

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
COURT No.: 500-11-041238-110  
ESTATE NO.: 0000074-2011-QC

**SUPERIOR COURT**  
**(Commercial Division)**  
***The Companies' Creditors Arrangement Act***

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

**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

**Debtor**

-and-

**RSM RICHTER INC.**, a duly incorporated legal person having its principal place of business at 2 Place Alexis-Nihon, in the city and district of Montreal, Quebec, H3Z 3C2

**Monitor**

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**REPORT OF THE MONITOR  
ON THE LIQUIDATION SOLICITATION PROCESS  
October 18, 2011**

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**A. INTRODUCTION**

1. On August 30, 2011, Hart Stores Inc. (hereinafter referred to as "Debtor") filed with the Quebec Superior Court, a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "CCAA"). In this regard, the Honourable Jean-Yves Lalonde, J.S.C. rendered the Initial Order appointing RSM Richter Inc. ("Richter") as monitor (the "Monitor").
2. On September 28, 2011, the Debtor presented a Motion and an Order extending the stay period was rendered up to and including November 4, 2011.

3. The Debtor, with the assistance of the Monitor, has identified stores that are underperforming and that should be closed ("Closing Stores") as part of the restructuring initiatives that need to be implemented by the Debtor.
4. The Debtor and the Monitor are of the opinion that the best way to realize the inventory presently held at the Closing Stores is by entering into an agency agreement with a specialized retail store liquidator. This will allow the Debtor to monetize immediately the value of the inventory at the Closing Stores and allow the Debtor to focus on other aspects of the restructuring, and particularly the remaining 60 stores which are not designated to be closed.
5. In order to select a liquidator, the Monitor planned and managed a solicitation process whereby liquidators were to submit liquidation proposals to the Debtor.
6. The purpose of this Report is to summarize the process undertaken to select a liquidator in order to realize the inventory located in Closing Stores.
7. Initially, the Debtor decided to close 26 underperforming stores. Subsequently and during the solicitation process described herein, the Debtor decided to keep 3 of those stores but also later decided to close an additional 9 stores. Therefore, the Company is contemplating closing a total of 32 stores.
8. We inform the Court that the Monitor has not conducted an audit or investigation of the information that was provided by the Debtor and that accordingly, no opinion is expressed regarding the accuracy, reliability or completeness of the information contained within this Report. The information contained herein is based on unaudited financial information provided to the Monitor by the Debtor's Management as well as obtained through discussions with the Debtor's Management and employees.
9. All amounts reflected in this Report are stated in Canadian currency unless otherwise noted.

## **B. IDENTIFICATION OF LIQUIDATORS TO BE CONTACTED**

10. Richter compiled a list of 13 U.S. and Canadian firms specializing in retail inventory liquidations ("Liquidation Firms") which is included as Appendix A.

## **C. SOLICITATION EMAIL**

11. The Liquidation Firms were initially contacted via email on September 15, 2011 and invited to submit liquidation proposals for the initial 26 Closing Stores. The solicitation email that was sent to each of them is attached hereto as Appendix B.
12. Attached to the solicitation email was a standard Confidentiality Agreement. Certain parties suggested changes to the standard Confidentiality Agreement, which were referred to the Debtor's legal counsel for review and approval. Of the 13 Liquidation Firms contacted, 11 Liquidation Firms signed the Confidentiality Agreement ("Interested Liquidation Firms").

## **D. VIRTUAL DATA ROOM**

13. Upon execution of the Confidentiality Agreement, the Interested Liquidation Firms were granted access to an online data room containing information regarding the Closing Stores. The index of documents posted to the online data room is attached hereto as Appendix C.

14. The contents of the data room were proposed by Richter based on our experience from previous dealings in similar situations and our assessment of the information the Interested Liquidation Firms would likely require in order to prepare their proposals. Additional information was added to the data room, from time to time, to elaborate and/or to respond to inquiries from the Interested Liquidation Firms. Therefore, every Interested Liquidation Firm was provided with the same information.

#### **E. REQUEST FOR PROPOSALS (“RFP”) AND AGENCY AGREEMENT**

15. On September 23, 2011, the Interested Liquidation Firms were provided with an RFP and draft agency agreement (see Appendices D and E, respectively).
16. The RFP was meant to inform the Interested Liquidation Firms of the terms and conditions pursuant to which they should submit proposals including, amongst other things, the following:
  - The proposal submission deadline (2:00 pm EST on October 5, 2011);
  - A description of the services that will be required from the Interested Liquidation Firms;
  - The requirement to include a “Guaranteed Amount” and a “Merchant Sharing Recovery Amount” in any proposal;
  - The basis of presentation for any amounts in the proposal (cost value);
  - The requirement for a \$500,000 deposit to be provided with each proposal; and
  - The requirement for an employee incentive bonus plan in any proposal.
17. The purpose of providing a draft agency agreement was to inform the Interested Liquidation Firms of the format and content of the contract that the Debtor was seeking in any liquidation proposal. This helps standardize the process and allows for better comparability between proposals.

#### **F. FOLLOW-UP INFORMATION REQUESTS**

18. As part of their process to prepare liquidation proposals, the Interested Liquidation Firms submitted certain follow-up requests for information to Richter. Richter then worked with the Debtor to answer the questions and provide the information requested to all of the Interested Liquidation Firms.
19. Any documents or information files compiled in response to the follow-up requests were posted to the data room. Those parties that had previously been granted access to the data room received an automated notification email informing them that new documents had been posted to the data room to insure that every Interested Liquidation Firm was provided with the same information.
20. As part of their research and analysis for the preparation of their proposals, certain Interested Liquidation Firms made unannounced (anonymous) visits to some of the Closing Stores. These visits did not allow for direct interaction with the Closing Stores’ employees pending the announcement by the Management of the Debtor advising the employees of the decision affecting the Closing Stores. Once the Debtor informed the Closing Stores’ employees of its plan to liquidate the inventory located in these stores, the Interested Liquidation Firms were permitted to make announced visits to the Closing Stores. Such requests were forwarded by Richter to the Debtor, which accommodated all requests that it had received.

## **G. CHANGES TO THE NUMBER OF CLOSING STORES**

21. On September 24, 2011, the Debtor informed Richter that it wanted to reduce the number of Closing Stores to 23. On September 26, 2011, Richter informed the Interested Liquidation Firms of the changes to the number of Closing Stores.

## **H. BIDS RECEIVED**

22. On October 5, 2011, Richter received five proposals for the liquidation of the inventory located in the 23 Closing Stores.
23. Proposals were submitted in the form of completed (redlined) drafts of the agency agreement previously provided to the Interested Liquidation Firms, along with relevant exhibits.
24. Appendix F summarizes the key terms and conditions of each of the proposals received (filed under seal with the Court).
25. The most advantageous proposal was the one submitted by Tiger Capital Group, LLC ("Tiger"). Tiger is a party unrelated to the Debtor and is dealing at arm's length from the Debtor. It is an entity that provides advisory, valuation, auction, management, and disposition services for a broad range of retail, wholesale, and industrial companies. It has over 30 years experience in North American matters.
26. In summary, of the 13 Liquidation Firms initially contacted:
  - One had no interest in the opportunity and declined to sign a Confidentiality Agreement;
  - One did not respond to the initial solicitation email or a subsequent follow-up email;
  - Three signed the Confidentiality Agreement but failed to submit a liquidation proposal either before or after the submission deadline; and
  - Eight submitted a proposal either on their own or as a joint venture with another Liquidation Firm.

## **I. PHASE II LIQUIDATION**

27. On October 6, 2011, the Debtor decided to add an additional nine stores to those which it had selected for purposes of closing/remittance to an Interested Liquidation Firm ("Phase II Closing Stores").
28. On October 7, 2011, the highest bidder on the inventory located in the initial 23 Closing Stores (Tiger) was invited to submit a separate proposal for the inventory located in the Phase II Closing Stores, by Noon on October 11, 2011. In order for Tiger to make such a proposal, Richter created a second data room containing information pertaining only to these Phase II Closing Stores.

29. The other bidders were not invited to submit proposals on the inventory located in the Phase II Closing Stores for the following reasons:
  - Tiger's proposal on the inventory located in the initial 23 Closing Stores was significantly higher than that of the next highest bidder; and
  - It is more practical and advantageous to use the same liquidator for all 32 Closing Stores.
30. On October 11, 2011, Tiger submitted a summary offer for the inventory located in the Phase II Closing Stores. The offer's key terms and conditions are included as Appendix G ("Phase II Liquidation Proposal") (filed under seal with the Court).

#### **J. NEGOTIATION OF A FINAL AGENCY AGREEMENT**

31. Upon receipt of Tiger's Phase II Liquidation Proposal and considering that the draft proposals received from Tiger required clarifications, the Debtor, the Monitor, and Tiger began discussions to clarify certain aspects of the proposals with a view to negotiate a combined agency agreement for the inventory presently held in the 32 Closing Stores ("Merchandise").
32. During these discussions certain issues were raised concerning a potential major adjustment relating to the Cost Value-to-Retail Value relationship of the Merchandise. Tiger and the Debtor concluded that this adjustment would likely materially affect the ultimate realization of the Merchandise.
33. As the same adjustment was also provided in the other proposals received from the other Interested Liquidation Firms, this did not affect the determination of the highest bidder.
34. Tiger and the Debtor finally agreed to a reduced Guaranteed Amount with no further adjustment on the Cost Value-to-Retail Value relationship of the Merchandise.
35. During the time these discussions were held, the second highest bidder called Richter to raise the same issues about the Cost Value-to-Retail Value relationship but indicated that it was ready to forego the adjustment clause contained in his proposal without changing the other terms and conditions of its offer.
36. A summary comparison of the best two offers received for the inventory located in the initial 23 Closing Stores as subsequently modified to address the Retail Value-to-Cost Value issues is included in Appendix H (filed under seal with the Court). Based on this analysis, the proposal from Tiger was still the most advantageous for the Debtor.
37. Finally on October 17, 2011, the Debtor and Tiger concluded an agency agreement (the "Agency Agreement", a copy of which is attached as Appendix I) (filed under seal with the Court) for the liquidation of the Merchandise located in the 32 Closing Stores. The key terms of the final Agency Agreement are summarized in Appendix J (filed under seal with the Court).

#### **K. CONCLUSION AND RECOMMENDATION**

38. The selection process that was conducted by the Monitor was initiated by soliciting 13 of the most important U.S. and Canadian retail store liquidators.

39. The Interested Liquidation Firms have had the time and the opportunity to analyze the relevant information on the initial 23 Closing Stores and make their best offer to the Debtor. Overall, in the Monitor's opinion, the process leading to the proposed transaction was reasonable, and the Monitor approves of it.
40. The highest bidder on the inventory located in the initial 23 Closing Stores ultimately accepted to extend its offer to the inventory located in the additional 9 Closing Stores and accordingly, the Agency Agreement was concluded for the inventory located in the 32 Closing Stores.
41. The Monitor is of the opinion that the realization contemplated by the Agency Agreement is more beneficial to the creditors than a sale or disposition under a bankruptcy, and will have no undue prejudicial effects on the creditors in the circumstances. In addition, the Monitor notes that the Debtor has stated in its Motion for approval of the Agency Agreement that the proposed transaction will not prevent the Debtor 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 and compromise to be filed by the Debtor.
42. Wells Fargo Capital Finance Corporation Canada, the Debtor's principal secured creditor and DIP Lender, has been kept informed throughout the process and has agreed to the terms and conditions of the Agency Agreement that was concluded and appended hereto.
43. Consequently, the Monitor is satisfied with the Debtor's selection of the liquidator for the Merchandise and the Agency Agreement, is satisfied that the consideration to be received for the assets thereunder is reasonable and fair, taking into account their market value, and recommends its approval by this Court.

Respectfully submitted at Montreal, this 18<sup>th</sup> day of October, 2011.

