

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

THE HONOURABLE REGIONAL )  
 )  
 SENIOR JUSTICE MORAWETZ )

FRIDAY, THE 27<sup>TH</sup> DAY  
  
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 section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended**

**APPROVAL ORDER – AGENCY AGREEMENT**

**THIS MOTION** made by HUK 10 LIMITED for an Order, inter alia, (i) approving the transaction contemplated under the agency agreement entered into between a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together, the “**Agent**”), as agent, HMV Canada Inc. (the “**Debtor**” or the “**Merchant**”), and Richter Advisory Group Inc., solely in its capacity as Court-appointed receiver of the Company (in such capacity, “**Richter**”), provided Richter is so appointed by this Court, dated January 26, 2017 (the “**Agency Agreement**”), and for certain related relief, and (ii) the granting of the Agent’s Charge (as defined below) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Chris Emmott sworn January 24, 2017, and the Exhibits thereto, the pre-filing report of Richter to be filed by Richter in its capacity as proposed Receiver (the "**Pre-Appointment Report**"), and on hearing the submissions of counsel for HUK 10, counsel for Richter, counsel for the Debtor, counsel for the Agent, <sup>Primaris REIT</sup> counsel for ~~the Agent~~, <sup>THE</sup> ~~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 25, 2017,

### **SERVICE AND DEFINITIONS**

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 that service, including form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected such service is hereby dispensed with.

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Appointment Order in these proceedings dated January 27, 2016 (the "**Appointment Order**") and the Agency Agreement, including the schedules thereto, as applicable.

### **APPROVAL OF AGENCY AGREEMENT**

3. **THIS COURT ORDERS** that the Agency Agreement, and the Sale Guidelines attached hereto as Schedule "A" (the "**Sale Guidelines**"), and the transactions contemplated therein and thereunder are hereby approved, authorized and ratified and that the execution of the Agency Agreement by each of the Debtor and Richter is hereby approved, authorized and ratified with such minor amendments to which the Debtor, Richter and the Agent may agree in writing. Subject to the provisions of this Order, the Debtor and Richter are hereby authorized and directed to comply with and perform the provisions of the Agency Agreement and take any and all actions as may be necessary or desirable to implement the Agency Agreement and each of the transactions contemplated therein. Without limiting the foregoing, the Debtor and Richter are authorized to execute, comply with and perform any other agreement, contract, deed or any other

document, or take any other action, which could be required or be useful to give full and complete effect to the Agency Agreement.

4. **THIS COURT ORDERS** that subject to the terms of the Agency Agreement, the Agent is authorized to conduct the Sale in accordance with this Order, the Agency Agreement and Sale Guidelines and to advertise and promote the Sale within the Closing Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Agency Agreement and the Sale Guidelines, the order of priority of documents to resolve such conflict is as follows: (i) this Order, (ii) the Sale Guidelines, and (iii) the Agency Agreement.

5. **THIS COURT ORDERS** that, the Agent, in its capacity as agent, is authorized to market and sell the Merchandise, Merchant Consignment Goods, any Additional Merchandise and Owned FF&E in accordance with the Sale Guidelines, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence on or prior to the date this Order or came into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively, "**Claims**"), including, without limitation, the Administration Charge and the Director's Charge, and any other charges hereafter granted by this Court in these proceedings, and all Claims, charges, security interests or liens evidenced by registration pursuant to the *Personal Property Security Act* (Ontario) or any other personal or removable property registration system (all such Claims, charges, security interests and liens collectively referred to herein as "**Encumbrances**"), which Encumbrances, subject to this Order and the Appointment Order, will attach instead to the Guaranteed Amount and other amounts received by Richter pursuant to the Agency Agreement, in the same order and priority as they existed against the sold assets on the Sale Commencement Date.

6. **THIS COURT ORDERS** that subject to the terms of this Order, the Appointment Order the Sale Guidelines and the Agency Agreement, the Agent shall have the right to enter and use the Closing Stores and all related store services and all facilities and all furniture, trade fixtures

and equipment, including the FF&E, located at the Closing Stores, and other assets of the Merchant as designated under the Agency Agreement, for the purpose of conducting the Sale and for such purposes, the Agent shall be entitled to the benefit of the Merchant's and Richter's stay of proceedings provided for under the Appointment Order, provided that any such stay of proceedings shall not be lifted or suspended without the written consent of the Agent or leave of this Court.

