

Court File No. CV-1711674

HMV CANADA INC.

REPORT OF THE PROPOSED RECEIVER

JANUARY 26, 2017

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

BETWEEN:

HUK 10 LIMITED

Applicant

- and -

HMV CANADA INC.

Respondents

**APPLICATION UNDER section 243 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**

**REPORT OF RICHTER ADVISORY GROUP INC.
IN ITS CAPACITY AS PROPOSED RECEIVER OF
HMV CANADA INC.**

JANUARY 26, 2017

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I. INTRODUCTION

1. Richter Advisory Group Inc. ("**Richter**") understands that an application will be made before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") by the HUK 10 Limited ("**HUK10**" or the "**Lender**") for an order (the "**Receivership Order**") appointing Richter as receiver, 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 (in such capacity, the "**Receiver**"), without security, of all the assets, properties and undertakings (the "**Property**") of HMV Canada Inc. ("**HMV**" or the "**Company**") to exercise the powers and duties set out in the Receivership Order.
2. Richter was previously retained by HMV to act as a financial advisor to the Company to assist with establishing contingency plans given its liquidity situation, and to work with the Company's Lender as appropriate.
3. Richter is a licensed trustee within the meaning of section 2 of the BIA and has consented to act as Receiver in these proceedings. We are writing this report in Richter's capacity as Proposed Receiver of HMV (in such capacity, the "**Proposed Receiver**") with a view to assisting the Court and the Company's stakeholders.

II. PURPOSE OF REPORT

4. The purpose of this report (the "**Report**") is to:
 - a) Provide this Court with:
 - (i) an overview of the Company, including its corporate structure and operations;
 - (ii) an overview of the Company's historical financial performance;
 - (iii) information on the Company's debt structure;
 - (iv) information on the Company's current financial position and liquidity; and
 - (v) the proposed Administration Charge, the Directors' & Officers' Charge and the Agent's Charge (as such terms are defined herein).
 - b) Summarize the key terms of the proposed agreement (the "**Liquidation Agency Agreement**") to be entered into among HMV, the Receiver and a contractual joint venture between Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together, the "**Agent**"), in which the Agent will liquidate substantially all of the Company's inventory (the "**Merchandise**") and the Company's furniture, fixtures and equipment (the "**FF&E**");
 - c) Summarize the mandate and powers that are being sought for the Receiver under the Receivership Order; and

- d) Recommend that, in the event this Court appoints Richter as Receiver, the Court issue an order (the “**Approval Order**”):
- (i) Approving the Liquidation Agency Agreement and authorizing and directing the Receiver and the Company to execute such documents and take such additional steps as are necessary to complete the transaction;
 - (ii) Approving the terms of the Administration Charge, the Directors’ & Officers’ Charge and the Agent’s Charge, and proposed priority rankings of such charges; and
 - (iii) Sealing the Confidential Appendices to prevent this information from becoming publicly available pending further order of this Court.

III. QUALIFICATIONS

5. In preparing this Report, the Proposed Receiver has relied upon unaudited financial information prepared by the Company’s representatives, the Company’s books and records, and discussions with the Company’s representatives, its legal counsel and the Lender (collectively, the “**Information**”).
6. In accordance with industry practice, except as described in this Report:
- a) Richter has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
 - b) future-oriented financial information relied upon in preparing this Report is based on management’s assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material.
7. Unless otherwise noted, all monetary amounts contained in this Report are expressed in Canadian dollars.

IV. BACKGROUND

COMPANY OVERVIEW

8. With decades of global retailing history, HMV is one of Canada’s leading audio and visual entertainment retailers, specializing in music, DVD, Blu-ray, and other media-related products. Established in 1986, HMV has grown from a small retail music chain to become one of Canada’s market leaders with 102 stores across Canada, as well as an e-commerce site, www.hmv.ca.
9. The Company originated as a subsidiary of the U.K.- based HMV Retail Ltd. HMV launched its Canadian retail operations in 1986 with the opening of its first store in Mississauga, Ontario. For 20 consecutive years after its founding, HMV received the Canadian music industry’s award for music retailer of the year.

10. On or about June 27, 2011, HMV Retail Ltd. sold the Company and the assigned the rights to the “HMV” brand in Canada to U.K.-based Hilco Capital Limited (“**Hilco Capital**”), an affiliate of the Lender. In response to the growing popularity of digital entertainment and streaming services, Hilco Capital assisted the Company in expanding its product mix to include non-media merchandise, and provided other financial and operational advice and support.
11. The Company’s corporate head office is located at leased premises on 5401 Eglinton Ave in Toronto, Ontario (the “**Head Office**”). In addition, the Company also maintains two leased warehouse and distribution centers in Mississauga, Ontario to handle retail store replenishment and e-commerce fulfillment. As previously noted, HMV had 102 retail stores operating from leased premises throughout Canada, the largest of which measures 30,000 square feet, broken down by province as follows:

HMV Canada Inc.	
Store Count by Province	
As at December 31, 2016	
Province	Store Count
Alberta	20
British Columbia	10
Manitoba	4
New Brunswick	3
Newfoundland	1
Nova Scotia	2
Ontario	34
Quebec	24
Saskatchewan	4
Total	102

Source: Management prepared information

12. As at January 21, 2017, HMV employed approximately 1,340 individuals across Canada, comprised of 1,242 employees at its retail locations, 18 employees in warehousing and distribution, and 80 in head office, e-commerce and administration functions. HMV’s workforce is not unionized and the Company does not maintain a pension plan.

CORPORATE STRUCTURE

13. HMV was incorporated under the *Business Corporations Act* (Ontario). The Company is also registered extra-provincially to carry on business in Alberta, British Columbia, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador and Prince Edward Island. HMV’s parent company is U.K.-based Barraud Holdings Limited (“**Barraud**”), an indirect subsidiary of Hilco Capital. The Company’s affiliates in Canada include HMV Digital Holdings ULC (“**HMV Digital**”) and HMV Pure Holdings

ULC (“**HMV Pure**”), both of which are indirect subsidiaries of Barraud, as well as HMV IP Holdings ULC (“**HMV IP**”). The Company’s organizational chart is attached hereto as **Appendix “A”**.

HMV Digital

14. In an attempt to stay competitive in the marketplace, HMV launched a subscription-based, streaming digital music service in December 2012, called “The Vault”. The Vault was subsequently replaced with “HMV Digital”, an online music store featuring an extensive digital catalogue of songs to buy individually or as complete albums, either through www.hmvdigital.ca or the HMV Digital mobile app.
15. HMV Digital is a British Columbia incorporated unlimited liability company with its registered office at 1800 – 355 Burrard Street, Vancouver, British Columbia. Based on information provided by the Company, the Proposed Receiver understands that HMV Digital has no employees and no material assets.

HMV Pure

16. HMV Pure is the Company’s customer rewards program, in which members earn points for every dollar spent in store or online, which can be redeemed for in-store discounts, music downloads, and special gift items, as well as opportunities to enter exclusive members-only contests.
17. HMV Pure is a British Columbia incorporated unlimited liability company with its registered office at 1800 – 355 Burrard Street, Vancouver, British Columbia. Based on information provided by the Company, the Proposed Receiver understands that HMV Pure has no employees and no material assets.

HMV IP

18. The Proposed Receiver understands HMV IP holds the intellectual property rights to the “HMV” brand in Canada. The Proposed Receiver further understands that the Company pays royalty and licensing fees to HMV IP for use of certain intellectual property pursuant to the terms of a sub-sublicense agreement dated June 26, 2011 (the “**Sub-Sublicense Agreement**”) entered into between HMV IP and the Company. Pursuant to the Sub-Sublicense Agreement, the Company is permitted to manage, operate and carry on its business in Canada using the “HMV” name.
19. The Company has outstanding secured indebtedness owing to HMV IP as a result of the non-payment of royalty and licensing fees to HMV IP since November 2014.
20. As described in greater detail below, HMV has guaranteed the indebtedness, liabilities and obligations of each of HMV IP, HMV Digital and HMV Pure (collectively the “**Related Companies**”) owing to the Lender, in accordance with the terms of a guarantee dated December 28, 2011 (the “**Guarantee**”). As noted above, the Related Companies are not subject to these receivership proceedings as the Related Companies have no material assets.

21. Further background information about HMV, including its causes of financial difficulties and insolvency, is provided in the affidavit of Mr. Christopher Emmott, a Director of HUK10 (the “**Emmott Affidavit**”), included in the receivership application materials filed with the Court by HUK10.

COMPANY’S FORBEARANCE AGREEMENT

22. The Proposed Receiver understands that the Lender has provided accommodations to the Company in order to sustain operations and meet obligations. A summary of these accommodations are as follows:
 - a) The Lender continued to advance additional funds to HMV to fund operating losses over the past two years. Between December 2011 and December 2014, the average loan balance owing by HMV to HUK10 was approximately \$11 million, whereas between December 2014 and December 2016, the average loan balance increased significantly to \$26 million; and
 - b) Deferral of all cash payments on account of the HUK10 Indebtedness (as defined herein), including principal repayments, interest, royalties, licensing and other fees, since November 2014.
23. The Proposed Receiver understands that the Company and the Lender entered into an amendment and consolidation agreement on December 22, 2016 (the “**Consolidation Agreement**”) as a result of certain defaults that occurred under the amended and restated loan agreement dated November 4, 2011 (the “**HUK10 Loan Agreement**”). As referenced in the Emmott Affidavit, and discussed below, the Lender, without waiving the defaults, agreed to forbear from taking any action in connection with the defaults until January 20, 2017 to allow the Company time to facilitate the Major Supplier Negotiations (as defined herein).

MAJOR SUPPLIER NEGOTIATION PROCESS

24. The Proposed Receiver understands that HMV purchases the majority of its physical media inventory from the major music labels and media studios (the “**Major Suppliers**”). As noted below, the Company owed the Major Suppliers approximately \$56 million in total as at December 31, 2016.
25. During the final weeks of December 2016 and the first few weeks of January 2017, the Proposed Receiver understands that the Company and the Lender engaged in good faith discussions with the Major Suppliers (the “**Major Supplier Negotiations**”) in an effort to renegotiate existing supply arrangements. The intent of these negotiations was to provide HMV with liquidity and gross margin improvement going forward to allow it to continue operations. Unfortunately, the Company was unable to reach an agreement with the Major Suppliers, on mutually acceptable terms, that would allow the Company to address its immediate cash flow needs.

26. As such, HUK10 demanded payment of all obligations owing to it by the Company by way of letter dated January 24, 2017 (the “**Demand Letter**”), and that day HUK10 also issued its Notice of Intention to Enforce Security pursuant to section 244(1) of the BIA to the Company. Concurrently with the delivery of the Demand Letter, HUK10 also issued demand letters to each of HMV IP, HMV Digital and HMV Pure in respect of their respective indebtedness to HUK10, which indebtedness was guaranteed by HMV as previously noted.
27. On January 24, 2017, HMV, as well as each of HMV IP, HMV Digital and HMV Pure, consented by way of letter to the enforcement by the Lender.

V. FINANCIAL POSITION

HISTORICAL OPERATING RESULTS

28. The Company’s most recent year-to-date (“**YTD**”) financial statements are presented for the eleven month period ending November 30, 2016.
29. Set out below is a summary of the Company’s income statement for: (i) the fiscal period ending December 28, 2013 (“**FY13**”); (ii) the fiscal period ending December 27, 2014 (“**FY14**”); (iii) the fiscal period ending January 2, 2016 (“**FY15**”); and (iv) the most recent year-to-date (“**YTD**”) period ending November 30, 2016 (unaudited) (“**FY16**”):

HMV Canada Inc.				
Income Statement				
(\$000s)				
	Eleven months ended November 30, 2016	Year ended January 2, 2016	Year ended December 27, 2014	Year ended December 28, 2013
Sales	\$ 147,705	\$ 214,424	\$ 225,176	\$ 245,084
Cost of goods sold	89,438	128,493	135,204	150,070
Other cost of sales	3,144	4,196	3,700	3,332
Gross profit	\$ 55,123	\$ 81,735	\$ 86,272	\$ 91,682
Expenses				
Store, head office and other administrative	\$ 68,457	\$ 87,790	\$ 90,342	\$ 94,381
Interest	2,115	2,490	2,466	1,832
Write-down of property, plant and equipment	-	316	-	126
Store closures costs	524	142	126	360
Total expenses	\$ 71,096	\$ 90,738	\$ 92,934	\$ 96,699
Loss before income taxes	(15,973)	(9,003)	(6,662)	(5,017)
Provision for income taxes	-	-	-	240
Net loss for the period	\$ (15,973)	\$ (9,003)	\$ (6,662)	\$ (4,777)
EBITDA	\$ (12,439)	\$ (3,938)	\$ (1,629)	\$ 261

Note: Fiscal year of Company ends on the Saturday of the final week in a calendar year.

Source: Management internal financials & audited financial statements

30. The income statement summary above reflects the following:

- a) the Company's revenues declined each year between FY13 and FY15, and are projected to further decrease to approximately \$190 million for FY16;
- b) net losses total approximately \$20 million between FY13 and FY15, and the Company is projected to incur another loss in FY16;
- c) the Company generated EBITDA losses in each of FY14 and FY15, and this trend is projected to continue in FY16; and
- d) despite store closures and cost reduction initiatives, such as headcount rationalization and renegotiating store rent expenses, the Company has not been able to reduce its operating costs to offset the decline in revenues.

31. Set out below is a summary of the Company's unaudited balance sheet as at November 30, 2016:

ASSETS		LIABILITIES AND SHAREHOLDER'S DEFICIENCY	
Current		Current	
Cash and cash equivalents	\$ 5,913	Accounts payable and accrued liabilities	\$ 75,724
Accounts receivable, net	\$ 1,303	Sales taxes payable	\$ -
Inventory	\$ 56,553	Income taxes payable	\$ 458
Prepaid expenses	\$ 126	Debt	\$ 55,643
Total current assets	\$ 63,895	Total current liabilities	\$ 131,825
Non-current assets		SHAREHOLDER'S DEFICIENCY	
Property, plant and equipment, net	\$ 4,137	Share capital	\$ 30,000
Intangible assets, net	\$ -	Contributed surplus	\$ 12,323
		Deficit	\$ (106,116)
Total assets	\$ 68,032	Total shareholder's deficiency	\$ (63,793)
		Total liabilities and shareholder's deficiency	\$ 68,032

Source: Management prepared information

32. The Company's internal financial statements as at November 30, 2016 reflect that:

- a) the book value of HMV's current liabilities (approximately \$132 million) significantly exceeds the book value of its current assets (approximately \$64 million). Even if the Company's outstanding indebtedness was excluded, HMV would still have a negative working position of approximately \$12 million;
- b) the Company had an accumulated retained earnings deficit of approximately \$106 million; and
- c) the Company is insolvent on a balance sheet basis.

ABILITY TO CONTINUE AS A GOING CONCERN

33. The Proposed Receiver understands that the Company's financial results YTD continue to be a concern. The Proposed Receiver is of the view that HMV will continue to experience challenges in operating as a going concern due to the following:
- a) the Company and the Major Suppliers were unable to reach an agreement, on mutually acceptable terms, to sustain HMV's operations and support a recovery. Not having come to satisfactory arrangements with the Major Suppliers, the Company is projected to incur another loss in 2017 and require at least an additional \$5 million to sustain operations. As noted above, the Lender is not prepared to continue to advance additional funds to the Company on that basis. The Lender is the Company's primary source of liquidity and a withdrawal of its support, would result in a material adverse change for the Company;
 - b) The Lender has supported the Company with additional financing since December 2014, and has agreed to defer cash payments, including scheduled principal and interest payments since November 2014. The Company currently lacks sufficient liquidity to address normal operating costs along with servicing its debt obligations owing to the Lender. In addition, there is no indication that HMV will be able to secure alternative financing to repay HUK10 in full, given its recent financial results and financial position; and
 - c) The Major Suppliers have all essentially stopped supplying inventory to the Company, and with no viable alternative supply arrangement, the Company could run out of inventory in the near future.

VI. CREDITORS

BANK OF MONTREAL

34. The Bank of Montreal ("**BMO**") provided a \$30 million (subsequently reduced to \$25 million) revolving asset-based facility to HMV pursuant to a credit agreement dated December 22, 2014, as amended by a first amending agreement dated December 15, 2016 (the "**BMO Facility**"). As security for its advances under the BMO Facility, BMO was granted a first-ranking security interest in the Property, in priority to HUK10.
35. The Proposed Receiver understands the BMO Facility originally expired in December 2016, but BMO granted a short three month extension to March 2017, at which point the Company could extend for an additional two year period, subject to certain conditions being met including an agreement with the Major Suppliers and an additional \$2 million working capital injection by HUK10.

