

**SUPERIOR COURT**  
(Commercial Division)

**CANADA**  
**PROVINCE OF QUEBEC**  
**DISTRICT OF MONTREAL**

**No:** 500-11-041238-110

**DATE:** February 27, 2012

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**PRESENT: THE HONOURABLE JEAN-YVES LALONDE, J.S.C.**

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

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

Petitioner

- and -

**RSM RICHTER INC.**

Monitor

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**ORDER**

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**ON READING** the Petitioner's motion for sanction of an amended plan of compromise and arrangement and for extension of the stay period pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the "CCAA") and the exhibits, and the affidavit of Robert Harritt filed in support thereof (the "**Motion**");

**CONSIDERING** the terms of the Initial Order rendered in these proceedings on August 30, 2011 (the "**Filing Date**") with respect to the Petitioner, pursuant to the CCAA;

**CONSIDERING** the order rendered on September 28, 2011 extending the Stay Period, as such term is defined in the Initial Order, until November 4, 2011, and granting other relief (the "**First Renewal Order**");

**CONSIDERING** the order rendered on November 4, 2011 extending the Stay Period, as such term is defined in the Initial Order, until January 18, 2012, and granting other relief (the "**Second Renewal Order**");

**CONSIDERING** the order rendered on January 18, 2012 extending the Stay Period, as such term is defined in the Initial Order, until January 20, 2012 (the “**Third Renewal Order**”);

**CONSIDERING** the order rendered on January 20, 2012 extending the Stay Period, as such term is defined in the Initial Order, until March 14, 2012 (the “**Fourth Renewal Order**”);

**CONSIDERING** the order rendered on November 28, 2011 setting the claims and meetings procedure (the “**Claims and Meeting Procedure Order**”);

**CONSIDERING** the representations of the parties;

**ON READING** the Report of the Monitor for the purpose of the sanction of the amended plan of compromise and arrangement filed in support of the Motion (the “**Monitor’s Report**”);

**GIVEN** the provisions of the CCAA;

**WHEREFORE, THE COURT:**

- 1       **GRANTS** the Motion;
- 2       **ORDERS** that capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the amended plan of compromise or arrangement, dated February 15, 2012, pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) with respect to Hart Stores Inc. / Magasins Hart Inc. (the “**Petitioner**”), filed by the Petitioner and which is attached hereto as Schedule "A" (as may be further amended, varied or supplemented in accordance with its terms, the “**Plan**”).
- 3       **GRANTS** the motion of the Petitioner to sanction the Plan (the “**Motion**”).

**SERVICE AND MEETING**

- 4       **ORDERS AND DECLARES** that there has been good and sufficient service and notice of both the Plan and the Notice of Meeting and Sanction Hearing (as defined in the Order of this Court made on November 28, 2011 (the “**Claims and Meeting Procedure Order**”) and that the Creditors’ Meeting was duly called, held and conducted in accordance with the CCAA and the Orders of this Court in the CCAA Proceedings, including without limitation the Claims and Meeting Procedure Order.
- 5       **DECLARES** valid and sufficient the service and the notices of presentation of the Motion, and **EXEMPTS** the Petitioner from service or providing any notice of presentation of the Motion other than the service and notice already given.

## **SANCTION OF PLAN**

**6 ORDERS AND DECLARES that:**

- a) the Plan has been approved by the Required Majorities of Affected Creditors in conformity with the CCAA;
- b) the Petitioner has complied with the provisions of the CCAA and the Orders of this Honourable Court in the CCAA Proceedings in all respects;
- c) this Honourable Court is satisfied that the Petitioner has neither done nor purported to do anything that is not authorized by the CCAA; and
- d) the Plan and the transactions contemplated thereby are fair and reasonable and in the best interest of the Petitioner, the Affected Creditors and all other Persons stipulated in the Plan.

**7 ORDERS AND DECLARES** that the Plan, including the compromises and arrangements set out therein, is hereby sanctioned and approved pursuant to section 6 of the CCAA, and as at the Plan Implementation Date, will be effective and enure to the benefit of, and be binding upon the Petitioner, the Affected Creditors and all other Persons stipulated in the Plan or the order to be rendered on this Motion.

## **PLAN IMPLEMENTATION**

**8 ORDERS** that the Petitioner and the Monitor be and are hereby authorized and directed to perform their functions and fulfill their obligations under the Plan, the Claims and Meeting Procedure Order and this Order to facilitate the implementation of the Plan.

**9 ORDERS** that, upon the filing with this Court of the Monitor's Certificate in accordance with Section 8.3 of the Plan, the Plan Implementation Date shall occur and all of the conditions precedent (the "**Conditions Precedent**") to the implementation of the Plan set out in Section 8.1 of the Plan shall have been satisfied and be deemed to be satisfied or, where permissible, waived, and the Plan and all associated steps, transactions, compromises, and arrangements shall be implemented in accordance with the terms of the Plan.

**10 ORDERS AND DECLARES** that, upon the issuance of the Certificate of Performance, the settlement of the Affected Claims shall become final and binding upon the Petitioner, the Affected Creditors and all other relevant Persons referred to in, or affected by, the Plan, and their respective heirs, administrators, executors, legal personal representatives, successors and assigns, in accordance with the terms of the Plan.

- 11 **ORDERS AND DECLARES** that the Distribution Amount shall be held by the Monitor and distributed by the Monitor on behalf of the Petitioner in accordance with the Plan, having regard only to the Proven Claims that have been properly asserted by the Claims Bar Date or Restructuring Claims Bar Date, as the case may be, which for sake of greater clarity shall include the Late Claims referred to in paragraph 28 of this Order, and this Order, subject to further order of this Court, in accordance with the Claims and Meeting Procedure Order.
- 12 **ORDERS AND DECLARES** that all distributions and payments by or at the direction of the Monitor, in each case on behalf of the Petitioner, under the Plan are for the account of the Petitioner and the fulfillment of its obligations under the Plan.
- 13 **ORDERS** that the Petitioner is authorized and empowered to execute, deliver and perform any credit agreement, instruments of indebtedness, security documents and any related documents, as may be required in connection with the Replacement Loan.

#### **RELEASES AND DISCHARGES**

- 14 **ORDERS AND DECLARES** that the compromises and releases set out in Article 6.2 of the Plan are approved and shall be binding and effective as of the Plan Implementation Date.
- 15 **ORDERS AND DECLARES** that, pursuant to and in accordance with Sections 6.1 and 8.5 of the Plan, effective as of the issuance of the Certificate of Performance, all Affected Claims of any nature against the Petitioner shall be forever settled, compromised, discharged and released, the ability of any Person to proceed against the Petitioner in respect of or relating to any Affected Claims shall be forever discharged and restrained, and all proceedings with respect to, in connection with or relating to such Affected Claims are hereby permanently stayed, subject only to the right of Affected Creditors to receive the distributions pursuant to the Plan in respect of their Affected Claims.
- 16 **ORDERS AND DECLARES** that the commencing, taking, applying for or issuing or continuing any and all steps or proceedings, including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any Released Party in respect of any and all Claims and any matter which is released pursuant to Section 6.2 of the Plan are hereby permanently stayed.
- 17 **ORDERS AND DECLARES** that all Proven Claims determined in accordance with the Claims and Meeting Procedure Order are final and binding on the Petitioner and all Affected Creditors.



- 18 **ORDERS AND DECLARES** that any Affected Claims for which a Proof of Claim had not been filed by the Claims Bar Date or the Restructuring Claims Bar Date, as the case may be, shall be and are hereby forever barred and extinguished.
- 19 **ORDERS AND DECLARES** that the DIP Lender Charge shall be released and discharged as of the Plan Implementation Date upon receipt of an acknowledgment by the DIP Lender of payment in full of the DIP Claim.
- 20 **ORDERS AND DECLARES** that the Administration Charge, as such term is defined in the Initial Order, and the Post-Filing Suppliers Charge, as such term is defined in the First Renewal Order, are hereby terminated and discharged against the property of the Petitioner as of the Plan Implementation Date.