7. **THIS COURT ORDERS** that until the applicable Vacate Date for each Closing Store (which shall in no event be later than April 30, 2017), the Agent shall have access to the Closing Stores in accordance with the applicable leases and the Sale Guidelines on the basis that the Agent is an agent of the Merchant and Richter, as applicable, and the Merchant and Richter, as applicable, have granted the right of access to the Closing Stores to the Agent. To the extent that the terms of the applicable leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the leases for the Merchant's leased locations. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon the Merchant, Richter or the Agent any additional restrictions not contained in the applicable lease or other occupancy agreement.

9. **THIS COURT ORDERS** that except as provided for in paragraph 4 hereof in respect of the advertising and promotion of the Sale within the Closing Stores, subject to, and in accordance with this Order, the Agency Agreement and the Sale Guidelines, the Agent, as agent for the Merchant, is authorized to advertise and promote the Sale, without further consent of any Person other than the Merchant and Richter as provided under the Agency Agreement or a Landlord as provided under the Sale Guidelines.

10. **THIS COURT ORDERS** that until the Sale Termination Date, the Agent shall have the right to use, without interference by any intellectual property licensor the Merchant's trademarks and logos, as well as all licenses and rights granted to the Merchant to use the trade names, trademarks and logos of third parties, relating to and used in connection with the operation of the

Closing Stores solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Agency Agreement, the Sale Guidelines, and this Order.

11. **THIS COURT ORDERS** that upon delivery of a Receiver's certificate to the Agent substantially in the form attached as Schedule "B" hereto (the "**Receiver's Certificate**") and subject to payment in full by the Agent to Richter of the unpaid portion, if any, of the Guaranteed Amount, Net FF&E Proceeds, any Merchant Sharing Recovery Amount, and all other amounts due to the Merchant and Richter under the Agency Agreement, all of the Merchant's right, title and interest in and to any Remaining Merchandise shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Remaining Merchandise shall be expunged and discharged as against the Remaining Merchandise upon the delivery of the Receiver's Certificate to the Agent; provided however that nothing herein shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of the Merchant or Richter in respect thereof, including without limitation, the obligations of the Agent to account for and remit the proceeds of sale of the Remaining Merchandise to the Merchant's Designated Deposit Accounts. The Agent shall comply with the Agency Agreement and the Sale Guidelines regarding the removal and/or sale of any FF&E.

12. **THIS COURT ORDERS AND DIRECTS** Richter to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

#### **AGENT LIABILITY**

13. **THIS COURT ORDERS** that the Agent shall act as an agent to the Merchant and Richter, as applicable, and that it shall not be liable for any claims against the Merchant other than as expressly provided in the Agency Agreement (including the Agent's indemnity obligations thereunder) or the Sale Guidelines. More specifically:

- (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Closing Stores, of the assets located therein or associated therewith or of the Merchant's employees (including the

Retained Employees) located at the Closing Stores or any other property of the Merchant;

- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) The Merchant shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Closing Stores and at the Distribution Centers during and after the term of the Agency Agreement, or otherwise in connection with the Sale, except in accordance with the Agency Agreement.

14. **THIS COURT ORDERS** that to the extent the Landlords (or any of them) have claims against the Merchant arising solely out of the conduct of the Agent in conducting the Sale for which the Merchant has claims against the Agent under the Agency Agreement, the Merchant shall be deemed to assign free and clear such claims to the applicable Landlord (the “**Assigned Landlord Rights**”).

#### **AGENT AN UNAFFECTED CREDITOR**

15. **THIS COURT ORDERS** that the Agency Agreement shall not be repudiated, resiliated or disclaimed by Richter, Merchant or any trustee in bankruptcy of Merchant. The claims of the Agent pursuant to the Agency Agreement and under the Agent’s Charge shall be treated as unaffected and shall not be compromised or arranged pursuant to any plan of arrangement or compromise filed by or in respect of the Merchant under the *Companies’ Creditors Arrangement Act (Canada)* (“**CCAA**”) or any proposal filed by or in respect of the Merchant under the *Bankruptcy and Insolvency Act (Canada)* (the “**BIA**”).

16. **THIS COURT ORDERS** that the Merchant and Richter are hereby authorized and directed, in accordance with the Agency Agreement, to remit and pay all amounts that become due to the Agent thereunder.