36. As at the date of this Report, the Proposed Receiver understands that the Company has terminated the BMO Facility. The Proposed Receiver understands that the Company is working with BMO to obtain the necessary discharges and releases of BMO's security.

HUK10

37. The Company's outstanding direct indebtedness owing to the Lender (the "**Direct Indebtedness**") consisted of the following:
- a) certain term loans extended to HMV by HUK10 pursuant to the HUK10 Loan Agreement; and
 - b) certain procurement fees rendered by HUK10 pursuant to the terms of an amended and restated negotiation services agreement dated January 7, 2014.
38. In addition to the Direct Indebtedness, the Company also guaranteed the indebtedness of the Related Companies pursuant to the Guarantee (the "**Guarantee Indebtedness**"):
- a) amounts advanced to HMV IP by HUK10 pursuant to a loan agreement made between HMV IP and HUK10 dated February 27, 2012;
 - b) amounts advanced to HMV Pure by HUK10 pursuant to a loan agreement made between HMV Pure and HUK10 dated February 27, 2012; and
 - c) amounts advanced to HMV Digital by HUK10 pursuant to a loan agreement made between HMV Digital and HUK10 dated February 27, 2012.
39. The Company was also indebted to each of HMV IP and Retail Agents 230 Limited ("**230 Limited**") pursuant to certain agreements and arrangements entered into with HMV. The Proposed Receiver understands that pursuant to the Consolidation Agreement, each of HMV IP and 230 Limited agreed to assign all of their respective indebtedness owing by the Company and related security to the Lender (the "**Assigned Indebtedness**", and together with the Guarantee Indebtedness and Direct Indebtedness, the "**HUK10 Indebtedness**").
40. The table below provides a summary of the HUK10 Indebtedness as at January 24, 2017:

HMV Canada Inc.	
Summary of HUK 10 Indebtedness	
As at January 24, 2017	
(\$000s)	
<u>Direct Indebtedness</u>	
HUK 10 Loan Agreement	\$ 17,970
Procurement Fees	3,207
<u>Guaranteed Indebtedness</u>	
HMV IP	\$ 2,135
HMV Pure	6,070
HMV Digital	2,954
HMV Wholesale Facility	496
<u>Assigned Indebtedness</u>	
HMV IP	\$ 5,200
230 Limited	929
Total	\$ 38,961

Source: Emmott Affidavit

41. The Proposed Receiver understands that the HUK10 Indebtedness is secured by a general security agreement and a movable hypothec representing a charge over all assets of HMV, subject to the security created by HMV in favour of BMO under the BMO Facility.

OTHER PPSA REGISTRANTS

42. In addition to the secured claims of the Lender pursuant to the HUK10 Indebtedness, the search report of prepared by the Lender's legal counsel of registrations filed under the applicable Personal Property Security Registry and/or Register of Personal and Movable Real Rights and reflects that certain financing and equipment lessors have registered a security interests against the Company.

POTENTIAL PRIORITY CLAIMS

43. Based on information provided by the Company, the Proposed Receiver understands that potential priority claims could total up to approximately \$2.2 million as at January 21, 2017, and are comprised of the following:

HMV Canada Inc.	
Estimated Priority Claims	
As at January 21, 2017	
(000's)	
Gross Wages and Salary	515
Vacation Pay	1,069
Sales Taxes Due	577
	\$ 2,161

Source: Management prepared estimates

44. The Proposed Receiver understands that the Company was current on all payments to government authorities for sales taxes and source deductions that were due and payable as at the date of this Report, and the above amounts, with the exception of vacation pay for the most part, represent estimates for amounts accrued since the Company's last payment date.
45. As noted above, HMV employed approximately 1,340 individuals across Canada and the Proposed Receiver understands the Company's bi-weekly payroll was approximately \$1 million on average. The Proposed Receiver understands that the \$515,000 estimate for wages represents the gross wages accrued for the stub period since the Company's last payroll run for pay period ending January 21, 2017 (the "**Stub Period Wages**"). The Proposed Receiver understands that the Lender supports the payment of the Stub Period Wages by the Receiver out of proceeds from the Property in the ordinary course for all employees, even those not retained during these proceedings.
46. If appointed as Receiver, the Proposed Receiver will comply with the provisions of the Wage Earner Protection Program Act subsequent to its appointment.

UNSECURED TRADE CREDITORS

47. The Proposed Receiver understands that the Company had total unsecured trade payables owing of approximately \$64 million as at January 24, 2017, of which approximately \$52 million was related to the Major Suppliers.
48. The Proposed Receiver understands that the Company was current in respect of obligations to its landlords for January 2017, except for certain landlords where monthly rent is based on a percentage of sales, which the Proposed Receiver understands is being reconciled by the Company in accordance with the applicable lease arrangements. The proposed Receivership Order contemplates authorizing the remittance of sufficient funds to the Company to enable the Company to pay the rent in full for the month of February 2017 under each of the Debtor's stores, Head Office, and other real property leases.

VII. THE LIQUIDATION AGENCY AGREEMENT

PRE-FILING SOLICITATION PROCESS

49. As noted above, HMV previously retained Richter in December 2016 to assist the Company with assessing strategic options given its liquidity situation, which included the potential for net orderly liquidation of the Company's inventory and assets, as a contingency should the Major Supplier Negotiations fail to achieve an acceptable result. Richter's services included:
- a) identifying and approaching parties, on a confidential basis, to solicit liquidation proposals for the Company's inventory and fixed assets (the "**Pre-Filing Solicitation Process**");
 - b) preparing a non-disclosure agreement ("**NDA**") and an electronic data-room (the "**Data Room**");
 - c) coordinating due diligence requests from Interested Parties (as defined herein); and
 - d) analyzing and negotiating offers.
50. A summary of the Pre-Filing Solicitation Process and its results are as follows:
- a) beginning on December 30, 2016, Richter contacted a total of 8 prospective interested parties (the "**Interested Parties**"), all of which were liquidators, to advise of the opportunity to present a proposal to in connection with this transaction opportunity. The Interested Parties were advised that the Company would consider an agency agreement and/or a consulting agreement, provided that such offers were binding;
 - b) Richter, with the assistance of the Company, prepared the Data Room, which contained corporate, financial and information relating to the Company's inventory and fixed assets, to assist Interested Parties in completing their primary due diligence;
 - c) all of the Interested Parties executed an NDA to obtain access to the Data Room;
 - d) throughout the course of the Pre-Filing Solicitation Process, Richter, with the assistance of the Company, facilitated due diligence efforts by, among other things, responding to queries from the Interested Parties regarding the Company's inventory and assets, and updating the Data Room as new information became available;
 - e) Richter deposited in the Data Room a form of consulting agreement and a form of agency agreement on January 10 and January 11, 2017, respectively, on which Interested Parties were required to submit binding offers (the "**Offers**");
 - f) Interested Parties were required to submit Offers to Richter by 5pm EST on January 13, 2017, which date was subsequently extended by the Company to 12pm EST on January 17, 2017 (the "**Bid**");

Deadline"). In total, 4 Offers were received from 2 of the Interested Parties (the "**Offerors**") prior to the Bid Deadline, with each of the Offerors submitting both an agency agreement, including a net minimum guarantee, and a consulting agreement.

- g) based upon the review by the Company and the Lender, in consultation with Richter, the Company advised Richter to engage in discussions with the Offerors in connection with the agency agreement Offers, and request that each of the Offerors submit their best and final bid to Richter on or before 4PM EST January 23, 2017 (the "**Final Offers**"). Filed with this Court on a sealed and confidential basis as **Confidential Appendix "1"**, a summary of the material terms of the Final Offers received (the "**Final Offers Summary**"), which is the subject of a request for a sealing order from this Court pending closing of the Liquidation Agency Agreement or upon further order of this Court. In view of the sensitive commercial information contained in the Final Offers Summary, the disclosure of which would cause prejudice to the Offerors, and may further affect the parties obligations and rights under the Pre-Filing Solicitation Process and otherwise, the Final Offers Summary will be provided to the Court prior to the return of the within application in a sealed envelope; and
- h) following an analysis of the Final Offers by the Company and the Lender, in consultation with Richter, the Final Offer submitted by the Agent was selected as the superior bid. The Company, the Proposed Receiver, the Agent, and their respective counsels, entered into negotiations immediately to finalize an agreement, which ultimately resulted in the Liquidation Agency Agreement, as discussed in greater detail below.

51. The Proposed Receiver notes that certain parties were not contacted by Richter as part of the Pre-Filing Solicitation Process due to concerns raised by the Company regarding potential conflicts of interest inherent with these parties. As the Pre-Filing Solicitation Process was run concurrently with the Major Supplier Negotiations, the Company wanted to ensure confidentiality regarding its contingency planning so as not jeopardize its Major Supplier Negotiations. The Proposed Receiver is of the view that the Interested Parties contacted as part of the Pre-Filing Solicitation Process all have extensive knowledge and experience in retail liquidations of this size and scale, and as such, the market was appropriately canvassed.

PROPOSED LIQUIDATION AGENCY AGREEMENT

52. The Proposed Receiver understands from discussions with the Company and the Lender that an orderly liquidation of the Company's inventory and assets would likely result in the highest proceeds, based on the following:

- a) the market for the sale of physical media in Canada is in significant decline and it is unlikely that a prospective purchaser would be interested in acquiring the Company's existing business or that the Company would be able to secure alternative financing to repay the HUK10 Indebtedness; and
 - b) any of the names, marks, or other intellectual property associated with the "HMV" name are licensed from HMV IP, and the Proposed Receiver understands HMV IP would not support the sale and/or otherwise transfer of the license.
53. Attached hereto as **Appendix "B"** is a redacted copy of the Liquidation Agency Agreement (without Exhibits) substantially in the form anticipated to be executed by the parties. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Liquidation Agency Agreement. Filed with this Court on a sealed and confidential basis as **Confidential Appendix "2"** is an unredacted copy of the Liquidation Agency Agreement (with Exhibits) substantially in the form anticipated to be executed by the parties. The Proposed Receiver, the Company and the Agent are currently conducting the final negotiations and revisions of the commercial terms of the Liquidation Agency Agreement. Once finalized and executed, the signed version of the Liquidation Agency Agreement will be provided to the Court on a sealed and confidential basis. In view of the sensitive commercial information and confidentiality obligations contained in the Liquidation Agency Agreement and its Exhibits, the disclosure of which would cause prejudice to the Company, its creditors, and stakeholders, the Liquidation Agency Agreement and its Exhibits is the subject of a request for a sealing order from this Court, and the unredacted copy of the Liquidation Agency Agreement and the Exhibits thereto will be provided to the Court prior to the return of the within application in a sealed envelope.
54. Below is a summary of certain of the material terms of the Liquidation Agency Agreement:
- a) the Agent is a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC, an affiliate of the Lender;
 - b) the Sale will commence following the approval of the Liquidation Agency Agreement, but no later than February 4, 2017 (the "**Sale Commencement Date**") and to end no later than April 30, 2017 (the "**Sale Termination Date**");
 - c) the Agent has provided a net minimum guarantee ("**NMG**") based on the aggregate Cost Value of the Merchandise, subject to adjustment if:
 - (i) the aggregate Cost Value of the Merchandise is less than Merchandise Threshold or greater than the Merchandise Ceiling;
 - (ii) the Cost Value of the Merchandise as a percentage of the Retail Price of the Merchandise exceeds the Cost Factor Threshold.

- d) the Agent will pay a portion of the NMG (the “**Initial Guaranty Payment**”) immediately following the issuance and entry of the Approval Order, with the remaining balance to be paid by the Agent following completion of the Final Reconciliation;
- e) the Agent will be responsible for the expenses in conducting the Sale (the “**Expenses**”), including but not limited to, store-level operating expenses such as payroll, rent, advertising and promotional costs, as well as certain head office costs;
- f) after payment by the Agent of the NMG and the Expenses, the Agent is entitled to a fee (the “**Agent’s Fee**”) being a percentage of the aggregate Cost Value of the Merchandise;
- g) in the event that the Proceeds of the Sale exceed the sum of the NMG, the Expenses and the Agent’s Fee, the Company and the Agent will share the excess based on the terms set out in the Liquidation Agency Agreement;
- h) Agent and Company shall, in good faith, negotiate mutually agreeable terms and conditions upon which the parties will procure additional inventory of like nature, quality, and appropriate mix to include in the Sale (the “**Additional Merchandise**”) and upon the appropriate treatment of the costs of acquiring such Additional Merchandise as an expense and the appropriate sharing of the gross margin earned on such Additional Merchandise provided that the Additional Merchandise will not exceed \$6.5 million at cost in the aggregate and that the Additional Merchandise will be distributed among the Closing Stores such that no Closing Store will receive more than 15% of the Additional Merchandise;
- i) the Sale will be conducted in accordance with the sale guidelines (the “**Sale Guidelines**”) attached to the Approval Order, and shall include:
 - (i) the Sale will be conducted in accordance with the terms of the applicable leases or other occupancy agreements, except as provided for in the Approval Order or any further Order of the Court, or any written agreement between the Company or Receiver and the applicable landlord;
 - (ii) the Sale shall be conducted so that each of the stores remain open during their normal hours of operation provided in their respective leases;
 - (iii) the Sale shall end by no later than the Sale Termination Date;
 - (iv) 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. No signs shall advertise the Sale as a “bankruptcy”, a “going out of business” or a “liquidation” sale;

- (v) At the conclusion of the Sale in each Closing Store, the Agent shall arrange that the premises for each Closing Store is in "broom-swept" and clean condition, and shall arrange that the Closing Stores are in the same condition as on the Sale Commencement Date, ordinary wear and tear excepted;
 - (vi) the Agent shall be entitled to include in the Sale the Additional Merchandise, subject to certain limitations; and
 - (vii) the Agent, the Company and, where appropriate, the Receiver, shall not conduct any auctions of Merchandise or FF&E at any of the Closing Stores.
- j) the reconciliation of Proceeds and Expenses shall take place between the Agent, the Company and the Receiver on a weekly basis, with a final reconciliation to occur within 30 days of the Sale Termination Date;
 - k) the Agent will have the exclusive right to sell the FF&E and the Agent shall be entitled to receive a commission of the sale proceeds, plus reimbursement of the Agent's out of pocket costs related to such disposition which are not duplicative of the Expenses; and
 - l) the only material condition precedent to the Liquidation Agency Agreement is the Court granting the Approval Order.
55. The form of Approval Order in respect of the Liquidation Agency Agreement includes the following provisions:
- a) that the Sale be conducted in accordance with the Sales Guidelines attached to the Approval Order as is typical in Court-approved retail liquidations;
 - b) requiring that Gross Sale Proceeds and Gross FF&E Proceeds be deposited into certain designated accounts; and
 - c) granting the Agent a charge (the "**Agent's Charge**") over the Merchandise, Proceeds and the FF&E Proceeds and the Agent's share of proceeds from the sale of Merchant Consignment Goods to secure payment of amounts owing to the Agent under the Liquidation Agency Agreement.
56. Based on the experience of the Proposed Receiver with other retail insolvency liquidations, it is the view of the Proposed Receiver that the terms and conditions of the Liquidation Agency Agreement and the Approval Order are consistent with general market conditions.

VIII. COURT-ORDERED CHARGES

ADMINISTRATION CHARGE

57. The proposed Receivership Order provides for a first ranking charge in favour of the Receiver, the Receiver's counsel, and counsel to the Company (the "**Insolvency Professionals**") in an amount not to exceed \$750,000, subject to further Order of the Court, charging all of the Property as security for the professional fees and disbursements incurred both before and after the date of these receivership proceedings (the "**Administration Charge**").
58. The Company was provided the Insolvency Professionals with minimal retainer fees for their services in connection with these receivership proceedings. The quantum of the Administration Charge sought was determined in consultation with the Lender, which supports the Administration Charge. The creation of the Administration Charge is commonplace in similar proceedings as is the proposed priority of the Administration Charge.