#### THE MONITOR

- 21 **ORDERS** that, effective upon the Plan Implementation Date, any and all claims against the Monitor in connection with the performance of its duties as Monitor up to the Plan Implementation Date shall be and are hereby stayed, extinguished and forever barred and the Monitor shall have no liability in respect thereof except for any liability arising out of gross negligence or wilful misconduct on the part of the Monitor, provided however that this paragraph shall not release the Monitor of its remaining duties pursuant to the Plan and this Order (the "**Remaining Duties**").
- 22 **ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court on notice to the Monitor ~~and upon further order securing, as security for costs, the solicitor and his own client costs of the Monitor in connection with the proposed action or proceeding.~~
- 23 **ORDERS** that upon the completion of its Remaining Duties, including, without limitation, the Monitor's duties in respect of the Claims and Meeting Procedure Order and distributions made by or at the direction of the Monitor in accordance with the Plan, the Monitor shall file with the Court the Monitor's Certificate of Performance stating that all of its Remaining Duties have been completed and that the Monitor is unaware of any claims with respect to its performance of such Remaining Duties, and upon the filing of such certificate, RSM Richter Inc. shall be deemed to be discharged from its duties as Monitor.

#### EXTENSION OF STAY PERIOD

- 24 **ORDERS** that, from and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of the Petitioner then existing or previously committed by the Petitioner or caused by the Petitioner, directly or indirectly, or non-compliance with any covenant, positive or negative pledge, warranty, representation, term, provision,

condition or obligation, express or implied, in any contract, credit document, agreement for sale, lease or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and the Petitioner arising from the filing by the Petitioner under the CCAA or the transactions contemplated by the Plan, and any and all notices of default and demands for payment under any instrument, including any guarantee arising from such default, shall be deemed to have been rescinded.

25 **DECLARES** that, subject to the performance by the Petitioner of its obligations under the Plan, all contracts, leases, agreements and other arrangements to which the Petitioner is a party and that have not been terminated or repudiated pursuant to the Initial Order will be and remain in full force and effect, unamended, as at the Plan Implementation Date, and no Person who is a party to any such contract, lease, agreement or other arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of dilution or other remedy) or make any demand under or in respect of any such contract, lease, agreement or other arrangement and no automatic termination will have any validity or effect, by reason of:

- a) any event that occurred on or prior to the Plan Implementation Date and is not continuing that would have entitled such Person to enforce those rights or remedies;
- b) the insolvency of the Petitioner or the fact that the Petitioner sought or obtained relief under the CCAA; or
- c) any compromises or arrangements effected pursuant to the Plan or any action taken or transaction effected pursuant to the Plan.

26 **EXTENDS** the Stay Period in respect of Petitioner until the Plan Implementation Date.

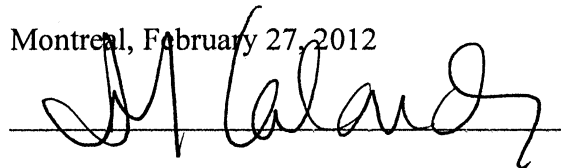
27 **ORDERS** that all Orders made in the CCAA Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by, or inconsistent with, this Order, the Claims and Meeting Procedure Order, or any further Order of this Court.

#### **GENERAL**

28 **CONFIRMS** the authority of the Monitor to accept the Late Claims, listed in Schedule "B" hereto, despite their having been received subsequent to the Claims Bar Date, and that paragraph 18 of this Order shall not apply to such Late Claims.

- 29 **DECLARES** that the Petitioner and the Monitor may apply to this Court for any directions or determinations required to resolve any matter or dispute relating to, or to the subject matter of or rights and benefits under, the Plan or this Order.
- 30 **ORDERS** that notwithstanding: (a) the pendency of the CCAA Proceedings and the declarations of insolvency made therein; (b) the pendency of any applications for bankruptcy orders hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") in respect of the Petitioner and any bankruptcy orders issued in respect of the Petitioner; or (c) the provisions of any federal or provincial statute, including section 36.1 of the CCAA and sections 95 to 101 of the BIA, that none of the steps, releases or compromises contemplated to be performed or effected pursuant to the Plan, shall: (i) constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions under any applicable law, federal, provincial or otherwise; or (ii) constitute conduct meriting an oppression remedy.
- 31 **ORDERS** <sup>REQUESTS</sup> the aid and recognition of any court of any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to section 17 of the CCAA), and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada, the legislature of any province or otherwise and any court or any judicial, regulatory or administrative body of the United States of America and the states or other subdivisions of the United States of America or any other nation or state to act in aid of and to be complementary to this court in carrying out the terms of this order where required.
- 32 **ORDERS** provisional execution, notwithstanding appeal.
- 33 **THE WHOLE** without costs, save in case of contestation.

Montreal, February 27, 2012



Jean-Yves Lalonde, J.S.C.

**COPIE CONFORME**



**Greffier adjoint**

**SCHEDULE « A »**

Amended Plan of Compromise and Arrangement

(see attached document)

**Court File No. 500-11-041238-110**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT  
OF  
HART STORES INC. / MAGASINS HART INC.**

**AMENDED PLAN OF COMPROMISE AND ARRANGEMENT UNDER THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36,**

**February 15, 2012**

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## AMENDED PLAN OF COMPROMISE AND ARRANGEMENT

Amended Plan of Compromise and Arrangement of Hart Stores Inc. / Magasins Hart Inc. pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

In this Plan, unless otherwise stated or the context otherwise requires:

**"Administration Charge"** has the meaning ascribed to such term in the Initial Order;

**"Administration Claim"** means a Claim secured by the Administration Charge;

**"Affected Claim"** means any Claim other than an Unaffected Claim;

**"Affected Creditor"** means a Creditor holding an Affected Claim, but only to the extent of its Affected Claim;

**"Affected Creditors Class"** means the class of Affected Creditors;

**"Business Day"** means a day, other than a Saturday, a Sunday, or a non-judicial day (as defined in article 6 of the *Code of Civil Procedure*, R.S.Q., c. C-25, as amended);

**"Capped Rent Period"** means, with respect to any lease or offer to lease for real or immovable property entered into with, or assumed by, the Petitioner containing provisions for a Capped Rent Rebate, the period in reference to which the Capped Rent Rebate is calculated;

**"Capped Rent Rebate"** means the amount of the credit to which the Petitioner is entitled against future amounts to be paid, or a reimbursement of amounts already paid to the landlord, whether as rent or otherwise, under a lease or offer to lease for real or immovable property, when the Petitioner's sales effected on the leased property did not exceed a certain threshold during the Capped Rent Period, calculated in accordance with the terms of such lease. In the case of a Disclaimed Lease, where the disclaimer became effective prior to the term of the Capped Rent Period, the Capped Rent Rebate will be prorated for that portion of the Capped Rent Period between the beginning of such period and the date on which the disclaimer or termination became effective;

**"CCAA"** means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

**"CCAA Charge(s)"** means the Administration Charge, the DIP Lender Charge, the Insurance Charge and the Post-Filing Suppliers Charge;



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

**“Certificate of Performance”** has the meaning ascribed to it in Section 8.4;

**“Chair”** means the Monitor, or the person designated by the Monitor to preside as chairperson at the Creditors’ Meeting;

**“Claim”** means any right of any Person against the Petitioner in connection with any indebtedness, liability or obligation of any kind of the Petitioner owed to such person and any interest, or penalties accrued thereon or costs payable in respect thereof, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts existing, or transactions which occurred, prior to the Determination Date, or which would have been claims provable in bankruptcy had the Petitioner become bankrupt on the Determination Date, and, without limitation, including any Restructuring Claim, but excluding any Unaffected Claim;

**“Claims Bar Date”** means the bar date of January 31, 2012 for the filing of Claims for voting or distribution purposes, as set out in the Claims Procedure Order;

**“Claims Procedure Order”** means the Claims and Meetings Procedure Order issued by the Court on November 28, 2011, establishing, among other things, procedures for proving Claims and the calling of the Creditors’ Meeting, as amended or supplemented from time to time by further Order(s) of the Court;

**“Court”** means the Quebec Superior Court of Quebec (Commercial Division);

**“Creditor”** means any Person having a Claim and may, where the context requires, include the assignee of a Claim or a trustee, interim receiver, receiver, receiver and manager, or other Person acting on behalf of such Person and includes a Known Creditor. A Creditor shall not include an Excluded Creditor in respect of that Person’s claim resulting from an Excluded Claim;

**“Creditors’ Meeting”** means the meeting of Affected Creditors to be convened for the purposes of voting on the Plan, and any adjournment thereof;

**“Crown Claims”** any claim of her Majesty the Queen in right of Canada or any province and described in Section 6(3) of the CCAA;