**RSM Richter Inc.**  
Court-Appointed Monitor



Benoit Gingues, CA, CIRP

# Appendix A

**Hart Stores Inc.  
Liquidation Firms Contacted**

- C3 Crescent Commercial Corp.
- Century Services Inc.
- Continental Auctioneers Inc.
- Gordon Brothers Retail Partners LLC
- Great American Group
- Hilco Merchant Resources LLC
- HyperAMS LLC
- Les Encanteurs M.G. Martin Inc.
- Maynards Industries Ltd.
- Nova Auctioneers Inc.
- SB Capital Group LLC
- Solid Asset Solutions LLC
- Tiger Capital Group LLC

# Appendix B

**Hart Stores Inc.  
Initial Solicitation E-Mail**

Email subject line: Hart Stores Inc. – Solicitation of Inventory Liquidation Proposals

Dear Mr. XXXX,

Hart Stores Inc. (“Hart Stores” or the “Company”), a 92-store regional department store chain with locations throughout eastern Canada, filed for protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) on August 30, 2011. RSM Richter Inc. is acting as Monitor in connection with the CCAA proceedings.

Hart Stores has requested our assistance in the solicitation of bids for the purpose of selecting an agent, on an exclusive basis, for the liquidation of inventory located at certain of the Company’s store locations that have been identified for closure (the “Closing Locations”).

Upon signature of the attached Confidentiality Agreement, you will be granted access to an online data room maintained by RSM Richter Inc. The data room contains select financial information concerning the Closing Locations and the merchandise inventories contained therein.

Those parties signing a Confidentiality Agreement will also receive a Request For Proposal outlining selected terms and conditions on which bidders should submit proposals.

Further details regarding the bid submission deadline will be provided shortly. It is the Company’s and RSM Richter Inc.’s intention to proceed quickly with the implementation of the inventory liquidation process for the Closing Locations.

RSM Richter Inc. and Hart Stores reserve the right to suspend or modify the bid solicitation process for any reason and to reject any or all bids with no obligation to disclose any reason therefor.

Should you require further information concerning this opportunity do not hesitate to contact the undersigned or Stéphane De Broux (514.934.8621, [sdebroux@rsmrichter.com](mailto:sdebroux@rsmrichter.com)).

Sincerely,

# Appendix C

**Hart Stores Inc.  
Data Room Index**

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- 1.1 Store closing list
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  - 1.1.1 Updated closing list - Sept 26 2011
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- 2.1.3 Current retail and POS retail for all SKUs as at Sept 29 2011
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# Appendix D

**RSM** Richter Inc.

**Hart Stores Inc.**

**Request for Proposals**

**RSM Richter Inc.**  
Consulting Division  
Montreal, September 23, 2011



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# 1 Introduction

Hart Stores Inc./Magasins Hart Inc. ["Harts" or "Company"] filed for protection under The Companies' Creditors Arrangement Act of Canada ["CCAA"] on AUGUST 30, 2011. RSM Richter Inc. was appointed Monitor ("Richter" or "Monitor") pursuant to the CCAA filing. The Monitor is working with the Company in connection with the Company's solicitation of bids for the purpose of selecting an agent, on an exclusive basis, to assist the Company in the liquidation of inventory and Furniture, Fixtures and Equipment ("FF&E"), located at certain of the Company's retail store locations ("Closing Stores") through the conduct of "store closings" or similar theme sales (the "Sale") at the Closing Stores.

Through a virtual data room maintained by Richter, the Company is providing to each Bidder who has executed and returned the required Confidentiality Agreement certain select financial information concerning the Closing Stores, the merchandise inventories located therein, as well as other financial information.

Requests for additional financial information and site visits should be directed to Stéphane De Broux (sdebroux@rsmrichter.com 514-934-8621) or Michael Derai (mderai@rsmrichter.com 514-934-3508).

**PARTICIPATION BY A BIDDER AND SUBMISSION OF A PROPOSAL / OFFER IN THIS PROPOSAL SOLICITATION PROCESS IS EXPRESSLY SUBJECT TO THE TERMS AND CONDITIONS OF THE CONFIDENTIALITY AGREEMENT SIGNED BY SUCH BIDDER AS WELL AS COMPLIANCE WITH THE TERMS AND PROVISIONS OF THIS REQUEST FOR PROPOSALS. FURTHER, ALL INFORMATION CONTAINED IN THIS REQUEST FOR PROPOSALS IS EXPRESSLY SUBJECT TO TERMS OF THE AGREEMENT POSTED IN THE VIRTUAL DATA ROOM. THE COMPANY RESERVES THE RIGHT TO REJECT ANY PROPOSAL AND EXCLUDE ANY BIDDER FROM ANY FURTHER PARTICIPATION IN THE PROPOSAL SOLICITATION PROCESS.**

## 2 Request for Proposals

1. All proposals to be considered must: (a) conform to each and every one of the requirements outlined herein (subject to such compliance, as may be determined in the discretion of the Company, a "Conforming Proposal") and (b) be received, in writing (by e-mail, messenger or facsimile), no later than 2pm (EST) **on OCTOBER 5, 2011** (the "Initial Proposal Deadline"). It is the present intention of the Company to only consider proposals that arrive on or before the Initial Proposal Deadline, and which conform to the terms and provisions of this proposal solicitation.
2. Proposals must be marked as "**Strictly Confidential**" and delivered on or before the Initial Proposal Deadline as follows:

RSM Richter Inc., Monitor re: Hart Stores Inc./Magasins Hart Inc.

2 Place Alexis Nihon, Suite 2200,

Montreal, Quebec

Attention : Benoit Gingues

Fax—514 934 3504

Email :bgingues@rsmrichter.com

3. Promptly upon receipt of any Conforming Proposal(s), the Company with the assistance of its advisors, shall determine which of the Conforming Proposals constitutes the best proposal received, taking into account all relevant circumstances (the "Accepted Proposal"). The Accepted Proposal shall form the basis of an Agency Agreement to be forthwith negotiated between the Company and the Successful Bidder. A draft of the Agency Agreement is attached hereto in order to assist Bidders with the consistency of their proposal and the desired elements of their proposal. The Company reserves the right, in its discretion, to accept any Conforming Proposal or reject all Conforming Proposals, or any components of a bidder's Conforming Proposal or to seek clarification or enhancement of a bidder's Conforming Proposal.
4. **The Company is operating under the CCAA. Accordingly, any Accepted Proposal is subject to approval of the Superior Court of Québec [" Court"].**

### 3 Selected Terms and Conditions on Which bidders Should Submit Proposals

Any Bidder who desires to submit a Conforming Proposal to serve as the Company's exclusive agent to conduct the Sale at the Closing Stores, must ensure that its proposal(s) conforms to the following guidelines in order to be considered a Conforming Proposal. As noted above, any proposal that the Company determines not to be a Conforming Proposal may not be considered for designation as the Accepted Proposal. Capitalized terms, not otherwise defined herein, shall have the meanings ascribed thereto in the Agency Agreement which is attached hereto as Exhibit 1.

1. The Bidder submitting the Accepted Proposal shall be allowed to conduct the Sale as a "store closing", "sale on everything" or similar theme sale at the Closing Stores consistent with the terms of the Agency Agreement. The Agency Agreement sets forth the terms and conditions of the agency relationship desired by the Company. In the event there is any inconsistency between the terms of the Agency Agreement and this proposal solicitation, the Agency Agreement shall control and govern, unless otherwise determined by the Company, in its discretion. **The Company reserves the right to make such changes to the Agency Agreement as it determines to be in the Company's interests.**
2. Any proposal that is submitted should include payment of a "Guaranteed Amount" and a "Merchant Sharing Recovery Amount" as well as an "Additional Merchandise Recovery Amount", if any, to the Company. Conforming Proposals should provide that the Company shall receive an initial upfront payment of an amount equal to not less than 90% of the estimated Guaranteed Amount (such amount being determined by reference to the aggregate Cost Value of the merchandise on the Sale commencement date, as reflected in the Company's books and records). Bidders will also be required to furnish one or more irrevocable standby letter(s) of credit to the Company for an amount not less than the remaining unpaid portion of the estimated Guaranteed Amount.
3. All proposals must be presented as a percentage of the "Cost Value" of the merchandise subject to the Sale. "Cost Value" shall be as defined in Section 5.3 of the Agency Agreement.
4. Proposals must also provide an alternative fee proposal based on net proceeds generated through the Sale.
5. The aggregate Cost Value of the merchandise subject to the Sale will be determined based on a SKU-based physical inventory count ("Inventory Taking") to be conducted by an independent inventory service ("Inventory Taking Service") to be mutually selected by the Company and the Bidder. Fifty percent (50%) of the costs of the Inventory Taking Service shall be an "Expense" of the Sale payable by the Bidder. The Company and the Bidder may each have their employees or representatives present at each Test Location to observe and test the physical counting, and review and test the listing, tabulation and pricing of the Merchandise. Conforming Proposals should include an estimate of the costs associated with the Inventory Taking.
6. Conforming Proposals should provide that the Bidder is unconditionally responsible for all "Expenses" (as defined in the attached draft Agency Agreement) incurred in conducting the Sale. Sale-related Expenses shall expressly include the costs associated with the transfer of merchandise from (and between, where applicable) the Stores. Bidders will also be required to furnish one or more irrevocable standby letter(s) of credit to the Company for an amount equal to not less than three (3) weeks' estimated Expenses.

7. The Company presently projects that the successful Bidder will be given undisturbed possession of the Closing Stores on or before **October 21, 2011 and that inventory at cost will approximate \$15.6 million. Bids shall be open to be considered by the Company until 5 PM EST on October 14, 2011 unless the Bidder specifies in its bid an alternate proposed Sale term for consideration by the Company.**
8. The Bidder must include with its offer a \$500,000 deposit check ("Deposit") to the order of "RSM Richter Inc., Monitor, in trust" which may be negotiated forthwith by the Monitor notwithstanding that the Bidder's offer has not been accepted, the whole to ensure the seriousness of the offer and to serve as liquidated damages in the event the offer is accepted but not closed due to the fault of the Bidder. The Deposit will be returned, without interest, to the unsuccessful Bidders, or in the event the offer is accepted but not closed due to the fault of the Company or failure to receive Court approval, and without further recourse by the Bidder.
9. Sales completed between the sale commencement date and the completion of the Inventory Taking at each of the particular Closing Stores (the "Gross Rings Period") shall be recorded and accounted for under the "gross rings" method, inclusive of a shrink adjustment of 1.5% of the Cost Value of the Merchandise sold during the Gross Rings Period applicable to each of the Closing Stores.
10. The successful Bidder shall be required to provide the Company with not less than 10 days advance written notice ("Vacate Notice") of its vacating of a Closing Store (as to each such Closing Store the "Vacate Date"). A bidder's obligations to pay all Expenses, including "Occupancy Expenses", for each Closing Store subject to a Vacate Notice shall continue until the Vacate Date for such Closing Stores.
11. The successful Bidder shall utilize the Company's existing point-of-sale system for recording all sales of goods in the Closing Stores to ensure accurate sales audit functions, as well as accurate calculations of the Recovery Amount, if any.
12. Conforming Proposals may include provisions providing for a Bidder's use of the Company's current credit card systems and servicing arrangements (including the Company's credit card terminals and processor(s), and credit card processor coding) during the course of the Sale; provided, however, Bidders make arrangements for the use of their own merchant identification numbers.
13. The Successful Bidder may use the Company's trade name and logo type in connection with advertising and promotion of the Sale; provided, however, the form and content of all advertising and promotional material is subject to the Company's prior approval, which approval shall not be unreasonably withheld or delayed.
14. Bidders' proposals may also include a proposal for the right to "augment" the Merchandise at the Closing Stores with additional goods procured by the Bidder, subject to the prior approval of the Company which will not unreasonably be withheld. Any proposal which includes an augmentation component should also clearly identify the amount of any additional consideration to be received by the Company in consideration of its permitting the Successful Bidder to augment the Merchandise as part of the Sale.
15. Each Bidder may also include as part of its proposal an offer to assist the Company in its disposition of **the Company's owned** FF&E located in the Closing Stores. With respect to any proposal to assist the Company in its disposition of **the Company's owned** FF&E located in the Closing Stores, each such proposal should conform to the following:

- a) The Successful Bidder will exercise normal and prudent care of cash registers and all other store equipment, office equipment, fixtures, furniture, etc. at the Closing Stores all of which shall remain the property of Company;
  - b) Each Bidder may include in its proposal a proposed fixtures disposition fee, which fee should be calculated based upon a percentage of net recoveries thereon by the Company; and
  - c) At the election of the Company, the Successful Bidder will sell such fixtures and other store equipment owned by the Company during the course of or after the conclusion of the liquidation sale, if so requested by the Company.
16. The Company is also prepared to consider, but shall not be obligated to accept, an equity proposal (outright offer to purchase **the Company's owned** FF&E located in the Closing Stores) for the FF&E. Any Bidder who desires to make such a proposal should include all pertinent terms thereof in its initial Conforming Proposal.
17. Unless otherwise provided in any Court Order, the Bidders shall comply in all material respects with the terms and provisions of any leases and other occupancy agreements for any of the Closing Stores, as well as federal, provincial, and local laws, ordinances, rules and regulations and with terms of any licenses or permits obtained.
18. Bidders should provide for an employee incentive bonus plan for those Company employees to be utilized in connection with the Sale. The amount of the incentive being offered to retained employees, and the timing of payment, is at the discretion of the Bidder, however, should be set forth with specificity in the proposal / offer.

