

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**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 WINTERHAWKS,  
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

**MOTION RECORD**

March 9, 2021

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

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TAB 1

**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

**NOTICE OF MOTION  
(Returnable March 16, 2021)**

KSV Restructuring Inc.<sup>1</sup> ("**KSV**" or the "**Receiver**"), in its capacity as Court-appointed receiver over the property, assets and undertakings of Audible Capital Corp. ("**Audible**"), Avenir Trading Corp., 1892244 Alberta Ltd., Avenir Sports Entertainment Ltd., Avenir Sports Entertainment Corp. and Portland Winter Hawks, Inc. (collectively, the "**Companies**"), will make a motion before the Honourable Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on March 16, 2021, at 9:30 a.m. or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard by videoconference as a result of the COVID-19 pandemic, the details of which can be found at Schedule "A" hereto.

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<sup>1</sup> Effective August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

**THE MOTION IS FOR:**

1. An order (the "**EdgeHill Approval and Vesting Order**") substantially in the form of the draft order attached at Tab "3" of this motion record, among other things, approving the transaction (the "**EdgeHill Transaction**") contemplated by the Asset Purchase Agreement dated March 8, 2021 (the "**EdgeHill APA**"), among the Receiver, as vendor, and EdgeHill Partners ("**EdgeHill**"), as purchaser, and vesting in EdgeHill, or as it may direct, all of the Receiver and Audible's right, title and interest in and to the assets described in the EdgeHill APA (the "**Units**") free and clear of and from any and all Claims and Encumbrances (each as defined in the EdgeHill Approval and Vesting Order).
2. An order (the "**Avina Approval and Vesting Order**") substantially in the form of the draft order attached at Tab "5" of this motion record, among other things, approving the transaction (the "**Avina Transaction**") contemplated by the Asset Purchase Agreement dated December 15, 2020, as amended (the "**APA**"), among the Receiver, as vendor, and Avina Acquisition Corp. ("**Avina**"), as purchaser, and vesting in Avina, or as it may direct, all of the Receiver and Audible's right, title and interest in and to the assets described in the APA (the "**Purchased Assets**") free and clear of and from any and all Claims and Encumbrances (each as defined in the Avina Approval and Vesting Order).
3. An order (the "**Ancillary Order**") substantially in the form of the draft order attached at Tab "7" of this motion record, among other things:
  - (a) abridging the time for service of this notice of motion and the motion record and dispensing with service on any person other than those served;
  - (b) authorizing the Receiver to sell Audible's common shares in Orla Mining Ltd. ("**Orla**") at fair market value should the Receiver, in its sole and unfettered discretion, decide to exercise Audible's Orla Warrants (as defined below);
  - (c) approving the fees and disbursements of the Receiver from November 1, 2020 to January 31, 2021 and of its counsel, Bennett Jones LLP ("**Bennett Jones**"), from November 1, 2020 to February 28, 2021;

- (d) approving the Fourth Report of the Receiver dated December 22, 2020 (the "**Fourth Report**") and the Fifth Report of the Receiver dated March 9, 2021 (the "**Fifth Report**") and the activities of the Receiver described therein.

4. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

***Background***

5. On May 7, 2020, the Court granted an order (the "**Receivership Order**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Ontario Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended (the "**CJA**"), appointing KSV as Receiver, without security, of all of the assets, undertakings and properties of the Companies. The primary asset of the Companies was the Portland Winterhawks franchise (the "**Winterhawks**"), a junior hockey team based in Portland, Oregon that plays in the Western Hockey League.

6. In addition to appointing KSV as Receiver, the Receivership Order, *inter alia*:

- (a) authorized and empowered the Receiver to act as a foreign representative of the Companies (the "**Foreign Representative**") for the purpose of having these receivership proceedings (the "**Receivership Proceedings**") recognized in a jurisdiction outside of Canada; and
- (b) authorized the Receiver, as Foreign Representative, to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*.

7. As Foreign Representative, the Receiver commenced proceedings in the US Bankruptcy Court of the District of Oregon (the "**US Court**") seeking recognition of the Receivership Proceedings and the enforcement of the Receivership Order pursuant to Chapter 15 of the *United States Bankruptcy Code*. On May 7, 2020, the US Court issued an order granting certain provisional relief, and on June 9, 2020, the US Court granted an order recognizing the Receivership Proceedings.

8. On June 2, 2020, the Court issued an order which, *inter alia*, approved a Court-supervised sale process in respect of the Winterhawks (the "**PWH Sale Process**").

9. As a result of the PWH Sale Process and certain additional efforts of the Receiver, the Court and the US Court each granted an order which, *inter alia*, approved the transaction (the "**PWH Transaction**") contemplated by the Asset Purchase Agreement dated October 23, 2020, as amended, between Winterhawks Sports Group LLC, as purchaser, and the Receiver, Avenue Ice Sports LLC and Winterhawks Junior Hockey LLC, as vendors on December 16, 2020 and December 18, 2020, respectively.

10. The PWH Transaction closed on December 31, 2020.

***The APA, the Investment Sale Process and EdgeHill<sup>2</sup>***

11. Audible holds several investments in start-up or growth stage companies (collectively, the "**Investments**"). On October 23, 2020, the Receiver was presented with an unsolicited asset purchase agreement from Avina to purchase certain of the Investments.

12. To maximize value for creditors by ensuring the highest and best value is obtained for the Purchased Assets, while minimizing the risk of losing the offer, the Receiver proposed that Avina act as a "stalking horse" in a court supervised sale process (the "**Investment Sale Process**"). Avina agreed to participate as the stalking horse bidder in the Investment Sale Process and Avina and the Receiver negotiated and entered into the APA.

13. On January 6, 2021, the Court issued an order (the "**Investment Sale Process Order**") which, *inter alia*, approved the Investment Sale Process.

***(i) the Investment Sale Process***

14. In accordance with the Investment Sale Process Order, the Receiver conducted the Investment Sale Process which, *inter alia*, included:

- (a) uploading certain information requested from the principals of the entities comprising the Purchased Assets, including securities registers and shareholder agreements, to a virtual data room;

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<sup>2</sup> All terms in this section not otherwise defined herein have the meanings ascribed to them in the APA or the EdgeHill APA, as applicable.

- (b) distributing an interest solicitation letter to prospective purchasers detailing the acquisition opportunity and enclosing a form of confidentiality agreement ("**CA**");
- (c) facilitating information requests by prospective purchasers; and
- (d) arranging for the Investment Sale Process to be advertised in the Globe & Mail.

15. The bid deadline under the Investment Sale Process was February 4, 2021 (the "**Bid Deadline**"), approximately four (4) weeks after the issuance of the Investment Sale Process Order.

16. Prior to the Bid Deadline, 12 parties executed a CA, however, no offers were received other than the APA. The Receiver received two (2) expressions of interest which, on a piecemeal and combined basis, were insufficient to be considered a Qualified Bid (as defined in the Fourth Report).

***(ii) EdgeHill Transaction***

17. Following service of the Investment Sale Process Order, the Receiver was contacted by counsel to the majority partners of EdgeHill, one of the entities that comprise the Investments. While the majority partners of EdgeHill did not object to the Investment Sale Process or the Investment Sale Process Order, they reserved their rights in respect of same. Further, they appeared at the motion for the Investment Sale Process Order and advised the Court of their position.

18. The Receiver and the majority partners of EdgeHill had a series of exchanges which, following consultation with Avina and the Companies' senior secured creditor Bridging Finance Inc. ("**Bridging**"), culminated in the EdgeHill APA.

19. The key terms and conditions of the EdgeHill APA include, *inter alia*:

- (a) Purchaser: EdgeHill;
- (b) Purchased Assets: the Receiver's and the Companies' right, title and interest to the Units;
- (c) Deposit: CAD\$25,000;
- (d) Purchase Price: CAD\$250,000



- (e) Closing: within three (3) Business Days after receipt of the EdgeHill Approval and Vesting Order; and
- (f) Outside Date: March 31, 2021.

***(ii) the Avina Transaction***

20. In connection with the proposed EdgeHill Transaction in respect of the Units, certain amendments to the APA were necessary. On March 8, 2021, the Receiver and Avina entered into an amendment to the APA (the "**Amendment Agreement**") which, among other things:

- (a) removed the Units as a "Purchase Asset" under the APA;
- (b) amended the definition of "Outside Date" to be March 31, 2021; and
- (c) reduced the purchase price by \$250,000 (i.e., from \$4,650,000 to \$4,400,000).

21. The key terms and conditions of the APA (prior to the Amendment Agreement) were summarized in the Fourth Report. The key terms and conditions of the APA following the Amendment Agreement include, *inter alia*:

- (a) Purchaser: Avina;
- (b) Purchased Assets: the Receiver's and Audible's right, title and interest to the Purchased Assets;
- (c) Purchase Price: CAD\$4,400,000
- (d) Deposit: CAD\$232,500;
- (e) Closing: within three (3) Business Days after receipt of the Avina Approval and Vesting Order; and
- (f) Outside Date: March 31, 2021.

***Orla Investment***

22. One of the Investments, which is not subject to the APA or the EdgeHill APA, is an investment in Orla, a public company that is developing a gold project in Mexico.

23. Pursuant to a loan agreement dated December 18, 2019 (the "**Orla Loan Agreement**"), Audible and the other lenders party thereto (collectively, the "**Orla Lenders**") agreed to lend up to an aggregate principal amount of US\$125 million to Orla in exchange for, among other things repayment of the principal amount with interest thereon and common share purchase warrants (the "**Orla Warrants**").

24. Prior to the Receivership Proceedings, the Orla Lenders advanced US\$25 million (20% of the total commitment) to Orla. The balance of the funds was to be advanced in two (2) equal tranches of US\$50 million, subject to Orla satisfying certain conditions precedent to such advances. On November 30, 2020, the second US\$50 million tranche was funded. The third tranche is due to be funded on or before April 30, 2021 (the "**Third Tranche**").

25. Audible's share of the Orla Lenders' total commitment is US\$8 million. The Receiver expects to use the funds from the Avina Transaction and the EdgeHill Transaction to fund the balance of its commitment prior to April 30, 2021. The balance remaining to be funded by Audible in the Third Tranche is US\$3.2 million.

26. On the closing of the Orla Loan Agreement, Audible received 2,080,000 Orla Warrants which have an exercise price of \$3 per share. The Orla Warrants vest following the funding of the Third Tranche. On March 8, 2021, Orla's common shares closed at CAD\$4.46 per share. Accordingly, Audible's Orla Warrants are "in-the-money" by approximately CAD\$3 million.

27. The Receiver is in discussion with Bridging regarding a potential credit bid for Audible's Orla investment, being the only other known asset held by the Companies. In the interim, the Receiver is seeking the Court's authority to sell Audible's Orla shares at fair market value should the Receiver exercise Audible's Orla Warrants. Bridging supports this relief.

### ***Professional Fees***

28. The Fifth Report and the fee affidavits appended thereto (the "**Fee Affidavits**") filed in connection with this motion contain detailed information on the fees and disbursements of the Receiver and Bennett Jones.

29. The Receiver believes that its fees and disbursements and the fees and disbursements of Bennett Jones are reasonable in the circumstances and have been properly incurred. Further, the

Receiver believes that the hourly rates charged by Bennett Jones are consistent with the rates charged by corporate law firms practicing in the area of corporate insolvency and restructuring in Toronto, Ontario.

**OTHER GROUNDS:**

30. The provisions of the BIA and the inherent and equitable jurisdiction of the Court;
31. Rules 1.04, 1.05, 2.03, 3.02, 14.05(2), 16, 37 and 39 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 101 of the CJA; and
32. Such further and other grounds as counsel may advise and the Court may permit.

**DOCUMENTARY EVIDENCE:**

33. The following documentary evidence will be used at the hearing of the motion:
  - (a) the Fifth Report;
  - (b) the Factum of the Receiver, to be filed; and
  - (c) such further and other evidence as counsel may advise and the Court may permit.

March 9, 2021

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its capacity as Court-appointed Receiver and  
not in its personal capacity

## Schedule "A"

Join Zoom Meeting

<https://us02web.zoom.us/j/83467640076>

Meeting ID: 834 6764 0076

One tap mobile

+12532158782,,83467640076# US (Tacoma)

+13017158592,,83467640076# US (Washington DC)

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

Meeting ID: 834 6764 0076

Find your local number: <https://us02web.zoom.us/j/kc43whvuqT>

**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

**NOTICE OF MOTION**

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

# TAB 2



**Fifth Report of  
KSV Restructuring Inc. 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.**

**March 9, 2021**

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COURT FILE NO.:CV-20-00640212-00CL

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

**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**

**FIFTH REPORT OF KSV RESTRUCTURING INC.  
MARCH 9, 2021**

## **1.0 Introduction**

1. This report ("Report") is filed by KSV Restructuring Inc.<sup>1</sup> ("KSV") in its capacity as receiver (in such capacity, the "Receiver") of Audible Capital Corp. ("Audible"), Avenir Trading Corp. ("Avenir Trading"), 1892244 Alberta Ltd. ("189"), Avenir Sports Entertainment Ltd. ("ASE Canada"), Avenir Sports Entertainment Corp. ("ASE US") and Portland Winter Hawks, Inc. ("PWH") (collectively, the "Companies").
2. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on May 7, 2020 (the "Receivership Order"), KSV was appointed Receiver of the Companies.
3. On May 7, 2020, the Receiver, as foreign representative of the Companies, commenced proceedings in the US Bankruptcy Court for the District of Oregon (the "US Court") seeking recognition of the Canadian receivership proceedings and the enforcement of the Receivership Order in the US under Chapter 15 of the US Bankruptcy Code. On the same date, the US Court entered an order granting provisional relief, subject to the US Court's recognition of the Canadian receivership proceedings (the "US Provisional Order"). On June 9, 2020, the US Court extended the relief granted by the US Provisional Order by entering an order that, among other

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<sup>1</sup> Effective August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

things, recognized the Canadian receivership proceedings as foreign main proceedings.

4. The Companies' principal asset was PWH's hockey franchise which operates in the Western Hockey League. A transaction for that business and related assets was approved by the Court and the US Court on December 16, 2020 and December 18, 2020, respectively, and closed on December 31, 2020. PWH was the Companies' principal asset located in the United States. Accordingly, on February 24, 2021, the Receiver filed a motion in the US Court to close the Chapter 15 proceedings. The US Court will make the order closing the Chapter 15 proceedings if no objections are received by the US Court by March 23, 2021.
5. Audible holds several investments in start-up or growth stage companies (collectively, the "Investments").
6. In October 2020, the Receiver was presented with an unsolicited offer from Avina Acquisition Corp. ("Avina") to purchase the Companies' interest in the Investments, other than Audible's interests in Orla Mining Ltd. ("Orla").
7. To maximize value for creditors by ensuring the highest and best value is obtained while minimizing the risk of losing the offer, the Receiver proposed that Avina allow the offer to act as a "stalking horse" in a Court supervised sale process (the "Sale Process"). Avina agreed to participate as the stalking horse bidder in such a process and the Receiver and Avina negotiated and entered into an asset purchase agreement dated December 15, 2020 (as amended, the "APA") for the sale of certain of the Investments (the "Purchased Assets").
8. On January 6, 2021, the Canadian Court issued an order approving the Sale Process and the APA for purposes of acting as the stalking horse bidder (the "Sale Process Order"). At the hearing for the Sale Process Order, the majority partners of EdgeHill Partners ("EdgeHill") reserved their rights with respect to the transfer of Audible's interest in the partnership units of EdgeHill (the "Units").
9. On March 4, 2021, following discussions with respect to the transfer of Audible's interest in the Units, Avina and the Receiver entered into an amendment to the APA which, among other things, removes the Units from the APA (the "Amendment Agreement").
10. Also, on March 8, 2021, the majority partners of EdgeHill and the Receiver entered into an asset purchase agreement (the "EdgeHill APA") for the sale of Audible's interest in the Units.

## **1.1 Purposes of this Report**

1. The purposes of this Report are to:
  - a) provide background information concerning the Companies;
  - b) summarize the results of the Sale Process;
  - c) summarize a proposed transaction (the "Avina Transaction") between the Receiver and Avina for the sale of the Purchased Assets pursuant to the APA;

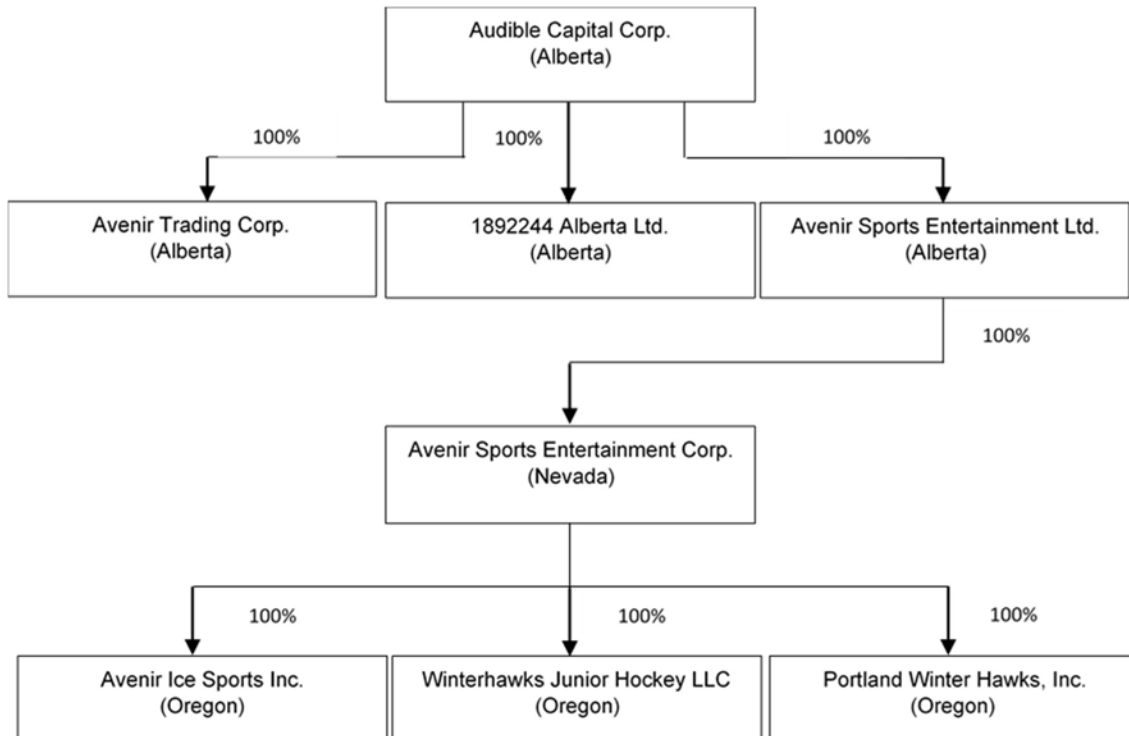
- d) summarize a proposed transaction (the "EdgeHill Transaction") between the Receiver and EdgeHill for the sale of the Units pursuant to the EdgeHill APA;
- e) provide an update on the status of Audible's investment in Orla;
- f) recommend that the Court issue an order (the "Avina Approval and Vesting Order"), among other things:
  - approving the Avina Transaction; and
  - vesting title in and to the Purchased Assets in Avina, free and clear of all liens, claims and encumbrances, except for permitted encumbrances, upon filing a certificate confirming, among other things, the completion of the Avina Transaction;
- g) recommend that the Court issue an order (the "EdgeHill Approval and Vesting Order"), among other things:
  - approving the EdgeHill Transaction; and
  - vesting title in and to the Units in EdgeHill, free and clear of all liens, claims and encumbrances, except for permitted encumbrances, upon filing a certificate confirming, among other things, the completion of the EdgeHill Transaction;
- h) recommend the Court issue an order, among other things:
  - authorizing the Receiver to sell Audible's investment in Orla's common shares should the Receiver exercise Audible's Orla Warrants (as defined below);
  - approving the fees and disbursements of the Receiver and Bennett Jones LLP ("Bennett Jones"), the Receiver's Canadian counsel, for the periods referenced in the attached fee affidavits; and
  - approving this Report and the Fourth Report of the Receiver dated December 22, 2020 (the "Fourth Report") and the Receiver's activities, as described herein and therein.

## 1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon the Companies' unaudited financial statements, their books and records and discussions with representatives of the Agent (as defined below) and the Companies.
2. The Receiver has not audited, or otherwise attempted to verify, the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
3. All dollar amounts specified herein are in Canadian dollars unless otherwise indicated.

## 2.0 Background

1. Audible is a holding company which is wholly owned by William Gallacher.
2. The corporate chart for the group is provided below. Audible's interest in each of the Investments is not depicted in the corporate chart – they are summarized below.



3. The Companies' senior secured creditor is Bridging Finance Inc. (the "Agent") which is currently owed approximately \$15 million.
4. The Purchased Assets consist of the following securities:

	Asset	Cost Base (\$)
1	Archeoptix Biomedical Inc. ("Archeoptix")	608,000
2	BioSteel Sports Nutrition Inc. ("BioSteel")	N/A <sup>2</sup>
3	Conavi Medical Inc.	149,997
4	Hammerhead Resources Inc. (formerly Canadian International Oil Corp.)	24,603
5	Mobility View Inc.	468,589
6	Orthogonal, Inc.	994,779
7	Panaxium SAS	4,859,136
8	Performance Phenomics Inc.	500,000
9	Phononic Inc. ("Phononic")	323,259
10	Sage Senses Inc. (o/a Motion Gestures)	98,478
11	Synaptive Medical Inc. ("Synaptive")	20,899,432

<sup>2</sup> All of the shares of BioSteel, including Audible's, were sold to Canopy Growth Corporation prior to the commencement of these receivership proceedings. However, the Receiver understands that in April 2021, Audible is entitled to a holdback of approximately \$704,000 from the sale of its shares of BioSteel, provided that no claims are made against the holdback prior to such time.

5. Additional information about the Companies and these receivership proceedings is provided in the Affidavit of Lekan Temidire, a representative of the Agent, sworn April 28, 2020 (the "Temidire Affidavit"). Copies of all Court materials filed in these proceedings, including the Temidire Affidavit, are available on the Receiver's website: <https://www.ksvadvisory.com/insolvency-cases/case/audible-capital-corp>.

### 3.0 Sale Process

1. A summary of the Sale Process is as follows:
  - a) prior to the issuance of the Sale Process Order by the Court, the Receiver received financial and other information from the principals of the Purchased Assets (the "Principals"), including securities registers and shareholder agreements (the "Information"). The Receiver also requested shareholder contact information;
  - b) the Information was uploaded to a virtual data room ("VDR") along with the bidding procedures approved by the Court;
  - c) following the issuance of the Sale Process Order by the Court, the Receiver distributed an interest solicitation letter to prospective purchasers detailing the acquisition opportunity (the "Teaser");
  - d) the prospective purchasers included approximately 100 shareholders of the companies comprising the Purchased Assets, and over 300 Canadian and US based institutional investors comprising family offices, venture capital firms, private equity firms and angel investors. As disclosed in the Fourth Report, pursuant to an agreement with Synaptive, the Receiver had agreed until the earlier of: (i) March 31, 2021 and (ii) the completion of a capital raise being completed by Synaptive, to refrain from contacting, *inter alia*, any of the existing securityholders of Synaptive (collectively, the "Restricted Securityholders"). The Receiver obtained a full list of the Restricted Securityholders prior to the Sale Process. The Receiver ensured that the prospective purchasers contacted did not include the Restricted Securityholders;
  - e) the Teaser included a form of confidentiality agreement ("CA") that interested parties were required to sign to obtain access to the VDR; and
  - f) the Receiver facilitated information requests by prospective purchasers with the Principals.
2. The Receiver arranged for the Sale Process to be advertised in the Globe & Mail newspaper on January 13, 2021.
3. The bid deadline under the Sale Process was February 4, 2021 (the "Bid Deadline"), approximately four (4) weeks after the issuance of the Sale Process Order.

### 3.1 Sale Process Results

1. A summary of the Sale Process results is as follows:
  - a) 12 parties executed a CA prior to the Bid Deadline; and
  - b) no offers were submitted prior to the Bid Deadline other than the APA.

2. The Receiver received two (2) expressions of interest. One for Audible's interest in Archeoptix and another for Audible's interest in Phononic. On a piecemeal and combined basis, the amount of these offers was insufficient to be considered a Qualified Bid (as defined in the Receiver's Fourth Report) and no other offers were received that would have resulted in a combination of piecemeal bids meeting the Qualified Bid criteria.

### 3.2 EdgeHill Transaction<sup>3</sup>

1. Following service of the Sale Process Order, the Receiver was contacted by counsel for the majority partners of EdgeHill, one of the entities that comprise the Investments. While the majority partners of EdgeHill did not object to the Sale Process or the Sale Process Order, they reserved their rights in respect of same. They appeared at the motion for the Sale Process Order and advised the Court of their position.
2. The Receiver and the majority partners of EdgeHill had a series of exchanges which, following consultation with Avina and the Agent, culminated in the EdgeHill APA.
3. A copy of the EdgeHill APA is attached as Appendix "A".
4. The key terms and conditions of the EdgeHill APA are provided below:
  - **Purchaser:** EdgeHill
  - **Purchased Assets:** the Receiver's and the Companies' right, title and interest in the Units.
  - **Purchase Price:** \$250,000.
  - **Deposit:** \$25,000.
  - **Representation and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an "as is, where is" basis, with limited representations and warranties.
  - **Closing:** within three (3) business days after receipt of the EdgeHill Approval and Vesting Order.
  - **Outside Date:** March 31, 2021.
  - **Material Conditions:**
    - the EdgeHill Approval and Vesting Order shall have been issued by the Court, shall not be stayed, varied superseded or under appeal, and the applicable time for appealing the EdgeHill Approval and Vesting Order shall have expired if the hearing for the EdgeHill Approval and Vesting Order is contested.

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<sup>3</sup> Terms not defined in this section have the meaning provided to them in the EdgeHill APA. This section is intended as a summary only. Reference should be made directly to the EdgeHill APA for a complete understanding of the terms of the proposed EdgeHill Transaction.

- **Termination:**
  - The EdgeHill APA can be terminated:
    - if any of the conditions in favour of EdgeHill or the Receiver are not performed or satisfied prior to the Outside Date; or
    - upon the mutual written agreement of EdgeHill and the Receiver.

## 4.0 The Avina Transaction<sup>4</sup>

### 4.1 The Amendment Agreement

1. In connection with the proposed EdgeHill Transaction in respect of the Units, certain amendments to the APA were necessary. On March 8, 2021, the Receiver and Avina executed the Amendment Agreement which, among other things:
  - Amended the definition of "Outside Date" of the APA to be March 31, 2021;
  - Reduced the purchase price by \$250,000 (i.e. from \$4,650,000 to \$4,400,000); and
  - Removed the Units from the list of Purchased Assets.
2. A copy of the Amendment Agreement is attached as Appendix "B"

### 4.2 The APA

1. A copy of the APA is attached as Appendix "C".
2. The key terms and conditions of the APA (prior to the Amendment Agreement) were summarized in the Fourth Report. The key terms and conditions of the APA following the Amendment Agreement are included below:
  - **Purchaser:** Avina
  - **Purchased Assets:** the Receiver's and the Companies' right, title and interest in the Purchased Assets.
  - **Purchase Price:** \$4,400,000
  - **Deposit:** \$232,500
  - **Representation and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an "as is, where is" basis, with limited representations and warranties.
  - **Closing:** within three (3) business days after receipt of the Avina Approval and Vesting Order.

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<sup>4</sup> Terms not defined in this section have the meaning provided to them in the APA. This section is intended as a summary only. Reference should be made directly to the APA for a complete understanding of the terms of the proposed Avina Transaction.

- **Outside Date:** March 31, 2021
- **Material Conditions:**
  - a) the Court shall have issued the Sale Process Order and it shall not have been stayed, varied, superseded or under appeal at the time of Closing;
  - b) the Receiver shall have determined that the APA is the Successful Bid in accordance with the Sale Process; and
  - c) the Avina Approval and Vesting Order shall have been issued by the Court, shall not be stayed, varied superseded or under appeal, and the applicable time for appealing the Avina Approval and Vesting Order shall have expired if the hearing for the Avina Approval and Vesting Order is contested.
- **Termination:**
  - (i) The APA can be terminated:
    - if any of the conditions in favour of Avina or the Receiver are not performed or satisfied prior to the Outside Date; or
    - upon the mutual written agreement of Avina and the Receiver.

#### **4.3 Recommendation**

1. The Receiver recommends the Canadian Court issue the proposed Avina Approval and Vesting Order and the EdgeHill Approval and Vesting Order for the following reasons:
  - a) in the Receiver's view, the Sale Process was commercially reasonable and conducted in accordance with the terms of the Sale Process Order;
  - b) the Agent, being the principal secured creditor and currently the only economic stakeholder in these proceedings, supports the Avina Transaction and the EdgeHill Transaction;
  - c) the Avina Transaction and the EdgeHill Transaction together provide for the greatest recovery available in the circumstances;
  - d) the market was widely canvassed by the Receiver. The Receiver solicited interest from approximately 100 of the existing shareholders of the companies comprising the Purchased Assets and over 300 North American investment firms, many of which seek to invest in growth and early-stage companies in the biotech and other industries relevant to the Purchased Assets;
  - e) the reduction in purchase price to the APA resulting from the Amending Agreement is entirely compensated by the EdgeHill APA; and
  - f) absent the Avina Transaction and the EdgeHill Transaction, a protracted marketing period is necessary. The ongoing professional fees and other costs will erode the recoveries with no certainty that a superior transaction could be completed.



## 5.0 Orla

1. Audible holds an investment in Orla. Orla is a public company that is developing a gold project in Mexico.
2. Pursuant to a loan agreement dated December 18, 2019 (the "Loan Agreement"), Audible and the other lenders party thereto (collectively, the "Orla Lenders") agreed to lend up to an aggregate principal amount of US\$125 million to Orla in exchange for, among other things, repayment of the principal amount with interest thereon and common share purchase warrants (the "Orla Warrants"). A copy of the Loan Agreement is attached as Appendix "D".
3. Prior to the receivership, the Orla Lenders advanced US\$25 million (20% of the total commitment) to Orla. The balance of funds is to be advanced in two (2) equal tranches of US\$50 million, subject to Orla satisfying certain conditions precedent to such advances. On November 30, 2020, the second \$50 million tranche was funded. The third tranche is due to be funded on or before April 30, 2021.
4. Audible's share of the Orla Lenders' total commitment is US\$8 million. Prior to the receivership, Audible advanced US\$1.6 million to Orla. On November 30, 2020, the Receiver funded Audible's second tranche obligations of US\$3.2 million. The Receiver expects to use the funds from the Avina Transaction and the EdgeHill Transaction to fund the balance of the commitment prior to April 30, 2021.
5. On closing of the Loan Agreement, Audible received 2,080,000 Orla Warrants which have an exercise price of \$3 per share. The Orla Warrants vest following the payment of the final amount owing under the Loan Agreement. On March 8, 2021, Orla's common shares closed at CAD\$4.46 per share. Accordingly, Audible's Orla Warrants are "in-the-money" by approximately CAD\$3 million.
6. The Receiver is in discussions with the Agent regarding a potential credit bid for the Orla investment, being the only other known asset held by the Companies. The Agent is the only economic stakeholder in the Orla investment based on the current Orla share price. In the interim, the Receiver is seeking the Court's authority to sell Audible's Orla shares at fair market value should the Receiver exercise Audible's Orla Warrants. The Agent is supportive of this relief.

## 6.0 Professional Fees

1. The fees (excluding disbursements, HST and other applicable taxes) of:
  - a) the Receiver from November 1, 2020 to January 31, 2021 total \$116,560.50; and
  - b) Bennett Jones from November 1, 2020 to February 28, 2021 total \$149,688.50.
2. Detailed invoices are provided in affidavits filed by representatives of the Receiver and Bennett Jones, which are provided in Appendices "E" and "F", respectively.
3. The average hourly rate for the Receiver and Bennett Jones for the referenced billing period was \$535.05 and \$525.78, respectively.

4. The Receiver is of the view that the hourly rates charged by Bennett Jones are consistent with the rates charged by law firms practicing in the area of insolvency in the Toronto market. The Receiver believes that the fees charged are reasonable and appropriate in the circumstances.

## 7.0 Overview of Receiver's Activities

1. The Receiver's activities since November 1, 2020 have included, *inter alia*, the following:
  - a) corresponding with Bennett Jones and K&L Gates LLP, the Receiver's US counsel, regarding all matters in the Companies' insolvency proceedings;
  - b) corresponding with Chaitons LLP, counsel to the Agent;
  - c) corresponding with management of the Portland Winterhawks franchise ("Winterhawks") and counsel in relation to the sale of the Winterhawks;
  - d) dealing with cash management issues, including paying post-filing expenses;
  - e) corresponding extensively with key stakeholders in these proceedings, including the Agent and the Western Hockey League;
  - f) corresponding extensively with Avina regarding the APA, Sale Process and the Amendment Agreement;
  - g) closing the transaction for the Winterhawks;
  - h) dealing with the Investments, including regularly communicating with the Principals;
  - i) negotiating and entering into the EdgeHill Transaction and the EdgeHill APA;
  - j) reviewing and commenting on Court materials in connection with the Canadian and US proceedings;
  - k) conducting the Sale Process;
  - l) drafting all Sale Process related materials, including the Teaser, and reviewing the CA;
  - m) compiling information in the VDR;
  - n) facilitating due diligence requests submitted by prospective purchasers throughout the Sale Process;
  - o) attending all Court appearances for this Court;
  - p) maintaining the Service List; and
  - q) preparing two (2) reports to Court, including this Report.

## 8.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make the orders granting the relief detailed in Section 1.1(1)(f), Section 1.1(1)(g) and Section 1.1(1)(h) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
SOLELY IN ITS CAPACITY AS  
RECEIVER OF THE COMPANIES  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**

## ASSET PURCHASE AGREEMENT

This Agreement made this 8th day of March, 2021.

### BETWEEN:

**KSV RESTRUCTURING INC., in its capacity as Court- appointed Receiver of Audible Capital Corp. et al, and not in its personal or corporate capacity**

**(the "Receiver")**

**- and -**

**EDGEHILL PARTNERS, a general partnership pursuant to the Partnerships Act (Ontario)**

**(the "Purchaser")**

**WHEREAS** pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated May 7, 2020 (the "**Receivership Order**"), the Receiver was appointed as receiver of all of the assets, undertakings and properties (the "**Property**") of Audible Capital Corp. ("**Audible**"), Avenir Trading Corp., 1892244 Alberta Ltd., Avenir Sports Entertainment Corp. and Portland Winter Hawks, Inc. (collectively, the "**Debtors**");

**AND WHEREAS**, pursuant to the Receivership Order, the Receiver is authorized to market and sell any or all of the Property of the Debtors and negotiate such terms and conditions of sale as the Receiver may deem appropriate;

**AND WHEREAS**, Audible owns eighteen (18) Units (as defined below) of the Purchaser;

**AND WHEREAS** the Purchaser has agreed to purchase for cancellation the Purchased Assets (as defined below) on the terms and subject to the conditions set forth in this Agreement subject to obtaining the Approval and Vesting Order (as defined below);

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties) the parties hereto agree as follows:

## **ARTICLE 1**

### **INTERPRETATION**

#### **1.1 Definitions**

In this Agreement, the following terms shall have the meanings set out below, unless the context requires otherwise:

**"Agreement"** means this asset purchase agreement, including all written amendments and written restatements thereto from time to time;

**"Applicable Law"** means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

**"Approval and Vesting Order"** means an order of the Court approving this Agreement and the transactions contemplated hereby and vesting, upon the delivery of the Receiver's Certificate to the Purchaser, all right, title and interest of the Debtors and the Receiver, if any, to the Purchased Assets in the Purchaser, free and clear of all Claims and Encumbrances pursuant to the terms and conditions of this Agreement, substantially in the form of the model order approved by the "Ontario Commercial List Users Committee", and otherwise in form and substance acceptable to the Purchaser and the Receiver;

**"Article"** or **"Section"** means the specified Article, or Section to this Agreement and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

**"Audible"** has the meaning ascribed thereto in the recitals hereof;

**"Business Day"** means a day on which banks are open for business in the City of Toronto, but does not include a Saturday, Sunday or statutory holiday recognized in the Province of Ontario;

**"Claims"** means any and all claims, demands, complaints, actions, applications, suits, causes of action, orders, or other similar processes, and **"Claim"** means any one of them;

**"Closing"** means the completion of the purchase and sale for cancellation of the Purchased Assets, in accordance with the provisions of this Agreement;

**"Closing Date"** has the meaning ascribed thereto in Section 4.1 hereof;

**"Closing Time"** has the meaning ascribed thereto in Section 4.1 4.1 hereof;

**"Court"** has the meaning ascribed thereto in the recitals hereof;

**"Debtors"** has the meaning ascribed thereto in the recitals hereof;

**"Deposit"** has the meaning ascribed thereto in Section 2.3 hereof.

**"Encumbrances"** means any and all security interests (whether contractual, statutory, or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, leases, title retention agreements, reservations of ownership, demands, executions, levies, charges, options or other rights to acquire any interest in any assets, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, and all contracts to create any of the foregoing, or encumbrances of any kind or character whatsoever;

**"Governmental Authorities"** means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and **"Governmental Authority"** means any one of them;

**"HST"** means all of the harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada);

**"Outside Date"** means March 31, 2021;

**"Parties"** means the Receiver and the Purchaser collectively, and **"Party"** means any of them;

**"Partnership Agreement"** means the Amended and Restated Partnership Agreement made as of May 12, 2015 between 2244829 Ontario Inc., 2244827 Ontario Inc., 2244835 Ontario Inc. and Avenir CC Finance Inc., as amended, restated or otherwise modified from time to time prior to the date of this Agreement;

**"Person"** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;

**"Purchase Price"** has the meaning ascribed thereto in Section 2.2 hereof;

**"Purchased Assets"** has the meaning ascribed thereto in Section 2.1 hereof;

**"Receiver's Certificate"** means a certificate from the Receiver confirming the Closing of the transactions contemplated hereby, substantially in the form attached to the Approval and Vesting Order;

**"Taxes"** means all taxes, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise,

franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax, including, Canada Pension Plan and provincial pension plan contributions (or equivalent in the jurisdiction where the Purchased Assets may be located), employment insurance payments and workers compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not that arise in respect of the Purchased Assets in the jurisdiction in which they are located;

"**Transfer Approval**" means a written approval of the transfer of the Purchased Assets pursuant to the Partnership Agreement substantially in the form attached as Schedule "A" hereto; and

"**Units**" has the meaning ascribed to it in the Partnership Agreement.

## **1.2 Section References**

Unless the context requires otherwise, references in this Agreement to Sections are to Sections of this Agreement.

## **ARTICLE 2** **PURCHASE AND SALE**

### **2.1 Purchase and Sale of Purchased Assets**

At the Closing Time, subject to the terms and conditions of this Agreement and the Approval and Vesting Order, the Receiver shall sell, and the Purchaser shall purchase for cancellation, all of the Receiver's and the Debtors' right, title and interest to eighteen (18) Units of the Purchaser (collectively the "**Purchased Assets**").

### **2.2 Purchase Price**

Pursuant to the terms and subject to the conditions set forth in this Agreement, in consideration of the sale of the Purchased Assets pursuant to the terms hereof, the Purchaser shall pay to the Receiver in cash the amount of \$250,000 (the "**Purchase Price**"), inclusive of applicable Taxes.

### **2.3 Deposit**

- (a) Within 24 hours of the execution and delivery of this Agreement by both Parties, the Purchaser shall pay a refundable deposit to the Receiver, in trust, by way of electronic funds transfer in the amount of \$25,000 (the "**Deposit**");
- (b) The Deposit shall be held, pending Closing, by the Receiver in an interest bearing account with a third party financial institution.
- (c) If the Closing does not occur due to:
  - (1) a material uncured breach of this Agreement by Purchaser, or



(2) the Purchaser's failure to close the transaction set forth in this Agreement on or before the Outside Date, except where the failure to close is due to:

(A) a mutual termination of this Agreement pursuant to Section 7.1(a); or

(B) the Purchaser terminating pursuant to Section 7.1(b) because a condition precedent set forth in Section 5.1 is not satisfied prior to the Outside Date

the full amount of the Deposit (plus accrued interest), less any applicable withholding Tax, shall become the property of the Receiver and be forfeited, and released to the Receiver as liquidated damages and not as a penalty.

(d) If the Closing does not occur for any reason other than that expressed in Section 2.3(c) above (including, without limitation where the failure to close is due to: (i) a mutual termination due to Section 7.1(a) or (ii) the Purchaser terminating pursuant to Section 7.1(b) because a condition precedent set forth in Section 5.1 is not satisfied prior to the Outside Date), the full amount of the Deposit (plus accrued interest), less any applicable withholding Tax, shall be returned by the Receiver to the Purchaser. The return of the Deposit pursuant to this Section 2.3(d) shall be the sole and exclusive remedy as liquidated damages of the Purchaser, whether at law or in equity, for any breach by the Receiver of the terms and conditions of this Agreement.

## **2.4 Satisfaction of Purchase Price**

The Purchaser shall satisfy the Purchase Price, less the amount of the Deposit, on Closing by payment to the Receiver by wire transfer of the balance of the Purchase Price to an account specified in writing by the Receiver.

## **2.5 HST and Receivables Elections**

If applicable, at the Closing, the Receiver and the Purchaser shall jointly execute an election under Section 167 of the *Excise Tax Act* (Canada) to seek to cause the sale of the Purchased Assets to take place on an HST-free basis under Part IX of the *Excise Tax Act* (Canada) and the Purchaser shall file such election with its HST return for the applicable reporting period in which the sale of the Purchased Assets takes place.

### **ARTICLE 3** **PROCEDURES**

#### **3.1 Motion for Approval and Vesting Order**

The Receiver shall file with the Court, as soon as practicable, a motion seeking the Court's issuance of the Approval and Vesting Order. The Purchaser shall cooperate with the Receiver in its efforts to obtain the issuance and entry of the Approval and Vesting Order. The Purchaser, at its own expense, will promptly provide to the Receiver with all such information within its possession or under its control as the Receiver may reasonably request to obtain the Approval and Vesting Order. The Receiver shall serve its motion seeking the Approval and Vesting Order on not less than seven days notice, and shall serve any party or parties as the Purchaser may reasonably request.

### **ARTICLE 4** **CLOSING ARRANGEMENTS**

#### **4.1 Closing**

Closing shall take place at 3:00 p.m. (the "**Closing Time**") on a Business Day (the "**Closing Date**") to be designated by the Purchaser and reasonably acceptable to the Receiver not later than 3 Business Days after the satisfaction or waiver of the conditions set out in Article 5. The Closing shall take place by electronic transmission of documents, or at such other time and location, and in such other manner, as the Parties may agree upon in writing.

#### **4.2 Tender**

Except as otherwise set out herein, any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel and money may be tendered by official bank draft drawn upon a Canadian chartered bank, by negotiable cheque payable in Canadian funds and certified by a Canadian chartered bank or trust company, or by wire transfer of immediately available funds to the account specified by that Party.

#### **4.3 Receiver's Closing Deliveries**

At the Closing, the Receiver shall deliver to the Purchaser the following, each in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) a copy of the Approval and Vesting Order, issued by the Court;
- (b) the Purchased Assets, in accordance with the Purchaser's instructions;
- (c) the Transfer Approval executed by the Receiver; and
- (d) the Receiver's Certificate, executed by the Receiver.

#### **4.4 Purchaser's Closing Deliveries**

At the Closing, the Purchaser shall deliver to the Receiver the following, each in form and substance satisfactory to the Receiver, acting reasonably:

- (a) the Purchase Price (less the Deposit);
- (b) the Transfer Approval executed by partners of the Purchaser who, collectively with Audible, hold not less than two thirds (2/3) of the outstanding Units of the Purchaser; and
- (c) a completed and signed Accredited Investor form.

#### **4.5 Delivery of the Receiver's Certificate**

When the conditions set out in Article 5 below have been satisfied or waived, the Receiver will deliver an executed copy of the Receiver's Certificate to the Purchaser. Upon such delivery, the Closing will be deemed to have occurred. The Receiver will thereafter promptly file a copy of the Receiver's Certificate with the Court.

### **ARTICLE 5** **CONDITIONS PRECEDENT**

#### **5.1 Conditions Precedent of the Purchaser**

The Purchaser shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing, by the Purchaser at any time; and the Receiver agrees with the Purchaser to take all such commercially reasonable actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Execution of this Agreement.* The Receiver shall deliver a fully executed copy of this Agreement to the Purchaser on or before 5 p.m. (Toronto time) on March 8, 2021.
- (b) *Representations and Warranties.* The representations and warranties of the Receiver in Section 6.1 shall be true and correct at the Closing Time.
- (c) *Approval and Vesting Order Final:* The Approval and Vesting Order shall have been issued by the Court, shall not be stayed, varied, superseded or under appeal, and the applicable time for appealing the Approval and Vesting Order shall have expired if the hearing for the Approval and Vesting Order is contested.

- (d) *Receiver's Compliance.* The Receiver shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before the Closing Time and shall have executed and delivered to the Purchaser at the Closing Time all the deliveries contemplated in Section 4.3.

## **5.2 Conditions Precedent of the Receiver**

The Receiver shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Receiver, and may be waived, in whole or in part, in writing by the Receiver at any time; and the Purchaser agrees with the Receiver to take all such commercially reasonable actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Purchaser's Compliance.* The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed by or complied with at or before the Closing Time and shall have executed and delivered to the Receiver at the Closing Time all the deliveries contemplated in Section 4.4 in this Agreement.
- (b) *Approval and Vesting Order Final:* The Approval and Vesting Order shall have been issued by the Court, shall not be stayed, varied, superseded or under appeal, and the applicable time for appealing the Approval and Vesting Order shall have expired if the hearing for the Approval and Vesting Order was contested.
- (c) *Representations and Warranties.* The representations and warranties of the Purchaser in Section 6.2 shall be true and correct at the Closing Time.

## **5.3 Non-Satisfaction of Conditions**

If any condition precedent set out in Section 5.1 or 5.2 is not satisfied or performed prior to the Outside Date, the Party for whose benefit the condition precedent is inserted may:

- (a) waive compliance with the condition, in whole or in part, in its sole discretion by written notice to the other Party (but may not claim for any matter waived) and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; or
- (b) elect on written notice to the other Party to terminate this Agreement, in which event each Party shall be released from all obligations under this Agreement, provided that the Deposit shall be dealt with in accordance with the terms of Section 2.3 hereof.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES**

#### **6.1 Representations and Warranties of the Receiver**

As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Receiver set out in this Section 6.1, the Receiver hereby represents and warrants to the Purchaser as follows:

- (a) *Due Authorization.* Subject to the granting of the Approval and Vesting Order, the Receiver has all necessary authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments;
- (b) *Enforceability of Obligations.* Subject to the granting of the Approval and Vesting Order, this Agreement constitutes a valid and binding obligation of the Receiver, enforceable against the Receiver, in accordance with its terms.

#### **6.2 Representations and Warranties of the Purchaser**

As a material inducement to the Receiver entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Receiver is entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 6.2, the Purchaser hereby represents and warrants to the Receiver as follows:

- (a) *Financial Wherewithal.* The Purchaser has the financial wherewithal to satisfy the Purchase Price on the Closing Date and has the amount of the Purchase Price currently available to it;
- (b) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser, enforceable against the Purchaser, in accordance with its terms; and
- (c) *Securities Laws.* The Purchaser is purchasing the Purchased Shares as principal or is deemed to be purchasing as principal in accordance with applicable Canadian securities laws and satisfies the definition of "accredited investor" as such term is defined under National Instrument 45-106 *Prospectus Exemptions*.

#### **6.3 Acquisition of Purchased Assets on "As Is, Where Is" Basis**

The Purchaser acknowledges and agrees that (a) the Receiver is selling the Purchased Assets on an "as is, where is" basis as they shall exist on the Closing Date, subject to the terms of the Approval and Vesting Order, and (b) it has conducted or will conduct its own searches and investigations relating to the Purchased Assets.

Without limiting the generality of the foregoing, any and all conditions, warranties or representations, expressed or implied, pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser.

#### **6.4 Purchase Price**

The Parties dispute the applicability of Section 2.15 of the Partnership Agreement in the context of a sale of the Units issued by the Purchaser pursuant to a Court approved sale. The Parties have agreed, without any admission, and without prejudice to any of their rights to ever make submissions that such section does or does not apply in the event that the sale of the Purchased Assets contemplated by this Asset Purchase Agreement does not close for any reason, or otherwise, to value the Purchased Assets without regard to calculation set out in section 2.15 of the Partnership Agreement. The Parties acknowledge and agree that the Purchase Price may be different than the value of the Purchased Assets that would be the result of such calculation.

### **ARTICLE 7** **TERMINATION**

#### **7.1 Termination by the Parties**

This Agreement may be terminated:

- (a) upon the mutual written agreement of the Receiver and the Purchaser; or
- (b) pursuant to Section 5.3(b) by either Party, unless such Party is in material breach of its obligations under this Agreement.

### **ARTICLE 8** **GENERAL CONTRACT PROVISIONS**

#### **8.1 Headings and Sections**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

#### **8.2 Number and Gender**

Unless the context requires otherwise, words importing the singular include the plural and vice versa, and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

#### **8.3 Currency**

Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars.

#### **8.4 No Strict Construction**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party, including, without limitation, the doctrine of *contra proferentum*.

#### **8.5 Entire Agreement**

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and sets out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement.

#### **8.6 Expenses**

Each Party shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the transactions contemplated in this Agreement, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

#### **8.7 Notices**

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by email as follows:

- (a) in the case of notice to the Receiver at

**KSV Restructuring Inc.**  
150 King Street West, Suite 2308  
Toronto, Ontario, M5H 1J9

Attention: Noah Goldstein  
Email: [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com)

With a copy to:

**Bennett Jones LLP**  
First Canadian Place  
100 King Street West, Suite 3400 Toronto, Ontario, M5X 1A4

Attention: Sean Zweig  
Email: [ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)

(b) in the case of a notice to the Purchaser at:

**EdgeHill Partners**  
45 Hazelton Ave Suite B,  
Toronto, ON M5R 2E3

Attention: Darryl DeMers  
Email: ddemers@ehpartners.com

With a copy to:

**McMillan LLP**  
TD Canada Trust Tower, Suite 1700  
421 7th Avenue S.W.  
Calgary, Alberta  
Canada T2P 4K9

Attention: Adam Maerov  
Email: adam.maerov@mcmillan.ca

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section.

## **8.8 Successors and Assigns**

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns including a trustee in bankruptcy of the Debtors. Neither Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other Party.

## **8.9 Third Party Beneficiaries**

Unless where provided to the contrary by the specific terms hereof, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.



#### **8.10 Time of the Essence**

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

#### **8.11 Amendment**

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

#### **8.12 Further Assurances**

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing Date, provided that the reasonable costs and expenses of any actions taken after the Closing Date at the request of a Party shall be the responsibility of the requesting Party.

#### **8.13 Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

#### **8.14 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the Courts of the Province of Ontario. The Parties consent to the jurisdiction and venue of the Court for the resolution of any disputes under this Agreement.

#### **8.15 Non-Merger**

Subject to Section 6.3, the representations, warranties and covenants of each Party contained in this Agreement will not merge on and will survive the closing of the Transaction and will continue in full force and effect, notwithstanding the closing of the Transaction or any investigation or knowledge acquired by or on behalf of the other Party.

#### **8.16 Independent Legal Advice**

The Purchaser warrants that it has received independent legal advice in connection with this Agreement.

#### **8.17 Execution and Delivery**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed and delivered either in original or faxed form or by electronic delivery in portable document format (PDF) and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties.

#### **8.18 Damages**

Under no circumstance shall any of the Parties or their representatives be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

#### **8.19 No Brokers**

It is understood and agreed that the Purchaser shall not be liable for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Receiver. It is further understood and agreed that the Receiver shall not be liable for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Purchaser.

#### **8.20 Receiver's Capacity**

The Purchaser acknowledges and agrees that KSV Restructuring Inc., acting in its capacity as receiver of the Debtors, will have no liability, in its personal capacity, in connection with this Agreement whatsoever.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]*

IN WITNESS OF WHICH the Parties have executed this Agreement.

