themed liquidation sale of all merchandise located in the Closing Stores (the "**Closing Store Merchandise**"), which are identified in Exhibit 1A to the Agency Agreement
 - b) The Sale would begin on October 21, 2011 (the "**Sale Commencement Date**") and end by January 31, 2012 (the "**Sale Termination Date**");
 - c) Tiger guarantees that the Petitioner will receive a net amount

greater than [REDACTED] as more fully set out in the Agency Agreement (the "**Guaranteed Amount**"), plus a significant additional percentage of the receipts generated above the Guaranteed Amount plus certain fees and expenses, the whole according to the formula and terms more fully set out in the Agency Agreement;

- d) A payment in the amount of 90 % of the estimated Guaranteed Amount would be paid to Wells Fargo Capital Corporation Canada ("**Wells**") the Petitioner's main secured creditor and DIP Lender, on the first business day following court approval of the Agency Agreement;
 - e) The actual value of the Guaranteed Amount will depend on the value of the Closing Store Merchandise on the Sale Commencement Date, which is subject to confirmation in the seven days following said date. As of the date hereof, the Cost Value of the Closing Store Merchandise is approximately \$ 19,000,000 ;
 - f) Substantially all expenses ("**Expenses**") related to the operation of the Closing Stores, will be assumed by Tiger, commencing October 21, 2011;
 - g) In addition to the amount equal to 90 % of the Guaranteed Amount which is to be paid by Tiger to Wells (as the Petitioner's designee of such payment) on the first Business Day following the Court's authorization of the Agency Agreement, Tiger is to remit letters of credit to Wells, in respect of 10 % of the estimated Cost Value of the Closing Store Merchandise, as well as in respect of estimated Expenses;
 - h) Any Closing Store Merchandise remaining unsold at the Sale Termination Date will remain the property of Tiger, and all proceeds upon a subsequent sale or disposition of that merchandise shall be deemed "Proceeds" to be divided among Tiger and the Petitioner as provided for in the Agency Agreement;
 - i) A condition of closing is that the Agency Agreement be approved by this Court, and an order rendered authorizing the Agency Agreement and containing the provisions more fully set out below, by no later than October 19, 2011;
23. The Agency Agreement, Exhibit R-1 also requires that a charge in the amount of \$ 18,000,000 be created by this Honorable Court in favour of Tiger (the "**Agent's Charge**"), to secure the execution by the Petitioner of

its obligations under the Agency Agreement, (i.e. after Tiger will have paid 90 % of the Guaranteed Amount) as well as the payment of amounts that may become owing to Tiger from time to time thereunder;

24. The Agent's charge would attach to all of the Petitioner's Property, and be of junior rank to the CCAA Charges created under the Initial Order and the Renewal Order, as well as any other Encumbrance charging the Property such that no secured creditor of the Petitioner would have its security subordinated to the Agent's Charge;

IV. SUPPORT FOR THE OFFER AND UNFAVOURABLE ALTERNATIVE TO THE OFFER

25. The Petitioner believes that the Agency Agreement, Exhibit R-1 represents the best available outcome for its stakeholders, inasmuch as the Agency Agreement provides the best opportunity to maximize the value of the Closing Store Merchandise;
26. The liquidators solicited through the RFP process are the most significant players in the US and Canadian markets, and the process leading to the selection of the Agency Agreement was managed and approved by the Monitor, was fair to all participants and reasonable;
27. Thus, the Proposals ultimately obtained represent the best prices the Petitioner can expect to obtain for the Closing Store Merchandise, and the Agency Agreement represents significantly more value, even after the negotiated adjustments, than any of the other proposals received;
28. Furthermore, the significant premium paid by Tiger is driven, among other factors, by the upcoming Holiday sale season where sale values are generally greater, and should the Sale not proceed, or be unduly delayed, the expected realization values for the Closing Store Merchandise would be significantly reduced;
29. Wells has been kept informed of the Petitioner's efforts to find a buyer for the Closing Stores Merchandise, and has reviewed and approves of the Agency Agreement, and the transactions contemplated therein;
30. Each of Wells and the Monitor has informed the Petitioner that it supports the granting of the present Motion, the approval of the Agency Agreement, Exhibit R-1, and the rendering of the Orders sought herein;
31. The Proposed Sale will not prevent the Petitioner from making, and it will make the payments required under paragraphs 6(5)a) and 6(6)a) of the CCAA under the Plan of Arrangement or Compromise to be filed by the Petitioner;

