

Court File No. CV-24-00715153-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

EXPORT DEVELOPMENT CANADA

Applicant

- and -

ANTAMEX INDUSTRIES ULC

Respondent

**AND IN THE MATTER OF AN APPLICATION UNDER section 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**

**FACTUM OF THE APPLICANT
(Appointing Receiver)**

February 26, 2024

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TO:

THE SERVICE LIST

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PART I – OVERVIEW

1. The applicant, Export Development Canada (“**EDC**”), brings this application for an order (the “**Receivership Order**”), among other things, appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver (in such capacity, the “**Receiver**”), without security, of all the present and future assets, undertakings, and properties of Antamex acquired for, or used in relation to, a business carried on by Antamex (the “**Business**”), including all proceeds thereof (the “**Property**”).

2. Antamex Industries ULC (“**Antamex**”) is a British Columbia corporation with its principal place of operations in Concord, Ontario. Antamex is in the business of designing, engineering, manufacturing, and installing custom, modular glass façade solutions for multi-story buildings.

Affidavit of Adam Smith sworn February 21, 2024 (the “Smith Affidavit”) at para 11, Application Record (“AR”), Tab 2, p. A28.

3. EDC made the EDC Loan (defined below) to Antamex to finance the purchase of certain glass production equipment to be leased to and used by Naverra LLC (formerly Solar Seal Architectural LLC), a Delaware limited liability company affiliated with Antamex (“**Naverra**”).¹

Smith Affidavit at para 29, AR, Tab 2, p. A33.

4. Antamex relies on Naverra both as a supplier of architectural glass products and as guarantor of its obligations under the EDC Loan Documents. Antamex leased the equipment purchased with the proceeds of the EDC Loan (the “**EDC Priority Collateral**”) to Naverra for use

¹ Capitalized terms used herein but not otherwise defined have the meanings given to them in the Smith Affidavit and the Receivership Order.

at the Norwich Glass Plant (defined below) in Norwich, Connecticut. The Norwich Glass Plant is a glass fabrication facility that Naverra leased from Norwich 40 TGCI LLC (the “**Landlord**”).

Smith Affidavit at para 52, AR, Tab 2, p. A39.

5. In June 2023, the Landlord commenced eviction proceedings in the Connecticut Court (the “**Norwich Proceedings**”) alleging violations of the Norwich Lease by Naverra, including non-payment of rents and failure to replenish a security deposit. The Connecticut Court issued its decision in November 2023 (the “**Norwich Judgment**”), granting judgment to the Landlord for the immediate possession of the Norwich Glass Plant plus legal costs.

Smith Affidavit at para 53, AR, Tab 2, p. A39.

6. Without notice or explanation to EDC, between the commencement date of the Norwich Proceedings and the date of the Norwich Judgment, Naverra shut down its operations at the Norwich Glass Plant, abandoning the premises and laying off all or part of its workforce. The Landlord subsequently retook possession of the Norwich Glass Plant on January 3, 2024, changing the locks and blocking all access to the equipment located there, including the EDC Priority Collateral and other equipment.

Smith Affidavit at paras 54-55, AR, Tab 2, p. A40.

7. Antamex is in default of its obligations to EDC under the EDC Loan Documents because (collectively, the “**Defaults**”):

- (a) it has caused or allowed Naverra to cease all or a substantial portion of its business operations without the prior written consent of EDC;

- (b) it has caused or allowed Naverra to default on its obligations under the Norwich Lease which has resulted in the Landlord having retaken possession of the Norwich Glass Plant (the facility where the EDC Priority Collateral is located); and
- (c) it has failed to deliver its financial statements to EDC in accordance with its obligations under the Third Amendment to the EDC Credit Agreement.

Smith Affidavit at paras 7, 51-60, AR, Tab 2, pp. A27, A39-A41.

8. The events concerning Naverra and the Norwich Glass Plant have had a materially adverse effect on Antamex's operations and Naverra's ability to honour the EDC Guarantee and constitute an event of default under the EDC Loan Documents. EDC believes that Naverra's conduct as described herein has imperiled EDC's interest in the EDC Priority Collateral. Without the timely appointment of a Receiver, EDC believes that its security position will continue to deteriorate (as discussed further below).