**AS NOTED ABOVE, THE COMPANY RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS SUBMITTED IN RESPONSE TO THIS REQUEST FOR PROPOSALS AND / OR WITHDRAW ANY OR ALL OF THE CLOSING STORES OR ADD TO THE NUMBER OF CLOSING STORES, AT ANY TIME IN ITS DISCRETION AND PRIOR TO EXECUTION OF A DEFINITIVE AGREEMENT.**

Any requests for additional information or clarification of the matters addressed herein shall be directed to RSM Richter Inc.

Yours truly,

RSM Richter Inc.

Court-appointed Monitor for Hart Stores Inc.

# Appendix E

AGENCY AGREEMENT

This Agency Agreement (the "Agreement") is made as of this \_\_\_ day of October, 2011 by and between \_\_\_\_\_ ("Agent") and Hart Stores Inc. / Magasins Hart Inc., a Canadian publicly held corporation ("Merchant"). Agent and Merchant are referred to from time to time in this Agreement individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Merchant operates a network of 92 mid-sized department stores under the Hart, Bargain Giant and Géant des Aubaines banners located in the provinces of Ontario, Quebec, Newfoundland, New Brunswick and Nova Scotia;

WHEREAS, the Merchant filed for protection and obtained an initial order under the *Companies' Creditors Arrangement Act* ("CCAA") on August 30, 2011, from the Superior Court of Quebec (the "Court");

WHEREAS, Merchant desires that Agent act as Merchant's exclusive agent for the limited purpose of: selling, by conducting a "store closing" or similar themed sale (the "Sale"), all of the Merchandise (as hereinafter defined) located or to be located in those Merchant store locations identified in Exhibit 1A annexed hereto (collectively, the "Closing Stores" and each a "Closing Store"), subject to the terms and conditions set forth herein;

WHEREAS, Agent is willing to serve as Merchant's exclusive agent to conduct the Sale in accordance with the terms and conditions of this Agreement;

WHEREAS, Agent will commence the Sale, effective October 21, 2011, subject to approval of this Agreement by the Court;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent and Merchant hereby agree as follows:

Section 1

Definitions and Exhibits

1.1 Defined Terms. The terms set forth below are defined in the Sections referenced of this Agreement:

<u>Defined Term</u>	<u>Section Reference</u>
Additional Agent Merchandise	Section 2.4
Additional Merchandise Proceeds	Section 3.1(c)
Additional Taxes and Penalties	Section 8.3
Agency Accounts	Section 3.3(d)
Agency Documents	Section 11.1(b)
Agent	Preamble
Agent Indemnified Parties	Section 13.1
Agent's Sharing Recovery Amount	Section 3.1(b)
Agreement	Preamble
Approval Order	Section 2.3
CCAA	Recitals
Court	Recitals
Benefits Cap	Section 4.1(c)
Central Services Expenses	Section 4.1
Closing Store	Recitals
Cost Factor Threshold	Section 3.1(g)
Cost File	Section 5.3(a)
Cost Value	Section 5.3(a)
Defective Merchandise	Section 5.2(c)
Designated Deposit Accounts	Section 3.3(d)
Estimated Guaranteed Amount	Section 3.3(a)
Event of Default	Section 14
Excluded Benefits	Section 4.1
Excluded Defective Merchandise	Section 5.2(d)
Excluded Pricing Adjustments	Section 5.3(c)
Expenses	Section 4.1
Expense L/C	Section 4.2(b)
Final Inventory Report	Section 3.3(a)
Final Reconciliation	Section 8.7(b)(i)
FF&E	Section 15
Global Inventory Adjustment	Section 5.3(b)
Gross Rings	Section 6.3
Guaranteed Amount	Section 3.1(a)
Guaranty Percentage	Section 3.1(a)
Guaranty L/C	Section 3.3(c)

Initial Guaranty Payment	Section 3.3(a)
Inventory Completion Date	Section 5.1(a)
Inventory Date	Section 5.1(a)
Inventory Taking	Section 5.1(a)
Inventory Taking Instructions	Section 5.1(a)
Inventory Taking Service	Section 5.1(a)
Lender	Section 3.3(a)
Liens	Section 2.3(b)
Merchandise	Section 5.2(a)
Merchandise Threshold	Section 11.1(k)
Merchant	Preamble
Merchant Consignment Goods	Section 5.4
Merchant's Sharing Recovery Amount	Section 3.1(b)
Monitor	Section 3.1(a)
Occupancy Expenses	Section 4.1
Party(ies)	Preamble
Payment Date	Section 3.1(a)
Proceeds	Section 7.1
Remaining Merchandise	Section 3.2
Retail Price	Section 3.1(g)
Retained Employee	Section 9.1
Retention Bonus	Section 9.4
Sale	Recitals
Sale Commencement Date	Section 2.1
Sale Guidelines	Section 8.1
Sale Term	Section 6.1
Sale Termination Date	Section 6.1
Sales Taxes	Section 8.3
Sharing Threshold	Section 3.1(b)
Third Party	Section 4.1
Vacate Date	Section 6.2

1.2 Exhibits. The Exhibits and Schedules annexed to this Agreement, as listed below, are an integral part of this Agreement:

Section Reference Description

Exhibits

1A	Recitals	Closing Store Locations
Exhibit 3.1(e)	Section 3.1[(e)]	Guaranty Percentage Adjustment Schedule
Exhibit 3.1(f)	Section 3.1[(f)]	Cost Factor Threshold Adjustment Schedule
Exhibit 3.3(a)	Section 3.3(a)	Wire Transfer Instructions
Exhibit 3.3(d)	Section 3.3(d)	Form of Guaranty L/C
Exhibit 4.1(a)	Section 4.1(a)	Occupancy Expense Schedule
Exhibit 4.2(b)	Section 4.2(b)	Form of Expense L/C
Exhibit 5.1(a)	Section 5.1	Inventory Taking Instructions
Exhibit 8.1	Section 8.1	Sale Guidelines
Exhibit 11.1(c)	Section 11.1(c)	Pre-Existing Liens

1.3 Currency. Unless otherwise specified, all references to monetary amounts refer to Canadian dollars.

Section 2 Appointment of Agent

2.1 Merchant hereby appoints Agent, and Agent hereby agrees to serve, as Merchant's exclusive agent for the limited purpose of conducting the Sale in accordance with the terms and conditions of this Agreement.

Agent shall commence the Sale on October 21, 2011 subject to Court approval of this Agreement, or such other date as may be mutually agreed upon by the Parties (the "Sale Commencement Date").

2.2 Except for incurring Expenses in connection with the Sale and as otherwise specifically provided in this Agreement, Agent shall have no authority to enter into any contract, agreement or other arrangement or take any other action, by or on behalf of Merchant, that would have the effect of creating any obligation or liability, present or contingent, on behalf of or for the account of Merchant without Merchant's and Lender's prior written consent.

2.3 Immediately pursuant to the execution of the Agreement, Merchant shall file a Motion to obtain an order of the Court authorizing the Agent and Merchant to conduct the Sale in accordance with the terms hereof (the "Approval Order"). The Approval Order shall be in a form and substance reasonably satisfactory to Merchant, Agent and Lender. The Approval Order shall provide, among other things, that:

(a) Merchant and Agent shall be authorized to take any and all actions as may be necessary or desirable to implement this Agreement and each of the transactions contemplated hereby;

(b) Agent shall be entitled to sell all Merchandise hereunder free and clear of all liens, claims and encumbrances thereon (collectively, "Liens"), with any presently existing Liens encumbering all or any portion of the Merchandise or the Proceeds attaching only to the Guaranteed Amount and other amounts to be received by Merchant under this Agreement;

(c) Agent shall have the right to use the Closing Stores and all related store services, furniture, fixtures, equipment and other assets of Merchant as designated hereunder for the purpose of conducting the Sale, free of any interference from any entity or person;

(d) Agent, as agent for Merchant, is authorized to conduct, advertise, post signs and otherwise promote the Sale without further consent of any person (other than Merchant as provided for herein), in accordance with the terms and conditions of this Agreement and the Sale Guidelines (as the same may be modified and approved by the Court, subject to Agent's reasonable approval), 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 (except to the extent, if any, limited in the Approval Order);

(e) Agent shall be granted a limited license and right to use until the Sale Termination Date 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 Agreement; and

(f) Agent shall not be liable for any claims against the Merchant other than as expressly provided for in this Agreement, and Agent shall have no successorship liabilities whatsoever.

2.4 In addition to the Merchandise, the Agent may also offer for sale in the Closing Stores certain

additional goods which the Agent owns or is otherwise authorized to sell, of a type, quality and kind similar to the Merchandise, and suitable for retail sale in a store substantially similar to the Closing Stores (the "Additional Agent Merchandise"), provided that such Additional Agent Merchandise shall be limited to \_\_\_\_% of the aggregate Cost Value of the Merchandise at the Sale Commencement Date.

### Section 3                      Guaranteed Amount and Other Payments

#### 3.1                      Payments to Merchant and Agent.

(a) As a guaranty of Agent's performance hereunder, Agent guarantees that Merchant shall receive an amount equal to \_\_\_\_ (%) ("Guaranty Percentage") of the aggregate Cost Value (as adjusted, if applicable) of Merchandise located in the Closing Stores on the Sale Commencement Date ("Guaranteed Amount"). The Guaranteed Amount will be calculated based upon the aggregate Cost Value of the Merchandise as determined by the final certified report of the Inventory Taking Service after verification and reconciliation thereof by Agent, Merchant, RSM Richter Inc., the Monitor of Merchant under the CCAA (the "Monitor") and Lender. The Guaranteed Amount may therefore be modified as a result of quantities only and not as a result of Unit Costs of the Merchandise, the latter with respect to which the Agent has already performed its diligence. As to other adjustments, their calculation and nature is reflected in section 5 hereof.

(b) To the extent that proceeds from the sale of Merchandise located at the Closing Stores exceed the sum of (i) the Guaranteed Amount, (ii) the Expenses in such stores and (iii) \_\_\_\_% of the aggregate Cost Value of the Merchandise in such Stores (the "Agent's Fee") (the "Sharing Threshold"), then all remaining proceeds of such sales shall be shared \_\_\_\_\_ % to Merchant ("Merchant's Sharing Recovery Amount") and \_\_\_\_\_% to Agent ("Agent's Sharing Recovery Amount").

(c) In addition to the Guaranteed Amount, Agent shall pay the Merchant an amount equal to \_\_\_\_% of the gross proceeds (net of Sales Taxes) of the sale of Additional Agent Merchandise (the "Additional Merchandise Recovery Amount"). Agent agrees that the aggregate cost to the Agent of the Additional Agent Merchandise shall not exceed \_\_\_\_\_ % of the aggregate Cost Value of the Merchandise. All proceeds of the sale of Additional Agent Merchandise in excess of the Additional Merchandise Recovery Amount shall be retained by Agent (the "Additional Merchandise Proceeds").