32. As appears from the Monitor's report, the Sale will be more beneficial to the creditor as a whole than if the Closing Store Merchandise were liquidated in bankruptcy;
33. Tiger has requested, and it is a condition thereof, that the Agency Agreement, Exhibit R-1, be approved by this Court and that the related Order be rendered, including a vesting order;
34. The Petitioner respectfully submits that it is in the best interest of the Petitioner and its stakeholders that the present Motion be granted in accordance with its conclusions;
35. No stakeholder will suffer any material undue prejudice by the requested Court approval of the Agency Agreement, exhibit R-1 and the related orders sought hereby;
36. The Petitioner respectfully submits that the notices given of the presentation of this Motion are proper and sufficient;
37. Given the urgency that the Sale commence without delay, the Petitioner asks that the judgement to be rendered on this Motion be executory, notwithstanding any appeal thereof;
38. This Motion is well-founded in fact and law;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

- [1] **GRANT** the Motion;
- [2] **DECLARE** that sufficient prior notice of the presentation of this Motion has been given by the Petitioner to interested parties, including to the secured creditors who are likely to be affected by the charges created herein;
- [3] **DECLARE** that the Agency Agreement from Tiger Capital Group, LLC ("**Tiger**"), as accepted by the Petitioner on October 17, 2011 (the "**Agency Agreement**"), communicated as Exhibit R-1, providing for Tiger to conduct a sale (the "**Sale**") of the Petitioner's merchandise (the "**Closing Store Merchandise**") located in the 32 stores identified in Exhibit 1A to the Agency Agreement (the "**Closing Stores**"), subject to payment of the Guaranteed Amount, as such term is defined therein, and performance of Petitioner's other obligations provided for therein, is fair and reasonable and in the best interest of the Petitioner's stakeholders;

- [4] **AUTHORIZE** the Petitioner to enter into the Agency Agreement and **DECLARE** that same is valid and enforceable;
- [5] **AUTHORIZE** the Sale of the Closing Store Merchandise by Tiger in accordance with the terms of the Agency Agreement;
- [6] **AUTHORIZE** the Petitioner to execute any other agreement, contract, deed or any other document ancillary or related to the Agency Agreement, or take any other action, which could be required or useful to give full and complete effect thereto;
- [7] **ORDER** that Exhibit R-1, and a full unredacted copy of the Monitor's report, be kept confidential in a sealed envelope, such that the content of those documents will not be made available to the public in order to safeguard the possibility of soliciting and obtaining other offers in the event that the Sale is not consummated;
- [8] **DECLARE** that Tiger in its capacity as agent of the Petitioner is authorized to sell the Closing Store Merchandise, absolutely and forever free and clear of and from any and all encumbrances, liens, claims, rights, title, interests, security interests, charges, pledges, mortgages, hypothecations, hypothecs, judgments, executions, writs of seizure and sale, options, adverse claims, levies, charges, priorities, remedies from facts which exist as of the date of the judgment to be rendered hereon whether known or unknown, or any other rights, rights of use, disputes and debts of all persons or entities of any kind whatsoever and howsoever arising, whether contractual, statutory, by operation of law or otherwise, whether perfected, attached, registered or filed, whether secured, unsecured or otherwise and whether created by or pursuant to the orders made in these proceedings, including all charges created by order of this Court in the Initial Order, the Renewal Order; and/or further orders (the "**Liens**"), which Liens shall instead attach to the Guaranteed Amount and the other amounts to be paid by Tiger to the Petitioner in furtherance of the Agency Agreement;
- [9] **DECLARE** that the communication of a redacted copy of the Monitor's report, as Exhibit R-2, is proper and sufficient;
- [10] **DECLARE** that no Liens shall attach to the proceeds of the sale and any other amounts which are, or may become payable by the Petitioner to Tiger, or which may be retained by Tiger, under the Agency Agreement, or to any amounts that must be reimbursed by the Petitioner to Tiger in the event that Tiger over-funds any amounts due to the Petitioner, and the Petitioner will pay such amounts to Tiger, or Tiger will retain them, free and clear of all Liens;

