

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE REGIONAL)

FRIDAY, THE 27th DAY

SENIOR JUSTICE MORAWETZ)

OF JANUARY, 2017

HUK 10 LIMITED

Applicant

- and -

HMV CANADA INC.

Respondent

**APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended, and under section 101 of the
Courts of Justice Act, R.S.O. 1990, c. C.43**

ORDER
(Appointing Receiver)

THIS APPLICATION made by HUK 10 Limited (the “**Applicant**”) for: (i) an Order (the “**Appointment Order**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing Richter Advisory Group Inc. (“**Richter**”) as receiver (the “**Receiver**”) without security, of the assets, undertakings and properties of HMV Canada Inc. (the “**Debtor**”) comprising, acquired for, or used in relation to, the business carried on by the Debtor, and (ii) an Order (the “**Agency Agreement Approval Order**”) approving the agency agreement entered into among the Debtor, the Receiver and a contractual joint venture comprised of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together, the “**Agent**”) dated January 26, 2017 (the “**Agency Agreement**”) and redacted copy of which is



attached as Appendix "A" to the report of Richter dated January 26, 2017 (the "**Pre-Appointment Report**"), pursuant to which, among other things, the Agent shall conduct a sale of, among others things, the Debtor's Merchandise and Owned FF&E (as such terms are defined in the Agency Agreement) (the "**Sale**") as agent for the Debtor and, as applicable, the Receiver, and approving the sale guidelines attached to the Agency Agreement which guidelines shall govern the Sale (the "**Sale Guidelines**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Christopher Emmott sworn January 25, 2017, and the Exhibits thereto, and the Pre-Appointment Report and the Appendices thereto, and on hearing the submissions of counsel for the Applicant, counsel for the proposed Receiver, counsel for the Debtor, counsel for ~~the Agent~~ ^{Primaris REIT}, counsel for The Cadillac Fairview Corporation Limited, counsel for 20 Vic Management Inc., Morguard Investments and Ivanhoe Cambridge II Inc. and those other parties listed on the counsel slip, no one appearing for any other person although duly served as appears from the affidavit of service of Donna McEvoy sworn January 26, 2017, and on reading the consent of Richter to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application, the Application Record and the Pre-Appointment Report is hereby abridged and that this Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that, pursuant to section 243(1) of the BIA and section 101 of the CJA, Richter is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor comprising, acquired for or used in relation to the business (the "**Business**") carried on by the Debtor, including all proceeds thereof (the "**Property**").

3. **THIS COURT ORDERS** that subject to further Order of this Court, and subject to paragraph 5 hereof, the Debtor shall remain in possession and control of the Property and shall remain in day to day operation and control of the Business, subject at all times to the provisions of the Agency Agreement and the Sale Guidelines, and the Receiver shall not be or be deemed to

be in possession and control of the Property save and except as specifically provided for herein or pursuant to steps actually taken by the Receiver with respect to the Property under the permissive powers granted to the Receiver pursuant to paragraph 9 of this Order (the "**Permissive Powers**").

4. **THIS COURT ORDERS** that the Debtor shall be entitled to continue to utilize its central cash management system currently in place with Bank of Montreal ("**BMO**") or, with the prior written consent of the Receiver and the Agent, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that BMO or any future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Debtor or Receiver of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, and shall be entitled to provide the Cash Management System without any liability in respect thereof to any person other than the Debtor, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unstayed and unaffected creditor with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System, and any recourse for such claims or expenses shall be limited to proceeds of the Merchant, which, for greater certainty, shall not include any proceeds to which the Agent is entitled under or pursuant to the Agency Agreement.

RECEIVER'S POWERS

Mandatory Powers

5. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to act at once in respect of and take possession and control of all of the Debtor's funds, cash, cash equivalents, investment items, treasury items, bank accounts, accounts with other financial institutions, including without limitation all proceeds generated by the Sale to which the Merchant is entitled under the Agency Agreement ("**Proceeds**") as and when remitted by the Agent, and for greater certainty such Proceeds shall include the Guaranteed Amount, the

Merchant's Sharing Recovery Amount, the Net FF&E Proceeds as such terms are defined in the Agency Agreement (collectively "**Treasury Assets**").

