

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

)

WEDNESDAY, THE 16th

MR. JUSTICE HAINEY

)

DAY OF DECEMBER, 2020

)

BRIDGING FINANCE INC., AS AGENT

Applicant

AUDIBLE CAPITAL CORP., AVENIR TRADING CORP., 1892244
ALBERTA LTD., AVENIR SPORTS ENTERTAINMENT LTD.,
AVENIR SPORTS ENTERTAINMENT CORP. and PORTLAND
WINTER HAWKS, INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT,
R.S.C. 1985, c.B 3, AS AMENDED, AND

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc.¹ in its capacity as Court-appointed receiver (in such capacity, the "**Receiver**") of the Property (as defined in the Receivership Order dated May 7, 2020) of Audible Capital Corp., Avenir Trading Corp., 1892244 Alberta Ltd., Avenir Sports Entertainment Ltd., Avenir Sports Entertainment Corp. and Portland Winter Hawks, Inc. ("**PWH**") (collectively, the "**Companies**") for an order approving the sale transaction (the "**Transaction**") contemplated by the asset purchase agreement (the "**Sale Agreement**") among the Receiver, Avenir Ice Sports LLC ("**AIS**"), Winterhawks Junior Hockey LLC ("**WJH**") and Winterhawks Sports Group LLC (the "**Purchaser**") dated October 23, 2020, and vesting in the Purchaser, or as it may direct, all of PWH's right, title and interest in

¹ Effective August 31, 2020 KSV Kofman Inc. changed its name to KSV Restructuring Inc.

and to the Purchased Assets (as defined in the Sale Agreement) and all of the Assumed Liabilities (as defined in the Sale Agreement), was heard this day via videoconference due to the COVID-19 pandemic.

ON READING the motion record of the Receiver and on hearing the submissions of counsel for the Receiver and such other parties as appear on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Aiden Nelms sworn December 14, 2020 filed:

1. **THIS COURT ORDERS** that the time and method of service and notice of this Motion is hereby abridged and validated and that this Motion is properly returnable today without further service or notice thereof.
2. **THIS COURT ORDERS** that capitalized terms used and not defined herein shall have the meanings ascribed to them in the Sale Agreement.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver and the Purchaser may agree upon. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets (including, for the avoidance of doubt, the Purchased Assets held by each of AIS and WJH) to Winterhawks Hockey, LLC, Winterhawks Ice Center, LLC, and Winterhawks Youth Hockey, LLC, as the case may be, and for the assumption of the Assumed Liabilities by Winterhawks Hockey, LLC, Winterhawks Ice Center, LLC, and Winterhawks Youth Hockey, LLC, as the case may be.
4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of PWH's right, title and interest in and to the Purchased Assets described in the Sale Agreement (including, but not limited to, to the Contracts (as defined in the Sale Agreement), including, for greater certainty, all Contracts listed in Exhibit "1" to Schedule "C" of the Sale Agreement (collectively, the "**Assigned Contracts**" and each an "**Assigned Contract**") shall vest absolutely in Winterhawks Hockey, LLC, Winterhawks Ice Center, LLC, and Winterhawks Youth Hockey, LLC, as the case may be, free and clear of and from any and 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, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including,

without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated May 7, 2020; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system in Canada or the United States (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that the assignment of the Assigned Contracts is declared valid and binding upon all of the counterparties to the Assigned Contracts notwithstanding any restriction, condition or prohibition contained in any such Assigned Contract relating to the assignment thereof, including any provision requiring the consent of any party to the assignment.

6. **THIS COURT ORDERS** that each counterparty to the Assigned Contracts is prohibited from exercising any right or remedy under the Assigned Contracts by reason of any defaults thereunder arising from the assignment of the Assigned Contracts, the insolvency of PWH, the commencement of these proceedings, or any failure of PWH, AIS or WJH to perform a non-monetary obligation under the Assigned Contracts.

7. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

8. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Receiver's Certificate to the Purchaser, all of the Assumed Liabilities described in the Sale Agreement, and no other Liabilities of any Vendor, shall vest absolutely in Winterhawks Hockey, LLC, Winterhawks Ice Center, LLC, and Winterhawks Youth Hockey, LLC, as the case may be.