Smith Affidavit at para 58, AR, Tab 2, p. A41.

9. On January 10, 2024, more than six (6) weeks ago, EDC issued a demand letter (the "**EDC Demand Letter**") notifying Antamex of the Defaults and demanding payment in full of the Indebtedness. On that date, Antamex also issued a Notice of Intention to Enforce a Security (the "**244 Notice**"). The 10-day notice period under the 244 Notice has long since expired. To date, Antamex has not repaid the Indebtedness owing to EDC.

Smith Affidavit at paras 48-49, AR, Tab 2, p. A38.

10. As of February 20, 2024, the amount of the Indebtedness totalled USD \$10,462,962.93, including interest and fees accrued to such date (exclusive of enforcement costs). Interest and fees will continue to accrue on the Indebtedness until paid in full.

Smith Affidavit at para 5, AR, Tab 2, p. A26.

11. The Indebtedness is secured by the EDC GSA (defined below), which provides that upon the occurrence of an event of default, EDC is entitled to commence proceedings and seek the appointment of a receiver of the Property, or any part thereof. The EDC Credit Agreement and EDC GSA are governed by the laws of the Province of Ontario and Antamex has agreed to submit to the jurisdiction of the Ontario courts in respect thereof.

Smith Affidavit at para 68, AR, Tab 2, p. A45. See also the EDC Credit Agreement and EDC GSA at Exhibits “H” to “L” of the Smith Affidavit.

12. EDC has considered the enforcement remedies available to it and has formed the view that the appointment of the Receiver by this Court is an expedient and appropriate remedy to preserve and realize the value of the Business and the Property. The basis for EDC’s decision is as follows:

- (a) Antamex will soon exhaust its liquid assets which will likely eliminate the prospect of a going concern sale and further erode the value of the Business and the Property.
- (b) A court-supervised sale or other realization process will result in more value for all stakeholders than any opportunity available to Antamex at this time, irrespective of whether such sale process results in a going concern sale or liquidation of the Property.
- (c) The Property is encumbered by the registered interests of multiple secured parties, some of whom may be related to Antamex, and it would be beneficial to all stakeholders for the Property to be sold in a transparent, court-supervised process.

(d) EDC remains in discussions with the Landlord and the other US stakeholders, all of whom allege various interests in the EDC Priority Collateral and other equipment in the Norwich Glass Plant. While EDC hopes to arrive at an agreement providing for the sale of all such equipment, the parties have yet to reach a consensus and litigation remains probable. EDC is aware of at least two civil lawsuits commenced against Naverra in the US for amounts allegedly owing for equipment purchased for use at the Norwich Glass Plant.

(e) In EDC's view, Antamex does not have the resources or wherewithal to protect its ownership interest in the Leased Equipment (defined below) located at the Norwich Glass Plant. EDC believes that the appointment of a Receiver is necessary to preserve the equipment and deal with any potential issues arising in respect thereof.

Smith Affidavit at para 66, AR, Tab 2, p. A43.

13. After the commencement of this application, Antamex retained insolvency counsel. Through counsel, Antamex asked EDC to consent to an adjournment of this application for "not less than 2-weeks" to allow for certain surety bond companies to complete a "books and records" review. Antamex advises that the purpose of the review is for the sureties to make financing decisions in connection with ongoing or anticipated projects of Antamex.

Affidavit of Connie Deng sworn February 26, 2023 ("Deng Affidavit"), Exhibit "A", Supplementary Application Record ("SAR"), Tab 1.

14. In response, EDC asked Antamex for a more detailed proposal which clearly defined the objective of the review and intentions of the sureties. EDC specifically asked Antamex and the sureties to address EDC's deteriorating security position and the payment of Antamex's

Indebtedness to EDC within a reasonable timeframe. Antamex and the sureties have failed to advance such a proposal.

Deng Affidavit, Exhibit “A”, SAR, Tab 1.