(d) Agent shall pay to Merchant the Guaranteed Amount, the Additional Merchandise Recovery Amount (if any) and the Merchant's Sharing Recovery Amount (if any) in the manner and at the times specified in Section 3.3 below.

(e) If and to the extent that Agent over-funds any amounts due hereunder, then Merchant agrees to promptly reimburse (by no later than the next weekly reconciliation contemplated by Section 8.7) such over-payment amounts to Agent to the extent such amount is not disputed by Merchant. If such over-payment amount is disputed by Merchant, then Merchant shall reimburse such over-payment amount, if any, no later than five (5) days following the date on which such dispute is resolved pursuant to this Agreement.

(f) To insure accurate sales audit functions, as well as accurate calculations of the Merchant's Sharing Recovery Amount and Additional Merchandise Recovery Amount, Agent shall be required to utilize Merchant's existing point-of-sale system for recording all sales of goods, Merchandise and Additional Merchandise in the Closing Stores, provided, however, to the extent the existing point-of-sale system is inadequate to or not capable of processing all sales and transactions contemplated by this Agreement, the Agent may install and use its own point-of-sale system in connection with the sale, subject to Merchant's approval of such system, which shall not be unreasonably withheld or duly delayed.

(g) The Guaranty Percentage has been established based upon the assumption that the aggregate Cost Value of the Merchandise being not less than \_\_\_\_\_, (floor), and not greater than \_\_\_\_\_ (ceiling) (the "Merchandise Threshold"). To the extent that the aggregate Cost Value of the Merchandise is less than

or more than the Merchandise Threshold, the Guaranty Percentage shall be adjusted in accordance with Exhibit 3.1[(e)] attached hereto. The Guaranty Percentage has also been established based upon the assumption that the Cost Value-to-Retail Value relationship of the Merchandise shall not be greater than \_\_\_% ("Cost Factor Threshold"). To the extent that the Cost Value-to-Retail Value relationship of the Merchandise is greater than the Cost Factor Threshold, the Guaranty Percentage shall be adjusted in accordance with Exhibit 3.1[(f)] attached hereto. As used in this Agreement, "Retail Price" shall mean the lowest of the hard-marked, stickered, ticketed, file, PLU, original price, or MSRP price without giving effect to any hang-tags, shelf-tags, or POS or other temporary discounts; items of Merchandise that are erroneously marked shall not be used in determining the Retail Price and a lower Retail Price shall not be used unless there are at least five (5) items at such lower Retail Price in each Closing Store in the applicable respective category.

(h) The adjustments to the Guaranty Percentage contemplated by Exhibits 3.1[(e)] and [(f)] shall be independent and cumulative.

(i) In addition, simultaneously with the payment of the Guaranteed Amount, Agent shall pay to Merchant an amount equal to the cash in the registers at the Closing Stores as of the Sale Commencement Date. An actual count of such cash shall be conducted by Agent and Merchant at the start of the Sale Commencement Date prior to any transactions.

3.2 Payments to Agent. After payment in full of the Guaranteed Amount, the Merchant's Share Payment and the payment of all Expenses, Agent shall be entitled to retain any remaining Proceeds of the Sale. Provided that no Event of Default has occurred and continues to exist on the part of the Agent, all Merchandise remaining at the conclusion of the Sale shall become the property of Agent, free and clear of all liens, claims and encumbrances of any kind or nature ("Remaining Merchandise"); provided, however, the Agent shall use its best and good faith efforts to dispose of all Merchandise during the conduct of the Sale, and all proceeds realized upon a sale or other disposition of the Remaining Merchandise after the Sale Termination Date shall nevertheless constitute Proceeds hereunder for purposes of, *inter alia*, calculating the Merchant's Share Payment.

### 3.3 Time of Payments; Control of Proceeds

(a) Payment of Guaranteed Amount. On the first business day following entry of the Approval Order ("Payment Date"), Agent shall pay Wells Fargo Capital Corporation Canada ("Lender"), on behalf of Merchant, an amount equal to ninety percent (90%) of the estimated Guaranteed Amount (the "Initial Guaranty Payment"), calculated based upon the estimated aggregate Cost Value of the Merchandise to be included in the Sale, as reflected on Merchant's books and records on the last business day immediately preceding the Sale Commencement Date (the "Estimated Guaranteed Amount") by wire transfer to such account(s) as are designated on Exhibit 3.3(a). The balance of the Guaranteed Amount, if any, shall be paid by Agent to the Lender, as Merchant's designee, on the first business day following the issuance of the final audited report of the aggregate Cost Value of the Merchandise by the Inventory Taking Service, after verification and reconciliation thereof by Agent, Merchant, Monitor and Lender (the "Final Inventory Report"). Agent's failure to pay such balance shall entitle the Lender to draw upon the Guaranty L/C to the extent of such balance. In the event that the actual Guaranteed Amount is less than the Initial Guaranty Payment actually paid as set forth above, the Merchant shall pay the Agent the amount by which the actual Guaranteed Amount is less than the Initial Guaranty Payment actually paid within two (2) business days after the Final Inventory Report has been issued.

(b) Payment of Merchant's Shared Recovery Amount and the Additional Merchandise Recovery Amount. Agent shall tender payment of all amounts on account of the Merchant's Shared Amount and the Additional Merchandise Recovery Amount as part of the weekly reconciliation conducted pursuant to Section 8.7(a), and subject to the Final Reconciliation under Section 8.7(b).

(c) Guaranty Security. If, on the Payment Date, the Final Inventory Report has not yet been issued and therefore Agent has made a payment pursuant to Section 3.3(a), then to secure payment of the balance of any unpaid portion of the Guaranteed Amount, Agent shall deliver to the Lender, as Merchant's designee, an irrevocable standby letter of credit in the original face amount equal to ten percent (10%) of the Estimated Guaranteed Amount, naming the Lender, as Merchant's designee, as the beneficiary, substantially in the form of Exhibit 3.3(d) attached hereto (the "Guaranty L/C"). The Guaranty L/C shall be delivered to the Lender, as Merchant's designee, on the Payment Date, and shall be issued by a bank selected by Agent and reasonably acceptable to Merchant and the Lender. Provided no Event of Default by Merchant has occurred, in the event that Agent shall fail to pay to the Lender, as Merchant's designee, any amount required to be paid on account of the Guaranteed Amount, the Lender, as Merchant's designee, shall be entitled to draw on the Guaranty L/C to fund such amount following five (5) days written notice to Agent of the Lender's intention to do so. The Guaranty L/C shall expire no earlier than sixty (60) days after the Sale Termination Date; provided, that, in the event that at the scheduled expiration date of the Guaranty L/C there remains any unresolved dispute as to the amount of the Guaranteed Amount, the Lender, as Merchant's designee, may, in its discretion, exercise the right to require Agent to have the expiration date of the Guaranty L/C extended for thirty (30) day intervals (or such other longer duration as Merchant, the Lender, and Agent may agree) until such time as the subject dispute has been resolved and any additional amounts due hereunder paid to the Lender, as Merchant's designee, it being agreed that if Agent has for any reason not so extended the expiry date of the Guaranty L/C by the date which is five (5) days prior to the then expiry date, the Lender shall have the right to make a drawing under the Guaranty L/C in an amount equal to the amounts Merchant asserts are then owing to Merchant; provided, further, that, in the event that Agent shall have paid to the Lender, as Merchant's designee, all amounts due on account of the Guaranteed Amount prior to such date, the Lender agrees to surrender the original Guaranty L/C to the issuer thereof together with written notification that the Guaranty L/C may be terminated. Merchant, the Lender, and Agent agree that after payment of the unpaid portion of the Guaranteed Amount, the Guaranty L/C shall be terminated.

(d) Control of Proceeds Following the entry of the Approval Order (and the applicable payments by Agent under Section 3.3(a) and the delivery by Agent of the Guaranty L/C and the Expense L/C), Agent may establish its own accounts dedicated solely for the deposit of the Proceeds (net of sales taxes) and the disbursement of amounts payable to Agent hereunder (the "Agency Accounts") and Merchant shall promptly upon Agent's request execute and deliver all necessary documents to open and maintain the Agency Accounts; provided, however, Agent may elect to continue to use Merchant's Designated Deposit Accounts with respect to the Closing Stores as the Agency Accounts (and assume sole signatory authority and control with respect thereto). The Agency Accounts shall be dedicated solely to the deposit of Proceeds and the disbursement of amounts payable hereunder, and Agent shall exercise sole signatory authority and control with respect to the Agency Accounts. Upon request, Agent shall deliver to Merchant copies of all bank statements and other information relating to such accounts. Merchant shall not be responsible for and Agent shall pay as an Expense hereunder, all bank fee and charges, including wire transfer charges, related to the Agency Accounts and Merchant's Designated Deposit Accounts, whether received during or after the Sale Term. Upon Agent's designation of the Agency Accounts, all Proceeds of the Sale (including credit card proceeds) shall be deposited into the Agency Accounts. For clarity, however, as the sales are subject to Sales Taxes [GST QST], more fully referred to in section 8.3 hereof, which are to be charged by the Agent to the Merchant's customers, the amount so collected by the Agent is to be remitted into the Merchant's bank accounts concurrently and no later than on a weekly basis. Should the Agent deposit the Sales Taxes to its own account, it shall on a weekly basis remit the equivalent amount to the Merchant for the remittance by the Merchant to the applicable governmental authorities.

(e)

If at any time during the Sale Term Merchant holds any undisputed amounts due to

Agent as Proceeds hereunder, Agent may, in its discretion, offset such Proceeds being held by Merchant against any amounts due and owing to Merchant under this Agreement, and (B) if at any time during the Sale Term, Agent holds any undisputed amounts due to Merchant under this Agreement; Agent may, in its discretion, offset such amounts being held by it against any amounts due and owing by, or required to be paid by, Merchant hereunder.

Section 4                      Expenses of the Sale

4.1                              Expenses

Agent shall be unconditionally responsible for all "Expenses" incurred in conducting the Sale during the Sale Term, which expenses shall be paid by Agent in accordance with Section 4.2 below (but which Agent may recover from Proceeds after the payment of the Guaranteed Amount; such Expenses however shall not reduce the Guaranteed Amount). As used herein, "Expenses" shall mean all Closing Store-level operating expenses of the Sale which arise during the Sale Term, limited to the following:

- (a) Occupancy expenses for the Closing Stores on a per location and per diem basis in an amount equal to the aggregate per diem totals set forth on Exhibit 4.1(a) ("Occupancy Expenses");
- (b) payroll and commissions, as well as vacation pay accruing thereon [but not arrears] for actual days/hours worked during the Sale Term for all Closing Store-level Retained Employees used in conducting the Sale as well as payroll for any temporary personnel engaged by Agent as independent contractors for the Sale (including, without limitation, Merchant's former employees);
- (c) any amounts payable by Merchant for benefits for Retained Employees (including, unemployment taxes, pension plan, workers' compensation and health care insurance benefits, but excluding Excluded Benefits) for Retained Employees used in the Sale, in an amount equal to \_\_\_ percent (%) of base payroll for each Retained Employee in the Closing Stores (the "Benefits Cap");
- (d) Retention Bonuses for Retained Employees, as provided for in Section 9.4 below;
- (e) actual costs of Agent's employees, independent contractors, on-site supervision, supervisor travel and supervisor bonuses, on-site living/housing expenses and all other reasonable compensation paid to such persons;
- (f) banners and in-Store signs which are produced for the Sale;
- (g) promotional costs, including, without limitation, advertising, sign-walkers, and direct mail;
- (h) the costs and expenses of obtaining additional supplies as may be required by Agent in the conduct of the Sale;
- (i) long distance telephone, postage/overnight delivery/courier charges;
- (j) credit card and bank card fees, bank charges, chargebacks and discounts;

- (k) costs of moving, transferring, or consolidating Merchandise (i) between/among the Closing Stores; and/or (ii) between the Warehouse/DC on one hand and any one or more of the Closing Stores on the other hand;
- (l) Third Party payroll processing fees;
- (m) armored car service, security personnel and monthly alarm services;
- (n) actual cost of Agent's capital and letter of credit fees;
- (o) reasonable fees of Agent's outside legal counsel incurred in connection with the negotiation, execution, and implementation of the transactions contemplated by this Agreement (but for the avoidance of doubt, not including any attorneys' fees incurred by Agent which the Court rules should not be treated as an Expense hereunder based upon any dispute between Agent and Merchant which the Court determines was prosecuted by Agent in bad faith);
- (p) trash and snow removal, and ordinary course Third Party cleanings;
- (q) Closing Store security and building alarm service;
- (r) Agent's fifty percent (50%) of cost of the physical inventory taking by the Inventory Taking Service;
- (s) Central Service Expenses in an amount equal to \_\_\_\_\_ per week for the Sale Term;
- (t) cash shortfalls in registers;
- (u) all fees and charges required to comply with applicable laws in connection with the Sale;
- (v) to the extent not included in the per diem totals, routine repair and maintenance costs, solely to the extent such costs result from the Agent's negligent acts or omissions during the term of the Sale; and
- (w) all fees, charges and expenses relating to foreign exchange matters and to convert amounts owing hereunder by Agent into Canadian dollars.