**“D&O Claim”** means any claim of a Director for indemnification, pursuant to paragraph 33 of the Initial Order;

**“Determination Date”** means August 30, 2011;

**"DIP Claim"** means any and all obligations of the Petitioner to the DIP Lender pursuant to the DIP Facility Documents or the Initial Order or relating to any outstanding letters of credit as of the Plan Implementation Date;

**"DIP Facility Documents"** means the DIP Commitment Letter dated as of August 30, 2011 by and among the Petitioner and the DIP Lender (as amended, modified, restated and / or supplemented from time to time) together with any related collateral, loan or security documents executed in connection therewith or which relate thereto;

**"DIP Lender"** means Wells Fargo Capital Finance Corporation Canada;

**"DIP Lender Charge"** shall have the meaning ascribed to such term in the Initial Order;

**"Director"** has the meaning given in the Initial Order;

**"Disallowed Claim"** means a Claim, or that portion thereof which has been disallowed, denied, dismissed or overruled by the Monitor pursuant to the Claims Procedure Order or an order of the Court in respect of which all appeal periods, if any, have expired;

**"Disclaimed Lease"** means a lease for real or immovable property which was disclaimed or resiliated by the Petitioner pursuant to Section 32 of the CCAA;

**"Disputed Claim"** means a Claim or that portion thereof that is subject to a Notice of Revision or Disallowance and, in either case, has not become a Proven Claim or a Disallowed Claim;

**"Distribution Amount"** means the amount of \$ 6,000,000 to be remitted by the Petitioner to the Monitor as provided for under Section 2.4;

**"Electing Creditor Claim"** means all Claims in respect of which the Creditors have elected (as set forth in Section 2.4 hereof) to receive the lesser of \$ 1,000 or the amount of their Claims or to reduce their respective Claims to \$ 1,000;

**"Electing Creditors"** means Creditors having an Electing Creditor Claim and **"Electing Creditor"** means any of them;

**"Equity Claim"** means any and all Claims arising from or in connection with a Person's interest in the issued and outstanding equity in the capital of the Petitioner, including with respect to any issued and outstanding common or preferred shares of the Petitioner of every class and series, and any and all warrants, options and agreements to purchase any of the foregoing;

**"Excluded Claim"** means any right of any Person against the Petitioner in connection with any indebtedness, liability or obligation of any kind which arose with respect to transactions which occurred after the Determination Date and any interest thereon, including the DIP Claim and any obligation of the Petitioner toward creditors who have supplied or shall supply services, utilities, goods or materials or who have or shall have

advanced funds to the Petitioner after the Determination Date, but only to the extent of their claims in respect of the supply of such services, utilities, goods, materials or funds after the Determination Date and to the extent that such claims are not otherwise affected by the Plan. For greater certainty, a Restructuring Claim is not an Excluded Claim;

**“Excluded Creditor”** means a Person having a Claim in respect of an Excluded Claim but only in respect of such Excluded Claim and to the extent that the Plan does not otherwise affect such Claim;

**“Final Instalment Date”** means the date referred to in Section 2.4b)(vii), as it may be extended pursuant to Section 2.4c);

**“First Instalment Date”** means the date referred to in Section 2.4b)(i), as it may be extended pursuant to Section 2.4c);

**“Gift Card Claim”** has the meaning ascribed to it in Section 2.3a)(iv) hereof;

**“Governmental Authority”** means any (i) multinational, national, provincial, state, regional, municipal, local or other government, governmental or public department, ministry, central bank, court, tribunal, arbitral body, commission, board, official, minister, bureau or agency, domestic or foreign, (ii) subdivision, agent, commission, board or authority of any of the foregoing; or (iii) quasi-governmental or private body, including any tribunal, commission, regulatory agency or self regulatory organization, exercising any regulatory, expropriation or taxing authority under, or for the account of, any of the foregoing;

**“Initial Order”** means the order of the Court made on August 30, 2011, as renewed and amended from time to time, under the CCAA;

**“Insurance Charge”** has the meaning given in the Order rendered September 28, 2011;

**“Insurance Claim”** means a Claim secured by the Insurance Charge;

**“Laws”** means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, injunctions, orders or decisions of any Governmental Authority, statutory body or self-regulatory authority, including general principles of law having the force of law and the term **“applicable”** with respect to such Laws and, in the context that refers to any Person, means such Laws as are applicable to such Person or its business, undertaking, property or securities and emanate from a Governmental Authority or self regulatory authority having jurisdiction over the Person or its business, undertaking, property or securities;

**“Meeting Date”** means the date fixed for the Creditors’ Meeting in accordance with the Claims Procedure Order, or any subsequent Order, or any subsequent date following an adjournment of that meeting, as the case may be;

**“Monitor”** means RSM Richter Inc., in its capacity as Monitor duly appointed by the Court pursuant to the Initial Order;

**“Monitor’s Certificate”** has the meaning ascribed to it in Section 8.3;

**“Notice of Dispute”** means the appeal motion referred to in paragraph 7 (b) of the Claims Procedure Order;

**“Notice of Revision or Disallowance”** has the meaning ascribed thereto in the Claims Procedure Order;

**“Order”** means any order of the Court in the CCAA Proceedings;

**“Original Currency”** has the meaning ascribed to it in Section 7.7;

**“Person”** means any individual, corporation, limited or unlimited liability company, general or limited partnership, association, trust, trustee, executor, administrator, legal personal representative, estate, unincorporated organization, joint venture, governmental body or agency, or any other entity;

**“Petitioner”** means Hart Stores Inc. / Magasins Hart Inc.;

**“Plan”** means this amended plan of compromise and arrangement of the Petitioner pursuant to the provisions of the CCAA, as it may be further amended, varied or supplemented by the Petitioner from time to time in accordance with its terms;

**“Plan Implementation Date”** means the date on which all conditions precedent to the implementation of this Plan, as set out in Section 8.1, have occurred or been satisfied or waived;

**“Post-Filing Suppliers Charge”** has the meaning given in the Order rendered September 28, 2011;

**“Proof of Claim”** has the meaning ascribed to such term in the Claims Procedure Order;

**“Proven Claim”** means, in respect of a Creditor, the amount of the Claim of such Creditor as finally determined for distribution purposes in accordance with Section 4.2 and the other provisions of this Plan, the CCAA and the Claims Procedure Order;

**“Released Parties”** has the meaning ascribed thereto in Section 6.2 hereof;

**“Replacement Lender”** means the person who will provide the Replacement Loan;

**“Replacement Loan”** means the senior secured facility to be provided by the Replacement Lender or such other loan provided by the Replacement Lender or another Person in lieu of the Replacement Lender;

**“Required Majorities”** means the affirmative vote of a majority in number of the Affected Creditors voting in the Affected Creditors Class, having Voting Claims and voting on the Plan (in person or by proxy) at the Creditors’ Meeting and representing not less than 66<sup>2</sup>/<sub>3</sub> % in value of the Voting Claims of the Affected Creditors voting (in person or by proxy) at the Creditors’ Meeting;

**“Reserve”** means the reserve to be established and maintained under this Plan by the Monitor by holding, on account of Disputed Claims, an amount equal to the aggregate amount that the holders of Disputed Claims would be entitled to receive if all such Disputed Claims had been Proven Claims as of the First Instalment Date;

**“Resolution”** means, collectively, when required by the context, one or any of, the resolutions providing for the approval of the Plan by the Affected Creditors;

**“Restructuring Claim”** means any right of any Person against the Petitioner in connection with any indebtedness, liability or obligation of any kind owed to such Person arising out of the restructuring, the disclaimer, or the resiliation of any contract, lease, employment agreement, collective agreement or other agreement, whether written or oral, after the Determination Date, including any right of any Person who receives a notice of repudiation or termination from the Petitioner; provided however, that a Restructuring Claim shall not include an Excluded Claim. Without limiting the generality of the above, a Restructuring Claim shall include the claim of a landlord whose lease has been disclaimed or terminated and the claim of an employee whose employment has been terminated after the Determination Date. For greater certainty, a Restructuring Claim is an Affected Claim;

**“Restructuring Claims Bar Date”** means 5:00 p.m. (Montréal time) on January 31, 2012;

**“Sanction Date”** means the date on which the Sanction Order is issued;

**“Sanction Order”** means the Order of the Court to be made under the CCAA sanctioning the Plan, as such Order may be affirmed, amended or modified by the Court at any time prior to the Plan Implementation Date or, if appealed, then, unless such appeal is withdrawn, abandoned or denied, as affirmed or amended on appeal, in form and content which is satisfactory to the Petitioner and the DIP Lender acting reasonably;