15. This Court ought to deny the adjournment request on the following grounds:

- (a) ***The appointment of the Receiver cannot wait any longer:*** There is a substantial risk that the Landlord, competing lien claimants, and others will seek (or have already sought) to exercise self-help remedies in respect of the Leased Equipment (defined below) located at the Norwich Glass Plant in Connecticut. EDC needs the Receiver to be in a position to respond to any such event and to seek recognition of these proceedings under chapter 15 of the US Bankruptcy Code if that becomes necessary or desirable in order to protect the EDC Priority Collateral and other equipment located at the Norwich Glass Plant. In addition, Antamex’s cash flow forecast shows significant expenditures during the week of March 4, 2024. Such expenditures will further erode the value of EDC’s security. To date, the sureties have not offered any financing to Antamex to cover these expenditures during the review period.

- (b) ***An adjournment will be at the expense of EDC’s interests as secured lender:*** The sureties’ position that they should be given two weeks to complete a “books and records” review is problematic because, among other reasons, the sureties’ review discloses no clear objective and does not offer any protection for EDC’s interest during the review period. On the contrary, the sureties’ proposal appears to be an attempt to protect the interests of the sureties at the expense of EDC’s interests as

a secured lender. In short, the sureties' proposal, if accepted by this Court, will ultimately be paid for by EDC.

(c) ***The appointment of the Receiver is just and convenient and will benefit the body of stakeholders generally:*** Antamex's management has shown indifference toward the legitimate interests of stakeholders, including by committing the aforementioned Defaults (particularly in allowing Naverra to abandon the Norwich Glass Plant and the Leased Equipment (defined below) located there). In addition, EDC understands that the sureties were only recently advised of Antamex's financial difficulties and the Defaults, despite the fact that EDC issued the EDC Demand Letter and 244 Notice more than six (6) weeks ago. Antamex's failure to notify the sureties (and possibly other stakeholders) of these matters in a more timely manner is unacceptable and only further illustrates the urgency of the Receiver's appointment.

(d) ***The Sureties' Review Should be Conducted in a Receivership:*** The "books and records" review that the sureties want to undertake can and should be completed in the context of a receivership under the supervision of, and in consultation with, the Receiver. There is no disadvantage to this approach which can possibly outweigh the prejudice that EDC will suffer if the Receiver is not appointed right away. On the contrary, the receivership will stabilize and protect Antamex's Property and will be advantageous to all stakeholders.

16. For the reasons set forth herein, the appointment of the Receiver is just and appropriate in the circumstances and ought to be granted without delay.

PART II – FACTS

The Relevant Parties

17. Antamex is a British Columbia corporation with its registered office in Vancouver. Antamex is extra-provincially registered to do business in Ontario and its chief executive office is located in Concord, Ontario. Antamex is in the business of designing, engineering, manufacturing, and installing custom, modular glass façade solutions for multi-story buildings.

Smith Affidavit at para 11, AR, Tab 2, p. A28.

18. Naverra is a Delaware limited liability company. Antamex relies on Naverra both as a supplier of architectural glass products and as the guarantor under the EDC Guarantee (defined below). Naverra is also the lessee and user of the equipment comprising the EDC Priority Collateral, which it leased from Antamex pursuant to a lease agreement dated as of December 1, 2022 (the “**Antamex Equipment Lease**”).

Smith Affidavit at paras 14, 52, AR, Tab 2, pp. A29, A39; Smith Affidavit, Exhibit “R”, AR, Tab 2, pp. A271-A279.

19. Before its default under the Norwich Lease (defined below) and subsequent eviction, Naverra occupied and operated a 180,000-square-foot glass fabrication facility at 40 Wisconsin Avenue in Norwich, Connecticut (the “**Norwich Glass Plant**”).

Smith Affidavit at para 16, AR, Tab 2, p. A29.

20. 256 Victoria Street West ULC (“**256 Victoria**”) is an affiliate of Antamex and owns the Antamex Facility (defined below) in Alliston, Ontario, which Antamex uses in connection with its business. 256 Victoria is owned by the same parent corporation as Antamex.

Smith Affidavit at para 17, AR, Tab 2, p. A30.

21. Antamex has guaranteed (the “**HSBC Guarantee**”) 256 Victoria’s obligations to HSBC Bank Canada (“**HSBC**”) under a credit facility letter dated as of March 29, 2021 among HSBC Bank Canada (“**HSBC**”) as lender, 256 Victoria as borrower, and Antamex as guarantor, as amended by a credit facility letter dated as of July 12, 2022 (the “**HSBC Credit Agreement**”). Antamex has also executed a general security agreement (the “**HSBC GSA**”) in favour of HSBC as security for the payment and performance of Antamex’s obligations to HSBC under the HSBC Guarantee. Pursuant to the HSBC Subordination Agreement, HSBC’s security interest ranks in priority to EDC’s security interest, subject to EDC’s first-ranking lien on the EDC Priority Collateral located at the Norwich Glass Plant.