**KSV RESTRUCTURING INC., in its capacity as  
Court-appointed Receiver of Audible Capital  
Corp. et al. and not in its personal or corporate  
capacity**

Per:



\_\_\_\_\_  
Name: Noah Goldstein  
Title: Managing Director

I have the authority to bind the Receiver

**EDGEHILL PARTNERS**

Per:

\_\_\_\_\_  
Name: Darryl DeMers  
Title: Chief Financial Officer & Chief  
Compliance Officer

IN WITNESS OF WHICH the Parties have executed this Agreement.

**KSV RESTRUCTURING INC., in its capacity as  
Court-appointed Receiver of Audible Capital  
Corp. et al. and not in its personal or corporate  
capacity**

Per: \_\_\_\_\_


Name:

Title:

I have the authority to bind the Receiver

**EDGEHILL PARTNERS**

Per: \_\_\_\_\_

  
Name: Darryl DeMers

Title: Chief Financial Officer & Chief  
Compliance Officer

**SCHEDULE "A"**  
**Form of Transfer Approval**

**EDGEHILL PARTNERS**  
(the “Partnership”)

**RESOLUTIONS OF PARTNERS**

**Transfer of Units of the Partnership**

**RECITALS:**

- A. pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 7, 2020 (the “**Receivership Order**”), KSV Restructuring Inc.<sup>1</sup> (the “**Receiver**”) was appointed as receiver of all of the assets, undertakings and properties (the “**Property**”) of Audible Capital Corp. (“**Audible**”), Avenir Trading Corp., 1892244 Alberta Ltd., Avenir Sports Entertainment Corp. and Portland Winter Hawks, Inc. (collectively, the “**Debtors**”);
- B. pursuant to the Receivership Order, the Receiver is authorized to market and sell any or all of the Property of the Debtors and negotiate such terms and conditions of sale as the Receiver may deem appropriate;
- C. Audible owns eighteen partnership units of the Partnership (the “**Transferred Units**”);
- D. the Partnership has agreed to purchase for cancellation the Transferred Units on the terms and subject to the conditions set forth in an asset purchase agreement between the Receiver and the Partnership (the “**Asset Purchase Agreement**”); and
- E. pursuant to the terms of the amended and restated partnership agreement made as of May 15, 2015 governing the affairs of the Partnership, no partner shall transfer all or any part of the partnership units of the Partnership unless such transfer is approved in writing by partners holding not less than two thirds of the outstanding partnership units of the Partnership.

**RESOLVED THAT:**

1. the transfer of the Transferred Units by the Receiver to the Partnership is hereby approved.

The foregoing resolutions may be executed in multiple counterparts, each of which shall be deemed to be an original resolution and all of which shall be construed as and shall constitute one resolution. These resolutions, to the extent signed and delivered by means of electronic transmission (including, without limitation, facsimile and internet transmission), shall be treated in all manner and respects as an original resolution and should be considered to have the same binding legal effect as if it were an original signed version thereof delivered in person.

*– signature page follows –*

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<sup>1</sup> Effective August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

## **Appendix “B”**

## **AMENDMENT TO ASSET PURCHASE AGREEMENT**

This Amendment to Asset Purchase Agreement (this “**Agreement**”) is made this 4<sup>th</sup> day of March, 2021, between KSV RESTRUCTURING INC., in its capacity as Court-appointed receiver of Audible Capital Corp. et al, and not in its personal or corporate capacity (in such capacity, the “**Receiver**”) and AVINA ACQUISITION CORP., duly incorporated under the laws of the Province of Ontario (the “**Purchaser**”)

**WHEREAS** the Receiver and the Purchaser are party to an asset purchase agreement dated December 15, 2020 (the “**APA**”), which was approved by order of Mr. Justice Hainey on January 6, 2021 (the “**Sale Procedure Order**”) as the stalking horse bid in a sale process conducted by the Receiver.

**AND WHEREAS** the APA is the Successful Bid, as defined in the bidding procedures approved by the Sale Procedure Order, and the Receiver and the Purchaser desire to amend the APA as set out herein prior to seeking court approval.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties) the parties hereto agree as follows:

### **1.1 Amendments to APA**

The following amendments shall be made to the APA, effective as of the date hereof:

- (a) The definition of “Outside Date” in Section 1.1 of the APA is deleted in its entirety and replaced with “means March 31, 2021”.
- (b) The reference to “\$4,650,000” in Section 2.2 of the APA is deleted and replaced with “\$4,400,000”.
- (c) The reference to “Edge Hill Partners – 18 Units” in Schedule B of the APA is deleted in its entirety.

### **1.2 Amendment to be Read with APA**

This Agreement shall be read together and shall have effect as if the provisions of the APA were contained in one agreement. To the extent that any provision in this Agreement conflicts with any provision in the APA, this Agreement shall govern. All other terms in the APA remain unchanged. To the extent that a term in the APA is not addressed in this Agreement the APA will govern and will be deemed to be in full force and effect.

### **1.3 Execution and Delivery**

This Agreement may be executed by the Receiver and the Purchaser in counterparts and may be executed and delivered by facsimile or other electronic means and all such



counterparts and facsimiles (or other electronic deliveries) shall together constitute one and the same agreement.

#### **1.4 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the Courts of the Province of Ontario. The Parties consent to the jurisdiction and venue of the Court for the resolution of any disputes under this Agreement.

**IN WITNESS OF WHICH** the Parties have executed this Agreement.

**KSV RESTRUCTURING INC., in its  
capacity as Court-appointed Receiver of  
Audible Capital Corp. et al, and not in its  
personal or corporate capacity**

Per: \_\_\_\_\_



Name: Noah Goldstein  
Title: Managing Director

I have the authority to bind the Receiver

**AVINA ACQUISITION CORP.**

Per: \_\_\_\_\_



Name: Armand Reale  
Title: Director

I have the authority to bind the  
Corporation

## **Appendix “C”**

## ASSET PURCHASE AGREEMENT

This Agreement made this 15th day of December, 2020.

**BETWEEN:**

**KSV RESTRUCTURING INC., in its capacity as Court-appointed Receiver of Audible Capital Corp. et al, and not in its personal or corporate capacity**

**(the "Receiver")**

**- and -**

**AVINA ACQUISITION CORP., duly incorporated under the laws of the Province of Ontario**

**(the "Purchaser")**

**WHEREAS** pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated May 7, 2020 (the "**Receivership Order**"), the Receiver was appointed as receiver of all of the assets, undertakings and properties (the "**Property**") of Audible Capital Corp., Avenir Trading Corp., 1892244 Alberta Ltd., Avenir Sports Entertainment Corp. and Portland Winter Hawks, Inc. (collectively, the "**Debtors**");

**AND WHEREAS**, pursuant to the Receivership Order, the Receiver is authorized to market and sell any or all of the Property of the Debtors and negotiate such terms and conditions of sale as the Receiver may deem appropriate;

**AND WHEREAS** the Purchaser has agreed to act as a "stalking horse bidder" in connection with the sale by the Receiver of the Debtors' right, title and interest, if any, in and to the Purchased Assets (as defined below), meaning that, in the absence of the Vendors' acceptance of one or more bids for the Purchased Assets made in accordance with the Sale Procedure (as defined below) which is superior to this Agreement (as determined by the Receiver, in accordance with the Sale Procedure), the Purchaser has agreed to purchase the Purchased Assets on the terms and subject to the conditions set forth in this Agreement, in accordance with the Sale Procedure and subject to obtaining the Approval and Vesting Order (as defined below);

**AND WHEREAS** the Receiver will seek to obtain the Stalking Horse and Sale Procedure Order (as defined below) authorizing the Receiver to enter into this Agreement and authorizing the sale process with respect to the Purchased Assets pursuant to the Sale Procedure;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties) the parties hereto agree as follows:

## **ARTICLE 1**

### **INTERPRETATION**

#### **1.1 Definitions**

In this Agreement, the following terms shall have the meanings set out below, unless the context requires otherwise:

**"Agreement"** means this asset purchase agreement, including all written amendments and written restatements thereto from time to time;

**"Applicable Law"** means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

**"Approval and Vesting Order"** means an order of the Court approving this Agreement and the transactions contemplated hereby and vesting, upon the delivery of the Receiver's Certificate to the Purchaser, all right, title and interest of the Debtors and the Receiver, if any, to the Purchased Assets in the Purchaser, free and clear of all Claims and Encumbrances pursuant to the terms and conditions of this Agreement, substantially in the form of the model order approved by the "Ontario Commercial List Users Committee", and otherwise in form and substance acceptable to the Purchaser and the Receiver;

**"Article"** or **"Section"** means the specified Article, or Section to this Agreement and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

**"Back-Up Bid"** has the meaning ascribed to it in the Sale Procedure;

**"Break Fee"** has the meaning ascribed thereto in Section 3.4 hereof;

**"Business Day"** means a day on which banks are open for business in the City of Toronto, but does not include a Saturday, Sunday or statutory holiday recognized in the Province of Ontario;

**"Claims"** means any and all claims, demands, complaints, actions, applications, suits, causes of action, orders, or other similar processes, and **"Claim"** means any one of them;

**"Closing"** means the completion of the purchase and sale of the Purchased Assets, in accordance with the provisions of this Agreement;

**"Closing Date"** has the meaning ascribed thereto in Section 4.1 hereof;

**"Closing Time"** has the meaning ascribed thereto in Section 4.1 4.1 hereof;

**"Court"** has the meaning ascribed thereto in the recitals hereof;

**"Debtors"** has the meaning ascribed thereto in the recitals hereof;

**“Deposit”** has the meaning ascribed thereto in Section 2.3 hereof.

**"Encumbrances"** means any and all security interests (whether contractual, statutory, or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, leases, title retention agreements, reservations of ownership, demands, executions, levies, charges, options or other rights to acquire any interest in any assets, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, and all contracts to create any of the foregoing, or encumbrances of any kind or character whatsoever;

**"Governmental Authorities"** means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and **"Governmental Authority"** means any one of them;

**"HST"** means all of the harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada);

**“Outside Date”** means March 26, 2021;

**"Parties"** means the Receiver and the Purchaser collectively, and **"Party"** means any one of them;

**"Person"** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;

**"Purchase Price"** has the meaning ascribed thereto in Section 2.2 hereof;

**"Purchased Assets"** has the meaning ascribed thereto in Section 2.1 hereof, as such defined term may be amended by the giving of notice by the Purchaser pursuant to Section 4.7 hereof;

**“Purchased Shares”** has the meaning ascribed thereto in Section 2.1 hereof;

**“Qualified Bid”** has the meaning ascribed to it in the Sale Procedure;

**“Receiver’s Certificate”** means a certificate from the Receiver confirming the Closing of the transactions contemplated hereby, substantially in the form attached to the Approval and Vesting Order;

**“Sale Procedure”** means the sale and solicitation process approved by the Stalking Horse and Sale Procedure Order, substantially in the form of **Schedule “A”** hereof;

**“Stalking Horse and Sale Procedure Order”** means an order of the Court approving the execution of this Agreement as a “stalking horse” asset purchase agreement, the transactions contemplated herein, and the Sale Procedure, in form and content acceptable to the Purchaser and the Receiver;

**“Successful Bid”** has the meaning ascribed to it in the Sale Procedure;

**"Taxes"** means all taxes, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax, including, Canada Pension Plan and provincial pension plan contributions (or equivalent in the jurisdiction where the Purchased Assets may be located), employment insurance payments and workers compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not that arise in respect of the Purchased Assets in the jurisdiction in which they are located.

## **1.2 Section References**

Unless the context requires otherwise, references in this Agreement to Sections are to Sections of this Agreement.

# **ARTICLE 2** **PURCHASE AND SALE**

## **2.1 Purchase and Sale of Purchased Assets**

At the Closing Time, subject to the terms and conditions of this Agreement and the Approval and Vesting Order, the Receiver shall sell, and the Purchaser shall purchase, all of the Receiver and the Debtors' right, title and interest to the assets set out in **Schedule “B”** hereto, as such Schedule “B” may be amended pursuant to Section 4.7 hereof (collectively the **“Purchased Assets”**), which includes the shares (the **“Purchased Shares”**) of the companies listed in Schedule A (collectively, the **“Companies”**).

## **2.2 Purchase Price**

Pursuant to the terms and subject to the conditions set forth in this Agreement, in consideration of the sale of the Purchased Assets pursuant to the terms hereof, the Purchaser shall pay to the Receiver in cash the amount of \$4,650,000 (the **“Purchase Price”**), inclusive of applicable Taxes.

## 2.3 Deposit

- (a) Within 24 hours of the execution and delivery of this Agreement by both Parties, the Purchaser shall pay a refundable deposit to the Receiver, in trust, by way of electronic funds transfer in the amount of \$232,500 (the “**Deposit**”).
- (b) The Deposit shall be held, pending Closing, by the Receiver in an interest-bearing account with a third-party financial institution.
- (c) If the Closing does not occur due to:
  - (1) a material uncured breach of this Agreement by Purchaser, or
  - (2) the Purchaser’s failure to close the transaction set forth in this Agreement on or before the Outside Date, except where the failure to close is due to:
    - (A) a termination pursuant to Section 7.1(a);
    - (B) a mutual termination of this Agreement pursuant to Section 7.1(b); or
    - (C) the Purchaser terminating pursuant to Section 7.1(c) because a condition precedent set forth in Section 5.1 is not satisfied prior to the Outside Date

the full amount of the Deposit (plus accrued interest), less any applicable withholding Tax, shall become the property of the Receiver and be forfeited, and released to the Receiver as liquidated damages and not as a penalty.

- (d) If the Closing does not occur for any reason other than that expressed in Section 2.3(c) above (including, without limitation where the failure to close is due to (i) a termination due to Section 7.1(a), or (ii) a mutual termination of this Agreement pursuant to Section 7.1(b), or (iii) the Purchaser terminating pursuant to Section 7.1(c) because a condition precedent set forth in Section 5.1 is not satisfied prior to the Outside Date), the full amount of the Deposit (plus accrued interest), less any applicable withholding Tax, shall be returned by the Receiver to the Purchaser. The return of the Deposit pursuant to this Section 2.3(d) and the payment of the Break Fee pursuant to Section 3.4 shall be the sole and exclusive remedy as liquidated damages of the Purchaser, whether at law or in equity, for any breach by the Receiver of the terms and conditions of this Agreement.

## 2.4 Satisfaction of Purchase Price

The Purchaser shall satisfy the Purchase Price on Closing by payment to the Receiver by wire transfer of the Purchase Price, less the amount of the Deposit, to an account specified in writing by the Receiver.

## **2.5 HST and Receivables Elections**

If applicable, at the Closing, the Receiver and the Purchaser shall jointly execute an election under Section 167 of the *Excise Tax Act* (Canada) to seek to cause the sale of the Purchased Assets to take place on an HST-free basis under Part IX of the *Excise Tax Act* (Canada) and the Purchaser shall file such election with its HST return for the applicable reporting period in which the sale of the Purchased Assets takes place.

## **ARTICLE 3** **PROCEDURES**

### **3.1 Motion for Stalking Horse and Sale Procedure Order**

The Receiver shall file with the Court, as soon as practicable following the execution and delivery of this Agreement, a motion seeking the Court's issuance of the Stalking Horse and Sale Procedure Order. The Purchaser shall cooperate with the Receiver in its efforts to obtain the issuance and entry of the Stalking Horse and Sale Procedure Order. The Purchaser, at its own expense, will promptly provide to the Receiver all such information within its possession or under its control as the Receiver may reasonably request to obtain the Stalking Horse and Sale Procedure Order. The Receiver shall serve its motion seeking the Stalking Horse and Sale Procedure Order on not less than seven Business Days notice, and shall serve any party or parties as the Purchaser may reasonably request.

### **3.2 Motion for Approval and Vesting Order**

If this Agreement is determined to be the Successful Bid in accordance with the Sale Procedure, the Receiver shall file with the Court, as soon as reasonably practicable thereafter, a motion seeking the Court's issuance of the Approval and Vesting Order. The Purchaser shall cooperate with the Receiver in its efforts to obtain the issuance and entry of the Approval and Vesting Order. The Purchaser, at its own expense, will promptly provide to the Receiver with all such information within its possession or under its control as the Receiver may reasonably request to obtain the Approval and Vesting Order. The Receiver shall serve its motion seeking the Approval and Vesting Order on not less than seven Business Days notice, and shall serve any party or parties as the Purchaser may reasonably request.

### **3.3 One or More Qualified Bids**

If one or more Qualified Bids (other than this Agreement) are received pursuant to the Sale Procedure, the Receiver shall pursue such bid(s) in accordance with the Sale Procedure.

### **3.4 Break Fee**

If this Agreement is terminated pursuant to Section 7.1(a) herein and the Purchased Assets are sold pursuant to either the Successful Bid or the Back-Up Bid, the Purchaser shall be entitled to a break-fee in the aggregate total amount of \$186,000, from the proceeds of such sale (the "**Break Fee**"). The Break Fee, if payable, will, in addition to the return of the Deposit pursuant to Section 2.3(d), be the sole and exclusive remedy as liquidated damages of the Purchaser, whether



at Law or in equity, for any breach by the Receiver of the terms and conditions of this Agreement. For greater certainty, the Receiver's obligation to pay the Break Fee pursuant to this Section 3.4 is expressly subject to Court approval and the granting of the of the Stalking Horse and Sale Procedure Order.

## **ARTICLE 4**

### **CLOSING ARRANGEMENTS**

#### **4.1 Closing**

Closing shall take place at 3:00 p.m. (the "**Closing Time**") on a Business Day (the "**Closing Date**") to be designated by the Purchaser and reasonably acceptable to the Receiver not later than 3 Business Days after the satisfaction or waiver of the conditions set out in Article 5. The Closing shall take place by electronic transmission of documents, or at such other time and location, and in such other manner, as the Parties may agree upon in writing.

#### **4.2 Tender**

Except as otherwise set out herein, any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel and money may be tendered by official bank draft drawn upon a Canadian chartered bank, by negotiable cheque payable in Canadian funds and certified by a Canadian chartered bank or trust company, or by wire transfer of immediately available funds to the account specified by that Party.

#### **4.3 Receiver's Closing Deliveries**

At the Closing, the Receiver shall deliver to the Purchaser the following, each in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) a copy of the Approval and Vesting Order, issued by the Court;
- (b) the Purchased Assets, in accordance with the Purchaser's instructions;
- (c) evidence that the Companies have entered the Purchaser or its nominees upon the books of the Companies as the holder of the Purchased Shares, but only to the extent the Receiver has obtained such evidence in accordance with Section 4.5; and
- (d) the Receiver's Certificate, executed by the Receiver.

#### **4.4 Purchaser's Closing Deliveries**

At the Closing, the Purchaser shall deliver to the Receiver the following, each in form and substance satisfactory to the Receiver, acting reasonably:

- (a) the Purchase Price (less the Deposit);
- (b) a completed and signed Accredited Investor form.

#### **4.5 Companies Share Registries**

The Receiver shall take all reasonable steps necessary to cause the Companies to enter the Purchaser or its nominees upon the books of the Companies as the holder of the Purchased Shares on Closing, provided that the Purchaser shall provide the Receiver with any information or reasonable assistance as may be requested by the Receiver in connection with obtaining such entries.

#### **4.6 Delivery of the Receiver's Certificate**

When the conditions set out in Article 5 below have been satisfied or waived, the Receiver will deliver an executed copy of the Receiver's Certificate to the Purchaser. Upon such delivery, the Closing will be deemed to have occurred. The Receiver will thereafter promptly file a copy of the Receiver's Certificate with the Court.

#### **4.7 Removal of Purchased Assets**

At any time prior to Closing, the Purchaser may remove any asset or assets from Schedule "B" by giving the Receiver written notification that such asset shall not be purchased, and upon receipt of such notice by the Receiver the specified asset or assets shall not constitute a "Purchased Asset". The Purchase Price shall not be reduced or amended in the event that any assets are removed from Schedule "B" pursuant to this Section 4.7.

### **ARTICLE 5** **CONDITIONS PRECEDENT**

#### **5.1 Conditions Precedent of the Purchaser**

The Purchaser shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing, by the Purchaser at any time; and the Receiver agrees with the Purchaser to take all such commercially reasonable actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Execution of this Agreement.* The Receiver shall delivery a fully executed copy of this Agreement to the Purchaser on or before 5 p.m. (Toronto time) on Wednesday, December 16, 2020.
- (b) *Representations and Warranties.* The representations and warranties of the Receiver in Section 6.1 shall be true and correct at the Closing Time;
- (c) *Stalking Horse and Sale Procedure Order.* The Stalking Horse and Sale Procedure Order shall have been issued by the Court, shall not be stayed, varied, superseded or under appeal, and the applicable time for appealing the Stalking Horse and Sale Procedure Order shall have expired;

- (d) *Successful Bid.* The Receiver shall have determined in accordance with the Sale Procedure that this Agreement is a Successful Bid.
- (e) *Approval and Vesting Order Final:* The Approval and Vesting Order shall have been issued by the Court, shall not be stayed, varied, superseded or under appeal, and the applicable time for appealing the Approval and Vesting Order shall have expired if the hearing for the Approval and Vesting Order is contested; and
- (f) *Receiver's Compliance.* The Receiver shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before the Closing Time and shall have executed and delivered to the Purchaser at the Closing Time all the deliveries contemplated in Section 4.3.

## **5.2 Conditions Precedent of the Receiver**

The Receiver shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Receiver, and may be waived, in whole or in part, in writing by the Receiver at any time; and the Purchaser agrees with the Receiver to take all such commercially reasonable actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Purchaser's Compliance.* The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed by or complied with at or before the Closing Time and shall have executed and delivered to the Receiver at the Closing Time all the deliveries contemplated in Section 4.4 in this Agreement.
- (b) *Stalking Horse and Sale Procedure Order.* The Stalking Horse and Sale Procedure Order shall have been issued by the Court, shall not be stayed, varied, superseded or under appeal, and the applicable time for appealing the Stalking Horse and Sale Procedure Order shall have expired;
- (c) *Approval and Vesting Order Final:* The Approval and Vesting Order shall have been issued by the Court, shall not be stayed, varied, superseded or under appeal, and the applicable time for appealing the Approval and Vesting Order shall have expired if the hearing for the Approval and Vesting Order was contested; and
- (d) *Representations and Warranties.* The representations and warranties of the Purchaser in Section 6.2 shall be true and correct at the Closing Time.

## **5.3 Non-Satisfaction of Conditions**

If any condition precedent set out in Section 5.1 or 5.2 is not satisfied or performed prior to the Outside Date, the Party for whose benefit the condition precedent is inserted may:

- (a) waive compliance with the condition, in whole or in part, in its sole discretion by written notice to the other Party (but may not claim for any matter waived) and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; or
- (b) elect on written notice to the other Party to terminate this Agreement, in which event each Party shall be released from all obligations under this Agreement, provided that the Deposit shall be dealt with in accordance with the terms of Section 2.3 hereof.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES**

#### **6.1 Representations and Warranties of the Receiver**

As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Receiver set out in this Section 6.1, the Receiver hereby represents and warrants to the Purchaser as follows:

- (a) *Due Authorization.* Subject to the granting of the Approval and Vesting Order, the Receiver has all necessary authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments;
- (b) *Enforceability of Obligations.* Subject to the granting of the Approval and Vesting Order, if applicable, this Agreement constitutes a valid and binding obligation of the Receiver, enforceable against the Receiver, in accordance with its terms.

#### **6.2 Representations and Warranties of the Purchaser**

As a material inducement to the Receiver entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Receiver is entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 5.2, the Purchaser hereby represents and warrants to the Receiver as follows:

- (a) *Financial Wherewithal.* The Purchaser has the financial wherewithal to satisfy the Purchase Price on the Closing Date and has the amount of the Purchase Price currently available to it;
- (b) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser, enforceable against the Purchaser, in accordance with its terms;
- (c) *Securities Laws.* The Purchaser is purchasing the Purchased Shares as principal or is deemed to be purchasing as principal in accordance with applicable Canadian

securities laws and satisfies the definition of “accredited investor” as such term is defined under National Instrument 45-106 *Prospectus and Registration Exemptions*; and

- (d) *Acknowledgement of Risks and Restrictions.* The Purchaser is aware of the risks and other characteristics of the Purchased Shares and of the fact that the Purchaser may not be able to resell the Purchased Shares except in accordance with the applicable securities legislation and regulatory policies.

### **6.3 Acquisition of Purchased Assets on "As Is, Where Is" Basis**

The Purchaser acknowledges and agrees that (a) the Receiver is selling the Purchased Assets on an "as is, where is" basis as they shall exist on the Closing Date, subject to the terms of the Approval and Vesting Order, and (b) it has conducted or will conduct its own searches and investigations relating to the Purchased Assets.

Without limiting the generality of the foregoing, any and all conditions, warranties or representations, expressed or implied, pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser.

## **ARTICLE 7** **TERMINATION**

### **7.1 Termination by the Parties**

This Agreement may be terminated:

- (a) automatically and without any action or notice by either the Receiver to the Purchaser or the Purchaser to the Receiver, immediately (i) upon the selection by the Receiver of a Successful Bid, if this Agreement is neither the Successful Bid nor the Back-Up Bid selected at such time, or (ii) upon the Closing of the Successful Bid(s) if this Agreement is the Back-Up Bid;
- (b) upon the mutual written agreement of the Receiver and the Purchaser; or
- (c) pursuant to Section 5.3(b) by either Party, unless such Party is in material breach of its obligations under this Agreement.

## **ARTICLE 8** **GENERAL CONTRACT PROVISIONS**

### **8.1 Headings and Sections**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **8.2 Number and Gender**

Unless the context requires otherwise, words importing the singular include the plural and vice versa, and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

## **8.3 Currency**

Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars.

## **8.4 No Strict Construction**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party, including, without limitation, the doctrine of *contra proferentum*.

## **8.5 Entire Agreement**

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and sets out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement.

## **8.6 Expenses**

Each Party shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the transactions contemplated in this Agreement, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

## **8.7 Notices**

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by email as follows:

- (a) in the case of notice to the Receiver at

**KSV Restructuring Inc.**  
150 King Street West, Suite 2308  
Toronto, Ontario, M5H 1J9

Attention: Noah Goldstein  
Email: [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com)

With a copy to:

**Bennett Jones LLP**  
First Canadian Place  
100 King Street West, Suite 3400  
Toronto, Ontario, M5X 1A4

Attention: Sean Zweig  
Email: [ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)

(b) in the case of a notice to the Purchaser at:

**Avina Acquisition Corp.**  
2 Bloor Street East, Suite 810  
Toronto, Ontario, M4W 1A8

Attention: Armand Reale  
Email: [areale@juniperceptl.com](mailto:areale@juniperceptl.com)

With a copy to:

**Blake, Cassels & Graydon LLP**  
Commerce Court West  
199 Bay Street, Suite 4000  
Toronto, Ontario, M5L 1A9

Attention: Chris Burr  
Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section.

## **8.8 Successors and Assigns**

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns including a trustee in bankruptcy of the Debtors. Neither Party may assign or transfer,

whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other Party.

### **8.9 Third Party Beneficiaries**

Unless where provided to the contrary by the specific terms hereof, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

### **8.10 Time of the Essence**

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

### **8.11 Amendment**

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

### **8.12 Further Assurances**

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing Date, provided that the reasonable costs and expenses of any actions taken after the Closing Date at the request of a Party shall be the responsibility of the requesting Party.

### **8.13 Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

### **8.14 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the Courts of the Province of Ontario. The Parties consent to the jurisdiction and venue of the Court for the resolution of any disputes under this Agreement.



### **8.15 Non-Merger**

Subject to Section 6.3, the representations, warranties and covenants of each Party contained in this Agreement will not merge on and will survive the closing of the Transaction and will continue in full force and effect, notwithstanding the closing of the Transaction or any investigation or knowledge acquired by or on behalf of the other Party.

### **8.16 Independent Legal Advice**

The Purchaser warrants that it has received independent legal advice in connection with this Agreement.

### **8.17 Execution and Delivery**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed and delivered either in original or faxed form or by electronic delivery in portable document format (PDF) and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties.

### **8.18 Damages**

Under no circumstance shall any of the Parties or their representatives be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

### **8.19 No Brokers**

It is understood and agreed that the Purchaser shall not be liable for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Receiver. It is further understood and agreed that the Receiver shall not be liable for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for the Purchaser.

### **8.20 Receiver's Capacity**

The Purchaser acknowledges and agrees that KSV Restructuring Inc., acting in its capacity as receiver of the Debtors, will have no liability, in its personal capacity, in connection with this Agreement whatsoever.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS OF WHICH the Parties have executed this Agreement.

**KSV RESTRUCTURING INC., in its capacity as Court-appointed Receiver of Audible Capital Corp. et al. and not in its personal or corporate capacity**

Per: 

Name:

Title:

*Noah Goldstein*  
*Managing Director*

I have the authority to bind the Receiver

**AVINA ACQUISITION CORP.**

Per: 

Name: Armand Reale

Title: Director

I have the authority to bind the Corporation

**SCHEDULE “A”**  
**Form of Sale Procedure**

**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.,  
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

**Bidding Procedures**

Set forth below are the bidding procedures (the “**Bidding Procedures**”) to be employed with respect to the sale (the “**Sale**”) of certain of Audible Capital Corp.'s ("Audible") assets set out in Schedule "A" hereto (the "**Investment Assets**") pursuant to a court approved solicitation process in the receivership proceedings bearing Court File No. CV-20-00640212-00CL.

On January 6, 2021, the Court issued an order (the “**Sale Process Order**”) approving and accepting for the purpose of conducting a “stalking horse” solicitation process (the “**Stalking Horse Process**”) in accordance with these Bidding Procedures that certain asset purchase agreement dated December 15, 2020 (the “**Stalking Horse Bid**”) between KSV Restructuring Inc., in its capacity as Court-appointed Receiver of Audible et al, and not in its personal capacity (the “**Receiver**”), and Avina Acquisition Corp. (the “**Stalking Horse Bidder**”), including, without limitation, the payment of a break fee (the “**Break Fee**”) by the Receiver to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid, and approving these Bidding Procedures.

Subject to Court availability and the terms hereof, the Receiver shall bring a motion (the “**Approval and Vesting Order Motion**”) on or before March 2, 2021 (or, if there is no Auction, on or before February 23, 2021) seeking the granting of an order by the Court authorizing the Receiver to proceed with the Sale of the Investment Assets to the Qualified Bidder(s) making the Successful Bid (each as defined below) (the “**Successful Bidder**”) (such order, as approved, the “**Approval and Vesting Order**”).

#### **Key Dates**

On or before January 7, 2021 at 5:00 p.m. (prevailing Eastern Time)	Delivery of Teasers and Sales Packages
On or before January 7, 2021 at 5:00 p.m. (prevailing Eastern Time)	Confidential Data-Site to be established
February 4, 2021 at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline - Due Date for Bids and Deposits
February 8, 2021 at 5:00 p.m. (prevailing Eastern Time)	Receiver to provide the Stalking Horse Bidder and each Qualified Bidder a schedule setting forth either or both: (i) the highest or otherwise best fully binding offer for all of the Investment Assets; and (ii) the highest or otherwise best fully binding offer(s) for all or any combination of the Investment Assets
February 11, 2021 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any)

February 23, 2021 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), or as soon as practicable if the Auction is not required	Approval and Sale Order hearing
March 2, 2021 at 10:00 a.m. (prevailing Eastern Time) (pending the Court's availability), or as soon as practicable if the Auction is required	Approval and Sale Order hearing

### **Assets to Be Sold En Bloc or Piecemeal**

The Receiver is offering for sale all of the Investment Assets and the Receiver will consider (i) a bid for all of the Receiver's right, title and interest in and to the Investment Assets (an “**En Bloc Bid**”); or (ii) separate bids to acquire some but not all of the Investment Assets (a “**Piecemeal Bid**”), provided that the Receiver will only consider Piecemeal Bids if a combination of one or more Piecemeal Bids in the aggregate meet the requirements to be a Qualified Bid (as defined below). The Receiver will be responsible for conducting the solicitation process and an auction (the “**Auction**”) (if any). The Auction, if any, will be conducted by the Receiver.

### **The Bidding Process**

The Receiver shall be responsible for the marketing and sale of the Investment Assets pursuant to the process described by the Receiver's Report to Court dated December ●, 2020 (the “**Bidding Process**”), which is set out below. The Receiver shall have the right to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that in its reasonable business judgment will better promote the goals of the Bidding Process, *provided, however*, that the adoption of any rule that materially deviates from these Bidding Procedures shall require the prior written consent of the Stalking Horse Bidder and Bridging Finance Inc., as agent (“**Bridging**”) or a further Order of the Court.

### **Participation Requirements**

“**Qualified Bidder**” is a bidder who submits a bid in substantially the same form as the Stalking Horse Bid, for a cash purchase price of at least CAD\$4,936,000 million and includes the Required Bid Terms and Materials (as defined below).

### **Bid Deadline**

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Terms and Materials to the Receiver no later than 5:00 p.m. (prevailing Eastern time) on February 4, 2021 (the “**Bid Deadline**”). Bridging has confirmed to the Receiver that it will not participate in the process as a bidder, and accordingly, the Receiver shall forthwith provide copies of any bids received to Bridging.

### **Bid Requirements**

All bids (other than the Stalking Horse Bid) must include, unless such requirement is waived by the Receiver after consultation with Bridging, the following (collectively, the “**Required Bid Terms and Materials**”):

- (i) A base cash purchase price equal to or greater than CAD\$4,936,000, being the amount payable under the Stalking Horse Bid plus the Break Fee (CAD\$186,000) and CAD\$100,000 bid increment (collectively, the “**Base Purchase Price**”);
- (ii) A provision stating that the bidder’s offer is irrevocably open for acceptance until the earlier of (i) the date that the Investment Assets have been sold pursuant to the closing of the sale approved by the Court; and (ii) the Outside Date;
- (iii) An executed copy of a proposed purchase agreement and a redline of the bidder’s proposed purchase agreement reflecting variations from the Stalking Horse Bid (the “**Marked Agreement**”);
- (iv) A cash deposit in the amount of not less than five *per cent* (5%) of the amount of the Base Purchase Price, in the form of a wire transfer, certified cheque or such other form acceptable to the Receiver (the “**Bid Deposit**”), which shall be held in the trust account of the Receiver’s solicitors (the “**Escrow Account**”). Funds shall be disbursed from the Escrow Account only as follows: (i) if the Qualified Bidder is the Successful Bidder, its Bid Deposit will be applied without interest on Closing to the purchase price payable by it under its bid on the closing thereof; and (ii) if the Qualified Bidder is not the Successful Bidder, then its Bid Deposit shall be returned without interest to it forthwith following the expiration of its offer (which in the case of the Back-Up Bidder shall be following closing of the sale to the Successful Bidder).

A bid received from a Qualified Bidder that includes all of the Required Bid Terms and Materials and is received by the Bid Deadline is a “**Qualified Bid**”. The Receiver, in consultation Bridging, reserves the right to determine the value of any Qualified Bid, and which Qualified Bid constitutes the best offer (the “**Lead Bid**”). For greater certainty, the Lead Bid can be two or more Piecemeal Bids. Details of the Lead Bid will be provided by the Receiver to all Qualified Bidders after the Bid Deadline and no later than 5:00p.m. (Eastern Time) two (2) Days before the date scheduled for the Auction.

Notwithstanding the bid requirements detailed above, the Stalking Horse Bid shall be deemed to be a Qualified Bid and the Stalking Horse Bidder shall be deemed to be a Qualified Bidder.

### **“As Is, Where Is, With All Faults”**

The Sale of the Investment Assets shall be on an “as is, where is” and “with all faults” basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Receiver or its agents, representatives, partners or employees, or any of the other parties participating in the sales process pursuant to these Bid Procedures, except as may otherwise be provided in a definitive purchase agreement with the Receiver. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Investment Assets prior to making its bid, that it has relied solely upon its own

independent review, investigation and/or inspection of any documents and/or the Investment Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Investment Assets, the financial performance of the Investment Assets or the location of the Investment Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Receiver.

### **Free of Any and All Liens**

Except as otherwise provided in the Stalking Horse Bid or another Successful Bidder's purchase agreement, and subject to any permitted encumbrances therein, all of the Receiver's and Audible's right, title and interest in and to the Investment Assets shall be sold free and clear of all liens and encumbrances pursuant to the Approval and Vesting Order.

### **The Sale and Auction Process**

If one or more Qualified Bids (other than that submitted by the Stalking Horse Bidder) have been received by the Receiver on or before the Bid Deadline, the Receiver shall advise all Qualified Bidders of the Lead Bid and invite all Qualified Bidders (including the Stalking Horse Bidder) to attend the Auction to be conducted by the Receiver in accordance with the Auction Procedures attached hereto as Appendix 1. The Auction shall be conducted by video conference. The Qualified Bid that is selected by the Receiver as the successful bid in accordance with the Auction Procedures shall be the "**Successful Bid**".

If no Qualified Bid (other than the Stalking Horse Bid) is submitted by the Bid Deadline, then the Stalking Horse Bid shall be the Successful Bid, the Stalking Horse Bidder shall be the Successful Bidder and the Auction shall be cancelled.

**The Receiver to Determine Highest and/or Best Bid:** The Receiver shall determine after each round of offers in the Auction, in its reasonable business judgment, the best bid and this bid shall be the Lead Bid. In making such determination, the Receiver may consider, without limitation: (i) the amount and nature of the consideration; (ii) the ability of the Qualified Bidder in question to close the proposed transaction; (iii) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (iv) any purchase price adjustment; (v) the net economic effect of any changes made to the Stalking Horse Bid; and (vi) such other considerations as the Receiver deems relevant in its reasonable business judgment. At the end of each round of offers, the Receiver shall advise the Qualified Bidders of the material terms of the then highest and/or best bid, and the basis for calculating the total consideration offered in such offer. If at the end of any round of bidding a Qualified Bidder has elected not to submit a further bid meeting the criteria set out herein (including the Minimum Bid Increment), then such Qualified Bidder shall not be entitled to continue to participate in the next round of offers or in any subsequent round.

If only one Qualified Bid is submitted after a round of offers then that Qualified Bid shall be the Successful Bid. The next highest offer, as determined by the Receiver (the "**Back-up Bid**"), shall be required to keep its offer open and available for acceptance until the closing of the Court Approved Sale of the Investment Assets to the Successful Bidder.



### **Highest versus Best Offer**

In determining the Lead Bid, the highest and/or best sale offer or offers during each round of offers, and the Successful Bid, the Receiver, in consultation with Bridging, is not required to select the offer with the highest purchase price and may, exercising its reasonable business judgment, select another offer or offers on the basis that it or they are the best offer even though not the highest purchase price, individually or in the aggregate. Without limiting the foregoing, the Receiver, in consultation with Bridging, may give such weight to the non-monetary considerations as it determines, exercising its reasonable business judgment, is appropriate and reasonable, including those considerations described above under “The Receiver to Determine Highest and/or Best Bid”.

### **Break Fee**

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Receiver has agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, a Break Fee of \$186,000 inclusive of HST (if any), in the event that the Stalking Horse Bidder is not the Successful Bidder.

The Break Fee is a material inducement for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Bid. The Break Fee, if payable in accordance with the Stalking Horse Bid, shall be paid in accordance with the Stalking Horse Bid and the Sale Process Order.

### **Acceptance of Qualified Bids**

The sale of the Investment Assets to any Successful Bidder by the Receiver is expressly conditional upon the approval of the Successful Bid by the Court at the hearing of the Approval and Vesting Order Motion. The presentation of the Successful Bid to the Court for approval does not obligate the Receiver to close the transaction contemplated by such Successful Bid unless and until the Court approves the Successful Bid. The Receiver will be deemed to have accepted a bid only when the bid has been approved by the Court at the hearing on the Approval and Vesting Order Motion.

### **Approval and Vesting Order Motion Hearing**

The Approval and Vesting Order Motion shall, subject to court availability, be made returnable on or before March 2, 2021 (or, if there is no Auction, as soon as practicable). The Receiver, in consultation with Bridging, reserves its right to the extent consistent with the Stalking Horse Bid to change the date of the hearing of Approval and Vesting Order Motion in order to achieve the maximum value for the Investment Assets.

### **Miscellaneous**

The solicitation process and these Bidding Procedures are solely for the benefit of the Receiver and nothing contained in the Sale Process Order or these Bidding Procedures shall create any rights in any other person (including, without limitation, any bidder or Qualified Bidder, and any rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Sale

Process Order. The bid protections incorporated in these Bidding Procedures are solely for the benefit of the Stalking Horse Bidder.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Process Order, the Stalking Horse Process and the Bidding Procedure.

## APPENDIX I

### Auction Procedures

#### Auction

1. If the Receiver, in consultation with Bridging, determines to conduct an Auction pursuant to the Bidding Procedures, the Receiver will notify the Qualified Bidders who made a Qualified Bid that an Auction will be conducted. The Auction will be convened by the Receiver and conducted by video conference at 10:00 a.m. (Eastern Time) on February 11, 2021, or such other place and time as the Receiver may advise. Capitalized terms used but not defined have the meaning given to them in the Bidding Procedures. The Auction shall be conducted in accordance with the following procedures:
  - a) Participation at The Auction. Only a Qualified Bidder is eligible to participate in the Auction. The Receiver shall provide all Qualified Bidders with the amount of the Leading Bid by 5:00pm (Eastern Time) two (2) Days before the date scheduled for the Auction. Each Qualified Bidder must inform the Receiver whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction. Only the authorized representatives of each of the Qualified Bidders, Bridging, the Receiver and their respective counsel and other advisors shall be permitted to attend the Auction.
  - b) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The Leading Bid shall constitute the “Opening Bid” for the first round and the highest Overbid (as defined below) at the end of each round shall constitute the “Opening Bid” for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction.
  - c) Receiver Shall Conduct the Auction. The Receiver and its advisors shall direct and preside over the Auction. At the start of each round of the Auction, the Receiver shall provide the terms of the Opening Bid to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take

into account any factors that the Receiver reasonably deems relevant to the value of the Qualified Bid, including, among other things, the following: (i) the amount and nature of the consideration; (ii) the Receiver's assessment of the certainty of the Qualified Bidder to close the proposed transaction on or before the Outside Date; (iii) the likelihood, extent and impact of any potential delays in closing; (iv) the net economic effect of any changes from the Opening Bid of the previous round, and (v) such other considerations as the Receiver deems relevant in its reasonable business judgment (collectively, the “**Bid Assessment Criteria**”). All Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and best Overbid shall be fully disclosed to all other Qualified Bidders that are participating in the Auction. The Receiver shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction.

- d) Terms of Overbids. An “**Overbid**” is any Bid made at the Auction subsequent to the Receiver's announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
- (i) *Minimum Overbid Increment:* Any Overbid shall be made in minimum Cash Purchase Price increments of CAD\$100,000 above the Opening Bid, or such increments as the Receiver, in consultation with Bridging, may determine in order to facilitate the Auction (the “**Minimum Overbid Increment**”). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Opening Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments.
  - (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the Bid Requirements, provided, however, that the Bid Deadline shall not apply. Any Overbid made by a Qualified Bidder must provide that it remains irrevocable and binding on the Qualified Bidder and open for acceptance as a Back-Up Bid until the closing of the Successful Bid.
  - (iii) *Announcing Overbids:* At the end of each round of bidding, the Receiver shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid, including the assets proposed to be acquired and the basis for calculating the total consideration offered in such Overbid based on, among other things, the Bid Assessment Criteria.
  - (iv) *Consideration of Overbids:* The Receiver, in consultation with Bridging, reserves the right to make one or more adjournments in the Auction in durations set by the Receiver to, among other things: (A) allow individual Qualified Bidders to consider how they wish to proceed; (B) consider and determine the current highest and/or best Overbid at any given time during the Auction; and, (C) give Qualified Bidders the opportunity to provide the Receiver with such additional evidence as it may require that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. The Receiver may have clarifying discussions with a Qualified Bidder, and the Receiver may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such

discussions. BIDDERS MUST OBTAIN ALL NECESSARY APPROVALS AND FUNDING COMMITMENTS IN ADVANCE OF THE AUCTION.

- (v) *Failure to Bid:* If at the end of any round of bidding a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Opening Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the next round of the Auction.
- e) Additional Procedures. The Receiver, in consultation with Bridging, may adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding provided they are not inconsistent with any of the provisions of the Bidding Procedures and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.
- f) Closing the Auction. The Auction shall be closed after the Receiver, in consultation with Bridging, has: (i) reviewed the final Overbid of each Qualified Bidder on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed sale; and (ii) identified the Successful Bid and the Back-Up Bid and the Receiver has advised the Qualified Bidders participating in the Auction of such determination
- g) Finalizing Documentation. Promptly following a Bid of a Qualified Bidder being declared the Successful Bid or the Back-Up Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid or Back-Up Bid. For greater certainty, every Bid made at Auction is deemed to be a signed and binding bid based on the bidder's original Qualified Bid.

### Schedule "A"

<b>Private Company</b>	<b>Number of Shares</b>
Archeoptix Biomedical Inc.	760,000
Phononic, Inc.	66,700
Performance Phenomics Inc.	1,000,000
Conavi Medical Inc.	24,193
Synaptive Medical Inc. – Common Shares	740,000
Synaptive Medical Inc. – Common Share Warrants (CAD\$25.52 strike price until September 21, 2026)	21,000
Synaptive Medical Inc. – Class B Shares	2,365,622
Synaptive Medical Inc. – Class B Warrants (US\$3.75 strike price for 3 years)	1,182,811
Orthogonal Inc.	185,903
Mobility View Inc.	7,187
Sage Senses Inc. (operating as Motion Gestures)	172,163
Hammerhead Resources Inc. (formerly Canadian International Oil Corp.)	40,000
Panaxium Inc.	969,767
EdgeHill Partners	18 units
BioSteel Sports Nutrition Inc.	All shares held by Audible Capital Corp.

**SCHEDULE “B”  
List of Purchased Assets**

<b>Private Company</b>	<b>Number of Shares</b>
Archeoptix Biomedical Inc.	760,000
Phononic, Inc.	66,700
Performance Phenomics Inc.	1,000,000
Conavi Medical Inc.	24,193
Synaptive Medical Inc. – Common Shares	740,000
Synaptive Medical Inc. – Common Share Warrants (CAD\$25.52 strike price until September 21, 2026)	21,000
Synaptive Medical Inc. – Class B Shares	2,365,622
Synaptive Medical Inc. – Class B Warrants (US\$3.75 strike price for 3 years)	1,182,811
Orthogonal Inc.	185,903
Mobility View Inc.	7,187
Sage Senses Inc. (operating as Motion Gestures)	172,163
Hammerhead Resources Inc. (formerly Canadian International Oil Corp.)	40,000
Panaxium Inc.	969,767
EdgeHill Partners	18 units
BioSteel Sports Nutrition Inc.	All shares held by Audible Capital Corp.

## **Appendix “D”**



**ORLA MINING LTD.  
as Borrower**

**and**

**TRINITY CAPITAL PARTNERS CORPORATION  
as Arranging Lender**

**and**

**GLAS USA LLC  
as Administrative Agent**

**and**

**GLAS AMERICAS LLC  
as Collateral Agent**

**and**

**THE PARTIES LISTED ON SCHEDULE A HERETO  
as Lenders**

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**LOAN AGREEMENT**

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**Dated as of December 18, 2019**

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**LOAN AGREEMENT** dated as of December 18, 2019 among Orla Mining Ltd., a corporation amalgamated under the *Canadian Business Corporations Act* (the “**Borrower**”), Trinity Capital Partners Corporation (the “**Arranging Lender**”), GLAS AMERICAS LLC, a limited liability company organized and existing under the laws of the State of New York, as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the “**Collateral Agent**”), and GLAS USA LLC, a limited liability company organized and existing under the laws of the State of New Jersey, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the “**Administrative Agent**” and together with the Collateral Agent, each an “**Agent**” and collectively, the “**Agents**”), and the parties listed on Schedule A from time to time as lenders (each, a “**Lender**” and, collectively, the “**Lenders**”).

**WHEREAS** the Borrower has requested the Lenders provide to it a certain loans for the purposes set forth in Section 9.1(e);

**AND WHEREAS** the Lenders are each willing, on a several basis, to provide such loans to the Borrower for the aforementioned purposes upon the terms and conditions contained herein;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Defined Terms**

The following defined terms shall for all purposes of this agreement, or any amendment, substitution, supplement, replacement or addition hereto, have the following respective meanings unless the context otherwise specifies or requires or unless otherwise defined herein:

“**Additional Equity**” means net cash proceeds of \$45,000,000 of additional capital (after deducting therefrom fees, commissions, costs and expenses and other amounts attributable to the raising of such capital) raised by the Borrower, which may not be redeemed, retracted or repaid in any manner whatsoever, and on which no fixed payments are required to be made while any Secured Obligations remain outstanding.

“**Additional Capital**” means the Additional Equity and the Loans.

“**Administrative Agent**” means GLAS USA LLC, in its capacity as administrative agent for the Lenders, and any successor thereto pursuant to Section 12.11.

“**Affiliate**” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, the Person specified.

**“Agent Account”** means the following United States Dollar account of the Administrative Agent:

*[commercially sensitive information redacted]*

or such other account as may be notified by the Administrative Agent to the other parties hereto.

**“AML Legislation”** has the meaning set out in Section 13.9.

**“Anti-Corruption Laws”** means all laws, rules, and regulations having the force of law of any jurisdiction applicable to any of the Obligors from time to time concerning or relating to bribery or corruption, including without limitation the *Corruption of Foreign Public Officials Acts* (Canada).

**“Applicable Laws”** means in respect of any Person, property, transaction or event, all applicable laws, standards, requirements, policies, approvals, statutes, ordinances, guidelines, treaties and regulations, and all applicable directives, orders, permits, judgments, injunctions, awards and decrees of any Governing Authority, in each case, having the force of law and binding on or affecting such Person or any of its property.

**“Applicable Securities Laws”** means, collectively, all applicable securities laws of each of the Provinces and Territories of Canada and the respective rules and regulations under such laws together with applicable published instruments, notices and orders of the securities regulatory authorities in such jurisdictions, and the rules and policies of the Toronto Stock Exchange and any other exchange or marketplace on which the Borrower has applied and been accepted for listing or quotation of its securities.

**“Arranging Lender”** means Trinity Capital Partners Corporation, in its capacity as arranging lender of the Credit Facility, and its successors and assigns.

**“Arm’s Length”** shall have the meaning ascribed thereto for the purposes of the Tax Act, as in effect as of the date hereof.

**“Asset Disposition”** has the meaning set out in Section 9.2(h).

**“Assets”** means, with respect to any Person, any and all property, assets and undertakings of such Person of every kind, real and personal, and wheresoever situate, whether now owned or hereafter acquired (and, for greater certainty, includes any equity or like interest of such Person in any other Person).

**“Banking Day”** means any day, other than Saturday and Sunday, on which banks generally are open for business in Vancouver, British Columbia, Toronto, Ontario and New York, New York.

**“Bankruptcy Law”** means the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), the *Winding-up and Restructuring Act* (Canada), Title 11, U.S. Code and any similar federal, provincial, state or foreign law for or in respect of the relief of debtors, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, arrangement, receivership, insolvency, reorganization or similar laws of Canada, the United States or other applicable jurisdictions from time to time in effect and any similar federal, provincial, state or foreign law for the relief of debtors affecting the rights of creditors generally.

**“Blocked Person”** means a Person which is a department, agency or instrumentality of, or is otherwise controlled by or acting on behalf of, directly or indirectly, (x) any OFAC Listed Person or (y) any Person, entity, organization, foreign country or regime that is subject to any OFAC Sanctions Program.

**“Bonding Obligations”** means any reimbursement or indemnity obligations incurred in the ordinary course of business in respect of performance bonds, reclamation bonds and indemnities, surety bonds, appeal bonds, completion guarantees or like instruments (excluding letters of credit or guarantee) issued to secure performance obligations relating to the Camino Rojo Project or the Cerro Quema Project.

**“Borrower Account”** means the following United States Dollar account of the Borrower, the wire transfer instructions with respect to which are as set forth below:

*[commercially sensitive information redacted]*

or such other account as may be notified by the Borrower to the Administrative Agent.

**“Camino Rojo”** means Minera Camino Rojo, S.A. de C.V.

**“Camino Rojo Project”** means the Camino Rojo Oxide, heap-leach gold project located in the municipality of Mazapil, state of Zacatecas, Mexico as defined in the June 25, 2019 feasibility study NI 43-101 technical report filed on SEDAR.