DIRECTORS' & OFFICERS' CHARGE

59. The proposed Receivership Order provides for a charge in the maximum amount of \$750,000 subject to further Order of the Court charging the assets of the Company to indemnify its directors and officers for liabilities incurred by the Company that result in post-filing claims against the directors and officers in their personal capacities (the "**Directors' & Officers' Charge**").
60. As noted in the Emmott Affidavit, the proposed Receivership Order leaves a large degree of control over the Company to the current directors and officers to effect the proposed liquidation pursuant to the Liquidation Agency Agreement.
61. The amount of the Directors' & Officers' Charge was determined by taking into consideration employee payroll and related expenses (including source deductions), vacation pay and sales taxes. As noted in the Emmott Affidavit, the Lender supports the Directors' & Officers' Charge.

AGENT'S CHARGE

62. As noted above, the Liquidation Agency Agreement, if approved, provides that the Agent will be granted the Agent's Charge over the Merchandise, Proceeds and the FF&E Proceeds and the Agent's share of proceeds from the sale of Merchant Consignment Goods to secure payment of amounts owing to the Agent under the Liquidation Agency Agreement.

SUMMARY AND PROPOSED RANKING OF THE COURT ORDERED CHARGES

63. It is contemplated that the priorities of the charges sought by the Lender (collectively, the “Charges”) will be as follows:
- a) First – the Agent’s Charge;
 - b) Second – Administration Charge; and
 - c) Third – the Directors’ & Officers’ Charge.
64. The Receivership Order provides that the Charges will rank in priority to the security interests of HUK10 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 the Receivership Order.
65. The Proposed Receiver believes that the Charges and rankings are required and reasonable in the circumstances of these receivership proceedings in order to achieve an orderly and efficient liquidation of the Company’s assets and accordingly, supports the granting and the proposed ranking of the Charges.

IX. RECEIVER’S PROPOSED MANDATE AND POWERS UNDER THE RECEIVERSHIP ORDER

66. The proposed Receivership Order contemplates that the Receiver shall take possession and control over the Company’s treasury assets and all amounts due to the Company pursuant to Liquidation Agency Agreement, and the Company shall remain in possession and control of the remaining assets, including the Merchandise and the FF&E. Further, the proposed Receivership Order contemplates that the operation and management of the Company will continue to be controlled by its current directors and officers during the receivership proceedings. The Lenders have requested this structure as the directors and officers have intimate knowledge of the Company’s business and operations and have previously overseen the closing of certain of the Company’s stores across Canada. As noted in the Emmott Affidavit, the directors and officers of the Company have worked closely with HUK10 over the past five years and are intimately familiar with the Company’s business and operations and have a unique skill set and knowledge of the industry which will allow the Company, with the assistance of the Receiver and the Agent, to conduct an orderly liquidation of the Company’s assets in the most efficient manner.
67. The Proposed Receiver notes that the proposed Receivership Order empowers and authorizes, but does not obligate, the Receiver to take an expanded role in keeping with the customary powers conferred in receiverships with a view to providing the Receiver with the flexibility to exercise its discretion and address issues and engage in activities in a timely fashion as requirements arise.

68. Provided the Receivership Order is granted, in addition to mailing notice of the Receiver's appointment pursuant to section 246(1) of the BIA, the Receiver will setup a website to post periodic updates and Court materials, as well as establish an information hotline(s) in the event creditors, suppliers, employees or other stakeholders require additional information with respect to these proceedings.

X. RECOMMENDATION

69. Provided this Court issues the Receivership Order, the Proposed Receiver recommends that this Court grant the Approval Order for the following reasons:

- a) the market for the sale of physical media in Canada is in significant decline and it is unlikely that a prospective purchaser would be interested in acquiring the Company's business or that the Company would be able to secure alternative financing to repay the HUK10 Indebtedness;
- b) any of the names, marks, or other intellectual property associated with the "HMV" name are licensed from HMV IP and such license has or will be terminated, effectively foreclosing the possibility of any sort of going concern sale of the Company's business;
- c) the Pre-Filing Solicitation Process facilitated by Richter and the Company was commercially reasonable, involved the participation of multiple interested parties, and sufficiently canvassed the market;
- d) the contemplated Liquidation Agency Agreement represents the best and highest Offer received;
- e) the Company's lack of liquidity substantially eliminates an opportunity to further market the assets without putting the Liquidation Agency Agreement at risk; and
- f) HUK10 is the only creditor with a present economic interest in the Property, and any further marketing efforts, in the Receiver's view, are not likely to result in realizations in excess of the HUK10 Indebtedness.

70. Provided this Court sees fit to issue the Receivership Order, upon such issuance of the order appointing the Receiver, and the Approval Order approving the Liquidation Agency Agreement, the Receiver shall forthwith enter into the Liquidation Agency Agreement and carry out the liquidation contemplated therein.

All of which is respectfully submitted on the 26th day of January, 2017.

Richter Advisory Group Inc.
as the Proposed Receiver of
HMV Canada Inc.
and not in its personal capacity

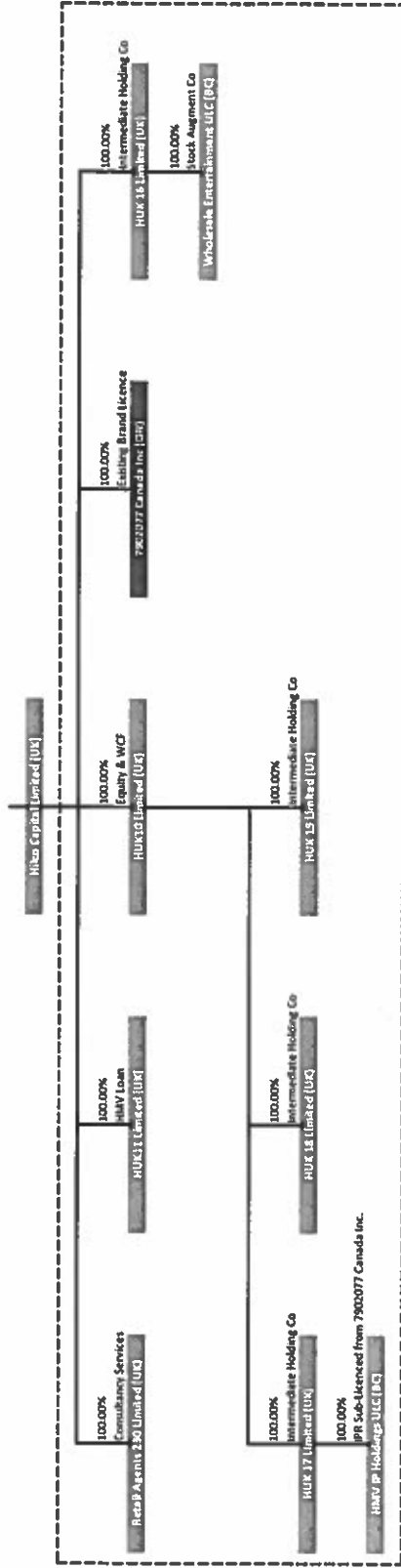


Paul van Eyk, CA·CIRP, CA·IFA
Senior Vice-President



Pritesh Patel, CIRP, CFA, MBA
Vice-President

APPENDIX A



Key

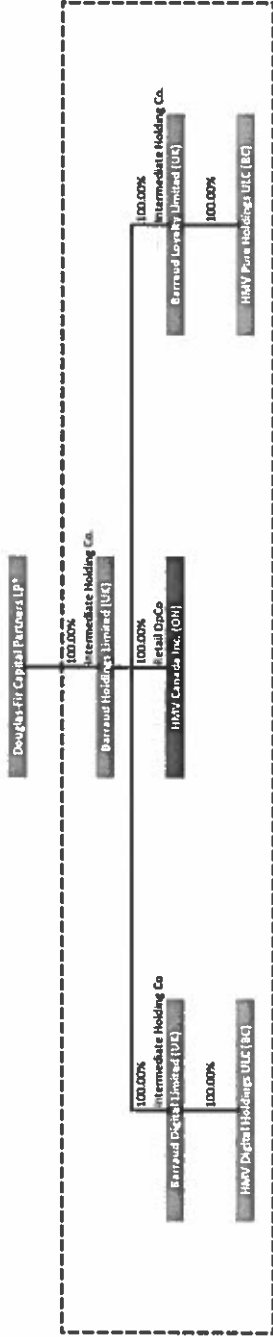
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(BC) = British Columbia Incorporated Company

(US) = US Company



UK
 UK Legal Entity
 British Columbia incorporated Unlimited Liability Company
 Canadian Inc. Legal Entity

ULC = Unlimited Liability Company
 (OH) = Ontario Incorporated Company
 (IC) = British Columbia Incorporated Company
 (UK) = UK Company

APPENDIX B

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AGENCY AGREEMENT

This Agency Agreement (the “**Agreement**”) is made as of January 26, 2017, by and 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 “**Company**” or 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 (as hereinafter defined).

RECITALS

WHEREAS HUK 10 Limited (“**HUK10**”), as a secured creditor of the Company, intends to apply to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for (i) an order (the “**Appointment Order**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (“**BIA**”), and section 101 of *Courts of Justice Act*, RSO 1990, c C.43, as amended (“**CJA**”) seeking, among other things, the appointment of Richter as receiver, without security, of the Company so that the Sale (as defined below) may commence on or about February 4, 2017, and (ii) the Approval Order (as hereinafter defined);

AND WHEREAS the Appointment Order will provide that the Company benefits from a stay of proceedings against the Company’s business and property, as well as other protections in the proceedings under the BIA (the “**Receivership Proceedings**”) in favour of both the Company and Richter;

AND WHEREAS on the date hereof, the Merchant operates 102 retail stores across Canada in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island;

AND WHEREAS as part of the Receivership Proceedings, the Merchant wishes to engage the Agent as its exclusive agent for the limited purposes of (a) selling, by conducting a “store closing,” “sale on everything,” “everything must go,” or other mutually agreed similarly themed sale (the “**Sale**”), all of the Merchandise (as hereinafter defined) from all of Merchant’s retail store locations identified in **Exhibit IA** annexed hereto (collectively, the “**Closing Stores**”) and each a “**Closing Store**”) and Merchant’s distribution centres identified in **Exhibit 1B** annexed hereto (collectively, the “**Distribution Centres**”); and (b) subject to Section 15 hereof, disposing of the Merchant’s owned furniture, trade fixtures and equipment (collectively, “**Owned FF&E**”) located at the Closing Stores, Distribution Centres, and Merchant’s corporate office, subject to the terms and conditions set forth herein;

AND WHEREAS the Agent is willing to serve as the Merchant’s exclusive agent to conduct the Sale in accordance with the terms and conditions of this Agreement and subject to the issuance of the Approval Order including the Sale Guidelines, both in form and substance satisfactory to the Agent, the Approval Order and the Sale Guidelines;

AND WHEREAS, if Richter exercises any of the powers given to it in the Appointment Order or any other Order of the Court that relates to the conduct of the Sale, the Agent is willing to serve as Richter’s exclusive agent, to the extent necessary, to conduct the Sale in accordance with the terms and conditions of this Agreement and, subject to the issuance of the Approval

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Order including the Sale Guidelines, both in form and substance satisfactory to the Agent, the Approval Order and the Sale Guidelines;

AND WHEREAS each of the Agent, the Merchant and Richter agrees and acknowledges that the entering into of this Agreement by the Merchant and Richter is subject to the approval of the Court and that should the Appointment Order and the Approval Order (as hereinafter defined) not be issued by the Court, this Agreement shall have no force or effect.

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

Section 1. Cash Management

1.1 Each of the parties hereto hereby acknowledges and agrees that, upon the issuance of the Appointment Order, Richter has been appointed by the Court pursuant to the terms of the Appointment Order to, among other things, monitor and administer the Merchant's cash and cash management systems. Any and all references herein relating to payments to be made by the Merchant under this Agreement or the receipt of any payments and/or deposits to be paid to the Merchant by the Agent or to which payment(s) the Merchant is entitled shall be made to or effected at the direction of and shall be under the control and supervision of Richter at all times, including, but not limited to, the payments described in Sections 3 and 4 below.

1.2 Richter shall take such reasonable steps, subject to compliance with its Court ordered duties and statutory obligations, as are necessary to facilitate the Merchant's need to fulfill its obligations under this Agreement and to allow the Merchant to carry on business in the ordinary course, as modified by and subject to the Appointment Order, the Approval Order, the Sale Guidelines, and this Agreement. The parties shall cooperate to effect the purpose, spirit, and the terms of this Agreement.

Section 2. Appointment of Agent

2.1 Appointment of Agent to Conduct Sale. Subject to approval of the Court, Merchant hereby appoints Agent, and Agent hereby agrees to serve, as Merchant's exclusive agent for the limited purpose of conducting the Sale in accordance with the terms and conditions of this Agreement and upon issuance, the Approval Order and the Sale Guidelines. Neither Merchant, nor Richter, nor Agent shall be obligated to perform this Agreement and this Agreement shall not be effective unless, by 5:00 p.m. (Eastern Time) on February 2, 2017 or such later date as the parties may agree (the "**Outside Date**"), Merchant has obtained the Approval Order and the Approval Order shall not have been stayed, varied, or vacated nor shall an application to restrain or prohibit the completion of the Sale be pending.

2.2 Appointment of Agent to Administer Proceeds. Subject to approval by the Court, if Richter exercises any of the powers given to it in the Appointment Order or any other Order of the Court that relates to the conduct of the Sale, Richter hereby appoints Agent, and Agent hereby agrees to serve, as Richter's exclusive agent, to the extent necessary, to conduct the Sale in accordance with the terms and conditions of this Agreement.

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

2.4 Additional Merchandise. [REDACTED] [REDACTED] additional inventory of like nature, quality, and appropriate mix to include in the Sale ("**Additional Merchandise**") [REDACTED] [REDACTED] provided that: (i) the Additional Merchandise will not exceed \$ [REDACTED] at cost in the aggregate, and (ii) the Additional Merchandise will be distributed among the Closing Stores such that no Closing Store will receive more than [REDACTED] of the Additional Merchandise. Additional Merchandise may be sold in accordance with and subject to the Sale Guidelines.

Section 3. Approval Order

3.1 Approval Order. Concurrent to the motion seeking the Appointment Order, HUK10 will bring a motion to obtain an order of the Court, in substantially the form attached hereto as **Exhibit 3.1** (the "**Approval Order**") authorizing the Merchant and Richter to enter into this Agreement and the Agent and Merchant to conduct the Sale in accordance with the terms hereof by no later than the Outside Date. The Approval Order shall be in form and substance satisfactory to the Merchant, Richter, and the Agent, acting reasonably, and shall provide, among other things, that:

- (a) the terms of this Agreement, including the Sale Guidelines, and each of the transactions contemplated hereby, including the Sale, are approved;
- (b) Merchant, Agent, and Richter shall be authorized to take any and all actions as may be necessary or desirable to implement this Agreement, administer and keep safe the Proceeds, and each of the transactions contemplated hereby;
- (c) Agent shall be entitled to sell all Merchandise and, subject to Section 15, the Owned FF&E, free and clear of all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, reservation of ownership or right of a third party of any nature or kind whatsoever including, without limitation, the charges and encumbrances in favour of HUK10, or any other lender, and the charges granted by the Court (collectively, "**Encumbrances**"), which Encumbrances will attach instead to the Guaranteed Amount and other amounts paid or to be paid to the Merchant under this Agreement in the same order and priority as they existed on the Sale Commencement Date;

