

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

)

TUESDAY, THE 16th

)

MR. JUSTICE HAINEY

)

DAY OF MARCH, 2021

BETWEEN:

BRIDGING FINANCE INC. AS AGENT

Applicant

- and -

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of Audible Capital Corp. and the other Respondents (collectively, the “**Debtors**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver and Avina Acquisition Corp. (the “**Purchaser**”) dated December 15, 2020, as amended by the Amendment Agreement dated March 8, 2021 (the “**Sale Agreement**”) and appended to the Fourth Report of the Receiver dated March 9, 2021 (the “**Report**”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the Purchased Assets as defined and described in the Sale Agreement (the “**Purchased Assets**”), proceeded by way of videoconference due to the COVID-19 crisis.

ON READING the Report and on hearing the submissions of counsel for the Receiver, the Purchaser, and the other counsel on the counsel slip, attached, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Aiden Nelms sworn and filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, with such minor amendments as the Receiver may deem necessary. 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 to the Purchaser.

3. **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 the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts, constructive trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, claims, demands, guarantees, restrictions, contractual commitments 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; (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 (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.

4. **THIS COURT ORDERS** that without limiting the generality of Paragraph 3, upon the delivery to the Purchaser of the Receiver's Certificate, all shares, units, limited partner interests and warrants that are Purchased Assets (collectively, the "**Equity Interests**") shall vest absolutely in the Purchaser as part of the Transaction free and clear of and from any Encumbrance, and such vesting shall be effective and binding upon the applicable issuer of the Equity Interests, and all of the other shareholders and unit holders of the issuer of the Equity Interest (collectively, "**Shareholders**") irrespective of and without triggering any rights of first refusal, rights of first offer, shotgun rights or similar rights of the Shareholders in respect of the

Equity Interests, provided that once vested in the Purchaser, the Equity Interests shall be subject to the applicable constating documents of the issuer, including any applicable shareholders or voting agreements, or other obligations or restrictions (the “**Constating Documents**”) that are applicable to other Equity Interests of the same class and series as the applicable Purchased Assets.

5. **THIS COURT ORDERS** that the Shareholders and each issuer of the Equity Interests are prohibited from exercising any right or remedy under any applicable Constating Documents by reason of any defaults thereunder arising from the transfer of the Equity Interest pursuant to the Transaction, the insolvency of the Debtors, the commencement of these proceedings or any failure of the Debtors to perform a non-monetary obligation under the Constating Documents.

6. **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.

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

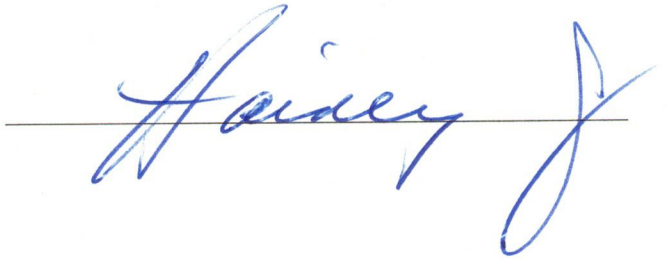
8. **THIS COURT ORDERS** that, notwithstanding:

- (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) in respect of any Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any Debtor and shall not be void or voidable by creditors of such Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency*

Act (Canada) 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.

9. **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 "Haidley", 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**

B E T W E E N:

BRIDGING FINANCE INC. AS AGENT

Applicant

- and -

**AUDIBLE CAPITAL CORP.,
AVENIR TRADING CORP., 1892244 ALBERTA LTD.,
AVENIR SPORTS ENTERTAINMENT LTD.,
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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hailey of the Ontario Superior Court of Justice (the “**Court**”) dated May 7, 2020, KSV Restructuring Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of Audible Capital Corp. and the other Respondents (collectively, the “**Debtors**”).

B. Pursuant to an Order of the Court dated March 16, 2021, the Court approved the agreement of purchase and sale made as of December 15, 2020 (as amended, the “**Sale Agreement**”) between the Receiver and Avina Acquisition Corp. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtors’ right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the

conditions to Closing as set out in sections 5.1 and 5.2 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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 sections 5.1 and 5.2 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; 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., in its capacity as
Receiver of the undertaking, property and assets of
Audible Capital Corp. et. al, and not in its personal
capacity**

Per: _____

Name:

Title:

Schedule B – Purchased Assets

Private Companies	# of Shares
Archeoptix Biomedical Inc.	760,000
Phononic Devices Inc.	66,700
Performance Phononics	1,000,000
Conavi Medical Inc.	24,193
Synaptive Medical Inc. – Common Shares	740,000
Synaptive Medical Inc. – Common Warrants	21,000
Synaptive Medical Inc. – Class B Shares	2,365,622
Synaptive Medical Inc. – Class B Warrants (US\$3.75 strike 3 yrs)	1,182,811
Orthogonal Inc.	185,903
Mobility View Inc.	7,187
Motion Gestures	172,163
Canadian International Oil Corp.	40,000
Panaxium SaS	969,767
BioSteel – all shares held by Audible Capital Corp.	

BRIDGING FINANCE INC., AS AGENT

-and-

AUDIBLE CAPITAL CORP. *et al*

Applicant

Respondents

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

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SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced in Toronto

AVINA 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