**“Canada Blocked Person”** means (i) a “terrorist group” as defined for the purposes of Part II.1 of the *Criminal Code* (Canada), as amended, or (ii) a Person identified in or pursuant to (x) Part II.1 of the *Criminal Code* (Canada), as amended, or (y) regulations or orders promulgated pursuant to the *Special Economic Measures Act* (Canada), as amended, the *United Nations Act* (Canada), as amended, or the *Freezing Assets of Corrupt Foreign Officials Act* (Canada), as amended, as a Person in respect of whose property or benefit a Lender would be prohibited from entering into or facilitating a related financial transaction.

**“Canadian Sanctions Law”** means the *Special Economic Measures Act* (Canada), the *United Nations Act* (Canada), the *Freezing Assets of Corrupt Foreign Officials Act* (Canada), the *Criminal Code* (Canada) and other similar Canadian laws imposing sanctions.

**“Capitalized Lease Obligations”** means, with respect to any Person, at any time, all liabilities of such Person as lessee in respect of any lease of real or personal property, which, in accordance with GAAP (as in effect on January 1, 2019), have been or are required to be capitalized.

**“Cash Proceeds”** means, at any time, the aggregate of (i) all Proceeds of Realization in the form of cash and (ii) all cash proceeds of the sale or disposition of non-cash Proceeds of Realization, in each case expressed in Dollars at such time.

**“Cerro Quema”** means Minera Cerro Quema, S.A.

**“Cerro Quema Project”** means the oxide, heap-leach gold project located in the Los Santos province, Republic of Panama.

**“Change of Control”** means with respect to any Obligor: (y) the consummation of any transaction, including any consolidation, arrangement, amalgamation or merger or any issue, transfer or acquisition of voting shares, the result of which is that any other Person or group of other Persons acting jointly or in concert for purposes of such transaction becomes the beneficial owner, directly or indirectly, of more than 50% of the voting shares of such Obligor; or (z) if, after the Closing Date, in any twelve (12) month consecutive period, the Continuing Directors cease to constitute a majority of the board of directors of the Borrower; provided that it shall not be a Change of Control where the Arranging Lender or any Affiliate thereof, acting jointly or in concert, acquires control of the applicable Obligor.

**“Closing Date”** means the date of execution and delivery of this agreement and upon which all conditions precedent in Section 10.1 have been satisfied.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Collateral Agent”** means GLAS Americas LLC, in its capacity as collateral agent for the Lenders, and any successor thereto pursuant to Section 12.11.

**“Commitment Fee”** has the meaning ascribed thereto in Section 5.4.

**“Continuing Directors”** means (a) any member of the board of directors who was a director of the Borrower on the Closing Date, and (b) any individual who becomes a member of the board of directors of the Borrower after the Closing Date if such individual was approved, appointed or nominated for the election to the board of directors of the Borrower by a majority of the Continuing Directors.

**“Control”** means the possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have corresponding meanings.

**“Credit Documents”** means this agreement, the Guarantees and the Security Documents and **“Credit Document”** means any of the Credit Documents.

**“Credit Facility”** has the meaning ascribed thereto in Section 2.1.

**“Debt”** means, with respect to a Person, without duplication, the following amounts, each calculated in accordance with GAAP, unless the context otherwise requires:

- (a) all obligations of such Person that would be considered to be indebtedness for borrowed money (including, without limitation, by way of overdraft and drafts or orders accepted representing extensions of credit), and all obligations of such Person (whether or not with respect to the borrowing of money) that are evidenced by bonds, debentures, notes or other similar instruments;
- (b) reimbursement obligations under bankers’ acceptances and contingent obligations of such Person in respect of any letter of credit, letters of guarantee or similar instruments;
- (c) Bonding Obligations of such Person;



- (d) any Equity Interests of that Person which Equity Interests, by their terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, prior to the Maturity Date, for cash or securities constituting Debt (read without reference to this subsection (d)) unless the issuer of such Equity Interests has by the terms of such Equity Interests the option of repaying such amounts or retiring or exchanging such Equity Interests with Equity Interests not convertible or exchangeable or redeemable for Debt (read without reference to this subsection (d));
- (e) all obligations of such Person for the deferred purchase price of Assets or services which constitute indebtedness (other than trade accounts payable and accrued expenses arising in the ordinary course of business);
- (f) all Capitalized Lease Obligations of such Person, obligations under synthetic leases, obligations under sale and leaseback transactions (unless the lease component of the sale and leaseback transaction is an operating lease) and indebtedness under arrangements relating to purchase money liens and other obligations in respect of the deferred purchase price of property and services;
- (g) all Hedge Exposure of such Person; and
- (h) the amount of the contingent obligations of such Person under any guarantee (other than by endorsement of negotiable instruments for collection or deposit in the ordinary course), indemnity or other financial assistance or other agreement assuring payment or performance of, any obligation in any manner of any part or all of an obligation of another Person of the type included in subsections (a) through (g) above;

but excluding, for greater certainty, trade payables and accrued liabilities that are current liabilities incurred in the ordinary course of business for which payment is due within 60 days of the date of any invoice or payment request related thereto; unearned revenue; current and deferred taxes shall not constitute Debt, and, for greater certainty, the stated amount of a letter of credit or any other letter of credit or guarantee shall not be included to the extent that the obligation in respect of which it has been issued is included in one of items (a) to (h) above.

**“Default”** means any event, fact or circumstance which is or which, with the passage of time, the giving of notice or both, would be an Event of Default.

**“Defaulting Lender”** means any Lender that (a) has failed to fund any portion of the Loans required to be funded by it hereunder within three Banking Days of the date required to be funded by it hereunder unless such failure has been cured, (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three Banking Days of the date when due, unless the subject of a good faith dispute or unless such failure has been cured, (c) has been determined by a court of competent jurisdiction or regulator to be insolvent or is unable to meet its obligations or admits in writing it is unable to pay its debts as they generally become due, (d) is the subject of a bankruptcy or insolvency proceeding,

(e) is subject to or is seeking the appointment of an administrator, regulator, conservator, liquidator, receiver, trustee, custodian or other similar official over any portion of its assets or business, or (f) fails to confirm in writing that it will comply with its obligations hereunder after written request from the Administrative Agent or the Borrower, or a Lender who provides notice in writing, or makes a public statement to the effect that (i) it does not intend to comply with its funding obligations hereunder or (ii) it does not intend to generally comply with any of its funding obligations under other agreements (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent to extending credit hereunder (specifically identified in such writing including, if applicable, by reference to a specific Default) cannot be satisfied).

**"Disclosure Documents"** means, collectively, all of the documents which have been filed by or on behalf of the Borrower since January 1, 2017 and prior to the date hereof with the relevant securities commissions pursuant to the Applicable Securities Laws, including all documents filed by the Borrower on [www.sedar.com](http://www.sedar.com).

**"Distribution"** means, with respect to any Person, (i) any dividend or other distribution, direct or indirect, declared or paid on issued Equity Interests of such Person, (ii) any payment (in any form whatsoever) made on account of any redemption, exchange, retirement, purchase or other acquisition for value, and any payment by such Person on account of a sinking fund or similar payment for the redemption, exchange, retirement, purchase or other acquisition for value, direct or indirect, made or paid in respect of the issued Equity Interests of such Person now or hereafter outstanding, (iii) any payment made to retire, or to obtain the surrender of, any outstanding or other rights to acquire issued, Equity Interests of any Obligor now or hereafter outstanding, and (iv) the payment by any Obligor of any royalty, consulting fee, management fee, bonus or similar fee to the shareholders or any Affiliate of such Person, except as otherwise not restricted in accordance with the terms of Section 9.2(r).

**"Dollars"** or **"\$"** means the lawful currency of the United States of America.

**"Drawdown Notice"** shall have the meaning ascribed thereto in Section 4.1.

**"Encumbrance"** means, with respect to any property or Asset, any mortgage, encumbrance, deed of trust, defeasance arrangement, trust arrangement, statutory or deemed trust, assignment, royalty, adverse claim, netting arrangement or right of set-off, pledge, charge, security interest, hypothec, usufruct or encumbrance of any kind or other arrangement, in each case, having the effect of security for the payment or performance of any debt, liability or obligation in respect of such property or Asset, whether or not filed, recorded or otherwise perfected under Applicable Law, including any conditional sale or other title retention agreement, any lease in the nature thereof, including title reservations, limitations, provisos or conditions.

**"Enforcement Date"** means the date on which the Administrative Agent notifies the Borrower, pursuant to and as then authorized by Section 11.1, that all Secured Obligations owing to the Lenders have become immediately due and payable or on which such Secured Obligations automatically become due and payable pursuant to Section 11.1, whichever occurs first.

**"Environmental Claims"** means any and all administrative, regulatory or judicial actions, suits, demands, claims, liens, notices of non compliance or violation, investigations, inspections,

inquiries or proceedings relating in any way to any Environmental Laws or to any permit issued under any such Environmental Laws including, without limitation:

- (a) any claim by a Governing Authority for enforcement, clean up, removal, response, remedial or other actions or damages pursuant to any Environmental Laws; and
- (b) any claim by a person seeking damages, contribution, indemnification, cost recovery, compensation or injunctive or other relief resulting from or relating to Hazardous Materials, including any Release thereof, or arising from alleged injury or threat of injury to human health or safety (arising from environmental matters) or the environment.

**“Environmental Laws”** means all Applicable Laws relating to the environment or environmental or occupational health and safety matters.

**“Equity Interests”** means, means, with respect to any Person, all shares, interests, units, trust units, partnership, membership or other interests, participations or other equivalent rights in the Person’s equity or capital, however designated, whether voting or non voting, whether now outstanding or issued after the Closing Date, together with warrants, options or other rights to acquire any such equity interests of such Person and securities convertible into or exchangeable for any such equity interests of such Person.

**“Event of Default”** means any one of the events set forth in Section 11.1.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to an Agent or any other Finance Party (each, a **“Recipient”**) or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, Canadian federal or provincial capital Taxes and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed under FATCA, (c) any Canadian withholding Taxes imposed on a payment by or on account of any obligation of the Borrower hereunder by reason of the Recipient (i) not dealing at arm’s length (for purposes of the *Income Tax Act* (Canada)) with the payer of such amount or (ii) being, or not dealing at arm’s length (for purposes of the *Income Tax Act* (Canada)) with, a specified shareholder (as defined in subsection 18(5) of the *Income Tax Act* (Canada) of the payer of such amount except, in each case, where the non-arm’s length relationship arises, or where the Recipient is a “specified shareholder” or does not deal at arm’s length with a “specified shareholder”, as a result of the Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or engaged in any other transaction pursuant to or enforced any rights under, a Credit Document, and (d) Taxes attributable to such Recipient’s failure to comply with Sections 6.4(f).

**“Exposure”** means, with respect to a particular Finance Party at a particular time and without duplication, the aggregate amount of the Secured Obligations owing to such Finance Party at such time determined by such Finance Party.

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the date of this agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code, and any applicable intergovernmental agreements and local implementing laws (including, for greater certainty, Part XVIII of the Tax Act), regulations and official guidance with respect to the foregoing.

“**Finance Parties**” means, collectively, the Agents and the Lenders.

“**Financial Statements**” means, at any time, the audited consolidated financial statements of the Borrower for the most recent Fiscal Year.

“**Fiscal Quarter**” means each three-month period of the Borrower ending on the last day of March, June, September and December during each Fiscal Year.

“**Fiscal Year**” means the fiscal year of the Borrower which ends on December 31 of each calendar year.

*[commercially sensitive information redacted]*

*[commercially sensitive information redacted]*

*[commercially sensitive information redacted]*

“**GAAP**” or “**generally accepted accounting principles**” means generally accepted accounting principles accepted in Canada from time to time as recommended in the Handbook of the Chartered Professional Accountants of Canada and its successors and including, where applicable, IFRS.

“**Governing Authority**” means any government, parliament, legislature, commission or agency or board of any government, parliament or legislature, or any political subdivision thereof, or any court or (without limitation to the foregoing) any other law-, regulation- or rule-making entity (including, without limitation, any central bank, fiscal or monetary authority or authority regulating banks) having jurisdiction in the relevant circumstances, or any Person acting under the authority of any of the foregoing (including, without limitation, any arbitrator) or any other authority charged with the administration or enforcement of Applicable Laws.

“**Guarantees**” means the guarantees entered into by each of the Guarantors in favour of the Collateral Agent, pursuant to which each Guarantor agreed to guarantee the Secured Obligations of the Borrower, as the same may be amended, modified, supplemented or replaced from time to time.

“**Guarantors**” means Camino Rojo and Cerro Quema, and each other Restricted Subsidiary that has entered into a Guarantee on or after the date of this agreement, and “**Guarantor**” means any one of them.

“**Hazardous Materials**” means any substance, product, liquid, waste, pollutant, chemical, contaminant, insecticide, pesticide, gaseous or solid matter, organic or inorganic matter, fuel, micro-organism, ray, odour, radiation, energy, vector, plasma, constituent, material or any combination thereof which (a) is listed, regulated or prohibited under any Environmental Law, or

(b) is hazardous waste, toxic, a pollutant, a deleterious substance or a contaminant under any Environmental Law, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

**“Hedging Agreements”** means any arrangement or transaction which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, interest rate option, spot or forward foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, equity hedging or any other similar transaction (including any option with respect to any of such transactions or arrangements) designed to protect or mitigate against risks in interest, currency exchange, metals or commodity price fluctuations.

**“Hedge Exposure”** of a Person means all obligations of such Person arising under or in connection with Hedging Agreements; provided that:

- (a) when calculating the value of a Hedging Agreement only the mark-to-market value (or, if any actual amount is due as a result of the termination or close-out of such Hedging Agreement, that amount) shall be taken into account; and
- (b) where any such Hedging Agreement allows for cross-transaction netting, the Hedge Exposure with respect to any counterparty shall be calculated on an aggregate net basis after taking into account all amounts owing by such counterparty to such Person under Hedging Agreements.

**“IFRS”** means International Financial Reporting Standards adopted by the International Accounting Standards Board from time to time.

**“Indemnified Parties”** has the meaning set out in Section 6.3.

**“Indemnified Taxes”** means Taxes, other than Excluded Taxes.

**“Individual Commitment”** means, with respect to a particular Lender, the amount set forth in Schedule A for the Tranche One Loan, Tranche Two Loan and Tranche Three Loan, as applicable, as the individual commitment of such Lender to provide such Loan; as reduced or amended from time to time pursuant to Sections 2.3, 6.2 and 13.5.

**“Insolvent Person”** has the meaning set out in the *Bankruptcy and Insolvency Act* (Canada), as of the date of this agreement.

**“Intellectual Property”** means the intellectual property in patents, patent applications, trademarks, trade-mark applications, trade names, service marks, copyrights, copyright registrations and trade secrets including, without limitation, customer lists and information and business opportunities, industrial designs, proprietary software, technology, recipes and formulae and other similar intellectual property rights.

**“Interest Rate”** means a rate per annum equal to 8.80%.

**“Investment”** means, with respect to any Person, all direct or indirect investments by such Person in other Persons or in Assets in the form of:

- (a) loans, advances or capital contributions (excluding (i) loans or advances to officers and employees made in the ordinary course of business or in connection with the relocation of such officers and employees and (ii) accounts receivable arising from sales or services rendered in the ordinary course of such Person’s business);
- (b) acquisition of any Equity Interests of another Person or any bond, debenture or other indebtedness or debt securities of another Person;
- (c) acquisition, by purchase or otherwise, of all or substantially all of the business, Assets or stock or other evidence of beneficial ownership of a Person; and
- (d) acquisition by purchase or otherwise of any real property and related personal property of a Person.

Any binding commitment to make an Investment in any Person or property and assets, as well as any option of another Person to require an Investment in such Person or property and assets, shall constitute an Investment.

**“Loans”** means the Tranche One Loan, Tranche Two Loan and Tranche Three Loan, made subject to and in accordance with the terms of this agreement, and **“Loan”** means any one of them.

**“Majority Lenders”** means, at any particular time prior to the repayment in full of all Secured Obligations and the termination of all commitments of the Lenders hereunder but subject to the next sentence, such group of Lenders whose Individual Commitments (expressed in Dollars) aggregate at least 75% of the aggregate amount of the Individual Commitments of all of the Lenders at such time. Notwithstanding the preceding sentence and except for the purposes of Section 12.13 of this Agreement, at all times prior to the advance of the Tranche Two Loan, Majority Lenders means the group of Tranche One Lenders whose Individual Commitments (expressed in Dollars) aggregate at least 75% of the aggregate amount of the Individual Commitments of all of the Tranche One Lenders at such time. Notwithstanding the foregoing, the unfunded Individual Commitment of, and the outstanding extensions of credit held or deemed to be held by, any Defaulting Lender shall be excluded for purposes of making a determination of Majority Lenders.

**“Material Adverse Change”** means any change of circumstances or event reasonably likely to have a Material Adverse Effect.

**“Material Adverse Effect”** means a material adverse effect on:

- (a) the business, operations, property, assets, liabilities (actual or contingent) or condition (financial or otherwise) of the Obligors taken as a whole;
- (b) metals prices, commodity prices, the economy or financial markets that disproportionately affect the Obligors;

- (c) the ability of the Obligors to perform their obligations under the Credit Documents or the validity or enforceability of the Credit Documents; or
- (d) the ability of any Finance Party to enforce its rights under any Credit Documents.

**“Material Agreement”** means (i) *[commercially sensitive information redacted]*, (ii) the Material Agreements referred to in Schedule H hereto, and (iii) any agreement to which an Obligor is party, the termination of which could reasonably be expected to have a Material Adverse Effect, including the investor rights agreement between the Borrower and Agnico Eagle Mines Limited dated October 18, 2019.

**“Maturity Date”** means December 18, 2024.

**“Minera Peñasquito Indebtedness”** mean the indebtedness owing by the Obligors to Minera Peñasquito, S.A. de C.V. in a principal amount which does not exceed MXN \$220,000,000.

**“MXN \$”** means Mexican pesos.

**“Net Cash Proceeds”** means, with respect to any Permitted Asset Disposition pursuant to Section 9.2(h), the gross cash proceeds (including payments from time to time in respect of instalment obligations, if any) received in respect of such Permitted Asset Disposition, less the sum of:

- (a) the amount, if any, of all Taxes paid or estimated to be payable by or in connection with such Permitted Asset Disposition;
- (b) amounts received in cash required to be reserved for indemnification, adjustment of purchase price or similar obligations pursuant to the agreements governing such Permitted Asset Disposition;
- (c) amounts required to be applied to, and applied to, the repayment of Debt secured by an Encumbrance expressly permitted hereunder on any asset that is the subject of such Permitted Asset Disposition (other than any Encumbrance created pursuant to a Credit Document); and
- (d) reasonable fees, commissions, expenses and costs paid by or on behalf of the selling Obligor relating to such Permitted Asset Disposition.

**“Non-Consenting Lender”** means a Lender that has not provided its consent to a waiver of, or amendment to, any provision of the Credit Documents where requested to do so by the Borrower or the Administrative Agent if such waiver or amendment requires the consent of all the Lenders and Lenders whose Individual Commitment at the relevant time aggregate at least 75% of the Total Commitment Amount at such time have consented to such waiver or amendment.

**“Obligors”** means the Borrower and the Guarantors, and **“Obligor”** means any one of them.

**“OFAC”** means the United States Office of Foreign Assets Control.

**“OFAC Listed Person”** means a Person whose name appears on the list of “Specially Designated Nationals” and “Blocked Persons” published by OFAC.

**“OFAC Sanctions Program”** means sanctions programmes administered from time to time by OFAC.

**“Other Connection Taxes”** means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than any connection arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Credit Document, or sold or assigned an interest in any Credit Document or advance thereunder).

**“Other Taxes”** means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Credit Document or from the execution, delivery or enforcement of, or otherwise with respect to, this agreement or any other Credit Document.

**“Permits”** means all material permits, consents, orders, authorizations, licences, concessions, approvals, rights and privileges or the like issued or granted by any Governing Authority required for the construction, development or operation of the Camino Rojo Project or Cerro Quema Project.

**“Permitted Asset Disposition”** has the meaning set out in Section 9.2(h).

**“Permitted Debt”** means any of the following:

- (a) unsecured cash management obligations of the Borrower in the ordinary course of business;
- (b) the Secured Obligations;
- (c) any Debt secured by a Permitted Encumbrance;
- (d) the Minera Peñasquito Indebtedness;
- (e) Permitted Foreign Exchange Hedging Indebtedness;
- (f) a working capital credit facility in a principal amount [*commercially sensitive information redacted*], and ranking first only on accounts receivable and inventory of the Obligors, provided that such working capital facility is (i) subordinate in all other respects to the Secured Obligations and the Security, and (ii) is in form and substance satisfactory to the Majority Lenders, acting reasonably, and subject to an intercreditor agreement on terms satisfactory to the Majority Lenders, acting reasonably (the **“Working Capital Facility”**);
- (g) any Guarantee by an Obligor of Debt of any other Obligor if such Debt is permitted under this agreement, excluding any Guarantee by the Borrower or Camino Rojo of any Debt of Cerro Quema or any Debt of any other Restricted Subsidiary;



- (h) any (i) indebtedness of an Obligor to any other Obligor that is set out in Schedule P, as such amount may be reduced by payment thereof from time to time, or (ii) indebtedness of an Obligor to any other Obligor; provided that such indebtedness is funded by (x) amounts of Permitted Distributions permitted to be used for such purpose, and from such sources, qualifying as Permitted Distributions in compliance with Section 9.2(g), or (y) the proceeds of additional capital raised by the Borrower (in excess of, and excluding, the proceeds of the Additional Equity);
- (i) unsecured Debt of an Obligor to any Affiliate thereof (other than any other Obligor) that is subject to a subordination and postponement agreement in favour of the Administrative Agent in form acceptable to the Administrative Agent, acting reasonably;
- (j) obligations of Camino Rojo consisting of Bonding Obligations,
- (k) obligations of Cerro Quema consisting of Bonding Obligations; provided that such obligations are (i) set out in Schedule P, as such obligations may be reduced by payment thereof from time to time, or (ii) funded by (x) amounts of Permitted Distributions permitted to be used, and from such sources, qualifying as Permitted Distributions in compliance with Section 9.2(g), or (y) the proceeds of additional capital raised by the Borrower (in excess of, and excluding, the proceeds of the Additional Equity); and
- (l) any extension, renewal or replacement of any of the foregoing,

provided that, the aggregate outstanding amount of Debt referred to in subparagraphs (c) (which, for certainty, shall not include the Secured Obligations) and (i) shall not at any time exceed *[commercially sensitive information redacted]*.

**“Permitted Distribution”** means any of the following, provided that no Default or Event of Default has occurred and is continuing at the time thereof:

- (a) capital contributions and loans by the Borrower to Camino Rojo and other Subsidiaries of the Borrower; provided that such capital contributions and loans made to Subsidiaries other than Camino Rojo are not funded from (i) Additional Capital, or (ii) save and except as permitted by paragraph (b) below, proceeds of the business or operations of any Restricted Subsidiary, or the proceeds of the sale of any shares or Assets of any Restricted Subsidiary;
- (b) subject to compliance with paragraph (d) below, capital contributions and loans in a minimum amount of \$1,000,000 and integral multiples of \$100,000 thereafter made after such time as the Additional Equity is raised and using (i) proceeds of the business or operations of any Restricted Subsidiary or (ii) proceeds of the sale of any Assets of any Restricted Subsidiary permitted by Section 9.2(h) of this agreement (and not from Additional Capital), in each case to fund the Cerro Quema Project;

- (c) dividends, loans, repayments or other Distributions by Camino Rojo to the Borrower in a minimum amount of \$1,000,000 and integral multiples of \$100,000 where all of the proceeds of such dividends, loans, repayments or other Distributions are immediately used to repay the Loans, together with all accrued and unpaid interest thereon and all other Secured Obligations owing by the Obligor to and including the date of such Distribution; and
- (d) dividends, loans, repayments or other Distributions by Camino Rojo to the Borrower or any Restricted Subsidiary in a minimum amount of \$1,000,000 and integral multiples of \$100,000 thereafter for use by the Borrower or such Restricted Subsidiary for general corporate purposes; provided that, 50% of the proceeds of such dividend, loan, repayment or other Distribution are used by the Borrower or such Restricted Subsidiary for general corporate purposes (which general corporate purpose (i) shall include funding the Cerro Quema Project (including, without limitation, the construction, development and operation thereof), provided that the same is not funded with Additional Capital and (ii) shall not include (x) dividends, loans, share buy-backs, repayments and other Distributions, or (y) the construction, development or operation of, or investment in, or funding of debt service related to, any mine, property or business that is not subject to the Security) and the remaining 50% of such proceeds are immediately distributed to the Borrower to be used to repay the Loans, together with all accrued and unpaid interest thereon and all other Secured Obligations owing by the Obligor to and including the date of such Distribution.

Absent a Default or an Event of Default, and except for the requirement to repay the Loans under (c) above, in no circumstances will the Obligor be required to use more than 50% of the proceeds of any Distributions or Investments to repay the Loans, accrued and unpaid interest thereon and other Secured Obligations.

**“Permitted Encumbrances”** means, as of any particular time, any of the following with respect to the property and assets of any Obligor:

- (a) the rights reserved to or vested in any municipality or governmental or other public authority by any statutory provision or by the terms of leases, licenses, franchises, grants or permits, which do not materially interfere with the use of or materially detract from the value of the assets subject thereto;
- (b) servitudes, easements, rights-of-way, restrictions and other similar encumbrances imposed by Applicable Law or incurred in the ordinary course of business and encumbrances consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any Obligor;
- (c) Encumbrances imposed by law for Taxes, assessments or governmental charges or levies not yet due or which are being contested in good faith and by appropriate

proceedings diligently conducted if adequate reserves with respect thereto are maintained in accordance with GAAP on the books of the applicable Obligor;

- (d) carrier's, warehousemen's, mechanics', materialmen's, repairmen's, construction and other like Encumbrances arising by operation of Applicable Law, arising in the ordinary course of business and securing amounts (i) which are not overdue for a period of more than 30 days, or (ii) which are being contested in good faith and by appropriate proceedings and, during such period during which amounts are being so contested, such Encumbrances shall not be executed on or enforced against any Secured Assets, provided that the applicable Obligor shall have set aside on its books adequate reserves therefor and not resulting in qualification by auditors;
- (e) undetermined or inchoate Encumbrances and charges arising or potentially arising under statutory provisions which have not at the time been filed or registered in accordance with Applicable Law or of which written notice has not been given in accordance with Applicable Law or which although filed or registered, relate to obligations not due or delinquent, including without limitation statutory Encumbrances incurred, or pledges or deposits made, under worker's compensation, employment insurance, pension and employment and other social security legislation;
- (f) deposits or Encumbrances over cash collateral and securing Bonding Obligations which qualify as Permitted Debt, together with any Encumbrance over the contract for which the underlying instrument was issued as security;
- (g) Encumbrances or covenants restricting or prohibiting access to or from lands abutting on controlled access highways or covenants affecting the use to which lands may be put; provided that such Encumbrances or covenants do not materially and adversely affect the use of the lands by any Obligor;
- (h) customary securities granted to public utilities or to any municipalities or Governing Authorities or other public authority when required by the utility, municipality or Governing Authorities or other public authority in connection with the supply of services or utilities to the Obligor;
- (i) unsecured adverse claims resulting from any judgment or award which does not constitute an Event of Default, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the applicable Obligor shall be prosecuting an appeal or proceeding for review in good faith and by appropriate proceedings and in respect of which a stay of execution pending such appeal or proceeding for review shall have been granted and remains in effect;
- (j) customary statutory Encumbrances incurred or pledges or deposits made in favour of a Governmental Authority to secure the performance of obligations of any Obligor under Environmental Laws to which any assets of such Obligor are subject;
- (k) any and all other statutory liens, charges, adverse claims, prior claims, security interests or encumbrances of any nature whatsoever which are not registered on the

title to the property and of which such Obligor does not have notice, claimed or held by any Governing Authority under or pursuant to any Applicable Law, which do not materially interfere with the use of or materially detract from the value of the assets subject thereto;

- (l) Encumbrances consisting of royalties payable with respect to any Assets of the Obligors existing as of the Closing Date described in Schedule M or otherwise permitted by Section 9.2(c).
- (m) customary rights of set-off or combination of accounts with respect to deposits and/or accounts permitted to be maintained under the terms of this agreement;
- (n) the interest of a vendor or a lessor under any conditional sale agreement, title retention agreement or consignment agreement (or any financing lease having substantially the same economic effect as any of the foregoing) permitted under the terms of this agreement;
- (o) Encumbrances on concentrates, minerals or the proceeds of sale of such concentrates or minerals arising or granted pursuant to a processing arrangement entered into in the ordinary course and upon usual market terms, securing the payment of the Borrower's or any of its Subsidiaries' portion of the fees, costs and expenses attributable to the processing of such concentrates or minerals under any such processing arrangement, but only insofar as such Encumbrances relate to obligations which are at such time not past due or the validity of which are being contested in good faith by appropriate proceedings and as to which reserves are being maintained in accordance with GAAP;
- (p) Encumbrances granted pursuant to the Security Documents;
- (q) Encumbrances on equipment in favour of a Person providing financing for such equipment or securing Capitalized Lease Obligations (and proceeds thereof, including any insurance proceeds related thereto); provided that, such Encumbrance is expressly and strictly limited to the equipment being financed by such Person and its proceeds and the aggregate amount of Debt secured by all such financings [*commercially sensitive information redacted*];
- (r) Encumbrances in respect of the Working Capital Facility ranking first only on accounts receivable and inventory but subordinate to the Lenders in all other respects, which are subject to an intercreditor agreement on terms satisfactory to the Majority Lenders, acting reasonably;
- (s) Encumbrances in respect of Permitted Foreign Exchange Hedging Indebtedness which are subject to an intercreditor agreement on terms satisfactory to the Majority Lenders, acting reasonably; and
- (t) any extension, renewal or replacement of any of the foregoing.

**“Permitted Foreign Exchange Hedging Indebtedness”** means foreign exchange related hedging indebtedness of up to 100% of the peso denominated capital expenditures during the Camino Rojo

construction period, and which is subject to an intercreditor agreement on terms satisfactory to the Majority Lenders, acting reasonably. Following completion of the Camino Rojo construction period, Permitted Foreign Exchange Hedging Indebtedness shall be limited to contract term not to exceed 12-month and an amount not to exceed up to 25% of the peso-denominated operating costs at the Camino Rojo Project.

**“Permitted Investment”** means any of the following Investments:

- (a) *[commercially sensitive information redacted]*;
- (b) Investments made by an Obligor using proceeds of a Permitted Distribution that are not required to be used to prepay the Loans, accrued and unpaid interest thereon and other Secured Obligations;
- (c) Investments made by the Borrower in Camino Rojo using proceeds of the Additional Capital; and
- (d) Investments existing as at the Closing Date described in Schedule N.

**“Person”** means any individual, partnership, limited partnership, limited liability partnership, limited or unlimited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, unincorporated syndicate, unincorporated organization, foundation, business entity, trust, trustee, executor, administrator or other legal personal representative or Governing Authority.

**“PPSA”** means the *Personal Property Security Act* (Ontario), as amended.

**“Proceeds of Realization”** means all cash and non-cash proceeds derived from any sale, disposition or other realization of the Secured Assets (i) on or after the Enforcement Date, (ii) upon any dissolution, liquidation, winding-up, reorganization, bankruptcy, insolvency or receivership of any Obligor (or any other arrangement or marshalling of the Secured Assets that is similar thereto) or (iii) upon the enforcement of, or any action taken with respect to, any Security Document.

**“Pro Rata Share”** means at any particular time with respect to a particular Lender, the ratio of the Individual Commitments of such Lender at such time to the Total Commitment Amount of all of the Lenders at such time.

**“Receiver”** means a receiver, receiver and manager or the person having similar powers or authority appointed by the Collateral Agent at the direction of the Majority Lenders, or by a court at the instance of the Collateral Agent, in each case respect of the Secured Assets or any part thereof.

**“Recipient”** shall have the meaning ascribed thereto in the definition of “Excluded Taxes”.

**“Release”** means any release, spill, emission, leak, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the environment including, without limitation, the movement of Hazardous Materials through ambient air, soil, surface water, ground water, wetlands, land or sub surface strata.

**“Relevant Jurisdiction”** means, from time to time, with respect to a Person that is granting Security hereunder, any province or territory of Canada or any other country, political subdivision thereof, in which such Person has its jurisdiction of formation, chief executive office or chief place of business or has tangible real and personal Assets (other than Assets in transit) and, for greater certainty, at the Closing Date includes the locations set forth in Schedule F.

**“Responsible Officer”** means, with respect to any Person, the chief executive officer, president, or chief financial officer of such Person (and, in the case of the execution and delivery of the Transaction Documents, any other Person properly authorized by resolutions of the board of directors (or equivalent) of such Person, or a valid power of attorney under Applicable Law) and, with respect to an Agent, includes any senior officer of such Agent with responsibility for the administration of the duties of such Agent under this Agreement and the other Credit Documents. Any document delivered hereunder that is signed by a Responsible Officer of an Obligor shall be conclusively presumed to have been authorized by all necessary corporate and/or other action on the part of such Obligor and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Obligor.

**“Restricted Subsidiary”** means each direct or indirect Subsidiary of the Borrower with a direct or indirect interest in: (i) the Camino Rojo Project or (ii) the Cerro Quema Project.

*[commercially sensitive information redacted]*

**“Sanctioned Entity”** means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC or similar program administered under Canadian Sanctions Law.

**“Secured Assets”** means all of the present and future (a) Assets constituting personal property of the Obligors, (b) Assets constituting real property of the Obligors related to the Camino Rojo Project and (c) any and all proceeds of any of the foregoing.

**“Secured Obligations”** means all indebtedness, obligations and liabilities, present or future, absolute or contingent, matured or not, at any time owing by any Obligor to the Finance Parties or any of them or remaining unpaid to the Finance Parties or any of them under or in connection with the Credit Documents. For certainty, **“Secured Obligations”** shall include interest accruing subsequent to the filing of, or which would have accrued but for the filing of, a petition for bankruptcy, in accordance with and at the rate (including any rate applicable pursuant to this agreement upon the occurrence of any Event of Default that is continuing to the extent lawful) specified herein, whether or not such interest is an allowable claim in such bankruptcy proceeding.

**“Secured Obligations Termination Date”** means the date on which all Secured Obligations (other than those provisions which by their terms survive the termination of the Credit Documents) have been indefeasibly paid in full and the Finance Parties have no Individual Commitments.

**“Security”** means the Encumbrances created by the Security Documents.

**“Security Documents”** means the security documents (as the same may be amended, modified, supplemented, restated or replaced from time to time) which, in the reasonable opinion of the Collateral Agent, are required to be entered into from time to time by the Obligors in favour of the Collateral Agent on behalf of the Finance Parties in order to grant to the Collateral Agent an Encumbrance on the Secured Assets as continuing collateral security for the payment and performance of the Secured Obligations of the Obligors, such security documents to be in form and substance satisfactory to the Collateral Agent and to include the security documents described in Schedule G.

**“share”** means, at any particular time with respect to a particular Lender and a particular Loan, the ratio of the Individual Commitment of such Lender with respect to such Loan at such time to the aggregate of the Individual Commitments of all Lenders with respect to such Loan at such time.

**“Subsidiary”** means, as to any Person, any other Person in which such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries owns sufficient voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such second Person, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries (unless such partnership or joint venture can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a **“Subsidiary”** is a reference to a Subsidiary of the Borrower.

**“Tax Act”** means the *Income Tax Act* (Canada), as the same may be amended, supplemented or replaced.

**“Taxes”** means all taxes, charges, fees, levies, imposts, rates, dues, premiums and assessments, including all income, sales, use, goods and services, harmonized sales, value added, capital, capital gains, alternative, net worth, transfer, profits, branch, gross receipts, windfall profits, withholding, payroll, employer health, excise, environmental, real property and personal property taxes, and any other taxes, customs duties, fees, assessments, or similar charges in the nature of a tax including federal, state and provincial pension plan contributions, employment/unemployment insurance payments, employer health and workers’ compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties with respect thereto, imposed, levied, collected, withheld or assessed by any Governing Authority (including federal, state, local, territorial, provincial, municipal, supranational and foreign Governing Authority), and whether disputed or not.

**“Total Commitment Amount”** means, at any particular time, the aggregate of the Individual Commitments of all of the Lenders at such time.

**“Tranche One Lenders”** means the Lenders set forth in Schedule A as Lenders under the heading “Tranche One Loan”, and **“Tranche One Lender”** means any of them.

**“Tranche One Loan”** shall have the meaning ascribed in Section 2.1(a).

**“Tranche Two Loan”** shall have the meaning ascribed in Section 2.1(b).

**“Tranche Three Loan”** shall have the meaning ascribed in Section 2.1(c).

**“Transaction Documents”** means the Credit Documents and the Warrants and **“Transaction Document”** means any of the Transaction Documents.

**“U.S.”** and **“United States”** means the United States of America, its territories and possessions, and any State of the United States and the District of Columbia.

**“U.S. Person”** means a (a) U.S. Person as that term is defined in Rule 902 of Regulation S (**“Regulation S”**) promulgated under the U.S. Securities Act, (b) any person purchasing securities on behalf or the account or benefit of any “U.S. Person” or any person in the United States, (c) any person that receives or received an offer of the securities while in the United States, (d) any person that is in the United States at the time the purchaser’s buy order was made or this subscription was executed or delivered. **“U.S. person”** includes but is not limited to (i) any natural person resident in the United States; (ii) any partnership or corporation organized or incorporated under the laws of the United States; (iii) any partnership or corporation organized outside the United States by a U.S. person principally for the purpose of investing in securities not registered under the U.S. Securities Act, unless it is organized or incorporated, and owned, by accredited investors who are not natural persons, estates or trusts; (iv) any estate or trust of which any executor or administrator or trustee is a U.S. person.

**“U.S. Securities Act”** means the United States *Securities Act of 1933*, as amended, and all rules, regulations and orders promulgated thereunder, as amended from time to time.

**“Warrants”** means, collectively, the 32,500,000 common share purchase warrants in the capital of the Borrower, with an exercise price of Cdn\$3.00 per common share and a seven (7) year exercise period from the date of issue, to be issued to each of the Lenders on or before the Closing Date in consideration, *inter alia*, for such Lender’s commitment to fund the Loans in accordance with the terms of this agreement.

**“Working Capital Facility”** has the meaning set out in subparagraph (f) of the definition of “Permitted Debt”.

## **1.2 Other Usages**

References to “this agreement”, “the agreement”, “hereof”, “herein”, “hereto” and like references refer to this Loan Agreement and not to any particular Article, Section or other subdivision of this agreement. References to an “Article”, “Section” or “Schedule” followed by a number or letter refer to the specified Article or Section of or Schedule to this agreement. Except as otherwise specifically provided, references in this agreement or any other Credit Document to any contract, agreement, license, franchise or any other instrument (including the Credit Documents) shall be deemed to include references to the same as varied, supplemented, waived, amended, restated or replaced from time to time in accordance with the terms hereof and thereof. References to “include” and “including” shall be read and construed as being followed by the phrase “without limitation”.



### **1.3 Plural and Singular**

Where the context so requires, words importing the singular number shall include the plural and *vice versa*.

### **1.4 Headings**

The division of this agreement into Articles and Sections and the insertion of headings in this agreement are for convenience of reference only and shall not affect the construction or interpretation of this agreement.

### **1.5 Currency**

Unless otherwise specified herein, all statements of or references to dollar amounts in this agreement shall mean lawful money of the United States.

### **1.6 Applicable Law**

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Any legal action or proceeding with respect to this agreement may be brought in the courts of the Province of Ontario and, by execution and delivery of this agreement, the parties hereby accept for themselves and in respect of their property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts. Nothing herein shall limit the right of any party to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party in any other jurisdiction.

### **1.7 Time of the Essence**

Time shall in all respects be of the essence of this agreement.

### **1.8 Non Banking Days**

Whenever any payment to be made hereunder shall be stated to be due or any action to be taken hereunder shall be stated to be required to be taken on a day other than a Banking Day, such payment shall be made or such action shall be taken on the next succeeding Banking Day and, in the case of the payment of any amount, the extension of time shall be included for the purposes of computation of interest, if any, thereon.

### **1.9 Consents and Approvals**

Whenever the consent or approval of a party hereto is required in a particular circumstance, unless otherwise expressly provided for therein, such consent or approval shall not be unreasonably withheld or delayed by such party.

### **1.10 Schedules**

Each and every one of the schedules which is referred to in this agreement and attached to this agreement shall form a part of this agreement.

### **1.11 Rule of Construction**

The Credit Documents have been negotiated by each party with the benefit of legal representation, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of the Credit Documents.

### **1.12 Accounting Terms – GAAP**

All accounting terms not otherwise defined in this agreement shall have those meanings assigned to them by, and all calculations are to be made and all financial data to be submitted are to be prepared in accordance with, GAAP, except as otherwise expressly provided.

To the extent that the definitions of accounting terms in this agreement or in any certificate or other document made or delivered pursuant to this agreement are inconsistent with the meanings of such terms under GAAP, the definitions in this agreement or in any such certificate or other document shall prevail.

### **1.13 Permitted Encumbrances**

For the avoidance of doubt, any reference to a Permitted Encumbrance in any Credit Document shall not subordinate or postpone, and shall not be interpreted as subordinating or postponing, any Encumbrance created by any Security Document to such Permitted Encumbrance.

## **ARTICLE 2 CREDIT FACILITY**

### **2.1 Establishment of Credit Facility**

Subject to the terms and conditions of this agreement, the Lenders hereby establish in favour of the Borrower a non-revolving term credit facility (the “**Credit Facility**”) in the amount of \$125,000,000 (as such amount may be reduced pursuant to Section 2.3). The Credit Facility shall be advanced to the Borrower in three tranches as follows, subject to and in accordance with the terms of this agreement:

- (a) the first tranche in the amount of \$25,000,000 (the “**Tranche One Loan**”) shall be advanced to the Borrower upon satisfaction of the conditions set forth in Sections 10.1 and 10.2;
- (b) the second tranche in the amount of \$50,000,000 (the “**Tranche Two Loan**”) shall be advanced to the Borrower upon satisfaction of the conditions set forth in Section 10.3; and
- (c) the third tranche in the amount of \$50,000,000 (the “**Tranche Three Loan**”) shall be advanced to the Borrower upon satisfaction of the conditions set forth in Section 10.3.

## **2.2 Lenders' Commitments**

Subject to the terms and conditions of this agreement, each Lender severally agrees to advance its share of the Loans to the Borrower based on their respective Individual Commitments provided that the aggregate amount of Loans advanced by each Lender shall not at any time exceed the aggregate Individual Commitments of such Lender. The Tranche One Loan shall be made available to the Borrower contemporaneously by all of the Tranche One Lenders. The Tranche Two Loan and Tranche Three Loan shall be made available to the Borrower contemporaneously by all of the Lenders. No Lender shall be responsible for any default by any other Lender in its obligation to provide its required share of any Loan nor shall the Individual Commitment of any Lender be increased as a result of any such default of another Lender in advancing its required share of such Loan. The failure of any Lender to make available to the Borrower its required share of any Loan shall not relieve any other Lender of its obligation hereunder to make available to the Borrower its required share of such Loans.

## **2.3 Permanent Reduction of Credit Facility**

The amount of the Credit Facility will be permanently reduced with respect to each repayment or prepayment made in accordance with Sections 7.1 and 7.2, such reduction to be in an amount equal to the amount of the repayment or prepayment and to be at the time of the repayment or prepayment. Upon any repayment or prepayment, Schedule A shall be deemed to be amended to reduce the aggregate amount of the Individual Commitments by the amount of such repayment or prepayment, with the Individual Commitment of each Lender reduced on a pro rata basis.

## **2.4 Termination of Credit Facility**

The Credit Facility shall terminate upon the earliest to occur of:

- (a) the termination of the Credit Facility in accordance with Section 11.1;
- (b) the date, if any, on which the Secured Obligations have been indefeasibly repaid in full pursuant to Sections 7.1(b), 7.1(c) or 7.2; and
- (c) the Maturity Date.

Upon the termination of the Credit Facility, the right of the Borrower to obtain any Loan under the Credit Facility and all of the obligations of the Lenders to advance any Loan under the Credit Facility shall automatically terminate.

# **ARTICLE 3 GENERAL PROVISIONS RELATING TO CREDITS**

## **3.1 Funding of Loans**

Each Tranche One Lender agrees, severally and not jointly and severally, to make available to the Administrative Agent its share of the Tranche One Loan prior to 12:00 p.m. (Toronto time) on the date which is at least one Banking Day prior to the date for the extension of such loan. For the Tranche Two Loan and Tranche Three Loan, each Lender agrees, severally and not jointly and severally, to make available to the Administrative Agent its Individual Commitment of the

principal amount of the Tranche Two Loan and Tranche Three Loan, as applicable, prior to 12:00 p.m. (Toronto time) on the date which is at least five (5) Banking Days prior to the date for the extension of the applicable Loan. The Administrative Agent shall, upon fulfilment by the Borrower of the applicable terms and conditions set forth in Article 10 and as irrevocably authorized and directed in the Drawdown Notice, make the applicable Loan available to the Borrower on the date of the extension of such Loan by crediting the Borrower Account (or causing such account to be credited) provided that the Administrative Agent has received from each applicable Lender, its respective share of the applicable advance.

### **3.2 Defaulting Lender**

If any Defaulting Lender fails to make available to the Administrative Agent any portion of its share of any Loan, the Administrative Agent shall forthwith give notice of such failure by the Defaulting Lender to the Borrower and the other Lenders and such notice shall state that any Lender may make available to the Administrative Agent all or any portion of the Defaulting Lender's share of such Loan, as applicable (but in no way shall any other Lender or the Administrative Agent be obliged to do so), in the place and stead of the Defaulting Lender. If more than one Lender gives notice that it is prepared to make funds available in the place and stead of a Defaulting Lender in such circumstances and the aggregate of the funds which such Lenders (herein collectively called the "**Contributing Lenders**" and individually called the "**Contributing Lender**") are prepared to make available exceeds the amount of the advance which the Defaulting Lender failed to make, then each Contributing Lender shall be deemed to have given notice that it is prepared to make available its Pro Rata Share of such advance based on the Contributing Lenders' relative commitments to advance in such circumstance. If any Contributing Lender makes funds available in the place and stead of a Defaulting Lender in such circumstances, then the Defaulting Lender shall (i) pay to such Contributing Lender, forthwith on demand, (x) any amount advanced to the Borrower on the Defaulting Lender's behalf together with interest thereon at the same rate payable by the Borrower on the funds advanced for each day from the date of advance to the date of payment, against payment by such Contributing Lender making the funds available of all interest received in respect of the Loan from the Borrower, and (y) such Defaulting Lender's Pro Rata Share of the Commitment Fee previously received by it in an amount equal to the amount of the Defaulting Lender's failed commitment for such Loan divided by the Total Commitment Amount (the "**Defaulting Percentage**"), and (ii) transfer to the Contributing Lender, in consideration for payment to the Defaulting Lender of ten dollars (\$10) and no other fee or compensation (and at such Defaulting Lender's sole cost and expense), its Defaulting Percentage of all Warrants previously issued to such Defaulting Lender. In furtherance of the foregoing, each Lender acknowledges and agrees that, until such time as such Lender has funded its respective commitment for the Tranche Two Loan or Tranche Three Loan, as the case may be, such Lender shall not be entitled to sell, assign, transfer or otherwise dispose of (a "**Disposition**") that portion of the Warrants issued to it corresponding to the portion of the Loans not yet funded by such Lender at such time divided by the Total Commitment Amount at such time, and that any such Disposition of such Warrants shall be restricted accordingly. In addition to interest as aforesaid, the Borrower shall pay all amounts which would otherwise have been owing and payable by the Borrower to the Defaulting Lender hereunder (with respect to the amounts advanced by the Contributing Lenders to the Borrower on behalf of the Defaulting Lender) to the Contributing Lenders until such time as the Defaulting Lender pays to the Administrative Agent for the

Contributing Lenders all amounts advanced by the Contributing Lenders on behalf of the Defaulting Lender.

### **3.3 Time and Place of Payments**

Unless otherwise expressly provided herein, the Borrower shall make all payments pursuant to this agreement or pursuant to any document, instrument or agreement delivered pursuant hereto by deposit to the Agent Account before 12:00 p.m. (Toronto time) on the day specified for payment and the Administrative Agent shall be entitled to withdraw the amount of any payment due to the Administrative Agent or the Lenders hereunder from such account on the day specified for payment.

### **3.4 Remittance of Payments**

Forthwith after receipt in the Agent Account by the Administrative Agent of any payment of principal, interest, fees or other amounts for the benefit of the Lenders pursuant to Section 3.3, the Administrative Agent shall, subject to Section 6.2, remit to each Lender, in immediately available funds, such Lender's Pro Rata Share of such payment (except to the extent such payment results from a Loan with respect to which a Defaulting Lender had failed, pursuant to Section 3.2, to make available to the Administrative Agent any portion of its required share of such Loan and where any other Lender has made funds available in the place and stead of such Defaulting Lender).

### **3.5 Evidence of Indebtedness**

The Administrative Agent shall maintain accounts wherein the Administrative Agent shall record the amount of credit outstanding, each payment of principal and interest on account of each Loan. The Administrative Agent's accounts constitute, in the absence of demonstrable error, *prima facie* evidence of the indebtedness of the Borrower pursuant to this agreement.

### **3.6 Notice Periods**

Each Drawdown Notice shall be given to the Administrative Agent prior to 3:00 p.m. (Toronto time) on a date not later than the tenth (10<sup>th</sup>) Banking Day prior to the date of any drawdown (except for the Drawdown Notice for the Tranche One Loan, which may be given one (1) Banking Day prior to the date of that drawdown). Any Prepayment Notice shall be given to the Administrative Agent prior to 3:00 p.m. (Toronto time) on a date no later than the fifth (5<sup>th</sup>) Banking Day prior to the date of any voluntary prepayment.

## **ARTICLE 4 DRAWDOWNS**

### **4.1 Drawdown Notice**

Subject to the provisions of this agreement and provided that all of the applicable conditions precedent set forth in Article 10 have been fulfilled by the Borrower or waived by the Lenders as provided in Section 12.13, the Borrower may, from time to time, obtain any Loan hereunder by giving to the Administrative Agent an irrevocable notice in substantially the form of Schedule D (a "**Drawdown Notice**") in accordance with Section 3.6 and specifying:

- (a) the date of the advance of the Loan; and
- (b) the principal amount of the Loan to be advanced.

## **ARTICLE 5 INTEREST AND FEES**

### **5.1 Interest Rates**

The Borrower shall pay to the Lenders, in accordance with Section 3.3, interest on the outstanding principal amount from time to time of each Loan at the Interest Rate.

### **5.2 Calculation and Payment of Interest**

- (a) Interest on the outstanding principal amount from time to time of each Loan shall accrue from day to day from and including the date on which such Loan is advanced to but excluding the date on which such Loan is repaid in full (both before and after maturity and as well after as before judgment) and shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.
- (b) Accrued interest shall be paid quarterly in arrears on the last Banking Day of December, March, June and September in each year (beginning with March 30, 2020), and on the Maturity Date.
- (c) Prior to the date that the Borrower has raised the Additional Equity, payment of accrued interest shall be paid by the Borrower from its own resources; provided however, the Borrower shall be entitled to use proceeds of the Loan strictly for the purposes of paying accrued interest required to be paid by the Borrower on the last Banking Day of March, 2020 and June, 2020. After the date that the Borrower has raised the Additional Equity, and strictly conditional upon the Borrower raising the Additional Equity, the Borrower shall be entitled to use proceeds of the Loan for the purposes of paying accrued interest on the Loans.