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- (d) no Encumbrances shall attach to any amounts payable by Merchant to, or retained by Agent under this Agreement, or to any amounts that must be reimbursed by Merchant to Agent in the event that Agent over-funds any amounts due to Merchant, and Merchant will pay such amounts to Agent, and Agent will be entitled to receive and will retain such amounts, free and clear of any and all Encumbrances, notwithstanding any enforcement;
- (e) Agent shall have the right to use the Closing Stores and all related store services, all furniture, trade fixtures and equipment, including the Owned FF&E (collectively, the “**FF&E**”), and other assets of Merchant as designated hereunder for the purpose of conducting the Sale, free of any interference from any entity or person, subject to the terms of this Agreement, the Appointment Order, the Approval Order and the Sale Guidelines approved by the Court;
- (f) subject to compliance by Merchant and Agent with this Agreement, the Appointment Order, the Approval Order and the Sale Guidelines, all utilities, landlords, creditors, any successor or assignee of Merchant under any and all leases relating to the Closing Stores or Distribution Centres and all persons acting for or on their behalf shall not interfere with or otherwise impede the conduct of the Sale, or institute any action in any court or before any administrative body which in any way directly or indirectly interferes with or obstructs or impedes the conduct of the Sale;
- (g) Agent, as agent for Merchant, is authorized to conduct, advertise, use A-frames and sign-walkers, post signs, and otherwise promote the Sale without further consent of any person in accordance with the terms and conditions of this Agreement, the Approval Order, and the Sale Guidelines;
- (h) a valid and perfected security interest and charge (the “**Agent’s Charge**”) is granted in favour of the Agent in all of the Merchandise, the Additional Merchandise, the Proceeds, the FF&E Proceeds and the Agent’s share of the proceeds from the sale of Merchant Consignment Goods, (collectively, the “**Charged Property**”) as security for all of the obligations of Merchant and Richter to Agent under this Agreement, including all amounts that are or may become owing or payable by Merchant to Agent under or in connection with this Agreement (the “**Merchant’s Obligations**”). Upon issuance of the Approval Order and payment of the Initial Guaranteed Payment, the Agent’s Charge shall be deemed properly perfected. For greater certainty, the Agent’s Charge shall not extend to any property of Merchant other than the Charged Property. The Agent’s Charge shall:
 - (i) be limited to the amount of the Merchant’s Obligations;
 - (ii) from the time of payment of the Initial Guaranty Payment to Merchant pursuant to this Agreement, rank in first priority senior to all Encumbrances save except to the extent of any unpaid portion of the Guaranteed Amount, the Merchant’s Share Recovery Amount, Net FF&E

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Proceeds, and Merchant's share of the proceeds from the sale of Merchant Consignment Goods due to Merchant hereunder (the "**Unpaid Merchant's Entitlements**");

- (iii) be valid and enforceable as against all of the Charged Property against all persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of Merchant including Richter for all purposes.
- (i) Notwithstanding (i) the bankruptcy of Merchant; (ii) the provisions of any federal or provincial statutes; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances contained in any existing loan document, lease, sublease or offer to lease or other agreement which binds Merchant or Richter or any agent of Merchant; and notwithstanding any provision to the contrary in any such agreement, the entering into of this Agreement and any other ancillary or related documents or agreements and any steps or actions taken in relation hereto, including the vesting of any Remaining Merchandise at the Sale Termination Date in Agent's possession free of any Encumbrances pursuant to Section 4.2 hereof, and the granting of the Agent's Charge and all steps taken and registrations made in any jurisdiction in the sole discretion of Agent, do not and will not constitute fraudulent preferences, fraudulent conveyances, transfer at undervalue, conduct that is oppressive, unfairly prejudicial to or that unfairly disregards the interest of any person, settlements or other challengeable, voidable or reviewable transactions under any applicable law and shall be binding on any receiver and any trustee in bankruptcy that may be appointed in respect of Merchant and shall not be void or voidable by creditors of Merchant;
- (j) the amounts deposited in Merchant's accounts in connection with this Agreement shall be held in trust in favour of the Merchant and Agent, and shall be distributed as set out in this Agreement; and
- (k) the transaction contemplated in this Agreement is exempt from the *Bulk Sales Act* (Ontario).

Section 4. Guaranteed Amount and Other Payments.**4.1 Payments to Merchant and Agent.**

- (a) Concurrent with the execution of this Agreement, the Agent has delivered a deposit, payable to the order of Richter Advisory Group Inc. in its capacity as Court-appointed receiver of the Merchant, in trust, by certified cheque, bank draft, or wire transfer to the account specified by Richter, in the amount equal to [REDACTED] percent ([REDACTED]) of the Guaranteed Amount (as defined below) (the "**Deposit**"), to be held in a non-interest bearing account with a Canadian bank and otherwise to be dealt with in accordance with the provisions of this Agreement. If this Agreement is terminated by the Merchant as a result of the Agent's default, the

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Deposit shall be paid to the Merchant, without interest, as liquidated damages and not as a penalty. If this Agreement is terminated for any other reason, including if the Approval Order is not obtained by the Outside Date, the Deposit shall be promptly repaid by the Merchant or Richter to the Agent, without interest.

- (b) As a guaranty of Agent's performance hereunder in respect of the Sale of the Merchandise, Agent guarantees that Merchant shall receive an amount equal to █ percent (█%) (the "**Guaranty Percentage**") of the aggregate Cost Value of the Merchandise included in the Sale (the "**Guaranteed Amount**"). The Guaranteed Amount will be calculated based upon the aggregate Cost Value of the Merchandise as determined by (i) the aggregate Cost Value of the Merchandise subject to Gross Rings (as calculated below); and (ii) any other adjustments to Cost Value as expressly contemplated by this Agreement. As required and from time to time, any reference to "Guaranteed Amount" shall mean the amount as calculated and modified from time to time in accordance with this Section. As to other adjustments, their calculation and nature is reflected in Section 6 hereof.
- (c) Merchandise received at the Closing Stores after the 10th day following the Sale Commencement Date, but prior to the Receipt Deadline shall be included in the Sale as Merchandise and valued independently at the Cost Value and Retail Price of each good multiplied by the inverse of the prevailing Sale discount for each such good at the time of receipt at the Closing Store. For greater clarity, by way of example, if Merchandise is received on the fifteenth (15th) day after the Sale Commencement Date and the prevailing discount on that date is equal to █%, the Cost Value and Retail Price of the Merchandise will be multiplied by █%.
- (d) To the extent that Proceeds exceed the sum of (i) the Guaranteed Amount, (ii) the Expenses and (iii) █ percent (█%) of the sum of the aggregate Cost Value of the Merchandise sold within the Sale (the "**Agent's Fee**") (collectively, the "**Sharing Threshold**"), then all remaining Proceeds of such Sale shall be shared █ percent █ to Merchant (the "**Merchant's Sharing Recovery Amount**") and █ percent █ to Agent (the "**Agent's Sharing Recovery Amount**"). To the extent that Merchant is entitled to receive any Merchant's Sharing Recovery Amount from the Proceeds, Agent shall pay the Merchant's Sharing Recovery Amount in accordance with Section 4.3(d) hereof.
- (e) Agent shall also be entitled to receive a commission on the FF&E Proceeds, if any, as provided for in Section 15 hereof.
- (f) Agent shall pay to Merchant the Guaranteed Amount, the Merchant's Sharing Recovery Amount, if any, the Net FF&E Proceeds in the manner and at the times specified in Section 4.3 below.
- (g) Subject to Section 4.3(e) below, if and to the extent that Agent or Merchant overfunds any amounts due to the other hereunder, then Merchant or Agent, as applicable, agrees to promptly reimburse (by no later than the next weekly

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reconciliation contemplated by Section 4.6) such over-payment amounts to Agent or Merchant, as applicable, to the extent such amount is not disputed by the other. If such over-payment amount is disputed by Merchant or Agent, then Merchant or Agent, as applicable, shall reimburse such over-payment amount to the other, if any, no later than five (5) days following the date on which such dispute is resolved pursuant to this Agreement.

- (h) Subject to Section 4.3 below, to ensure accurate sales audit functions, as well as accurate calculations of the Merchant's Sharing Recovery Amount, Agent shall be required to utilize Merchant's existing point-of-sale system for recording all sales of Merchandise in the Closing Stores.
- (i) The Guaranty Percentage has been established based upon the assumption that aggregate Cost Value of the Merchandise included in the Sale is not less than [REDACTED] dollars [REDACTED] (the "**Merchandise Threshold**") and is not more than [REDACTED] dollars (\$ [REDACTED]) (the "**Merchandise Ceiling**"). To the extent that the aggregate Cost Value of the Merchandise included in the Sale is less than the Merchandise Threshold, or higher than the Merchandise Ceiling, the Guarantee Percentage shall be adjusted, on a *pro rata* basis, in accordance with **Exhibit 4.1(i)** hereto, as and where applicable.
- (j) The Guaranty Percentage has also been established based upon the assumption that the aggregate Cost Value-to-Retail Price relationship of the Merchandise (aggregate Cost Value divided by aggregate Retail Price) (the "**Cost Factor**") shall not be greater than [REDACTED] percent [REDACTED] (the "**Cost Factor Threshold**"). If the Cost Factor is greater than the Cost Factor Threshold, the Guaranty Percentage shall be adjusted downward in accordance with **Exhibit 4.1(j)** attached hereto. For the purposes of this Agreement, "**Retail Price**" means the lower of (i) lowest ticketed, marked, shelf, hang-tag, stickered, hard-marked, multi-unit purchase discount, or "buy one get one" type price, (ii) current retail or aged price as reflected in the Cost Files, or (iii) other file price reflected in Merchant's books and records for such item of Merchandise; provided, however, that the Retail Price shall not be adjusted for Excluded Price Adjustments. For purposes of calculating Retail Price, if an item of Merchandise of the same SKU has more than one ticketed price, marked price, shelf price, hang-tag price, stickered price, or other hard-marked price, or if multiple items of the same SKU have different ticketed prices, marked prices, shelf prices, hang-tag prices, stickered prices, or other hard-marked price, the lowest ticketed, marked, shelf, hang-tag, stickered, or other hard-marked price on any such item shall prevail for such item or for all such items within the same SKU, as the case may be, that are located within the same location (as the case may be, the "**Lowest Location Price**"), unless it is reasonably determined by Merchant and Agent that the applicable Lowest Location Price was mismarked or such item was priced because it was damaged or marked as "as is," in which case the higher price shall control; provided, however, in determining the Lowest Location Price with respect to any item of Merchandise at a Store, the Lowest Location Price shall be determined based upon the lowest ticketed, marked, shelf, hang-tag, stickered,

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hard-marked, multi-unit purchase discounts, “buy one get one” type discounts or PLU price for such item on a per Store basis. No adjustment to Retail Price shall be made with respect to different ticketed price, marked price, shelf, hang-tag, stickered, hard-marked, multi-unit purchase discounts, “buy one get one” type discounts or PLU prices for items located in different Closing Stores. For purposes of this Agreement, the Cost Factor shall be calculated by dividing the aggregate Cost Value of the Merchandise by the aggregate Retail Price of the Merchandise.

- (k) The adjustments to the Guaranty Percentage contemplated by **Exhibit 4.1(i)** and **Exhibit 4.1(j)** shall be independent and cumulative.
- (l) On the Sale Commencement Date, or as soon as practically possible, Agent and Merchant shall confirm the amount of cash in the registers at the Closing Stores as of the Sale Commencement Date (**“Cash in Registers”**). An actual count of such cash shall be conducted by Agent and Merchant at the start of the Sale Commencement Date prior to any transactions. The Cash in Registers shall be made available for use by Agent during the Sale and the Agent shall pay the Merchant an amount equal to the Cash in Registers on the Final Reconciliation.

4.2 **Remaining Merchandise.** Provided that no Event of Default has occurred and continues to exist on the part of Agent, and after all payments are made to Merchant as required hereunder, all Merchandise remaining, if any, at the Sale Termination Date (the **“Remaining Merchandise”**) shall become the property of Agent free and clear of all Encumbrances, provided, however, that all proceeds received by Agent from the disposition shall nevertheless constitute Proceeds for the purposes of this Agreement. Notwithstanding the foregoing, Agent shall use commercially reasonable efforts and act in good faith to dispose of all of the Merchandise during the Sale Term.

4.3 **Time of Payments.**

- (a) **Payment of Guaranteed Amount.** On or before the next Business Day following the date the Approval Order is issued by the Court (the **“Payment Date”**), Agent shall pay to an account designated by Merchant and approved by Richter an amount equal to [REDACTED] percent [REDACTED] of the estimated Guaranteed Amount (the **“Initial Guaranty Payment”**) calculated based upon the estimated Cost Value of the Merchandise in the Closing Stores and the Distribution Centres on the Sale Commencement Date (based upon Merchant’s books and records maintained in the ordinary course as of the date immediately preceding the Payment Date), less the Deposit (which Deposit shall be credited against the Initial Guaranty Payment on the Payment Date). Such payment shall be made to Merchant by wire transfer to an account designated by Merchant and approved by Richter. From the funds paid on account of the Initial Guaranty Payment, an amount equal to [REDACTED] percent [REDACTED] of the estimated Guaranteed Amount (the **“Escrow Amount”**) shall be held by Richter, in escrow, in a separate trust account, pending completion of the Final Reconciliation provided for in Section 4.6(b) below, which Escrow Amount shall be released in accordance with the

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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.

- (b) Payment of Balance of Guaranteed Amount. The balance of the Guaranteed Amount, if any, shall be paid by Agent to Merchant by wire transfer to the account designated by Merchant and approved by Richter upon completion of the Final Reconciliation provided for in Section 4.6(b) below. Notwithstanding the foregoing, if and when [REDACTED] percent ([REDACTED]) of the estimated Cost Value of the Merchandise has been rung through using Gross Rings (the “**Funding Threshold**”), Agent will then, beginning with the next subsequent weekly reconciliation under Section 4.6(a), remit to Merchant an amount equal to [REDACTED] percent [REDACTED] of the Cost Value of Merchandise sold during in that week in excess of the Funding Threshold. For the purposes of this Agreement, “**Business Day**” means any day excluding a Saturday, Sunday or statutory holiday in the Province of Ontario.
- (c) Payments in respect of Merchant’s Sharing Recovery Amount and Net FF&E Proceeds. Agent shall pay to Merchant, following approval by Richter, all amounts on account of the Merchant’s Sharing Recovery Amount, if any, as part of the Final Reconciliation pursuant to Section 4.6(b), and the Agent shall pay to Merchant, following approval by Richter, all amounts owed to the Merchant on account of the Net FF&E Proceeds, if any, as part of the weekly reconciliation conducted pursuant to Section 4.6(a).
- (d) Payments to Agent. Subject to payment of the Guaranteed Amount, Expenses, Merchant’s Sharing Recovery Amount, if any, and all other amounts payable to Merchant from Proceeds hereunder, Agent shall retain from Proceeds, as its compensation for services rendered to Merchant hereunder, the Agent’s Fee, plus Agent’s Sharing Recovery Amount, if any. Agent shall also be entitled to receive the FF&E Commission. Agent shall be entitled to receive, and retain from the Proceeds, any applicable sales, excise, consumption or use, or similar taxes or any other government charges (other than taxes on income), including GST and QST, (“**Sales Taxes**”) payable by Merchant on any compensation or fees for services received by Agent under this Agreement, including the Agent’s Fee, the Agent’s Sharing Recovery Amount and the FF&E Commission. Such Sales Taxes shall be payable by the Merchant to the Agent in addition to the compensation received by the Agent. “**GST**” means any goods and services or harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada). “**QST**” means any Quebec sales tax imposed under Title I of an *Act respecting the Quebec Sales Tax* (Quebec).
- (e) Over-Funding by Agent. In the event that Agent funds or pays all or any portion of the Merchant’s obligations under this Agreement, and such funding or payment cannot be recovered by the Agent under Section 4.3(g) as an offset or otherwise, and as a result of such funding or payment, the Merchant received more value than the Merchant would have otherwise received under this Agreement had Agent not funded or paid such obligations, Merchant, subject to the approval of

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Richter, (or Richter, if applicable) shall pay all such funded or paid amounts to Agent within five (5) Business Days of Agent's request. If and to the extent Agent over-funds any amounts in respect of the Guaranteed Amount hereunder, and such over-funding cannot be recovered by the Agent from Merchant under Section 4.3(g) as an offset or otherwise, then Merchant, subject to the approval of Richter, (and Richter, if applicable) agree to reimburse any undisputed portion of such overfunded amount in respect of the Guaranteed Amount to Agent within five (5) Business Days of written demand thereof by Agent. In the event Agent and Merchant cannot agree within five (5) Business Days of Agent's request as to the amount to be reimbursed or the party from whom such reimbursement is required to be made, Agent shall be entitled to file a motion with the Court seeking payment of the undisputed portion of the reimbursable amount hereunder, and Merchant (or Richter if applicable) agree that they shall be bound by the final determination of the Court as to such matter.

- (f) Timing of Wire Transfer Payments. All amounts required to be paid by Agent or Merchant under any provision of this Agreement shall be made by wire transfer of immediately available funds which shall be wired by Agent or Merchant, as applicable, subject to approval by Richter, no later than 2:00 p.m. (Eastern Time) on the date that such payment is due; provided, however, that all of the information necessary to complete the wire transfer has been received by Agent or Merchant, as applicable, by 11:00 a.m. (Eastern Time) on the date that such payment is due. In the event that the date on which any such payment is due is not a Business Day, then such payment shall be made by wire transfer on the next Business Day.
- (g) Set-Off. Merchant agrees that if at any time during the Sale Term, Agent holds any amounts due to Merchant hereunder, notwithstanding the provisions of any Order of the Court, Agent, may in its discretion, offset such amounts being held by Agent against any undisputed amounts due and owing by, or required to be paid by Merchant under this Agreement. Merchant may, in its discretion, offset any amounts held by Merchant against any undisputed amounts due and owing by, or required to be paid by Agent under this Agreement. Any such setoffs shall be reconciled and accounted for as part of the weekly reconciliation.