**“Section 6(5) Claim”** means any claim of an employee or former employee described in Section 6(5) of the CCAA but only to the extent of such amounts as required to be paid under the CCAA;

**“Section 19(2) Claims”** means any claim described in Section 19(2) of the CCAA;

**“Secured Claim”** means the Claim of a Secured Creditor, to the extent of the value of such Secured Creditor’s security;

**"Secured Creditor"** has the meaning given to such term in the CCAA, but only to the extent that such creditor's mortgage, hypothec, pledge, charge, lien or other security interest over the property of the Petitioner was valid, opposable, perfected, and could be set up against third parties, including a trustee to the Petitioner's bankruptcy, on both the Determination Date and the Claims Bar Date, failing which that Secured Creditor will be deemed to be an unsecured creditor, as such term is defined in the CCAA;

**"Taxes"** means all federal, state, provincial, territorial, county, municipal, local or foreign taxes, duties, imposts, levies, assessments, tariffs and other charges imposed, assessed or collected by a Governmental Authority, including (a) any gross income, net income, gross receipts, business, royalty, capital, capital gains, goods and services, value added, severance, stamp, franchise, occupation, premium, capital stock, sales and use, real property, land transfer, personal property, ad valorem, transfer, licence, profits, windfall profits, environmental, payroll, employment, employer health, pension plan, anti-dumping, countervail, excise, severance, stamp, occupation, or premium tax, (b) all withholdings on amounts paid to or by the relevant Person, (c) all employment insurance premiums, Canada, Quebec and any other pension plan contributions or premiums, (d) any fine, penalty, interest, or addition to tax, (e) any tax imposed, assessed, or collected or payable pursuant to any tax-sharing agreement or any other contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency, or fee, and (f) any liability for any of the foregoing as a transferee, successor, guarantor, or by contract or by operation of law;

**"Unaffected Claim"** means any right of any Person in connection with any indebtedness, liability or obligation of any kind of the type described in Section 2.3 hereof. For greater certainty, the Unaffected Claims include the Excluded Claims;

**"Unaffected Creditor"** means a Person having a Claim in respect of an Unaffected Claim, but only in respect of such Unaffected Claim, and for greater certainty, includes an Excluded Creditor;

**"Volume Rebate"** means a rebate, whether in cash or as a credit note, granted by a supplier to the Petitioner to be applied against amounts owing, or to become owing, by the Petitioner to the supplier, based on the gross amount of purchases made by the Petitioner of such supplier's goods or services over the Volume Rebate Period, calculated, in each case, in accordance with the agreements between the parties. In the event the Determination Date arrived during the Volume Rebate Period, then the Volume Rebate will be pro rated for that portion from the beginning of such Volume Rebate Period;

**"Volume Rebate Period"** means with respect to any supplier who has granted a Volume Rebate to the Petitioner, the period in reference to which such Volume Rebate is calculated; and

**“Voting Claim”** means, in respect of a Creditor, the amount of such Creditor’s claim which has been accepted for voting purposes in accordance with Section 4.2 and the other provisions of this Plan, the Claims Procedure Order and the CCAA.

## **1.2 Interpretation**

For purposes of this Plan:

- a) any reference in this Plan to a contract, instrument, release, indenture, agreement or other document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;
- b) any reference in this Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified or supplemented;
- c) all references to currency and to “\$” or “C \$” are to Canadian dollars except as otherwise indicated;
- d) all references in this Plan to Articles and Sections are references to Articles and Sections of this Plan;
- e) unless otherwise specified, the words “hereof”, “herein” and “hereto” refer to this Plan in its entirety rather than to any particular portion of this Plan;
- f) the division of this Plan into Articles, Sections and paragraphs and the insertion of captions and headings to Articles, Sections and paragraphs are for convenience of reference only and are not intended to affect the interpretation of, or to be part of this Plan;
- g) where the context requires, a word or words importing the singular shall include the plural and vice versa and a word or words importing one gender shall include all genders;
- h) the words “includes” and “including” are not limiting; and
- i) the word “or” is not exclusive.

## **1.3 Date for any Action**

In the event that any date on which any action is required to be taken under this Plan by any of the parties is not a Business Day, that action shall be required to be taken on the next succeeding day which is a Business Day.

#### 1.4 Statutory References

Any reference in this Plan to a statute includes all regulations made thereunder and all amendments to such statute or regulations in force, from time to time, or any statute or regulations that supplement or supersede such statute or regulations.

### ARTICLE 2 COMPROMISE AND ARRANGEMENT

#### 2.1 Persons Affected

The purpose of this Plan is to provide for the full and final settlement of all Affected Claims, including any claim resulting directly or indirectly from the consequences and effects of the Plan's acceptance by the Affected Creditors, its sanction by the Court, the implementation of the Plan, or the debt forgiveness resulting from same. Except as specifically provided for in this Plan, this Plan will become effective on the Plan Implementation Date in accordance with its terms, and all Affected Claims against the Petitioner will be fully and finally, settled, compromised and released or otherwise assigned, transferred or alienated as set forth in this Plan upon the Distribution Amount being fully paid to the Monitor, it being understood that any Affected Claim that is paid in full pursuant to this Plan before such date shall be settled, compromised and released on the date of such payment. This Plan shall be binding on and enure to the benefit of the Petitioner, the Affected Creditors, the Released Parties, any trustee, agent or other Person acting on behalf of any Affected Creditor and such other Persons who have received the benefit of, or are bound by any waivers, releases or indemnities hereunder.

#### 2.2 Classes of Affected Claims

There shall only be one class of Affected Creditors for the purpose of voting on, and receiving distributions pursuant to this Plan, being the Affected Creditors Class.

#### 2.3 Unaffected Claims

- a) This Plan does not affect the following claims (each, an "**Unaffected Claim**" and, collectively, the "**Unaffected Claims**"), the holders of which will not be entitled to vote at the Creditors' Meeting or receive any distributions under this Plan in respect thereof:
  - (i) the Excluded Claims;
  - (ii) any Administration Claim;
  - (iii) any D&O Claim;
  - (iv) any claim with respect to gift-cards, lay-away deposits and other customer certificates (collectively, "**Gift Card Claims**");
  - (v) Crown Claims;



- (vi) Section 6(5) Claims;
  - (vii) Section 19(2) Claims; and
  - (viii) Secured Claims.
- b) Nothing in this Plan shall affect the Petitioner's rights and defences, both legal and equitable, with respect to any Unaffected Claim including any rights arising under or pursuant to the Claims Procedure Order or this Plan or any rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims.

#### **2.4 Treatment of Affected Claims**

- a) At any time prior to August 14, 2012, any Affected Creditor may elect, by written notice to the Monitor to that effect, (in any manner acceptable to the Monitor) to receive the lesser of \$ 1,000.00 or the amount of its Proven Claim or to irrevocably and unconditionally reduce such Proven Claim to \$ 1,000.00, whereupon:
- (i) any such Proven Claim in excess of \$ 1,000.00 shall be deemed, for all purposes, to have been irrevocably and unconditionally reduced to \$ 1,000.00 and the Affected Creditor having a Proven Claim in excess of \$ 1,000.00 shall be deemed to have irrevocably and unconditionally waived and renounced to any rights to participate in any further distribution; and
  - (ii) any such Affected Creditor shall be treated as an Electing Creditor and such Creditor's Proven Claim shall be treated as an Electing Creditor Claim under this Plan.
- b) The Distribution Amount shall be paid by the Petitioner without any interest thereon whatsoever, in full and final settlement, release and discharge of all Affected Claims, on the following dates, namely:
- (i) the full amount of all Electing Creditor Claims shall be paid to the Monitor on or before September 14, 2012 for distribution to all Electing Creditors as herein set forth, in full and final settlement, release and discharge of all Electing Creditor Claims;
  - (ii) an amount of \$ 1,000,000, less all amounts set forth in Section 2.4b)(i) hereof, shall be paid by the Petitioner to the Monitor on or before the First Instalment Date, for distribution to all Affected Creditors (other than Electing Creditors) as herein set forth;
  - (iii) a second amount of \$ 1,000,000 shall be paid by the Petitioner to the Monitor on or before February 3, 2013 for distribution to all

Affected Creditors (other than Electing Creditors) as herein set forth;