### **5.3 General Interest Rules**

- (a) For the purposes of this agreement, whenever interest is calculated on the basis of a year other than 365 or 366 days, each rate of interest determined pursuant to such calculation expressed as an annual rate for the purposes of the *Interest Act* (Canada) is equivalent to such rate as so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 365 or 366 days, respectively.
- (b) Interest on each Loan and on overdue interest thereon shall be payable in the currency in which such Loan is denominated during the relevant period.
- (c) If the Borrower fails to pay any fee or other amount of any nature payable by it to the Administrative Agent or the Lenders hereunder or under any Credit Document or other document, instrument or agreement delivered pursuant hereto as and when due in accordance with the terms of this agreement, the Borrower shall (without

duplication to payments required under Section 10.4 or 11.4) pay to the Administrative Agent or the Lenders, as the case may be, interest on such overdue amount in the same currency as such overdue amount is payable from and including such due date to but excluding the date of actual payment (as well after as before judgment), at the rate per annum, calculated and, to the extent unpaid, compounded monthly, which is equal to the Interest Rate plus an additional 2% per annum. Such interest on overdue amounts shall become due and be paid on the earlier of (i) the date that demand is made by the Administrative Agent and (ii) the last day of each month.

- (d) If any provision of this agreement would oblige the Borrower to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by Applicable Law or would result in a receipt by that Lender of “interest” at a “criminal rate” (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by Applicable Law or so result in a receipt by that Lender of “interest” at a “criminal rate”, such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:
  - (i) first, by reducing the amount or rate of interest required to be paid to the affected Lender under this Article 5; and
  - (ii) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the affected Lender which would constitute interest for purposes of section 347 of the *Criminal Code* (Canada).

#### **5.4 Commitment Fee**

The Borrower shall pay the Lenders an upfront fee in an aggregate amount equal to 1.00% of the Loans (the “**Commitment Fee**”) on the Closing Date, which Commitment Fee shall be earned and payable to each of the Lenders on the Closing Date on a *pro rata* basis in their respective Pro Rata Shares. In satisfaction of the payment of the Commitment Fee by the Borrower, each Lender may deduct its *pro rata* share of such Commitment Fee from the portion of the Tranche One Loan to be advanced by such Lender to the Borrower.

### **ARTICLE 6 REPLACEMENT OF LENDERS, INDEMNITY AND TAX PROVISIONS**

#### **6.1 Conditions of Credit**

The obtaining or maintaining of Loans hereunder shall be subject to the terms and conditions contained in this Article 6.

## 6.2 Replacement of Lenders

- (a) If any Lender is a Defaulting Lender, or if any Lender is a Non-Consenting Lender, or if the Borrower is required to pay any additional amount to any Lender or any Governing Authority for the account of any Lender pursuant to Section 6.4, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 13.5), all its interests, rights and obligations under this agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (a) if such assignee is not otherwise a Lender, Affiliate of any Lender or any fund managed by a Lender, the Borrower shall have received the prior written consent of the Administrative Agent (acting at the written direction of the Majority Lenders), which consent shall not unreasonably be withheld, (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (c) in the case of any such assignment resulting from payments required to be made pursuant to Section 6.4, such assignment will result in a reduction in such compensation or payments. Upon any such assignment, Schedule A shall be deemed to be amended as required to reflect such assignment.
- (b) If the Borrower is required to pay any additional amount to any Lender or any Governing Authority for the account of any Lender pursuant to Section 6.4, then such Lender shall, following a request from the Borrower use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or an Affiliate of such Lender, if, in the judgment of such Lender, acting reasonably, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 6.4 in the future, and (b) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

## 6.3 Indemnity for Transactional Liability

- (a) The Borrower hereby agrees to indemnify and hold the Agents, each other Finance Party and its Affiliates and each of its and their respective shareholders, officers, directors, employees and agents (collectively, the “**Indemnified Parties**”) free and harmless from and against any and all claims, demands, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and expenses in connection therewith (irrespective of whether such Indemnified Party is a party to the action for which indemnification hereunder is sought), and including, without limitation, reasonable and documented legal fees and out of pocket disbursements and amounts paid in settlement thereof (which settlement, other than any settlement made to avoid criminal sanction to any Finance Party, is approved by the Borrower)



(collectively in this Section 6.3(a), the “**Indemnified Liabilities**”), incurred or suffered by, the Indemnified Parties or any of them as a result of, or arising out of, or relating to (i) the making of the Loans contemplated herein, (ii) any actual or threatened investigation, litigation or other proceeding relating to any Loan extended or proposed to be extended as contemplated herein or (iii) the execution, delivery, performance or enforcement of the Credit Documents and any instrument, document or agreement executed pursuant hereto or thereto, except for any such Indemnified Liabilities claimed by an Indemnified Party that a court of competent jurisdiction determines, by way of final and unappealable judgement, arose on account of such Indemnified Party’s gross negligence or willful misconduct.

- (b) All obligations provided for in this Section 6.3 shall survive indefinitely the permanent repayment of the outstanding credit hereunder and the termination of this agreement. The obligations provided for in this Section 6.3 shall not be reduced or impaired by any investigation made by or on behalf of an Agent or any other Finance Party.
- (c) The Borrower hereby agrees that, for the purposes of effectively allocating the risk of loss placed on the Borrower by this Section 6.3, each Agent and each other Finance Party shall be deemed to be acting as the agent or trustee on behalf of and for the benefit of their respective Affiliates and each of its and their shareholders, officers, directors, employees and agents.
- (d) If, for any reason, the obligations of the Borrower pursuant to this Section 6.3, shall be unenforceable, the Borrower agrees to make the maximum contribution to the payment and satisfaction of each obligation that is permissible under Applicable Law.
- (e) The indemnity under this Section 6.3 shall not apply to any matters specifically dealt with in Sections 6.4, 6.5 or 9.1(f).

#### **6.4 Gross-Up for Taxes**

- (a) Any and all payments or credits made by or on behalf of the Obligors under this agreement or under any other Credit Document (any such payment being hereinafter referred to as a “**Payment**”) to or for the benefit of the Administrative Agent or any other Finance Party shall be made without set-off or counterclaim, and without deduction or withholding for, or on account of, any and all present or future Taxes except to the extent that such deduction or withholding is required by law or the administrative practice of any Governing Authority. If any such Taxes are so required to be deducted or withheld from or in respect of any Payment made to or for the benefit of the Administrative Agent or any other Finance Party, the Borrower shall:
  - (i) promptly notify the Administrative Agent of such requirement;
  - (ii) if the Tax is an Indemnified Tax, pay to the Administrative Agent or other Finance Party, as the case may be, in addition to the Payment to which the

Administrative Agent or other Finance Party is otherwise entitled, such additional amount as is necessary to ensure that the net amount actually received by the Administrative Agent or other Finance Party (net of the full amount of any Indemnified Taxes required to be deducted or withheld from the Payment and any additional amount paid by the Borrower under this Section 6.4(a), whether assessable against the Borrower, the Administrative Agent or such other Finance Party) equals the full amount the Administrative Agent or other Finance Party, as the case may be, would have received had no such deduction or withholding been required;

- (iii) make such deduction or withholding;
  - (iv) pay to the relevant Governing Authority in accordance with Applicable Law the full amount of Taxes required to be deducted or withheld (including the full amount of Taxes required to be deducted or withheld from any additional amount paid by the Borrower to the Administrative Agent or other Finance Party under this Section 6.4(a)) within the time period required by Applicable Law; and
  - (v) as promptly as possible thereafter, forward to the Administrative Agent or other Finance Party, as the case may be, an original official receipt (or a certified copy), or other documentation reasonably acceptable to the Administrative Agent or other Finance Party, evidencing such payment to such Governing Authority.
- (b) In addition, the Borrower agrees to duly and timely pay any and all present or future Other Taxes to the relevant Governing Authority.
- (c) The Borrower hereby indemnifies and holds harmless the Administrative Agent and each other Finance Party for the full amount of Indemnified Taxes and Other Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 6.4), interest, penalties and other liabilities, levied, imposed or assessed against (and whether or not paid directly by) the Administrative Agent or any other Finance Party, as applicable, and for all expenses arising therefrom or with respect thereto, or resulting from or relating to the Borrower's failure to:
- (i) remit to the Administrative Agent or any other Finance Party the documentation referred to in Section 6.4(a)(v); or
  - (ii) pay any Taxes or Other Taxes when due to the relevant Governing Authority (including, without limitation, any Taxes imposed by any Governing Authority on amounts payable under this Section 6.4).

The provisions of this Section 6.4(c) shall apply whether or not such Taxes were correctly or legally imposed, asserted or assessed. The Administrative Agent or any other Finance Party who pays any Indemnified Taxes or Other Taxes, shall promptly notify the Borrower of such payment, provided, however, that failure to provide such notice shall not detract

from, or compromise, the obligations of the Borrower under this Section 6.4. Payment pursuant to this indemnification shall be made within 30 days from the date the Administrative Agent or any other Finance Party, as the case may be, makes written demand therefor accompanied by a certificate as to the amount of such Indemnified Taxes or Other Taxes and the calculation thereof, which calculation shall be conclusive evidence of such amount absent manifest error.

- (d) If the Borrower determines in good faith that a reasonable basis exists for contesting any Taxes for which a payment has been made under this Section 6.4, the relevant Finance Party, as applicable, shall, if so reasonably requested by the Borrower, reasonably cooperate with the Borrower in challenging such Taxes at the Borrower's expense.
- (e) If any Finance Party determines in its sole discretion exercised in good faith that it has received a refund of, or credit for, Taxes for which a payment has been made by the Borrower under this Section 6.4, which refund or credit is attributable to the Taxes giving rise to such payment made by the Borrower, then such Finance Party shall reimburse the Borrower for such amount (if any, without interest, but not exceeding the amount of any payment made under this Section 6.4 that gives rise to such refund or credit), net of any out-of-pocket expenses (including Taxes) of such Finance Party which such Finance Party determines in its absolute discretion exercised in good faith will leave it, after such reimbursement, in no worse after-Tax position than it would have been in if such Taxes had not been exigible. The Borrower, upon the request of the Administrative Agent or any other Finance Party, agrees to repay the Administrative Agent or other Finance Party, as the case may be, any portion of any such refund or credit paid over to the Borrower that the Administrative Agent or other Finance Party, as the case may be, is required to pay to the relevant Governing Authority and agrees to pay any interest, penalties or other charges paid by the Administrative Agent or other Finance Party, as the case may be, as a result of or related to such payment to such Governing Authority. Neither the Administrative Agent nor any other Finance Party shall be under any obligation to arrange its tax affairs in any particular manner so as to claim any refund or credit. None of the Finance Parties shall be obliged to disclose any information regarding its tax affairs or computations to the Borrower or any other Person in connection with this Section 6.4(e) or any other provision of this Section 6.4.
- (f) Any Finance Party that is entitled to an exemption from or reduction of any Indemnified Taxes or Other Taxes with respect to any payments made under this agreement shall, at the sole cost and expense of the Borrower, deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation as the Borrower or the Administrative Agent may reasonably request to permit such payments to be made without withholding or at a reduced rate of withholding. In addition, each Finance Party, if reasonably requested by the Borrower or the Administrative Agent, shall, at the sole cost and expense of the Borrower, deliver such other documentation reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the

Administrative Agent to determine whether or not such Finance Party is subject to withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation shall not be required if, in the Finance Party's sole discretion, acting reasonably, such completion, execution or submission would subject such Finance Party to any unreimbursed cost or expense or could reasonably be expected to materially prejudice, or be materially burdensome to, the legal or commercial position of such Finance Party.

- (g) The provisions of this Section 6.4 shall survive without limitation the termination of the Credit Facility and this agreement and all other Credit Documents and the permanent repayment of the outstanding credit and all other amounts payable hereunder.

## **6.5 Environmental Indemnity**

Each Obligor shall indemnify and hold harmless the Indemnified Parties forthwith on demand by the Administrative Agent from and against any and all claims, suits, actions, damages, costs, losses, liabilities, penalties, obligations, judgements, charges and expenses (including without limitation, all reasonable and documented legal fees and disbursements on a solicitor and his own client basis) of any nature whatsoever, suffered or incurred by the Indemnified Parties or any of them in connection with the Credit Facility, whether as beneficiaries under the Credit Documents, as successors in interest of the Obligors or any of their Subsidiaries, or voluntary transfer in lieu of foreclosure, or otherwise howsoever, with respect to any Environmental Claims relating to the Assets of the Borrower or any of its Subsidiaries arising under any Environmental Laws as a result of the past, present or future operations of the Borrower or any of its Subsidiaries (or any predecessor in interest to the Borrower or its Subsidiaries), or the past, present or future condition of any part of the Assets of the Borrower or its Subsidiaries owned, operated or leased by the Borrower or its Subsidiaries (or any such predecessor in interest), including any liabilities arising as a result of any indemnity covering Environmental Claims given to any Person by the Lenders or an Agent or a Receiver or similar person appointed hereunder or under Applicable Law, in each case, acting reasonably (collectively, the "**Indemnified Third Party**"); but excluding any Environmental Claims or liabilities relating thereto to the extent that such Environmental Claims or liabilities arise by reason of the gross negligence or wilful misconduct of the Indemnified Party or the Indemnified Third Party claiming indemnity hereunder. In the case of indemnities covering Environmental Claims provided by an Agent or Lender in favour of an Indemnified Third Party, such Agent or Lender shall provide the Borrower with prompt notice of such indemnity; provided that, (i) neither of the Agents nor any Lender shall have any liability whatsoever for any failure to provide notice as aforesaid and (ii) the failure to provide such notice to the Borrower shall not in any manner affect the right of any Agent or any Lender to give notice of any claim under this Section 6.5. In all other cases, the Administrative Agent shall provide the Borrower with prompt notice of any indemnity covering Environmental Claims provided in favour of an Indemnified Third Party upon a Responsible Officer of the Administrative Agent becoming aware of such indemnity. The provisions of this Section shall survive the repayment of the Secured Obligations.

## **6.6 Benefit of Indemnities**

For the purposes of providing the benefit of the indemnities contained in Sections 6.3 and 6.5 in favour of the Indemnified Parties and Indemnified Third Parties which are not a party hereto, the applicable Lender or Agent, as the case may be, shall, in addition to contracting on its own behalf, be deemed to be contracting as agent and trustee for and on behalf of such persons.

## **ARTICLE 7 REPAYMENTS AND PREPAYMENTS**

### **7.1 Repayment of Credit Facility**

- (a) **Mandatory Repayment on Maturity.** The Borrower shall repay to the Lenders the outstanding principal amount of the Loans on the Maturity Date, together with all accrued and unpaid interest thereon and all other Secured Obligations owing by the Obligors to and including such date.
- (b) **Mandatory Repayment upon a Change of Control.** Upon the date of occurrence of a Change of Control, the Borrower shall repay to the Lenders the outstanding principal amount of the Loans together with a premium of two percent (2%) on such principal amount, together with all accrued and unpaid interest thereon and all other Secured Obligations owing by the Obligors to and including such date.
- (c) **Mandatory Repayments from the Proceeds of Permitted Distributions.** The Borrower shall, upon the occurrence of any Distribution described in paragraphs (b), (c) and (d) of the definition of Permitted Distributions, immediately repay the Loans, together with all accrued and unpaid interest thereon and all other Secured Obligations owing by the Obligors to and including the date of such Distribution in the amounts stated in such subparagraphs as required to be used to repay such amounts..

### **7.2 Voluntary Prepayments under Credit Facility**

The Borrower shall be entitled to prepay all or any portion of any outstanding Loan at any time, without premium or penalty if such prepayment is made solely from cash proceeds from operations of the Borrower or its Subsidiaries. If any prepayment is made with proceeds of (a) third-party debt funding (which funding must be in an amount sufficient to prepay the Secured Obligations in full if such funding does not constitute Permitted Debt), (b) the issuance of Equity Interests by the Borrower or (c) proceeds from the exercise of warrants, the Borrower shall prepay such amounts, together with (i) a premium of 2.0% on the principal amount prepaid and (ii) without duplication, all accrued and unpaid interest thereon and all other Secured Obligations owing by the Obligors to and including the date of such prepayment. Amounts which are prepaid as aforesaid may not be reborrowed.

### **7.3 Prepayment Notice**

The Borrower shall give written notice to the Administrative Agent of each voluntary prepayment pursuant to Section 7.2. Such notice (a “**Prepayment Notice**”) shall be irrevocable, shall be given in accordance with Section 3.6 and shall specify:

- (a) the amount of the prepayment to be made;
- (b) the date on which the prepayment is to take place; and
- (c) the source of the funds being used for the prepayment.

## **ARTICLE 8**

### **REPRESENTATIONS AND WARRANTIES**

#### **8.1 Representations and Warranties**

To induce the Lenders and the Agents to enter into this agreement and to induce the Lenders to advance the Loans hereunder, the Borrower hereby represents and warrants to the Lenders and the Agents, as of the date of this agreement and, as of the date of each advance of the Loans hereunder, as follows, and acknowledges and confirms that the Lenders and the Agents are relying upon such representations and warranties in entering into this agreement and in advancing the Loans hereunder and that such reliance by the Lenders and the Agents shall not be construed to be lessened or mitigated by any due diligence investigation that may be conducted by the Lenders or an Agent:

- (a) **Status and Power.** Each Obligor is organized, validly existing and is subsisting in good standing under the laws of the jurisdiction governing its existence. Each Obligor is qualified, registered or licensed in all Relevant Jurisdictions. Each Obligor has all requisite capacity, power and authority to own, hold under licence or lease its properties, to carry on its business as now conducted where the nature of its business activities require such qualification, registration or licensing, except to the extent that any failure to do so could not reasonably be expected to have a Material Adverse Effect. Each Obligor has all requisite corporate capacity to enter into, and carry out the transactions contemplated by, each Credit Document to which it is a party.
- (b) **Authorization and Enforcement.** All necessary action, corporate or otherwise, has been taken to authorize the execution, delivery and performance of the Credit Documents by each Obligor which is a party thereto. Each Obligor has duly executed and delivered the Credit Documents to which it is a party. The Credit Documents to which each Obligor is a party are legal, valid and binding obligations of such Obligor, enforceable against such Obligor in accordance with their respective terms, except to the extent that the enforceability thereof may be limited by (i) applicable bankruptcy, insolvency, moratorium, reorganization and other laws of general application limiting the enforcement of creditors' rights generally, (ii) the fact that the courts may deny the granting or enforcement of equitable remedies and (iii) the fact that, pursuant to the *Currency Act* (Canada), no court in Canada may make an order expressed in any currency other than lawful money of Canada.
- (c) **Compliance with Other Instruments.** The execution, delivery and performance by each Obligor of the Credit Documents to which it is a party, and the consummation of the transactions contemplated herein and therein, (i) do not and

will not conflict with, result in (A) any breach or violation of, or constitute a default under, the terms, conditions or provisions of the articles or constituting documents or by laws of, or any shareholder agreement or declaration relating to, such Obligor or of any law, regulation, judgment, decree or order binding on or applicable to such Obligor or to which its property is subject or (B), any material breach or violation of, or constitute a default under, any Material Agreement, Permit or other instrument to which such Obligor is a party or is otherwise bound or by which such Obligor benefits or to which its Assets are subject, (ii) will not create or give rise to any Encumbrances on any Obligor's Assets, except for any Encumbrance created or arising under the Credit Documents and (iii) do not require the consent or approval of any Governing Authority or any other party, other than such consents as have been obtained and are in effect.

- (d) **Financial Statements.** The Financial Statements and the unaudited quarterly consolidated financial statements for the Borrower were prepared in accordance with GAAP and no Material Adverse Change has occurred in the consolidated financial condition or operations of the Borrower since the date of such Financial Statements. The balance sheet contained in each of the Financial Statements and the unaudited quarterly consolidated financial statements for the Borrower fairly presents in all material respects the consolidated financial condition of the Borrower as at the date thereof and the statements of income contained in the Financial Statements or the unaudited quarterly consolidated financial statements for the Borrower, as applicable, fairly presents in all material respects the consolidated results of operations of the Borrower during the fiscal period covered thereby. Other than as disclosed in the Financial Statements or the unaudited quarterly consolidated financial statements for the Borrower (including the notes thereto), there are no obligations (including contingent obligations) of the Borrower or any of its Subsidiaries of a material nature.
- (e) **Litigation, etc.** Save and except as set out in Schedule I (which is up to date as of the Closing Date), there are no actions, suits, investigations, claims or proceedings which have been commenced or, to the knowledge of the Borrower, have been threatened in writing against or affecting any Obligor as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected to have a Material Adverse Effect.
- (f) **Title to Assets.** Each Obligor has good and marketable title to all of its property, assets and undertaking, free from any Encumbrances other than the Permitted Encumbrances.
- (g) **Conduct of Business.** No Obligor is in violation of any Applicable Laws (including, without limitation, Environmental Laws) or Permits in a manner which could reasonably be expected to have a Material Adverse Effect. Subject to Schedule O, each Obligor has all Permits which are required to own its properties and Assets and to operate its businesses where they are currently being operated, except (i) those Permits the absence of which could not reasonably be expected to have a Material Adverse Effect and (ii) those which are not now necessary and

which are expected to be obtained in the ordinary course of business by the time they are necessary.

- (h) **No Default.** No Default or Event of Default exists or would result from the incurring of any Secured Obligations. No Obligor is in default under any Material Agreement or under or with respect to any contractual obligation in any respect which, individually or together with all such defaults, could reasonably be expected to have a Material Adverse Effect, or that would, if such default had occurred after the initial drawdown hereunder, create an Event of Default.
- (i) **Tax Returns and Taxes.** Each Obligor has filed all material tax returns and tax reports required by law to have been filed by it and has paid all material taxes and governmental charges owing or payable by it, except any such taxes or charges which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books.
- (j) **Consents, Approvals, etc.** No consents, approvals, acknowledgements, undertakings, non-disturbance agreements, directions or other documents or instruments which have not already been provided to the Administrative Agent are required to be entered into by any Person (i) to implement the transactions at the times and in the manner contemplated by the Credit Documents, (ii) to make effective the Security created or intended to be created by any Obligor in favour of the Collateral Agent at the times and in the manner required pursuant to the Security Documents or (iii) to ensure the perfection and the intended priority of such Security at the times and in the manner required by the Credit Documents, other than financing statements filed in connection with such Security.
- (k) **Encumbrances.** The Encumbrances granted to the Collateral Agent pursuant to the Security Documents are fully perfected first priority Encumbrances in and to the Secured Assets, subject only to Permitted Encumbrances.
- (l) **French Form of Corporate Name.** As of the Closing Date, there is no French form of the corporate name of any Obligor.
- (m) **Assets Insured.** The Obligors maintain insurance policies and coverage over the Secured Assets with insurers, in amounts, for risks and otherwise on terms (subject to the amount of such deductibles as are reasonable and normal in the circumstances) and against loss or damage as are customary for property in the nature of the Secured Assets and in the case of Persons engaged in the same or similar businesses and similarly situated and there is no material continuing default by the applicable Obligors insured under the provisions of such policies of insurance maintained.
- (n) **Corporate Structure.** As of the Closing Date, Schedule E accurately sets out a corporate structure chart of the Obligors and their Subsidiaries.



- (o) **Employment and Labour Agreements.** Each Obligor is in compliance with the terms and conditions of all collective bargaining agreements (if any) and other labour agreements to which it is subject, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect.
- (p) **Anti-Money Laundering Laws and Anti-Corruption Laws.** Each Obligor is in compliance in all material respects, with the PATRIOT Act, the Bank Secrecy Act and AML Legislation or Anti-Corruption Laws (including the U.S. Foreign Corrupt Practices Act of 1977) to the extent any such Obligor is legally required to comply with such laws. Each Obligor and its Subsidiaries has instituted and maintains in effect policies and procedures reasonably designed to ensure compliance by the Obligor, their Subsidiaries and their respective directors, officers, employees and agents with applicable AML Legislation and Anti-Corruption Laws.
- (q) **No Material Adverse Effect.** Since the date of the most recent Financial Statements of the Borrower furnished to the Administrative Agent, there has been no Material Adverse Change, and no event or circumstance has occurred that could reasonably be expected to result in a Material Adverse Effect.
- (r) **Intellectual Property.** Each Obligor has rights sufficient for it to use all the Intellectual Property reasonably necessary for the conduct of its business. No Obligor has received any notice of any claim of infringement or similar claim or proceeding relating to any of its Intellectual Property which, if determined against such Obligor, could reasonably be expected to have a Material Adverse Effect.
- (s) **Material Agreements and Permits.**
  - (i) Schedule H accurately sets out all Material Agreements and Permits held (subject to Schedule O) by the Obligor as of the Closing Date.
  - (ii) Each Permit is valid, subsisting and in good standing and the Obligor is not in default or breach of any Permit and, to the knowledge of the Obligor, no proceeding is pending or has been threatened in writing by the applicable Governing Authority to revoke or terminate any Permit, except (A) where breach of the foregoing could not reasonably be expected to have a Material Adverse Effect and (b) those Permits which are not now necessary and which are expected to be obtained in the ordinary course of business by the time they are necessary.
  - (iii) The Obligor is not in default or breach of any Material Agreement and is not aware of any default thereunder by any party to any Material Agreement, in each case, where such breach or default could reasonably be expected to have a Material Adverse Effect.
- (t) **Relevant Jurisdictions.** Schedule F identifies in respect of each Obligor as of the Closing Date, the Relevant Jurisdictions including the full address of such Obligor's chief executive office and all places of business and, if different, the address at which the books and records of such Obligor are located.

- (u) **Solvency.** As at the Closing Date and after giving effect to the making of the Loans hereunder on such date, no Obligor is an Insolvent Person.
- (v) **Non-Arm's Length Transactions.** All agreements, arrangements or transactions between any Obligor, on the one hand, and any Affiliate of or other Person not dealing at Arm's Length with such Obligor (other than another Obligor and other than ordinary course arrangements with any employee, management or director of an Obligor), on the other hand, in existence as of the Closing Date are set forth on Schedule J.
- (w) **Debt.** There exists no Debt of an Obligor that is not Permitted Debt.
- (x) **Sanctions.** To the best knowledge of the Borrower after due inquiry, neither it nor any of its Subsidiaries is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC or the United States Department of State or under Canadian Sanctions Law ("**Sanctions Laws**"). No Obligor is a Canada Blocked Person or a Sanctioned Entity. No proceeds of any Loan will be used in any manner that will result in a violation by any Lender of any U.S. sanctions administered by OFAC or the United States Department of State or any Canadian Sanctions Law. Notwithstanding anything in this agreement, nothing in this agreement shall require the Borrower or any of its Subsidiaries that are registered or incorporated under the laws of Canada or of a province thereof, or any officers, directors or employees thereof, to commit an act or omission that contravenes the *Foreign Extraterritorial Measures (United States) Order, 1992*.
- (y) **Environmental.**
  - (i) Each Obligor and its Assets taken as a whole comply in all respects and the businesses, activities and operations of same and the use of such Assets and the processes and undertakings performed thereon comply in all respects with all Environmental Laws except to the extent that failure to so comply could not reasonably be expected to have a Material Adverse Effect; further, no Obligor knows of any facts which result in or constitute or are likely to give rise to non-compliance with any Environmental Laws, which facts or non-compliance could reasonably be expected to have a Material Adverse Effect.
  - (ii) No Obligor has received written notice of non-compliance with any Environmental Laws and, except as previously disclosed to an Agent in writing, has knowledge of any facts which could reasonably be expected to give rise to any notice of non-compliance with any Environmental Laws, which non-compliance has had or could reasonably be expected to have a Material Adverse Effect and no Obligor has received any notice that any Obligor is a potentially responsible party for a federal, provincial, state, regional, municipal or local clean up or corrective action in connection with their respective properties, assets and undertakings where such clean up or corrective action has had or could reasonably be expected to have a Material Adverse Effect.

(z) **Securities Laws and Public Disclosure.**

- (i) The Borrower is in compliance in all material respects with all of its disclosure obligations under the Applicable Securities Laws. Each of the Disclosure Documents filed since January 1, 2017 was, as of the date thereof, in compliance in all material respects with the Applicable Securities Laws and did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. There is no fact or circumstance known to the Borrower which the Borrower has not publicly disclosed which materially adversely affects, or so far as the Borrower can reasonably foresee, could materially adversely affect, the assets, liabilities (contingent or otherwise), affairs, business, capital, condition (financial or otherwise), operations or prospects of the Borrower or materially adversely affects, or so far as the Borrower can reasonably foresee, could materially adversely affect, the ability of the Borrower to perform its obligations under the Credit Facility. The Borrower has not filed any confidential material change reports with applicable securities regulators that have not been made public.
  - (ii) Since December 31, 2018, there has not occurred any material change in the assets, liabilities (absolute, accrued, contingent or otherwise), affairs, business, capital, condition (financial or otherwise), operations or prospects of the Borrower and its subsidiaries taken as a whole, and no event has occurred or circumstance exists which could reasonably be expected to result in such a material change, which has not been publicly disclosed.
  - (iii) The Borrower has not disclosed to any Lender any “material fact” or “material change” (as such terms are defined under the *Securities Act* (Ontario)) with respect to the Borrower that has not been generally disclosed (as such term is used under the *Securities Act* (Ontario)).
  - (iv) No order or ruling preventing, ceasing or suspending trading in any securities of the Borrower or prohibiting the issue and sale of securities by the Borrower has been issued by any Governing Authority and no proceedings or investigations for such purposes have been instituted or, to the best of the knowledge of the Borrower, are pending or threatened by any Governing Authority.
- (aa) **Full Disclosure.** All written information provided to an Agent or a Lender by or on behalf of the Obligors in connection with the Credit Facility is true and correct in all material respects and none of the documentation furnished to an Agent or any Lender by or on behalf the Obligors in connection with the Credit Facility omits or will omit when furnished, a material fact necessary in order to make the statements contained therein, taken as a whole, not materially misleading in light of the circumstances under which such statements are made.

## **8.2 Accredited Investor Status**

Each Lender hereby represents and warrants that it is acquiring the Warrants being issued to it pursuant to the exemption provided by Section 2.3 of National Instrument 45-106 – *Prospectus Exemptions* of the Canadian Securities Administrators (“**NI 45-106**”) as an “accredited investor” and is either acquiring the Warrants as principal for its own account, or is deemed to be acquiring the Warrants as principal for its own account in accordance with applicable securities laws and has completed, executed and delivered the Accredited Investor Status Certificate attached as Schedule K hereto and the information contained therein is true and correct. No Lender was created, and is being used, solely to acquire and hold the Warrants in reliance on an exemption from prospectus requirements under applicable securities laws. In addition, each Lender that is a U.S. Person hereby represents and warrants that it is an “accredited investor” that meets the criteria set forth in Rule 501(a) of Regulation D under the U.S. Securities Act and the Warrants are being issued to a limited number of Lenders that are U.S. Persons pursuant to the exemption from registration provided by Rule 506 of Regulation D under the U.S. Securities Act and exemptions from the qualification requirements under applicable state securities laws and has completed, executed and delivered the U.S. Accredited Investor Certification Letter attached as Schedule L hereto and the information contained therein is true and correct.

## **8.3 Survival of Representations and Warranties**

All of the representations and warranties of the Borrower contained in Section 8.1 and of the Lenders contained in Section 8.2 shall survive the execution and delivery of this agreement and shall continue until the Secured Obligations Termination Date, notwithstanding any investigation made at any time by or on behalf of the Administrative Agent or any of the Lenders.

# **ARTICLE 9 COVENANTS**

## **9.1 Affirmative Covenants**

The Borrower hereby covenants and agrees with the Agents and the Lenders that, until the Secured Obligations Termination Date, or unless waived in writing in accordance with Section 12.13:

- (a) **To Pay Taxes.** Each Obligor shall file all material Tax returns required to be filed by it with the relevant Governing Authority and timely and duly pay or cause to be paid all material Taxes due and payable by it to the relevant Governing Authority, save and except when and so long as the validity of any such Taxes that are in good faith being contested by appropriate proceedings and for which the applicable Obligor is maintaining adequate reserves.
- (b) **Existence and Conduct of Business.** Each Obligor shall maintain its existence in good standing (subject to Section 9.2(i)) and do or cause to be done all things necessary to keep in full force and effect all necessary Permits, rights, licences and qualifications to carry on business in any jurisdiction in which it carries on business, except where such failure could not be reasonably expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, all mineral concessions referred to in Schedule H, as such mineral concessions may be renewed

or extended from time to time (and all additional mineral concessions obtained after the date of this agreement, if any, required for the construction, development or operation of the Camino Rojo Project or Cerro Quema Project) shall be maintained in full force and effect; provided that each Obligor may relinquish any mining concession that is not required for the construction, development or operation of the Camino Rojo Project or the Cerro Quema Project upon one Banking Day's prior written notice to the Administrative Agent of such Obligor's intention to do so.

- (c) **Compliance with Applicable Laws.** Each Obligor shall (i) comply with all Applicable Laws (including compliance with all Environmental Laws), except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect and (ii) comply with all AML Legislation, Anti-Corruption Laws and applicable Sanctions Laws.
- (d) **Reporting.** The Borrower shall deliver to the Administrative Agent for further distribution to the Lenders:
  - (i) during the construction of the Camino Rojo Project, monthly financial reports prepared for management and the board of directors of the Borrower concurrently with delivery of such reports to the management and board of directors of the Borrower;
  - (ii) following completion of the construction of the Camino Rojo Project:
    - (A) within 45 days after the end of each of the first three Fiscal Quarters of the Borrower in each Fiscal Year, unaudited quarterly consolidated financial statements for the Borrower; and
    - (B) within 90 days after the end of each Fiscal Year of the Borrower, annual audited consolidated financial statements for the Borrower, including separated results for the fourth Fiscal Quarter of such Fiscal Year;
  - (iii) concurrently with the delivery of the financial statements described in paragraphs (ii)(A) and (ii)(B), an executed and completed compliance certificate, in the form attached as Schedule B, evidencing compliance with the terms of this agreement;
  - (iv) prompt notice of any Default or Event of Default after the Borrower learns of the occurrence thereof;
  - (v) prompt notice of any (u) Material Adverse Change, (v) material litigation, (w) threatened or pending material environmental investigation or claim, and (x) proceedings or actions related to any Permits; and
  - (vi) prompt notice of (and if requested, a copy of) each Material Agreement (and any amendment thereto) to which any Obligor is a party or becomes a party.

Information required to be delivered pursuant to Section 9.1(d)(ii) shall be deemed to have been delivered on the date on which such information has been posted on the Borrower's website on the Internet, at [www.sedar.com](http://www.sedar.com) or at another website identified by the Borrower by notice to the Administrative Agent and accessible by the Lenders without charge.

- (e) **Use of Proceeds.** The Borrower shall apply all of the proceeds of the Additional Capital to (i) finance the construction and/or the development of the Camino Rojo Project (including early project works, purchasing long-lead items and working capital needs related to the Camino Rojo Project), (ii) *[commercially sensitive information redacted]*, and (iii) fund the normal course general and administrative expenses of the Obligors consistent with previous practice of such Obligors (provided that no proceeds of the Additional Capital shall be used to fund the exploration, development or construction of the Cerro Quema Project). For greater certainty, the aforementioned proceeds of the Additional Capital may not be used in any manner whatsoever in connection with the acquisition, development, construction or operation of, or investment in, any mine, property or business that will not be subject to the Security and a first ranking Encumbrance (subject to Permitted Encumbrances other than any Encumbrance in respect of (x) Debt described in subparagraphs (a) and (b) of the definition of Debt, and (y) Debt incurred in subparagraphs (g) and (h) of the definition of Debt as credit support for the Debt described in subparagraph (x) immediately above) in favour of the Finance Parties.
- (f) **Reimbursement of Expenses.** The Borrower shall (i) reimburse each Agent, on demand, for all reasonable out-of-pocket costs, charges and expenses incurred by or on behalf of such Agent (including, without limitation, the reasonable and documented legal fees, disbursements and other charges of counsel incurred by such Agent) in connection with the negotiation, preparation, execution, delivery, syndication, administration and interpretation of the Credit Documents and the closing documentation ancillary to the completion of the transactions contemplated hereby and thereby (for greater certainty, on or before the Closing Date) and any amendments and waivers hereto (whether or not consummated or entered into), and any search fees, (ii) reimburse each Agent within seven (7) days following demand (or if an Event of Default has occurred and is continuing, on demand), for all reasonable out-of-pocket costs, charges and expenses incurred by or on behalf of such Agent (including the documented fees, disbursements and other charges of counsel) incurred in connection with the ongoing administration of the Credit Documents and (iii) reimburse the Agents and the Lenders, on demand, for all reasonable out-of-pocket costs, charges and expenses incurred by or on behalf of any of them (including the documented fees, disbursements and other charges of counsel) incurred in connection with the enforcement of the Credit Documents.
- (g) **Prompt Payment.** Each Obligor shall duly and punctually pay or cause to be paid to the Lenders and the Agents all amounts payable under this agreement and the other Credit Documents on the due dates and at the places, in the currency and in the manner mentioned herein.

- (h) **Operation of Assets.** Each Obligor shall operate its businesses and properties and conduct all operations in accordance with prudent industry practice in all material respects, and in accordance with Applicable Law and with the terms and provisions of applicable Permits in all material respects, except, in each case, where such the failure to do so could not be reasonably expected to have a Material Adverse Effect.
- (i) **Books and Records.** Each Obligor shall at all times maintain proper records and books of account and therein make true and correct entries of all dealings and transactions relating to its business.
- (j) **Inspection.** Each Obligor shall, upon reasonable notice, permit representatives of, or consultants to, the Collateral Agent and Lenders (as a group), during regular business hours, subject to compliance with applicable health and safety protocols, to inspect any of its Assets, and conduct environmental site assessments and/or compliance audits, as required by the Collateral Agent (at the direction of the Arranging Lender or the Majority Lenders, acting reasonably), examine and report on all insurance maintained by or on behalf of each Obligor, as required by the Collateral Agent (at the direction of the Arranging Lender or the Majority Lenders, acting reasonably) and to examine and take extracts from its books and records, including but not limited to books and records stored in computer data banks and computer software systems, and to discuss its financial condition with its senior officers and (in the presence of such of its representatives as it may designate) its auditors; provided that, prior to an Event of Default that is continuing, all such visits, inspections and inquiries shall occur not more than once in any Fiscal Year.
- (k) **Other Information.** The Borrower shall, with reasonable promptness, provide to the Agents such other books of account, records, reports, and other papers and information relating to any Obligor or relating to the ability of any Obligor to perform its obligations under this agreement or any other Credit Document to which it is a party as, from time to time, may be reasonably requested by an Agent, including information readily available to the Borrower explaining the Borrower's financial statements if such information has been reasonably requested.
- (l) **Insurance.**
  - (i) Each Obligor shall maintain insurance in such types and in such amounts as are customary in the case of Persons engaged in the same or similar business as the Obligors and similarly situated. The Collateral Agent, on behalf of the Finance Parties, shall be designated as a first loss payee on all of the Obligors' property policies, and all of the Obligors' liability insurance policies shall designate the Collateral Agent and "the Lenders from time to time under the Loan Agreement" as additional insured parties.
  - (ii) To the extent that the Administrative Agent receives any proceeds of any property or casualty insurance policy maintained by an Obligor hereunder and:

- (A) the aggregate amount of such proceeds (excluding proceeds which have been either (y) previously reinvested in productive Assets of an Obligor, or (z) committed to be reinvested solely in other productive Assets of an Obligor pursuant to a binding contractual commitment, purchase order or similar binding legal instrument and which are segregated in an account of such Obligor containing only such proceeds (and are not comingled with any other Assets of such Obligor)) is less than \$5,000,000 in the aggregate for all such proceeds at any time then, provided that no Default has occurred and is continuing, the Administrative Agent shall promptly deliver such proceeds to the Borrower or the other applicable Obligor to be applied in the reinvestment of Assets of the Borrower or other Obligor, as applicable; or
  - (B) the aggregate amount of such proceeds (excluding proceeds which have been either (y) previously reinvested in productive Assets of an Obligor, or (z) committed to be reinvested solely in other productive Assets of an Obligor pursuant to a binding contractual commitment, purchase order or similar binding legal instrument and which are segregated in an account of such Obligor containing only such proceeds (and are not comingled with any other Assets of such Obligor)) is equal to or exceeds \$5,000,000 in the aggregate for all such proceeds at any time (“**Restricted Insurance Proceeds**”) then, provided that (I) no Default has occurred and is continuing, (II) such Obligor, as applicable, undertakes to repair, restore, replace or otherwise remedy any damage or destruction of its Assets giving rise to such proceeds, or reinvest the proceeds in other productive Assets, in a manner satisfactorily described in a written plan delivered to the Agent within thirty (30) days of payment of such proceeds by the applicable insurer (a “**Reinvestment Plan**”), and (III) such Reinvestment Plan has been approved by the Majority Lenders (acting reasonably), the Administrative Agent shall release the Restricted Insurance Proceeds to the Borrower or other applicable Obligor for application towards such repair, restoration, replacement or reinvestment in accordance with the Reinvestment Plan and reasonable disbursement procedures to be agreed to by the Borrower or other Obligor as applicable, on the one hand, and the Administrative Agent, on the other hand. To the extent that the Majority Lenders do not approve of the Reinvestment Plan as aforesaid, or no Reinvestment Plan is delivered in the manner and time period described above, the Administrative Agent shall apply the Restricted Insurance Proceeds to permanently reduce the Secured Obligations.
- (iii) For certainty, any insurance proceeds arising from the relevant Secured Assets on or after the occurrence of an Event of Default that is continuing shall be applied in accordance with Section 12.21.



- (m) **Change in Scheduled Information.** If any of the information contained in Schedule E and/or F shall change, the Borrower shall promptly notify the Administrative Agent in writing of the details of such change within 10 days thereof, and Schedule E and/or Schedule F, as the case may be, shall thereupon be deemed to be amended accordingly.
- (n) **Change of Name or Jurisdiction of Incorporation.** If any Obligor changes its corporate name, adopts a French form of name or changes its jurisdiction of organization or the jurisdiction of its location for the purposes of the PPSA or other Applicable Laws applicable to the Security, the Borrower shall promptly notify the Collateral Agent in writing of the details of such change or adoption and Section 8.1(l), as the case may be, shall thereupon be deemed to be amended accordingly.
- (o) **Material Agreements.** Each Obligor shall at all times be and remain in compliance in all material respects with all of its covenants, agreements and obligations in and diligently enforce all its material rights under all Material Agreements to which it is a party, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.
- (p) *[commercially sensitive information redacted]*
- (q) **Working Capital.** The Obligors shall, at all times on and after the advance of the Tranche One Loan, maintain (on an unconsolidated basis) an aggregate minimum net working capital of no less than \$5,000,000; provided that each calculation of net working capital shall exclude the amount of the Minera Peñasquito Indebtedness after such time that the Minera Peñasquito Indebtedness becomes due and payable in accordance with the terms of the agreement governing such indebtedness (as such terms exist on the Closing Date).
- (r) **Additional Guarantors.** With respect to any Person that becomes a Restricted Subsidiary of the Borrower after the Closing Date, the Borrower shall promptly (and in any event within 30 days after such Person becomes a Restricted Subsidiary) (i) pledge and deliver to the Collateral Agent the certificates, if any, representing all of the equity interests of such Restricted Subsidiary, together with undated stock powers or other appropriate instruments of transfer duly executed and delivered by an authorized officer of the holder(s) required pursuant to Applicable Laws in order to grant a first priority Encumbrance over such equity interests in favour of the Collateral Agent, and all intercompany notes owing from such Restricted Subsidiary to any Obligor, together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Obligor, (ii) cause such Restricted Subsidiary (i) to execute (A) a guarantee or such comparable documentation to become a Guarantor and (B) Security Documents as required to grant, in favour of the Collateral Agent, an Encumbrance on the Secured Assets of such Restricted Subsidiary, substantially in the form delivered by the Obligors, and (iii) to take all actions necessary in the opinion of the Administrative Agent (acting on the written instructions of the Majority Lenders), acting reasonably, to cause the Encumbrance created by the applicable Security Document to be perfected to the

extent required by such Security Document in accordance with all Applicable Law, including the filing of financing statements, filings in applicable land registry offices or such other filings and notices in such jurisdictions as may be reasonably requested by the Collateral Agent (acting at the written direction of the Majority Lenders).

(s) **Environmental Covenants.**

(i) Each Obligor shall conduct their business and operations so as to comply at all times with all Environmental Laws if the consequence of a failure to comply, either alone or in connection with any other such non-compliances, could reasonably be expected to have a Material Adverse Effect.

(ii) If any Obligor shall:

(A) receive or give any notice that a violation of any Environmental Law has or may have been committed or is about to be committed by the same, and if such violation has or could reasonably be expected to have a Material Adverse Effect;

(B) receive any notice that a complaint, proceeding or order has been filed or is about to be filed against the same alleging a violation of any Environmental Law, and if such violation could reasonably be expected to have a Material Adverse Effect; or

(C) receive any notice requiring it to take any action in connection with the release of Hazardous Materials into the environment or alleging that it is be liable or responsible for costs associated with a response to or to clean up a Release of Hazardous Materials into the environment,

it shall promptly provide each Agent with a copy of such notice and shall furnish to the each Agent from time to time all reasonable information requested by the Administrative Agent relating to the same.

(t) **Registrations.** The Borrower shall record, file or register, at its own expense, applications for registration or financing statements (and continuation or financing change statements when applicable), and make any other registrations or filings, including where required, the registration of each of the Security Documents (collectively, “**Registrations**”) with respect to the Secured Assets now existing and hereafter created or arising and the creation of Encumbrances therein under and as contemplated by the Security Documents, meeting the requirements of Applicable Law, in such manner and in such jurisdictions as are necessary or desirable to protect, perfect and maintain the protection and perfection of, such Encumbrances, and to deliver a file stamped copy of each such Registration or other evidence of such Registration to the Collateral Agent; provided that, for greater certainty, the initial recordings, filings and registrations in respect of the Security Documents to be executed and delivered as a condition to the advance of the Tranche One Loan,

and the Tranche Two Loan and Tranche Three Loan, as applicable, shall only be required to be made at the times required in accordance with the applicable conditions precedent set out in Sections 10.1 and 10.3, as applicable. If any Obligor (i) changes its corporate name, adopts a French form of name or changes its jurisdiction of organization or the jurisdiction of its location for the purposes of the PPSA or other Applicable Laws applicable to the Security, or (ii) takes any other action, which in any such case would, under the Applicable Law, require the amendment of any Registration recorded, registered and filed in accordance with the provisions hereof, the Borrower shall promptly file such Registrations as are necessary or desirable to continue the perfection of the Encumbrances in the Secured Assets intended under the Security Documents. In furtherance of the foregoing, the Borrower shall promptly notify the Collateral Agent of all Registrations made or required to be made, together with all customary and pertinent details relating to each such Registration and the Security covered thereby. The Collateral Agent may, but shall be under no obligation whatsoever to, record, file or register any Registration, or make any other recording, filing or registration in connection herewith or with the Security Documents.

- (u) **Further Assurances.** Each Obligor shall, at the Borrower's sole expense, execute any and all further documents, financing statements, agreements and instruments, and take all further action that may be required under Applicable Law, or that the Collateral Agent may reasonably request (acting at the written direction of the Majority Lenders), in order to grant, preserve, protect and perfect the validity and intended priority of the Encumbrances created or intended to be created by the Security Documents in the Secured Assets.

## 9.2 Restrictive Covenants

The Borrower hereby covenants and agrees with the Agents and the Lenders that, until the Secured Obligations Termination Date, or unless waived in writing in accordance with Section 12.13:

- (a) **Permitted Debt.** No Obligor shall incur, create, assume or suffer to exist any Debt in excess of *[commercially sensitive information redacted]* in the aggregate for all such Obligors, other than Permitted Debt.
- (b) **Permitted Encumbrances.** No Obligor shall incur, create, or suffer to exist any Encumbrance, other than Permitted Encumbrances.
- (c) **Streams and Royalties.** No Obligor shall grant a stream, royalty or like interest in or related to the Assets of such Obligor which form part of the Camino Rojo Project or the Cerro Quema Project without the prior written consent of the Majority Lenders; provided that, (i) royalties in existence as of the date of this agreement which, for greater certainty, do not include royalties relating to the Cerro Quema Project other than as disclosed on Schedule M, (ii) royalties required by any Governing Authority in Mexico or Panama in connection with the Camino Rojo Project or Cerro Quema Project, and (iii) *[commercially sensitive information redacted]*.

- (d) **Investments.** No Obligor shall make any Investment using proceeds of the Additional Capital, other than Permitted Investments. For greater certainty, except for Investments made by the Borrower in Camino Rojo, no Investments may be made by any Obligor in any Subsidiary other than Investments funded using (x) proceeds of a Permitted Distribution that are not required to be used to repay the Loans, accrued and unpaid interest thereon and other Secured Obligations in accordance with the terms of this agreement, or (y) the proceeds of additional capital raised by the Borrower (in excess of, and excluding, the proceeds of the Additional Equity).
- (e) **Comingling.** The Additional Capital shall not be comingled or otherwise combined with any of the Assets of any Subsidiary of the Borrower that is not an Obligor.
- (f) **Business Activities.** No Obligor shall conduct any business other than (i) the exploration, extraction, processing and sale of base metals, precious metals and by-products derived therefrom, and (ii) such other business that is the same, similar or otherwise related, ancillary or complimentary thereto, in each case which does not detract from the continued construction, development, operation, viability and prospects of the Camino Rojo Project.
- (g) **Distributions.** No Obligor shall make, declare or pay any Distributions without obtaining prior written consent from the Majority Lenders, other than Permitted Distributions.
- (h) **Dispositions.** No Obligor shall sell, transfer, lease or otherwise convey (each, an “**Asset Disposition**”) all or any part of its Assets without the prior written consent of the Majority Lenders, except for (i) the sale, transfer or other disposition in the ordinary course of business of inventory, obsolete, scrap and worn-out material, equipment or other assets (ii) transactions between Obligor permitted pursuant to Section 9.2(m), (iii) any sale, transfer or other disposition of Assets relating to, any sulphide project pursuant to the Option Agreement dated November 7, 2017 among the Borrower, CR Acquisitions Ltd., Camino Rojo and Newmont Goldcorp Corporation (as successor to Goldcorp Inc.) (“**NGC**”) (as the same may be amended, restated, supplemented or otherwise modified from time to time to increase the interest that NGC may acquire in any such sulfide project), (iv) any sale, transfer or other disposition of the Equity Interests of Monitor Gold Corp.; provided that, the consideration received therefor remains subject to the Security, and (v) the sale of other Assets of such Obligor with a fair market value not exceeding \$5,000,000 in the aggregate in any Fiscal Year (each sale in this clause (v), an “**Other Asset Disposition**”) provided that, in the case of such Other Asset Disposition, such Obligor shall (subject to subparagraph (z) below) have the right, within 180 days thereof, to reinvest the proceeds of such Other Asset Disposition in assets useful for the operation of its business provided that (x) no Default has occurred and is continuing, (y) if the proceeds of such Other Asset Disposition arise from the sale of Secured Assets, the assets subject to such reinvestment shall at all times be subject to the Security, and (z) if the proceeds of such Other Asset Disposition are not so reinvested within such 180 day period, the Net Cash Proceeds

of such Other Asset Disposition are immediately applied to repayment of the Loans in accordance with Section 7.2; and (vi) the disposition of the Cerro Quema Project to a Person dealing at Arm's Length with the Obligors (each of (i) through (vi), a "**Permitted Asset Disposition**"); provided further that the Borrower shall, in the case of any proposed sale of the Cerro Quema Project, provide written notice to the Lenders at least 10 Banking Days prior to (x) launching any sales process for the Cerro Quema Project or, (y) if no such sales process is launched, entering into any agreement for the sale of the Cerro Quema Project; and provided further that the Net Cash Proceeds from any Disposition of the Cerro Quema Project shall be applied as a permanent prepayment of the Loans in accordance with Section 7.2.