17. **THIS COURT ORDERS** that Richter shall hold the Escrow Amount (as defined in the Agency Agreement) in escrow, in a separate trust account, pending completion of the Final Reconciliation (as such term is defined in the Agency Agreement) in accordance with the terms of the Agency Agreement, which Escrow Amount shall be released in accordance with the agreed Final Reconciliation or, in the absence of agreement between the Agent and Richter, upon further Order of the Court made on notice to Richter and the Agent.

18. **THIS COURT ORDERS** that no Encumbrances shall attach to any amounts remitted or payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Agency Agreement, including, without limitation, the Proceeds thereunder or any amounts to be reimbursed by the Merchant or Richter to the Agent pursuant to the Agency Agreement, and Merchant or Richter will pay such amounts to the Agent within five (5) Business Days after the Agent's written request for such reimbursement, and at all times the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Agency Agreement.

19. **THIS COURT ORDERS** that if the Merchant (a) fails to comply with any of its obligations under the Agency Agreement, this Order or the Sale Guidelines and, if curable, such failure is not cured within two business days of delivery of notice thereof by the Agent to the Merchant and Richter; or (b) the Merchant is prevented, by the making of an assignment in bankruptcy, the issuance of a bankruptcy order, by legislation or order of any court, or otherwise, from complying with any of its obligations under the Agency Agreement, this Order or the Sale Guidelines; then Richter shall and shall be deemed to have assumed the obligations of the Merchant under the Agency Agreement, this Order and the Sale Guidelines and be bound by the terms thereof, and shall take all steps necessary, including by exercise of all applicable Permissive Powers, to carry out and perform the obligations of the Merchant under the Agency Agreement, this Order and the Sale Guidelines.

## **DESIGNATED DEPOSIT ACCOUNTS**

20. **THIS COURT ORDERS** that no Person, including BMO, shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Deposit Accounts or the Post-Receivership Accounts, or the Sales Tax Account pursuant to the Agency Agreement, including any setoff, collection or enforcement steps, in relation to any Proceeds or FF&E Proceeds, that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement.

21. **THIS COURT ORDERS** that amounts deposited in the Designated Deposit Accounts pursuant to the Agency Agreement including Proceeds and FF&E Proceeds shall be and be deemed to be held in trust for the Merchant and the Agent, as the case may be, and, for clarity, no Person shall have any claim, ownership interest or other entitlement in or against such amounts, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to the Merchant or Richter.

## **AGENT'S CHARGE AND SECURITY INTEREST**

22. **THIS COURT ORDERS** that subject to the receipt by Richter of the Initial Guaranty Payment, the Agent be and is hereby granted a charge (the "**Agent's Charge**") on all of the Merchandise, Proceeds, the FF&E Proceeds and the Agent's share of the proceeds from the sale of Merchant Consignment Goods as security for all of the obligations of the Merchant and Richter to the Agent under the Agency Agreement, including, without limitation, all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement, which charge shall rank in priority to all Encumbrances.

## **PRIORITY OF CHARGES**

23. **THIS COURT ORDERS** that the priorities of the Agent's Charge, the Administration Charge and the Directors' Charge, as among them, shall be as set out in the Appointment Order.

24. **THIS COURT ORDERS** that neither the Merchant nor Richter shall grant or suffer to exist any Encumbrances over any Merchandise, Proceeds, FF&E Proceeds and the Agent's share



of the proceeds from the sale of Merchant Consignment Goods that rank in priority to, or *pari passu* with the Agent's Charge.

25. **THIS COURT ORDERS** that the Agent's Charge shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Merchandise, Proceeds, FF&E Proceeds and the Agent's share of the proceeds from the sale of Merchant Consignment Goods and, if any, shall rank in priority to all other Encumbrances of or in favour of any Person.

26. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA, in respect of the Merchant, or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Merchant; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement which binds the Merchant:

- (a) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining Merchandise,
- (b) the Agent's Charge, and
- (c) Assigned Landlord Rights,

shall be binding on any trustee in bankruptcy that may be appointed in respect to the Merchant and shall not be void or voidable by any Person, including any creditor of the Merchant, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

## **BULK SALES ACT AND OTHER LEGISLATION**

27. **THIS COURT ORDERS AND DECLARES** that the transactions contemplated under the Agency Agreement and any transfer of Remaining Merchandise shall be exempt from the application of *Bulk Sales Act* (Ontario) and any other equivalent federal or provincial legislation.