- (iv) a third amount of \$ 500,000 shall be paid by the Petitioner to the Monitor on or before September 14, 2013 for distribution to all Affected Creditors (other than Electing Creditors) as herein set forth;
  - (v) a fourth amount of \$ 1,500,000 shall be paid by the Petitioner to the Monitor on or before February 2, 2014 for distribution to all Affected Creditors (other than Electing Creditors) as herein set forth;
  - (vi) a fifth amount of \$ 500,000 shall be paid by the Petitioner to the Monitor on or before September 14, 2014 for distribution to all Affected Creditors (other than Electing Creditors) as herein set forth; and
  - (vii) a sixth amount of \$ 1,500,000 shall be paid by the Petitioner to the Monitor on or before February 28, 2015 for distribution to all Affected Creditors (other than Electing Creditors) as herein set forth.
- c) Notwithstanding the foregoing, the Petitioner may, with the Monitor's consent, defer the date on which any instalment is to be made, so long as the payment date of any instalment is not delayed for more than 90 days.
  - d) All amounts referred to in 2.4b)(i) to 2.4b)(vii) hereof (if applicable) shall be paid by the Petitioner to the Monitor on or before each of the respective dates therein set forth and shall thereafter be distributed by the Monitor to the Affected Creditors, according to the amount of their respective Proven Claims, as follows:
    - (i) the amounts set forth in Section 2.4a) hereof shall be distributed by the Monitor to the Electing Creditors as set forth in Section 2.4b)(i) hereof; and
    - (ii) the amounts set forth in Sections 2.4b)(ii) through 2.4b)(vii) shall be distributed by the Monitor to the Affected Creditors (other than the Electing Creditors) on a *pro rata* basis, according to the amounts of their respective Proven Claims.

### **ARTICLE 3 TREATMENT OF UNAFFECTED CREDITORS**

#### **3.1 Treatment of the DIP Lender**

On or before the Plan Implementation Date, the DIP Lender shall receive full payment in cash of the DIP Claim.

#### **3.2 Treatment of Excluded Claims and Insurance**

Subject to Section 3.1 hereof, the other Excluded Claims and any Insurance Claim will remain in full force and effect in accordance with their terms after the Plan Implementation Date, and will be paid in full by the Petitioner in the normal course of its operations as and when they become due.

#### **3.3 Treatment of Administration and D&O Claims**

All Administration Claims, and all D&O Claims, if any, will be paid in full by the Petitioner as and when they become due, and any remaining balance will be settled as soon as practicable after the issuance of the Certificate of Performance.

#### **3.4 Treatment of Gift Card Claims**

Gift Card Claims will be honoured in accordance with the terms of the relevant gift card, gift certificate or lay-away deposit upon presentation of such gift card, gift certificate or lay-away deposit by the holder at any of the Petitioner's retail stores.

#### **3.5 Treatment of Crown Claims**

Within six months after the Plan Implementation Date, all Crown Claims will be paid in full by the Petitioner.

#### **3.6 Treatment of Section 6(5) Claims**

Section 6(5) Claims, if any, will be paid in such amounts as required under the CCAA immediately after the Plan Implementation Date.

#### **3.7 Section 19(2) Claims**

Section 19(2) Claims, if any, will be paid by the Petitioner as and when they become due.

#### **3.8 Secured Claims**

Secured Claims will be dealt with as provided for under the agreements between the Petitioner and the relevant Secured Creditor, or as may be otherwise agreed by them.

## **ARTICLE 4**

### **VALUATION OF CLAIMS, CREDITORS' MEETING AND RELATED MATTERS**

#### **4.1 Conversion of Affected Claims into Canadian Currency**

For the purposes of determining the value of Affected Claims denominated in currencies other than Canadian dollars for voting purposes, such Affected Claims shall be converted by the Monitor to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging currency to Canadian dollars on the Determination Date (which in the case of US Dollars was C \$ 0.9793 for US \$1 dollar).

#### **4.2 Affected Claims**

Affected Creditors shall be entitled to prove their respective Affected Claims, vote their Voting Claims in respect of the Plan, and, if their Affected Claims become Proven Claims, receive the distributions provided for pursuant to the Claims Procedure Order and this Plan.

All amounts recognized as Voting Claims or Proven Claims shall be net of any amount that the Petitioner is entitled to offset, recoup, compensate or otherwise apply in reduction of such amounts, including on account of any Capped Rent Rebate or Volume Rebate to which the Petitioner is entitled.

#### **4.3 Creditors' Meeting**

The Creditors' Meeting shall be held in accordance with this Plan, the Claims Procedure Order, and any further Order which may be made from time to time for the purposes of considering and voting on the Resolution or other matters to be considered at the Creditors' Meeting.

#### **4.4 Approval by Affected Creditors**

The Petitioner will seek approval of the Plan by the affirmative vote of the Required Majorities. The Resolution to be voted on at the Creditors' Meeting, which will be decided by the Required Majorities on a vote by ballot, unless the Chair decides, in his or her sole discretion, to hold such vote by way of show of hands. The result of any vote will be binding on all Affected Creditors, whether or not any such Affected Creditor is present and voting (in person or by proxy) at the Creditors' Meeting.

#### **4.5 Claims Bar Date and Restructuring Bar Date**

If an Affected Creditor holding an Affected Claim has failed to file its Proof of Claim prior to the relevant Claims Bar Date or Restructuring Claims Bar Date and has not been permitted to file a late claim pursuant to an Order, that Affected Creditor shall be barred from voting at the Creditors' Meeting and the Affected Creditor shall have no right to receive a distribution, and the Petitioner shall be released from the Affected

Claims of such Creditor and Section 6.2 of this Plan shall apply to all such Affected Claims.

#### **4.6 Holders of Equity Claims**

Any Persons holding an Equity Claim shall not be entitled to receive any payment, compensation or distribution hereunder with respect to their Equity Claims, and any Claims that any such Persons may have that are directly or indirectly related to or are derived from such Equity Claims shall be deemed to be released in full. Any Person holding an Equity Claim shall also not be entitled to vote in respect of such Equity Claim on the Plan at a Meeting of Affected Creditors.

### **ARTICLE 5 PROCEDURE FOR RESOLVING DISTRIBUTIONS IN RESPECT OF DISPUTED CLAIMS**

#### **5.1 No Distributions Pending Allowance**

Notwithstanding any other provision of this Plan, no distributions shall be made with respect to a Disputed Claim unless and until it has become a Proven Claim. Disputed Claims shall be dealt with in accordance with the Claims Procedure Order and this Plan.

#### **5.2 Distributions From Reserve Once Disputed Claims Resolved**

The Monitor shall make allocations from the Reserve to holders of Disputed Claims following the First Instalment Date in accordance with this Plan. To the extent that Disputed Claims become Proven Claims after the First Instalment Date, the Monitor shall, from time to time at its sole discretion, distribute from the Reserve to the holders of such Proven Claims, the amount which they would have been entitled to receive in respect of such Proven Claims had such Claims been Proven Claims on the First Instalment Date. To the extent that any Disputed Claim or a portion thereof has become a Disallowed Claim, then the Monitor shall distribute, to the holders of Claims that have previously been adjudicated under this Plan to be Proven Claims, their pro rata share from the Reserve of such additional amount kept in the Reserve on account of such Disallowed Claims.

### **ARTICLE 6 EFFECT OF THE PLAN AND RELEASES**

#### **6.1 Effect of the Plan**

Upon the Distribution Amount being remitted to the Monitor and the issuance of the Certificate of Performance, all Affected Claims shall be deemed to be fully and finally settled, compromised and released, as of the date of issuance of the Certificate of Performance, subject only to an Affected Creditor's right to recover the distributions under this Plan, except for such claims as may have been fully paid prior to such date, in which case those Affected Claims will be deemed to be settled as of such payment.