- (i) **Consolidation, Merger, Amalgamation; Transfer of All Assets.** No Obligor shall (a) consolidate with, or merge or amalgamate with or into, any other Person other than with another Obligor and provided that the Administrative Agent is satisfied, acting reasonably, in each case that (x) the Borrower and each other successor remains liable under all applicable Transaction Documents in accordance with all Applicable Laws, and (y) that all Security remains binding and perfected first priority security under all Applicable Laws (subject to Permitted Encumbrances); or (b) sell, transfer or otherwise dispose of all or substantially all of its Assets in any manner whatsoever.
- (j) **Constituting Documents.** No Obligor shall enter into any transaction to change or amend its articles, by-laws or any other constituting documents to create any new class or classes of shares or equity interests whatsoever.
- (k) **Terrorism Sanctions Regulations.** No Obligor shall (a) become a Blocked Person or a Canada Blocked Person, or (b) have any Investments in or engage in any dealings or transactions with any Blocked Person or Canada Blocked Person except in accordance with Applicable Law and in a manner where such investments, transactions or dealings would not cause the purchase, holding or receipt of any payment or exercise of any rights in respect of the Credit Facility by an Agent or a Lender to be in violation of any laws or regulations administered by OFAC or any similar Governing Authority of any jurisdiction. Notwithstanding the foregoing, nothing in this agreement shall require any Obligor that is registered or incorporated under the laws of Canada or of a province to commit an act or omission that contravenes the *Foreign Extraterritorial Measures (United States) Order, 1992*.
- (l) **Hedging.** The Obligors shall not enter into any Hedging Agreement for speculative purposes.
- (m) **Transactions with Affiliates.** No Obligor shall enter into, directly or indirectly, any transaction or group of related transactions (including without limitation the purchase, lease, sale or exchange of Assets of any kind or the rendering of any service) with any Affiliate of such Obligor on terms materially less favourable to such Obligor than would be obtainable in a comparable Arm's Length transaction in the ordinary course of business; provided that such restriction will not apply to (i) any transaction where such Obligor is the net beneficiary of such arrangement,

- (ii) transaction between or among Obligor and not involving any of their Affiliates and (iii) any Permitted Distribution, Permitted Debt or Permitted Investment.
- (n) **Change of Control.** No Obligor shall enter into, directly or indirectly, any transaction or group of related transactions that results a Change of Control.
- (o) **Subsidiaries.** No Obligor shall have any Restricted Subsidiaries other than those set out on Schedule E, except as permitted in accordance and in compliance with Section 9.1(r).
- (p) **Fiscal Year.** The Borrower shall not change its Fiscal Year end.
- (q) **Additional Equity.** No portion of the Additional Equity shall be redeemed, retracted or repaid, and no payments of any kind shall be made to the holders thereof on account of such Additional Equity, in any amount or in any manner whatsoever while any Secured Obligations are outstanding.
- (r) **Consulting Fees, Etc.** No Obligor shall pay any consulting fee, management fee, bonus or similar fee to its shareholders or Affiliates, or any employee, officer or director thereof, save and except for payments made on terms that would be obtainable in a comparable Arm's Length transaction in the ordinary course of business and consistent with past practice or prudent industry practice.

### **9.3 Performance of Covenants by Administrative Agent**

At any time that an Event of Default has occurred and is continuing, either Agent may, on the instructions of the Majority Lenders and upon notice by such Agent to the Borrower, perform any covenant of the Borrower under this agreement or any other Credit Document which the Borrower fails to perform or cause to be performed and which such Agent is capable of performing, including any covenants the performance of which requires the payment of money, provided that such Agent shall not be obligated to perform any such covenant on behalf of the Borrower and no such performance by such Agent shall require such Agent to further perform the Borrower's covenants or shall operate as a derogation of the rights and remedies of such Agent and the Lenders under this agreement or any other Credit Document or as a waiver of such covenant by such Agent. Any amounts paid by such Agent as aforesaid shall be reimbursed by the Lenders in their Pro Rata Shares and shall be repaid by the Borrower to such Agent on behalf of the Lenders on demand.

## **ARTICLE 10 CONDITIONS PRECEDENT**

### **10.1 Conditions Precedent to Effectiveness of this Agreement**

The effectiveness of this agreement on the Closing Date and the obligations of the applicable Lenders to extend the Tranche One Loan to the Borrower by way of drawdown under the Credit Facility is subject to fulfillment of (or waiver pursuant to Section 12.13) of the following conditions precedent:

- (a) the Administrative Agent's and counsel to the Arranging Lender's receipt of the following:
  - (i) original counterparts of this agreement, executed by a Responsible Officer of the Borrower;
  - (ii) each Security Document described as Tranche One Security Documents on Schedule G, executed by each Obligor party thereto;
  - (iii) a certified copy of the articles of incorporation or amalgamation, and by-laws (or analogous organizational documents) of each Obligor and any shareholders' agreement of each Obligor;
  - (iv) a certificate of status or good standing (or equivalent) for each Obligor issued by the appropriate Governing Authority of the jurisdiction in which each Obligor, as applicable, is incorporated or formed, to the extent available in such jurisdiction;
  - (v) a certified copy of the resolution of the board of directors (or equivalent) of each Obligor executed by a Responsible Officer, authorizing it to execute, deliver and perform its obligations under the Transaction Documents to which it is party or is to be a party on or after the date of this agreement, respectively;
  - (vi) a certificate executed by a Responsible Officer, setting forth specimen signatures of the individuals of each Obligor authorized to sign the Transaction Documents to which it is party or is to be a party on or after the date of this agreement, respectively; and
  - (vii) a certificate of the Borrower, certifying that no Default or Event of Default has occurred and is continuing on the Closing Date or would arise after giving effect to the Transaction Documents executed and delivered on the Closing Date;
- (b) there shall not have occurred any material adverse effect on (i) the business, operations, property, assets, liabilities (actual or contingent) or condition (financial or otherwise) of the Obligors taken as a whole or (ii) metals prices, commodity prices, the economy or financial markets that disproportionately affect the Obligors, taken as a whole;
- (c) the Administrative Agent and the Lenders shall have received all requisite information to identify each Obligor under the applicable "know your client" and AML Legislation delivered at least five 5 Banking Days prior to the Closing Date to enable the Administrative Agent and the Tranche One Lenders to complete such identification;
- (d) the Administrative Agent and counsel to the Arranging Lender shall have received evidence that all insurance required to be maintained pursuant to Section 9.1(l) has

been obtained and is in effect and that each Obligor is in compliance with the requirements of Section 9.1(l);

- (e) the Administrative Agent and counsel to the Arranging Lender shall have received copies of a recent Encumbrance and judgment search in each jurisdiction reasonably requested by counsel to the Arranging Lender with respect to the Obligors and the Security Documents described as Tranche One Security Documents on Schedule G;
- (f) the Arranging Lender shall have completed all business, legal and financial due diligence and be satisfied with the results thereof, in its sole discretion, acting reasonably;
- (g) the Administrative Agent and counsel to the Arranging Lender shall have received, in form and substance satisfactory to the Agents, their counsel and counsel to the Arranging Lender, acting reasonably, a customary opinion of counsel to each of the Obligors (in each applicable jurisdiction), addressed to the Lenders and the Agents, relating, without limitation, to the status and capacity of the Obligors, the due authorization by the Obligors, execution and delivery by the Obligors and the validity and enforceability of the Transaction Documents (save for the Security Documents described as Tranche Two/Three Security Documents on Schedule G), the validity and perfection of the Encumbrances created by the Security Documents, including perfection by control if applicable under relevant Applicable Laws (save for the Security Documents described as Tranche Two/Three Security Documents on Schedule G), non-contravention or breach of constating documents and Applicable Laws, the completion of all required filings and registrations with the applicable Governing Authority in respect of the Transaction Documents (save for the Security Documents described as Tranche Two/Three Security Documents on Schedule G) and the obtaining of all relevant Governing Authority approvals in respect of the Transaction Documents (save for the Security Documents described as Tranche Two/Three Security Documents on Schedule G) and such other customary matters as the Administrative Agent (on instructions of counsel to the Arranging Lender) may reasonably request;
- (h) all fees and expenses of the Agents and the Arranging Lender due and payable hereunder on or prior to Closing, including, to the extent invoiced, all reasonable and documented legal fees and expenses required to be reimbursed or paid by the Borrower hereunder or under any other Credit Document, shall have been paid by the Borrower in full;
- (i) the Borrower shall have provided to the Administrative Agent and the Lenders all other documents provided for herein.
- (j) the representations and warranties of the Borrower and each other Obligor contained in Article 8 or any other Credit Document shall be true and correct in all respects, in each case as of the Closing Date (unless such representations and warranties specifically refer to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date);



- (k) no Default or Event of Default shall exist or would arise immediately upon the Closing Date;
- (l) the Administrative Agent and counsel to the Arranging Lender shall have received, to the satisfaction of the Arranging Lender, evidence that the Borrower has complied with all applicable regulatory (including from the Toronto Stock Exchange), corporate and governmental requirements, including any required consents and approvals in respect of the drawdown of the Tranche One Loan and the issuance of the Warrants, separately as applicable;
- (m) no litigation or similar proceeding enjoining or restricting the Credit Facility shall have occurred and be continuing;
- (n) each of the Lenders has received its Pro Rata Share of the Warrants;
- (o) registrations and filings to perfect the Security created or intended to be created by the Tranche One Security Documents specified on Schedule G under the laws of British Columbia and any other applicable Canadian jurisdiction required to perfect such Security shall have been made, in form and substance satisfactory to counsel for the Arranging Lender (excluding, for greater certainty, any requirement for perfection under the local laws of any non-Canadian jurisdiction) and a notation shall have been made on the shareholder register of each of the Restricted Subsidiaries, if applicable, noting the pledge and granting of security to the Collateral Agent, on behalf of the Lenders, over all of the securities of such Restricted Subsidiaries;
- (p) the physical share certificates representing all of the shares of Camino Rojo and Cerro Quema, duly endorsed in blank, shall have been delivered to the Collateral Agent; and
- (q) the Administrative Agent and counsel to the Arranging Lender shall have received a certificate signed by a Responsible Officer of the Borrower confirming the satisfaction of the conditions set forth in the preceding clauses (j) and (k) as of the Closing Date.

## **10.2 Conditions Precedent to All Loans**

The obligation of the Lenders to make each Loan hereunder is subject to fulfillment of the following conditions precedent on the date each advance of the Loan is extended:

- (a) the Borrower shall have complied with the requirements of Article 4 in respect of the relevant Loan;
- (b) no Default or Event of Default shall have occurred and be continuing or would arise immediately after giving effect to or as a result of the advance of the relevant Loan;
- (c) the representations and warranties of the Borrower contained in all Credit Documents and Article 8 shall be true and correct in all respects on the date such advance of the relevant Loan is made as if such representations and warranties were

made on such date (unless such representations and warranties specifically refer to an earlier date, in which case such representation and warranties shall be true and correct as of such earlier date); and

- (d) the Administrative Agent and counsel to the Arranging Lender shall have received a certificate signed by the Borrower confirming the satisfaction of the conditions set forth in the preceding clauses (b) and (c) as of the date such advance of the relevant Loan is made.

### **10.3 Conditions Precedent to Tranche Two Loan and Tranche Three Loan**

The obligations of the Lenders to advance the Tranche Two Loan or Tranche Three Loan to the Borrower is subject to fulfillment of the following conditions precedent on or prior to the date of the applicable advance:

- (a) the conditions precedent set forth in Section 10.2 shall have been satisfied;
- (b) the Administrative Agent's and counsel to the Arranging Lender's receipt of the following:
  - (i) original counterparts each Credit Document not previously delivered pursuant to Sections 10.1;
  - (ii) if not previously delivered as a condition to the advance of the Tranche Two Loan;
    - (A) to the extent there has been any amendment, change or other modification thereto since the Closing Date, a certified copy of the articles of incorporation or amalgamation, and by-laws (or analogous organizational documents) of each Obligor and any shareholders' agreement of such Obligor;
    - (B) a certificate of status or good standing (or equivalent) for each Obligor issued by the appropriate Governing Authority of the jurisdiction in which such Obligor, as applicable, is incorporated or formed, to the extent available in such jurisdiction;
    - (C) to the extent there has been any amendment, change or other modification thereto since the Closing Date, a certified copy of the resolution of the board of directors (or equivalent) of each Obligor executed by a Responsible Officer authorizing it to execute, deliver and perform its obligations under each such Credit Document required to be delivered pursuant to Section 10.3(b)(i) to which it is party;
    - (D) a certificate executed by a Responsible Officer of each Obligor delivering any Credit Document required to be delivered pursuant to Section 10.3(b)(i) setting forth specimen signatures of the

individuals authorized to sign each such Credit Document to which it is party; and

- (iii) a certificate executed by a Responsible Officer of the Borrower certifying that no Default or Event of Default has occurred and is continuing as of the date of the advance of the Tranche Two Loan or Tranche Three Loan, as applicable, or would arise after giving effect to the advance of such Loan;
- (c) the Administrative Agent and counsel to the Arranging Lender shall have received, in form and substance satisfactory to the Agents, their counsel and counsel to the Arranging Lender, acting reasonably, a customary opinion of counsel to each Obligor (in each applicable jurisdiction), addressed to the Lenders and the Agents, relating, without limitation, to the status and capacity of such Obligors, the due authorization by such Obligors, execution and delivery by such Obligors and the validity and enforceability of such Credit Documents, the validity and perfection of the Encumbrances created by any Security Document not previously delivered pursuant to Section 10.1, including perfection by control if applicable under relevant Applicable Laws, non-contravention or breach of constating documents and Applicable Laws, the completion of all required filings and registrations with the applicable Governing Authority in respect of such Credit Documents and the obtaining of all relevant Governing Authority approvals in respect of such Credit Documents and such other customary matters as the Administrative Agent (on instructions of counsel to the Arranging Lender) may reasonably request;
- (d) there shall not have occurred on or as of the date thereof any fact, circumstance, event, change, occurrence or effect that has, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;
- (e) the Arranging Lender shall have received evidence that the Additional Equity has been received by the Borrower;
- (f) if not previously delivered in connection with the advance of the Tranche Two Loan, the Administrative Agent and counsel to the Arranging Lender shall have received evidence that all insurance required to be maintained pursuant to Section 9.1(l) has been obtained and is in effect and that each Obligor is in compliance with the requirements of Section 9.1(l);
- (g) if not previously delivered in connection with the advance of the Tranche Two Loan, the Administrative Agent and counsel to the Arranging Lender shall have received evidence that the Obligors have, subject to Schedule O, obtained all Permits necessary for the commencement of the construction and development of the Camino Rojo Project, and the Majority Lenders shall be satisfied (acting reasonably) that the Obligors will obtain all necessary Permits for the continued construction, development and operation of the Camino Rojo Project as such Permits are necessary;
- (h) *[commercially sensitive information redacted]*

- (i) if not previously delivered in connection with the advance of the Tranche Two Loan, (x) all Security Documents and related documents and instruments shall have been properly registered, recorded and filed in all places and all necessary notations have been made on the applicable shareholder registers (if not previously made and maintained), (y) lien and other necessary searches shall have been completed in all jurisdictions, and (z) deliveries of all consents, approvals, acknowledgements, undertakings, estoppels and subordination agreements contemplated herein, directions, negotiable documents of title, ownership certificates, share certificates (together with endorsements in blank) and other similar documents shall have been made and maintained, in each case, which in the opinion of the Administrative Agent's counsel, acting at the written direction of counsel to the Arranging Lender (acting reasonably), are required to make effective the Security created or intended to be created by the Security Documents and to ensure the perfection and the intended priority of such Security;
- (j) all fees and expenses of each Agent and the Arranging Lender due and payable prior to the date of advance of the Tranche Two Loan or Tranche Three Loan, as applicable, including, to the extent invoiced, all reasonable and documented legal fees and expenses required to be reimbursed or paid by the Borrower hereunder or under any other Credit Document, shall have been paid by the Borrower in full (or arrangement for payment thereof satisfactory to the applicable Agent shall have been made); and
- (k) in the case of the Tranche Three Loan, the date of the advance of the Tranche Three Loan is within 6 months of the date of advance of the Tranche Two Loan.

#### **10.4 Waiver**

The terms and conditions of Sections 10.1, 10.2 and 10.3 are inserted for the sole benefit of the Administrative Agent and the Lenders, and the Administrative Agent (based on the written approval and direction of the Majority Lenders) may waive any such term or condition in accordance with Section 12.13, in whole or in part, with or without terms or conditions.

### **ARTICLE 11 DEFAULT AND REMEDIES**

#### **11.1 Events of Default**

Upon the occurrence of any one or more of the following events, unless expressly waived in writing in accordance with Section 12.13:

- (a) the breach by the Borrower of Section 7.1;
- (b) the failure of any Obligor to pay any amount due under the Credit Documents (other than amounts due pursuant to Section 7.1) within three Banking Days after payment of such amount becoming due and payable;

- (c) the Borrower shall fail to perform or observe any covenant or condition contained in Section 9.1(d)(iv), Section 9.1(p) or Section 9.1(q) or in any provision of Section 9.2;
- (d) if any representation or warranty made by any Obligor in any Transaction Document or in any other document, agreement or instrument delivered pursuant hereto or thereto or referred to herein or therein or any material information furnished in writing to an Agent or any Lender by any Obligor proves to have been incorrect in any material respect if such representation or warranty is not otherwise qualified by materiality and in any respect if such representation or warranty is already qualified in any way by materiality when made or furnished and, if such breach of a representation and warranty is capable of remedy, such breach continues for twenty (20) days from the earlier of (i) the Administrative Agent (acting at the written direction of the Majority Lenders) or any Lender providing written notice thereof to the Borrower, or (ii) the applicable Obligor becoming aware of the incorrect representation or warranty;
- (e) the breach or failure of due observance or performance by any Obligor of any covenant or provision of any Transaction Document (other than those previously referred to in Section 10.2(a) through (c) inclusive) and such breach or failure continues for twenty (20) days from the earlier of (i) the Administrative Agent (acting at the written direction of the Majority Lenders) or any Lender providing written notice thereof to the Borrower, or (ii) the applicable Obligor becoming aware of such breach or failure;
- (f) if an event of default under any one or more agreements, indentures or instruments under which (i) any Obligor has outstanding Debt in an amount of at least *[commercially sensitive information redacted]* in the aggregate or (ii) under which any other Person has outstanding Debt in an amount *[commercially sensitive information redacted]* in the aggregate which is guaranteed by any Obligor, shall occur (with all applicable grace periods having expired) and be continuing, and, as a result thereof, the repayment of any such Debt is accelerated, or is capable of being accelerated, prior to the stated maturity thereof, or if any such Debt which is payable on demand is not paid on demand;
- (g) if an event of default occurs under any one or more Material Agreements (a “**Defaulted Agreement**”) and (i) in the case of the investor rights agreement between the Borrower and Agnico Eagle Mines Limited, continues for more than ten (10) Banking Days, and (ii) in the case of any other Defaulted Agreement, continues for more than thirty (30) days unless such Defaulted Agreement is replaced with an agreement within such time period (which agreement shall be promptly delivered to the Administrative Agent) (x) between the applicable Obligor and an Arm’s Length Person having substantially the same credit quality and ability to perform its obligations as the counter party to the Defaulted Agreement, and (y) providing the applicable Obligor party thereto with substantially the same commercial terms as contained in the Defaulted Agreement;

- (h) one or more final and non-appealable judgments for payment of money in an aggregate amount in excess of *[commercially sensitive information redacted]* is obtained against any Obligor and such judgment or decree shall not have been and remain released, bonded, discharged, vacated, satisfied, stayed pending appeal or accepted for payment by an insurer within forty-five (45) days from the date of being entered;
- (i) any Assets of any Obligor having an aggregate fair market value of at least *[commercially sensitive information redacted]* in the aggregate for all Obligors are seized or expropriated by any Governing Authority or any other Person and such seizure or expropriation continues in effect and is not released or discharged for more than forty-five (45) or such longer period during which entitlement to the use of such property continues with the applicable Obligor, and such Obligor is contesting the same in good faith and by appropriate proceedings, provided that if the property is removed from the use of such Obligor, or is sold, in the interim, such grace period shall cease to apply;
- (j) any Transaction Document becomes or is determined by a court of competent jurisdiction to be illegal, invalid and unenforceable or any Obligor repudiates any Transaction Document, and such determination or repudiation is not remediated within twenty (20) days of such Obligor becoming aware of such determination or making such repudiation;
- (k) a judgment, decree or order of a court of competent jurisdiction is entered against any Obligor, (i) adjudging it bankrupt or insolvent, or approving a petition seeking its reorganization or winding-up under any Bankruptcy Law; or (ii) appointing a receiver, trustee, liquidator, or other Person with like powers, over all, or substantially all, of the property of it; or (iii) ordering the involuntary winding up or liquidation of the affairs of it, unless, in each case, such Obligor commences forthwith to diligently and in good faith contest such proceeding and such proceeding is dismissed, stayed or discharged within forty-five (45) of the commencement thereof;
- (l) (i) a resolution is passed for the dissolution, winding-up, reorganization, arrangement or liquidation of any Obligor, pursuant to Applicable Law; (ii) any Obligor institutes proceedings to be adjudicated bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it under any Bankruptcy Law; (iii) any Obligor consents to the filing of any petition under any such law or to the appointment of a receiver, or other person with like powers, over all, or substantially all, of any of its property; (iv) any Obligor makes a general assignment for the benefit of creditors, or becomes unable to pay its debts generally as they become due; or (v) any Obligor takes or consents to any action in furtherance of any of the aforesaid purposes; or
- (m) *[commercially sensitive information redacted]*,

the Administrative Agent (with the approval and instructions of the Majority Lenders) may, by notice to the Borrower, terminate the Credit Facility (provided, however, that the Credit Facility

shall automatically terminate, without notice of any kind, upon the occurrence of an event described in clause (k) or (l) above) and the Administrative Agent (with the approval and instructions of the Majority Lenders) may, by the same or further notice to the Borrower, declare all indebtedness and Secured Obligations of the Borrower to the Lenders pursuant to this agreement to be immediately due and payable whereupon all such indebtedness shall immediately become and be due and payable and the Security shall become immediately enforceable, without further demand or other notice of any kind and the Collateral Agent may (with the approval and written instructions of the Majority Lenders) enforce or cause to be enforced the Security, all of which are expressly waived by the Borrower (provided, however, that all such indebtedness and Secured Obligations of the Borrower to the Lenders shall automatically become due and payable, without notice of any kind, upon the occurrence of an event described in clause (k) or (l) above).

For greater certainty, each of the financial measures in the events described in this Section 11.1 shall be without duplication, and the aggregate amount of any such defaults or judgments outstanding at any point shall *[commercially sensitive information redacted]*.

## **11.2 Remedies Cumulative**

The Borrower expressly agrees that the rights and remedies of the Agents and the Lenders under this agreement and the other Credit Documents are cumulative and in addition to and not in substitution for any rights or remedies provided by law. Any single or partial exercise by the any Agent or any Lender of any right or remedy for a default or breach of any term, covenant or condition in this agreement and the other Credit Documents does not waive, alter, affect or prejudice any other right or remedy to which such Agent or such Lender may be lawfully entitled for the same default or breach. Any waiver by the Administrative Agent with the approval of the Majority Lenders or all of the Lenders in accordance with Section 12.13 of the strict observance, performance or compliance with any term, covenant or condition of this agreement and the other Credit Documents is not a waiver of any subsequent default and any indulgence by the Lenders with respect to any failure to strictly observe, perform or comply with any term, covenant or condition of this agreement and the other Credit Documents is not a waiver of the entire term, covenant or condition or any subsequent default. No failure or delay by any Agent or any Lender in exercising any right shall operate as a waiver of such right nor shall any single or partial exercise of any power or right preclude its further exercise or the exercise of any other power or right.

## **11.3 Set-Off**

In addition to any rights now or hereafter granted under Applicable Law, and not by way of limitation of any such rights, each Agent and each Lender is authorized, at any time that an Event of Default has occurred and is continuing without notice to the Borrower or to any other Person, any such notice being expressly waived by the Borrower, to set off, appropriate and apply any and all deposits, matured or unmatured, general or special, and any other indebtedness at any time held by or owing by such Agent or such Lender to or for the credit of or the account of the Borrower (but excluding any indebtedness or other amounts owing by the Administrative Agent or such Lender to or for the credit of or the account of the Borrower in connection with the Warrants) against and on account of the obligations and liabilities of the Borrower which are due and payable to such Agent or such Lender, as the case may be, under the Credit Documents.

#### **11.4 Default Interest**

Upon the occurrence and during the continuance of any Event of Default, the principal amount of each Loan under the Credit Facility together with all accrued and unpaid interest and other unpaid amounts payable hereunder shall bear interest at the Interest Rate plus an additional 2% per annum, shall be due and paid on the earlier of (i) the date that demand is made by the Administrative Agent and (ii) the last date of each month and, to the extent unpaid, shall be compounded monthly.

### **ARTICLE 12 THE AGENTS**

#### **12.1 Appointment and Authorization of Agents**

Each Finance Party hereby appoints and authorizes, and hereby agrees that it will require any assignee of any of its interests in the Credit Documents (other than the holder of a participation in its interests herein or therein) to appoint and authorize each the Agent to take such actions as agent on its behalf and to exercise such powers under the Credit Documents as are delegated to such Agent by such Finance Party by the terms hereof, together with such powers as are reasonably incidental thereto (and no individual Lender shall have any rights to take any such actions or exercise such powers so delegated). Each Agent may perform any of its duties hereunder by or through its agents or employees. Neither Agent shall, nor shall any of its directors, officers, employees or agents, be liable to any of the Finance Parties for any action taken or omitted to be taken by it or them hereunder or thereunder or in connection herewith or therewith, except for its own negligence or wilful misconduct and each Finance Party hereby acknowledges that each Agent is entering into the provisions of this Section 12.1 on its own behalf and as agent and trustee for its directors, officers, employees and agents. The provisions of this Article 12 are solely for the benefit of the Agents, and the Borrower shall not have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” as used herein or in any other Credit Document (or any similar term) with reference to each Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Neither Agent shall, under any circumstances, be construed to be partner or joint venture of any Lender.

#### **12.2 Interest Holders**

Each Agent may treat each Lender set forth in Schedule A or the Person designated in the last notice delivered to it under Section 13.5 as the holder of all of the interests of such Lender under the Credit Documents. Any request, authority or consent of any Lender (i) who, at the time of making such request or giving such authority or consent, is listed as a Lender in Schedule A or designated in the last notice delivered to it under Section 13.5 as the holder of all of the interests of such Lender, and (ii) relating to any matter or circumstance arising prior to the Effective Date (as defined in Schedule C) of such assignment shall, to the extent of the interests of such Lender under the Credit Documents so assigned, be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding rights and interests of such Lender hereunder.



### **12.3 Consultation with Counsel**

Each Agent may consult with legal counsel selected by it as counsel for such Agent and shall not be liable for any action taken or not taken or suffered by it in good faith and in accordance with the advice and opinion of such counsel.

### **12.4 Documents**

Neither Agent shall be under any duty to the Finance Parties to examine, enquire into or pass upon the validity, effectiveness or genuineness of the Credit Documents or any instrument, document or communication furnished pursuant to or in connection with the Credit Documents and each Agent shall, as regards the Finance Parties, be entitled to assume that the same are valid, effective and genuine, have been signed or sent by the proper parties and are what they purport to be.

### **12.5 Responsibility of the Agents**

The duties and obligations of each Agent to the Finance Parties under the Credit Documents are only those expressly set forth herein or as specified in the other Credit Documents. Neither Agent shall have any duty to the Finance Parties to investigate whether a Default or an Event of Default has occurred. Each Agent shall, as regards the Finance Parties, be entitled to assume that no Default or Event of Default has occurred and is continuing unless a Responsible Officer of such Agent has actual knowledge or has been notified by the Borrower of such fact or has been notified by a Finance Party that such Finance Party considers that a Default or Event of Default has occurred and is continuing, such notification to specify in detail the nature thereof. The duties of the Agents shall be mechanical and administrative in nature, and the Agents shall not have, by reason of this Agreement or the other Credit Documents, a fiduciary relationship in respect of any Lender.

### **12.6 Action by the Agents**

Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, statement, certificate, telex, teletype or facsimile message, electronic mail, cablegram, radiogram, order or other documentary teletransmission, telephone message, Internet or intranet website posting or other distribution believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. Each Agent shall be entitled to request written instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Credit Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and each Agent may refrain from acting unless and until it receives those written instructions or that clarification. In the absence of written instructions, each Agent as applicable, may act (or refrain from acting) as it considers to be in the best interests of the Finance Parties. Each Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights which may be vested in it on behalf of the Finance Parties by and under this agreement; provided, however, that neither Agent shall exercise any rights under Section 11.1 or the Security Documents or expressed to be on behalf of or with the approval of the Majority Lenders without the request, consent or instructions of the Majority Lenders. Furthermore, any rights of an Agent expressed to be on behalf of or with the approval of the Majority Lenders shall be exercised by such Agent upon the

written request or instructions of the Majority Lenders. Neither Agent shall incur any liability to the Finance Parties under or in respect of any of the Credit Documents with respect to anything which it may do or refrain from doing in the reasonable exercise of its judgment or which may seem to it to be necessary or desirable in the circumstances, except for its gross negligence or wilful misconduct as finally determined by a court of competent jurisdiction. Each Agent shall in all cases be fully protected in acting or refraining from acting under any of the Credit Documents in accordance with the instructions of the Majority Lenders and any action taken or failure to act pursuant to such instructions shall be binding on all Finance Parties. In respect of any notice by or action taken by either Agent hereunder, the Borrower shall at no time be obliged to enquire as to the right or authority of such Agent to so notify or act.

## **12.7 Notice of Events of Default**

In the event that the Responsible Officer of an Agent shall acquire actual knowledge or shall have been notified of any Default or Event of Default, such Agent shall promptly notify the other Finance Parties and the Agents shall take such action and assert such rights under Section 11.1 and under the other Credit Documents as the Majority Lenders shall request in writing and the Agents shall not be subject to any liability by reason of acting pursuant to any such request. If the Majority Lenders shall fail for five Banking Days after receipt of the notice of any Default or Event of Default to request the Agents to take such action or to assert such rights under any of the Credit Documents in respect of such Default or Event of Default, each Agent may, but shall not be required to, take such action or assert such rights (other than rights under Section 11.1 or under the other Credit Documents and other than giving an express waiver of any Default or any Event of Default) as it deems in its discretion to be advisable for the protection of the Finance Parties except that, if the Majority Lenders have instructed an Agent not to take such action or assert such rights, in no event shall such Agent act contrary to such instructions unless required by law to do so.

## **12.8 Responsibility Disclaimed**

No Agent shall be under any liability or responsibility whatsoever as agent hereunder or under any of the Credit Documents:

- (a) to any Obligor or any other Person as a consequence of any failure or delay in the performance by, or any breach by, any Finance Party or Finance Parties of any of its or their obligations under any of the Credit Documents;
- (b) to any Lender or Lenders as a consequence of any failure or delay in performance by, or any breach by, any Obligor of any of its obligations under any of the Credit Documents;
- (c) as agent hereunder to any Lender or Lenders for any statements, representations or warranties in any of the Credit Documents or in any other documents contemplated hereby or thereby or in any other information provided pursuant to any of the Credit Documents or any other documents contemplated hereby or thereby or for the validity, effectiveness, enforceability or sufficiency of any of the Credit Documents or any other document contemplated hereby or thereby;

- (d) for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services;
- (e) to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion under the Credit Documents. Each Agent may refuse to perform any duty or exercise any right or power unless it receives assurances, indemnity and/or security satisfactory to it against the costs, expenses and liabilities which might be incurred by it in performing such duty or exercising such right or power;
- (f) for any unsuitability, inadequacy, expiration or unfitness of any security interest created hereunder or pursuant to any other security documents pertaining to this matter nor shall it be obligated to make any investigation into, and shall be entitled to assume, the adequacy and fitness of any security interest created hereunder or pursuant to any other security document pertaining to this matter;
- (g) for any error of judgment, or for any act done or step taken or omitted by it in good faith or for any mistake in act or law, or for anything which it may, in good faith, do or refrain from doing in connection herewith, in each case except for its own gross negligence or willful misconduct;
- (h) for any indirect, special, punitive or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, even if such loss or damage was foreseeable or it has been advised of the likelihood of such loss or damage and regardless of the form of action;
- (i) except with respect to its own gross negligence or willful misconduct, to any Finance Party for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the priority of any lien or security interest created or purported to be created under or in connection with, any security document or any other instrument or document furnished pursuant thereto;
- (j) for any liability with respect to monitoring compliance of any other party to the Credit Documents or any other document related hereto or thereto. Neither Agent has any duty to monitor the value or rating of any collateral on an ongoing basis; or
- (k) to segregate any money held by such Agent in trust hereunder or under any Credit Document from other funds except to the extent required by Applicable Law. Such Agent shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing.

## **12.9 Indemnification**

The Lenders agree to indemnify each Agent (to the extent not reimbursed by the Borrower) on a several basis only and in their respective Pro Rata Shares from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any nature whatsoever which may be imposed on, incurred by or asserted against such Agent in any way relating to or arising out of any of the Credit Documents or any other document contemplated hereby or thereby or any action taken or omitted by such Agent under any of the Credit Documents or any document contemplated hereby or thereby, except that no Finance Party shall be liable to either Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the gross negligence (it being acknowledged that ordinary negligence does not necessarily constitute gross negligence) or wilful misconduct of such Agent as finally determined by a court of competent jurisdiction.

## **12.10 Credit Decision**

Each Lender represents and warrants to the Administrative Agent that:

- (a) in making its decision to enter into this agreement and to make its Pro Rata Share of the Credit Facility available to the Borrower, it is independently taking whatever steps it considers necessary to evaluate the financial condition and affairs of the Obligors and that it has made an independent credit judgment without reliance upon any information furnished by the Administrative Agent; and
- (b) so long as any portion of the Credit Facility is being utilized by the Borrower, it will continue to make its own independent evaluation of the financial condition and affairs of the Obligors.

## **12.11 Successor Agent**

Subject to the appointment and acceptance of a successor Agent, as provided below, each Agent may resign at any time by giving 30 days written notice thereof to the Borrower and the Finance Parties. Upon any such resignation, the Majority Lenders, with the prior written consent of the Borrower (which consent shall not be required (x) if the successor Agent is an Affiliate or Subsidiary of the retiring Agent on the date hereof or (y) for so long as an Event of Default has occurred and is continuing), shall have the right to appoint a successor Agent who shall be one of the Lenders unless none of the Lenders wishes to accept such appointment. If no successor Agent shall have been so appointed and shall have accepted such appointment by the time of such resignation, then the retiring Agent may, on behalf of the Finance Parties and with the prior written consent of the Borrower (which consent shall not be required for so long as an Event of Default has occurred and is continuing), petition a court of competent jurisdiction to appoint a successor Agent which shall be a recognized custodian or collateral agent or trustee organized under the laws of Canada or the United States of America which has combined capital and reserves in excess of Cdn. \$50,000,000. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges, duties and obligations of the retiring Agent (in its capacity as such Agent but not in its capacity as a Finance Party) and the retiring Agent shall be discharged from its duties

and obligations hereunder (in its capacity as such Agent but not in its capacity as a Finance Party). After any retiring Agent's resignation hereunder, provisions of this Article 12 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent.

#### **12.12 Delegation by an Agent**

Each Agent shall have the right to delegate any of its duties or obligations hereunder or under any of the Credit Documents to any of its Affiliates upon terms and conditions and subject to regulations as such Agent may think to be in the interests of the Finance Parties as a whole, and may, but is not required to, employ any agents or other assistants (including, counsel, accountants, appraisers, other experts, agencies and advisors) as it may reasonably require for the proper determination and discharge of its duties hereunder, so long as, in each case, such Agent shall not thereby be relieved of such duties or obligations and provided that such Agent will not be responsible for any negligence or misconduct on the part of any delegates, agents or other assistants or for any liability incurred by any Person as a result of not appointing such delegates, agents or other assistants if such Agent has acted honestly and in good faith and exercised that degree of care, diligence and skill that a reasonably prudent administrative or collateral agent would exercise in comparable circumstances.

#### **12.13 Waivers and Amendments**

- (a) Subject to Sections 12.13(b) and (c), any term, covenant or condition of any of the Credit Documents may only be amended with the prior consent of the Borrower and the Majority Lenders or compliance therewith may be waived (either generally or in a particular instance and either retroactively or prospectively) by the Majority Lenders and in any such event the failure to observe, perform or discharge any such covenant, condition or obligation, so amended or waived (whether such amendment is executed or such consent or waiver is given before or after such failure), shall not be construed as a breach of such covenant, condition or obligation or as a Default or Event of Default.
- (b) Notwithstanding Section 12.13(a), without the prior written consent of each Lender, no such amendment or waiver shall directly:
  - (i) increase either the Total Commitment Amount or the Individual Commitment of any Lender under the Credit Facility or extend the Maturity Date;
  - (ii) extend the time for the payment of interest or principal on Loans owing to any Lender, forgive any portion of principal thereof or reduce the stated rate of interest thereon;
  - (iii) amend the requirement of *pro rata* application of all amounts received by the Administrative Agent in respect of the Credit Facility;
  - (iv) change the percentage of the Lenders' requirement to constitute the Majority Lenders or otherwise amend the definition of Majority Lenders,

Finance Parties, Exposure, Secured Obligations, Secured Obligations Termination Date or any definition forming part thereof;

- (v) reduce the stated amount or postpone the date for payment of any fees or other amount to be paid to any Lender pursuant to Article 5;
  - (vi) permit any subordination of the Secured Obligations;
  - (vii) release or discharge (or amend in a manner which would have that effect) the Security Documents, in whole or in part (other than a release or discharge of Security pursuant to Section 12.24); or
  - (viii) alter the terms of this Section 12.13, Section 12.15 or Section 12.16.
- (c) No amendment to or waiver of any provision hereof to the extent it affects the rights or obligations of an Agent shall be effective without its prior written consent.
- (d) Notwithstanding any other provision hereof, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (i) the Individual Commitment of such Defaulting Lender under the Credit Facility may not be increased or extended, (ii) the principal amount of any Loan extended by such Defaulting Lender may not be decreased, (iii) any interest or fees payable to such Defaulting Lender may not be reduced and, (iv) the payment of any principal, interest or fees owing to such Defaulting Lender may not be postponed, in each case without the consent of such Defaulting Lender.

#### **12.14 Determination by an Agent Conclusive and Binding**

Any determination to be made by an Agent on behalf of or with the approval of the Lenders or the Majority Lenders under this agreement or any other Credit Document shall be made by such Agent in good faith and, if so made, shall be binding on all parties, absent manifest error.

#### **12.15 Adjustments among Lenders after Acceleration**

- (a) The Lenders agree that, at any time after all indebtedness of the Borrower to the Lenders pursuant hereto has become immediately due and payable pursuant to Section 11.1 or after the cancellation or termination of the Credit Facility, they will at any time or from time to time upon the request of any Lender through the Administrative Agent purchase portions of the availments made available by the other Lenders which remain outstanding, and make any other adjustments which may be necessary or appropriate, in order that the amounts of the availments made available by the respective Lenders which remain outstanding, as adjusted pursuant to this Section 12.15, will be in the same proportions as their respective Pro Rata Shares thereof with respect to the Credit Facility immediately prior to such acceleration, cancellation or termination.
- (b) The Lenders agree that, at any time after all indebtedness of the Borrower to the Lenders pursuant hereto has become immediately due and payable pursuant to Section 11.1 or after the cancellation or termination of the Credit Facility, the

amount of any repayment made by the Borrower under this agreement, and the amount of any Proceeds of Realization, which are to be applied against amounts owing hereunder as principal, will be so applied in a manner such that to the extent possible, the availments made available by the respective Lenders which remain outstanding, after giving effect to such application, will be in the same proportions as their respective Pro Rata Shares thereof with respect to the Credit Facility immediately prior to such acceleration, cancellation or termination.

- (c) For greater certainty, the Lenders acknowledge and agree that without limiting the generality of the provisions of Section 12.15(a) and (b), such provisions will have application if and whenever any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, compensation, or otherwise) on account of any monies owing or payable by the Borrower to it under the Credit Documents in excess of its Pro Rata Share of payments on account of monies owing by the Borrower to all the Lenders thereunder.
- (d) The Borrower agrees to be bound by and to do all things necessary or appropriate to give effect to any and all purchases and other adjustments made by and between the Lenders pursuant to this Section 12.15, provided that Borrower shall have no additional financial obligations in connection therewith.

#### **12.16 Redistribution of Payment**

If a Lender shall receive payment of a portion of the aggregate amount of principal and interest due to it hereunder which is greater than the proportion received by any other Lender in respect of the aggregate amount of principal and interest due in respect of the Credit Facility (having regard to the respective Individual Commitments of the Lenders for the Credit Facility), the Lender receiving such proportionately greater payment shall purchase a participation (which shall be deemed to have been done simultaneously with receipt of such payment) in that portion of the aggregate outstanding credit of the other Lender or Lenders so that the respective receipts shall be *pro rata* to their respective participation in the credits; provided, however, that if all or part of such proportionately greater payment received by such purchasing Lender shall be recovered from the Borrower, such purchase shall be rescinded and the purchase price paid for such participation shall be returned by such selling Lender or Lenders to the extent of such recovery, but without interest.

#### **12.17 Distribution of Notices**

Except as otherwise expressly provided herein, promptly after receipt by an Agent of any notice or other document which is delivered to the such hereunder on behalf of the Majority Lenders, such Agent shall provide a copy of such notice or other document to each of the Finance Parties.

#### **12.18 Decision to Enforce Security**

Upon the Security becoming enforceable in accordance with its terms, the Collateral Agent shall promptly so notify each of the Finance Parties. Any Lender may thereafter provide the Collateral Agent with a written request to enforce the Security. Forthwith after the receipt of such a request, the Collateral Agent shall seek the instructions of the Majority Lenders as to whether the Security should be enforced and the manner in which the Security should be enforced. In seeking such

instructions, the Collateral Agent shall submit a specific proposal to the Finance Parties. The Collateral Agent shall promptly notify the Finance Parties of all instructions and approvals of the Majority Lenders.

### **12.19 Enforcement**

The Collateral Agent reserves the sole right to enforce, or otherwise deal with, the Security and to deal with the Obligors in connection therewith; provided, however, that the Collateral Agent shall so enforce, or otherwise deal with, the Security as the Majority Lenders shall instruct.

### **12.20 Determination of Exposures**

Concurrent with any request for any approval or instructions of the Majority Lenders and prior to any distribution of Proceeds of Realization to any of the Finance Parties, the Administrative Agent shall request each of the Finance Parties to provide to the Administrative Agent a written calculation of such Finance Party's Exposure as at the applicable date, each such calculation to be certified true and correct by the Finance Party providing same. Such calculation shall be in such detail as may be reasonably requested by the Administrative Agent. Each of the Finance Parties shall so provide such calculation within two Banking Days following the request of the Administrative Agent. Any such calculation provided by a particular Finance Party shall, absent manifest error, constitute *prima facie* evidence of such Finance Party's Exposure at such time. With respect to each determination of the Exposure of the Finance Parties, the Administrative Agent shall promptly notify the Finance Parties. The Exposure of a Lender under any Credit Documents shall be the aggregate amount owing to such Lender thereunder on the applicable date.

### **12.21 Application of Cash Proceeds**

- (a) All Proceeds of Realization which are not Cash Proceeds shall be forthwith delivered to the Administrative Agent and disposed of, or realized upon, by the Administrative Agent in such manner as the Majority Lenders may approve so as to produce Cash Proceeds.
- (b) Subject to the claims, if any, of secured creditors of the Borrower (except the claims of any Finance Party) whose security ranks in priority to the Security, all Cash Proceeds shall be applied and distributed, and the claims of the Finance Parties shall be deemed to have the relative priorities which would result in the Cash Proceeds being applied and distributed, as follows:
  - (i) first, to the payment of all reasonable and documented costs and expenses incurred by each Agent (including, without limitation, all reasonable and documented legal fees and disbursements) in the exercise of all or any of the powers granted to it hereunder or under the other Credit Documents and in payment of all of the remuneration of any Receiver and all reasonable and documented costs and expenses properly incurred by such Receiver (including, without limitation, all reasonable and documented legal fees and disbursements) in the exercise of all or any powers granted to it under the Security Documents;



- (ii) second, in payment of all amounts of money borrowed or advanced by the Collateral Agent or any Receiver pursuant to the Security Documents and any interest thereon;
- (iii) third, to the payment of the Secured Obligations of the Borrower to the Finance Parties *pro rata* in accordance with their relative Exposures; and
- (iv) finally, the balance, if any, to the Borrower or otherwise in accordance with Applicable Law.

#### **12.22 Entering into Contracts**

Each Agent may enter into any Credit Document other than this agreement and any amendment or waiver of this agreement as agent for and on behalf of the Finance Parties.

#### **12.23 Other Security Not Permitted**

None of the Finance Parties shall be entitled to enjoy any Encumbrance with respect to any of the Secured Assets to secure the Secured Obligations other than the Security.

#### **12.24 Discharge of Security**

- (a) To the extent a sale or other disposition of the Secured Assets is permitted pursuant to the provisions hereof, the Lenders hereby authorize the Collateral Agent, at the cost and expense of the Borrower, to execute such discharges and other instruments which are necessary for the purposes of releasing and discharging the Security therein or for the purposes of recording the provisions or effect thereof in any office where any Security Document may be registered or recorded or for the purpose of more fully and effectively carrying out the provisions of this Section 12.24.
- (b) On the Secured Obligations Termination Date, the Lenders hereby authorize the Collateral Agent (or, in the Collateral Agent's reasonable discretion, the Borrower or its counsel), at the expense and request of the Borrower, to execute such agreements and other instruments as may be necessary to release and discharge the Security or record the effects of such release or discharge in any office where the Security Documents may be registered or recorded.

#### **12.25 Survival**

The provisions of this Article 12 and all other provisions of this agreement which are necessary to give effect to each of the provisions of this Article 12 shall survive the permanent repayment in full of the Credit Facility and the termination of all of the commitments of the Lenders in connection therewith until the Secured Obligations Termination Date.

## **ARTICLE 13 MISCELLANEOUS**

### **13.1 Notices**

All notices and other communications provided for herein shall be in writing and shall be (a) personally delivered to an officer or other responsible employee of the addressee; or (b) sent by electronic communication (including email and Internet or intranet websites), at or to the applicable addresses or email addresses, as the case may be, to the extent set out opposite the parties name on the signature page hereof or at or to such address or addresses or email address or addresses as any party hereto may from time to time designate to the Borrower and Administrative Agent.

Any notice or other communication which is personally delivered as aforesaid shall be deemed to have been validly and effectively given on the date of such delivery if such date is a Banking Day and such delivery was received before 5:00 p.m. (Toronto time); otherwise, it shall be deemed to have been validly and effectively given on the Banking Day next following such date of delivery. Any notice or communication which is sent by electronic communication shall be deemed to have been validly and effectively given on the date of transmission if such date is a Banking Day and such transmission was received before 5:00 p.m. (Toronto Time); otherwise, it shall be deemed to have been validly and effectively given on the Banking Day next following such date of transmission.

Any notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing paragraph of notification that such notice or communication is available and identifying the website address therefor.

### **13.2 Severability**

Any provision of this agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

### **13.3 Counterparts**

This agreement may be executed and delivered in one or more original or electronic mail transmission in PDF format counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

### **13.4 Successors and Assigns**

This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.

### **13.5 Assignment**

- (a) Neither the Credit Documents nor the benefit thereof may, without the consent of each Lender, be assigned by the Borrower.

- (b) Notwithstanding any provision in any Credit Document or in the Warrants, no Lender shall be entitled to sell, transfer, assign, grant a participation in, or otherwise dispose of, all or any portion of its rights and obligations under the Credit Documents or in any Warrants issued or to be issued to such Lender, in each case until such time as such Lender has advanced the full amount of its Individual Commitment.
- (c) Subject to Section 13.5(b), with the prior written consent of (i) the Borrower (provided that such consent is not required in circumstances where an Event of Default has occurred and is continuing) and (ii) the Administrative Agent, a Lender may at any time sell all or any part of its rights and obligations under the Credit Documents to one or more Persons (“**Purchasing Lenders**”), provided that such consent of the Borrower is not required if such sale is to one or more other Lenders, to an Affiliate of any Lender or to any fund managed by such Lender, and such assignment would not impose at the time of the assignment on the Borrower any indemnity contained in this agreement. Upon such sale, the Lender shall, to the extent of such sale, be released from its obligations under the Credit Documents arising thereafter and each of the Purchasing Lenders shall become a party to the Credit Documents to the extent of the interest so purchased; provided, however, no Lender that is a Defaulting Lender shall be released from any obligation in respect of damages arising in connection with it being or becoming a Defaulting Lender. Any such assignment by a Lender shall not be effective unless and until such Lender and the Purchasing Lender has executed an instrument substantially in the form of Schedule C whereby the Purchasing Lender has agreed to be bound by the terms of the Credit Documents as a Lender and has agreed to a specific Individual Commitment with respect to the Credit Facility and a specific address and email address for the purpose of notices as provided in Section 13.1, unless and until the requisite consents to such assignment have been obtained and unless and until a copy of a fully executed copy of such instrument has been delivered to the Administrative Agent and the Borrower. Upon any such assignment becoming effective, Schedule A shall be deemed to be amended to include the Purchasing Lender as a Lender with the specific Individual Commitment with respect to the Credit Facility, address and email address as aforesaid and the Individual Commitment of the Lender with respect to the Credit Facility making such assignment shall be deemed to be reduced by the amount of the Individual Commitments of the Purchasing Lender with respect to the Credit Facility.
- (d) The Borrower authorizes the Administrative Agent and the Lenders to disclose to any Purchasing Lender and any prospective Purchasing Lender and authorizes each of the Lenders to disclose to any other Lender any and all financial information in their possession concerning the Obligors and their Subsidiaries which has been delivered to them by or on behalf of the Borrower pursuant to this agreement or which has been delivered to them by or on behalf of the Borrower in connection with their credit evaluation of the Obligors and their Subsidiaries prior to becoming a party to this agreement, so long as any such Purchasing Lender (other than an Affiliate of the assigning Lender or a fund managed by such assigning Lender), in the case of any assignment by a Lender that is subject to a confidentiality agreement

with the Borrower at such time, agrees in writing pursuant to a confidentiality agreement on terms approved by the Borrower not to disclose any confidential, non-public information to any Person other than, on a need to know basis, to its non-brokerage affiliates, employees, accountants or legal counsel on a confidential basis, unless required by Applicable Law.

- (e) In connection with all assignments, payment of a registration and processing fee of \$3,500 shall be made by the assigning Lender to the Administrative Agent (which fee may be waived or reduced in the sole discretion of Administrative Agent). No such registration and processing fee shall be payable in the case of an assignee which is already a Lender.

### 13.6 Entire Agreement

This agreement and the agreements referred to herein and delivered pursuant hereto constitute the entire agreement between the parties hereto and supersede any prior agreements, undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof.

### 13.7 Further Assurances

The Borrower shall, from time to time and at all times hereafter, upon every reasonable request of an Agent, make, do, execute, and deliver, or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be necessary in the opinion of such Agent, acting reasonably, for more effectually implementing and carrying out the true intent and meaning of the Credit Documents or any agreement delivered pursuant hereto and thereto.

### 13.8 Judgment Currency

- (a) If, for the purpose of obtaining or enforcing judgment against the Borrower in any court in any jurisdiction, it becomes necessary to convert into a particular currency (such currency being hereinafter in this Section 13.8 referred to as the “**Judgment Currency**”) an amount due in another currency (such other currency being hereinafter in this Section 13.8 referred to as the “**Indebtedness Currency**”) under this agreement, the conversion shall be made at the rate of exchange prevailing on the Banking Day immediately preceding:
  - (i) the date of actual payment of the amount due, in the case of any proceeding in the courts of the Province of Ontario or in the courts of any other jurisdiction that will give effect to such conversion being made on such date; or
  - (ii) the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 13.8(a)(ii) being hereinafter in this Section 13.8 referred to as the “**Judgment Conversion Date**”).
- (b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 13.8(a)(ii), there is a change in the rate of exchange prevailing between the

Judgment Conversion Date and the date of actual payment of the amount due, the Borrower shall pay to the appropriate judgment creditor or creditors such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Indebtedness Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date.

- (c) Any amount due from the Borrower under the provisions of Section 13.8(b) shall be due to the appropriate judgment creditor or creditors as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this agreement.
- (d) The term “rate of exchange” in this Section 13.8 means the 4:30 p.m. rate of exchange for Canadian interbank transactions applied in converting the Indebtedness Currency into the Judgment Currency published by the Bank of Canada for the day prior to the day in question.