"Expenses" shall not include: (i) Central Service Expenses in excess of the amount set forth in the first clause of Section 4.1(s) or any expenses associated with the Warehouse/DC; (ii) Excluded Benefits; (iii) any rent or other occupancy expenses other than Occupancy Expenses set forth on Exhibit 4.1(a) hereof; and (iv) any costs, expenses or liabilities arising during the Sale Term in connection with the Sale of Merchandise which the Merchant and the Lender agree in writing shall be for the account of the Merchant.

All the Expenses listed above, shall be paid by Agent promptly when due during the Sale Term. Notwithstanding anything herein to the contrary, to the extent that any Expense listed in Section 4.1 is also included on Exhibit 4.1(a), then Exhibit 4.1(a) shall control and such Expense shall not be double counted.

As used herein, the following terms have the following respective meanings:

"Central Services Expenses" means costs and expenses for Merchant's central administrative services necessary for the Sale including but not limited to (a) Merchant's inventory control system; (b) payroll system; and (c) accounting system.

"Excluded Benefits" means vacation days or vacation pay, sick days or sick leave, maternity leave or other leaves of absence, termination or severance pay (including without limitation any notice in accordance with provincial employment/labor standards) and benefits in excess of the Benefits Cap percentage limitation provided in Section 4.1(c) above.

"Occupancy Expenses" means only the per diem, per Closing Store amounts set forth on Exhibit 4.1(a).

"Third Party" means, with reference to any Expenses to be paid to a "third party", a party that is not affiliated with or related to Merchant.

#### 4.2 Payment of Expenses; Security.

(a) All Expenses incurred during each week of the Sale (*i.e.*, Monday through Sunday) shall be paid by Agent to or on behalf of Merchant, or offset by Merchant from Proceeds held by Merchant, immediately following the weekly Sale reconciliation by Merchant and Agent pursuant to Section 8.7(a) below, based upon invoices and other documentation reasonably satisfactory to Agent; provided, however, Agent shall be obligated to pre-fund any Occupancy Expenses and payroll-related expenses consistent with Merchant's customary rent and payroll funding practices and timing.

(b) To secure Agent's obligations to pay Expenses, Agent shall deliver to the Lender, as Merchant's designee, an irrevocable and unconditional standby letter of credit ("Expense L/C") in an original face amount representing an amount equal to three (3) weeks' estimated Expenses, naming the Lender, as Merchant's designee, as beneficiary (substantially in the form of Exhibit 4.2(b)). The Expense L/C shall be delivered to the Lender, as Merchant's designee, on the Payment Date, and shall be issued by a bank selected by Agent and reasonably acceptable to Merchant and Lender. Merchant, the Lender, and Agent agree that at the point where there are fewer than two (2) weeks remaining in the Sale Term, the face amount of the Expense L/C shall be reduced in amount(s) to be agreed upon by Merchant, the Lender, and Agent.

(c) In the event that Agent fails to pay any Expense(s) when due, or within three (3) business days after Merchant and/or the Lender notifies Agent that any Expense(s) are unpaid and past due, or in the event the Expense L/C will expire within five (5) business days and one or more Expenses are then unpaid, the Lender, as Merchant's designee, shall be entitled to draw on the Expense L/C to fund such unpaid amount. The Expense L/C shall expire not earlier than the date that is sixty (60) days after the Sale Termination Date; provided that, in the event that at the scheduled expiration date of the Expense L/C there remains any unresolved dispute as to the amount of any unpaid Expense hereunder, the Lender, as Merchant's designee, may, in its discretion, exercise the right to cause Agent to have the expiration date of the Expense L/C extended for additional thirty day (30) intervals (or such other longer duration as the Merchant, Lender, and Agent may agree) until such time as the dispute has been resolved and any additional amounts due hereunder have been paid to Merchant.

## Section 5                    Inventory, Valuation; Merchandise

### 5.1                    Inventory Taking

(a) Commencing on the Sale Commencement Date, Merchant and Agent shall cause to be taken a SKU and Retail Price level physical inventory of the Merchandise located in the Closing Stores (the "Inventory Taking"), which Inventory Taking shall be completed in each of the Closing Stores no later than five (5) after the Sale Commencement Date (the "Inventory Completion Date", and the date of the Inventory Taking at each Closing Store being the "Inventory Date" for each such Closing Store). Merchant and Agent shall jointly employ RGIS or another mutually acceptable independent inventory taking service (the "Inventory Taking Service") to conduct the Inventory Taking. The Inventory Taking shall be conducted in accordance with the procedures and instructions to be mutually agreed by Merchant and Agent and made a part of this Agreement as Exhibit 5.1(a) (the "Inventory Taking Instructions"). As an Expense, Agent shall be responsible for fifty percent (50%) of the fees and expenses of the Inventory Taking Service, with the balance of such fees and expenses to be paid by Merchant. Except as provided in the immediately preceding sentence as concerns allocation of the costs of the Inventory Taking Service, Merchant and Agent shall each bear their respective costs and expenses relative to the Inventory Taking. Merchant, Agent, Monitor and Lender shall each have the right to have representatives present during the Inventory Taking, and shall each have the right to review and verify the listing and tabulation of the Inventory Taking Service. Merchant agrees that during the conduct of the Inventory Taking in each of the Closing Stores, the applicable Closing Store shall be closed to the public and no sales or other transactions shall be conducted until the Inventory Taking has been completed, as agreed by Merchant and Agent. Merchant and Agent further agree that until the Inventory Taking in each particular Closing Store is completed, Agent shall not (i) transfer any Merchandise to or from that Closing Store, (ii) move any Merchandise within or about the Closing Stores and/or (iii) remove any Merchant hang tags, price tickets, or inventory control tags affixed to any Merchandise. The Inventory Taking, including, but not limited to, the determination of the aggregate Cost Value of the Merchandise, shall be reconciled by Merchant and Agent within ten (10) days after its completion, and the Agent and Merchant shall use their reasonable best efforts to accomplish such reconciliation within such ten (10) day period; provided, further, that the Final Inventory Report shall be completed not later than thirty (30) days after the Sale Commencement Date. In the event there is any dispute with respect to the reconciliation of the aggregate Cost Value of the Merchandise following completion of the Inventory Taking, then any such dispute shall be resolved in the manner and at the times set forth in Section 8.7(b)(ii) hereof.

### 5.2                    Merchandise Subject to this Agreement.

(a) For purposes of this Agreement, including, without limitation, the calculation of the Guaranteed Amount, "Merchandise" shall mean: all finished goods inventory, layaway goods and display goods, if applicable, that are owned by Merchant and located in the Closing Stores on the Sale Commencement Date, including, but not limited to, (w) Defective Merchandise, (x) Merchandise subject to Gross Rings and (y) on order Merchandise or in-transit to (or in respect of) the Closing Stores.

(b) "Merchandise" shall not include: (i) goods which belong to sublessees or licensees, if any, of Merchant; (ii) goods held by Merchant as bailee; (iii) Excluded Defective Merchandise; (iv) furnishings, trade fixtures furniture and equipment and improvements to real property which are located in the Closing Stores.

(c) As used herein, the term "Defective Merchandise" shall mean such item(s) of inventory that is non-first quality inventory unsaleable in its current physical condition, used or previously owned, faded, torn, shopworn or soiled inventory (but shall not include Excluded Defective Merchandise).

(d) As used herein, the term "Excluded Defective Merchandise" shall mean those items of Defective Merchandise that are not saleable in the ordinary course because they are so damaged or defective that they cannot reasonably be used for their intended purpose.

### 5.3 Valuation.

(a) For purposes of this Agreement, "Cost Value" shall mean with respect to each item of Merchandise, the aggregate of the cost for such item of Merchandise as reflected in Merchant's master cost file identified as " \_\_\_\_\_ " provided by Merchant via Merchant's due diligence Firmex FTP website (the "Cost File").

(b) Merchant represents, and Agent acknowledges, that the Cost File does not account for any Excluded Pricing Adjustments, and no such adjustments shall be taken into account in determining the Cost Value of any item of Merchandise.

(c) For purposes of this Agreement, "Excluded Pricing Adjustments" shall mean the following discounts or price adjustments offered by Merchant: (i) point-of-sale discounts or similar adjustments, regardless of duration; (ii) employee discounts; (iii) member or customer appreciation points or coupons; (iv) multi-unit purchase discounts; (v) adjustments for damaged, defective, or "as-is" items; (vi) coupons, catalog, website, or circular prices, or "buy, one" get one type discounts; and (vi) customer savings pass discounts or bounce back coupons, or discounts for future purchases based on dollar value of past purchases, or similar customer specific, temporary, or employee non-product specific discounts or pricing accommodations.

(d) With respect to Defective Merchandise, for purposes of determining the Cost Value thereof, and in lieu of any other adjustments to the Cost Value of Merchandise under this Agreement (*e.g.*, adjustments for Defective Merchandise, clearance merchandise, mis-mates and near-mates, sample merchandise, and/or Excluded Pricing Adjustments), the aggregate Cost Value of the Merchandise shall be adjusted (*i.e.*, reduced) by means of a single global downward adjustment equal to \_\_\_\_\_ percent (%) of the aggregate Cost Value of the Merchandise (the "Global Inventory Adjustment"). Notwithstanding the foregoing, and for purpose of the avoidance of doubt, the Cost Value of the Merchandise shall be adjusted for the exclusion from Merchandise of all Excluded Defective Merchandise.

5.4 Excluded Goods. Merchant shall retain all rights and responsibility for any goods not included as "Merchandise" hereunder and shall remove such goods from the Closing Stores prior to the Sale Commencement Date, or as soon thereafter as reasonably practicable. If Merchant elects at the beginning of the Sale Term, Agent shall accept those goods not included as "Merchandise" hereunder and as identified by Merchant for sale as "Merchant Consignment Goods". The Agent shall retain \_\_\_\_\_ percent (%) of the sale price (less \_\_\_\_ (%) of applicable Sales Taxes) for all sales of Merchant Consignment Goods, and Merchant shall receive \_\_\_\_\_ percent (%) of the sale price (less \_\_\_\_\_ percent (%) of applicable Sales Taxes) respect of such sales. Merchant shall receive its share of the receipts of sales of Merchant Consignment Goods on a weekly basis, immediately following the weekly Sale reconciliation by Merchant and Agent pursuant to Section 8.7(a) below. If Merchant does not elect to have Agent sell such goods not included as Merchandise, then all such items will be removed by Merchant from the Closing Stores at its expense as soon as practicable after the date hereof. Except as expressly provided in this Section 5.4, Agent shall have no cost, expense or responsibility in connection with any goods not included in Merchandise, including but not limited to sales commissions and percentage rent.

### Section 6 Sale Term

6.1 Term. The Sale shall commence at the Closing Stores on the Sale Commencement Date. The Agent shall complete the Sale, and shall vacate each Closing Store's premises in favor of Merchant or its representative or assignee on or before \_\_\_\_\_ (the "Sale Termination Date"). The period from the Sale Commencement Date to the Sale Termination Date shall be referred to herein as the "Sale Term". The Sale Termination Date may be (a) extended by mutual written agreement of Agent and Merchant; or (b) accelerated

by Agent, in which case Agent shall provide Merchant with not less than seven (7) days' advance written notice of any such planned accelerated Sale Termination Date.