4.4 [Reserved].

4.5 Gross Rings. For the period from the Sale Commencement Date until the Vacate Date for each Closing Store (the "**Gross Rings Period**"), Merchant and Agent shall jointly keep (a) a strict count of all gross cash register receipts less applicable Sales Taxes but excluding any prevailing discounts ("**Gross Rings**") and (b) cash reports of sales at the Closing Stores. Register receipts shall show for each item sold the actual Cost Value and Retail Price for such item and the markdown or discount, if any, specifically granted by Agent in connection with such Sale. Agent shall pay that portion of the Guaranteed Amount calculated on the Gross Rings basis, to account for shrinkage, on the basis of ██████% of the aggregate Cost Value of the Merchandise sold during the Gross Rings Period. All such records and reports shall be made available to Merchant and Agent and Richter during regular business hours upon reasonable

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notice. Any Merchandise included in the Sale using the Gross Rings shall be included in Merchandise.

4.6 Reconciliation.

- (a) Weekly Reconciliation. On each Thursday during the Sale Term, commencing on the second Thursday after the Sale Commencement Date, Merchant, Agent, and Richter shall cooperate to jointly prepare a reconciliation of the weekly Proceeds of the Sale, Expenses and Net FF&E Proceeds and any other Sale related items that either party may reasonably request, in each case for the prior week or partial week (i.e. Sunday through Saturday), all pursuant to procedures agreed upon by Merchant, Agent, and Richter.
- (b) Final Reconciliation. Within thirty (30) days after the Sale Termination Date, Merchant and Agent shall jointly prepare a final reconciliation of the Sale for review and approval by Richter, including, without limitation, a summary of Proceeds, Expenses, Net FF&E Proceeds, Sales Taxes and any other accounting required hereunder (the "**Final Reconciliation**"). Within five (5) days of completion of the Final Reconciliation and Richter's review and approval of the Final Reconciliation, Agent shall pay to Merchant, or Merchant or Richter shall pay to Agent, as the case may be, any and all undisputed amounts due to the other pursuant to the Final Reconciliation. Merchant, Richter or Agent, as the case may be, shall hold any disputed amounts in trust pending resolution of the dispute by agreement of the parties or as determined in the manner set out in Section 4.6(c) below. During the Sale Term, and until all of Merchant's, Richter's and Agent's obligations under this Agreement have been indefeasibly satisfied in full, Merchant, Agent, and Richter shall have reasonable access to Merchant's and Agent's records with respect to the Merchandise, Proceeds, Net FF&E Proceeds, Sales Taxes, and Expenses to review and audit such records relating to the Sale.
- (c) Dispute Resolution. In the event that there is any dispute with respect to the Final Reconciliation or the determination of the aggregate Cost Value of the Merchandise or with respect to any other matters arising from or related to this Agreement, such dispute shall be promptly (and in no event later than the third Business Day following the request by either Merchant, Agent, or Richter) submitted to the Court for resolution.

4.7 Control of Proceeds. All Proceeds shall be controlled by Agent in the manner provided for below.

- (a) Agent may (but shall not be required to) establish its own accounts (including without limitation credit card accounts and systems), dedicated solely for the deposit of the Proceeds and the disbursement of amounts payable to Agent hereunder (the "**Agency Accounts**"), and Merchant shall promptly, upon Agent's reasonable request, execute and deliver all necessary documents to open and maintain the Agency Accounts; provided, however, Agent shall have the right, in its sole and absolute discretion, to continue to use Merchant's Designated Deposit

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Accounts (as defined below) as the Agency Accounts in which case Merchant's Designated Deposit Accounts shall be deemed to be Agency Accounts. Subject to Agent's compliance with all representations, warranties and covenants herein, Agent shall exercise sole signatory authority and control with respect to the Agency Accounts. The Agency Accounts shall be dedicated solely to the deposit of Proceeds and other amounts contemplated by this Agreement and the distribution of amounts payable hereunder; provided that, in the event (a) Agent elects to continue to use Merchant's Designated Deposit Accounts (defined below) as the Agency Accounts, and (b) such accounts have amounts deposited therein by Merchant that do not constitute proceeds and/or other amounts contemplated by this Agreement, then Merchant and Agent shall cooperate with each other to establish and implement appropriate steps and procedures to accomplish a daily reconciliation, and remittance to Merchant and Agent, as their interests may appear, of any Proceeds (including credit card Proceeds), and other amounts contemplated by this Agreement. Upon request, Agent shall deliver to Merchant and/or Richter copies of all bank statements and other information relating to such accounts. Neither the Merchant nor Richter shall be responsible for, and Agent shall pay as an Expense hereunder, all bank fees and charges, including wire transfer charges, related to the Sale and the Agency Accounts, whether received during or after the Sale Term. Upon Agent's notice to Merchant and Richter of Agent's designation of the Agency Accounts (other than Merchant's Designated Deposit Accounts), all Proceeds of the Sale (including credit card Proceeds) shall be deposited into the Agency Accounts, subject to the review and approval by Richter. For clarity, Richter shall not be responsible for any Expense, fees, or costs hereunder and all Expense, fees, and costs hereunder shall be born by Merchant and Agent, as applicable.

- (b) Agent shall have the right to use Merchant's credit card facilities, including Merchant's credit card terminals and processor(s), credit card processor coding, Merchant's identification number(s) and existing bank accounts for credit card transactions relating solely to the Sale. In the event that Agent elects to use Merchant's credit card facilities, Merchant shall process credit card transactions on behalf of Agent and for Agent's account, applying customary practices and procedures. Without limiting the foregoing, Merchant shall cooperate with Agent to download data from all credit card terminals each day during the Sale Term to effect settlement with Merchant's credit card processor(s), and shall take such other actions necessary to process credit card transactions on behalf of Agent under Merchant's identification number(s). At Agent's request, Merchant shall cooperate with Agent to establish Merchant's identification numbers under Agent's name to enable Agent to process all such credit card Proceeds for Agent's account. Neither Merchant nor Richter shall be responsible for, and Agent shall pay as an Expense hereunder, all credit card fees, charges, and chargebacks related to the Sale, whether received during or after the Sale Term. Agent shall not be responsible for, as an Expense or otherwise, any credit card fees, charges, or chargebacks that do not relate to the Sale, whether received prior to, during or after the Sale Term.

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- (c) Unless and until Agent establishes its own Agency Accounts (other than Merchant's Designated Deposit Accounts), all Proceeds and other amounts contemplated by this Agreement (including credit card Proceeds), shall be collected by Merchant and deposited on a daily basis into depository accounts designated by, and owned and in the name of, Merchant for the Closing Stores, which accounts shall be designated solely for the deposit of Proceeds and other amounts contemplated by this Agreement (including credit card Proceeds), and the disbursement of amounts payable to or by Agent hereunder (the "**Designated Deposit Accounts**"). Merchant hereby grants to Agent a first priority Charge solely upon such amounts that constitute Proceeds (or other amounts contemplated hereunder) deposited in each Designated Deposit Account from and after the Sale Commencement Date. If, notwithstanding the provisions of this section, Merchant or Richter receives or otherwise has dominion over or control of any Proceeds or other amounts due to Agent, Merchant or Richter shall be deemed to hold such Proceeds and other amounts due to Agent "in trust" for Agent and shall not commingle Proceeds or other amounts due to Agent with any of Merchant's other funds or deposit such Proceeds or other amounts in any account except a Designated Deposit Account or as otherwise instructed by Agent.
- (d) On each business day, Merchant shall promptly pay to Agent by wire funds transfer all funds in the Designated Deposit Accounts (including, without limitation, Proceeds, Proceeds from credit card sales, and all other amounts) deposited into the Designated Deposit Accounts for the prior day(s) without any offset or netting of Expenses or other amounts that may be due to Merchant. Agent shall have ten (10) calendar days after the date of each such payment by Merchant to notify Merchant and Richter of any shortfall in such payment, in which case, Merchant or Richter shall promptly pay to Agent funds in the amount of such shortfall.
- (e) From Gross Sale Proceeds, Merchant shall establish a holdback in an amount equal to the Sales Taxes applicable to such Gross Sale Proceeds (the "**Sales Tax Holdback**") and shall deposit such holdback into a segregated account designated by Merchant and Agent solely for the purpose thereof (the "**Sales Tax Account**"). Sales Taxes are to be remitted from the Sales Tax Holdback in the Sales Tax Account by Merchant pursuant to Section 9.3 hereof, as part of the weekly reconciliation conducted by the Parties pursuant to Section 4.6(a) hereof. Subject to the terms of this Agreement, if the Sales Tax Holdback exceeds the Sales Taxes that should have been charged and collected on the Sale, any surplus funds are to be released to the Agent from the Sales Tax Holdback.

Section 5. Payment of Expenses

5.1 Expenses. Agent shall be unconditionally responsible for the payment of all Expenses out of Proceeds (or from Agent's own accounts if and to the extent there are insufficient Proceeds) incurred in conducting the Sale during the Sale Term and such Expenses shall not reduce the Guaranteed Amount. As used herein, "**Expenses**" shall mean all Closing Store level operating

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expenses of the Sale that arise or are incurred during the Sale Term (and in the case of the Expenses set forth in Sections 5.1(f), 5.1(q), 5.1(r), and 5.1(t) below, such expenses also include expenses incurred prior to or in connection with the Sale and are not confined to Closing Store level operating expenses of the Sale and in connection with Section 5.1(v) are not confined to Closing Store level operating expenses of the Sale) limited to the following (without duplication):

- (a) occupancy expenses for the Closing Stores on a per location, per category, and *per diem* basis through the Vacate Date (as defined in Section 6.2 hereof) in an amount up to the respective per diem totals by Closing Store set forth on **Exhibit 5.1(a)** hereto (the “**Occupancy Expenses**”);
- (b) remittances by Agent to Merchant of an amount equal to the Base Payroll for all Retained Employees used in conducting the Sale for actual days/hours worked during the Sale Term;
- (c) remittances by Agent to Merchant of any actual amounts paid by Merchant for benefits that accrue solely during and are referable to the Sale Term for Retained Employees used in the Sale (including, but not limited to, Canadian pension plan and Quebec pension plan payments, employment insurance premiums, employer health tax, health services fund payments, workers’ compensation benefits and health care and insurance benefits, vacation pay accruing during the Sale Term (but not in arrears) and statutory holiday pay) but excluding Excluded Benefits, in an amount not to exceed [REDACTED] percent [REDACTED] of the Base Payroll for each Retained Employee in the Closing Stores (the “**Benefits Cap**”);
- (d) remittances by Agent to Merchant of any amounts payable by Merchant under an Agent approved employee incentive plan to eligible Retained Employees in an amount not to exceed [REDACTED] percent [REDACTED] of the Base Payroll for each Retained Employee in the Closing Stores; as provided in Section 10.4 below;
- (e) all costs associated with Agent’s on-site supervision of the Sale by Agent’s employees or independent contractors and associated reasonable corporate travel costs (based on economy fares and reasonable hotels), third party payroll costs, and reasonable and customary deferred compensation;
- (f) all costs of signage and banners (interior and exterior) and in-store signs which are produced for the Sale, in compliance with the Sale Guidelines;
- (g) out-of-pocket promotional costs incurred by Agent pursuant to the terms of this Agreement, including, without limitation, use of Agent’s social media and Agent’s website, sign walkers, advertising and direct mailings relating to the Sale;
- (h) cost of additional supplies used at the Closing Stores as may be required by Agent in the conduct of the Sale (excluding those supplies located at the Closing Stores on the Sale Commencement Date which may be used by Agent at no charge);

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- (i) credit card and bank card fees, bank charges, chargebacks and discounts with respect to Merchandise sold in the Sale;
- (j) costs of processing moving, transferring or consolidating Merchandise between and among the Closing Stores and any and all costs, including delivery and freight costs, related to the processing, transfer and consolidation of Merchandise between and among such Closing Stores;
- (k) bank service charges (for Closing Store and Merchant corporate accounts), cheque guarantee fees, and bad cheque expenses, to the extent attributable to the Sale;
- (l) all Agent fees and charges required to comply with applicable laws in connection with the Sale;
- (m) Closing Stores' cash theft and other cash shortfalls in the cash registers;
- (n) postage, courier and overnight mail charges to and from or among the Closing Stores and head office (to the extent relating to the Sale);
- (o) [Reserved];
- (p) Third Party payroll processing fees;
- (q) Agent's actual cost of capital, including Letter of Credit fees;
- (r) Agent's reasonable out-of-pocket costs and expenses including but not limited to, reasonable legal fees and expenses incurred in connection with the review of data, preparation, negotiation and execution of this Agreement and any ancillary documents, and in connection with the Sale in an amount not to exceed \$ [REDACTED] unless otherwise agreed to by the Merchant and approved by Richter;
- (s) pursuant to Section 10.1 hereof, which Agent in its discretion considers appropriate, and other miscellaneous Closing Store-level expenses incurred by Agent as approved by Merchant;
- (t) actual cost of Agent's insurance reasonably allocable to this Agreement and the transactions contemplated hereby required under Section 13.3 hereof;
- (u) the actual cost and expenses of providing such additional services which Agent deems appropriate for the Sale; and
- (v) Central Services Expenses in an amount equal to \$ [REDACTED] per week for each week during the Sale, which amount shall be paid weekly to Merchant.

For those Expenses set out in 5.1(e), 5.1(f) and 5.1(g) Agent shall provide Merchant with a good faith estimate of such Expenses and the parties acknowledge and agree that (a) the Agent has full decision making authority with respect to such Expenses and (b) that such

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estimates may not be representative of the final amounts of such Expenses and may be subject to change.

“**Expenses**” shall not include: (i) Excluded Benefits; (ii) any rent or other occupancy expenses other than Occupancy Expenses in accordance with Section 5.1(a) hereof; (iii) Central Services Expenses (except as provided in Section 5.1); (iv) any expenses associated with any of the Distribution Centres; (v) any fees or expenses owed to or incurred by Richter; or (v) any costs, expenses or liabilities arising during the Sale Term in connection with the Sale of Merchandise, other than the Expenses listed above, all of which shall be paid by Agent or Merchant, as applicable, promptly when due during the Sale Term. For certainty, royalties under licenses shall be the responsibility of and paid by Merchant and shall not constitute an Expense payable by Agent. Additionally, in the case of Expenses incurred by the Merchant, the Merchant shall only recover such Expenses net of applicable Sales Taxes.

Notwithstanding anything herein to the contrary, to the extent that any Expense listed in Section 5.1 is also included on **Exhibit 5.1(a)**, then **Exhibit 5.1(a)** shall control and such Expense shall not be double counted.

5.2 Certain Definitions.

As used in this Article 4 and this Agreement, the following terms have the following respective meanings:

“**Base Payroll**” means base hourly payroll, overtime and commissions and bonuses under the Agent approved employee incentive plan, but excluding bonuses, vacation pay and statutory holiday pay payable under Merchant’s compensation policy in effect as at the Sale Commencement Date.

“**Central Services Expenses**” means costs and expenses for Merchant’s central administrative services for the Sale including, but not limited to (a) Merchant’s POS and inventory control systems, including inventory handling, data processing and reporting, and store level information; (b) payroll system and processing and human resources; (c) accounting systems, MIS services, asset protection services, operations, cash and inventory reconciliations; (d) Merchant’s social media and Merchant’s website, including updates and maintenance and email preparation and distribution (e) allocation systems for Merchandise.

“**Excluded Benefits**” means vacation days or vacation pay, sick days or sick leave, maternity leave benefits, disability benefits or other leaves of absence, termination or severance pay (including, without limitation, any notice or pay, in lieu of notice in accordance with provincial employment/labour standards, common law, or contract) and similar amounts, and all benefits in excess of the Benefits Cap provided for in Section 5.1(c) above. Excluded Benefits also means and includes any amounts payable for pension, profit sharing, bonus or other retirement, benefit or incentive plans other than those expressly described in Section 5.1(c) above.