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

10. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer

to the Purchaser, Winterhawks Hockey, LLC, Winterhawks Ice Center, LLC, and Winterhawks Youth Hockey, LLC all human resources and payroll information in the Receiver's records pertaining to PWH's past and current employees. The Purchaser, Winterhawks Hockey, LLC, Winterhawks Ice Center, LLC, and Winterhawks Youth Hockey, LLC shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by PWH.

11. **THIS COURT ORDERS** that, notwithstanding:

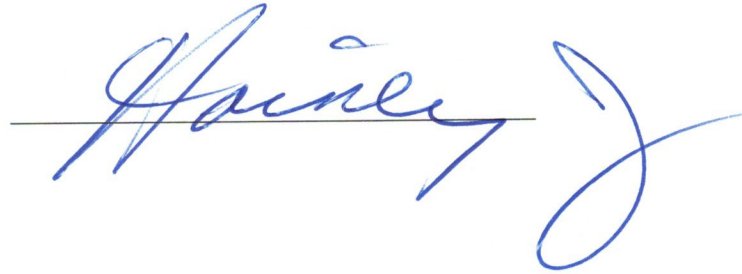
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of any of the Companies and any bankruptcy order issued pursuant to any such applications or otherwise; and
- (c) any assignment in bankruptcy made in respect of any of the Companies;

the vesting of the Purchased Assets and the Assumed Liabilities in Winterhawks Hockey, LLC, Winterhawks Ice Center, LLC, and Winterhawks Youth Hockey, LLC, as the case may be, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Companies and shall not be void or voidable by creditors of the Companies, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12. **THIS COURT ORDERS** that for a period of not less than two years from the Closing Date, the Purchaser, Winterhawks Hockey, LLC, Winterhawks Ice Center, LLC, and Winterhawks Youth Hockey, LLC shall provide the Receiver and any trustee in bankruptcy of any of the Companies with reasonable access to the books and records of PWH in the possession of the Purchaser, Winterhawks Hockey, LLC, Winterhawks Ice Center, LLC, and Winterhawks Youth Hockey, LLC during normal business hours upon request.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and

to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in blue ink, appearing to read "Hainey", is written over a horizontal line. The signature is stylized and extends to the right of the line.

Schedule A – Form of Receiver's Certificate

Court File No.: CV-20-00640212-00CL

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

BETWEEN:

BRIDGING FINANCE INC., AS AGENT

Applicant

**AUDIBLE CAPITAL CORP., AVENIR TRADING CORP., 1892244
ALBERTA LTD., AVENIR SPORTS ENTERTAINMENT LTD.,
AVENIR SPORTS ENTERTAINMENT CORP. and PORTLAND
WINTER HAWKS, INC.**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT,
R.S.C. 1985, c.B 3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O.
1990, c.C.43, AS AMENDED

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated May 7, 2020 (as amended, the "**Receivership Order**"), KSV Restructuring Inc. was appointed as Receiver (in such capacity, the "**Receiver**") of the Property (as defined in the Receivership Order).

B. Pursuant to an Order of the Court dated December 16, 2020 (the "**Approval and Vesting Order**"), the Court approved the agreement of purchase and sale made as of October 23, 2020 (as amended, the "**Sale Agreement**") among the Receiver, Avenir Ice Sports LLC, Winterhawks Junior Hockey LLC and Winterhawks Sports Group LLC (the "**Purchaser**") and provided for the vesting in Winterhawks Hockey, LLC, Winterhawks Ice Center, LLC, and Winterhawks Youth Hockey, LLC, as the case may be, or as the Purchaser may direct, of PWH's right, title and interest in and to the Purchased Assets and of the Assumed Liabilities, which vesting is to be effective with respect to the Purchased Assets and the Assumed Liabilities upon the delivery by the Receiver to the Purchaser of a certificate.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received, the purchase price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser in accordance with their terms; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV Restructuring Inc., solely in its capacity as Receiver of Audible Capital Corp., Avenir Trading Corp., 1892244 Alberta Ltd., Avenir Sports Entertainment Ltd., Avenir Sports Entertainment Corp. and Portland Winter Hawks, Inc., and not in its personal capacity

Per: _____

Name:

Title:

BRIDGING FINANCE INC., AS AGENT

-and-

AUDIBLE CAPITAL CORP. *et al*

Applicant

Respondents

Court File No.: CV-20-00640212-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced in Toronto

Approval and Vesting Order

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Lawyers for KSV Restructuring Inc., solely in its
capacity as Court-appointed Receiver and not in
its personal capacity