## 6.2 Plan Releases

Upon the implementation of this Plan on the Plan Implementation Date, (i) the Petitioner; (ii) the Monitor and its legal counsel in the CCAA Proceedings; (iii) all present and future directors, officers and employees, legal counsel, financial advisors, consultants and agents of the Petitioner in such capacities (and their respective directors, officers and employees); and (iv) the DIP Lender and its legal counsel in the CCAA Proceedings (each being herein referred to individually as a “**Released Party**”) shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, liens and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person (including any Secured Creditor in respect of each Released Party, except the Petitioner and solely in respect of its Secured Claim), may be entitled to assert (including any and all Claims in respect of statutory liabilities of present and former directors, officers and employees of the Petitioner and any alleged fiduciary or other duty) whether known or unknown, mature or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the Plan Implementation Date in any way relating to, arising out of or in connection with Claims, the business and affairs of the Petitioner, this Plan and the CCAA Proceedings, and all claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Petitioner’s obligations under the Plan or any related document), all to the full extent permitted by law, provided that nothing herein:

- a) shall release or discharge a Released Party from an Unaffected Claim or shall release or discharge the Petitioner from or in respect of its obligations under this Plan;
- b) shall affect the right of any Person:
  - (i) to recover an indemnity from any insurance coverage under which that Person is an insured; or
  - (ii) to obtain recovery on a claim or liability against a Released Party from any insurance coverage pursuant to which that Released Party is an insured, but, for certainty, any claim or liability to which an insurer is or would otherwise be subrogated as against the Petitioner is released hereunder and the recovery to which such Person shall be entitled under such insurance coverage shall be limited to the proceeds of insurance actually paid by the insurer with respect to such claim or liability; or
- c) shall release or discharge present or former directors of the Petitioner with respect to matters set out in Section 5.1(2) of the CCAA;

and provided further, however, that, notwithstanding the foregoing release under the Plan, any Claim shall remain subject to any right of set-off that otherwise would be available to the Person against whom such Claim is asserted.

### **6.3 Injunction Related to Releases**

The Sanction Order will enjoin the prosecution, whether directly, derivatively or otherwise, of any claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, liability or interest released, discharged or terminated pursuant to this Plan.

### **6.4 Waiver of Defaults**

From and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of the Petitioner (except for defaults under the securities, contracts, instruments, releases and other documents delivered under this Plan or entered into in connection herewith or pursuant hereto) then existing or previously committed by the Petitioner or caused by the Petitioner, directly or indirectly, or non-compliance with any covenant, positive or negative pledge, warranty, representation, term, provision, condition or obligation, express or implied, in any contract, credit document, agreement for sale, lease or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and the Petitioner arising from the filing by the Petitioner under the CCAA or the transactions contemplated by this Plan or otherwise, and any and all notices of default and demands for payment under any instrument, including any guarantee arising from such default, shall be deemed to have been rescinded.

## **ARTICLE 7 PROVISIONS GOVERNING DISTRIBUTIONS**

### **7.1 Partial Distributions for Claims Allowed**

Except as otherwise provided herein or as ordered by the Court, distributions shall be made by the Monitor at the time and in the manner deemed reasonable by the Monitor, and partial distributions may be made prior to receipt of the full amount of the Distribution Amount. In such a case, all such partial payments shall represent the pro rata amount of the distribution to which the holders of a Proven Claim would otherwise be entitled to receive.

Notwithstanding the foregoing, the amount referred in Section 2.4b)(i) shall be distributed to the Electing Creditors within a reasonable time after receipt of the amount referred to in that Section.

### **7.2 Currency to be used for the Distribution**

For the purposes of determining of the Claims denominated in currencies other than Canadian dollars for distribution purposes, such Claims shall be converted by the Monitor to Canadian dollars at the Bank of Canada noon spot rate of exchange for

exchanging currency to Canadian dollars on the Determination Date (which in the case of US Dollars was C \$ 0.9793 for US \$ 1 dollar).

### **7.3 Assignment of Claims**

For purposes of determining entitlement to receive any distribution pursuant to this Plan, the Petitioner and the Monitor and each of their respective agents, successors and assigns shall have no obligation to recognize any transfer of Claims except as provided for under the Claims Procedure Order.

### **7.4 Interest on Affected Claims**

Except as specifically provided in the Plan, the Sanction Order or any contract, instrument release, settlement or other agreement entered into in connection with this Plan, following the Determination Date, interest shall not be treated as accruing on account of any Affected Claims for purposes of determining the allowance and distribution of such Affected Claim. To the extent that any Proven Claim to which a distribution under this Plan relates is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for Tax purposes to the principal amount of the Proven Claim (including the secured and unsecured portion of the principal amount of such Proven Claim) first and then, to the extent that the consideration exceeds the principal amount of the Proven Claim, to the portion of such Proven Claim representing accrued but unpaid interest (including interest in respect of any secured portion of such Proven Claim).

### **7.5 Distributions by Monitor**

The Petitioner shall be entitled to remit to the Monitor the Distribution Amount in five instalment payments, as provided for in Section 2.4. The Monitor shall make all distributions required under this Plan subject to the provisions of Article 5 and Article 7 hereof. The Monitor shall receive, without further Court approval, reasonable compensation from the Petitioner for distribution services rendered pursuant to the Plan.

### **7.6 Delivery of Distributions**

- a) Proven Claims. Subject to Section 7.3 hereof, distributions shall be made by the Monitor (i) at the addresses set forth on the Proof of Claim form filed by the Affected Creditors (or at the last known addresses of such Affected Creditors if no Proof of Claim form was filed or if the Petitioner or the Monitor have been notified in writing of a change of address), (ii) at the addresses set forth in any written notice of address change delivered to the Monitor after the date of any related Proof of Claim, or (iii) in a registered retirement savings plan account designated by any employee of the Petitioner.
- b) Undeliverable Distributions. If any distribution to a Creditor is returned as undeliverable, no further distributions to such Creditor shall be made unless and until the Monitor is notified of the then-current address of such



Creditor, at which time all missed distributions shall be made to such Creditor without interest. The Petitioner shall make reasonable efforts to locate Affected Creditors for which distributions were undeliverable. Any claim for undeliverable distributions must be made on or before the later to occur of (i) three months after the Final Instalment Date, or (ii) three months after such Creditor's Claim becomes a Proven Claim, after which date all unclaimed property shall revert to the Petitioner free of any restrictions or claims thereon and the claim of any Creditor with respect to such property shall be discharged and forever barred, notwithstanding any federal or provincial laws to the contrary.

#### **7.7 No Double Recovery**

The aggregate recovery on account of any Proven Claim from all sources, regardless of whether on account of a theory of primary or secondary liability, by reason of guarantee, surety, indemnity, joint and several obligations or otherwise, shall not exceed (A) 100 % of the underlying indebtedness, liability or obligation giving rise to such Claim or, (B) where the underlying indebtedness, liability or obligation giving rise to such Claim is denominated in a currency (the "**Original Currency**") other than Canadian dollars, 100 % of such underlying indebtedness, liability or obligation after conversion of the value of the distributions received in Canadian dollars back to the Original Currency at the Bank of Canada noon spot rate of exchange for exchanging Canadian dollars to the Original Currency on the date of applicable distribution date.

#### **7.8 Guarantees and Similar Covenants**

No Person who has a Claim under any guarantee, surety, indemnity or similar covenant in respect of any Claim which is settled, compromised, released or otherwise dealt with under this Plan or who has any right under any such covenant against a Creditor in respect of, or to be subrogated to, the rights of any Person in respect of a Claim which is compromised under this Plan shall not be entitled to any greater rights than the Creditor whose Claim is settled, compromised, released or otherwise dealt with under this Plan.

### **ARTICLE 8 IMPLEMENTATION OF THE PLAN**

#### **8.1 Conditions Precedent to Implementation of Plan**

The implementation of this Plan by the Petitioner is subject to the following conditions precedent which, except for subsection a) below and as otherwise would be in violation of applicable Laws, may be waived as provided in Section 8.2 hereof:

- a) the approval of this Plan by the Required Majorities shall have been obtained;