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

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All Expenses incurred during each week (i.e., Sunday through Saturday) of the Sale Term shall be paid by Agent to or on behalf of Merchant, or paid by Merchant or Richter and thereafter reimbursed by Agent as provided for herein, as set out in Section 5.1, immediately following the weekly reconciliation by Merchant and Agent pursuant to Section 4.6(a) above, based upon invoices and other documentation satisfactory to Agent, acting reasonably; provided, however, Agent shall be obligated to pre-fund Occupancy Expenses for the month of February 2017 and payroll-related expenses consistent with Merchant's customary payroll funding practices and timing. Merchant shall reimburse Agent in accordance with Section 4.1(g) any over-advance in respect of Occupancy Expenses for any Occupancy Expenses pre-funded by Agent in respect of a period after which Agent has vacated the Closing Store.

5.3 Security. In order to secure Agent's obligations under this Agreement to pay the balance of the Guaranteed Amount, within one business day following the Payment Date, Agent shall furnish Merchant, in form and substance and from an issuer reasonably acceptable to Merchant, an irrevocable standby letter of credit naming Merchant and Richter as beneficiary in the aggregate original face amount equal to the sum of [REDACTED] percent [REDACTED] of the estimated Guaranteed Amount (the "Letter of Credit"). As and when the Agent pays the balance of the Guaranteed Amount pursuant to Section 4.3(b), the Letter of Credit shall be reduced, from time to time, to an amount that the parties mutually agree upon, but in any event, not less than an estimate of three weeks of Expenses. The Letter of Credit shall have an expiry date of no earlier than 60 days after the Sale Termination Date. Unless the parties shall have mutually agreed that they have paid all amounts contemplated by the Final Reconciliation under this Agreement (or the Court has determined that such payments have been made), then, at least five days after such date Merchant shall receive an amendment to the Letter of Credit solely extending (or further extending, as the case may be) the expiry date by at least 60 days. If Merchant fails to receive such amendment to the Letter of Credit no later than five days before the expiry date, then Merchant shall be permitted to draw the full amount under the Letter of Credit to hold as security for amounts that may become due and payable to Merchant. In the event that Agent, after receipt of five Business Days' written notice, fails to pay an undisputed portion of the amounts owing hereunder (include any Expenses), Merchant may draw on the Letter of Credit in an amount equal to the unpaid, past due amount owing.

Section 6. Merchandise

6.1 Merchandise Subject to this Agreement.

- (a) For purposes of this Agreement, including, without limitation, the calculation of the Guaranteed Amount, "Merchandise" shall mean: (i) all new, finished, first-quality goods inventory that is owned by Merchant and located at the Closing Stores as of the Sale Commencement Date; (ii) Defective Merchandise, (iii) all Distribution Centre Merchandise and In-Transit Merchandise received at the Closing Stores no later than the tenth (10th) day after the Sale Commencement Date, provided that if such goods are received at the Closing Stores after such 10 day period, but on or before the thirtieth (30th) day after the Sale Commencement Date (the "Receipt Deadline"), such goods shall be included in the Sale as Merchandise subject to the adjustment in Section 4.1(c); and (iv) Pre-Sale Returned Merchandise which is saleable as first quality merchandise and received

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during the Sale Term pursuant to Section 9.5 hereof. Notwithstanding the foregoing, Merchandise shall not include: (1) goods held by Merchant on memo, on consignment, or as bailee, unless otherwise agreed to by Merchant and Agent or which belong to sublessees, licensees, department lessees, or concessionaires of Merchant; (2) Pre-Sale Returned Merchandise which is not saleable as first quality merchandise and would otherwise have been Excluded Defective Merchandise, whether returned during or after the Sale Term; (3) Excluded Defective Merchandise; and (4) any Distribution Centre Merchandise and In-Transit Merchandise received after the Receipt Deadline (collectively, the “**Excluded Merchandise**”). As used in this Agreement the following terms have the respective meanings set forth below:

- (i) “**Defective Merchandise**” means any item which is not finished, first quality inventory that is saleable in the ordinary course. Examples of Defective Merchandise include but are limited to goods that are used, damaged, defective, scratched, dented, on display, out of box, out of season, related to a holiday outside of the Sale Term, worn, faded, torn, soiled or affected by other similar defects rendering it not first quality and for greater certainty, excludes Excluded Defective Merchandise.
- (ii) “**Excluded Defective Merchandise**” shall mean (i) those items of Defective Merchandise that are not saleable in the ordinary course because they are so damaged or defective that they cannot reasonably be used for their intended purpose; (ii) items that are missing a component, mismatched, parts, typically sold as a set which are incomplete, mis-sized pairs, or gift with purchase items not ordinarily sold separately; (iii) goods with an expiration, sell by, or similar date that is prior to or during the Sale Term, including out-of-date newspapers, periodicals, or magazines; and (iv) those items of Defective Merchandise for which Merchant and Agent cannot agree upon a Cost Value.
- (iii) “**Distribution Centre Merchandise**” means any item of Merchandise located at Merchant’s Distribution Centres and reflected in the Cost Files.
- (iv) “**In-Transit Merchandise**” means items of inventory that were ordered by Merchant in the ordinary course of business as identified on **Exhibit 6.1(a)(iv)** to be provided prior to the Sale Commencement Date, which inventory was in-transit to the Closing Stores or Distribution Centres as of the Sale Commencement Date.

6.2 Valuation.

- (a) For purposes of this Agreement, “**Cost Value**” shall mean with respect to each item of Merchandise, the lower of the lowest of (i) the actual cost; (ii) the cost as reflected in the column named “Std Cost” in the merchandise file named “Inventory by SKU – December 2016 REVISED.mdb” and any other due diligence files or subsequent update (the “**Cost Files**”) or (iii) the Retail Price;

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provided, however, that the Cost Value of Defective Merchandise shall be dealt with in accordance with Section 6.2(d) below. If there is a discrepancy between the merchandise file named "Inventory by SKU – December 2016 REVISED.mdb" and any subsequent file in the Cost Files, the lowest actual SKU level cost for such item of Merchandise as reflected in the Cost Files shall apply.

- (b) Merchant represents, and Agent acknowledges, that the Cost Files do not account for any Excluded Pricing Adjustments, and no such adjustments shall be taken into account in determining the Cost Value of any item of Merchandise.
- (c) For purposes of this Agreement, the term "**Excluded Price Adjustments**" means the following discounts or price adjustments offered by the Merchant: (i) point of sale discounts or similar adjustments regardless of duration on the Sale Commencement Date; (ii) employee discounts; (iii) adjustments for damaged, defective or "as-is" items; and (iv) ticketing or marking errors; or customer specific, temporary, or employee non-product specific discounts or pricing accommodations.
- (d) For purposes of determining the Cost Value of Defective Merchandise, such Cost Value shall be mutually agreed to by Agent and Merchant. If Agent and Merchant are unable to mutually agree on the Cost Value of any one or more items of Defective Merchandise, such items shall be Excluded Defective Merchandise.

6.3 **Excluded Goods**. Merchant shall retain all rights and responsibility for any goods not included as "**Merchandise**" hereunder, including, without limitation, the Excluded Merchandise. If Merchant elects on the first day of the Sale Term, and provided Merchant and Agent have mutually agreed on price and means to sell such items, Agent shall accept those goods not included as "**Merchandise**" hereunder and as identified by Merchant for sale as "**Merchant Consignment Goods**". Election by the Merchant to include Merchant Consignment Goods in the Sale constitutes a representation and warranty by Merchant that it is entitled to sell such goods and to allocate the proceeds of such sale as provided for in this Agreement. The Agent shall retain [REDACTED] percent [REDACTED] of the sale price (less [REDACTED] percent [REDACTED] of applicable Sales Taxes) for all sales of Merchant Consignment Goods, and Merchant shall receive [REDACTED] percent [REDACTED] of the sale price, plus [REDACTED] percent [REDACTED] of applicable Sales Taxes in respect of such sales. Merchant shall receive its share of the receipts of sales of Merchant Consignment Goods on a weekly basis, immediately following the weekly reconciliation by Merchant and Agent pursuant to Section 4.6(a) hereof. If Merchant does not elect to have Agent sell such goods not included as Merchandise, then all such items will be removed by Merchant from the Closing Stores at its expense as soon as practicable after the date hereof. Except as expressly provided in this Section 6.3, Agent shall have no cost, expense or responsibility in connection with any goods not included in Merchandise, including but not limited to, sales commissions and percentage rent.

Strictly Confidential**Section 7. Sale Term**

7.1 Term. The Sale shall commence at the Closing Stores on the first day following issuance of the Approval Order, but in no event later than February 4, 2017 absent Agent's express written consent (the "**Sale Commencement Date**"). Agent shall complete the Sale and vacate each Closing Store's premises in favour of Merchant or its representative or assignee on or before April 30, 2017 (the "**Sale Termination Date**"). The period from the Sale Commencement Date to the Sale Termination Date shall be referred to herein as the "**Sale Term**." Agent may on at least seven (7) days' notice to Merchant earlier terminate the Sale at any Closing Store in its sole discretion. If Agent intends to vacate a Closing Store prior to the Sale Termination Date, Agent shall provide Merchant with not less than seven (7) days' advance written notice thereof (as to each such Closing Store, as applicable, the "**Vacate Date**") For greater certainty, the Vacate Date shall not be later than the Sale Termination Date and it being understood that the Agent's obligations to pay all Expenses, including Occupancy Expenses and all accrued and unpaid Expenses that become due and payable after the Sale Term, for each Store subject to a Vacate Notice shall continue until the applicable Vacate Date for such Store; provided, however, that, with respect to Occupancy Expenses, the Agent's obligations to pay all Occupancy Expenses for each Store shall continue until the 15th of a calendar month if the Vacate Notice applicable to each such Store is provided on or before the 8th day of such calendar month.

7.2 Vacating the Closing Stores. Subject to the terms of Section 7.1 hereof, on each Vacate Date and on the Sale Termination Date (as applicable), Agent shall vacate each Closing Store in favor of Merchant or its representatives or assignee, remove all Remaining Merchandise (subject to the right to abandon, neatly in place, the FF&E) and leave the applicable Closing Stores in an orderly and "broom swept" condition. Agent agrees that it shall be obligated to forthwith repair any damage caused by Agent (or any representative, agent or licensee thereof) to any Closing Store, ordinary wear and tear excepted. Agent's obligations to pay Occupancy Expenses, for each Closing Store shall be limited to the period prior to and including the applicable Vacate Date for such Closing Store. All assets of Merchant not used by Agent in the conduct of the Sale (e.g. FF&E, supplies, etc.) shall be returned by Agent to Merchant or left at the Closing Stores, as applicable, unless otherwise disposed of through no fault of Agent. Where reference is made in this Section 7 to vacating the Closing Stores, such shall mean vacating the Closing Stores, in favor of Merchant, its representatives or assignee and shall not mean vacating possession or disclaimer of lease in favor of the landlord or owner of the Closing Store premises, such lease being the property of Merchant.

Section 8. Sale Proceeds

8.1 Proceeds. For purposes of this Agreement, "**Proceeds**" shall mean the total amount (in dollars) of (i) all sales of Merchandise excluding Sales Taxes on such sales; (ii) all proceeds of Merchant's insurance (net of any deductible) directly attributable to loss or damage to Merchandise or loss of cash arising from events occurring during the Sale Term; and (iii) all proceeds from the disposition of Remaining Merchandise. "**Gross Sale Proceeds**" shall mean Proceeds plus Sales Taxes on such sales. Notwithstanding anything herein to the contrary, "Proceeds" shall be exclusive of (i) Sales Taxes, and (ii) returns, allowances and customer credits.

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8.2 Credit Card Proceeds. Agent shall have the right (but not the obligation) during the Sale Term to use Merchant's credit card facilities (including Merchant's credit card terminals and processor(s), credit card processor coding, merchant identification number(s) and existing bank accounts) for credit card Proceeds relating solely to the Sale (collectively, the "**Credit Card Processing Facilities**"); provided, however, Agent shall have the right to obtain Agent's own merchant identification numbers and bank accounts following the payment of the Initial Guaranty Payment on the Sale Commencement Date and all other amounts payable to Merchant on such date. To the extent that Agent uses Merchant's existing Credit Card Processing Facilities, Agent shall comply with all of Merchant's existing agreements with persons providing such Credit Card Processing Facilities. To the extent Agent so elects, Merchant shall exercise commercially reasonable efforts to assist Agent in obtaining such merchant identification number and bank accounts and shall update their systems to recognize and accept such merchant identification numbers and Merchant shall process credit card transactions on behalf of Agent and for Agent's account, applying customary practices and procedures. To the extent available, Agent shall have the right to accept Merchant's proprietary card. Without limiting the foregoing, Merchant shall cooperate with Agent to down-load data from all credit card terminals each day during the Sale Term and to effect settlement with Merchant's credit card processor(s) and shall take such other actions necessary to process credit card transactions on behalf of Agent under Merchant's identification number(s). Merchant shall not be responsible for and Agent shall pay as an Expense hereunder, all credit card fees, charges and chargebacks related to the Sale, whether received during or after the Sale Term. For greater certainty, the FF&E Proceeds do not constitute "Proceeds" as such term is defined herein.

Section 9. Conduct of the Sale

9.1 Rights of Agent. Subject to the issuance of Approval Order by the Court, Agent shall be permitted to conduct the Sale throughout the Sale Term in a manner consistent with (a) applicable laws and regulations, (b) the leases and other occupancy agreements relating to the Closing Stores, except as amended by Court order or agreement of the applicable landlord, (c) the sale guidelines annexed hereto as **Exhibit 9.1**, as the same may be modified and approved by the Court, subject to Agent's approval, acting reasonably ("**Sale Guidelines**") and (d) the terms of this Agreement. In addition to any other rights granted to Agent hereunder, in conducting the Sale, Agent, in the exercise of its sole discretion, but expressly subject in all cases to the restrictions set out above, shall have the right:

- (a) to establish Closing Stores' hours, which are consistent with the terms of applicable leases, mortgages or other occupancy agreements and local laws or regulations;
- (b) subject to Section 4.3 hereof and any requisite consents, to use without charge during the Sale Term (except where otherwise designated as an Expense pursuant to Section 5.1 hereof), all Owned FF&E and other FF&E, advertising materials, Merchant website, Merchant social media accounts (but for greater certainty, the costs or amounts payable to third parties relating to an email blast out of the ordinary course of business shall be an Expense), bank accounts, customer lists and mailing lists, Closing Store level (and to the extent available, corporate) point of sale systems and equipment and computer hardware and software, existing

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supplies located at the Closing Stores, intangible assets (including Merchant's names, logos, trademarks and tax identification numbers), Closing Stores' keys, case keys, security codes, and safe and lock combinations required to gain access to and operate the Closing Stores, and any other assets of Merchant located at the Closing Stores (whether owned, leased, or licensed) consistent with applicable terms of leases or licenses. Agent shall exercise due care and return to Merchant immediately at the end of the Sale (or leave in the vacated Stores) all materials and supplies except materials or supplies expended;

- (c) subject to Section 4.3 hereof, to use without charge (except as otherwise provided in Section 5.1 hereof) all of the Merchant's assets located at the Closing Stores or used in the ordinary course of business at the Closing Stores, including but not limited to Merchant's central office facilities, POS systems, central administrative services and personnel to process payroll, perform MIS and provide other central office services necessary for the Sale to the extent that such services are normally provided by Merchant in house at no cost to the Agent (except as otherwise provided in Section 5.1 hereof) and the Merchant has the obligation to provide such facilities, systems, services and personnel; provided, however, that in the event Agent requests Merchant to provide services other than those normally provided to the Closing Stores and relating to the sale of Merchandise by Merchant in the ordinary course of business and as expressly contemplated by this Agreement, Agent shall be responsible to reimburse Merchant for actual incremental cost of such services incurred by Merchant as an Expense of the Sale hereunder;
- (d) to establish Sale prices and implement advertising, signage (including exterior banners and signs), and promotional programs consistent with the sale theme described herein, and as otherwise provided in the Approval Order and the Sale Guidelines, as and where applicable (including, without limitation, by means of media advertising, A-frame, offsite signage and similar signage, and use of sign walkers); and
- (e) to transfer as an Expense, Merchandise between and among the Closing Stores.

9.2 Terms of Sales to Customers. Subject to Agent's compliance with the Approval Order and Sale Guidelines, all sales of Merchandise, and Owned FF&E will be "final sales" (and the same shall be printed or stamped on customer receipts) and "as is, where is" and all advertisements and sales receipts will reflect the same. Agent shall not warrant the Merchandise or Owned FF&E in any manner, but will, to the extent legally permissible, pass on all manufacturers' warranties to customers. All sales will be made only for cash or, nationally recognized bank credit and debit cards.