6.2 Vacating the Closing Stores. Subject to the terms of Section 6.1 hereof, Agent shall provide Merchant with not less than ten (10) days' advance written notice of its intention to vacate any Closing Store (as to each such Closing Store, as applicable, the "Vacate Date"). On the Vacate Date, Agent shall vacate in favor of Merchant or its representatives or assignee, remove all Remaining Merchandise and leave the applicable Closing Stores in "broom clean" condition (ordinary wear and tear excepted) subject to the right to abandon, neatly in place, the FF&E. Agent's obligations to pay all Expenses, including Occupancy Expenses, for each Closing Store subject to the Vacate Date notice shall continue until the later of (a) the applicable Vacate Date for such Closing Store, as applicable, or, (b) the fifteenth (15<sup>th</sup>) day of the calendar month in which the Vacate Date notice is given for such Closing Store. All assets of Merchant used by Agent in the conduct of the Sale (e.g., FF&E, supplies, etc.) shall be returned by Agent to Merchant or left at the Closing Stores, as applicable, to the extent same have not been used in the conduct of the Sale or have not been otherwise disposed of through no fault of the Agent. Where reference is made in this Section 6 to vacating the Closing Stores, such shall mean vacating the Closing Stores, as applicable, in favor of Merchant, its representatives or assignee and shall not mean vacating possession or disclaimer of lease in favor of the landlord or owner of the Closing Store premises, such lease being the property of the Merchant. Agent agrees that it shall be obligated to forthwith repair any damage caused by Agent (or any representative, agent or licensee thereof) to any Closing Store or the Warehouse/DC during the Sale Term, ordinary wear and tear excepted.

6.3 Gross Rings. In the event that the Sale commences prior to the completion of the Inventory Taking at any Closing Store, then for the period from the Sale Commencement Date until the Inventory Date for such Closing Store, Agent, and Merchant shall keep a strict count of register receipts and reports (the "Gross Rings") to determine the actual Cost Value of the Merchandise sold by SKU at the applicable Closing Store. All such records and reports shall be made available to Merchant and Agent during regular business hours upon reasonable notice. Any Merchandise included in the Sale using this Gross Rings method shall be included in Merchandise using the actual Cost Value of the Merchandise sold plus a \_\_\_\_\_ percent (%) shrink provision.

## Section 7                      Sale Proceeds.

7.1 Proceeds. For purposes of this Agreement, "Proceeds" shall mean the total amount (in dollars) of all sales of Merchandise made under this Agreement, but exclusive of (i) Sales Taxes and (ii) returns, allowances and customer credits. All proceeds of Merchant's insurance (net of any deductible) directly attributable to loss or damage to Merchandise or loss of cash arising from events occurring during the Sale Term shall constitute Proceeds under this Agreement.

7.2 Credit Card Proceeds. Agent shall have the right to use Merchant's credit card facilities (including Merchant's credit card terminals and processor(s), credit card processor coding, Merchant identification number(s) and existing bank accounts) for credit card Proceeds relating solely to the Sale. In the event that Agent elects to use Merchant's credit card facilities, Merchant shall process credit card transactions on behalf of Agent and for Agent's account, applying customary practices and procedures. Without limiting the foregoing, Merchant shall cooperate with Agent to down-load data from all credit card terminals each day during the Sale Term and to effect settlement with Merchant's credit card processor(s) and shall take such other actions necessary to process credit card transactions on behalf of Agent under Merchant's identification number(s). In the event Agent elects in its sole discretion to establish its own merchant identification numbers, Merchant shall cooperate with Agent to enable Agent to process all such credit card Proceeds for Agent's account. Merchant shall not be responsible for and Agent shall pay as an Expense hereunder, all credit card fees, charges, and chargebacks related to the Sale, whether received during or after the Sale Term.

Section 8

Conduct of the Sale

8.1 Rights of Agent. Agent shall be permitted to conduct a "store closing" or similar theme sale at the Closing Stores in a manner consistent with (a) applicable laws and regulations and (b) with the Sale guidelines ("Sale Guidelines") annexed hereto as Exhibit 8.1 applicable to the Closing Stores, whether by in-store, media advertising, or other promotional materials.

In addition to any other rights granted to Agent hereunder, in conducting the Sale, Agent, in the exercise of its sole discretion, shall have the right:

(a) to establish Closing Stores' hours, which are consistent with the terms of applicable leases, mortgages or other occupancy agreements and local laws or regulations;

(b) to use without charge during the Sale Term (except where otherwise designated as an Expense pursuant to Section 4.1 hereof), all FF&E, Closing Store-level (and to the extent available, corporate), computer hardware and software, customer lists and customer email lists, existing supplies located at the Closing Stores, intangible assets (including Merchant's names, logos, trademarks and tax identification numbers), Closing Stores' keys, case keys, security codes, and safe and lock combinations required to gain access to and operate the Closing Stores, and any other assets of Merchant located at the Closing Stores (whether owned, leased, or licensed) consistent with applicable terms of leases or licenses. Agent shall exercise due care and return to the Merchant immediately at the end of the Sale all materials and supplies except materials or supplies expended;

(c) to use Merchant's central office facilities, POS systems, central administrative services and personnel to process payroll, perform MIS and provide other central office services necessary for the Sale to the extent that such services are normally provided by Merchant in house, at no cost to Agent (except where otherwise designated as an Expense pursuant to Section 4.1 hereof); provided, however, that in the event Agent requests Merchant to provide services other than those normally provided to the Closing Stores and relating to the sale of Merchandise by Merchant in the ordinary course of business and as expressly contemplated by this Agreement, Agent shall be responsible to reimburse Merchant for the actual incremental cost of such services incurred by Merchant as an Expense of the Sale hereunder;

(d) to establish Sale prices and implement advertising, signage (including exterior banners and signs), and promotional programs consistent with the sale theme described herein, and as otherwise provided in the Approval Order and the Sale Guidelines, as and where applicable (including, without limitation, by means of media advertising, and similar signage);

(e) once the Inventory Taking has been completed at both the transferring Closing Store and the receiving Closing Store, to transfer Merchandise between the Closing Stores; and to close the Closing Stores to the public for a period after the Sale Commencement Date for purposes of preparing the Closing Stores for the Sale.

8.2 Terms of Sales to Customers. Subject to Agent's compliance with applicable law, all sales of Merchandise will be "final sales" and "as is" and all advertisements and sales receipts will reflect the same. Agent shall not warrant the Merchandise in any manner, but will, to the extent legally permissible, pass on all manufacturers' warranties to customers. All sales will be made only for cash, nationally recognized bank credit cards, and, in Agent's discretion, personal checks, provided, however, if Agent determines to accept personal checks, Agent shall bear the risk of loss therefore.

8.3 Sales Taxes. During the Sale Term, all sales taxes or any other charges or taxes attributable to sales of Merchandise as indicated on Merchant's point of sale equipment payable to any taxing authority having jurisdiction (collectively, "Sales Taxes") shall be added to the sales price of Merchandise and collected on Merchant's behalf, and provided to Merchant on no less than a weekly basis for deposit in Merchant's existing accounts, trust accounts or other accounts, as designated by Merchant. Provided that Agent has collected all Sales Taxes during the Sale and remitted the proceeds thereof to Merchant, Merchant shall promptly pay all Sales Taxes and file all applicable reports and documents required by the applicable taxing authorities; provided, however, notwithstanding anything to the contrary herein, in the event that Agent uses any system other than Merchant's point of sale system to compute Sales Taxes relating to the Sale, Agent shall reimburse Merchant for any additional Sales Taxes, interest, fines, penalties, and the like payable to any taxing authority as the result of a Sales Tax audit conducted by or on behalf of such authority which discloses that the Sales Taxes collected by Agent and paid over to Merchant for any period during the Sale were less than those mandated by applicable law (any such additional Sales Taxes and other amounts are collectively referred to herein as "Additional Taxes and Penalties"). Merchant will be given access to the computation of gross receipts for verification of all such Sales Tax collections. Provided Agent performs its responsibilities in accordance with this Section 8.3, Merchant shall indemnify and hold harmless Agent from and against any and all costs, including, but not limited to, reasonable attorneys' fees, assessments, fines or penalties which Agent sustains or incurs as a result or consequence of the failure by Merchant to promptly pay such taxes to the proper taxing authorities and/or the failure by Merchant to promptly file with such taxing authorities all reports and other documents required, by applicable law, to be filed with or delivered to such taxing authorities. Agent shall add Sales Tax to the sales price of Additional Merchandise and Agent shall collect Sales taxes attributable to the sales of Additional Merchandise and deposit such amounts into existing accounts, trust accounts or other accounts designated by Agent, for remittance by Merchant, on behalf of Agent, to the appropriate taxing authority. If Agent fails to perform its responsibilities in accordance with this Section 8.3, and provided Merchant complies with its obligations in accordance with this Section 8.3, Agent shall indemnify and hold harmless Merchant from and against any and all costs including, but not limited to, reasonable legal fees, assessments, fines or penalties which Merchant sustains or incurs as a result or consequence of the failure by Agent to collect Sales Taxes, remit to Merchant, and/or, to the extent Agent is required hereunder to prepare reports and other documents, the failure by Agent to promptly deliver any and all reports and other documents required to enable Merchant to file any requisite returns with such taxing authorities.

8.4 Supplies. Agent shall have the right to use all existing supplies necessary to conduct the Sale (e.g., boxes, bags but not gift cards, gift certificates, rain checks, merchandise credits or the like) located at the Closing Stores at no charge to Agent. In the event that additional supplies are required in any of the Closing Stores during the Sale, the acquisition of such additional supplies shall be the responsibility of Agent as an Expense; provided, however, that Merchant shall assist Agent in obtaining supplies from Merchant's vendors at Merchant's cost.

8.5 Returns of Merchandise. Agent is not required to accept returns of merchandise sold by Merchant prior to the Sale Commencement Date and will not be reimbursed by Merchant for any returns accepted.

8.6. Gift Certificates. Agent shall not accept Merchant's gift certificates, gift cards and similar Merchandise credits issued by Merchant in any of the Closing Stores and in connection with the Sale

contemplated herein.

8.7. Sale Reconciliation.

(a) Weekly Reconciliation. On each Wednesday during the Sale Term, commencing on the second Wednesday after the Sale Commencement Date, Agent and Merchant shall cooperate to reconcile Expenses, Gross Rings, and such other Sale-related items as either Party shall reasonably request, in each case for the prior week or partial week (i.e. Sunday through Saturday), all pursuant to procedures agreed upon by Merchant and Agent.

(b) Final Reconciliation. (i) Within thirty (30) days after the Sale Termination Date, Agent and Merchant shall jointly prepare a final reconciliation of the Sale including, without limitation, a summary of Proceeds, taxes, Expenses, and any other accountings required hereunder (the "Final Reconciliation"). Within five (5) days of completion of the Final Reconciliation, any undisputed and unpaid Expenses shall be paid by Agent. In the absence of an order of the Court, no such disputed amount(s) shall be paid until the dispute has been resolved by agreement of the Parties or as determined in the manner prescribed in Section 8.7(b)(ii) hereof. During the Sale Term, and until all of Agent's obligations under this Agreement have been satisfied, Merchant, Agent and Monitor shall have reasonable access to Merchant's and Agent's records with respect to Proceeds, taxes, Expenses and other Sale-related items to review and audit such records.

(ii) In the event that there is any dispute with respect to either (x) the determination of the aggregate Cost Value of the Merchandise as reflected in the Final Inventory Report and/or (y) the Final Reconciliation, such dispute shall be promptly (and in no event later than the third business day following the request by either Merchant or Agent) submitted to the Monitor under the CCAA for resolution, failing which resolution to the Court. In the event of a dispute as to (x) or (y) above, Agent shall extend the Guaranty L/C and/or Expense L/C, as the case may be in accordance with the provisions of Sections 3.3[[c]] and 4.2[(c)] hereof. If Agent has for any reason not so extended the expiry date of the Guaranty L/C and/or the Expense L/C by the date which is five (5) business days prior to the then expiry date, Lender shall have the right to make a drawing under the Guaranty L/C and/or the Expense L/C, as appropriate, in an amount equal to the amounts Merchant asserts are then owing to Merchant to be held in trust pending the Final Reconciliation.