- [11] **ORDER and DECLARE** that Tiger shall have the right to use the Closing Stores and all related store services, furniture, fixtures, equipment and other assets of the Petitioner as designated under the Agency Agreement for the purpose of conducting the Sale, free of any interference from any entity or person, including landlords;
- [12] **ORDER and DECLARE** that Tiger, as agent for the Petitioner, is authorized to conduct, advertise, post signs (including exterior signs and banners and sign-walkers) and otherwise promote the Sale without further consent of any person (other than the Petitioner as provided for in the Agency Agreement), in accordance with the terms and conditions of the Agency Agreement, and without further compliance with applicable federal, provincial or local laws governing, inter alia, the conduct of store closing sales, other than those designed to protect public health and safety;
- [13] **DECLARE** that until January 31, 2012, or such other date on which the Petitioner and Tiger agree that the Sale is completed (the "**Sale Termination Date**"), Tiger is granted a limited license and right to use the trade names and logos relating to and used in connection with the operation of the Closing Stores, solely for the purpose of advertising the Sale in accordance with the terms of the Agency Agreement and the judgment to be rendered on this motion;
- [14] **ORDER and DECLARE** that Tiger shall not be liable for any claims against the Petitioner other than as provided for in the Agency Agreement, and Tiger shall not be deemed to be a successor employer, and shall have no successorship liabilities whatsoever, it being understood that Tiger is acting solely as an agent of the Petitioner, and to that end:
- a) Tiger shall not be deemed to be in possession or control of the Closing Stores or the assets located therein or associated therewith, or of the Petitioner's employees located at the Closing Stores;
 - b) Tiger does not assume any of the Petitioner's obligations or liabilities with respect to any of the foregoing;
 - c) Except as specifically provided for in the Agency Agreement, Tiger will not be liable for wages, salaries and employment obligations, as well as for any indemnity, severance pay, amounts in lieu of prior notice or other obligations (however and whenever arising) relating to the termination of employees of the Petitioner and its direct and indirect subsidiaries; and

- d) The Petitioner shall bear all responsibility for liability claims of customers, employees and other persons arising from events occurring at the Closing Stores between the Sale Commencement Date and the Sale Termination Date, and thereafter, save and except where any such claim arises directly from the acts or omissions of Tiger, its supervisors, agents, independent contractors or employees located at the Closing Stores;
- [15] **DECLARE** that the claims of Tiger pursuant to the Agency Agreement shall not be compromised or arranged pursuant to a plan to the Petitioner's creditors (a "**Plan**") or the present proceedings and Tiger shall be treated as an unaffected creditor in these proceedings and in any Plan;
- [16] **DECLARE** that notwithstanding the CCAA, the Initial Order or any order rendered under the present proceedings, the Petitioner shall not have the right to disclaim or resiliate the Agency Agreement or any of its agreements, contracts or arrangements in relation to the Agency Agreement, except as permitted under the Agency Agreement;
- [17] **DECLARE** that the Agency Agreement and any related agreements or documents to be entered into or signed further thereto, the transactions contemplated thereby (including, without limitation, Tiger's entitlement to a portion of the proceeds of the Sale and any other amounts which are, or may become, payable or repayable by the Petitioner to Tiger, or which may be retained by Tiger, under the Agency Agreement, free and clear of any Liens) and the vesting of any remaining Closing Store Merchandise at the Sale Termination Date in Tiger's possession, will survive any proposal, plan of arrangements or bankruptcy of the Petitioner and will bind any successor in interest, including any trustee, monitor, interim receiver, receiver or other administrator of the property of others that may be appointed under any applicable federal or provincial legislation, and further **DECLARE** that the Sale shall not be attacked or voided as a reviewable transaction nor as a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction or constitute oppressive or unfairly prejudicial conduct under the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act* or any other applicable provincial or federal legislation;
- [18] **DECLARE** that the judgment to be rendered on this motion shall have full force and effect in all of the provinces and territories of Canada;
- [19] **DECLARE** that all of the Property, as such term is defined in the Initial Order, of the Petitioner is hereby subject to a charge and security for an

aggregate amount of \$ 18,000,000 (such charge and security is referred to herein as the “**Agent’s Charge**”) in favour of Tiger as security for all of the obligations and other amounts that may become owing or repayable to Tiger under or in relation to the Agency Agreement;

- [20] **DECLARE** that the Agent’s Charge shall rank in priority to any unsecured claims, but immediately after any and all 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, including the Administration Charge and the DIP Lender Charge, as such terms are defined in the Initial Order, and the Insurance Charge, and the Post-Filing Suppliers’ Charge as such terms are defined in the Renewal Order;
- [21] **DECLARE** that the Agent’s Charge shall attach, as of the Effective Time, without the necessity of registration, 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;
- [22] **DECLARE** that for the purposes of paragraphs 47, 48, 50, 51 and 52 of the Initial Order, the Agent’s Charge shall be deemed to be a “CCAA Charge”, and shall have the benefit of those provisions, *mutatis mutandis*;
- [23] **ORDER** the provisional execution of the judgement to be rendered on the present motion, notwithstanding appeal;
- [24] **THE WHOLE** without costs, save in case of contestation.