28. **THIS COURT ORDERS** that, without limiting the provisions of the Appointment Order, the Merchant and Richter are authorized and permitted to transfer to the Agent personal information in each's custody and control, and Agent is permitted to use and disclose such personal information subject to and in accordance with the terms of the Agency Agreement.

## **GENERAL**

29. **THIS COURT ORDERS** that Richter may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

31. **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 Richter, the Merchant and their 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 Richter and its agents in carrying out the terms of this Order.

32. **THIS COURT ORDERS** that Richter 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 Richter 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.

33. **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 Richter, the Merchant, and Agent 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.

34. **THIS COURT ORDERS AND DECLARES** that Confidential Appendices "1" and "2" to the Receiver's Pre-Appointment Report be sealed pending further Order of this Court.



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## SCHEDULE A SALE GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Closing Stores of HMV Canada Inc. (the "**Merchant**"). All terms not herein defined shall have the meaning set forth in the Agency Agreement, dated as of January 25, 2017, between Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together, the "**Agent**") the Merchant, and Richter Advisory Group Inc. solely in its capacity as Court-appointed receiver of the Company (in such capacity, "**Richter**") provided so appointed by the Court.

1. Except as otherwise expressly set out herein, and subject to: (i) the Approval Order or any further Order of the Court; (ii) any subsequent written agreement between the Merchant or Richter and the applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**") and approved by the Agent; or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected landlords are privy for each of the affected Closing Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed to create or impose upon the Merchant or Richter or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Closing Stores remain open during their normal hours of operation provided for in the respective Leases for the Closing Stores until the respective Vacate Date of each Closing Store. The Sale at the Closing Stores shall end by no later than April 30, 2017. Any Rent payable under the respective Leases shall be paid as provided in the Appointment Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Agent may advertise the Sale at the Closing Stores as a "store closing", "everything on sale", "everything must go", or similar theme sale at the Closing Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" sale or a "liquidation" sale it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Merchant or Richter, the Agent shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Agency Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent and the Company of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Agent shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including "you pay" or "topper" signs). In addition, the Agent shall be permitted to utilize exterior banners/signs at stand alone or strip mall Closing Stores or enclosed mall Closing Stores with a separate entrance from the exterior of the enclosed mall; provided, however, that where such banners are not permitted by the applicable Lease or the

Landlord requests in writing that the banner are not to be used, no banner shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Landlord. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Closing Store and shall not be wider than the premises occupied by the affected Closing Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Closing Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent. If a Landlord is concerned with "store closing" signs being placed in the front window of a Closing Store or with the number or size of the signs in the front window, the Agent and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.

6. Conspicuous signs shall be posted in the cash register areas of each Closing Store to the effect that all sales are "final".

7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Closing Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Closing Store is located. Otherwise, the Agent may solicit customers in the Closing Stores themselves. The Agent shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.

8. At the conclusion of the Sale in each Closing Store, the Agent shall arrange that the premises for each Closing Store are in "broom-swept" and clean condition, and shall arrange that the Closing Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted, subject to the Agent's right to abandon FF&E in accordance with sections 7.2 15(a) of the Agency Agreement. No property of any Landlord of a Closing Store shall be removed or sold during the Sale. No permanent fixtures (other than the FF&E for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. Subject to the foregoing, the Agent shall vacate the Closing Stores in accordance with the terms and conditions of the Agency Agreement. Any fixtures or personal property left in a Closed Store after it has been vacated by the Agent or in respect of which the applicable Lease has been repudiated by Richter shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.

9. Subject to the terms of paragraph 8 above, the Agent may sell Owned FF&E located in the Closing Stores during the Sale. The Merchant and the Agent may advertise the sale of Owned FF&E consistent with these guidelines on the understanding that any Landlord may require that such signs be placed in discreet locations within the Closing Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any Owned FF&E sold during the Sale shall only be permitted to remove the Owned FF&E either through the back shipping areas designated by the Landlord or through other areas after regular store business hours or through the front

door of the Store during Store business hours if the Owned FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord. The Agent shall repair any damage to the Closing Stores resulting from the removal of any FF&E by the Agent or by third party purchasers of Owned FF&E from the Agent.

10. The Agent shall not make any alterations to interior or exterior Closing Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Closing Store.