8.8 Force Majeure. If any casualty, act of terrorism or act of God prevents the conduct of business in the ordinary course at any Closing Store for a period in excess of one (1) day, such Closing Store and the Merchandise located at such Store shall, in Agent's discretion, be eliminated from the Sale and considered to be deleted from this Agreement as of the date of such event, and Agent and Merchant shall have no further rights or obligations hereunder with respect thereto; provided, however, that the proceeds of any insurance attributable to such Merchandise shall constitute Proceeds hereunder, and (ii) the Guaranteed Amount shall be reduced to account for any Merchandise eliminated from the Sale which is not the subject of insurance proceeds, and Merchant shall reimburse Agent for the amount the Guaranteed Amount is so reduced in connection with the next weekly reconciliation pursuant to Section 8.7, provided the removal of such Merchandise from that sale shall not affect the Merchandise Threshold.

Section 9                      Employee Matters.

9.1                      Merchant's Employees. Subject to the applicable provisions of the Approval Order and any other provisions in this Agreement relating to employees, Agent may use Merchant's employees in the conduct of the Sale to the extent Agent in its sole discretion deems expedient, and Agent may select and schedule the number and type of Merchant's employees required for the Sale. Agent shall identify any such employees to be used in connection with the Sale (each such employee, a "Retained Employee"). Retained Employees shall at all times remain employees of Merchant, and shall not be considered or deemed to be employees of Agent. Merchant and Agent agree that except to the extent that wages and benefits of Retained Employees constitute Expenses hereunder, nothing contained in this Agreement and none of Agent's actions taken in respect of the Sale shall be deemed to constitute an assumption by Agent of any of Merchant's obligations relating to any of Merchant's employees including, without limitation, Excluded Benefits, notice and severance claims and other and obligations, or any other amounts required to be paid by statute or law; nor shall Agent become liable under any collective bargaining or employment agreement or be deemed a joint or successor employer with respect to such employees. Merchant shall not, without Agent's prior written consent, raise the salary or wages or increase the benefits for, or pay any bonuses or make any other extraordinary payments to, any of the Retained Employees, except as otherwise provided in this Agreement.

9.2                      Termination of Employees by Merchant. Agent may in its discretion stop using any Retained Employee at any time during the Sale. In the event Agent determines to discontinue its use of any Retained Employee in connection with the conduct of the Sale, Agent will provide written notice to Merchant at least seven (7) days prior thereto, except for termination "for cause" (such as dishonesty, fraud or breach of employee duties), in which event no prior notice to Merchant shall be required, provided Agent shall notify Merchant as soon as practicable after such termination. From and after the date of this Agreement and until the Sale Termination Date, Merchant shall not transfer or dismiss employees of the Closing Stores except "for cause" without Agent's prior consent (which consent shall not be unreasonably withheld). Notwithstanding any other provision hereof, Agent will indemnify Merchant with respect to any claims by Retained Employees arising from Agent's treatment of such Retained Employees.

9.3                      Payroll Matters. During the Sale Term, Merchant shall process and pay the base payroll and all related payroll taxes, worker's compensation, employment and unemployment insurance, and benefits [including accruing vacation pay, but not arrears] for all Retained Employees, to be reimbursed by the Agent as per section 4.1 hereof, (except for Agent's employees and independent contractors hired by Agent) in accordance with its usual and customary procedures. At Agent's expense, Merchant shall also process payroll for additional personnel hired by Agent for the Sale. For sake of greater clarity, Merchant shall have no liability with respect to such additional personnel hired by the Agent for the Sale, whether as to salary, notice, pay in lieu of notice, separation pay, severance or any other claim (an "Additional Employee Claim") Merchant's obligation being limited to providing a payroll service, and Agent shall indemnify and hold Merchant harmless with respect to any Additional Employee Claim.

9.4                      Employee Retention Bonuses. Agent shall pay, at its sole discretion as an Expense, retention bonuses ("Retention Bonuses") (which bonuses shall be inclusive of payroll taxes but as to which no benefits shall be payable), up to \_\_\_\_\_ (%) of the aggregate base payroll, to certain Retained Employees who do not voluntarily leave employment and are not terminated "for cause". The amount of such Retention Bonuses, which will be payable within seven (7) days after the Sale Termination Date, shall be in amounts to be determined by Agent, in its discretion, and shall be processed through Merchant's payroll system. Agent shall not utilize the Retention Bonus as a mechanism to encourage Retained Employees to act in a manner adverse to Merchant.

Section 10                      Conditions Precedent

The willingness of Agent and Merchant to enter into the transactions contemplated under this Agreement are directly conditioned upon the satisfaction of the following conditions at the time or during the time periods indicated, unless specifically waived in writing by the applicable Party:

(a) All representations and warranties of Merchant and Agent hereunder shall be true and correct in all material respects and no Event of Default shall have occurred at and as of the date hereof and as of the Sale Commencement Date.

(b) Agent hereby acknowledges that prior to the execution of this Agreement, Merchant has provided Agent reasonable access to all pricing and cost files, computer hardware, software and data files, inter-Stores transfer logs, markdown schedules, invoices, style runs and all other documents relative to the price, mix and quantities of inventory located at the Closing Stores.

(c) Agent hereby acknowledges that prior to the execution of the Agreement, and on the date immediately preceding the Inventory Date, Agent has had and shall have had the opportunity to inspect the Closing Stores and the Merchandise.

(d) This Agreement, the Agency Documents and the Approval Order shall be in form and substance satisfactory to Lender.

Section 11                      Representations, Warranties and Covenants.

11.1                      Merchant's Representations, Warranties and Covenants. Merchant hereby represents, warrants, and covenants in favor of Agent as follows:

(a) Merchant (i) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation; (ii) has all requisite corporate power and authority to own, lease and operate its assets and properties and to carry on its business as presently conducted; and (iii) is and during the Sale Term will continue to be, duly authorized and qualified to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification, including all jurisdictions in which the Closing Stores are located, except, in each case, to the extent that the failure to be in good standing or so qualified could not reasonably be expected to have a material adverse effect on the ability of Merchant to execute and deliver this Agreement and perform fully its obligations hereunder.

(b) Merchant has the right, power and authority to execute and deliver this Agreement and each other document and agreement contemplated hereby (collectively, together with this Agreement, the "Agency Documents") and, subject to the Approval Order, to perform fully its obligations there under. Merchant has taken all necessary actions required to authorize the execution, delivery and performance by Merchant of the Agency Documents, and no further consent or approval on the part of Merchant is required for Merchant to enter into and deliver the Agency Documents, subject to the Approval Order, to perform its obligations there under, and to consummate the Sale. Each of the Agency Documents has been duly executed and delivered by Merchant and constitutes the legal, valid and binding obligation of Merchant enforceable in accordance with its terms. Other than the Approval Order, no court order or decree of any federal, provincial or local governmental authority or regulatory body is in effect that would prevent or materially impair, or is required for the Merchant's consummation of, the transactions contemplated by this Agreement, and no consent of any Third Party which has not been obtained is required therefore, other than as shall be obtained prior to the Sale Commencement Date, except for any such consent the failure of which to be obtained could not reasonably be expected to have a material adverse effect on the ability of Merchant to execute and deliver this Agreement and perform fully its obligations hereunder. No contract or other agreement to which the Merchant is a party or by which the

Merchant is otherwise bound will prevent or materially impair the consummation of the Sale and the other transactions contemplated by this Agreement

(c) Merchant (i) owns and will own at all times during the Sale Term, good and marketable title to all of the Merchandise and FF&E free and clear of all liens, claims and encumbrances of any nature and (ii) Merchant shall not create, incur, assume or suffer to exist any security interest, lien or other charge or encumbrance upon or with respect to any of the Merchandise or the Proceeds, in each case, except for such pre-existing liens and security interests as shall have been disclosed by Merchant to Agent and identified in Exhibit 11.1(c) hereof.

(d) Merchant has maintained its pricing files in the ordinary course of business, and prices charged to the public for goods (whether in-Store, by advertisement or otherwise) have been the same since September 17, 2011 in all material respects as set forth in such pricing files (including without limitation the Cost File) for the periods indicated therein (without consideration of any Excluded Pricing Adjustments), other than in the ordinary course of business. All pricing files and records relative to the Merchandise have been made available to Agent. All pricing files and records are true and accurate in all material respects as to the actual cost to Merchant for purchasing the goods referred to therein and as to the selling price to the public for such goods as of the dates and for the periods indicated therein.

(e) Since September 17, 2011, Merchant has ticketed or marked items of inventory received at the Closing Stores prior to the Sale Commencement Date in a manner consistent with similar Merchandise located at the Closing Stores and in accordance with Merchant's past practices and policies relative to pricing and marking inventory. No such Merchandise has been ticketed or marketed in contemplation of the Sale.

(f) To the best of Merchant's knowledge, all Merchandise is in compliance with all applicable federal, provincial or local product safety laws, rules and standards. Merchant shall provide Agent with its historic policies and practices, if any, regarding product recalls prior to the Sale Commencement Date.

(g) Subject to the terms of this Agreement, Agent shall have the right to the unencumbered use and occupancy of, and peaceful and quiet possession of, each of the Closing Stores, and the assets currently located at the Closing Stores and the services at the Closing Stores.

(h) Merchant has paid all self-insured or Merchant funded employee benefit programs for Closing Stores' employees, including health and medical benefits and insurance and all proper claims made or to be made in accordance with such programs.

(i) Since September 17, 2011, Merchant has not marked up or raised the price of any items of Merchandise, or removed or altered any tickets or any indicia of clearance merchandise. No such Merchandise has been ticketed or marketed in contemplation of the Sale. Merchant has not and shall not purchase or transfer to or from the Closing Stores any merchandise or goods outside the ordinary course in anticipation of the Sale or of the Inventory Taking.

(j) Other than the proceeding under the CCAA, no action, arbitration, suit, notice, or legal, administrative or other proceeding before any court or governmental body has been instituted by or against the Merchant, or has been settled or resolved, or to Merchant's knowledge, is threatened against or affects Merchant, relative to Merchant's business or properties, or which questions the validity of this Agreement, or that if adversely determined, would adversely affect the conduct of the Sale.

(k) Merchant has not and shall not throughout the Sale Term take any action the result of which is to materially increase the cost of operating the Sale, including, without limitation, increasing salaries or other amounts payable to employees.

(m) Merchant is not a party to any collective bargaining agreements with its employees; to the best of Merchant's knowledge, no labor unions represent Merchant's employees at the Closing Stores; and to the best of Merchant's knowledge, there are currently no strikes, work stoppages or other labor disturbances affecting the Closing Stores or Merchant's central office facilities.

11.2 Agent's Representations, Warranties and Covenants. Agent hereby represents, warrants and covenants in favor of Merchant as follows:

(a) Agent: (i) is a corporation, partnership, or limited liability company, as the case may be, duly and validly existing and in good standing under the laws of the province of its organization; (ii) has all requisite power and authority to carry on its business as presently conducted and to consummate the transactions contemplated hereby; and (iii) is and during the Sale Term will continue to be duly authorized and qualified as a foreign company to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification.

(b) Agent has the right, power and authority to execute and deliver each of the Agency Documents to which it is a party and to perform fully its obligations there under. Agent has taken all necessary actions required to authorize the execution, delivery, and performance by Agent of the Agency Documents, and no further consent or approval is required on the part of Agent for Agent to enter into and deliver the Agency Documents, to perform its obligations there under, and to consummate the Sale. Each of the Agency Documents has been duly executed and delivered by the Agent and, constitutes the legal, valid and binding obligation of Agent enforceable in accordance with its terms. No court order or decree of any federal, provincial or local governmental authority or regulatory body is in effect that would prevent or impair or is required for Agent's consummation of the transactions contemplated by this Agreement, and no consent of any Third Party which has not been obtained is required therefore other than as provided herein. No contract or other agreement to which Agent is a party or by which Agent is otherwise bound will prevent or impair the consummation of the transactions contemplated by this Agreement.