### 13.9 Anti-Money Laundering Legislation

- (a) The Borrower acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” applicable laws, whether within Canada or elsewhere (collectively, including any guidelines or orders thereunder, “**AML Legislation**”), the Lenders and the Agents may be required to obtain, verify and record information regarding the Borrower and its Subsidiaries and their directors, authorized signing officers, direct or indirect shareholders or unitholders or other Persons in control of the Borrower and/or any such Subsidiary, and the transactions contemplated hereby. The Borrower shall promptly.
  - (i) provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or an Agent, or any prospective assignee of a Lender or Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence; and
  - (ii) if requested from time to time, notify the recipient of any such information of any changes thereto.
- (b) If, upon the written request of any Lender, the Administrative Agent has ascertained the identity of the Borrower or any of its Subsidiaries or any authorized signatories of the Borrower or any of its Subsidiaries for the purposes of applicable AML Legislation on such Lender’s behalf, then the Administrative Agent:
  - (i) shall be deemed to have done so as an agent for such Lender, and this agreement shall constitute a “written agreement” in such regard between

such Lender and the Administrative Agent within the meaning of applicable AML Legislation; and

- (ii) shall provide to such Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the foregoing, each of the Lenders agrees that the Administrative Agent has no obligation to ascertain the identity of the Borrower or any of its Subsidiaries or any authorized signatories of the Borrower or any of its Subsidiaries, on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from the Borrower or any of its Subsidiaries or any such authorized signatory in doing so.

### **13.10 No Fiduciary Duty**

Each Lender and its Affiliates (collectively, solely for purposes of this Section 13.10, the “**Lending Parties**”), may have economic interests that conflict with those of the Borrower, its shareholders and/or their Affiliates. The Borrower acknowledges and agrees that (i) the transactions contemplated by the Credit Documents (including the exercise of rights and remedies hereunder and thereunder) (the “**Credit Document Transactions**”) are arm’s-length commercial transactions between the Lenders, on the one hand, and the Borrower, on the other, and (ii) in connection with the Credit Document Transactions and with the process leading thereto, (x) no Lending Party has assumed an advisory or fiduciary responsibility in favour of the Borrower, its shareholders or its Affiliates with respect to the Credit Document Transactions or the process leading thereto (irrespective of whether any Lending Party has advised, is currently advising or will advise the Borrower, its shareholders or its Affiliates on other matters) or any other obligation to the Borrower except the obligations expressly set forth in the Credit Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of the Borrower, its management, shareholders, creditors or any other Person in respect of the Credit Document Transactions except as otherwise expressly set forth in the Credit Documents. The Borrower acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to the Credit Document Transactions and the process leading thereto. The Borrower agrees that it will not claim that any Lending Party has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower, in connection with the Credit Document Transactions or the process leading thereto except as otherwise expressly set forth in the Credit Documents.

### **13.11 Treatment of Certain Information: Confidentiality**

- (a) Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that each of the Agents and the Lenders may disclose the Information (i) to its Affiliates and its Affiliates’ respective directors, officers, employees, agents, advisors and representatives in connection with the administration of this agreement and the preservation, exercise, or enforcement of the rights of the Lenders under this agreement (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent

requested by any Governing Authority purporting to have jurisdiction over it and legally entitled to compel production of such Information (provided that, unless specifically prohibited by Applicable Laws, court order or similar legal process, each Agent and each Lender shall use reasonable efforts to notify the Borrower of any request by any Governmental Authority or representative thereof (other than any such request in connection with an examination of an Agent or a Lender by such Governmental Authority) for disclosure of any such Information prior to disclosure of such Information), (iii) to the extent required by Applicable Laws or by any court order or similar legal process (provided that, unless specifically prohibited by Applicable Laws, court order or similar legal process, each Agent and each Lender shall use reasonable efforts to notify the Borrower of any request by any Governmental Authority or representative thereof (other than any such request in connection with an examination of an Agent or a Lender by such Governmental Authority) for disclosure of any such Information prior to disclosure of such Information), (iv), in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (v) subject to an agreement containing provisions substantially the same as those of this Section 13.11, to any permitted assignee of, or any prospective permitted assignee of, any of its rights or obligations under this agreement, (vi) with the consent of the Borrower, (vii) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 13.11 or (y) becomes available to an Agent or any Lender on a non-confidential basis from a source other than an Obligor. Notwithstanding the provisions of Section 13.11(a)(ii) and (iii), neither of the Agents nor any Lenders shall have any liability whatsoever for any failure to provide notice as referred to therein.

- (b) For purposes of this Section 13.11, "Information" means all information received in connection with this agreement and/or any Obligor or its Subsidiaries or their respective businesses from any Obligor, other than any such information that (i) is available to an Agent or any Lender on a non-confidential basis prior to such receipt or (ii) has become publicly available other than as a result of a breach of this Section 13.11.
- (c) In addition and for greater certainty, any Lenders named therein shall have the right to approve any press releases or presentations prepared by any Obligor in connection with the Credit Facility.

***[The remainder of this page is intentionally left blank.]***

**IN WITNESS WHEREOF** the parties hereto have executed and delivered this agreement on the date first written above.

Address:

Orla Mining Ltd.  
Suite 202 – 595 Howe Street  
Vancouver, BC  
Canada V6C 2T5

Attention Etienne Morin, Chief  
Financial Officer  
Telephone: *[personal information redacted]*  
Email: *[personal information redacted]*

**ORLA MINING LTD.**

Per: *(Signed) “Etienne Morin”*  
Name: Etienne Morin  
Title: Chief Financial Officer

Per: \_\_\_\_\_  
Name:  
Title:



**GLAS USA LLC, as Administrative  
Agent**

Per: (Signed) "Yana Kislenko"  
Name: Yana Kislenko  
Title: Vice President

**GLAS AMERICAS LLC, as Collateral  
Agent**

Per: (Signed) "Yana Kislenko"  
Name: Yana Kislenko  
Title: Vice President

**TRINITY CAPITAL PARTNERS  
CORPORATION, as Arranging Lender  
and Lender**

Per: (Signed) "John Graham"  
Name: John Graham  
Title: Partner

Per: \_\_\_\_\_  
Name:  
Title:

*[Remaining signature pages of each of the Lenders redacted for confidentiality reasons]*

**SCHEDULE A**  
**LENDERS AND INDIVIDUAL COMMITMENTS**

*[Schedule redacted for confidentiality reasons]*

**SCHEDULE B  
COMPLIANCE CERTIFICATE**

TO: GLAS USA LLC, as Administrative Agent

Attention: Administrator – ORLA MINING

Email: *[personal information redacted]*

I, \_\_\_\_\_, the \_\_\_\_\_ of Orla Mining Ltd. (the “**Borrower**”), in such capacity as \_\_\_\_\_, without personal liability, and not in my personal capacity, hereby certify that:

1. I am the duly appointed \_\_\_\_\_ of the Borrower, the borrower named in the loan agreement made as of December 18, 2019 between, *inter alios*, the Borrower, the Lenders named therein, and GLAS USA LLC, as administrative agent (as amended, amended and restated, modified, supplemented or replaced from time to time, the “**Loan Agreement**”) and as such I am providing this certificate for and on behalf of the Borrower pursuant to the Loan Agreement.
2. I am familiar with and have examined the provisions of the Loan Agreement including, without limitation, those of Article 8, Article 9 and Article 11 therein.
3. To the best of my knowledge, information and belief and after due inquiry, no Default or Event of Default has occurred and is continuing as at the date hereof. Without limiting the generality of the foregoing, the Borrower acknowledges and confirms that it is in compliance with Section 9.1(t) of the Loan Agreement concerning Registrations required to be created, maintained, recorded, registered, filed and perfected with respect to the Security in accordance with the provisions of the Credit Documents.
4. All representations and warranties contained in Article 8 are true and correct in all respects on the date hereof as if such representations and warranties were made on such date (other than such representations and warranties which relate to an earlier date, in which case such representations and warranties are true and correct as of such earlier date).
5. Unless the context otherwise requires, capitalized terms in the Loan Agreement which appear herein without definitions shall have the meanings ascribed thereto in the Loan Agreement.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ORLA MINING LTD.**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE C**  
**FORM OF ASSIGNMENT**

DATED \_\_\_\_\_, 20\_\_

Reference is made to the loan agreement, dated as of December 18, 2019 (as such agreement may be amended, supplemented, amended and restated, novated or otherwise modified and in effect from time to time, the “**Loan Agreement**”) between, *inter alia*, Orla Mining Ltd., as borrower, the Lenders named therein and GLAS USA LLC as administrative agent of the Lenders. Terms defined in the Loan Agreement are used herein as therein defined.

\_\_\_\_\_ (the “**Assignor**”) and \_\_\_\_\_ (the “**Assignee**”) agree as follows:

- (a) The Assignor hereby sells and assigns to the Assignee, and the Assignee hereby purchases and assumes from the Assignor, a \_\_\_\_\_% interest in and to all of the Assignor’s rights and obligations under the Loan Agreement as of the Effective Date (as defined below) (including, without limitation, such percentage interest in the Assignor’s Individual Commitment as in effect on the Effective Date, the credit extended by the Assignor under the Credit Facility and outstanding on the Effective Date and the corresponding rights and obligations of the Assignor under all of the Credit Documents).
- (b) The Assignor (i) represents and warrants that as of the date hereof its Individual Commitment is \$ \_\_\_\_\_ (without giving effect to assignments thereof which have not yet become effective, including, but not limited to, the assignment contemplated hereby), and the aggregate outstanding amount of credit extended by it under the Credit Facility is \$ \_\_\_\_\_ (without giving effect to assignments thereof which have not yet become effective, including, but not limited to, the assignment contemplated hereby); (ii) represents and warrants that it is the legal and beneficial owner of the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (iii) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Credit Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Documents or any other instrument or document furnished pursuant thereto; (iv) makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Obligor and its Subsidiaries or the performance or observance by any Obligor of any of its obligations under the Credit Documents or any other instrument or document furnished pursuant thereto; and (v) gives notice to the Administrative Agent and the Borrower of the assignment to the Assignee hereunder.
- (c) The effective date of this Assignment (the “**Effective Date**”) shall be the later of \_\_\_\_\_ and the date on which a copy of a fully executed copy of this Assignment has been delivered to the Borrower and the Administrative Agent in accordance with Section 13.5(b) of the Loan Agreement.
- (d) The Assignee hereby agrees to (i) the specific Individual Commitment of \$ \_\_\_\_\_ with respect to the Credit Facility; (ii) be bound by the terms of the Credit Documents as a

Lender; and (iii) the address and email address set out after its name on the signature page hereof for the purpose of notices as provided in Section 13.1 of the Loan Agreement.

- (e) As of the Effective Date (i) the Assignee shall, in addition to any rights and obligations under the Credit Documents held by it immediately prior to the Effective Date, have the rights and obligations under the Credit Documents that have been assigned to it pursuant to this Assignment, and (ii) the Assignor shall, to the extent provided in this Assignment, relinquish its rights and be released from its obligations under the Credit Documents.
- (f) The Assignor and Assignee shall make all appropriate adjustments in payments under the Credit Documents for periods prior to the Effective Date directly between themselves.
- (g) This Assignment and Acceptance shall be delivered to the Administrative Agent with a processing and recordation fee of \$3,500. **[NTD: To be included if fee has not been waived by the Administrative Agent.]**
- (h) If the Assignee is not a Lender, annexed hereto as Exhibit A is a completed administrative questionnaire, providing such information (including, without limitation, credit contact information and wiring instructions) of the Assignee.
- (i) From and after the Effective Date, the Administrative Agent shall make all payments in respect of the assigned interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date, and to the Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to the Assignee.

This Assignment shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.

**[ASSIGNOR]**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[ASSIGNEE]**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_

Title:

Address

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Attention:

Email:

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**ACKNOWLEDGED** and agreed to as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**GLAS USA LLC, as Administrative Agent**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGED** and agreed to as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.<sup>1</sup>

**ORLA MINING LTD.**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

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<sup>1</sup> Not required if (i) an Event of Default has occurred and is continuing, or (ii) (x) if assignment is to a Lender, an Affiliate of a Lender, or to any fund managed by such Lender, and (y) such assignment would not impose at the time of the assignment on the Borrower any indemnity contained in the Loan Agreement.

**EXHIBIT A**  
**ADMINISTRATIVE QUESTIONNAIRE**

See attached.



## **LSTA/LMA Standard Administrative Details Form**

The Loan Market Association ("LMA") and Loan Syndications & Trading Association ("LSTA") consent to the use and reproduction of this document for the preparation and documentation of agreements relating to transactions or potential transactions in the loan markets.

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# LSTA/LMA Standard Administrative Details Form

ENTITY DETAILS					
<b>Name</b>	<b>[Name]</b>			<b>MEI</b>	<i>Markit Entity ID</i>
<b>GIIN</b>	<i>FATCA Global Intermediary Identification Number (Optional)</i>	<b>CRN</b>	<i>UK Company Registration Number (Optional)</i>	<b>LEI</b>	<i>Legal Entity ID (Optional)</i>
<b>Entity Type</b>	<i>Type of lender. If lender/entity type does not appear in list, you may provide your own value.</i>				
<b>Address (of Lending Office):</b> <i>Registered address of lending office, including country of domicile.</i>			<b>Signature Block:</b> <i>Signature Block as it would appear on settlement documentation. E.g. (for separately managed account): ABC Fund by 123 Asset Management as Advisor</i>		
<b>Fund Manager</b>	<i>Name of fund/asset manager, as would be referenced in the sig. block.</i>			<b>MEI</b>	<i>Markit Entity ID</i>
<b>Lender Parent</b>	<i>Name of legal parent if different from lender entity. (Optional)</i>			<b>MEI</b>	<i>Markit Entity ID</i>

NOTICE/SERVICING MESSAGE DELIVERY INSTRUCTIONS						
<b>Firm</b>	<i>Name of Company</i>	<b>Fax</b>	<i>Fax Number</i>	<b>Email</b>	<i>Email Address</i>	<b>Email Pfd.</b>
<b>Firm</b>	<i>Name of Company</i>	<b>Fax</b>	<i>Fax Number</i>	<b>Email</b>	<i>Email Address</i>	<b>Email Pfd.</b>

STANDARD SETTLEMENT INSTRUCTIONS / WIRING INSTRUCTIONS			
<b>Currency</b>	<i>Applicable Currency.</i>		
<b>Account With Institution</b>	<i>Name of Beneficiary's Bank (usually custodian/trustee)</i>		
<b>SWIFT BIC</b>	<i>8/11-Character BIC of Beneficiary's Bank</i>	<b>ABA #</b>	<i>Routing # or UK Sort Code of Beneficiary's Bank (optional)</i>
<b>Beneficiary Customer</b>	<i>Name of Ultimate Beneficiary (Lender)</i>		
<b>Beneficiary Account #</b>	<i>Account # of Ult. Beneficiary</i>	<b>IBAN</b>	<i>IBAN of Ultimate Beneficiary (opt)</i>
<b>Payment Reference (Remittance Info)</b>	<b><i>Use Standard Wire Reference Format*:</i></b> [Borrower Name] [Facility Name/ Abbr.] [Facility/Deal CUSIP/ISIN] [Payment Purpose(s)] [Transaction Reference ID]		
<b>Special Instructions</b>			
<i>Template above can be used for wire instructions where receiving bank is custodian/trustee, and lender has dedicated account. Additional templates provided at Appendix A.</i>			

SERVICE PROVIDERS & THIRD-PARTY DATA ACCESS							
						<i>Doc. Delivery</i>	<i>Recon &amp; Inventory</i>
<b>Role</b>	Custodian/Trustee	<b>Name</b>	<i>Name of Company</i>	<b>MEI</b>	<i>Markit Entity ID</i>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Role</b>	<i>Relationship to lender.</i>	<b>Name</b>	<i>Name of Company</i>	<b>MEI</b>	<i>Markit entity ID</i>	<input type="checkbox"/>	<input type="checkbox"/>

CREDIT CONTACTS (LEGAL DOCUMENTATION, AMENDMENTS & WAIVERS)					
Name	Name of group or individual.		Select group or Individual	Firm	Firm with which contact is affiliated.
Address: Registered address of contact's office (if different than the lender's office), including country of domicile.					
Phone		Fax		Email	
<input type="checkbox"/> Data Room Access			Pfd. Contact Method	Preferred contact method for inquiries.	
Copy and paste section above to add any additional contacts. <b>It is recommended that at least one of the contacts be a group.</b>					

OPERATIONS CONTACTS (INQUIRIES ONLY)					
Name	Name of group or individual.		Select group or Individual	Firm	Firm with which contact is affiliated.
Address: Registered address of contact's office (if different than the lender's office), including country of domicile.					
Phone		Fax		Email	
<input type="checkbox"/> Settlements <input type="checkbox"/> Servicing <input type="checkbox"/> SSI Verification <input type="checkbox"/> KYC			Pfd. Contact Method	Preferred contact method for inquiries.	
Copy and paste section above to add any additional contacts. <b>It is recommended that at least one of the contacts be a group.</b>					

LETTER OF CREDIT CONTACTS					
Name	Name of group or individual.		Select group or Individual	Firm	Firm with which contact is affiliated.
Address: Registered address of contact's office (if different than the lender's office), including country of domicile.					
Phone		Fax		Email	
<input type="checkbox"/> Settlements <input type="checkbox"/> Servicing <input type="checkbox"/> SSI Verification <input type="checkbox"/> KYC			Pfd. Contact Method	Preferred contact method for inquiries.	
Copy and paste section above to add any additional contacts. <b>It is recommended that at least one of the contacts be a group.</b>					

ADDITIONAL ENTITY DETAILS & KYC/FATCA INFORMATION			
Country of Incorporation	Country of Incorporation of lender	Country of Tax Residence	Country of Residence of lender for tax purposes
EIN	US Employee ID Number	UK Treaty Passport #	UK Treaty Passport #
US Tax Form	Type of tax form used/ attached	UK Treaty Passport Export Date	UK Treaty Passport Expiry Date
Entity Referenced As	Primary Entity		

## Appendix A: Additional Wire Instruction Templates:

Template below can be used for wire instructions where recipient is intermediary bank with nostro account for custodian and the Lender does not have a dedicated account.

Currency	<i>Applicable Currency.</i>		
Correspondent Bank	<i>Name of Receiver's Correspondent Bank (SWIFT 54a)</i>		
SWIFT BIC	<i>8/11-Character SWIFT BIC of Correspondent Bank</i>		
Intermediary Bank	<i>Name of Intermediary Bank (SWIFT 56a)</i>		
SWIFT BIC	<i>8/11-Character BIC of Intermediary Bank</i>	ABA #	<i>ABA/Routing # or UK Sort Code of Intermediary Bank (optional)</i>
Account With Institution	<i>Name of Beneficiary's Bank – usually custodian (SWIFT 57a)</i>		
SWIFT BIC	<i>8/11-Character SWIFT BIC of Beneficiary's Bank</i>	IBAN	<i>IBAN of Beneficiary's Bank at Intermediary</i>
Beneficiary Customer	<i>Name of Ultimate Beneficiary (Lender) (SWIFT 59a)</i>		
Beneficiary Account #	<i>Account #/Code of Ult. Beneficiary</i>		
Payment Reference (Remittance Info)	<b><i>Use Standard Wire Reference Format*:</i></b> [Borrower Name] [Facility Name/ Abbr.] [Facility/Deal CUSIP/ISIN] [Payment Purpose(s)] [Transaction Reference ID]		
Special Instructions			

**SCHEDULE D  
FORM OF DRAWDOWN NOTICE**

**TO:** GLAS USA LLC AND GLAS AMERICAS LLC  
3 Second Street, Suite 206  
Jersey City, NJ 07311  
Fax: *[personal information redacted]*,

Attention: Administrator – ORLA MINING  
Telefax: *[personal information redacted]*,  
Email: *[personal information redacted]*,

**RE:** Loan Agreement, dated as of December 18, 2019 (as such agreement may be amended, supplemented, amended and restated, novated or otherwise modified and in effect from time to time, the “**Loan Agreement**”) between, *inter alia*, Orla Mining Ltd., as borrower, the Lenders named therein and GLAS USA LLC, as administrative agent of the Lenders

Pursuant to the terms of the Loan Agreement, the undersigned hereby irrevocably notifies you that it wishes to draw down under the Credit Facility on **[date of drawdown]** the amount of \$●.

You are hereby irrevocably authorized and directed to pay the proceeds of the drawdown as follows:

**[To be added]**

and this shall be your good and sufficient authority for so doing.

All capitalized terms defined in the Loan Agreement and used herein shall have the meanings ascribed thereto in the Loan Agreement.

**DATED** the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ORLA MINING LTD.**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Authorized Signatory

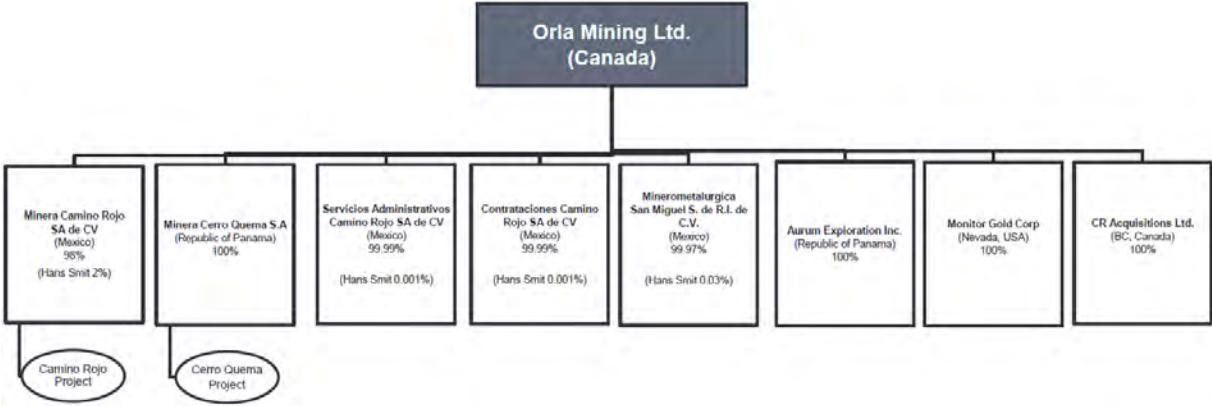
Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Authorized Signatory

# SCHEDULE E

## CORPORATE STRUCTURE





**SCHEDULE F  
RELEVANT JURISDICTIONS**

<b>Obligor</b>	<b>Jurisdiction of Formation</b>	<b>Address of Chief Executive Office</b>	<b>Address(es) where Books and Records are located</b>	<b>Place(s) of Business</b>	<b>Jurisdictions(s) where Tangible Assets are held</b>
Orla Mining Ltd.	Canada	202 – 595 Howe Street Vancouver, BC V6C 2T5	202 – 595 Howe Street Vancouver, BC V6C 2T5	202 – 595 Howe Street Vancouver, BC V6C 2T5	British Columbia
Minera Cerro Quema, S.A.	Panama	El Vigia, Luis Rios y Octava el Vigia, 5438, village of San Juan Bautista, district of Chitré, province of Herrera, Rep. of Panama	MMG Tower, 23rd Floor Ave. Paseo del Mar Costa del Este Panama City Rep. of Panama  El Vigia, Luis Rios y Octava el Vigia, 5438, village of San Juan Bautista, district of Chitré, province of Herrera, Rep. of Panama	El Vigia, Luis Rios y Octava el Vigia, 5438, village of San Juan Bautista, district of Chitré, province of Herrera, Rep. of Panama	Panama
Minera Camino Rojo, S.A de C.V.	Mexico	Avenida Universidad #250 Interior 1-C, Colonia Militar, Zacatecas, Zacatecas. C.P. 98065	Calle Roma No. 1205 Colonia Vista Hermosa Chihuahua, Chih., C.P. 31205	Calle 11 de Agosto # 7 Colonia Centro, Mazapil Zacatecas 98230  Avenida Universidad #250 Interior 1-C, Colonia Militar, Zacatecas,	Mexico

				Zacatecas. C.P. 98065	
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## **SCHEDULE G SECURITY DOCUMENTS**

### **A. Tranche One Security Documents (governed by Ontario law)**

1. General Security Agreement executed by the Borrower in favour of the Collateral Agent.
2. Pledge Agreement granted by Hans Smit, as minority shareholder of Camino Rojo, in respect of 1 Series A share of Camino Rojo (such share being the “**CR Minority Share**”)
3. Guarantee of Camino Rojo in favour of the Collateral Agent.
4. Guarantee of Cerro Quema in favour of the Collateral Agent.
5. General Security Agreement executed by Camino Rojo in favour of the Collateral Agent.
6. General Security Agreement executed by Cerro Quema in favour of the Collateral Agent.
7. Subordination agreements granted in favour of the Collateral Agent by each of:
  - (a) the Borrower;
  - (b) Camino Rojo; and
  - (c) Cerro Quema.

### **B. Tranche Two/Three Security Documents**

1. Guarantee from Camino Rojo in favour of the Collateral Agent. (Mexican law).
2. Mexican law security agreement/non-possessory pledge granted by Camino Rojo (including granting security over the mining concessions) in respect of all assets of Camino Rojo not subject to the trust agreement in item 6 below.
3. Mortgage over movables (re: personal property) granted by Cerro Quema.
4. Mexican law trust agreement granted by the minority shareholder of Camino Rojo in respect of the CR Minority Share.
5. Panamanian law pledge agreement granted by the Borrower in respect of the shares of Cerro Quema.
6. Mexican law trust agreement granted by the Borrower and Camino Rojo in respect of (a) all shares of Camino Rojo other than the CR Minority Share and (b) equipment and machinery of Camino Rojo.

7. If required under Mexican law, Mexican law subordination agreements granted by each of:
- (a) the Borrower (if necessary);
  - (b) Camino Rojo; and
  - (c) Cerro Quema.

## SCHEDULE H MATERIAL AGREEMENTS AND PERMITS

### Material Agreements

1. *[commercially sensitive information redacted]*
2. Agreement for Engineering, Procurement, and Construction Management Services, between Camino Rojo and M3 MEXICANA S de RL de CV, once the same becomes effective.
3. Investor Rights Agreement, dated October 18, 2019, between the Borrower and Agnico Eagle Mines Limited.
4. Asset Purchase Agreement re: the Camino Rojo Project, dated June 20, 2017, among the Borrower, Camino Rojo, Minera Peñasquito, S.A. de C.V., and Newmont Goldcorp Corporation (as successor to Goldcorp Inc.).
5. Assignment Agreement over Mining Concessions, dated June 20, 2017, between Camino Rojo and Minera Peñasquito, S.A. de C.V.
6. *[commercially sensitive information redacted]*,
7. *[commercially sensitive information redacted]*,
8. *[commercially sensitive information redacted]*,

### Permits

#### *Camino Rojo Project*

1. Cambio de Uso de Suelo (Land Use Change) issued by the Secretaria del Medio Ambiente y Recursos Naturales (Secretary of the Environment and Natural Resources) (“SEMARNAT”), once the same is obtained.
2. Manifiesto de Impacto Ambiental (Environmental Impact Statement) issued by SEMARNAT, once the same is obtained.
3. The following water concessions granted by the Comisión Nacional del Agua (CONAGUA):

Title of Concession	Volume of Concession
07ZAC154052/37IMDL13	3,695,900.00
07ZAC155063/37fMDL14	6,000,000.00

4. The following mineral concessions:

**Table 4-1**  
**Listing of Mining Concessions**

Concession Name	File Number (Expediente)	Title Number	Validity		Area
			Title Issued Date	Expiration Date	Hectares
Camino Rojo	093/28336	230914	06/11/2007	05/11/2057	8,340.7905
Camino Rojo 1	093/28349	231922	16/05/2008	15/05/2058	88,897.3255
Camino Rojo 1 Frac. A	093/28349	231923	16/05/2008	15/05/2058	96.8888
Camino Rojo 3	093/28425	232014	03/06/2008	02/06/2058	30,050.0000
Camino Rojo 2	093/28417	232076	10/06/2008	09/06/2058	17,847.4398
Camino Rojo 4	093/28465	232644	02/10/2008	01/10/2058	9,701.0000
Camino Rojo 5	093/28534	232647	02/10/2008	01/10/2058	33,018.4718

### *Cerro Quema Project*

The following three contracts between the Republic of Panama and Cerro Quema, which grant exclusive rights for mineral extraction:

- Contract No. 19, dated February 26, 1997, for the exclusive rights for the extraction of Class IV metallic minerals (gold and silver) for 5,000 ha and effective for 20 years, identified in the National Directorate of Mineral Resources with the symbol MCQSA-EXTR (gold and silver) 96-63
- Contract No. 20, dated February 26, 1997, for the exclusive rights for the extraction of Class IV metallic minerals (gold and silver) for 5,000 ha and effective for 20 years, identified in the National Directorate of Mineral Resources with the symbol MCQSA-EXTR (gold and silver) 96-62
- Contract No. 21, dated March 3, 1997, for the exclusive rights for the extraction of Class IV metallic minerals (gold and silver) for 4,893 ha and effective for 20 years, identified in the National Directorate of Mineral Resources with the symbol MCQSA-EXTR (gold and silver) 96-64.

## **SCHEDULE I**

## **LITIGATION**

*[commercially sensitive information redacted]*

**SCHEDULE J**  
**NON-ARM'S LENGTH TRANSACTIONS**

<b>Obligor</b>	<b>Non-Arm's Length Transaction(s)</b>
Orla Mining Ltd.	Amended and Restated Contractor Agreement, dated December 6, 2016, between the Borrower and Octavio Choy, and the transactions contemplated thereby.
Minera Camino Rojo, S.A. de C.V.	<ul style="list-style-type: none"> <li>• Commercial Services Contract, dated February 6, 2018, between Minera Camino Rojo, S.A. de C.V. and Contrataciones Camino Rojo, S.A. de C.V., and the transactions contemplated thereby.</li> <li>• Commercial Services Contract, dated November 8, 2018, between Minera Camino Rojo, S.A. de C.V. and Servicios Camino Rojo, S.A. de C.V., and the transactions contemplated thereby.</li> </ul>
Minera Cerro Quema, S.A.	Nil.



**SCHEDULE K**  
**ACCREDITED INVESTOR STATUS CERTIFICATE**

See attached.

## ACCREDITED INVESTOR STATUS CERTIFICATE

**TO: ORLA MINING LTD. (THE “ISSUER”)**

In connection with the issuance of common share purchase warrants (the “**Warrants**”) in the capital of the Issuer with an exercise price of Cdn\$3.00 per common share and a seven (7) year exercise period from the date of issue, to be issued in consideration for the commitment to fund a non-revolving term credit facility in the amount of Usd\$125,000,000, in accordance with the terms of a credit agreement dated November [●], 2019, to the undersigned subscriber or, if applicable, the disclosed principal on whose behalf the undersigned is acting as agent (the “**Subscriber**” for the purposes of this Certificate), the Subscriber hereby represents, warrants, covenants and certifies to the Issuer that:

1. the Subscriber is either acquiring the Warrants as principal for the Subscriber’s own account or is deemed under National Instrument 45-106 *Prospectus Exemptions* of the Canadian Securities Administrators (“**NI 45-106**”) to be acquiring the Warrants as principal;
2. the Subscriber is resident in or otherwise subject to the securities laws of one of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Newfoundland and Labrador, Nova Scotia, New Brunswick or Prince Edward Island;
3. the Subscriber is an “accredited investor” within the meaning of NI 45-106 on the basis that the Subscriber fits within one of the categories of an “accredited investor” reproduced below beside which the Subscriber has indicated the undersigned belongs to such category;
4. the Subscriber was not created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) below; and
5. the undersigned acknowledges that the foregoing representations, warranties and covenants are made by the undersigned with the intent that they be relied upon in determining the suitability of the Subscriber as an acquirer of the Warrants and the undersigned undertakes to immediately notify the Issuer of any change in any statement or other information relating to the Warrants set forth herein which takes place prior to the closing time (the “**Closing Time**”) of the issuance of the Warrants.

The categories listed herein contain certain specifically defined terms. If you are unsure as to the meanings of those terms, or are unsure as to the applicability of any category below, please contact your broker and/or legal advisor before completing this Certificate.

**Additional Instruction:** If the Subscriber is an individual and qualifies as an “accredited investor” pursuant to paragraphs (j), (k) or (l) below, it must also complete and sign Schedule A attached hereto entitled “*Form 45-106F9: Form for Individual Accredited Investors*” and the individual accredited investor questionnaire attached thereto.

The Subscriber is [check appropriate box and complete related blanks]:

- ☐ (a) except in Ontario, a Canadian financial institution, or a Schedule III bank, or in Ontario, a bank listed in Schedule I, II or III to the *Bank Act* (Canada);
- ☐ (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);
- ☐ (c) a subsidiary of any person referred to in paragraphs (a) or (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary;

- ☐ (d) a person registered under the securities legislation of a jurisdiction of Canada, as an adviser or dealer;
- ☐ (e) an individual registered under the securities legislation of a jurisdiction of Canada as a representative of a person referred to in paragraph (d);
- ☐ (e.1) an individual formerly registered under the securities legislation of a jurisdiction of Canada, other than an individual formerly registered solely as a representative of a limited market dealer under one or both of the Securities Act (Ontario) or the Securities Act (Newfoundland and Labrador);
- ☐ (f) the Government of Canada or a jurisdiction of Canada, or any crown corporation, agency or wholly owned entity of the Government of Canada or a jurisdiction of Canada;
- ☐ (g) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;
- ☐ (h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government;
- ☐ (i) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada), a pension commission or similar regulatory authority of a jurisdiction of Canada;
- ☐ (j) an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds Cdn\$1,000,000;  
**[If qualifying under this paragraph, the Subscriber must also complete and sign Schedule A attached hereto entitled "Form 45-106F9: Form for Individual Accredited Investors"]**
- ☐ (j.1) an individual who beneficially owns financial assets having an aggregate realizable value that, before taxes, but net of any related liabilities exceeds \$5,000,000;
- ☐ (k) an individual whose net income before taxes exceeded Cdn\$200,000 in each of the two most recent calendar years or whose net income before taxes combined with that of a spouse exceeded Cdn\$300,000 in each of the two most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year;  
**[If qualifying under this paragraph, the Subscriber must also complete and sign Schedule A attached hereto entitled "Form 45-106F9: Form for Individual Accredited Investors"]**
- ☐ (l) an individual who, either alone or with a spouse, has net assets of at least Cdn\$5,000,000;  
**[If qualifying under this paragraph, the Subscriber must also complete and sign Schedule A attached hereto entitled "Form 45-106F9: Form for Individual Accredited Investors"]**
- ☐ (m) a person, other than an individual or investment fund, that has net assets of at least Cdn\$5,000,000 as shown on its most recently prepared financial statements;
- ☐ (n) an investment fund that distributes or has distributed its securities only to:
  - (i) a person that is or was an accredited investor at the time of the distribution;
  - (ii) a person that acquires or acquired securities in the circumstances referred to in sections 2.10 and 2.19 of NI45-106, or
  - (iii) a person described in paragraph (i) or (ii) that acquires or acquired securities under section 2.18 of NI45-106;
- ☐ (o) an investment fund that distributes or has distributed securities under a prospectus in a jurisdiction of Canada for which the regulator or, in Quebec, the securities regulatory authority, has issued a receipt;
- ☐ (p) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be;
- ☐ (q) a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction;

- ☐ (r) a registered charity under the *Income Tax Act* (Canada) that, in regard to the trade, has obtained advice from an eligibility adviser or an adviser registered under the securities legislation of the jurisdiction of the registered charity to give advice on the securities being traded;
- ☐ (s) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (d) or paragraph (i) in form and function;
- ☐ (t) a person in respect of which all of the owner of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are persons that are accredited investors;
- ☐ (u) an investment fund that is advised by a person registered as an adviser or a person that is exempt from registration as an adviser;
- ☐ (v) a person that is recognized or designated by the securities regulatory authority or, except in Ontario and Quebec, the regulator as an accredited investor; or
- ☐ (w) a trust established by an accredited investor for the benefit of the accredited investor's family members of which a majority of the trustees are accredited investors and all of the beneficiaries are the accredited investor's spouse, a former spouse of the accredited investor or a parent, grandparent, brother, sister, child or grandchild of that accredited investor, of that accredited investor's spouse or of that accredited investor's former spouse.

**Definitions:**

**“Canadian financial institution”** means

- (a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act, or
- (b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

**“financial assets”** means

- (a) cash,
- (b) securities, or
- (c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation;

**“fully managed account”** means an account of a client for which a person makes the investment decisions if that person has full discretion to trade in securities for the account without requiring the client's express consent to a transaction;

**“investment fund”** has the same meaning as in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

**“person”** includes

- (a) an individual,
- (b) a corporation,
- (c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and
- (d) an individual or other person in that person's capacity as a trustee, executor, administrator or personal or other legal representative;

**“related liabilities”** means

- (a) liabilities incurred or assumed for the purpose of financing the acquisition or ownership of financial assets, or
- (b) liabilities that are secured by financial assets;

**“Schedule III bank”** means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

**“spouse”** means, an individual who,

- (a) is married to another individual and is not living separate and apart within the meaning of the *Divorce Act* (Canada), from the other individual; or
- (b) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender; or
- (c) in Alberta, is an individual referred to in paragraph (a) or (b), or is an adult interdependent partner within the meaning of the *Adult Interdependent Relationships Act* (Alberta);

**“subsidiary”** means in issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary.

\* \* \* \* \*

*signature page follows*

The representations, warranties, statements and certification made in this Certificate are true and accurate as of the date of this Certificate and will be true and accurate at the Closing Time. If any such representation, warranty, statement or certification becomes untrue or inaccurate prior to the Closing Time, the Subscriber shall give the Issuer immediate written notice thereof.

The Subscriber acknowledges and agrees that the Issuer will and can rely on this Certificate in connection with the Subscriber's acquisition of Warrants.

IN WITNESS, the undersigned has executed this Certificate as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

## 1. SUBSCRIBER INFORMATION

**If a corporation, partnership or other entity:**

**If an individual:**

\_\_\_\_\_  
*(Print Name of Subscriber)*

\_\_\_\_\_  
*(Print Name of Subscriber)*

\_\_\_\_\_  
*(Signature of Authorized Signatory)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Name and Position of Authorized Signatory)*

\_\_\_\_\_  
*(Jurisdiction of Residence of Subscriber)*

\_\_\_\_\_  
*(Jurisdiction of Residence of Subscriber)*

## 2. NUMBER OF WARRANTS

**The total number of Warrants to be acquired by the Subscriber is as follows:**

\_\_\_\_\_

## 3. REGISTRATION INSTRUCTIONS

**The Subscriber directs the Issuer to register the Warrants as follows:**

\_\_\_\_\_  
*(Registration Name and Account Number)*

\_\_\_\_\_  
*(Registration Address – Include City, Province and Postal Code)*

\_\_\_\_\_  
*(Registered Holder: Contact Name, Contact Telephone Number and Contact Email Address)*

## 4. DELIVERY INSTRUCTIONS

**If the Warrants are to be delivered other than as set out above, the Subscriber directs the Issuer to deliver the Warrants as follows:**

\_\_\_\_\_  
*(Name of Recipient)*

\_\_\_\_\_  
*(Address of Recipient – Include City, Province and Postal Code)*

\_\_\_\_\_  
*(Recipient: Contact Name, Contact Telephone Number and Contact Email Address)*

*[Signature page to follow]*

**ACCEPTANCE**

Accepted by this Issuer as of the \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

)  
)  
)  
)  
)

**ORLA MINING LTD.**

Per: \_\_\_\_\_  
Authorized Signatory

**PERSONAL INFORMATION**

1. **Present Ownership of Securities of the Issuer.** The Subscriber owns, directly or indirectly, or exercises control or direction over, \_\_\_\_\_ common shares of the Issuer and securities convertible or exercisable to acquire an additional \_\_\_\_\_ common shares of the Issuer.
  
2. **Insider Status.** The Subscriber either **[check appropriate box]**:
  - ☐ is an “Insider” of the Issuer as defined in the British Columbia *Securities Act*, determined as follows:
    - (a) a director or officer of the Issuer;
    - (b) a director or officer of a person that is itself an insider or subsidiary of the Issuer; or
    - (c) a person that has direct or indirect:
      - (1) beneficial ownership of or control or direction over; or
      - (2) a combination of beneficial ownership of and control or direction over, securities of the Issuer carrying more than 10% of the voting rights attached to all the Issuer’s outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person as underwriter in the course of a distribution.
  - ☐ is not an Insider of the Issuer.
  
3. **Registrant Status.** The Subscriber either **[check appropriate box]**:
  - ☐ is a registrant (as defined in applicable securities laws)
  - ☐ is not a registrant.



**SCHEDULE A**

**Form 45-106F9**

*Form for Individual Accredited Investors*

**WARNING!**

**This investment is risky. Don't invest unless you can afford to lose all the money you pay for this investment.**

**SECTION 1 TO BE COMPLETED BY THE ISSUER OR SELLING SECURITY HOLDER**

**1. About your investment**

Type of securities: *Warrants*

Issuer: *Orla Mining Ltd. (the "Issuer")*

Purchased from: *The Issuer*

**SECTIONS 2 TO 4 TO BE COMPLETED BY THE PURCHASER**

**2. Risk acknowledgement**

This investment is risky. Initial that you understand that:

**Your  
initials**

**Risk of loss** – You could lose your entire investment of \$ \_\_\_\_\_. [Instruction: Insert the total dollar amount of the investment.]

**Liquidity risk** – You may not be able to sell your investment quickly – or at all.

**Lack of information** – You may receive little or no information about your investment.

**Lack of advice** – You will not receive advice from the salesperson about whether this investment is suitable for you unless the salesperson is registered. The salesperson is the person who meets with, or provides information to, you about making this investment. To check whether the salesperson is registered, go to [www.aretheyregistered.ca](http://www.aretheyregistered.ca).

**3. Accredited investor status**

If you are relying on a prospectus exemption contained in any of sections (j), (k), or (l) of Category 1 "Accredited Investor" in Form 1, you must meet at least **one** of the following criteria to be able to make this investment. Initial the statement that applies to you. (You may initial more than one statement.) The person identified in section 6 is responsible for ensuring that you meet the definition of accredited investor. That person, or the salesperson identified in section 5, can help you if you have questions about whether you meet these criteria.

**Your  
initials**

- Your net income before taxes was more than \$200,000 in each of the 2 most recent calendar years, and you expect it to be more than \$200,000 in the current calendar year. (You can find your net income before taxes on your personal income tax return.)

- Your net income before taxes combined with your spouse's was more than \$300,000 in each of the 2 most recent calendar years, and you expect your combined net income before taxes to be more than \$300,000 in the current calendar year.

<ul style="list-style-type: none"><li>• Either alone or with your spouse, you own more than \$1 million in cash and securities, after subtracting any debt related to the cash and securities.</li></ul>	
<ul style="list-style-type: none"><li>• Either alone or with your spouse, you have net assets worth more than \$5 million. (Your net assets are your total assets (including real estate) minus your total debt.)</li></ul>	
<b>4. Your name and signature</b>	
By signing this form, you confirm that you have read this form and you understand the risks of making this investment as identified in this form.	
First and last name (please print):	
Signature:	Date:
<b>SECTION 5 TO BE COMPLETED BY THE SALESPERSON</b>	
<b>5. Salesperson information</b>	
<i>[Instruction: The salesperson is the person who meets with, or provides information to, the purchaser with respect to making this investment. That could include a representative of the issuer or selling security holder, a registrant or a person who is exempt from the registration requirement.]</i>	
First and last name of salesperson (please print):	
Telephone:	Email:
Name of firm (if registered):	
<b>SECTION 6 TO BE COMPLETED BY THE ISSUER OR SELLING SECURITY HOLDER</b>	
<b>6. For more information about this investment</b>	
<p>Orla Mining Ltd. Suite 202 - 595 Howe Street Vancouver, BC V6C 2T5</p> <p>Attention: Etienne Morin, Chief Financial Officer</p> <p>Telephone: 604 564 1852</p> <p>Email: <a href="mailto:etienne.morin@orlaminig.com">etienne.morin@orlaminig.com</a></p> <p>For more information about prospectus exemptions, contact your local securities regulator. You can find contact information at <a href="http://www.securities-administrators.ca">www.securities-administrators.ca</a>.</p>	

**Form instructions:**

1. *This form does not mandate the use of a specific font size or style but the font must be legible.*
2. *The information in sections 1, 5 and 6 must be completed before the purchaser completes and signs the form.*
3. *The purchaser must sign this form. Each of the purchaser and the issuer or selling security holder must receive a copy of this form signed by the purchaser. The issuer or selling security holder is required to keep a copy of this form for 8 years after the distribution.*

**INDIVIDUAL ACCREDITED INVESTOR QUESTIONNAIRE (CANADIAN)**

**THIS QUESTIONNAIRE IS TO BE COMPLETED BY ACCREDITED INVESTORS WHO ARE INDIVIDUALS**

Unless otherwise defined herein, all capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the subscription agreement accompanying this questionnaire. I understand that in order to be accepted as an “accredited investor” under National Instrument 45-106, I must satisfy certain of the following criteria. The undersigned hereby represents and warrants to the Issuer as follows:

**1. Financial Circumstances.** Please answer the following questions concerning your financial status by marking the appropriate box and filling in the blanks.

**1.1** Was your net income before taxes more than \$200,000 in each of the 2 most recent calendar years?

☐ Yes ☐ No

**1.2** If you answered “Yes” to Question 1.1, do you expect your net income before taxes to be more than \$200,000 in the current calendar year?

☐ Yes ☐ No

**1.3** Was your net income before taxes combined with your spouse’s net income before taxes more than \$300,000 in each of the 2 most recent calendar years?

☐ Yes ☐ No

**1.4** If you answered “Yes” to Question 1.3, do you expect your net income before taxes combined with your spouse’s net income before taxes to be more than \$300,000 in the current calendar year?

☐ Yes ☐ No

**1.5** Do you own, either alone or with your spouse, more than \$1,000,000 in cash and securities, after subtracting any debt related to the cash and securities?

☐ Yes ☐ No

**1.6** Do you own, either alone or with your spouse, have net assets (*i.e.*, your total assets (including real estate) less your total debt) worth more than \$5,000,000?

☐ Yes ☐ No

**1.7** Please indicate, for each of the two most recent years, what your individual net income before taxes (or joint net income before taxes together with your spouse) was, and for the current year what your individual net income before taxes (or joint net income before taxes together with your spouse) is expected to be:

<b>2017</b>	Individual	_____	Joint	_____
<b>2018</b>	Individual	_____	Joint	_____
<b>2019</b>	Individual	_____	Joint	_____

**2. Financial Background.** Please respond to the following questions, supplying as much detail as possible in order to make your answers complete.

**2.1** Indicate by check mark which of the following categories best describes the extent of your prior experience in the areas of investment listed below:

<u>No Experience</u>	<u>Some Experience</u>	<u>Substantial Experience</u>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marketable Securities
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Securities for which no public market exists

**2.2** For those investments for which you indicated “Substantial Experience” or “Some Experience” in question 2.1 above, please answer the following additional question:

How often do you make your own investment decisions with respect to such investments?

**2.3** Do you have adequate means of providing for your current needs and personal contingencies and have no need for liquidity in such investments?

☐ Yes ☐ No

**2.4** Please indicate whether you are borrowing the money to be used to purchase securities in the Offering?

☐ Yes ☐ No

I hereby represent and warrant that:

- (a) my net income before taxes was more than \$200,000 in each of the 2 most recent calendar years, and I expect it to be more than \$200,000 in the current calendar year;
- (b) my net income before taxes combined with my spouse’s was more than \$300,000 in each of the 2 most recent calendar years, and I expect that our combined net income before taxes to be more than \$300,000 in the current calendar year;
- (c) either alone or with my spouse, I own more than \$1,000,000 in cash and securities, after subtracting any debt related to the cash and securities; or
- (d) either alone or with my spouse, I have net assets worth more than \$5,000,000.

My commitment to investments which are not readily marketable is reasonable in relation to my net worth. I meet at least one of the criteria for an “accredited investor” under National Instrument 45-106. The foregoing representations and warranties and all other information which I have provided to the Issuer concerning myself and my financial condition are true and accurate as of the date hereof. If in any respect, such representations, warranties, or information shall not be true and accurate, I will give written notice of such fact to the Issuer specifying which representations, warranties or information are not true and accurate, and the reasons therefor. I understand that the information contained herein is being furnished by me in order for the Issuer to determine my suitability as an **accredited investor**, may be accepted by the Issuer in light of the requirements of NI 45-106 and that the Issuer will rely on the information contained herein for purposes of such determination.

Dated: \_\_\_\_\_, 2019

Signed: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print Name of Witness

**SCHEDULE L**  
**U.S. ACCREDITED INVESTOR STATUS CERTIFICATION LETTER**

See attached.

The Warrants and the Warrant Shares (collectively, the “Securities”) have not been and will not be registered under the United States Securities Act of 1933, as amended (the “U.S. Securities Act”) or the securities laws of any states of the United States, and may not be offered or sold within the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the U.S. Securities Act and applicable state securities laws.

The Securities have not been recommended, approved or disapproved by the United States Securities and Exchange Commission (the “SEC”), by any state regulatory authority or by any Canadian regulatory authority, nor has the SEC or any state regulatory authority or Canadian regulatory authority passed on the accuracy or adequacy of this U.S. Accredited Investor Certification Letter. Any representation to the contrary is a criminal offense.

#### U.S. ACCREDITED INVESTOR CERTIFICATION LETTER

TO: **Orla Mining Ltd. (the “Company”)**

RE: **Warrants for purchase of Common Shares of Orla Mining Ltd. (“Warrants”)**

**Instructions:** Complete and sign this U.S. Accredited Investor Certification Letter. **Please be sure to also fully complete the Accredited Investor Affirmation contained in Section (3).**

Number of Warrants: \_\_\_\_\_

Ladies and Gentlemen:

Re: Warrants for Purchase of Common Shares

In connection with its agreement to participate with respect to a secured project finance facility for the development of certain projects of the Company, in part, for Warrants with the right to subscribe for and purchase of fully paid and non-assessable common shares (“**Common Shares**”) in the capital of the Company at any time prior to 5:00 p.m. (Vancouver Time) (the “**Expiry Time**”) on the Expiry Date (as defined in the certificate representing the Warrant) at a price (the “**Exercise Price**”) of C\$3.00 per Common Share in accordance with the terms and conditions of such Warrant, undersigned, on its own behalf and on behalf of each person for whom it is acting (collectively referred to herein, as applicable, as “**undersigned**”), acknowledges, represents, warrants, covenants and agrees with the Company as follows, and certifies (and acknowledges that the Company, the and their respective counsel are relying thereon):

- (1) undersigned acknowledges and agrees that the Warrants and the shares issuable upon exercise of the Warrants (each a “**Warrant Share**”) have not been, and will not be, registered under the United States Securities Act or the securities laws of an applicable state of the United States, and that the issuance of the Warrants and the Warrant Shares, as applicable, in the United States is being made in reliance on the exemption from registration provided by Rule 506(b) of Regulation D under the U.S. Securities Act and/or Section 4(a)(2) promulgated under the U.S. Securities Act, or such similar exemption from registration;
- (2) undersigned is (i) a U.S. Person (as defined pursuant to Regulation S under the U.S. Securities Act); (ii) a person purchasing Shares for the account or benefit of a person in the United States; (iii) a person that receives or received an offer of the Warrants while in the United States; or (iv) a person that is in the United States at the time their order was originated or this U.S. Accredited Investor Certification Letter was executed;
- (3) **(THIS SECTION IS MUST BE COMPLETED)** it (i) is an “accredited investor” within the meaning of Rule 501(a) of Regulation D under the U.S. Securities Act (a “**U.S. Accredited Investors**”) and is acquiring the Warrants and the Warrant Shares, as applicable, for its own account or for the account of one or more U.S. Accredited Investor with respect to which it exercises sole investment discretion (“**Beneficial Purchaser**”), and not with a view to resale, distribution or other disposition of any of the Warrants and the Warrant Shares, as applicable, in violation of United States federal or state securities laws and (ii) satisfies one or more of the categories indicated below (**please place an “X” and initial on the appropriate line or**



**lines and, if there is a Beneficial Purchaser, undersigned must mark “P” beside the category applicable to undersigned and “BP” beside the category applicable to the Beneficial Purchaser), and is (mark all that apply):**

\_\_\_\_\_ Category 1. A bank, as defined in Section 3(a)(2) of the U.S. Securities Act, whether acting in its individual or fiduciary capacity; or

\_\_\_\_\_ Category 2. A savings and loan association or other institution as defined in Section 3(a)(5)(A) of the U.S. Securities Act, whether acting in its individual or fiduciary capacity; or;

\_\_\_\_\_ Category 3. A broker or dealer registered pursuant to Section 15 of the United States Securities Exchange Act of 1934, as amended; or;

\_\_\_\_\_ Category 4. An insurance company as defined in Section 2(13) of the U.S. Securities Act; or

\_\_\_\_\_ Category 5. An investment company registered under the United States Investment Company Act of 1940, as amended; or

\_\_\_\_\_ Category 6. A business development company as defined in Section 2(a)(48) of the United States Investment Company Act of 1940, as amended; or

\_\_\_\_\_ Category 7. A small business investment company licensed by the U.S. Small Business Administration under Section 301 (c) or (d) of the United States Small Business Investment Act of 1958, as amended; or

\_\_\_\_\_ Category 8. A plan established and maintained by a state, its political subdivisions or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, with total assets in excess of U.S. \$5,000,000; or

\_\_\_\_\_ Category 9. An employee benefit plan within the meaning of the United States Employee Retirement Income Security Act of 1974 in which the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or an employee benefit plan with total assets in excess of U.S. \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons who are accredited investors; or

\_\_\_\_\_ Category 10. A private business development company as defined in Section 202(a)(22) of the United States Investment Advisers Act of 1940, as amended; or

\_\_\_\_\_ Category 11. An organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, a corporation, a Massachusetts or similar business trust, or a partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of U.S. \$5,000,000; or

\_\_\_\_\_ Category 12. Any director or executive officer of the Company; or

\_\_\_\_\_ Category 13. A natural person that has a net worth (or joint net worth together with his or her spouse) excluding the “net value” of his or her primary residence, in excess of US\$1,000,000 and no reason to believe that net worth will not remain in excess of US\$1,000,000 for the foreseeable future. “Net value” for such purposes is the fair value of the residence less any mortgage indebtedness or other obligation secured by the residence, provided that any amount of the secured obligation in excess of the value of the residence is considered a liability and must be deducted from the investor’s net worth; or

\_\_\_\_\_ Category 14. A natural person who had an individual income in excess of U.S. \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of U.S. \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year; or

\_\_\_\_\_ Category 15. A trust, with total assets in excess of U.S. \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) under the U.S. Securities Act; or

\_\_\_\_\_ Category 16. Any entity in which all of the equity owners meet the requirements of at least one of the above categories (if this alternative is checked, you must at the request of the Company identify each equity owner and provide statements signed by each demonstrating how each qualifies as a U.S. Accredited Investor).

