

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

THE HONOURABLE MR.
JUSTICE MCEWEN

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MONDAY, THE 17th
DAY OF JUNE, 2019



BETWEEN:

CORNER FLAG LLC

Applicant

– and –

ERWIN HYMER GROUP NORTH AMERICA, INC.

Respondent

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended, and under section 101 of the *Courts of Justice Act*,
R.S.O. 1990, c. C.43**

**ORDER
(La Mesa Approval and Vesting)**

THIS MOTION made by Alvarez & Marsal Canada Inc., in its capacity as the court-appointed receiver and manager (the “**Receiver**”) without security of all of the assets, undertakings and properties of Erwin Hymer Group North America, Inc. (“**EHGNA**” or the “**Debtor**”), for an Order approving the sale transaction (the “**La Mesa Transaction**”) contemplated by the Bill of Sale appended as Appendix “G” to the Receiver’s Second Report (as hereinafter defined) (the “**Sale Agreement**”) between the Receiver and La Mesa R.V. Center, Inc. (the “**Purchaser**”) and vesting in the Purchaser the Debtor’s right, title and interest in and to the

Purchased Assets (as defined in the Sale Agreement) was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Receiver dated June 10, 2019 (the “**Second Report**”), and on hearing the submissions of counsel for the Receiver, Corner Flag LLC, the Purchaser and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Waleed Malik affirmed June 11, 2019 and the Affidavit of Service of Ana Chalupa sworn June 11, 2019, both filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the timing and method of service of the Notice of Motion and Motion Record be and are hereby abridged and validated, and this motion is properly returnable today.

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Sale Agreement or the Second Report.

APPROVAL OF SALE AGREEMENT

3. **THIS COURT ORDERS AND DECLARES** that the La Mesa 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 La Mesa 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 Debtor’s right, title and interest in and to the Purchased Assets listed in Schedule “A” to such Receiver’s Certificate 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:

- (a) any encumbrances or charges created by the Order of the Honourable Justice McEwen dated February 15, 2019; and
- (b) 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 Claims and Encumbrances affecting or relating to the Purchased Assets listed in Schedule “A” to any Receiver’s Certificate delivered by the Receiver to the Purchaser are hereby expunged and discharged as against such 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 listed in Schedule “A” to any Receiver’s Certificate delivered by the Receiver shall stand in the place and stead of such Purchased Assets, and that from and after the delivery of any such Receiver’s Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of such Purchased Assets with the same priority as they had with respect to such Purchased Assets immediately prior to the

sale, as if such 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 any Receiver's Certificate delivered to the Purchaser, 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) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of any 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 Debtor and shall not be void or voidable by creditors of the 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.

GENERAL

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.

A handwritten signature in black ink, appearing to be 'McE', is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUN 17 2019

PER / PAR: 

Schedule A – Form of Receiver’s Certificate

Court File No. CV-19-614593-00CL

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

B E T W E E N:

CORNER FLAG LLC

Applicant

– and –

ERWIN HYMER GROUP NORTH AMERICA, INC.

Respondent

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,
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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February 15, 2019, Alvarez & Marsal Canada Inc. was appointed as the receiver (the “**Receiver**”) of the of all of the assets, undertakings and properties of Erwin Hymer Group North America, Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated June 17, 2019, the Court approved the Bill of Sale appended as Appendix “G” to the Second Report of the Receiver dated June 10, 2019 (the “**Sale Agreement**”) between the Receiver and La Mesa R.V. Center, Inc. (the “**Purchaser**”), and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to each Purchased Asset upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser in full in respect of the Purchased Assets listed on

Schedule “A” to this Receiver’s Certificate (the “**Specified Purchased Assets**”); (ii) all conditions as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser with respect to such Specified Purchased Assets; (iii) all storage fees in respect of the Specified Purchased Assets have been paid to Challenger Motor Freight Inc., and (iv) the transaction has been completed with respect to the Specified Purchased Assets 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 Payment relating to the Specified Purchased Assets;
2. The conditions set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser with respect to such Specified Purchased Assets;
3. All storage fees in respect of the Specified Purchased Assets have been paid to Challenger Motor Freight Inc.; and
4. The transaction has been completed with respect to the Specified Purchased Assets to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

ALVAREZ & MARSAL CANADA INC., in its capacity as Receiver of the undertaking, property and assets of Erwin Hymer Group North America, Inc., and not in its personal capacity

Per: _____

Name: _____

Title: _____

SCHEDULE "A"

Specified Purchased Assets

CORNER FLAG LLC
Applicant

and

ERWIN HYMER GROUP NORTH AMERICA, INC.
Respondent

Court File No. CV-19-614593-00CL

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

Proceeding commenced at Toronto

**ORDER
(La Mesa Approval and Vesting)**

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