Smith Affidavit at paras 18, 36-38, AR, Tab 2, pp. A30, A35-A36.

The EDC Loan Documents

22. Pursuant to a credit facility agreement dated as of November 5, 2021 among EDC as lender, Antamex as borrower, and Naverra as guarantor (as amended, the “**EDC Credit Agreement**”), EDC advanced loans to Antamex in the principal aggregate amount of USD \$12,500,000 (collectively, the “**EDC Loan**”) to finance the purchase of certain glass production equipment for use by Naverra at the Norwich Glass Plant.

Smith Affidavit at para 20, AR, Tab 2, pp. A30-A31; Smith Affidavit, Exhibits “H”, “I”, “J”, and “K”, AR, Tab 2, pp. A96-A145.

23. As security for the payment of the Indebtedness, Antamex executed a general security agreement dated as of November 5, 2021 in favour of EDC (the “**EDC GSA**”). Pursuant to the EDC GSA, Antamex granted to EDC a continuing security interest in all of Antamex’s present and after-acquired personal property as general and continuing security for the prompt and complete payment and performance of all obligations, indebtedness, and liabilities of Antamex to

EDC under the EDC Credit Agreement. EDC's security interests created by the EDC GSA are perfected by registrations under the Ontario PPSA and the BC PPSA.

Smith Affidavit at paras 23-24, AR, Tab 2, pp. A31-A32; Smith Affidavit, Exhibits "L", "M" and "N", AR, Tab 2, pp. A146-A223.

24. Antamex also executed a security agreement dated as of November 5, 2021 in favour of EDC that is governed by the law of the State of New York (the "**EDC US GSA**") in which Antamex, among other things, granted to EDC a continuing security interest in the personal property described therein as security for the payment and performance of all obligations, indebtedness, and liabilities of Antamex to EDC. EDC's security interests created by the EDC US GSA are perfected by registrations under the UCC registry in Washington, DC.

Smith Affidavit at paras 25-26, AR, Tab 2, p. A32; Smith Affidavit, Exhibit "O", AR, Tab 2, pp. A224-A256.

25. Pursuant to the EDC GSA, the EDC US GSA, and the related subordination agreements, EDC was granted a first-priority security interest in the equipment that was financed by EDC (the "**EDC Priority Collateral**") as well as a residual security interest in all of Antamex's other property ranking third behind the security interests of HSBC and Waygar Capital Inc. ("**Waygar**"). EDC's residual security interest now ranks second, behind HSBC's.

Smith Affidavit at paras 20, 42, AR, Tab 2, pp. A30-A31, A36-A37.

26. As an additional assurance, Naverra (then Solar Seal Architectural LLC) executed a guarantee agreement dated as of December 17, 2021 (the "**EDC Guarantee**") in favour of EDC, in which Naverra, among other things, unconditionally and irrevocably guaranteed the prompt and complete payment and performance of Antamex's obligation to EDC to repay the Indebtedness.

Smith Affidavit at para 27, AR, Tab 2, p. A32; Smith Affidavit, Exhibit "Q", AR, Tab 2, pp. A261-270.

Antamex's Defaults

Naverra Ceased Operations and Abandoned the Norwich Glass Plant

27. The Antamex Equipment Lease provides, and Antamex confirms, that all the equipment leased under the Antamex Equipment Lease, including but not limited to the EDC Priority Collateral (collectively, the “**Leased Equipment**”), is and remains the property of Antamex.

Smith Affidavit at paras 30, 33, AR, Tab 2, p. A33; Smith Affidavit, Exhibit “R”, AR, Tab 2, p. A273.

28. Before the fall of 2023, Naverra occupied and operated the Norwich Glass Plant pursuant to a lease agreement, dated as of October 15, 2021, between Landlord as landlord and Naverra as tenant (the “**Norwich Lease**”). The EDC Priority Collateral was to be installed and used at the Norwich Glass Plant.