- b) the Sanction Order sanctioning this Plan shall have been issued, and not appealed from and the operation and effect of the Sanction Order shall not have been stayed, reversed or amended, and shall, among other things:
- (i) declare that: (i) this Plan has been approved by the Required Majorities of Affected Creditors of the Petitioner in conformity with the CCAA; (ii) the Petitioner has complied with the provisions of the CCAA and the Orders of the Court made in the CCAA Proceedings in all respects; (iii) the Court is satisfied that the Petitioner has neither done nor purported to do anything that is not authorized by the CCAA; and (iv) this Plan and the transactions contemplated thereby are fair and reasonable;
  - (ii) order that this Plan, including the compromises and arrangements set out herein, is sanctioned and approved pursuant to Section 6 of the CCAA and, as at the Plan Implementation Date, will be effective and will enure to the benefit of and be binding upon the Petitioner, the Affected Creditors and all other Persons stipulated in this Plan or in the Sanction Order;
  - (iii) order that the full and final release and discharge of the Claims will be effective and will enure to the benefit of and be binding upon the Petitioner, the Affected Creditors and all other Persons stipulated in this Plan upon the issuance of the Certificate of Performance;
  - (iv) declare that the Petitioner and the Monitor are authorized to take all steps and actions necessary to implement this Plan;
  - (v) declare that all Proven Claims determined in accordance with the Claims Procedure Order are final and binding on the Petitioner and all Affected Creditors;
  - (vi) a declaration and an order declaring that any Claims for which a Proof of Claim has not been filed by the Claims Bar Date shall be forever barred and extinguished;
  - (vii) a declaration and order declaring that all distributions and payments by or at the direction of the Monitor, in each case on behalf of the Petitioner, under the Plan are for the account of the Petitioner and the fulfillment of its obligations under the Plan;
  - (viii) a declaration and an order declaring that the Petitioner and the Monitor may apply to the Court for advice and direction in respect of any matters arising from or under the Plan;
  - (ix) declare that, subject to the performance by the Petitioner of its obligations under this Plan, all contracts, leases, agreements and

other arrangements to which the Petitioner are a party and that have not been terminated or repudiated pursuant to the Initial Order will be and remain in full force and effect, unamended, as at the Plan Implementation Date, and no Person who is a party to any such contract, lease, agreement or other arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of dilution or other remedy) or make any demand under or in respect of any such contract, lease, agreement or other arrangement and no automatic termination will have any validity or effect, by reason of:

- i. any event that occurred on or prior to the Plan Implementation Date and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults, events of default, or termination events arising as a result of the insolvency of the Petitioner);
    - ii. the insolvency of the Petitioner or the fact that the Petitioner sought or obtained relief under the CCAA; or
    - iii. any compromises or arrangements effected pursuant to this Plan or any action taken or transaction effected pursuant to this Plan;
  - (x) declare that the stay of proceedings under the Initial Order continues until the Plan Implementation Date;
  - (xi) confirm the scope of the release contemplated by Section 6.2;
  - (xii) preclude the commencement or prosecution, whether directly, derivatively or otherwise, or any demands, claims, actions, causes of action, counterclaims, suits, or any indebtedness, liability, obligation or cause of action released and discharged pursuant to this Plan;
  - (xiii) order that the DIP Lender Charge will be released and discharged as of the Plan Implementation Date upon receipt of an acknowledgment by the DIP Lender of payment in full of the DIP Claim;
  - (xiv) order that all CCAA Charges, other than the DIP Lender Charge and the Insurance Charge, will be released and discharged upon the issuance of the Sanction Order; and
- c) the Replacement Loan is disbursed following (i) the satisfaction of the condition in Section 8.1a), and (ii) the Sanction Order being issued without an appeal having been lodged therefrom prior to disbursement.

## **8.2 Waiver of Conditions**

Each of the conditions set forth in Section 8.1 above except for the conditions set forth in Section 8.1a), may be waived in whole or in part by the Petitioner or the other relevant parties to the documents and transactions referred to therein without any other notice to parties in interest or the Court and without a hearing. The failure to satisfy or waive any condition prior to the Plan Implementation Date may be asserted by the Petitioner regardless of the circumstances giving rise to the failure of such condition to be satisfied (including any action or inaction by the Petitioner). The failure of the Petitioner to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right that may be asserted at any time.

## **8.3 Monitors' Certificate**

Upon satisfaction of all the conditions set out in Section 8.1 (or waiver thereof, as the case may be), the Monitor shall file with the Court a certificate stating that all such conditions have occurred or have been satisfied or waived, as the case may be, and that the Plan Implementation Date has occurred (the "**Monitor's Certificate**").

## **8.4 Certificate of Performance**

Upon receipt of the last instalment payable by the Petitioner pursuant to Section 2.4, the Monitor will deposit with the Court a certificate of performance of the Plan (the "**Certificate of Performance**").

## **8.5 Effect of Plan**

As of the issuance of the Certificate of Performance, the settlement of the Affected Claims in accordance with this Plan shall become final and binding on the Petitioner, and all of the Affected Creditors and their respective successors and assigns, and this Plan shall result in the full and final settlement of all Affected Claims, including for greater certainty, any Restructuring Claim and any Claims resulting, directly or indirectly, from the consequences and effects relating to the acceptance of the Plan by the Affected Creditors, its sanction by the Court, or its implementation, and any indebtedness, obligations or undertakings which the Petitioner may subsequently become subject to, directly or indirectly, as a result of an obligation, transaction or an event that occurred before the Determination Date, as well as any indebtedness, obligations or any undertakings that the Petitioner may be subject to on any date whatsoever in connection with the Plan, the approval thereof by the Court or the implementation thereof. For greater certainty, this Plan shall not affect or impair any rights, remedies and recourses which the Petitioner had, has or may have after the issuance of the Certificate of Performance in connection with transactions, facts or obligations existing prior to the Determination Date.

## **ARTICLE 9 CREDITORS' COMMITTEE**

The Affected Creditors may appoint a Creditors' Committee at the Creditors' Meeting consisting of not more than three (3) persons, one of whom shall be the Chairman of the Committee, to exercise the following duties:

- a) be informed from time to time by the Monitor of the progress made in implementing the Plan;
- b) extend, where applicable, the time period for payment to the Monitor of any sum to be distributed to the Affected Creditors beyond the delays provided for in Section 2.4c); and
- c) assist the Monitor in an advisory capacity in relation to the administration of the Plan.

The Chairman of the Committee will receive compensation for his services paid by the Petitioner equal to that paid to the Petitioner's external directors for their participation at meetings of the Petitioner's board of directors. The other members of the Committee will be paid reasonable compensation for their actual time and services rendered to the Committee. For sake of greater clarity, the compensation to be paid to the members of the Committee will not be paid from the Distribution Amount, but in addition thereto.

## **ARTICLE 10 MISCELLANEOUS**

### **10.1 Confirmation of Plan**

Provided that this Plan is approved by the Required Majorities, and the Sanction Order is made in form and substance acceptable to the Petitioner and the DIP Lender, each acting reasonably, and the satisfaction or waiver of the conditions to the implementation of this Plan set forth in Article 8 hereof, this Plan shall be implemented by the Petitioner and shall be binding upon the Petitioner and all Persons referred to in Section 2.1 hereof and their respective successors and assigns.

### **10.2 Paramountcy**

From and after the Plan Implementation Date, any conflict between this Plan and/or the covenants, warranties, representations, terms, conditions, provisions or obligations, express or implied, of any contract, mortgage, security agreement, and/or indenture, trust indenture, loan agreement, commitment letter, agreement for sale, the by-laws of the Petitioner, lease or other agreement, undertaking or any other source of obligations, written or oral and any and all amendments or supplements thereto existing between one or more of the Affected Creditors and the Petitioner as at the Plan Implementation Date will be deemed to be governed by the terms, conditions and provisions of this Plan and the Sanction Order, which shall take precedence and priority.

For greater certainty, all Affected Creditors shall be deemed irrevocably for all purposes to consent to all transactions contemplated in and by this Plan.

### **10.3 Modification of Plan**

The Petitioner, in consultation with the Monitor and the DIP Lender, reserves the right to file any modification of, or amendment or supplement to, this Plan by way of a supplementary plan or plans of reorganization, compromise or arrangement (or any one or more thereof) at or before the Creditors' Meeting, in which case any such supplementary plan or plans of reorganization, compromise or arrangement (or any one or more thereof), shall, for all purposes, be and be deemed to form part of and be incorporated into this Plan. The Petitioner shall file any supplementary plans with the Court as soon as practicable. The Petitioner shall give notice to Affected Creditors of the details of any such modification, amendment or supplement at the Creditors' Meeting prior to the vote being taken to approve this Plan. The Petitioner may give notice of a proposed modification, amendment or supplement to this Plan at or before the Creditors' Meeting by notice which shall be sufficient if given to those Affected Creditors present at such meeting in person or by proxy.

After the Creditors' Meeting (and both prior to and subsequent to the obtaining of the Sanction Order), the Petitioner, in consultation with the Monitor and, if prior to the Plan Implementation Date, the DIP Lender, may at any time and from time to time vary, amend, modify or supplement this Plan, except the amount of the Distribution Amount, without the need for obtaining an order of the Court or providing notice to the Affected Creditors if the Monitor determines that such variation, amendment, modification or supplement would not be materially prejudicial to the interests of the Affected Creditors under this Plan or the Sanction Order and is necessary in order to give effect to the substance of this Plan or the Sanction Order.