- (4) if undersigned is: (a) a corporation, it is duly incorporated and is validly subsisting under the laws of its jurisdiction of incorporation and has all requisite legal and corporate power and authority to execute and deliver this U.S. Accredited Investor Certification Letter, to acquire the Warrants as contemplated herein and to carry out and perform its obligations under the terms of this U.S. Accredited Investor Certification Letter and the individual signing this U.S. Accredited Investor Certification Letter has been duly authorized to execute and deliver this U.S. Accredited Investor Certification Letter; or (b) an individual, partnership, syndicate or other form of unincorporated organization, it has the necessary legal capacity and authority to execute and deliver this U.S. Accredited Investor Certification Letter and to observe and perform its covenants and obligations hereunder and has obtained all necessary approvals in respect thereof and the individual signing this U.S. Accredited Investor Certification Letter has been duly authorized to execute and deliver this U.S. Accredited Investor Certification Letter;
- (5) the execution and delivery of this U.S. Accredited Investor Certification Letter and the performance and compliance with the terms hereof will not result in any breach of, or be in conflict with, or constitute a default under, or create a state of facts which after notice or lapse of time or both would constitute a default under, any term or provision of any controlling documents, by-laws or resolutions of undersigned or any indenture, contract, agreement (whether written or oral), instrument or other document to which undersigned is a party or subject, or any judgment, decree, order, statute, rule or regulation applicable to undersigned;
- (6) this U.S. Accredited Investor Certification Letter has been duly and validly authorized, executed and delivered by, and upon acceptance by the Company constitutes a legal, valid, binding and enforceable obligation of, undersigned; if undersigned is contracting hereunder as trustee, agent, representative or nominee for one or more beneficial purchasers, undersigned has due and proper authority to execute and deliver this U.S. Accredited Investor Certification Letter on behalf of each such beneficial purchaser and to act on behalf of each such beneficial purchaser in connection with the transactions contemplated hereby and acknowledges that the Company may be required by law to disclose to certain regulatory authorities the identity of each beneficial purchaser of Warrants and the Warrant Shares for whom undersigned may be acting;
- (7) undersigned has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment in the Securities and it is able to bear the economic risks of such investment and is able, without impairing its financial condition, to hold the Warrants and the Warrant Shares, as applicable, for an indefinite period of time and to bear the economic risks, and withstand a complete loss of such investment;
- (8) undersigned understands that the Warrants may not be exercised in the United States or by, or on behalf or for the benefit of, a U.S. Person (as defined in Regulation S under the U.S. Securities Act), unless an exemption from the registration requirements of the U.S. Securities Act and applicable state securities laws is available for the issuance of the Warrant Shares, if any, to the U.S. Person and such U.S. Person has furnished an opinion of counsel of recognized standing in form and substance reasonably satisfactory to the Company to such effect and/or any other certificates or documentation reasonably requested by the Company, the registrar and transfer agent or as required under the Warrant Indenture; following exercise of the Warrants, if such an exercise is available, the Warrant Shares will bear a restrictive legend set forth herein;
- (9) undersigned understands and acknowledges that each of the Warrants and the Warrant Shares, as applicable, are "restricted securities" within the meaning of Rule 144(a)(3) under the U.S. Securities Act, and it agrees that if it decides to offer, sell, pledge or otherwise transfer any of the Warrants and the Warrant Shares, as applicable, directly or indirectly, it will not offer, sell, pledge or otherwise transfer any of such securities,

directly or indirectly, other than in compliance with any restrictive legend imprinted thereon, any restrictions or requirements set forth herein, and pursuant to an available exemption from the registration requirements under the U.S. Securities Act and the securities laws of all applicable states of the United States, if any;

- (10) undersigned understands and acknowledges that certificates representing any Warrants and any Warrant Shares, as applicable, and all certificates issued in exchange for or in substitution of such certificates, will bear the following legend(s), as applicable, upon the original issuance and until the legend is no longer required under applicable requirements of the U.S. Securities Act or applicable state securities laws:

THE SECURITIES REPRESENTED HEREBY [if for Warrants shall also include: AND THE SECURITIES ISSUABLE UPON EXERCISE HEREOF] HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “U.S. SECURITIES ACT”) OR UNDER THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY PURCHASING SUCH SECURITIES, AGREES FOR THE BENEFIT OF THE ISSUER OF SUCH SECURITIES AND ITS SUCCESSORS (THE “COMPANY”) THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE COMPANY; (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT, IF AVAILABLE, AND IN COMPLIANCE WITH LOCAL LAWS AND REGULATIONS; (C) IN ACCORDANCE WITH THE EXEMPTION FROM REGISTRATION UNDER THE U.S. SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER, IF AVAILABLE, AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS; OR (D) IN A TRANSACTION THAT DOES NOT REQUIRE REGISTRATION UNDER THE U.S. SECURITIES ACT OR ANY APPLICABLE STATE SECURITIES LAWS, AND, IN THE CASE OF PARAGRAPH (C) OR (D), THE SELLER HAS PRIOR TO SUCH TRANSFER FURNISHED TO THE COMPANY AN OPINION OF COUNSEL OF RECOGNIZED STANDING IN FORM AND SUBSTANCE SATISFACTORY TO THE COMPANY TO SUCH EFFECT AND/OR SUCH OTHER CERTIFICATIONS, INFORMATION OR DOCUMENTATION AS REASONABLY REQUESTED BY THE COMPANY. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE GOOD DELIVERY IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA.

[if a Warrant shall also include: THIS WARRANT MAY NOT BE EXERCISED BY OR ON BEHALF OF, OR FOR THE ACCOUNT OR BENEFIT OF, A PERSON IN THE UNITED STATES OR A U.S. PERSON UNLESS THE COMMON SHARES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM SUCH REGISTRATION REQUIREMENTS IS AVAILABLE.

THE WARRANTS REPRESENTED BY THIS CERTIFICATE WILL BE VOID AFTER THE EXPIRY DATE (AS DEFINED IN THIS WARRANT CERTIFICATE).]

*provided*, that if any of the Warrants or Warrant Shares, if any, are being sold in accordance with Rule 904 of Regulation S, this legend may be removed by providing the declarations to the Company and transfer agent in the form attached as Appendix A to this U.S. Accredited Investor Certification Letter (or such other form as the Company may prescribe from time to time), together with any other evidence, which may include an opinion of counsel of recognized standing reasonably satisfactory to the Company and/or transfer agent, to the effect that the legend is no longer required under applicable requirements of the U.S. Securities Act; *provided further*, that if any of the Warrants or Warrant Shares are being sold pursuant to Rule 144 under the U.S. Securities Act, if available, the legend may be removed by delivery to the Company and the Company’s transfer agent of an opinion of counsel of recognized standing in form and substance satisfactory to the Company and the transfer agent, to the effect that the legend is no longer required under applicable requirements of the U.S. Securities Act or state securities laws;

- (11) undersigned consents to the Company making a notation on its records or giving instructions to its transfer agent, as applicable, in order to implement the restrictions on transfer set forth and described herein;

- (12) undersigned has decided to acquire the Warrants and the underlying securities based solely on undersigned's independent investigation and evaluation of the Company and its assets and undersigned has had access to all materials, books and records and documents relating to the Company as undersigned has desired;
- (13) undersigned has been provided an opportunity to ask questions of, and receive answers from, authorized representatives of the Company concerning the Company, the Unites and underlying securities, and the terms of the Offering and that any request for such information has been complied with to undersigned's satisfaction and that it has had the opportunity to consult with its own legal and tax advisors with regards thereto and it is solely responsible for obtaining such legal, tax and other advice, including advice regarding the ability to resell the Warrants or Warrant Shares, if any;
- (14) undersigned understands and acknowledges that the Company is not obligated to file and have no present intention of filing with the SEC or with any state securities administrator any registration statement under the U.S. Securities Act with respect to any of the Warrants or Warrant Shares;
- (15) undersigned acknowledges that purchasing, holding and disposing of any of Warrants or Warrant Shares, if any, may have tax consequences under the laws of both Canada and the United States, and that it is solely responsible for determining the tax consequences of investment in such securities and the Company gives no opinion and makes no representation with respect to the tax consequences to undersigned under United States, state, local or foreign tax law of undersigned's acquisition or disposition of any such securities, or as to any other tax consequences related to any of such securities; and no determination has been made whether the Company will be a "passive foreign investment company" ("PFIC") within the meaning of Section 1291 of the United States Internal Revenue Code;
- (16) undersigned understands that financial statements of the Company have been prepared in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board, which differ from United States generally accepted accounting principles, and thus may not be comparable to financial statements of United States companies;
- (17) undersigned understands and acknowledges that the Company is not (i) obligated to remain a "foreign issuer" within the meaning of Rule 902 of Regulation S, (ii) may not, at the time the Warrants or Warrant Shares, if any, are resold by it or at any other time, be a foreign issuer, and (iii) may engage in one or more transactions which could cause the Company not to be a foreign issuer;
- (18) if required by applicable securities legislation, regulatory policy or order or by any securities commission, stock exchange or other regulatory authority, undersigned will execute, deliver and file and otherwise assist the Company in filing reports, questionnaires, undertakings and other documents with respect to the issuance of the securities;
- (19) undersigned acknowledges and understands that the enforcement by investors of civil liabilities under the United States federal securities laws may be affected adversely by the fact that the Company is incorporated or organized outside the United States, that some or all of its officers and directors and the experts named herein are residents of a foreign country, and that all or a substantial portion of the assets of the Company and said persons are located outside the United States; as a result, it may be difficult or impossible for holders of Warrants or Warrant Shares in the United States to effect service of process within the United States upon the Company, its officers or directors or the experts named herein, or to realize against them upon judgments of courts of the United States predicated upon civil liabilities under the federal securities laws of the United States or "blue sky" laws of any state within the United States; and in addition, holders of Warrants or Warrant Shares in the United States should not assume that the courts of Canada: (a) would enforce judgments of United States courts obtained in actions against such persons predicated upon civil liabilities under the federal securities laws of the United States or "blue sky" laws of any state within the United States; or (b) would enforce, in original actions, liabilities against such persons predicated upon civil liabilities under the federal securities laws of the United States or "blue sky" laws of any state within the United States;
- (20) it understands that the reserve and resource estimates included in Company materials, filings or information, as applicable, have been prepared in accordance with Canadian National Instrument 43-101 - Standards of Disclosure for Mineral Projects and the Canadian Institute of Mining, Metallurgy and Petroleum

classification system, which may differ significantly from the requirements of the SEC and, accordingly, reported information concerning mineral deposits of the Company may not be comparable with information made public by companies that report in accordance with U.S. standards;

- (21) undersigned is not subject to any of the “Bad Actor” disqualifications described in Rule 506(d)(1)(i) to (viii) under the U.S. Securities Act (each, a “Disqualification Event”), except to the extent an applicable Disqualification Event does not apply to prevent reliance on Rule 506 because of the provisions set forth in Rule 506(d)(2). If undersigned is subject to a Disqualification Event, but the provisions of Rule 506(d)(1) do not apply to prevent reliance on Rule 506 because of the provisions of Rule 506(d)(2), undersigned shall provide the Company with a written description of any matters that would have otherwise triggered disqualification under Rule 506(d)(1) and the reason why the provisions of such paragraph do not apply, including all information which, in the opinion of the Company, may be required to be disclosed by the Company to comply with the provisions of Rule 506(e). The undersigned hereby authorizes the Company to disclose, as contemplated pursuant to Rule 506(e), any and all information with respect to a Disqualification Event relating to undersigned and/or its directors, officers, general partners or managing members, as applicable, that occurred prior to September 23, 2013;
- (22) undersigned acknowledges that the Corporation may complete additional financings in the future in order to develop the business of the Corporation and to fund its ongoing development; that there is no assurance that such financings will be available and, if available, on reasonable terms; any such future financings may have a dilutive effect on current security holders, including undersigned;
- (23) undersigned, or others for whom undersigned is contracting hereunder, is solely responsible and the Corporation is not in any way responsible for compliance by undersigned or any beneficial purchaser for whom it is contracting hereunder with all applicable hold periods and resale restrictions to which the Shares are subject;
- (24) undersigned acknowledges that this U.S. Accredited Investor Certification Letter is subject to rejection or allotment, in whole or in part, by the Corporation; and it is understood and agreed that all consideration tendered herewith shall be returned to undersigned, without interest or deduction, at the address of undersigned set out herein if this U.S. Accredited Investor Certification Letter is not accepted, or if accepted only in part, such portion of the consideration attributable to that portion of the subscription hereunder which is not accepted shall be so returned to undersigned without interest or deduction;
- (25) undersigned represents and warrants that (i) the consideration or funds representing the applicable purchase price of the Warrants or Warrant Shares, if any, which will be advanced by undersigned for the Warrants or Warrant Shares in the Offering will not represent proceeds of crime for the purposes of the United States Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (the “**PATRIOT Act**”), and undersigned acknowledges that the Company and/or any of their respective affiliates or representatives in the United States may in the future be required by law to disclose undersigned’s name and other information relating to undersigned’s subscription hereunder, on a confidential basis, pursuant to the PATRIOT Act, and (b) no portion of the funds or consideration representing the applicable purchase price to be provided by undersigned (i) has been or will be derived from or related to any activity that is deemed criminal under the laws of the United States of America, or any other jurisdiction, or (ii) is being tendered on behalf of a person or entity that has not been identified to or by undersigned; and undersigned shall promptly notify the Company and their respective affiliates or representatives in the United States if undersigned discovers that any of such representations ceases to be true and provide the Company and any of their respective affiliates and representatives in the United States with appropriate information in connection therewith;
- (26) undersigned understands and acknowledges that, absent exceptive relief from the SEC, if a corporation or any predecessor is deemed to have been at any time previously an issuer with no or nominal operations and no or nominal assets other than cash and cash equivalents (including, being deemed a “shell company” defined in Rule 144(i) under the U.S. Securities Act), Rule 144 under the U.S. Securities Act may not be available for resales of restricted securities, and the Company is not obligated to provide Rule 144 information under the U.S. Securities Act for resales of such securities and, as a result, Rule 144 is not available for the public resale of such securities;

- (27) the Corporation's counsel, Cassels Brock and Blackwell LLP and Neal, Gerber & Eisenberg LLP, are acting solely for the Corporation in connection with matters set forth herein and undersigned may not rely upon such counsel in any respect; undersigned acknowledges that it has been encouraged to and should obtain independent legal, income tax and investment advice with respect to such matters and accordingly, has been independently advised as to the meanings of all terms contained herein relevant to undersigned for the purposes of giving representations, warranties and covenants under this U.S. Accredited Investor Certification Letter;
- (28) it represents and warrants that the offer, sale and issuance of the securities is not a transaction, or part of a chain of transactions which, although in technical compliance with an applicable exemption under the U.S. Securities Act, is part of a plan or scheme to evade the registration requirements of the U.S. Securities Act; and
- (29) it acknowledges that undersigned (including, any Beneficial Purchaser) has not purchased the Warrants or Warrant Shares as a result of any directed selling efforts (as defined in Rule 902(c) of Regulation S under the U.S. Securities Act) or any form of "general solicitation" or "general advertising" (as such terms are defined in Regulation D under the U.S. Securities Act) including advertisements, articles, notices or other communications published in any newspaper, magazine or similar media or broadcast over the Internet, radio, or television, or any seminar or meeting whose attendees have been invited by general solicitation or general advertising or in any other manner involving a public offering within the meaning of Section 4(a)(2) of the U.S. Securities Act.

Undersigned acknowledges and agrees that the representations, warranties, covenants and agreements contained herein are made by it with the intent that they may be relied upon by the Company and its counsel and representatives, in determining its eligibility to purchase the Warrants and Warrant Shares, as applicable, (or, if applicable, the eligibility of others on whose behalf undersigned purchaser is contracting hereunder to purchase the Warrants and Warrant Shares, as applicable). By this letter undersigned represents and warrants that the foregoing representations and warranties are true and that they shall survive the purchase by it of the Warrants and Warrant Shares, as applicable, and shall continue in full force and effect notwithstanding any subsequent disposition by undersigned of the Warrants and Warrant Shares.

The Company is irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

*[Remainder of page intentionally left blank. Signature page follows.]*

**Execution by the Potential Warrantholder:**

EXECUTED by undersigned this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Number of Warrants

\_\_\_\_\_  
Consideration

**If an Individual**

By:

\_\_\_\_\_  
**If an Entity**, Authorized Signatory

\_\_\_\_\_  
(Undersigned's Residential or Head Office Address)

\_\_\_\_\_  
Name *(please print)*

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
Name and Official Capacity or Title of Authorized  
Signatory *(please print)*

\_\_\_\_\_  
(Facsimile Number)

**Registration Instructions (if other than in name  
of undersigned):**

**Certificate Delivery Instructions (if other than the  
address above):**

\_\_\_\_\_  
Name and Address of Residence  
*(as it should appear on the certificates)*

\_\_\_\_\_  
Account reference, if applicable

\_\_\_\_\_  
Account reference, if applicable

\_\_\_\_\_  
Address of Intermediary

\_\_\_\_\_  
Contact Name

\_\_\_\_\_  
( )  
Telephone Number

**IF YOU ARE SIGNING THIS AGREEMENT AS AGENT FOR A BENEFICIAL PURCHASER PLEASE  
PROVIDE THE FOLLOWING INFORMATION FOR EACH BENEFICIAL PURCHASER**

Details of Beneficial Purchaser, if applicable

Name of Beneficial Purchaser (please print)

Beneficial Purchaser's Residential or Head Office  
Address

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Facsimile Number)

**Acceptance by the Company:**

**Orla Mining Ltd.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:



## APPENDIX A

### DECLARATION FOR REMOVAL OF LEGEND (REGULATION S)

TO: Orla Mining Ltd.  
Suite 202 - 595 Howe St  
Vancouver, BC V6C 2T5  
CANADA

AND TO: \_\_\_\_\_, as registrar and transfer agent for the [warrants] [warrant shares] of Orla Mining Ltd.

The undersigned (A) acknowledges that the sale of \_\_\_\_\_ [warrants] [warrant shares] of Orla Mining Ltd. (the “**Company**”) to which this declaration relates, is being made in reliance on Rule 904 of Regulation S under the United States Securities Act of 1933, as amended (the “**U.S. Securities Act**”), and (B) certifies that (1) the undersigned is not (a) an “affiliate” of the Corporation (as that term is defined in Rule 405 under the U.S. Securities Act), (b) a “distributor” as defined in Regulation S or (c) an affiliate of a distributor; (2) the offer of such securities was not made to a person in the United States and either (a) at the time the buy order was originated, the buyer was outside the United States, or the seller and any person acting on its behalf reasonably believed that the buyer was outside the United States, or (b) the transaction was executed on or through the facilities of a designated offshore securities market (such as the TSX Venture Exchange, the Toronto Stock Exchange or the Canadian Securities Exchange) and neither the seller nor any person acting on its behalf knows that the transaction has been prearranged with a buyer in the United States or a U.S. person; (3) neither the seller nor any affiliate of the seller nor any person acting on their behalf has engaged or will engage in any directed selling efforts in the United States in connection with the offer and sale of such securities; (4) the sale is bona fide and not for the purpose of “washing off” the resale restrictions imposed because the securities are “restricted securities” (as that term is defined in Rule 144(a)(3) under the U.S. Securities Act); (5) the seller does not intend to replace securities sold in reliance on Rule 904 of Regulation S with fungible unrestricted securities; and (6) the contemplated sale is not a transaction, or part of a series of transactions, which, although in technical compliance with Regulation S, is part of a plan or scheme to evade the registration provisions of the U.S. Securities Act. Terms used herein have the meanings given to them by Regulation S under the U.S. Securities Act.

This certification is made by it with the intent that they may be relied upon by the Company and its counsel (as if originally issued to such counsel), and the foregoing representations and warranties are true and shall continue in full force and effect notwithstanding any subsequent disposition by the undersigned of the applicable securities.

Dated: \_\_\_\_\_  
Name of Seller

By: \_\_\_\_\_  
Name:  
Title:

**Affirmation By Seller's Broker-Dealer (Regulation S)**

We have read the foregoing representations of our customer, \_\_\_\_\_ (the "**Seller**") dated \_\_\_\_\_, with regard to our sale, for such Seller's account, of \_\_\_\_\_ (the "**Securities**"), of the Company described therein, and on behalf of ourselves we certify and affirm that (A) we have no knowledge that the transaction had been prearranged with a buyer in the United States, (B) at the time the buy order was originated, the buyer was outside the United States, or the Seller and any person acting on its behalf reasonably believed that the buyer was outside of the United States or the transaction was executed on or through the facilities of a "designated offshore securities market", (C) neither we, nor any person acting on our behalf, engaged in any "directed selling efforts" (within the meaning of Rule 902(c) of Regulation S under the U.S. Securities Act) in connection with the offer and sale of such securities, and (D) we have complied with the provisions of Rule 904(b) of Regulation S, if applicable, in connection with the sale of the Securities by the seller. Terms used herein have the meanings given to them by Regulation S under the U.S. Securities Act. We have executed or will execute, as applicable, sales of the Securities pursuant to and in compliance with Rule 904 of Regulation S ("**Regulation S**") under the United States Securities Act of 1933, as amended, on behalf of the Seller.

Legal counsel to the Company and the Underwriters or U.S. Affiliates shall be entitled to rely upon the representations, warranties and covenants contained in this affirmation to the same extent as if this letter had been addressed to them, it being agreed that such representations, warranties and covenants shall be deemed to be made both as of the date of this affirmation and at the time of the sale of the Securities.

Name of Firm: \_\_\_\_\_

By (name): \_\_\_\_\_

Title: \_\_\_\_\_

(an duly authorized officer)

Date: \_\_\_\_\_

**SCHEDULE M**  
**ENCUMBRANCES CONSISTING OF ROYALTIES**

1. 4.0% net smelter returns royalty payable to the Government of Panama with respect to mineral production at the Cerro Quema Project.
2. 2.0% net smelter returns royalty payable to Newmont Goldcorp Corporation (as successor to Goldcorp Inc.) with respect to mineral production at the Camino Rojo Project.
3. 0.5% royalty payable to the Government of Mexico as an “Extraordinary Mining Duty” with respect to the Camino Rojo Project.

**SCHEDULE N**  
**PERMITTED INVESTMENTS**

Nil.

## **SCHEDULE O**

### **PERMIT EXCEPTIONS**

Each of the water concessions relating to the Camino Rojo Project set out in Schedule H were assigned by Minera Peñasquito, S.A. de C.V. to Minera Camino Rojo, S.A. de C.V. pursuant to an Assignment of Water Concession dated November 7, 2017. Application of such assignment has been filed for registration with the National Water Commission and registration is pending.

The original 20-year term for each of the mineral concessions relating to the Cerro Quema Project set out in Schedule H expired on February 26, 2017 (Contracts 19 and 20) and March 3, 2017 (Contract 21). Cerro Quema has applied for the prescribed 10-year extension to these contracts as it is entitled to under Panamanian mineral law.

Mining concessions Camino Rojo 4 and Camino Rojo 5 set out in Schedule H were transferred by Minera Peñasquito, S.A. de C.V. to Minera Camino Rojo, S.A. de C.V. pursuant to an assignment agreement signed between both parties on November 8, 2017; a reduction application has been filed in respect of each of these mining concessions and registration of the transfer of these mining concessions to Camino Rojo is pending until the reduction has been completed.

**SCHEDULE P**  
**PERMITTED DEBT**

**I.** *[commercially sensitive information redacted]*,

**II. Existing Cerro Quema Bonding Obligations**

Bonding Obligations totalling US\$300,000, of which US\$150,000 is cash collateralized and the remainder is insured, all of which are in favour of the Governing Authorities in Panama.

## **Appendix “E”**

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

**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**

**AFFIDAVIT OF NOAH GOLDSTEIN  
(SWORN MARCH 9, 2021)**

I, Noah Goldstein, of the City of Toronto, in the Province of Ontario, MAKE OATH AND  
SAY:

1. I am a Vice President and Managing Director of KSV Restructuring Inc. ("KSV").
2. Pursuant to an order (the "Receivership Order") of the Ontario Superior Court of Justice (Commercial List) made on May 7, 2020, KSV was appointed as the receiver and manager ("Receiver") of Audible Capital Corp., Avenir Trading Corp., 1892244 Alberta Ltd., Avenir Sports Entertainment Ltd., Avenir Sports Entertainment Corp. and Portland Winter Hawks, Inc.
3. I have been integrally involved in this mandate since the date of the Receivership Order. As such, I have knowledge of the matters to which I hereinafter depose.
4. On March 9, 2021, the Receiver finalized its Fifth Report to Court in which it provided a summary of the Receiver's fees for the period from November 1, 2020 to January 31, 2021.



5. I hereby confirm that attached as Exhibit "A" hereto is a true copy of the accounts of KSV for the period indicated and confirm that these accounts accurately reflect the services provided by KSV in this matter and the fees and disbursements claimed by it.

6. Additionally, attached hereto as Exhibit "B" is a summary of roles, hours and rates charged by members of KSV who have worked on this matter, and I hereby confirm that the list represents an accurate account of such information.

7. I consider the accounts to be fair and reasonable considering the circumstances connected with this matter.

8. I also confirm that the Receiver has not received, nor expects to receive, nor has the Receiver been promised any remuneration or consideration other than the amounts claimed in the accounts.

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario, this 9<sup>th</sup>  
day of March 2021

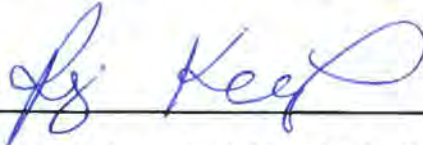
  
\_\_\_\_\_  
**Commissioner for taking affidavits, etc.**



\_\_\_\_\_  
**NOAH GOLDSTEIN**

**Rajinder Kashyap, a Commissioner, etc.,  
Province of Ontario, for KSV Restructuring Inc.  
Expires January 27, 2024.**

THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF NOAH GOLDSTEIN  
SWORN BEFORE ME THIS 9<sup>th</sup> DAY OF MARCH 2021



---

A Commissioner for taking Affidavits, etc.

Rajinder Kashyap, a Commissioner, etc.,  
Province of Ontario, for KSV Restructuring Inc.  
Expires January 27, 2024.

**ksv advisory inc.**

150 King Street West, Suite 2308

Toronto, Ontario, M5H 1J9

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ksvadvisory.com

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**INVOICE**

Audible Capital Corp. et al  
c/o KSV Restructuring Inc.  
150 King Street West, Suite 2308  
Toronto, ON M5H 1J9

December 22, 2020

Invoice No: 1999  
HST #: 818808768RT0001

**Re: Audible Capital Corp. ("Audible"), Avenir Trading Corp.,  
1892244 Alberta Ltd., Avenir Sports Entertainment Ltd., Avenir Sports  
Entertainment Corp. and Portland Winterhawks, Inc. (collectively, the "Companies")**

For professional services rendered by KSV Restructuring Inc. in its capacity as Court-appointed receiver ("Receiver") of the Companies during November 2020, including:

General

- Corresponding with Bridging Finance Inc. (the "Agent"), Chaitons LLP ("Chaitons"), the Agent's counsel, Bennett Jones LLP ("Bennett Jones"), the Receiver's Canadian counsel, and K&L Gates LLP ("K&L"), the Receiver's US counsel, regarding all aspects of this mandate;
- Corresponding with Doug Piper, President of the Portland Winterhawks ("Winterhawks"), regarding all aspects of the Winterhawks' business and operations during the period;

Operations of the Winterhawks

- Corresponding with various employees of the Winterhawks, including Mr. Piper, Kelley Robinett, SVP, Business Operations and Vicky Talmadge, VP Finance, on a regular basis regarding all aspects of the Winterhawks' operations;
- Reviewing bi-weekly payroll for the Winterhawks, and communication with representatives of the Winterhawks' payroll service provider, Barrett Business Services, Inc. regarding payment of the same;
- Reviewing invoices and preparing disbursements for the Winterhawks;
- Corresponding with the Winterhawks' management regarding the operations of the Winterhawks Skating Center and the Winterhawks Junior Hockey, LLC;

### Sale Process

- Corresponding with Mr. Piper on a near-daily basis regarding all aspects and management of the sale process (the “Sale Process”);
- Corresponding regularly with representatives of the Western Hockey League (“WHL”) regarding the Sale Process;
- Corresponding with the WHL regarding the 2021-2022 season and the impact on the Sale Process;
- Attending near-daily calls with Mr. Piper regarding managing all Interested Parties’ diligence efforts;
- Corresponding extensively with representatives of Winterhawks Sports Group LLC (the “Purchaser”) on a near daily basis during November 2020;
- Facilitating extensive diligence requests for the Purchaser;
- Updating the virtual data room with various financial and non-financial information regarding the Winterhawks, with the assistance of the Winterhawks’ staff;
- Reviewing and executing the first and second amendments to the Asset Purchase Agreement (“APA”);
- Dealing extensively with the Purchaser regarding a new lease for the Winterhawks’ practice facility;
- Reviewing a security opinion prepared by K&L;
- Dealing extensively with contract assignments required under the APA;
- Preparing motion materials in connection with approving the APA;
- Corresponding with Darryl Henry, a broker, regarding the Sale Process;

### Matters relating to Audible Capital Corporation

- Corresponding with Jacquie Shivak, a former employee of Audible, regarding financial matters relating to the Companies;
- Corresponding with parties that have an interest in certain of Audible’s investments;
- Corresponding with management of EdgeHill Partners (“EP”) regarding a potential buyout of Audible’s interest in EP;



Other

- Updating the Agent regularly regarding the status of the receivership proceedings;
- Corresponding regularly with Bill Gallacher regarding the status of the receivership proceedings;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements	\$	31,803.60
HST		<u>4,134.47</u>
Total due	\$	<u>35,938.07</u>

KSV Restructuring Inc.  
Audible Capital Corp et al.  
**Time Summary**  
For the period during November 2020

Personnel	Rate (\$)	Hours	Amount (\$)
Noah Goldstein	625	38.50	24,062.50
Eli Brenner	495	11.00	5,445.00
Murtaza Tallat	450	3.00	1,350.00
Other Staff and Administration		3.20	888.00
			<u>31,745.50</u>
Disbursements			<u>58.10</u>
Total Fees and Disbursements			<u><u>31,803.60</u></u>

**ksw advisory inc.**

150 King Street West, Suite 2308

Toronto, Ontario, M5H 1J9

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**INVOICE**

Audible Capital Corp. et al  
c/o KSV Restructuring Inc.  
150 King Street West, Suite 2308  
Toronto, ON M5H 1J9

January 18, 2021

Invoice No: 2037  
HST #: 818808768RT0001

**Re: Audible Capital Corp. ("Audible"), Avenir Trading Corp.,  
1892244 Alberta Ltd., Avenir Sports Entertainment Ltd., Avenir Sports  
Entertainment Corp. and Portland Winterhawks, Inc. (collectively, the "Companies")**

For professional services rendered by KSV Restructuring Inc. in its capacity as Court-appointed receiver ("Receiver") of the Companies during December 2020, including:

General

- Corresponding with Bridging Finance Inc. (the "Agent"), Chaitons LLP ("Chaitons"), the Agent's counsel, Bennett Jones LLP ("Bennett Jones"), the Receiver's Canadian counsel, and K&L Gates LLP ("K&L"), the Receiver's US counsel, regarding all aspects of this mandate;
- Corresponding with Doug Piper, President of the Portland Winterhawks ("Winterhawks"), regarding all aspects of the Winterhawks' business and operations during the period;
- Corresponding with Bennett Jones regarding the sale of Audible's non-controlling investments (the "Investment Assets") in 11 start-up and growth stage companies (the "Investment Companies" and each an "Investment Company") (the "Investment Sale Process");

Operations of the Winterhawks

- Corresponding with various employees of the Winterhawks, including Mr. Piper, Kelley Robinett, SVP, Business Operations and Vicky Talmadge, VP Finance, on a regular basis regarding all aspects of the Winterhawks' operations;
- Reviewing bi-weekly payroll for the Winterhawks, and communication with representatives of the Winterhawks' payroll service provider, Barrett Business Services, Inc. regarding payment of the same;
- Reviewing invoices and preparing disbursements for the Winterhawks;

- Corresponding with the Winterhawks' management regarding the operations of the Winterhawks Skating Center and the Winterhawks Junior Hockey, LLC;

#### Sale Process - Winterhawks

- Corresponding with Mr. Piper on a near-daily basis regarding all aspects and management of the sale process (the "Sale Process");
- Corresponding regularly with representatives of the Western Hockey League ("WHL") regarding the Sale Process;
- Corresponding with the WHL regarding the 2021-2022 season and the impact on the Sale Process;
- Preparing the Third Report of the Receiver dated December 9, 2020 in connection with the sale of the Winterhawks (the "Winterhawks Motion");
- Reviewing and commenting on Canadian and US Motion materials in connection with the Winterhawks Motion;
- Attending Canadian and US Court in connection with the Winterhawks Motion;
- Corresponding with Darryl Henry, a broker, regarding the Sale Process;

#### Sale Process - Investment Assets

- Corresponding extensively with Bennett Jones and Blake, Cassels & Graydon LLP ("Blakes"), counsel to Avina Acquisition Corp. ("Avina"), the stalking horse bidder, regarding Avina's stalking horse asset purchase agreement for the Investment Assets (the "APA");
- Negotiating the terms of the APA with Blakes and discussing same with Bennett Jones;
- Attending a call with Blakes and Bennett Jones on December 8, 2020 regarding the APA;
- Reviewing and commenting on the draft APA;
- Corresponding with Torys LLP, counsel to Synaptive Medical Inc., an Investment Company ("Synaptive"), regarding the Receiver's request for financial and corporate records and reaching an agreement on the terms of the Receiver's confidentiality obligations over information provided by Synaptive;
- Sending letters to the principals (the "Principals") of ten of the Investment Companies requesting financial and corporate records (the "Requested Information");
- Corresponding extensively with the Principals and/or counsel to the Investment Companies regarding the Requested Information and the Investment Sale Process;
- Reviewing the Requested Information provided by the Investment Companies;
- Sending letters to the principals of two of the Investment Companies to follow up on the Requested Information;



- Corresponding with Performance Phenomics Inc., an Investment Company ("Phenomics"), and its counsel, Osler, Hoskin & Harcourt LLP, regarding Phenomics' corporate reorganization and reviewing corporate records in respect of same;
- Attending a call with Bennett Jones on December 30, 2020 regarding the Investment Sale Process, Phenomics reorganization and preparing non-disclosure agreements;
- Corresponding with Bennett Jones regarding the transfer restrictions outlined in the Investment Companies' corporate records;
- Corresponding with Maple Leafs Sports & Entertainment Ltd. ("MLSE") regarding the ownership of certain Toronto Raptors and Toronto Maples Leafs season tickets;
- Preparing the Receiver's Fourth Report to Court dated December 22, 2020 regarding the Investment Sale Process;
- Preparing a summary of break fees in recent Canadian restructuring proceedings included as an appendix in the Fourth Report;
- Corresponding with Bennett Jones regarding all court materials filed in relation to the Investment Sale Process including the Notice of Motion dated December 22, 2020, bidding procedures and APA Approval Order;
- Preparing marketing materials, including a teaser summarizing the investment opportunity;
- Identifying prospective buyers, and compiling a list with key contact information ("Buyers List");

#### Other

- Updating the Agent regularly regarding the status of the receivership proceedings;
- Corresponding regularly with Bill Gallacher regarding the status of the receivership proceedings;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements	\$	47,839.22
HST		6,219.10
Total due	\$	<u>54,058.32</u>

KSV Restructuring Inc.  
Audible Capital Corp et al.

**Time Summary**

For the period during December 2020

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Noah Goldstein	625	48.50	30,312.50
Jordan Wong	450	30.25	13,612.50
Other Staff and Administration		12.20	3,857.50
			<u>47,782.50</u>
Disbursements			56.72
Total Fees and Disbursements			<u><u>47,839.22</u></u>

**ksv advisory inc.**

150 King Street West, Suite 2308

Toronto, Ontario, M5H 1J9

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**INVOICE**

Audible Capital Corp. et al  
c/o KSV Restructuring Inc.  
150 King Street West, Suite 2308  
Toronto, ON M5H 1J9

February 8, 2021

Invoice No: 2060  
HST #: 818808768RT0001

**Re: Audible Capital Corp. ("Audible"), Avenir Trading Corp.,  
1892244 Alberta Ltd., Avenir Sports Entertainment Ltd., Avenir Sports  
Entertainment Corp. and Portland Winterhawks, Inc. (collectively, the "Companies")**

For professional services rendered by KSV Restructuring Inc. in its capacity as Court-appointed receiver ("Receiver") of the Companies during January 2021, including:

General

- Corresponding with Bridging Finance Inc. (the "Agent"), Chaitons LLP ("Chaitons"), the Agent's counsel, Bennett Jones LLP ("Bennett Jones"), the Receiver's Canadian counsel, and K&L Gates LLP ("K&L"), the Receiver's US counsel, regarding all aspects of this mandate;
- Corresponding with Bennett Jones regarding the sale of Audible's non-controlling investments (the "Investment Assets") in 11 start-up and growth stage companies (the "Investment Companies" and each an "Investment Company") (the "Investment Sale Process");
- Corresponding with the purchaser of the Portland Winterhawks to complete an orderly transition of the team;
- Corresponding extensively with Bennett Jones regarding the Investment Sale Process and the stalking horse asset purchase agreement ("APA") submitted by Avina Acquisition Corp. ("Avina"), the stalking horse bidder;
- Attending calls and corresponding extensively with the principals (the "Principals") and/or counsel of some of the Investment Companies regarding outstanding financial and corporate records previously requested (the "Requested Information") and the Investment Sale Process;
- Corresponding with Torys LLP, counsel to Synaptive Medical Inc., an Investment Company ("Synaptive"), regarding the Receiver's request for financial and corporate records and to facilitate information requests by prospective purchasers;



- Reviewing the Requested Information provided by the Investment Companies;
- Attending a call with Osler, Hoskin & Harcourt LLP, counsel to Performance Phenomics Inc., an Investment Company ("Phenomics"), on January 4, 2021 regarding Phenomics' corporate reorganization;
- Corresponding with Bennett Jones regarding the transfer restrictions outlined in the Investment Companies' corporate records ("Transfer Restrictions");
- Reviewing summaries of the Transfer Restrictions prepared by Bennett Jones;
- Preparing marketing materials, including a teaser summarizing the investment opportunity (the "Teaser");
- Reviewing the non-disclosure agreement ("NDA") prepared by Bennett Jones;
- Preparing a virtual data room ("VDR") containing the Investment Company's financial and corporate records to be accessed by prospective purchasers who signed the NDA;
- Preparing a summary of the Investment Companies' recent financial information and uploading same to the VDR;
- Requesting shareholder contact information from the Principals of the Investment Companies and preparing a list with key contact information of these prospective purchasers ("Shareholder Buyers List");
- Reviewing online databases to identify prospective purchasers including family offices, venture capital firms, private equity firms, incubators, angel investors and other institutional investors ("Investor Buyers List");
- Preparing an advertisement of the Sale Process for publication in the Globe & Mail newspaper on January 13, 2021;
- Attending a virtual court hearing on January 6, 2021 regarding the Receiver's motion for approval of the Investment Sale Process;
- Reviewing an order of the Court dated January 6, 2021 approving the Investment Sale Process and APA;
- Sending the Teaser and NDA to roughly 100 parties on the Shareholder Buyers List and over 300 parties on the Investor Buyers List;
- Attending multiple calls with prospective purchasers who did not ultimately execute the NDA;
- Executing 12 NDAs with prospective purchasers ("Potential Bidders") and providing these parties with access to the VDR;
- Attending multiple calls and corresponding with the Potential Bidders regarding the Investment Sale Process, bidding procedures and specific questions or requests concerning the Investment Companies;
- Following up with parties on the Shareholder Buyers List and the Investor Buyers List;
- Corresponding with Bill Gallacher and his counsel regarding his intention to submit a bid;

Other

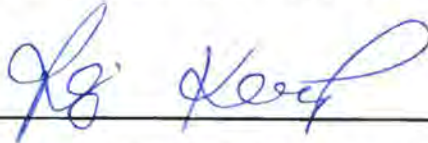
- Updating the Agent regularly regarding the status of the receivership proceedings;
- Corresponding regularly with Mr. Gallacher regarding the status of the receivership proceedings;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements	\$	37,562.34
HST		4,883.10
Total due	\$	<u>42,445.44</u>

KSV Restructuring Inc.  
Audible Capital Corp et al.  
**Time Summary**  
For the period during January 2021

Personnel	Rate (\$)	Hours	Amount (\$)
Noah Goldstein	650	22.00	14,300.00
Jordan Wong	475	46.00	21,850.00
Other Staff and Administration		3.20	882.50
			<u>37,032.50</u>
Disbursements			529.84
Total Fees and Disbursements			<u><u>37,562.34</u></u>

THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF NOAH GOLDSTEIN  
SWORN BEFORE ME THIS 9<sup>th</sup> DAY OF MARCH 2020



A Commissioner for taking Affidavits, etc.

**Rajinder Kashyap, a Commissioner, etc.,  
Province of Ontario, for KSV Restructuring Inc.  
Expires January 27, 2024.**

**Audible Capital Corp et al.**  
**Schedule of Professionals' Time and Rates**  
**For the Period from November 1, 2020 to January 31, 2021**

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Personnel	Title	Duties	Hours	Billing Rate (\$ per hour)	Amount (\$)
Noah Goldstein	Managing Director	Overall responsibility	109.00	625 - 650	68,675.00
Eli Brenner	Senior Manager	Sale Process - Winterhawks	11.00	495	5,445.00
Jordan Wong	Associate	Sale Process - Investments	76.25	450	35,462.50
Other staff and administrative			21.60	125-725	6,978.00
Total fees			217.85		116,560.50
Average hourly rate					\$ 535.05



## **Appendix “F”**

**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  
WINTERHAWKS, 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

**AFFIDAVIT OF SEAN ZWEIG  
(sworn March 8, 2021)**

I, **SEAN ZWEIG**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY  
AS FOLLOWS:**

1. I am a lawyer qualified to practice law in the Province of Ontario and am a partner of Bennett Jones LLP ("**Bennett Jones**"), counsel for KSV Restructuring Inc.<sup>1</sup> in its capacity as Court-appointed receiver (the "**Receiver**") in these proceedings and as such have knowledge of the matters hereinafter deposed. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

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<sup>1</sup> Effective August 31, 2020 KSV Kofman Inc. changed its name to KSV Restructuring Inc.

2. I make this affidavit in support of a motion by the Receiver for, among other things, approval of the fees and disbursements of the Receiver and its counsel.

3. Attached hereto as Exhibit "A" are true copies of the accounts rendered by Bennett Jones counsel to the Receiver for the period between November 1, 2020 and February 28, 2021. The accounts have been redacted to address matters of confidentiality or privilege. I confirm that these accounts accurately reflect the services provided by Bennett Jones in this matter for this period and the fees and disbursements claimed by it for the period.

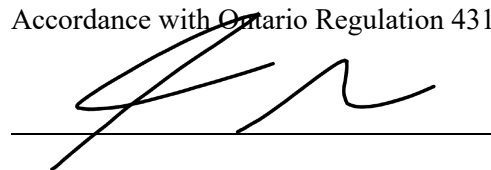
4. Attached hereto as Exhibit "B" is a schedule summarizing the accounts of Bennett Jones rendered to the Receiver for the fees and disbursements incurred by Bennett Jones in connection with these proceedings for the period between November 1, 2020 and February 28, 2021.

5. Attached hereto as Exhibit "C" is a schedule summarizing the respective years of call and billing rates of each of the professionals at Bennett Jones that rendered services to the Receiver, the hours worked by each such individual and the blended hourly rate for the file.


6. To the best of my knowledge, the rates charged by Bennett Jones throughout the course of these proceedings are comparable to the rates charged by other law firms in the Toronto market for the provision of similar services. I believe that the total hours, fees and disbursements incurred to date by Bennett Jones on this matter are reasonable and appropriate in the circumstances.

SWORN before me over videoconference )  
on this 8<sup>th</sup> day of March 2021. The affiant )  
was located in the City of Toronto, in the )  
Province of Ontario. This Affidavit was )  
Commissioned remotely as a result of )  
COVID-19 and was commissioned in )  
Accordance with Ontario Regulation 431/20 )

  
SEAN ZWEIG



**THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF SEAN ZWEIG  
SWORN  
THE 8<sup>th</sup> DAY OF MARCH 2021**

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a final flourish.