6. **THIS COURT ORDERS** that the Receiver is authorized and directed to remit to the Debtor sufficient funding from the Treasury Assets to operate the Business in accordance with the provisions of the Agency Agreement including, without limitation, to pay rent in full to the applicable landlords through to the Vacate Date for each Closing Store. Without limiting the foregoing, the Receiver is authorized and hereby directed to remit sufficient funds to the Debtor to enable the Debtor to pay the rent in full for the month of February, 2017 under each of the debtor's store, head office, distribution centres and other real property leases (the "**Leases**"), and the Debtor is hereby authorized and directed to remit payment of the February 2017 rent in full to the applicable landlords in accordance with the provisions of the respective Leases. Commencing on March 1, 2017, rent under all Leases (save and except any component of rent comprising percentage rent which shall be calculated and paid in accordance with the terms of the Lease) shall be paid by the Debtor ~~quarter~~ ^{twice} monthly in advance, up to and including the effective date of any notice of repudiation delivered by the ~~Receiver~~ ^{Debtor} to the relevant landlord, and the Receiver be and is hereby ~~authorized~~ ^{authorized} and directed to remit to the Debtor ~~sufficient~~ ^{sufficient} funding from Treasury Assets ~~on a weekly basis~~ to enable the Debtor to make such ~~weekly~~ ^{in equal payments} in advance rent payments in accordance herewith.

7. **THIS COURT ORDERS** that notwithstanding any term of this Order, but subject to the rights of the Receiver to repudiate, and any trustee in bankruptcy that may be appointed in respect of the Debtor, to disclaim, retain, or assign Leases:

(a) any charges created by this Order over the Leases shall only be a charge in the Debtor's interest in such Leases;

(b) except as expressly permitted by the terms of the Leases, none of the Leases shall be amended or varied or deemed to be amended or varied, in any way without obtaining the prior written consent of the applicable landlord or without further Order of this Court;

(c) the Debtor shall provide the relevant landlord(s) with at least ~~six~~ ^{fifteen} ~~(6)~~ ¹⁵ days' prior notice of the intention to repudiate Lease (the "**Repudiation Notice Period**");

(d) if a notice of repudiation is delivered by the Debtor in respect of a Lease, then (a) during the Repudiation Notice Period, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Debtor, and if such repudiation is delivered while the Sale is ongoing and the Closing Store in question has not yet been vacated, the Agent, 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Debtor in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

8. **THIS COURT ORDERS** that the Debtor shall provide each of the relevant landlords with notice of the Debtor's intention to remove any fixtures from any leased premises at least six days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Debtor's, or in the case of the Closing Stores, the Agent's entitlement to remove any such fixture under the provisions of the Lease, such fixture shall remain on the premises and shall be dealt with as agreed between such landlord and the Debtor, or in the case of the Closing Stores, the Debtor, the Receiver and the Agent, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord. If the Debtor repudiates the Lease governing such leased premises it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the Repudiation Notice Period), and the repudiation of the Lease shall be without prejudice to the Debtor's, or in the case of the Closing Stores, the Debtor's, the Receiver's or the Agent's claim to the fixtures in dispute;

Permissive Powers

9. **THIS COURT ORDERS** that subject at all times to paragraph 5 above relating to Treasury Assets and Proceeds, the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor, excluding the Agency Agreement;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises, or other assets to continue the business of the Debtor or any parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the

name and on behalf of the Debtor, for any purpose pursuant to this Order or the Agency Agreement Approval Order;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to sell, convey, transfer, lease or assign any Property (other than the Leases) or any part or parts thereof not subject to the Agency Agreement out of the ordinary course of business, without the approval of this Court in respect of any transaction not exceeding \$25,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amounts set out above, and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (k) to apply for any vesting order or other orders necessary to convey the Property (other than the Leases) or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property; and

- (n) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

10. **THIS COURT ORDERS** that, in carrying out its mandate and exercising the powers given to it under this and any other Orders of the Court, the Receiver shall conduct itself and administer the Property (including by exercising control over the Treasury Assets) in a manner that is consistent with, and will not cause or contribute to a breach or frustration of, the obligations of the Debtor and the Receiver under the Agency Agreement. Without limiting the foregoing and notwithstanding any other provision of this Order (including for certainty paragraph 20 of this Order) and any other Order of the Court, the Merchant and the Receiver are directed to administer all funds generated by the Sale, or that are to be received, remitted or paid by Merchant or Receiver under the Agency Agreement, in accordance with the provisions thereof, including, without limitation, section 4.7.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

11. **THIS COURT ORDERS** that: (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control and shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

12. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data

storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 10 or in paragraph 11 of this Order shall require the delivery of the Records, or the granting of access to the Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

13. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

14. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

15. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or

with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

17. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver and the Agent or leave of this Court.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtor and/or Receiver, and that the Debtor and/or Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid in accordance with normal payment practices of the

Debtor or such other practices as may be agreed upon by the supplier or service provider and the Debtor, with the consent of the Agent, or as may be ordered by this Court.