9.3 Sales Taxes. During the Sale Term, all Sales Taxes attributable to the sales of Merchandise as indicated on the Merchant's point of sale equipment shall be added to the sales price of Merchandise and collected by Agent at the time of sale on Merchant's behalf, and deposited in the Merchant's Designated Deposit Accounts for further deposit into the Sales Tax Account. Provided that Agent has collected all Sales Taxes during the Sale and remitted the

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proceeds thereof to Merchant, Agent shall have no further obligation to Merchant, Richter, HUK10, any other lender, any taxing authority, or any other party. Merchant shall promptly pay all Sales Taxes and file all applicable reports and documents required by the applicable taxing authorities. Merchant will be given access to the computation of gross receipts for verification of all such Sales Tax collections. Provided Agent performs its responsibilities in accordance with this Section 9.3, Merchant shall indemnify and hold harmless Agent from and against any and all costs, including, but not limited to, reasonable legal fees, investigation and legal expenses, assessments, claims, demands, actions, proceedings, fines or penalties which Agent sustains or incurs as a result or consequence of the failure by Merchant to promptly pay such taxes to the proper taxing authorities and/or the failure by Merchant to promptly file with such taxing authorities all reports and other documents required, by applicable law, to be filed with or delivered to such taxing authorities. If Agent fails to perform its responsibilities in accordance with this Section 9.3, and provided Merchant complies with its obligations in accordance with this Section 9.3, Agent shall indemnify and hold harmless Merchant from and against any and all costs including, but not limited to, reasonable legal fees, investigation and legal expenses, assessments, claims, demands, actions, proceedings, fines or penalties which Merchant sustains or incurs as a result or consequence of the failure by Agent to collect Sales Taxes, remit to Merchant, and/or, to the extent Agent is required hereunder to prepare reports and other documents, the failure by Agent to promptly deliver any and all reports and other documents required to enable Merchant to file any requisite returns with such taxing authorities. These indemnities shall continue in full force and effect subsequent to and notwithstanding the expiration of termination of this Agreement. Without limiting the generality of this Section 9.3(a), it is hereby agreed that, as Agent is conducting the Sale solely as agent for the Merchant, various payments that this Agreement contemplates that one party may make to the other party (including the payment by Agent of the Guaranteed Amount) do not represent the sale of tangible personal property and, accordingly, are not subject to Sales Taxes.

9.4 Supplies. Agent shall have the right to use all existing supplies necessary to conduct the Sale (e.g., boxes, bags, twine, merchandise credits or the like) located at the Closing Stores at no charge to Agent. In the event that additional supplies are required in any of the Closing Stores during the Sale, the acquisition of such additional supplies shall be the responsibility of Agent as an Expense; provided, however, that Merchant shall assist Agent in obtaining supplies from Merchant's vendors at Merchant's cost.

9.5 Returns of Merchandise. During the Sale Term, and only at the Closing Stores, Agent shall accept returns of merchandise sold by Merchant prior to the Sale Commencement Date: (i) in accordance with Merchant's return/exchange policy in effect at the time of such purchase; and (ii) only for the first twenty-one (21) days after the Sale Commencement Date (the "**Pre-Sale Returned Merchandise**"). To the extent that any item of Pre-Sale Returned Merchandise is saleable as first-quality merchandise and is received during the Sale Term, then such item shall be included in the Sale and as Merchandise at the Cost Value as adjusted by the prevailing discount as described in Section 4.1(c). To the extent that any item of Pre-Sale Returned Merchandise is returned is not saleable first quality merchandise or is received after the Sale Term, then such item shall form part of the Excluded Merchandise under this Agreement. The aggregate Cost Value of the Merchandise shall be increased by the applicable Cost Value of any Pre-Sale Returned Merchandise (as adjusted by the prevailing discount as described in Section 4.1(c)) included in Merchandise as provided for in this Section 9.5. Agent shall reimburse

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customers for Pre-Sale Returned Merchandise in the same tender as such item was purchased (as the case may be, the "Refund"). Merchant shall promptly reimburse Agent in cash for any Refunds Agent is required to issue to customers in respect of any Pre-Sale Returned Merchandise as part of the weekly reconciliation process. To the extent that Merchant is required to reimburse Agent for Refunds to customers in respect of any Pre-Sale Returned Merchandise, such amounts shall not reduce Proceeds under this Agreement. Any Pre-Sale Returned Merchandise not included in Merchandise shall be disposed of by Agent in accordance with instructions received from Merchant or, in the absence of such instructions, returned to Merchant at the end of the Sale Term.

9.6 Gift Certificates. During the Sale Term, Agent shall be entitled to accept gift certificates, gift cards, or Merchandise credits issued by Merchant prior to the Sale Commencement Date if directed by Merchant for the first thirty (30) days after the Sale Commencement Date. No gift certificates, gift cards or Merchandise credits shall be issued by Agent during the Sale Term. Merchant shall promptly reimburse Agent in cash in the amount of such gift certificates, gift cards or merchandise cards so honoured.

9.7 Force Majeure. If any casualty, act of war or terrorism, or act of God (excluding a snow or ice storm) prevents or substantially inhibits the conduct of business in the ordinary course at any Closing Store for more than five (5) days, such Closing Store and the Merchandise located at such Closing Store shall, in Agent's discretion, be eliminated from the Sale and considered to be deleted from this Agreement as of the date of such event, and Agent and Merchant shall have no further rights or obligations hereunder with respect thereto; provided, however, that (i) subject to the terms of Section 8.1 above, the proceeds of any insurance attributable to such Merchandise shall constitute Proceeds hereunder, and (ii) the Guaranteed Amount shall be reduced to account for any Merchandise eliminated from the Sale which is not the subject of insurance proceeds, and Merchant, shall reimburse Agent for the amount the Guaranteed Amount is so reduced prior to the end of the Sale Term. Merchant's obligation to reimburse Agent shall be deemed to be an overpayment and the obligation to reimburse same to Agent shall be secured by the Agent's Charge.

9.8 Merchant's Right to Monitor. In addition to Merchant's right to review Agent's books and records relating to the Sale under Section 4.6(b), Merchant shall have the right to monitor the Sale and activities attendant thereto and to be present in the Closing Stores during the hours when the Closing Stores are open for business; provided, however, that Merchant's presence does not unreasonably disrupt the conduct of the Sale. Merchant shall also have a right of access to the Closing Stores at any time in the event of an emergency situation and shall promptly notify Agent of such emergency.

9.9 Richter's Right to Monitor. In addition to Richter's right to review Agent's books and records relating to the Sale under Section 4.6(b), Richter shall have the right but not the obligation to monitor the Sale and activities attendant thereto and to be present in the Closing Stores during the hours when the Closing Stores are open for business; provided, however, that Richter's presence does not unreasonably disrupt the conduct of the Sale. Richter shall also have a right of access to the Closing Stores at any time in the event of an emergency situation and shall promptly notify Agent of such emergency

Strictly Confidential**Section 10. Employee Matters**

10.1 Merchant's Employees. Merchant shall use commercially reasonable efforts to make available and Agent may use Merchant's store-level employees in the conduct of the Sale to the extent Agent in its sole discretion deems expedient. Agent may recommend to Merchant the selection and scheduling of the number and type of Merchant's employees to assist with the conduct of the Sale. Merchant shall use commercially reasonable efforts (which shall not include payment of any additional amounts above current employee compensation) to make all of Merchant's employees at the Closing Stores available to Agent for the Sale. Agent shall assist Merchant in identifying any such store-level employees to be used in connection with the Sale (each such employee, a "**Retained Employee**") prior to the Sale Commencement Date. Notwithstanding the foregoing, Merchant's employees shall at all times remain employees of Merchant and shall not be considered or deemed to be employees of Agent. Merchant and Agent agree that except to the extent that the amount of wages and benefits of Retained Employees constitute Expenses to be reimbursed by Agent to Merchant hereunder, nothing contained in this Agreement and none of Agent's actions taken in respect of the Sale shall be deemed to constitute an assumption by Agent of any of Merchant's obligations relating to any of Merchant's employees including, without limitation, Excluded Benefits, notice and other termination type claims and obligations, or any other amounts required to be paid by statute or law; nor shall Agent become liable under any employment agreement or be deemed a related, joint or successor employer with respect to any of such employees. Agent shall use commercially reasonable efforts to comply in the conduct of the Sale with all of Merchant's employee rules, regulations, guidelines and policies which have been provided to Agent in writing. Merchant shall not, without the prior consent of Agent, raise the salary or wages or increase the benefits for, or pay any bonuses or other extraordinary payments to, any of the Retained Employees prior to the Sale Termination Date. If the number of Retained Employees made available to Agent pursuant to this Section 10.1 is insufficient to effectively run the Sale as determined by Agent in its sole discretion, Agent may request that Merchant engage additional temporary contract personnel on a per diem basis, and Merchant shall use reasonable commercial efforts to fulfill such request. If Merchant fails to facilitate the engagement of sufficient Retained Employees and temporary contract personnel as requested by Agent hereunder, Agent may engage such temporary personnel and all related costs and expenses shall constitute Expenses of Agent under this Agreement.

10.2 Termination of Employees By Merchant. All responsibility for hiring and firing and supervision of the conduct of the Retained Employees shall rest with Merchant. Agent may in its discretion stop using any Retained Employee at any time during the Sale. In the event Agent determines to discontinue its use of any Retained Employee in connection with the conduct of the Sale, Agent will provide written notice to Merchant at least seven (7) days prior thereto, except for discontinuance of use "for cause" (such as dishonesty, fraud or breach of employee duties), in which event no prior notice to Merchant shall be required, provided Agent shall notify Merchant as soon as practicable prior to such discontinuance of use so that Merchant can coordinate the termination of such Retained Employee and Agent shall provide Merchant with all supporting documents or information so that Merchant can arrange for the termination of such Retained Employee. From and after the date of this Agreement and until the Sale Termination Date, Merchant shall not transfer or terminate Retained Employees (except "for cause") without Agent's prior consent (which consent shall not be unreasonably withheld).

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10.3 Payroll Matters. During the Sale Term, Merchant shall process and pay any amounts such as the Base Payroll, commissions, and all related payroll taxes, worker's compensation, employment and unemployment insurance, and benefits, including accruing vacation pay (but not arrears) for all Retained Employees or temporary contract personnel that may be reimbursed by Agent as per Section 5.1 hereof (except for employees and independent contractors hired by Agent) in accordance with its usual and customary procedures.

10.4 Employee Incentive Plan. Agent shall have the right to elect to pay, as an Expense, retention bonuses (each an "**Incentive Plan**") (which bonuses shall be inclusive of payroll taxes but as to which no benefits shall be payable), up to a maximum aggregate amount equal to ■ percent ■ of aggregate Base Payroll, to selected Retained Employees who do not voluntarily leave employment and are not terminated "for cause". Subject only to limitation of ■ percent ■ of aggregate Base Payroll, the actual amount of the Incentive Plan to be paid to any Retained Employee shall be in an amount to be determined by Agent, and shall be payable within thirty (30) days after the Sale Termination Date, and shall be processed through Merchant's payroll system. Agent shall provide Merchant with a copy of Agent's Incentive Plan at least one (1) Business Day prior to its implementation.

Section 11. Conditions Precedent

The willingness of Merchant and Agent to enter into the transactions contemplated under this Agreement and Richter to acknowledge and agree to the terms of this Agreement is directly conditional upon the satisfaction of the following conditions at the time or during the time periods indicated, unless specifically waived in writing by the applicable party:

- (a) All representations and warranties of Merchant and Agent hereunder shall be true and correct in all material respects and no Event of Default shall have occurred at and as of the date hereof and as of the Sale Commencement Date;
- (b) On or before the Outside Date, the Court shall have issued the Appointment Order and the Approval Order, in a form and substance acceptable to Merchant, Agent, and Richter all acting reasonably, and the Appointment Order and Approval Order shall not have been stayed, varied, or vacated nor shall an application to restrain or prohibit the completion of the Sale be pending.

Section 12. Representations, Warranties, Covenants and Acknowledgements

12.1 Merchant's Representations, Warranties and Covenants. Merchant hereby represents, warrants and covenants to Agent as follows:

- (a) Merchant (i) is a corporation duly incorporated under the laws of the Province of Ontario, and (ii) is and during the Sale Term will continue to be, duly authorized, and qualified to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification, including all jurisdictions in which the Closing Stores are located, except, in each case, to the extent that the failure to be in good standing or so qualified could not reasonably be expected to have a material adverse effect on the ability of Merchant to execute and deliver this Agreement and perform fully its obligations hereunder. Merchant

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has all requisite corporate power and authority to own, lease and operate the assets and properties of Merchant and to carry on Merchant's business as presently conducted.

- (b) Subject to the issuance of the Approval Order and pursuant to the order of the Court: (i) Merchant has the right, power and authority to execute and deliver this Agreement and each other document and agreement contemplated hereby (collectively, together with this Agreement, the "**Agency Documents**") and to perform the obligations of Merchant thereunder; (ii) all necessary action has been taken by or on behalf of Merchant to authorize the execution and delivery by Merchant of the Agency Documents and no further consent or approval is required for Merchant to enter into and deliver the Agency Documents, to perform the obligations thereunder, and to consummate the Sale; (iii) each of the Agency Documents has been duly executed and delivered by or on behalf of Merchant and constitutes the legal, valid and binding obligation of Merchant enforceable in accordance with its terms; and (iv) no court order or decree of any federal, state, local, or provincial governmental authority or regulatory body is in effect that would prevent or materially impair, or is required for Merchant's consummation of, the transactions contemplated by this Agreement.
- (c) Merchant has maintained its pricing files (including the Cost Files) in the ordinary course of business and prices charged to the public for goods are the same in all material respects as set forth in such pricing files for the periods indicated therein (without consideration of any point of sale markdowns), and all pricing files and the Cost Files and all records relating thereto are true and accurate in all material respects as to the actual cost recognized on Merchant's books and records for the goods referred to therein and as to the selling prices to the public for such goods, without consideration of any point of sale markdowns, as of the dates and for the periods indicated therein. Merchant represents that (i) the ticketed prices of all items of Merchandise do not and shall not include any Sales Taxes and (ii) all cash registers located at the Closing Stores are programmed to correctly compute all Sales Taxes required to be paid by the customer under applicable law, as such calculations have been identified to Merchant by its retained service provider.
- (d) From execution of this Agreement until the Sale Commencement Date, Merchant has and shall continue to ticket or mark all items of inventory received at the Closing Stores prior to the Sale Commencement Date in a manner consistent with Merchant's ordinary course past practice and policies relative to pricing and marking inventory. Merchant shall be responsible for ticketing Merchandise to be transferred to the Closing Stores during the Sale Term. Merchant shall not remove from merchandise any sale stickers or other markings indicating items are on sale prior to the Sale Commencement Date, and have not raised, and will not raise, prices of any Merchandise in contemplation of the Sale. From January 1, 2017 to the Sale Commencement Date, the Merchant has not and will not take additional permanent markdowns.

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- (e) Merchant will continue to provide Agent reasonable access to all pricing and cost files, computer hardware, software and data files, inter-stores transfer logs, markdown schedules, invoices, style runs and all other documents relative to the price, mix and quantities of inventory located at the Closing Stores, and will provide the services that constitute the Central Services Expenses for the duration of the Sale Term.
- (f) Subject to the provisions of the Appointment Order, the Approval Order and the terms of this Agreement, throughout the Sale Term, Agent shall have the right to and the Merchant shall provide the unencumbered use and occupancy of, and peaceful and quiet possession of, each of the Closing Stores, the FF&E currently located at the Closing Stores and the utilities and other services provided at the Closing Stores. Merchant shall, throughout the Sale Term, and to the extent within its control, maintain in good working order, condition and repair all cash registers, heating systems, air conditioning systems, and all other mechanical devices necessary for the conduct of the Sale at the Closing Stores.
- (g) Merchant has not taken, and shall not throughout the Sale Term take, any action, the result of which is to materially increase the cost of operating the Sale including, without limitation, increasing salaries, wages or other amounts payable to employees, except to the extent that an employee was due an annual raise.
- (h) Merchant is not party to any collective bargaining agreements with its employees at the Closing Stores and no labour unions represent Merchant's employees at the Closing Stores and as at the date of this Agreement, there are no strikes, work stoppages or other labour disruptions affecting the Closing Stores or Merchant's central office facilities.
- (i) Except as otherwise provided for in the Appointment Order, the Merchant agrees to operate its business at the Closing Stores in all respects from the date of this Agreement to the Sale Commencement Date in the ordinary course.
- (j) Merchant has provided and will continue to provide Agent with all available sales, financial, inventory and other information that Agent has requested and hereafter may request relevant to the transaction contemplated under this Agreement to the extent that such information is in the Merchant's possession.
- (k) Since January 1, 2017, Merchant has operated, and, absent a *bona fide* dispute, through the Sale Commencement Date, Merchant covenants to continue to operate, the Closing Stores in all material respects in the ordinary course of business including without limitation by: (i) selling inventory during such period at customary prices consistent with the ordinary course of business; (ii) not promoting or advertising any sales or in-store promotions (including POS promotions) to the public outside of the Merchant's ordinary course of business; (iii) except as may occur in the ordinary course of business, not returning inventory to vendors and not transferring inventory or supplies out of or to the Closing Stores; (iv) except as may occur in the ordinary course of business, not

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making any management personnel moves or changes at the Closing Stores. Prior to the Sale Commencement Date, Merchant shall not offer any promotions or discounts at any of the Closing Stores, or at Merchant's retail locations (other than the Closing Stores) to the extent there are any such other locations, except as detailed on **Exhibit 12.1(k)**.