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**A Commissioner for taking affidavits, etc.**



Bennett Jones

Bennett Jones LLP  
Suite 3400  
1 First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4

KSV Restructuring Inc.  
SUITE 2308, 150 KING STREET WEST  
TORONTO, ON M5H 1J9

Attention: Noah Goldstein

Re: Audible Capital Corp.  
Our File Number: 074735.00027

Date: December 7, 2020  
Invoice: 1366727

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PROFESSIONAL SERVICES RENDERED in conjunction with the above noted matter:

Professional Services	\$	35,890.00
Disbursements	\$	10.15
Total Due before GST/HST	\$	35,900.15
GST/HST	\$	4,667.02
Total Due in CAD	\$	40,567.17

Due upon receipt. Bennett Jones reserves the right to charge interest at a rate not greater than 12% per annum on outstanding invoices over 30 days. We collect, use and disclose information pursuant to our Privacy Policies. For further information visit our website at [www.bennettjones.com](http://www.bennettjones.com). GST/HST number: 119346757



December 7, 2020  
Page 2

Client:  
Invoice No.:

074735.00027  
1366727

Date	Name	Description	Hours
02/11/20	Sean Zweig	Reviewing correspondence with Banner Bank; Various emails in connection with contract assignments; Call regarding same; Further emails regarding same; Call and emails with N. Goldstein	1.10
03/11/20	Aiden Nelms	Reading and responding to file related emails	0.30
03/11/20	Sean Zweig	Discussions in connection with Audible investments; Reviewing AIS letter from landlord, and discussing same; Reviewing and commenting on US status update	0.50
04/11/20	Aiden Nelms	Reading and responding to file related emails	0.30
04/11/20	Sean Zweig	Various emails in connection with PWH sale; Emails regarding distribution / security opinion; Emails regarding [REDACTED]; Reviewing update from US court	0.50
05/11/20	Aiden Nelms	Reading and responding to file related emails; Coordinating court time and hearing details	0.50
05/11/20	Sean Zweig	Emails in connection with PWH court approval, AIS lease and Banner Bank	0.30
06/11/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and redacting invoices for fee approval	1.70
06/11/20	Sean Zweig	Emails in connection with [REDACTED]; Call with N. Goldstein; Emails in connection with AIS lease	0.40
09/11/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and redacting invoices	1.90
09/11/20	Sean Zweig	Call with C. Burr; Call with N. Goldstein	0.20
11/11/20	Sean Zweig	Emails regarding potential Audible transaction; Call with N. Goldstein	0.20
12/11/20	Aiden Nelms	Reading and responding to file related emails; Reviewing, revising and commenting on the Receiver's report	2.00
12/11/20	Sean Zweig	Emails with N. Goldstein regarding WHL fees; Emails in connection with potential Audible stalking horse offer; Reviewing and commenting on draft Court Report; Various emails in connection with Audible investments, and call with N. Goldstein regarding same; Various emails with N. Goldstein and US counsel regarding PWH matters	1.40



December 7, 2020  
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Client:  
Invoice No.:

074735.00027  
1366727

Date	Name	Description	Hours
13/11/20	Sean Zweig	Emails in connection with US security opinion	0.10
14/11/20	Sean Zweig	Reviewing revised draft of Report; Emails with A. Nelms regarding upcoming hearing	0.30
16/11/20	Aiden Nelms	Reading and responding to file related emails; Drafting and revising Approval and Vesting Order; Drafting and revising Notice of Motion; Drafting and revising Ancillary Order; Redacting invoices for privilege; Redacting K&L's invoices for privilege; Reviewing and commenting on draft Report	8.50
16/11/20	Thomas Gray	Research on [REDACTED] for A. Nelms	4.10
16/11/20	Bronwynn Shaw	Drafting closing agenda for asset purchase transaction	3.90
16/11/20	Sean Zweig	Emails in connection with WHL matters and discussing same with N. Goldstein; Discussing [REDACTED]; Call with B. Sargent and N. Goldstein; Reviewing and commenting on draft Order and Notice of Motion; Reviewing revised drafts; Many emails and discussions in connection with upcoming motion	2.10
17/11/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and revising Approval and Vesting Order; Reviewing and redacting K&L invoices; Drafting and revising Fee Affidavit exhibits; Preparing for and participating in conference call with internal working group and counsel at MOFO; Reviewing and considering Sale Agreement; Drafting and revising General Conveyance Assignment and Assumption Agreement; Phone call with K. Hanc regarding same	5.40
17/11/20	Kris Hanc	Call with MoFo and S. Zweig; Call with A. Nelms; Correspondence	0.40
17/11/20	Sean Zweig	Dealing with assignment provisions for Order; Call with N. Goldstein regarding [REDACTED]; Reviewing email regarding league approval; Call with Morrison & Foerster team; Emails in connection with LLC transfers; Reviewing purchaser assignments; Emails with B. Sargent; Reviewing and commenting on drafts of US court documents	2.00

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Client:  
Invoice No.:

074735.00027  
1366727

Date	Name	Description	Hours
18/11/20	Kris Hanc	Reviewing and revising transfer agreement	0.60
18/11/20	Aiden Nelms	Reading and responding to file related emails; Drafting and revising Notice of Motion; Drafting and revising Ancillary Order; Redacting invoices for privilege; Drafting and revising Fee Affidavit exhibits; Reviewing and commenting on draft Report	3.60
18/11/20	Thomas Gray	Assisting A. Nelms with fee affidavits	0.80
18/11/20	Sean Zweig	Reviewing KSV comments on US court documents; Emails with B. Sargent regarding same; Call regarding PWH transaction; Calls regarding potential Orla transaction; Calls with N. Goldstein; Reviewing revised Report; Reviewing revised Canadian court documents; Reviewing and commenting on revised US court documents; Many emails in connection with PWH transaction and related motion; Reviewing draft stalking horse APA; Discussion with N. Goldstein; Reviewing and swearing fee affidavit	3.30
19/11/20	Aiden Nelms	Reading and responding to file related emails; Drafting and revising rider for Receiver's Report; Finalizing B. Sargent's Fee Affidavit and coordinating execution of same; Revising Notice of Motion	2.80
19/11/20	Kris Hanc	Reviewing draft Avina APA and preparing comments	0.80
19/11/20	Sean Zweig	Reviewing N. Goldstein's comments on US Declaration; Reviewing rider for Report; Discussions regarding PWH transaction; Discussions in connection with possible Orla transaction; Emails in connection with stalking horse bid received; Many emails with B. Sargent; Emails and call with N. Goldstein	1.40
20/11/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and revising the Receiver's report; Reviewing and revising form of Notice of Motion	2.30
20/11/20	Sean Zweig	Multiple calls and emails throughout day in connection with final [REDACTED]; Reviewing and commenting on revised Canadian and US court materials; Reviewing and marking up stalking horse bid; Reviewing LLC transfer documents	2.30





December 7, 2020

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Client:

074735.00027

Invoice No.:

1366727

Date	Name	Description	Hours
21/11/20	Sean Zweig	Calls with N. Goldstein	0.30
22/11/20	Sean Zweig	Many emails with Morrison & Foerster regarding assignment of lease and next steps; Reviewing APA in connection with same	0.60
23/11/20	Aiden Nelms	Reading and responding to file related emails	0.30
23/11/20	Sean Zweig	Emails and discussions in connection with Audible assets; Discussions regarding PWH sale issues	0.80
24/11/20	Sean Zweig	Emails in connection with Bridging debt; Discussion with N. Goldstein	0.20
25/11/20	Aiden Nelms	Reading and responding to file related emails; Finalizing court appearance details	0.40
25/11/20	Sean Zweig	Call with N. Goldstein	0.20
27/11/20	Sean Zweig	Emails in connection with offer from B. Gallacher; Call with C. Burr and N. Goldstein regarding stalking horse APA; Follow-up call with N. Goldstein; Considering [REDACTED]	0.80
28/11/20	Sean Zweig	Correspondence with N. Goldstein	0.20
30/11/20	Aiden Nelms	Reading and responding to file related emails; Drafting and revising Factum in respect of sale approval	0.80
30/11/20	Sean Zweig	Correspondence regarding status of PWH transaction; Emails with C. Burr and N. Goldstein regarding potential stalking horse agreement	0.40

Total Hours	61.00
Total Professional Services	\$ 35,890.00

Name	Hours
Kris Hanc	1.80
Sean Zweig	19.60
Bronwynn Shaw	3.90
Aiden Nelms	30.80
Thomas Gray	4.90

Disbursements	Amount
SoundPath Legal Conferencing	\$ 10.15
Total Disbursements	\$ 10.15
GST/HST	\$ 4,667.02



Bennett Jones

December 7, 2020  
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Client: 074735.00027  
Invoice No.: 1366727

TOTAL DUE \$ 40,567.17



Date: December 7, 2020  
Invoice: 1366727

Professional Services	\$	35,890.00
Disbursements	\$	10.15
Total Due before GST/HST	\$	35,900.15
GST/HST	\$	4,667.02
Total Due in CAD	\$	40,567.17

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Bennett Jones

Bennett Jones LLP  
Suite 3400  
1 First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4

KSV Restructuring Inc.  
SUITE 2308, 150 KING STREET WEST  
TORONTO, ON M5H 1J9

Attention: Noah Goldstein

Re: Audible Capital Corp.  
Our File Number: 074735.00027

Date: December 31, 2020  
Invoice: 1373229

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PROFESSIONAL SERVICES RENDERED in conjunction with the above noted matter:

Professional Services	\$	77,680.50
Disbursements	\$	108.61
Other Charges	\$	1,226.50
Total Due before GST/HST	\$	<u>79,015.61</u>
GST/HST	\$	10,272.03
Total Due in CAD	\$	<u><u>89,287.64</u></u>

Due upon receipt. Bennett Jones reserves the right to charge interest at a rate not greater than 12% per annum on outstanding invoices over 30 days. We collect, use and disclose information pursuant to our Privacy Policies. For further information visit our website at [www.bennettjones.com](http://www.bennettjones.com). GST/HST number: 119346757



December 31, 2020

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Client:

Invoice No.:

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1373229

Date	Name	Description	Hours
01/12/20	Sean Zweig	Call with N. Goldstein regarding Audible [REDACTED]; Calls and emails with K. Hanc regarding same	0.50
01/12/20	Kris Hanc	Call with S. Zweig; Reviewing CBCA regarding shareholder information requirements; Reviewing CBCA; Emails regarding same	0.40
02/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering relevant [REDACTED]; Drafting letter to companies in which Audible holds investments; Phone call with S. Zweig regarding Investment Assets Bidding Procedures	3.00
02/12/20	Sean Zweig	Call with N. Goldstein; Reviewing and commenting on draft letters to investment companies; Call with A. Nelms regarding bid procedures; Emails in connection with PWH sale	0.70
03/12/20	Sean Zweig	Emails with A. Nelms regarding bid procedures; Emails with C. Burr; Considering [REDACTED] and discussing with N. Goldstein; Reviewing correspondence with investment company	1.00
03/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering draft Stalking Horse APA; Reviewing and considering Bidding Procedures precedent; Drafting and revising form of Bidding Procedures for Investment Assets	3.20
04/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering various provisions in the OBCA and CBCA regarding corporate records and shareholder disclosure; Drafting and revising form of Bidding Procedures for Investment Assets	3.10
04/12/20	Andrew Sahai	Researchin [REDACTED]	7.40
04/12/20	Sean Zweig	Various emails regarding bid procedures; Reviewing and commenting on same; Call with A. Sahai regarding [REDACTED]; Emails and call regarding [REDACTED]	0.90
05/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and revising bid procedures	1.00
05/12/20	Sean Zweig	Reviewing N. Goldstein's comments on bid procedures; Reviewing revised draft; Emails	0.30

December 31, 2020  
Page 3Client:  
Invoice No.:074735.00027  
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Date	Name	Description	Hours
		regarding [REDACTED]	
06/12/20	Sean Zweig	Reviewing documents provided by Audible investment company, and correspondence regarding same; Discussions regarding bid procedures; Emails with B. Sargent	0.80
06/12/20	Andrew Sahai	Researching whether [REDACTED] [REDACTED]	5.50
06/12/20	Aiden Nelms	Reading and responding to file related emails	0.30
07/12/20	Andrew Sahai	Finalizing memorandum for S. Zweig summarizing [REDACTED] [REDACTED]	3.30
07/12/20	Aiden Nelms	Reading and responding to file related emails; Phone call with T. Gray regarding due [REDACTED]; Reviewing and considering materials in respect of same; Reviewing and considering mark-up of Investment APA and Bidding Procedures	2.60
07/12/20	Thomas Gray	Summarizing restrictions on [REDACTED] [REDACTED]	6.50
07/12/20	Sean Zweig	Emails regarding [REDACTED]; Various emails with C. Burr; Discussions with N. Goldstein; Reviewing A. Sahai's research regarding [REDACTED]; Reviewing and commenting on revised APA and bid procedures; Reviewing and commenting on draft AVO; Emails regarding MLSE tickets	1.30
08/12/20	Thomas Gray	Continuing to summarize [REDACTED] [REDACTED]	0.90
08/12/20	Aiden Nelms	Reading and responding to file related emails; Preparing for and participating in conference call with internal working group and C. Burr regarding Stalking Horse APA; Drafting and revising amendment to PWH APA; Reviewing and commenting on the Receiver's Third Report; Reviewing and commenting on draft AVO for Investment Asset SISP; Reviewing and revising motion materials	4.60
08/12/20	Sean Zweig	Working on potential Audible sale, including in respect of MLSE tickets; Many discussions	1.70



Date	Name	Description	Hours
		regarding same and commenting on documents; Reviewing revised PWH sale report; Call with Receiver and C. Burr; Emails in connection with PWH sale matters; Revising amendment; Reviewing and commenting on draft bidding procedures order	
09/12/20	Thomas Gray	Updating draft of [REDACTED]	0.40
09/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and revising Approval and Vesting Order; Reviewing and revising Notice of Motion; Reviewing and revising 2nd Amendment to the APA; Reviewing and revising Ancillary Order; Reviewing and revising Investment Bid Procedures; Reviewing and finalizing December 16 Motion Record; Drafting and revising letter to MLSE regarding seat licenses; Multiple file related phone calls throughout the day	5.00
09/12/20	Sean Zweig	Dealing with [REDACTED]; Working throughout day in connection with PWH transaction, and finalizing same; Reviewing and commenting on draft stalking horse report; Emails in connection with BioSteel litigation; Multiple discussions regarding stalking horse deal terms and MLSE issues; Emails with B. Sargent; Reviewing and commenting on MLSE letter	3.00
09/12/20	Phil Ward	Drafting email to A. Nelms regarding [REDACTED]; Telephone call with A. Nelms regarding same	0.20
10/12/20	Sean Zweig	Various correspondence in connection with Audible investments and MLSE tickets; Reviewing updated drafts of US sale approval materials; Reviewing MOFO comments and further drafts; Discussions with N. Goldstein	1.20
10/12/20	Aiden Nelms	Reading and responding to file related emails; Phone call with MLSE; Reviewing and considering draft US materials	2.90
10/12/20	Thomas Gray	Continuing to review [REDACTED]	0.80
11/12/20	Aiden Nelms	Reading and responding to file related emails	0.20
11/12/20	Sean Zweig	Reviewing and commenting on Swiss engagement letter; Emails and call in connection with US sale approval notice	0.40
12/12/20	Sean Zweig	Various correspondence in connection with US sale	0.40



December 31, 2020  
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Client:  
Invoice No.:

074735.00027  
1373229

Date	Name	Description	Hours
		approval motion and Canopy Growth/KPMG lawsuit	
12/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and revising Factum	1.30
13/12/20	Thomas Gray	Preparing Book of Authorities for A. Nelms	1.60
13/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and revising Factum	3.00
13/12/20	Joshua Foster	Reviewing and revising factum in support of approval and vesting order; Corresponding with A. Nelms regarding same	0.60
13/12/20	Sean Zweig	Reviewing and commenting on draft factum; Reviewing revised draft and correspondence regarding same	0.50
14/12/20	Thomas Gray	Preparing Book of Authorities for A. Nelms	1.70
14/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and revising Factum; Reviewing and finalizing Book of Authorities; Coordinating filing of documents; Uploading documents to Sync; Preparing for and participating in conference call regarding BioSteel litigation	3.50
14/12/20	Joshua Foster	Reviewing and revising factum citations; Commissioning affidavits of service; Corresponding with A. Nelms regarding same	0.20
14/12/20	Sean Zweig	Reviewing draft closing agenda, and emails regarding same	0.20
15/12/20	Aiden Nelms	Reading and responding to file related emails; Drafting and revising note to KSV regarding BioSteel lawsuit update; Reviewing and considering revised Investment Asset Stalking Horse; Drafting and revising Factum; Drafting and revising follow-up letter to Investment Companies	2.40
15/12/20	Bronwynn Shaw	Reviewing closing agenda	1.00
15/12/20	Sean Zweig	Various discussions in connection with Audible stalking horse, and reviewing and commenting on revised draft documents; Discussions regarding shareholding information requests, and commenting on draft letter in connection with same; Reviewing BioSteel update; Various emails with US counsel in connection with upcoming hearing	1.20





Date	Name	Description	Hours
16/12/20	Aiden Nelms	Reading and responding to file related emails; Drafting and revising letter to companies regarding investment assets; Preparing for and participating in hearing via videoconference; Coordinating service of signed Orders; Reading and considering summaries on transfer restrictions	3.30
16/12/20	Bronwynn Shaw	Preparing mark-up of closing agenda	0.80
16/12/20	Kris Hanc	Reviewing purchase agreement; Reviewing closing agenda and providing comments	0.60
16/12/20	Sean Zweig	Preparing for and attending hearing; Many calls with N. Goldstein regarding Audible stalking horse agreement and related issues; Many emails and calls regarding US sale approval objections and issues; Reviewing transfer restriction memorandum for certain investments; Considering issues in connection with investment sale process; Reviewing comments on closing agenda	1.70
17/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering closing checklist; Reviewing and revising Purchaser's bring-down certificate; Drafting and revising Vendors' bring-down certificate; Preparing for and participating in conference call with M. Goodman and B. Shaw regarding closing checklist; Follow-up call with B. Shaw regarding same	3.10
17/12/20	Sean Zweig	Many emails throughout day in connection with upcoming US hearing and potential objections; Call with B. Sargent regarding upcoming hearing and open issues; Call with Torys regarding Synaptive sale process; Emails regarding closing matters; Many discussions with N. Goldstein	1.90
17/12/20	Bronwynn Shaw	Reviewing and providing comments on bring-down certificates; Drafting direction and receipt relating to payment of purchase price; Call with Purchaser's counsel to discuss closing; Call with A. Nelms to discuss closing items; Coordinating signature packages for closing	2.90
17/12/20	Olivia D'Innocenzo	Conducting Ontario and federal corporate searches on Mobility View Inc.; Circulating same to A. Nelms	0.50
18/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and commenting on draft of Fourth	5.30



Date	Name	Description	Hours
		Report; Reviewing and revising draft Order; Drafting and revising Notice of Motion; Reviewing and considering Business Corporations Act (Alberta) regarding [REDACTED] Reviewing closing checklist and drafting follow-up note to N. Goldstein	
18/12/20	Sean Zweig	Reviewing and revising draft Fourth Report; Emails in connection with PWH closing; Discussions with N. Goldstein; Attending US sale approval hearing	1.30
18/12/20	Bronwynn Shaw	Reviewing revised bring-down certificates	0.20
19/12/20	Thomas Gray	Revising Notice of Motion	0.60
19/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and revising motion materials; Reviewing and revising draft Investment Bidding Procedures and Stalking Horse APA Approval Order	1.30
19/12/20	Sean Zweig	Reviewing and commenting on draft Notice of Motion and revised Order; Emails in connection with stalking horse motion and issues	0.30
20/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and revising draft Notice of Motion and draft Investment Bidding Procedures and Stalking horse APA Approval Order	0.90
20/12/20	Sean Zweig	Emails in connection with Service List and motion materials for stalking horse motion	0.20
21/12/20	Aiden Nelms	Reading and responding to file related emails; Drafting and revising Investment SISP Factum; Reviewing and considering OBCA provisions; Drafting correspondence to Synaptive; Reviewing and commenting on Fourth Report; Phone call with B. Shaw regarding closing checklist; Updating same	4.10
21/12/20	Bronwynn Shaw	Call with A. Nelms to discuss outstanding closing items	0.40
21/12/20	Thomas Gray	Reviewing agreements and summarizing [REDACTED]	0.70
21/12/20	Sean Zweig	Reviewing revised Report and considering potential additional relief; Emails with B. Sargent; Emails in connection with requested information from Synaptive; Reviewing WHL press release; Emails with A. Nelms	0.70



Date	Name	Description	Hours
21/12/20	Olivia D'Innocenzo	Conducting BC and Ontario corporate searches on Synaptive Medical Inc.; Circulating same to A. Nelms	0.60
22/12/20	Aiden Nelms	Reading and responding to file related emails; Phone call with S. Zweig regarding various issues; Phone call with M. Goodman regarding outstanding PWH items; Phone call with B. Shaw regarding same; Reviewing and considering comments on receipt and direction; Reviewing and considering draft of Fourth Report; Finalizing and compiling Motion Record; Drafting note to Service List in respect of same; Drafting and revising Factum	6.80
22/12/20	Bronwynn Shaw	Reviewing closing documents; Reviewing signature packages and compiling draft closing documents; Call with A. Nelms to discuss outstanding closing items	1.60
22/12/20	Sean Zweig	Call and emails regarding PWH closing matters; Reviewing and commenting on factum; Call with N. Goldstein regarding Orla question; Various correspondence throughout day	1.00
22/12/20	Thomas Gray	Reviewing documents for [REDACTED]	1.70
22/12/20	Kris Hanc	Reviewing comments on closing documents	0.10
23/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and revising Factum and Book of Authorities; Preparing for and participating in conference call regarding PWH closing; Coordinating signature packages; Filing court materials; Reviewing and revising Bill of Sale, Assignment and Assumption Agreement	3.60
23/12/20	Jade Wong	Receiving instructions from A. Nelms; Compiling cases for book of authorities; Creating index	2.20
23/12/20	Preet Bell	Correspondence with A. Nelms regarding legal test for approval of sale process; Reviewing case law in respect of same and providing case law for factum	0.40
23/12/20	Sean Zweig	Various emails in connection with PWH closing, and reviewing closing documents; Reviewing case and considering application to Orla; Call with A. Nelms	0.50
23/12/20	Bronwynn Shaw	Call with Purchaser's counsel regarding closing;	1.00

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1373229

Date	Name	Description	Hours
		Call with A. Nelms regarding outstanding closing items	
24/12/20	Thomas Gray	Reviewing [REDACTED] [REDACTED]	0.70
24/12/20	Kris Hanc	Reviewing draft closing documents; Correspondence	0.40
24/12/20	Aiden Nelms	Reading and responding to file related emails; Finalizing Factum and Book of Authorities; Drafting note to the Service List; Circulating same; Phone call with N. Goldstein; Reviewing and considering mark-up of Bill of Sale, Assignment and Assumption Agreements; Circulating same	1.90
24/12/20	Joshua Foster	Reviewing and revising factum draft in support of SISP process and approval of the stalking horse agreement; Corresponding with A. Nelms regarding same	0.50
24/12/20	Sean Zweig	Reviewing Synaptive notice, and correspondence regarding same; Various correspondence in connection with PWH closing	0.30
24/12/20	Bronwynn Shaw	Reviewing and providing comments on assignment and assumption agreements	1.10
27/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering comments on Bill of Sale, Assignment and Assumption Agreement; Finalizing and sending N. Goldstein signature package	1.20
27/12/20	Bronwynn Shaw	Reviewing comments on assignment and assumption agreements	0.50
28/12/20	Thomas Gray	Continuing to review documents for [REDACTED] [REDACTED]	0.70
28/12/20	Aiden Nelms	Reading and responding to file related emails; Coordinating signature packages; Finalizing certain vendor deliverables; Compiling and finalizing certain vendor deliverables	2.30
28/12/20	Sean Zweig	Emails in connection with outstanding information from investee companies; Emails in connection with transaction involving Performance Phenomics	0.40
29/12/20	Thomas Gray	Continuing to review company documents for [REDACTED]	1.80

December 31, 2020  
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Client:  
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1373229

Date	Name	Description	Hours
29/12/20	Aiden Nelms	Reading and responding to file related emails; Phone call with B. Gallacher of Performance Phenomics regarding January 6 appearance; Phone call with B. Shaw regarding closing mechanics; Phone call with M. Goodman regarding same; Finalizing certain deliverables; Circulating same in escrow; Filing Factum and Book of Authorities	3.30
29/12/20	Bronwynn Shaw	Reviewing updated closing agenda; Call with A. Nelms regarding outstanding closing items; Correspondence regarding closing	1.30
29/12/20	Sean Zweig	Emails in connection with PWH sale; Emails regarding information requests from Audible investment companies	0.30
30/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering certain closing documents; Reviewing and considering certain [REDACTED] Phone call with J. Wong regarding same; Phone call with M. Goodman regarding PWH closing; Drafting and revising Investment Asset SISP NDA	3.60
30/12/20	Sean Zweig	Emails in connection with [REDACTED] issue; Emails in connection with PWH closing and related matters; Emails with counsel to Synaptive	0.60
31/12/20	Thomas Gray	Continuing to review [REDACTED]	2.70
31/12/20	Aiden Nelms	Reading and responding to file related emails; Reviewing ABCA provisions; Drafting and revising Investment Asset SISP NDA; Coordinating PWH closing	2.90
31/12/20	Sean Zweig	Emails in connection with PWH sale	0.20
Total Hours			157.70
Total Professional Services			\$ 77,680.50

Name	Hours
Kris Hanc	1.50
Preet Bell	0.40
Sean Zweig	23.50
Phil Ward	0.20
Bronwynn Shaw	10.80



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Name	Hours
Andrew Sahai	16.20
Joshua Foster	1.30
Aiden Nelms	79.70
Thomas Gray	20.80
Jade Wong	2.20
Olivia D'Innocenzo	1.10

Disbursements	Amount
SoundPath Legal Conferencing	\$ 19.11
Online Government Service	\$ 89.50
Total Disbursements	\$ 108.61

Other Charges	Amount
Library Computer Search - WestlawNext Canada	\$ 918.00
Printing	\$ 308.50
Total Other Charges	\$ 1,226.50
GST/HST	\$ 10,272.03
TOTAL DUE	\$ 89,287.64



Bennett Jones

KSV Restructuring Inc.  
SUITE 2308, 150 KING STREET WEST  
TORONTO, ON M5H 1J9

Attention: Noah Goldstein

Re: Audible Capital Corp.  
Our File Number: 074735.00027

Date: December 31, 2020  
Invoice: 1373229

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Remittance Statement

Professional Services	\$	77,680.50
Disbursements	\$	108.61
Other Charges	\$	1,226.50
Total Due before GST/HST	\$	79,015.61
GST/HST	\$	10,272.03
Total Due in CAD	\$	89,287.64

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Bennett Jones

Bennett Jones LLP  
Suite 3400  
1 First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4

KSV Restructuring Inc.  
SUITE 2308, 150 KING STREET WEST  
TORONTO, ON M5H 1J9

Attention: Noah Goldstein

Re: Audible Capital Corp.  
Our File Number: 074735.00027

Date: February 3, 2021  
Invoice: 1378292

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PROFESSIONAL SERVICES RENDERED in conjunction with the above noted matter:

Professional Services	\$	26,174.00
Disbursements	\$	113.83
Disbursements Incurred As Your Agent (Non Taxable)	\$	320.00
Other Charges	\$	47.50
Total Due before GST/HST	\$	26,655.33
GST/HST	\$	3,423.59
Total Due in CAD	\$	30,078.92

Due upon receipt. Bennett Jones reserves the right to charge interest at a rate not greater than 12% per annum on outstanding invoices over 30 days. We collect, use and disclose information pursuant to our Privacy Policies. For further information visit our website at [www.bennettjones.com](http://www.bennettjones.com). GST/HST number: 119346757



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Client:  
Invoice No.:

074735.00027  
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Date	Name	Description	Hours
02/01/21	Aiden Nelms	Reading and responding to file related emails; Running NDA related blacklines; Reviewing and considering markup	1.00
02/01/21	Sean Zweig	Reviewing and commenting on NDA	0.20
03/01/21	Thomas Gray	Continuing to review documents [REDACTED] [REDACTED]	3.50
03/01/21	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering markup of NDA; Reviewing and revising same	1.00
04/01/21	Thomas Gray	Continuing to review [REDACTED] [REDACTED]	1.40
04/01/21	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering OBCA regarding entitlement to securities register; Reviewing and considering KSV's comments on draft NDA; Revising same; Reviewing and commenting on draft teaser	1.90
04/01/21	Sean Zweig	Reviewing and commenting on draft Teaser; Reviewing KSV comments on NDA; Reviewing letter from McMillan and discussing same; Emails with M. Atkey; Various other correspondence	0.80
05/01/21	Thomas Gray	Continuing to review documents for [REDACTED] [REDACTED]	4.10
05/01/21	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering certain [REDACTED] [REDACTED] Preparing for and participating in conference call with S. Zweig, KSV and Osler	3.20
05/01/21	Sean Zweig	Emails in connection with [REDACTED]; Emails regarding Synaptive matter; Two calls with A. Maerov; Discussions with N. Goldstein regarding same; Call with Osler regarding Performance Phenomics; Follow-up emails	1.30
06/01/21	Thomas Gray	Continuing to review documents for [REDACTED] [REDACTED]	0.90
06/01/21	Aiden Nelms	Reading and responding to file related emails; Preparing Counsel Slip; Preparing for and participating in court appearance via videoconference; Drafting note to service list	3.20

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Client:  
Invoice No.:

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1378292

Date	Name	Description	Hours
		including Orders; Multiple phone calls regarding the Investment Asset SISP; Revising the service list; Reviewing, considering and updating [REDACTED]; Coordinating same with J. Wong	
06/01/21	Preet Bell	Phone call with S. Zweig regarding [REDACTED]; Reviewing and analyzing materials for same	0.30
06/01/21	Sean Zweig	Preparing for and attending at hearing; Call with P. Bell regarding [REDACTED]; Reviewing and discussing Globe ad	1.00
07/01/21	Thomas Gray	Continuing to review [REDACTED]	2.80
07/01/21	Aiden Nelms	Reading and responding to file related emails; Reviewing and revising certain [REDACTED]; Finalizing same and sending to J. Wong; Call with J. Wong regarding same	2.30
07/01/21	Preet Bell	Conducting research and analysis on [REDACTED]; [REDACTED]; Reviewing draft motion materials in respect of same	3.70
08/01/21	Aiden Nelms	Reading and responding to file related emails; Finalizing certain [REDACTED]; Coordinating delivery of same to P. Bell	0.80
08/01/21	Preet Bell	Continuing research and analysis in respect of [REDACTED]; Correspondence and phone call with S. Zweig in respect of same; Conducting review and analysis of relevant materials and documents	1.30
08/01/21	Sean Zweig	Reviewing correspondence regarding [REDACTED]; Emails and call with P. Bell regarding [REDACTED]	0.60
11/01/21	Aiden Nelms	Reading and responding to file related emails	0.50
11/01/21	Sean Zweig	Emails regarding [REDACTED]; Reviewing letter from McMillan, and emails in connection with same	0.40
13/01/21	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering certain Investment	0.50

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Client:  
Invoice No.:

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Date	Name	Description	Hours
		Company disclosure	
13/01/21	Sean Zweig	Emails regarding missing information from investment company; Emails with C. Burr; Correspondence with B. Sargent; Emails regarding sale process update	0.50
14/01/21	Thomas Gray	Reviewing documents for [REDACTED] [REDACTED]	0.40
14/01/21	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering disclosure from Phononic in respect of [REDACTED]	0.30
14/01/21	Sean Zweig	Emails with N. Goldstein regarding sale process	0.10
15/01/21	Thomas Gray	Reviewing documents for [REDACTED] [REDACTED]	0.70
18/01/21	Thomas Gray	Reviewing articles of incorporation for share transfer restrictions and sending summary to A. Nelms	1.30
18/01/21	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering Investment Company [REDACTED]	0.60
19/01/21	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering request regarding amendment to NDA	0.70
19/01/21	Sean Zweig	Emails regarding requested change to NDA	0.10
20/01/21	Sean Zweig	Emails regarding due diligence requests and sale process update	0.20
21/01/21	Sean Zweig	Email correspondence with Receiver and C. Burr	0.10
22/01/21	Aiden Nelms	Reading and responding to file related emails	0.30
22/01/21	Sean Zweig	Reviewing offer received; Correspondence with N. Goldstein	0.20
23/01/21	Sean Zweig	Emails with N. Goldstein and C. Burr	0.10
26/01/21	Preet Bell	Conducting case law research on [REDACTED] [REDACTED] [REDACTED] Discussing same with S. Zweig	1.80



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Client:  
Invoice No.:

074735.00027  
1378292

Date	Name	Description	Hours
26/01/21	Sean Zweig	Call with P. Bell regarding [REDACTED]	0.20
27/01/21	Aiden Nelms	Reading and responding to file related emails; Reviewing Q3 financials of Investment Company	0.30
27/01/21	Preet Bell	Continuing to review case law on [REDACTED] [REDACTED] correspondence and summary analysis in respect of same	1.60
27/01/21	Sean Zweig	Emails with P. Bell in connection with t [REDACTED] [REDACTED]	0.20
28/01/21	Sean Zweig	Correspondence in connection with sale process	0.20
29/01/21	Sean Zweig	Emails in connection with stalking horse matter; Discussions with N. Goldstein	0.40
Total Hours			47.00
Total Professional Services			\$ 26,174.00

Name	Hours
Preet Bell	8.70
Sean Zweig	6.60
Aiden Nelms	16.60
Thomas Gray	15.10

Disbursements	Amount
SoundPath Legal Conferencing	\$ 29.76
Postage / Registered Mail	\$ 84.07
Total Disbursements	\$ 113.83

Disbursements Incurred As Your Agent (Non Taxable)	Amount
Courthouse	\$ 320.00
Total Disbursements Incurred as Your Agent	\$ 320.00

Other Charges	Amount
Printing	\$ 47.50
Total Other Charges	\$ 47.50
GST/HST	\$ 3,423.59
TOTAL DUE	\$ 30,078.92



Date: February 3, 2021  
Invoice: 1378292

Professional Services	\$	26,174.00
Disbursements	\$	113.83
Disbursements Incurred As Your Agent (Non Taxable)	\$	320.00
Other Charges	\$	47.50
Total Due before GST/HST	\$	26,655.33
GST/HST	\$	3,423.59
Total Due in CAD	\$	30,078.92

[illegible]



Bennett Jones

Bennett Jones LLP  
Suite 3400  
1 First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4

KSV Restructuring Inc.  
SUITE 2308, 150 KING STREET WEST  
TORONTO, ON M5H 1J9

Attention: Noah Goldstein

Re: Audible Capital Corp.  
Our File Number: 074735.00027

Date: March 3, 2021  
Invoice: 1382104

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PROFESSIONAL SERVICES RENDERED in conjunction with the above noted matter:

Professional Services	\$	9,944.00
Disbursements	\$	41.34
Other Charges	\$	814.00
Total Due before GST/HST	\$	<u>10,799.34</u>
GST/HST	\$	1,403.91
Total Due in CAD	\$	<u><u>12,203.25</u></u>

Due upon receipt. Bennett Jones reserves the right to charge interest at a rate not greater than 12% per annum on outstanding invoices over 30 days. We collect, use and disclose information pursuant to our Privacy Policies. For further information visit our website at [www.bennettjones.com](http://www.bennettjones.com). GST/HST number: 119346757

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Page 2

Client:  
Invoice No.:

074735.00027  
1382104

Date	Name	Description	Hours
01/02/21	Aiden Nelms	Reading and responding to file related emails	0.60
01/02/21	Sean Zweig	Reviewing correspondence regarding Synaptive	0.10
02/02/21	Sean Zweig	Correspondence with B. Sargent and N. Goldstein	0.20
03/02/21	Sean Zweig	Correspondence with potential bidder; Correspondence with N. Goldstein	0.30
04/02/21	Sean Zweig	Discussions regarding sale process matters and next steps	0.30
05/02/21	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering Stalking Horse APA; Coordinating with the Court regarding Court time	0.70
05/02/21	Sean Zweig	Various correspondence in connection with next steps for stalking horse bid and related matters	0.30
08/02/21	Aiden Nelms	Reading and responding to file related emails	0.30
09/02/21	Sean Zweig	Discussion with N. Goldstein regarding Orla; Considering next steps for investment securities sale, and discussing same	0.40
10/02/21	Sean Zweig	Reviewing letter from McMillan; Correspondence in connection with same	0.20
12/02/21	Sean Zweig	Correspondence with N. Goldstein and C. Burr	0.20
18/02/21	Sean Zweig	Discussion with N. Goldstein regarding [REDACTED]; [REDACTED]; Emails with B. Sargent	0.20
20/02/21	Sean Zweig	Reviewing and commenting on draft materials to terminate Chapter 15 proceedings	0.50
22/02/21	Thomas Gray	Call with P. Bell to discuss [REDACTED]; Beginning research into [REDACTED]	0.70
22/02/21	Aiden Nelms	Reading and responding to file related emails; Reviewing and revising Service List; Reviewing and considering MLSE contract; Drafting correspondence in respect of same	0.90
22/02/21	Preet Bell	Phone call with S. Zweig regarding potential next steps and [REDACTED]; [REDACTED]; Discussing same and [REDACTED] with T. Gray	0.40
22/02/21	Sean Zweig	Emails with K&L Gates and N. Goldstein in	0.40

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Page 3

Client:  
Invoice No.:

074735.00027  
1382104

Date	Name	Description	Hours
		connection with Chapter 15 termination; Emails in connection with MLSE correspondence and next steps	
23/02/21	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering MLSE contract and past correspondence; Preparing for and participating in phone call with MLSE's counsel	0.80
23/02/21	Sean Zweig	Emails and call in connection with [REDACTED]; Reviewing revised Chapter 15 materials	0.50
24/02/21	Thomas Gray	Research on [REDACTED]; Reviewing EdgeHill Partnership agreement	2.40
24/02/21	Aiden Nelms	Reading and responding to file related emails; Reviewing and considering request from P. Bell; Reviewing certain agreements subject to the Investment SISP in respect of same	0.70
24/02/21	Preet Bell	Phone call with S. Zweig regarding vesting order issues; Internal correspondence regarding same	0.20
24/02/21	Sean Zweig	Reviewing final copies of Chapter 11 termination materials; Emails regarding EdgeHill	0.30
25/02/21	Thomas Gray	Summarizing key provisions from [REDACTED] for P. Bell	2.40
25/02/21	Preet Bell	Reviewing [REDACTED], and considering issues arising out of [REDACTED]; Internal correspondence in respect of same; Phone call with S. Zweig	0.50
25/02/21	Sean Zweig	Reviewing correspondence from B. Sargent; Emails and call with P. Bell regarding [REDACTED]	0.50
26/02/21	Thomas Gray	Continuing research on [REDACTED] and sending findings to P. Bell	3.60
26/02/21	Sean Zweig	Correspondence regarding BioSteel litigation funding; Discussion with N. Goldstein	0.20
28/02/21	Sean Zweig	Correspondence with each of N. Goldstein and P. Bell	0.20

Total Hours	19.00
Total Professional Services	\$ 9,944.00





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Page 4

Client: 074735.00027  
Invoice No.: 1382104

Name	Hours
Preet Bell	1.10
Sean Zweig	4.80
Aiden Nelms	4.00
Thomas Gray	9.10

Disbursements	Amount
Courier	\$ 41.34
Total Disbursements	\$ 41.34

Other Charges	Amount
Library Computer Search - WestlawNext Canada	\$ 814.00
Total Other Charges	\$ 814.00
GST/HST	\$ 1,403.91
TOTAL DUE	\$ 12,203.25



Bennett Jones

KSV Restructuring Inc.  
SUITE 2308, 150 KING STREET WEST  
TORONTO, ON M5H 1J9

Attention: Noah Goldstein

Re: Audible Capital Corp.  
Our File Number: 074735.00027

Date: March 3, 2021  
Invoice: 1382104

---

Remittance Statement

Professional Services	\$	9,944.00
Disbursements	\$	41.34
Other Charges	\$	814.00
Total Due before GST/HST	\$	10,799.34
GST/HST	\$	1,403.91
Total Due in CAD	\$	12,203.25

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF SEAN ZWEIG  
SWORN  
THE 8<sup>th</sup> DAY OF MARCH 2021**

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a smaller, more fluid 'Z'.

---

**A Commissioner for taking affidavits, etc.**

## Exhibit "B"

Invoice #	Period Ending	Date of Account	Fees	Expenses/ Disbursements	GST/HST	Total
1366727	20-Nov-20	7-Dec-20	\$ 35,890.00	\$ 10.15	\$ 4,667.02	\$ 40,567.17
1373229	31-Dec-20	31-Dec-20	\$ 77,680.50	\$ 1,335.11	\$ 10,272.03	\$ 89,287.64
1378292	29-Jan-21	3-Feb-21	\$ 26,174.00	\$ 481.33	\$ 3,423.59	\$ 30,078.92
1382104	28-Feb-21	3-Mar-21	\$ 9,944.00	\$ 855.34	\$ 1,403.91	\$ 12,203.25
<b>TOTAL</b>			<b>\$ 149,688.50</b>	<b>\$ 2,681.93</b>	<b>\$ 19,766.55</b>	<b>\$ 172,136.98</b>

**THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF SEAN ZWEIG  
SWORN  
THE 8<sup>th</sup> DAY OF MARCH 2021**

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a series of loops and a final horizontal stroke.

---

**A Commissioner for taking affidavits, etc.**

### Exhibit "C"

Timekeeper	Year of Call (if applicable)	Hourly Rate	Total Time	Fees
Sean Zweig	2009	\$ 850.00	43.1	\$ 36,635.00
		\$ 895.00	11.4	\$ 10,203.00
Kris Hanc	2007	\$ 865.00	3.3	\$ 2,854.50
Preet Bell	2008	\$ 755.00	0.4	\$ 302.00
		\$ 795.00	9.8	\$ 7,791.00
Phil Ward	2012	\$ 730.00	0.2	\$ 146.00
Bronwynn Shaw	2017	\$ 520.00	14.7	\$ 7,644.00
Aiden Nelms	2018	\$ 465.00	110.5	\$ 51,382.50
		\$ 545.00	20.6	\$ 11,227.00
Andrew Sahai	2020	\$ 380.00	16.2	\$ 6,156.00
Joshua Foster	2020	\$ 380.00	1.3	\$ 494.00
Jade Wong	Articling Student	\$ 270.00	2.2	\$ 594.00
Thomas Gray	Articling Student	\$ 270.00	25.7	\$ 6,939.00
		\$ 285.00	24.2	\$ 6,897.00
Olivia D'Innocenzo	Commercial Clerk	\$ 385.00	1.1	\$ 423.50
<b>TOTAL</b>		<b>Total Hours:</b>	<b>284.7</b>	<b>\$ 149,688.50</b>

<b>Blended Rate</b> (excluding expenses and HST) <b>\$149,688.50 ÷ 284.7 hours =</b>	<b>\$525.78</b>
--	-----------------

**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

**FEE AFFIDAVIT**

**BENNETT JONES LLP**

One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

**Sean Zweig** (LSO# 57307I)  
**Aiden Nelms** (LSO# 74170S)

Tel: 416-863-1200  
Fax: 416-863-1716

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

# TAB 3



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

THE HONOURABLE	)	TUESDAY, THE 16 <sup>th</sup>
	)	
MR. JUSTICE HAINEY	)	DAY OF MARCH, 2021

**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

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by KSV Restructuring Inc.<sup>1</sup> 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. ("**Audible**"), Avenir Trading Corp., 1892244 Alberta Ltd., Avenir Sports Entertainment Ltd., Avenir Sports Entertainment Corp. and Portland Winter Hawks, Inc. (collectively, the "**Companies**") for an order approving the sale transaction (the "**Transaction**") contemplated by the asset purchase agreement (the "**Sale Agreement**") among the Receiver and EdgeHill Partners (the "**Purchaser**") dated March 8, 2021, and vesting in the Purchaser, or as it may direct, all of the Receiver's and the Companies' right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), was heard this day via videoconference due to the COVID-19 pandemic.

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<sup>1</sup> Effective August 31, 2020 KSV Kofman Inc. changed its name to KSV Restructuring Inc.

**ON READING** the motion record of the Receiver and on hearing the submissions of counsel for the Receiver and counsel to the Purchaser 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 and 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 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.

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 the Receiver's and the Companies' right, title and interest in and to the Purchased Assets described in the Sale Agreement 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 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 (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 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.

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

7. **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 in the Purchaser 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.

8. **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.

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**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 March 16, 2021 (the "**Approval and Vesting Order**"), the Court approved the asset purchase agreement made as of March 8, 2021 (as amended, the "**Sale Agreement**") among the Receiver and EdgeHill Partners (the "**Purchaser**") and provided for the vesting in the Purchaser, or as the Purchaser may direct, of the Receiver's and the Companies' 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.

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**

Applicant

-and-

**AUDIBLE CAPITAL CORP. *et al***

Respondents

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

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

Proceedings commenced in Toronto

**EDGEHILL APPROVAL AND VESTING ORDER**

**BENNETT JONES LLP**

One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

**Sean Zweig** (LSO# 57307I)  
**Aiden Nelms** (LSO# 74170S)

Tel: 416-863-1200  
Fax: 416-863-1716

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

# TAB 4

Revised: January 21, 2014

Court File No. —: CV-20-00640212-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) ~~WEEKDAY~~ TUESDAY, THE # 16<sup>th</sup>  
)  
MR. JUSTICE — HAINES ) DAY OF ~~MONTH, 20YR~~ MARCH,  
) 2021

~~BETWEEN:~~

~~PLAINTIFF~~

Plaintiff

~~—and—~~

~~DEFENDANT~~

Defendant

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



THIS MOTION, made by ~~[RECEIVER'S NAME]~~ KSV Restructuring Inc.<sup>1</sup> in its capacity as ~~the~~ Court-appointed receiver (in such capacity, the "Receiver") of the ~~undertaking, property and assets of [DEBTOR]~~ (Property (as defined in the Receivership Order dated May 7, 2020) of Audible Capital Corp. ("Audible"), Avenir Trading Corp., 1892244 Alberta Ltd., Avenir Sports Entertainment Ltd., Avenir Sports Entertainment Corp. and Portland Winter Hawks, Inc. (collectively, the "Debtor Companies")) for an order approving the sale transaction (the "Transaction") contemplated by ~~an~~ the asset purchase agreement ~~of purchase and sale~~ (the "Sale Agreement") ~~between~~ among the Receiver and ~~[NAME OF PURCHASER]~~ EdgeHill Partners (the "Purchaser") dated ~~[DATE]~~ and appended to the Report of the Receiver dated [DATE] (the "Report") March 8, 2021, and vesting in the Purchaser, or as it may direct, all of the ~~Debtor's~~ Receiver's and the Companies' right, title and interest in and to the ~~assets described~~ Purchased Assets (as defined in the Sale Agreement ~~(the "Purchased Assets"))~~, was heard this day ~~at 330 University Avenue, Toronto, Ontario~~ via videoconference due to the COVID-19 pandemic.

ON READING the ~~Report~~ motion record of the Receiver and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~ and counsel to the Purchaser 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 ~~[NAME]~~ Aiden Nelms sworn ~~[DATE]~~ and filed<sup>+</sup>:

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.

<sup>1</sup> Effective August 31, 2020 KSV Kofman Inc. changed its name to KSV Restructuring Inc.

<sup>+</sup> This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

3. ~~1.~~ **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,<sup>2</sup> and the execution of the Sale Agreement by the Receiver<sup>3</sup> is hereby authorized and 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.

4. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's<sup>4</sup> certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the ~~Debtor's~~ Receiver's and the Companies' right, title and interest in and to the Purchased Assets described in the Sale Agreement ~~[and listed on Schedule B hereto]~~<sup>4</sup> 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 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**"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~ Hainey dated ~~[DATE]~~ 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;~~ and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", ~~which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D~~) and, for greater certainty, this Court orders that all of the

<sup>2</sup> ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

<sup>3</sup> ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

<sup>4</sup> ~~To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

<sup>5</sup> ~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

~~3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION} of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

5. ~~4.~~ **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> 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<sup>8</sup>, 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.

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

~~6. 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 all human resources and payroll information in the~~

~~<sup>6</sup> Elect the language appropriate to the land registry system (Registry vs. Land Titles).~~

~~<sup>7</sup> The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

~~<sup>8</sup> This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

~~Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser 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 the Debtor.~~

7. **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 ~~Debtor~~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 ~~Debtor~~Companies;

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 of the ~~Debtor~~Companies and shall not be void or voidable by creditors of the ~~Debtor~~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 ~~*Bankruptcy and Insolvency Act (Canada)*~~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.

~~8. — THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

8. ~~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.

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Schedule A ~~—~~ Form of Receiver<sup>2</sup>'s Certificate

Court File No. ~~\_\_\_\_\_~~: CV-20-00640212-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

~~BETWEEN:~~

**PLAINTIFF**

~~Plaintiff~~

~~—and—~~

**DEFENDANT**

~~Defendant~~

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<sup>2</sup>'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ May 7, 2020 (as amended, the "Receivership Order"), KSV Restructuring Inc. was appointed as ~~the receiver (the "Receiver~~ (in such capacity, the "Receiver") of

the ~~undertaking, property and assets of [DEBTOR]~~ (the "~~Debtor~~" Property (as defined in the Receivership Order)).

B. Pursuant to an Order of the Court dated ~~[DATE]~~ March 16, 2021 (the "Approval and Vesting Order"), the Court approved the asset purchase agreement ~~of purchase and sale~~ made as of ~~[DATE OF AGREEMENT]~~ (March 8, 2021 (as amended, the "Sale Agreement") ~~between~~ among the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ EdgeHill Partners (the "Purchaser") and provided for the vesting in the Purchaser, or as the Purchaser may direct, of the ~~Debtor's~~ Receiver's and the Companies' 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 section 4 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 ~~section 4 of~~ 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].

~~[NAME OF RECEIVER]~~, KSV Restructuring Inc., solely in its capacity as Receiver of ~~the undertaking, property and assets of [DEBTOR]~~ 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:

# TAB 5

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	TUESDAY, THE 16th
	)	
MR. JUSTICE HAINEY	)	DAY OF MARCH, 2021

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.,  
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.

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**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.,  
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 Justice Hainey 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**

Applicant

-and-

**AUDIBLE CAPITAL CORP. *et al***

Respondents

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

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

Proceedings commenced in Toronto

**AVINA APPROVAL AND VESTING ORDER**

**BENNETT JONES LLP**

One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

**Sean Zweig** (LSO# 57307I)

**Aiden Nelms** (LSO# 74170S)

Tel: 416-863-1200

Fax: 416-863-1716

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

# TAB 6

Revised: January 21, 2014

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE )  
JUSTICE- )  
)

~~WEEKDAY~~TUESDAY, THE #  
~~DAY OF MONTH, 20YR~~16th

MR. JUSTICE HAINEY

DAY OF MARCH, 2021

B E T W E E N:

~~PLAINTIFF~~

~~Plaintiff~~

BRIDGING FINANCE INC. AS AGENT

Applicant

- and -  
~~DEFENDANT~~

~~Defendant~~

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

~~(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 ~~(the “Sale Agreement”)~~ between the Receiver and ~~[NAME OF PURCHASER]~~ Avina Acquisition Corp. (the “Purchaser”) dated ~~[DATE]~~ 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 ~~[DATE]~~ March 9, 2021 (the “Report”), and vesting in the Purchaser the Debtors’ right, title and interest in and to the ~~assets~~ Purchased Assets as defined and described in the Sale Agreement (the “Purchased Assets”), ~~was heard this day at 330 University Avenue, Toronto, Ontario~~ 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, ~~[NAMES OF OTHER PARTIES APPEARING]~~ 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 ~~[NAME]~~ Aiden Nelms sworn ~~[DATE]~~ and filed<sup>1</sup>:

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. ~~1.~~ **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby ~~approved,<sup>2</sup> and the execution of the Sale Agreement by the Receiver<sup>3</sup> is hereby authorized and~~ 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

<sup>1</sup> ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

<sup>2</sup> ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

<sup>3</sup> ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. ~~2.~~ **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's<sup>4</sup> right, title and interest in and to the Purchased Assets described in the Sale Agreement [and listed on Schedule B hereto]<sup>4</sup>, 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"<sup>5</sup>) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice [NAME] Hainey dated [DATE] 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; ~~and (iii) those Claims listed on Schedule C hereto~~ (all of which are collectively referred to as the "Encumbrances", ~~which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D~~) 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.

~~3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver][Land Titles Division of {LOCATION}] of an Application for Vesting Order in the form prescribed by the Land Titles Act~~

<sup>4</sup> ~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

<sup>5</sup> ~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

~~and/or the Land Registration Reform Act]<sup>6</sup>, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

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. ~~4.~~ **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds<sup>7</sup> 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<sup>8</sup>, as if the

~~<sup>6</sup> Elect the language appropriate to the land registry system (Registry vs. Land Titles).~~

~~<sup>7</sup> The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

~~<sup>8</sup> This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect~~

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. ~~5.~~ **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

~~6. 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 all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser 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 the Debtor.~~

8. ~~7.~~ **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 ~~the~~any Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of ~~the~~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 ~~the~~any Debtor and shall not be void or voidable by creditors of ~~the~~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

~~insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~




shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

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.

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~~Revised: January 21, 2014~~

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:

**~~PLAINTIFF~~**

~~Plaintiff~~

BRIDGING FINANCE INC. AS AGENT

Applicant

- and ~~—~~

**~~DEFENDANT~~**

~~Defendant~~

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 ~~[NAME OF JUDGE]~~ Justice Hainey of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ May 7, 2020, KSV Restructuring Inc. was appointed as the receiver (the "Receiver")

of the undertaking, property and assets of ~~[DEBTOR]~~ (Audible Capital Corp. and the other Respondents (collectively, the “Debtors”)).

B. Pursuant to an Order of the Court dated ~~[DATE]~~ March 16, 2021, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ (December 15, 2020 (as amended, the “Sale Agreement”)) between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ 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 ~~section~~ 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. ~~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. ~~2.~~ The conditions to Closing as set out in ~~section~~ sections 5.1 and 5.2 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. ~~3.~~ The Transaction has been completed to the satisfaction of the Receiver.

4. ~~4.~~ This Certificate was delivered by the Receiver at \_\_\_\_\_ ~~[TIME]~~ TIME on \_\_\_\_\_ ~~[DATE]~~ DATE.

~~[NAME OF RECEIVER]~~ KSV  
RESTRUCTURING INC., in its capacity  
as Receiver of the undertaking, property

and assets of ~~{DEBTOR}~~Audible  
Capital Corp. et. al, and not in its  
personal capacity

P  
e  
r  
:

\_\_\_\_\_

Name:

Title:

Revised: January 21, 2014

Schedule B — Purchased Assets

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

# TAB 7

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	TUESDAY, THE 16 <sup>th</sup>
	)	
JUSTICE HAINEY	)	DAY OF MARCH, 2021

**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

**ORDER**  
(Ancillary Order)

**THIS MOTION**, made by KSV Restructuring Inc.<sup>1</sup> 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. ("**Audible**"), Avenir Trading Corp., 1892244 Alberta Ltd., Avenir Sports Entertainment Ltd., Avenir Sports Entertainment Corp. and Portland Winter Hawks, Inc. for an order, among other things: (i) abridging and validating service of the Notice of Motion and Motion Record herein; (ii) approving the Fourth Report of the Receiver dated December 22, 2020 (the "**Fourth Report**") and the Fifth Report of the Receiver dated March [●], 2021 (the "**Fifth Report**" and together with the Fourth Report, the "**Reports**") and the activities of the Receiver described therein; (iii) approving the fees and disbursements of the Receiver and

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<sup>1</sup> Effective August 30, 2020 KSV Kofman Inc. changed its name to KSV Restructuring Inc.

its counsel, and (iv) authorizing the Receiver to sell Audible's Orla common shares should the Receiver decide to exercise Audible's Orla Warrants, was heard this day by videoconference due to the COVID-19 pandemic.

**ON READING** the Notice of Motion of the Receiver and the Fifth Report, filed, and on hearing the submissions of counsel for the Receiver and counsel for those other parties appearing as indicated by the counsel sheet, no one else appearing although properly served, as appears from the affidavit of Aiden Nelms sworn and filed:

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record in respect of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used in this Order and not otherwise defined shall have the meanings ascribed to them in the Fifth Report.

### **APPROVAL OF THE REPORTS, ACTIVITIES AND FEES**

3. **THIS COURT ORDERS** that the Reports and the activities of the Receiver referred to therein be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own liability, shall be entitled to rely upon or utilize in any way such approval.
4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel Bennett Jones, as set out in the affidavits of Noah Goldstein sworn March 9, 2021 and Sean Zweig sworn March 8, 2021, be and are hereby approved.

### **ORLA INVESTMENT**

5. **THIS COURT ORDERS** that the Receiver is authorized to sell Audible's common shares in Orla should the Receiver, in its sole and unfettered discretion, decide to exercise Audible's Orla Warrants.



**GENERAL**

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

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

8. **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.

9. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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**BRIDGING FINANCE INC., AS AGENT**

Applicant

-and-

**AUDIBLE CAPITAL CORP. *et al***

Respondents

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

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

Proceedings commenced in Toronto

**ANCILLARY ORDER**

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capacity as Court-appointed Receiver and not in  
its personal capacity

**BRIDGING FINANCE INC., AS AGENT**

Applicant

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**MOTION RECORD**

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