NO PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **THIS COURT ORDERS** that no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtor with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtor whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, without first obtaining leave of the Court on not less than seven days' notice to the Service List in these proceedings.

RECEIVER TO HOLD FUNDS

20. **THIS COURT ORDERS** that, subject to paragraph 10 of this Order, all Treasury Assets or Proceeds received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the Sale or the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into (i) one or more of the Receiver's new accounts to be opened by the Receiver (the "**Post Receivership Accounts**"); or (ii) one of the Debtor's existing accounts with BMO which accounts shall be swept on a daily basis, or as soon as practicable, and the proceeds deposited into the Post Receivership Accounts, and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

21. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Debtor may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including, any successor employer liabilities as provided for in section 14.06(1.2) of the BIA.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

22. **THIS COURT ORDERS** that the Debtor shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Debtor after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. **THIS COURT ORDERS** that the directors and officers of the Debtor shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 32 and 34 herein.

24. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Debtor's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

PIPEDA

25. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Debtor and Receiver shall be authorized to disclose personal information of identifiable individuals to the Agent and to its advisors, and the Agent is in turn authorized to disclose such personal information of identifiable individuals to potential purchasers, but only to the extent desirable or required to assist the Agent or potential purchasers with the Sale. The Agent and the prospective purchasers shall maintain and protect the privacy of such information and limit the use of such information to the conduct and evaluation of the Sale, and, in the case of prospective purchasers, if they do not complete a Sale, shall return all such information to the Agent or the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is

in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Agent or the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

26. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

27. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment, the carrying out of the provisions of this Order, or arising from the Debtor's operation of the Business, including any liability or obligation in respect of taxes, withholdings, interest, penalties or other like claims, save and except for any gross negligence or wilful misconduct on its part, and it shall have no obligations under sections 81.4(5) or 81.6(3) of the BIA. Nothing in this Order shall derogate from the protections afforded to the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

28. **THIS COURT ORDERS** that the Receiver, counsel to the Receiver, and counsel to the Debtor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver, counsel to the Receiver and counsel to the Debtor shall be entitled to and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed the amount of \$750,000 in the aggregate unless further ordered by the Court, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 32 through 34. For clarity, counsel to the Debtor’s access to the Administration Charge is solely for fees incurred and accrued on and after the date of this Order.

29. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel and counsel to the Debtor, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

31. **THIS COURT ORDERS** that the Receiver, in consultation with the Agent and HUK 10 shall be at liberty and it is hereby empowered to utilize the funds in the Post Receivership Accounts from time to time for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, and funding the Debtor’s operation of the Business in accordance with the provisions of the Agency Agreement, including interim expenditures.

VALIDITY AND PRIORITY OF CHARGES

32. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Director's Charge and the Agents Charge as provided in the Agency Agreement Approval Order, as between them, shall be as follows:

First - the Agent's Charge

Second – the Administration Charge up to \$750,000

Third – the Directors Charge up to \$750,000

33. **THIS COURT ORDERS** that the filing, registration, or perfection of the Administration Charge, the Directors Charge, and the Agent's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

34. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property in priority to any security interests of the Applicant as well as all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, which are properly perfected security interests as of the date of this Order in favour of any other Person but subject to sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

35. **THIS COURT ORDERS** that any Charge created by this Order over Leases of real property in Canada shall only be a Charge in the Debtor's interest in such Lease.

SERVICE AND NOTICE

36. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute

an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL “ <http://www.richter.ca/Folder/Insolvency-Cases/H/HMV-Canada-Inc>” .

37. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the intended recipient at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

38. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder and is hereby authorized and empowered, but not obligated, to cause the Debtor to make an assignment in bankruptcy and that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

39. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

40. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

41. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

42. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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8(A) This Court orders that

no lease shall be assigned or sold without the applicable landlord's consent and where such consent has not been obtained the debtor shall repudiate such lease in accordance with the terms of this Order and the Approval Order-Agency Agreement Order dated Jan. 27, 2017 and such repudiation shall be without prejudice to any and all rights that the landlord(s) may have arising as a result of the repudiation.

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HUK 10 LIMITED

- and -
Applicant

HMV CANADA INC.

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDINGS COMMENCED AT TORONTO

**ORDER
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