MONTREAL, October 18, 2011


HEENAN BLAIKIE LLP
Attorneys for the Petitioner

AFFIDAVIT

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:

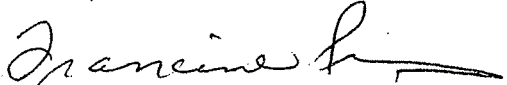
1. That I am the Chief Financial Officer and duly authorized representative of the Petitioner;
2. That all the facts contained in the present Motion for an Order Authorizing an Agency Agreement for the Sale of Excess Inventory are true;
3. That all the facts contained in this affidavit are true.

AND I HAVE SIGNED:



ROBERT HARRITT

Solemnly affirmed to before me, in the City of Montreal, this 18TH day of October, 2011



Commissioner of Oaths for the Province of Quebec



NOTICE OF PRESENTATION

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

Attorneys for Wells Fargo

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

Attorneys for Wells Fargo

AND: RSM Richter Inc.
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AND: Norton Rose OR LLP
1 Place Ville-Marie
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Attorneys for Ameco-Paradisio

AND: Poliquin, Avocats
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Bureau 550
Laval (Quebec) H7M 3Y2

Attorneys for Quality Draft
Home Deco Ltd.

**AND: Deveau, Bourgeois, Gagné,
Hébert & Associés, s.e.n.c.r.l.**
2540 boul. Daniel-Johnson
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Attorneys for Les Immeubles
Plaisance Inc.

AND: McMillan LLP
1000 Sherbrooke St. West
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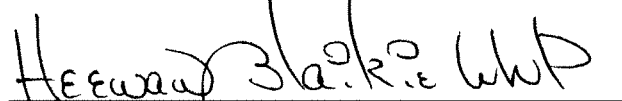
Attorneys for Tiger Capital
Group, LLC

TAKE NOTICE that the present Motion for an Order Authorizing an Agency Agreement for the Sale of Excess Inventory 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 October 19, 2011, at 9:00 o'clock, in room B-107 of the Courthouse of Saint-Jérôme, located at 25 de Martigny Street West, in the City of Saint-Jérôme, Province of Quebec, or as soon thereafter as counsel may be heard.

AND DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, October 18, 2011

A handwritten signature in black ink, appearing to read "Heenan Blaikie LLP", written over a horizontal line.

HEENAN BLAIKIE LLP

Attorneys for the Petitioner

C A N A D A

PROVINCE OF QUEBEC
District of Montreal

S U P E R I O R C O U R T
(Commercial Division)

No: 500-11-041238-110

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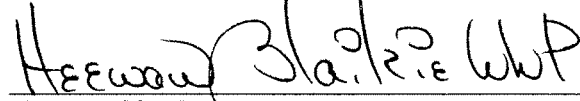
Monitor

LIST OF EXHIBITS

(In support of the Motion for an Order Authorizing an
Agency Agreement for the Sale of Excess Inventory)

- | | |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------|
| EXHIBIT R-1 | Agency Agreement, dated as of October 17, 2011, entered into between Tigor Capital Group, LLC and the Petitioner (under seal); |
| EXHIBIT R-2 | Redacted copy of the Monitor's report on the liquidation solicitation process; |
| EXHIBIT R-3 | Invitation to the Proposed Liquidators to submit their proposals for the inventory; |
| EXHIBIT R-4 | Copy of the form of confidentiality agreement; |
| EXHIBIT R-5 | Index of documents found in the data room; |
| EXHIBIT R-6 | Request for proposals; |
| EXHIBIT R-7 | Draft agency agreement; |

MONTREAL, October 18, 2011

A handwritten signature in black ink, appearing to read "Heenan Blaikie LLP", written over a horizontal line.

HEENAN BLAIKIE LLP

Attorneys for the Petitioner

500-11-041238-110

SUPERIOR COURT
(Commercial Division)

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(Sections 9, 11 AND 36 of the *Companies'*
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as amended)

ORIGINAL

Code: BJ-0039

Notre réf. : 043054.0112

M^{re} Michael J. Hanlon

Téléphone : 514 846-2376

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Heenan Blaikie LLP

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