(c) No action, arbitration, suit, notice, or legal administrative or other proceeding before any court or governmental body has been instituted by or against Agent, or has been settled or resolved, or to Agent's knowledge, has been threatened against or affects Agent, which questions the validity of this Agreement or any action taken or to be taken by Agent in connection with this Agreement, or which if adversely determined, would have a material adverse effect upon Agent's ability to perform its obligations under this Agreement.

## Section 12      Insurance

12.1 Merchant's Liability Insurance. Merchant shall continue, at its expense, until the Sale Termination Date, in such amounts as it currently has in effect, all of its liability insurance policies including, but not limited to, products liability, comprehensive public liability, auto liability and umbrella liability insurance, covering injuries to persons and property in, or in connection with Merchant's operation of the Closing Stores, and shall cause Agent to be named an additional named insured with respect to all such policies. Prior to the Sale Commencement Date, Merchant shall, on a best efforts basis, deliver to Agent certificates evidencing such insurance setting forth the duration thereof and naming Agent as an additional named insured, in form reasonably satisfactory to Agent. All such policies shall, on a best efforts basis, require at least thirty (30) days prior notice to Agent of cancellation, non-renewal or material change. In the event of a claim under any such policies Merchant shall be responsible for the payment of all deductibles, retentions or self-insured amounts to

the extent said claim arises from or relates to the willful acts or omissions of Merchant or its employees, agents (other than Agent's employees), or independent contractors (other than Agent and independent contractors hired by Agent in conjunction with the Sale).

12.2 Merchant's Casualty Insurance. Merchant shall continue, at its expense, until the Sale Termination Date, in such amounts as it currently has in effect, fire, flood, theft and extended coverage casualty insurance covering the Merchandise in a total amount equal to no less than the Cost Value thereof, and shall cause Agent to be named an additional named insured with respect to all such policies. In the event of a loss to the Merchandise on or after the date of this Agreement, the proceeds of such insurance attributable to the Merchandise (including any deductible to be paid by Merchant) shall constitute Proceeds. Prior to the Sale Commencement Date, Merchant shall, on a best efforts basis, deliver to Agent certificates evidencing such insurance setting forth the duration thereof and naming Agent as additional named insured, in form and substance reasonably satisfactory to Agent. All such policies shall, on a best efforts basis, require at least thirty (30) days prior notice to Agent of cancellation, non-renewal or material change. Merchant shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date, without Agent's prior written consent.

12.3 Agent's Insurance. Agent shall maintain at Agent's cost and expense throughout the Sale Term, in such amounts as it currently has in effect, comprehensive public liability and automobile liability insurance policies covering injuries to persons and property in or in connection with Agent's agency at the Closing Stores and shall cause Merchant to be named an additional insured with respect to such policies. Prior to the Sale Commencement Date, Agent shall, on a best efforts basis, deliver to Merchant certificates evidencing such insurance policies, setting forth the duration thereof and naming Merchant as an additional insured, in form and substance reasonable satisfactory to Merchant. All such policies shall, on a best efforts basis, require at least thirty (30) days prior notice to Agent of cancellation, non-renewal or material change. In the event of a claim under such policies Agent shall be responsible for the payment of all deductibles, retentions or self-insured amounts there under, to the extent said claim arises from or relates to the alleged acts or omissions of Agent or Agent's employees, agents or independent contractors).

12.4 Worker's Compensation Insurance. Merchant shall continue until the Sale Termination Date, in such amounts as it has in effect worker's compensation insurance (including employer liability insurance) covering all Retained Employees, at least in compliance with all statutory requirements. Prior to the Sale Commencement Date, Merchant shall deliver to Agent a certificate of its insurance broker or carrier evidencing such insurance.

12.5 Risk of Loss. Without limiting any other provision of this Agreement, Merchant acknowledges that Agent is conducting the Sale on behalf of Merchant solely in the capacity of an agent, and that in such capacity (i) Agent shall not be deemed to be in possession or control of the Closing Stores or the assets located therein or associated therewith, or of Merchant's employees located at the Closing Stores, and (ii) except as expressly provided in this Agreement, Agent does not assume any of Merchant's obligations or liabilities with respect to any of the foregoing. Agent shall not be deemed to be a successor employer. Merchant and Agent agree that, subject to the terms of this Agreement, Merchant shall bear all responsibility for liability claims of customers, employees and other persons arising from events occurring at the Closing Stores during and after the Sale Term, except to the extent any such claim arises directly from the acts or omissions of Agent, or its supervisors, agents, independent contractors, or employees located at the Closing Stores (an "Agent Claim"). In the event of any liability claim other than an Agent Claim, Merchant shall administer such claim and shall present such claim to Merchant's liability insurance carrier in accordance with Merchant's policies and procedures existing immediately prior to the Sale Commencement Date, and shall provide a copy of the initial documentation relating to such claim to Agent at the address listed in this Agreement. To the extent that Merchant and Agent agree that a claim constitutes an Agent Claim, Agent shall administer such claim and shall present such claim to its liability insurance carrier, and shall provide copies of the initial documentation relating

to such claim to Merchant. In the event that Merchant and Agent cannot agree whether a claim constitutes an Agent Claim, each Party shall present the claim to its own liability insurance carrier, and a copy of the initial claim documentation shall be delivered to the other Party to the foregoing address.

Section 13                    Indemnification

13.1                    Merchant Indemnification. Merchant shall indemnify and hold Agent and its officers, directors, employees, agents and independent contractors (collectively "Agent Indemnified Parties") harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, asserted directly or indirectly against Agent resulting from, or related to (including acts or omissions of persons or entities affiliated with or acting on behalf of the Merchant):

- (a)                    Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained in any Agency Document;
- (b)                    subject to Agent's performance and compliance with its obligations pursuant to Sections 4.1(b), 4.1(c), and 9 hereof, any failure of Merchant to pay to its employees any wages, salaries or benefits due to such employees during the Sale Term or other claims asserted against Agent by Merchant's employees resulting from Merchant's (and not Agent's) treatment of its employees;
- (c)                    subject to Agent's compliance with its obligations under Section 8.3 hereof, any failure by Merchant to pay any Sales Taxes to the proper taxing authorities or to properly file with any taxing authorities any reports or documents required by applicable law to be filed in respect thereof; and
- (d)                    the gross negligence or willful misconduct of Merchant or any of its officers, directors, employees, agents (other than Agent) or representatives.

13.2                    Agent Indemnification. Agent shall indemnify and hold Merchant and its officers, directors, employees, agents and representatives harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, asserted directly or indirectly against, Merchant resulting from, or related to (including acts or omissions of persons or entities affiliated with or acting on behalf of the Agent):

- (a)                    Agent's material breach of or failure to comply with any public health and safety laws or any of its agreements, covenants, representations or warranties contained in any Agency Document;
- (b)                    any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortuous or otherwise actionable treatment of any employees or agents of Merchant by Agent or any of its employees, agents, independent contractors or other officers, directors or representatives of Agent; any claims by any party engaged by Agent as an employee or independent contractor arising out of such engagement;
- (d)                    any tax assessments ; in the event that Agent uses any system other than Merchant's point of sale system to compute Sales Taxes relating to the Sale, any Additional Taxes and Penalties; and
- (e)                    the gross negligence or willful misconduct of Agent or any of its officers, directors, employees, agents or representatives.

Section 14                    Defaults.

The following shall constitute "Events of Default" hereunder:

(a) Merchant's or Agent's failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party; or

(b) Any representation or warranty made by Merchant or Agent proves untrue in any material respect as of the date made or at any time and throughout the Sale Term; or

(c) Subject to Section 8.8 hereof, the Sale is terminated or materially interrupted or impaired at any Closing Store for any reason other than (i) an Event of Default by Agent, or (ii) any other material breach or action by Agent not authorized hereunder.

In the event of an Event of Default, the non-defaulting Party in the case of a Default under subsection (a) or (b) or Agent in the case of subsection (c) may, in its discretion, elect to terminate this Agreement upon seven (7) business days' written notice to the other Party and pursue any and all rights and remedies and damages resulting from such default hereunder in the event such cure is not affected by the defaulting Party.

#### Section 15            Fixtures.

With respect to furniture, fixtures and equipment owned by Merchant and located at the Closing Stores ("FF&E"), Agent shall sell the FF&E in any such location; provided, however, Merchant, with the consent of the Lenders, shall have the right to designate certain FF&E located at any of the locations that Merchant does not elect to have Agent sell. Agent shall be entitled to receive a commission equal to \_\_\_\_\_ (%) of the gross proceeds from the sale of such FF&E (net only of sales taxes), and Merchant shall reimburse Agent for its reasonable and documented FF&E selling expenses pursuant to a mutually agreed upon budget; provided, however, Agent and Merchant may agree, in lieu of such commission, upon a lump sum guarantee with respect to the FF&E or outright purchase thereof. In either event, as of the Sale Termination Date, Agent may abandon in place in a neat and orderly manner any unsold FF&E at the respective locations.

#### Section 16            Miscellaneous

16.1            Notices. All notices and communications provided for pursuant to this Agreement shall be in writing, and sent by hand, by facsimile, or a recognized overnight delivery service, as follows: **[NTD: insert notice particulars.]**

16.2            Governing Law; Consent to Jurisdiction. This Agreement shall be governed and construed in accordance with the law of the Province of Quebec and the laws of Canada applicable therein, without regard to conflicts of laws principles thereof and all disputes relating directly or indirectly to this agreement shall be resolved by the Court and by execution of this Agreement each Party hereby irrevocably accepts and submits to the jurisdiction of the Court with respect to any such action or proceeding and to service of process by certified mail, return receipt requested to the address listed above for each Party.

16.3            Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect thereto.

16.4 Amendments. This Agreement may not be modified except in a written instrument executed by each of the parties hereto.

16.5 No Waiver. No consent or waiver by any Party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligation of such Party. Failure on the part of any Party to complain of any act or failure to act by the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder.

16.6 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Agent and Merchant, including any bankruptcy trustee or receiver thereof. Agent shall not be permitted to assign its obligations under this Agreement.

16.7 Execution in Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one agreement. This Agreement may be executed by facsimile or other electronic transmission, and such facsimile or electronic signature shall be treated as an original signature hereunder.

16.8 Section Headings. The headings of sections of this Agreement are inserted for convenience only and shall not be considered for the purpose of determining the meaning or legal effect of any provisions hereof.

16.9 Survival. All representations, warranties, covenants and agreements made herein, by the parties hereto, shall be continuing, shall be considered to have been relied upon by the parties and shall survive the execution, delivery and performance of this Agreement.

16.10 Termination. This Agreement shall remain in full force and effect until the first to occur of: (i) receipt by Merchant of written notice from Agent that any of the conditions specified in Section 10 hereof have not been satisfied within 5 days of the anticipated Sale Commencement Date set forth in Section 6.1; or (iii) the expiration of the Sale Term and completion and certification by Merchant and Agent of the Final Reconciliation pursuant to Section 8.7(b) above. Notwithstanding the foregoing, (a) the representations, warranties and indemnities of Merchant and Agent contained herein and the provisions of Section 11 above, and (b) any claim arising from a breach of this Agreement prior to its termination, shall survive the termination of this Agreement pursuant to this Section 16.10.

16.11 16.12 Obligations. Agent may utilize the services of subcontractors and or licensees in connection with the performance of its obligations hereunder.

16.13 The parties have specifically required that the present agreement and all related documents be drafted and executed in English. Les parties aux présentes ont formellement demandé à ce que la présente convention et tous les documents auxquels cell-ci réfère soient rédigés et signés en langue anglaise.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURES FOLLOW]

[Agent]

Per: \_\_\_\_\_  
Name:  
Title:

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

Per: \_\_\_\_\_  
Name:  
Title:

# Appendix F

(Filed under seal with the Court)

# Appendix G

(Filed under seal with the Court)

# Appendix H

(Filed under seal with the Court)

# Appendix I

(Filed under seal with the Court)

# Appendix J

(Filed under seal with the Court)