### **10.4 Deeming Provisions**

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

### **10.5 Sections 95 to 101 BIA**

Notwithstanding Section 36.1 of the CCAA, Sections 38 and 95 to 101 of the *Bankruptcy Insolvency Act* (Canada) shall not apply to this Plan, and neither the Monitor nor any Creditor may exercise a right or remedy, or commence an action or proceeding based on those sections.

### **10.6 Responsibilities of the Monitor**

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings with respect to the Petitioner and not in its personal or corporate capacity and will not be responsible or liable for any responsibilities or obligations of the Petitioner under this Plan or otherwise, including with respect to the making of distributions or the receipt of any distribution by any Creditor or any other Person pursuant to the Plan. The Monitor

will have the powers and protections granted to it by this Plan, the CCAA, the Initial Order, the Claims Procedure Order, the Sanction Order and any other Orders

## 10.7 Notices

- a) Any notices or communication to be made or given hereunder to the Petitioner or the Monitor shall be in writing and shall refer to this Plan and may, subject as hereinafter provided, be made or given by personal delivery, by courier, by prepaid mail or by telecopier addressed to the respective parties as follows:

- (i) if to Petitioner:

Hart Stores Inc. / Magasins Hart Inc.  
900 Place Paul-Kane  
Laval (Quebec) H7C 2T2  
Canada

Attention: Robert Farah  
Fax: (450) 661.1054

With a copy to:

Heenan Blaikie LLP  
1250, Rene-Levesque Blvd. West, Suite 2500  
Montreal (Quebec) H3B 3V2  
Canada

Attention: Michael J. Hanlon  
Nicolas Plourde  
Stephen D. Hart  
Fax: (514) 846-3427

- (ii) if to the Monitor:

RSM Richter Inc.  
2 Place Alexis-Nihon  
Montreal (Quebec) H3Z 3C2  
Canada

Attention: Benoît Gingues  
Stéphane de Broux  
Fax: (514) 934.3504

With a copy to:

McCarthy Tetrault  
1000 De La Gauchetiere Street West

Suite 2500  
Montreal (Quebec) H3B 0A2  
Canada

Attention: Alain N. Tardif  
Fax: (514) 875-6246

or to such other address as any party may from time to time notify the others in accordance with this Section 10.7. In the event of any strike, lock-out or other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by telecopier and any notice or other communication given or made by prepaid mail within the five Business Day period immediately preceding the commencement of such interruption, unless actually received, shall be deemed not to have been given or made. All such notices and communications shall be deemed to have been received, in the case of notice by telecopier or by delivery prior to 5:00 p.m. (local time) on a Business Day, when received or if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and, in the case of notice mailed as aforesaid, on the fourth Business Day following the date on which such notice or other communication is mailed. The unintentional failure by the Petitioner or the Monitor to give any notice contemplated hereunder to any particular Creditor shall not invalidate this Plan or any action taken by any Person pursuant to this Plan.

- b) Any notices or communication to be made or given hereunder by the Monitor or the Petitioner to a Creditor may be sent by e-mail, ordinary mail, registered mail, courier or facsimile transmission to the email address, address or facsimile number specified by such Creditor in its Proof of Claim, or in any subsequent written notice of change of address given to the Monitor. A Creditor shall be deemed to have received any document sent pursuant to this Plan four Business Days after the document is sent by ordinary or registered mail and on the Business Day immediately following the day on which the document is sent by courier, email or facsimile transmission.

#### **10.8 Severability of Plan Provisions**

If, prior to the Sanction Date, any term or provision of this Plan is held by the Court to be invalid, void or unenforceable, the Court, at the request of the Petitioner, which request shall be made in consultation with the Monitor and the DIP Lender, shall have the power to either (i) sever such term or provision from the balance of this Plan and provide the Petitioner with the option to proceed with the implementation of the balance of this Plan as of and with effect from the Plan Implementation Date, or (ii) alter and interpret such term or provision to make it valid and enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be



invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such severing, holding, alteration or interpretation, and provided the Petitioner proceeds with the implementation of this Plan, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such severing, holding, alteration or interpretation.

#### **10.9 Revocation, Withdrawal or Non-Consummation**

The Petitioner, upon consultation with the Monitor and the DIP Lender, reserves the right to revoke or withdraw this Plan at any time prior to the Sanction Date and to file subsequent plans of arrangement and compromise. If the Petitioner revokes or withdraws this Plan, or if the Sanction Order is not issued, (i) this Plan shall be null and void in all respects, (ii) any Claim, any settlement or compromise embodied in this Plan (including the fixing or limiting of any Claim to an amount certain), assumption or termination, repudiation of executory contracts or leases affected by this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void, and (iii) nothing contained in this Plan, and no act taken in preparation for consummation of this Plan, shall: (a) constitute or be deemed to constitute a waiver or release of any Claims by or against the Petitioner or any other Person; (b) prejudice in any manner the rights of the Petitioner or any Person in any further proceedings involving the Petitioner; or (c) constitute an admission of any sort by the Petitioner or any other Person.

#### **10.10 Further Assurance**

Notwithstanding that the transactions and events set out in this Plan shall occur and be deemed to occur in the order set out herein without any additional act or formality, each of the Persons affected hereby shall make, do and execute, or cause to be made, done and executed at the cost of the requesting party, all such further acts, deeds, agreements, transfers, assurances, instruments or, documents as may reasonably be required by the Petitioner in order to better implement this Plan.

#### **10.11 Governing Law**

This Plan shall be governed by and construed in accordance with the law of the Province of Quebec and the federal laws of Canada applicable therein. Any questions as to the interpretation or application of this Plan and all proceedings taken in connection with this Plan and its provisions shall be subject to the exclusive jurisdiction of the Court.

#### **10.12 Successors and Assigns**

This Plan shall be binding upon and shall enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and permitted assigns of any Person named or referred to in Section 2.1 hereof.

*[Signature Page Follows]*

Signed in Montreal, Quebec, this 15<sup>th</sup> day of February , 2012.

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

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

Robert Farah

**SCHEDULE « B »**

Late Claims

HBdocs - 12005427v1

**Hart Stores Inc.**

Proof of Claims received after 5:00 pm - January 31, 2012

As at February 24, 2012

**Exhibit A****Miscellaneous Creditors**

	<u><b>Amount</b></u>	
Canadian Linen & Uniform	\$ 168.90	
Cassidy's Transfer & Storage	1,695.00	
Construction des IIs Inc.	1,782.86	
<b>Danawares Corporation</b>	<b>449.92</b>	
Entreprises Yvon Blais & Fils Inc.	561.65	
Gestion Chevarie	791.76	
Idea Nuova Décor	47,957.87	
Indenticam	1,354.57	
<b>Newfoundland Power Inc.</b>	<b>28,131.04</b>	
Nutreco Canada	2,368.32	
Regie Intercommunale dechets de la lievre	425.00	\$ 85,686.89

**Coface**

Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re:1445868 Ontario /DBA Buyers Group	53,065.97	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re:158329 Canada Inc. DBA Clientele	20,714.73	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: 4207602 Canada Inc. AKA Cameo Knitting	132,588.90	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: 9147-5077 Quebec DBA Runners Clothing	114,504.91	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Amerella of Canada Ltd.	421,914.19	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Atlantic Promotions Inc.	72,345.09	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Atlantic Sportswear Mfg. Ltd.	147,645.19	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Creations! Las Vegas Inc.	233,141.34	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Curtis International	431,173.00	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: For Kids Sake Fashion Ltd.	71,879.87	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Globe Electric Company Inc.	212,573.68	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Hamelin Enterprises	10,938.10	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Linen Corp. Inc.	30,544.77	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Memphis Blues / Ruby International Cie.	19,087.45	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Midway Industries Ltd.	118,531.22	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Mod- Atout Inc.	17,984.96	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: MT2 Clothing AKA 7023316 Canada Inc.	21,522.09	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Splash Home AKA 3361781 Canada Inc.	17,857.69	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Ventes Domay Sales Inc.	43,721.56	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Vin rouge AKA 415332 Canada Inc.	19,689.62	
Compagnie Francaise d'Assurance pour le Commerce Exterieur - Canada Branch Re: Zero 11 60 Fashions Inc.	83,603.51	2,295,027.84

**Total Proof of Claims Received after January 31, 2012 5:00 PM****\$ 2,380,714.73**