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

- (a) Each of the entities comprising the contractual joint venture that is the Agent hereunder is (i) a unlimited liability company, duly and validly existing and in good standing under the laws of the province of its organization, (ii) has all requisite power and authority to carry on its business as presently conducted in the jurisdictions where the Closing Stores are located and to consummate the transactions contemplated hereby and (iii) is and during the Sale Term will continue to be duly authorized and qualified to do business, and in good standing, in each jurisdiction where the nature of its business or properties requires such qualification.
- (b) Agent has the right, power and authority to execute and deliver each of the Agency Documents to which it is a party and to perform its obligations thereunder. Agent has taken all necessary actions required to authorize the execution, delivery, and performance by Agent of the Agency Documents, and no further consent or approval is required on the part of Agent for Agent to enter into and deliver the Agency Documents and to perform its obligations thereunder and to consummate the Sale. Each of the Agency Documents has been duly executed and delivered by Agent and constitutes the legal, valid and binding obligation of Agent enforceable in accordance with its terms. No court order or decree of any federal, provincial, state or local governmental authority or regulatory body is in effect that would prevent or impair or is required for Agent's consummation of the transactions contemplated by this Agreement, and no consent of any Third Party which has not been obtained is required therefor other than as provided herein. No contract or other agreement to which Agent is a party or by which Agent is otherwise bound will prevent or impair the consummation of the transactions contemplated by this Agreement.
- (c) No action, arbitration, suit, notice, or legal administrative or other proceeding before any court or governmental body has been instituted by or against Agent, or has been settled or resolved, or to Agent's knowledge, has been threatened against or affects Agent, which questions the validity of this Agreement or any action taken or to be taken by Agent in connection with this Agreement, or which if adversely determined, would have a material adverse effect upon Agent's ability to perform its obligations under this Agreement.
- (d) The Sale shall be conducted in compliance with the terms of this Agreement, the Sale Guidelines and the Approval Order.

Strictly Confidential**Section 13. Insurance**

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

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

13.3 Agent's Insurance. Agent shall maintain as an Expense throughout the Sale Term in such amounts as it currently has in effect, comprehensive public liability and automobile liability insurance policies covering injuries to persons and property in or in connection with Agent's agency at the Closing Stores and shall cause Merchant to be named an additional insured with respect to such policies. Prior to the Sale Commencement Date, Agent shall deliver to Merchant certificates evidencing such insurance policies, setting forth the duration thereof and naming Merchant as an additional insured, in form and substance reasonably satisfactory to Merchant. In the event of a claim under such policies Agent shall be responsible, as an Expense, for the payment of all deductibles, retentions or self-insured amounts thereunder, to the extent said claim arises from or relates to the alleged acts or omissions of Agent or Agent's employees, agents or independent contractors.

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13.4 Worker's Compensation Insurance. Merchant shall continue to pay until the Sale Termination Date appropriate worker's compensation insurance (including employer liability insurance) covering all Retained Employees in compliance with all statutory requirements.

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

Section 14. Indemnification

14.1 Merchant Indemnification to Agent. Merchant shall indemnify and hold Agent and its officers, directors, employees, agents and independent contractors (collectively, "**Agent Indemnified Parties**") harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable legal fees and expenses, asserted directly or indirectly against an Agent Indemnified Party resulting from, or related to:

- (a) subject to Agent's performance and compliance with its obligations pursuant to Section 5.1(b), 5.1(c) and Section 10 hereof, any failure by Merchant to pay its employees any wages, salaries or benefits due to such employee during the Sale Term or other claims asserted against Agent by Merchant's employees resulting from Merchant's (and not Agent's) treatment of its employees;
- (b) subject to Agent's compliance with its obligations under Section 9.3 hereof, any failure by Merchant to pay any Sales Taxes to the proper taxing authorities or to properly file with any taxing authorities any reports or documents required by applicable law to be filed in respect thereof;
- (c) the gross negligence (including omissions) or willful misconduct of Merchant or any of its officers, directors, employees, agents (other than Agent) or representatives;

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14.2 Merchant Indemnification to Richter. Merchant shall indemnify and hold Richter and its officers, directors, employees, agents and independent contractors (collectively, “**Richter Indemnified Parties**”) harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable legal fees and expenses, asserted directly or indirectly against an Richter Indemnified Party resulting from, or related to:

- (a) any failure by Merchant to pay its employees any wages, salaries or benefits due to such employee during the Sale Term or other claims asserted against Richter by Merchant’s employees resulting from Merchant’s (and not Richter’s) treatment of its employees;
- (b) any failure by Merchant to pay any Sales Taxes to the proper taxing authorities or to properly file with any taxing authorities any reports or documents required by applicable law to be filed in respect thereof;
- (c) the gross negligence (including omissions) or willful misconduct of Merchant or any of its officers, directors, employees, agents (other than Richter) or representatives;

14.3 Agent Indemnification to Merchant. Agent shall indemnify and hold Merchant and its officers, directors, employees, agents and representatives (“**Merchant Indemnified Parties**”) harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable legal fees and expenses, asserted directly or indirectly against a Merchant Indemnified Party resulting from, or related to:

- (a) Agent’s material breach of or failure to comply with any local, state, provincial or federal laws or regulations, or any of its agreements, covenants, representations or warranties contained in this Agreement or other Agency Document and any order of the Court relating to the Sale;
- (b) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of any customers, employees or agents of Merchant by Agent or any of its employees, agents, independent contractors or other officers, directors or representatives of Agent;
- (c) any claims by any party engaged by Agent as an employee or independent contractor arising out of such engagement;
- (d) any Sales Tax assessments (and penalties and interest arising therefrom or in respect thereof) in the event that Agent uses any system other than Merchant’s point of sale system to compute Sales Taxes relating to the Sale as described in Section 9.3; and
- (e) the gross negligence (including omissions) or willful misconduct of Agent or any of its officers, directors, employees, agents or representatives.

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The foregoing indemnity is supplemental to and does not replace any of the other indemnities in this Agreement given by Agent, including, without limitation, the indemnities of Agent contained in Section 9.3 hereof.

14.4 [Reserved]

Section 15. Fixtures

- (a) With respect to Owned FF&E, subject to the provisions of the Approval Order, Agent shall have the exclusive right to dispose of all of the Owned FF&E. Agent shall be entitled to receive (i) a commission equal to [REDACTED] percent [REDACTED] (the “**FF&E Commission**”) of the proceeds from the sale of such Owned FF&E (net of Sales Taxes), plus (ii) reimbursement by Merchant of Agent’s out of pocket expenses related to the disposition of the Owned FF&E which are not duplicative of the Expenses set out in Section 5.1 and are in accordance with a budget mutually agreed upon between Merchant and Agent. As of the Sale Termination Date, Agent may abandon, in place, in a neat and orderly manner any unsold Owned FF&E and any FF&E. The removal of any sold Owned FF&E shall be done in a manner consistent with the Sale Guidelines.
- (b) All gross proceeds from the disposition of the Owned FF&E (collectively, the “**Gross FF&E Proceeds**”), shall be deposited in accordance with Section 4.7 above. From the Gross Sale Proceeds, Agent shall establish a holdback (the “**FF&E Holdback**”) in the Agency Account in an amount equal to the Gross FF&E Proceeds, less the applicable FF&E Commission and applicable Sales Taxes subject to the Sales Tax Holdback in accordance with Section 4.7(b) hereof (being the “**Net FF&E Proceeds**”). Net FF&E Proceeds are to be remitted from the FF&E Holdback to Merchant pursuant to Section 4.3(c) hereof, as part of the weekly reconciliation conducted by the Parties pursuant to Section 4.6(a) of this Agreement.
- (c) If Merchant elects to have Agent sell the Owned FF&E on a guaranteed basis, Merchant and Agent shall use good faith efforts to mutually agree upon the guaranteed amount (the “**Additional Guaranteed Amount**”) on account of the sale of the Owned FF&E, which Additional Guaranteed Amount shall be paid by Agent on the Payment Date or within two (2) business days after mutual agreement with respect to such Additional Guaranteed Amount. In consideration for the payment of the Additional Guaranteed Amount, Agent shall be authorized to sell the Owned FF&E and retain all Gross FF&E Proceeds (net only of Sales Taxes) from the sale of all Owned FF&E for Agent’s sole and exclusive benefit. Agent shall have the right to abandon any unsold Owned FF&E or FF&E, as provided herein.

Section 16. Events of Default

The following shall constitute “**Events of Default**” hereunder:

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- (a) Merchant or Agent shall fail to perform any of their respective material obligations hereunder, if such failure remains uncured seven (7) days after receipt of written notice thereof;
- (b) Any representation or warranty made by Merchant or Agent proves untrue in any material respect as of the date; or
- (c) Subject to Section 9.7, the Sale is terminated or materially interrupted or impaired at any Closing Store for any reason other than (i) an Event of Default by Agent; or (ii) any other material breach or action by Agent not authorized under this Agreement.

In the event of an Event of Default, the non-defaulting Party in the case of an Event of Default under subsection (a) or (b) or the Agent in the case of subsection (c) may, in its discretion, elect to terminate this Agreement, upon seven (7) Business Days' written notice to the other Party and pursue any and all rights and remedies and damages resulting from such Event of Default hereunder.

Section 17. Miscellaneous

17.1 Notices. All notices and communications provided for pursuant to this

Agreement shall be in writing, and sent by hand, by facsimile, electronic (PDF) transmission or courier delivery, as follows:

If to Agent:

Gordon Brothers Canada ULC
 c/o Gordon Brothers Group, LLC
 800 Boylston Street
 27th Floor
 Boston, MA 02199
 Attention: Mackenzie Shea, Associate General Counsel
 Email: mshea@gordonbrothers.com

and

Merchant Retail Solutions ULC
 c/o Hilco Merchant Resources, LLC
 5 Revere Drive
 Suite 206
 Northbrook, IL 60062
 Attention: Ian Fredericks
 Email: ifredericks@hilcoglobal.com

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With a mandated copy (which shall not constitute notice) to:

Agent's Canadian counsel Fasken Martineau DuMoulin LLP
Bay Adelaide Centre
333 Bay Street, Suite 2400
Toronto, ON M5H 2T6
Attn.: Stuart Brotman/Natasha De Cicco
Email: sbrotman@fasken.com/ndecicco@fasken.com

If to Receiver: Richter Advisory Group Inc.
181 Bay Street,
33rd Floor
Toronto, ON M5J 2T3
Attn.: Pritesh Patel

Tel: 416-642-9421
Fax: 416-488-3765
Email: ppatel@richter.ca

With a mandated copy (which shall not constitute notice) to:

Gowling WLG
1 First Canadian Place
100 King Street West
Suite 1600
Toronto, ON M5X 1G5
Attn.: David F.W. Cohen & Frank Lamie

Tel: 416-369-6667 / 416-862-3609
Email: david.cohen@gowlingwlg.com /
frank.lamie@gowlingwlg.com

If to Merchant: HMV Canada Inc.
5401 Eglinton Avenue West,
Suite 110
Etobicoke, ON M9C 5K6
Attn.: Nick Williams

Email: nwilliams@hmv.ca

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With a mandated copy (which shall not constitute notice) to:

Aird & Berlis LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9
Attn.: Steven Graff

Email: sgraff@airdberlis.com

17.2 Governing Law; Consent to Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflicts of laws principles thereof. The parties hereto agree that the Court shall retain exclusive jurisdiction to hear and finally determine any disputes arising from or under this Agreement, and by execution of this Agreement each party hereby irrevocably accepts and submits to the jurisdiction of such Court with respect to any such action or proceeding and to service of process by certified mail, return receipt requested to the address listed above for each party.

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

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

17.5 Successors and Assigns; Merchant's Authority. This Agreement shall inure to the benefit of and be binding upon Merchant and Agent, including, but not limited to, any trustee in bankruptcy or receiver or interim receiver thereof; provided, however, that this Agreement may not be assigned by either Party without the prior written consent of the other Party.

17.6 Subcontractors. Agent may utilize the services of subcontractors and or licensees in connection with the performance of its obligations hereunder.

17.7 Confidentiality. The terms of this Agreement, together with all information and documentation provided by the Merchant to the Agent pursuant to this Agreement, shall be confidential and subject to the terms and conditions of the confidentiality agreements between the Merchant and the Agent, except for disclosures which may be required by law or as Merchant considers appropriate, acting reasonably and in consultation with Agent, in connection with obtaining the Approval Order. Agent acknowledges and agrees that in connection with Merchant's application for the Approval Order, Merchant will file a copy of this Agreement with

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the pricing information redacted and without **Exhibit 5.1(a)** to this Agreement and will seek an order sealing an unredacted copy of this Agreement, including such Exhibits.

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

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

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

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

17.12 Choice of Language. The parties have specifically required that this Agreement and all related documents be drafted and executed in English. *Les parties aux présentes ont formellement demandé à ce que la présente convention et tous les documents auxquels celle-ci réfère soient rédigés et signés en langue anglaise.*

17.13 Further Assurances. The Merchant and the Agent shall each execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, at the cost and expense of the requesting party, such instruments and take such other actions as may be necessary or advisable to carry out their obligations under this Agreement, or any document, certificate or other instrument delivered pursuant hereto or thereto or required by applicable law.

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

[SIGNATURES NEXT PAGE]

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IN WITNESS WHEREOF, Agent and Merchant have executed this Agreement as of the day and year first written above.

AGENT

GORDON BROTHERS CANADA ULC

By: _____
Name:
Title:

MERCHANT RETAIL SOLUTIONS ULC

By: _____
Name:
Title:

MERCHANT

HMV CANADA INC.

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED by the undersigned with effect as of the date first referred to above.

RICHTER ADVISORY GROUP INC., solely in its capacity as Court-appointed receiver of the assets, undertakings and properties of HMV Canada Inc., provided so appointed by the Court, and not in its corporate or personal capacity

By: _____
Name:
Title:

Strictly Confidential**Exhibits**

1A	Closing Stores
1b	Distribution Centres
3.1	Approval Order
4.1(i)	Merchandise Threshold
4.1(j)	Cost Factor
5.1(a)	Occupancy Expenses
6.1(a)(iv)	In-Transit Merchandise*
9.1	Sale Guidelines
12.1(k)	Promotional Activity

*to be provided prior to Sale Commencement Date

CONFIDENTIAL
APPENDIX 1

Filed with the Court on a sealed and
confidential basis

CONFIDENTIAL
APPENDIX 2

Filed with the Court on a sealed and
confidential basis

HUK 10 LIMITED

Applicant

- and -

HMV CANADA INC.

Respondent

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
PROCEEDINGS COMMENCED AT TORONTO

**PRE-FILING REPORT OF THE
PROPOSED RECEIVER**

GOWLING WLG (CANADA) LLP
1 First Canadian Place, Suite 1600
100 King Street West
Toronto, Ontario M5X 1G5

David F.W. Cohen
Tel: (416) 369-6667 / Fax: (416) 862-7661
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Frank D. Lamie
Tel: (416) 862-3609 / (416) 862-7661
Email: frank.lamie@gowlings.com

**Lawyers for Richter Advisory Group Inc., in its capacity as
proposed Receiver of HMV Canada Inc.**