11. The Agent hereby provides notice to the Landlords of the Agent's intention to sell and remove FF&E from the Closing Stores. The Agent will arrange with each Landlord represented by counsel on the service list or directed by the Landlord and with any other Landlord that so requests, a walk through with the Agent to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Closing Store to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed to between the Merchant, Richter, the Agent and such Landlord, or by further Order of the Court upon a motion by Richter on at least two (2) days' notice to such Landlord. If the Merchant or Richter has repudiated the Lease governing such Closing Store in accordance with the Appointment Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the Appointment Order), and the repudiation of the Lease shall be without prejudice to Richter's or the Merchant's or the Agent's claim to the FF&E in dispute.

12. If a notice of repudiation is delivered pursuant to the Appointment Order to a Landlord while the Sale is ongoing and the Closing Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant, Richter and 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 Closing Store without waiver of or prejudice to any claims or rights such landlord may have against the Merchant in respect of such Lease or Closing Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith. Absent the Agent's consent, neither the Merchant nor Richter shall seek to repudiate any Lease of a Closing Store prior to the earlier of (i) the applicable Vacate Date for such Closing Store and (ii) April 30, 2017.

13. The Agent and its agents and representatives shall have the same access rights to the Closing Stores as the Merchant and Richter under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Closing Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).

14. The Agent, the Merchant and, where appropriate, Richter, shall not conduct any auctions of Merchandise or FF&E at any of the Closing Stores.

CDN \$ 500,000 at cost

15. The Agent shall be entitled to include in the Sale the Additional Merchandise, to the extent permitted under the Agency Agreement; provided that: (i) the Additional Merchandise will not exceed \$6.5 million at cost in the aggregate; (ii) the Additional Merchandise will be distributed among the Closing Stores such that no Closing Store will receive more than ~~15%~~ of the Additional Merchandise; and (iii) the Additional Merchandise is of like kind and category and no lessor quality to the Merchandise, and consistent with any restriction on usage of the Closing Stores set out in the applicable Leases.

16. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Agent shall be Dylan Chochla at Fasken Martineau DuMoulin LLP who may be reached by phone at 416.868.3425 or email at dchochla@fasken.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Richter shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of the dispute.

17. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

18. These Sale Guidelines may be amended by written agreement between the Merchant, Richter, the Agent and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines).

**SCHEDULE B**  
**FORM OF RECEIVER'S CERTIFICATE**

Court File No. CV-17-11674-00CL

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

**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 section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended**

**RECEIVER'S CERTIFICATE**

**RECITALS**

All undefined terms in this Receiver's Certificate have the meanings ascribed to them in the Agency Agreement entered into between a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together, the "**Agent**"), as agent, and HMV Canada Inc. (the "**Merchant**"), and Richter Advisory Group Inc., solely in its capacity as Court-appointed receiver of the Company (in such capacity, "**Richter**") on January <\*>, 2017, a copy of which is attached as Appendix <\*> to the Pre-Appointment Report of Richter dated January <\*>, 2017.



Pursuant to an Order of the Court dated January 27, 2017, the Court ordered that all of the Remaining Merchandise vest absolutely in the Agent, free and clear of and from any and all claims and encumbrances, upon the delivery by Richter to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) the Guaranteed Amount, the Expenses, Net FF&E Proceeds, any Merchant Sharing Recovery Amount, and all other amounts due to the Merchant and Richter under the Agency Agreement have been paid in full to the Merchant.

**RICHTER ADVISORY GROUP INC.**, in its capacity as Court-appointed Receiver in the BIA receivership proceedings of the Merchant certifies that it has been informed by the Agent and the Merchant that:

- i. The Sale has ended.
- ii. The Guaranteed Amount, Net FF&E Proceeds, any Merchant Sharing Recovery Amount, and all other amounts due to the Merchant and Richter under the Agency Agreement have been paid in full.
- iii. The Remaining Merchandise includes the Merchandise listed on Appendix "A" hereto.

DATED as of this \_\_\_\_ day of \_\_\_\_\_, 2017.

**RICHTER ADVISORY GROUP INC., in its  
capacity as Court-appointed Receiver of HMV  
Canada Inc. and not in its personal capacity**

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APPENDIX "A"

LIST OF REMAINING MERCHANDISE

27969800.4  
10075149.1

**HUK 10 LIMITED**

- and -

**HMV CANADA INC.**

Applicant

Respondent

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

PROCEEDINGS COMMENCED AT TORONTO

**ORDER  
(APPROVING AGENCY AGREEMENT)**

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