Smith Affidavit at para 34, AR, Tab 2, p. A34; Smith Affidavit, Exhibit “V”, AR, Tab 2, pp. A307-A313.

29. On June 27, 2023, the Landlord commenced eviction proceedings in the Connecticut Superior Court in Norwich, Connecticut (the “**Connecticut Court**”). By its decision rendered on November 9, 2023 (the Norwich Judgment), the Connecticut Court found that Naverra was in default of its obligations under the Norwich Lease and granted judgment to the Landlord for the immediate possession of the Norwich Glass Plant plus legal costs.

Smith Affidavit at para 53, AR, Tab 2, pp. A39-A40; Smith Affidavit, Exhibit BB, AR, Tab 2, pp. A346-A353.

30. Without notice or explanation to EDC, between the commencement date of the Norwich Proceedings and the date of the Norwich Judgment, Naverra shut down its operations at the Norwich Glass Plant, abandoning the premises and laying off all or part of its workforce.

Smith Affidavit at para 54, AR, Tab 2, p. A40.

31. On or around January 3, 2024, the Landlord retook possession the Norwich Glass Plant, changing the locks and blocking all access to the equipment located there, including the EDC Priority Collateral.

Smith Affidavit at para 55, AR, Tab 2, p. A40; Smith Affidavit, Exhibit CC, AR, Tab 2, pp. A354-A355.

32. On January 11, 2024, the Landlord notified EDC that the Norwich Lease had been terminated and demanded removal of the EDC Priority Collateral. Discussions between EDC, the Landlord, Antamex, and Naverra regarding the sale or removal of the EDC Priority Collateral and other equipment located at the Norwich Glass Plant remain ongoing.

Smith Affidavit at para 56, AR, Tab 2, p. A40; Smith Affidavit, Exhibit DD, AR, Tab 2, pp. A356-358.

33. These events concerning Naverra and the Norwich Glass Plant have had a materially adverse effect on Antamex's operations and Naverra's ability to honour the EDC Guarantee and constitute an event of default under the EDC Loan Documents. Naverra's conduct has also imperiled EDC's interest in the Leased Equipment. The Landlord, certain alleged lien holders, and others have all asserted claims in respect of the Leased Equipment and have threatened to seek various self-help remedies in respect thereof. EDC is already are of two lawsuits commenced in the US by certain of these alleged lienholders. Because Antamex has shown no intention or ability to deal with this situation, the appointment of the Receiver is necessary to protect Antamex's ownership interest in the Leased Equipment and to preserve EDC's security position.

Smith Affidavit at paras 58, 66(d)-(e), AR, Tab 2, p. A41, A44.

Antamex Failed to Deliver Financial Statements

34. Pursuant to the Third Amendment to the EDC Credit Agreement, Antamex was required to deliver to EDC, within 45 days of the six (6) month period ended June 30, 2023, a copy of its financial statements for such period with a compliance certificate for such period in the prescribed form reflecting the twelve (12) month rolling Debt Service Coverage Ratio (as defined therein) as of June 30, 2023.

Smith Affidavit at para 59, AR, Tab 2, p. A41; Smith Affidavit, Exhibit “K”, AR, Tab 2, p. A141.

35. Antamex provided certain financial records to EDC near the end of January 2024. The financial records that Antamex produced do not satisfy the reporting covenant, and, in any event, they indicate that Antamex breached the Debt Service Coverage Ratio covenant.

Smith Affidavit at para 60, AR, Tab 2, p. A41.

The Defaults Continue Despite the Demand Letter and 244 Notice

36. The foregoing Defaults have not been cured and are continuing. On January 10, 2024, EDC’s external legal counsel, Fasken Martineau DuMoulin LLP issued the EDC Demand Letter to Antamex on behalf of EDC outlining Antamex’s defaults under the EDC Loan Documents and demanding repayment of the Indebtedness. The EDC Demand Letter attached the 244 Notice notifying Antamex that EDC intended to enforce the security interests created by the EDC GSA and commencing the ten (10) day notice period for said enforcement.

Smith Affidavit at paras 48-49, 65, AR, Tab 2, pp. A38, A43; Smith Affidavit, Exhibit “AA”, AR, Tab 2, pp. A340-A345.

Antamex’s Marketing Efforts & Financial Difficulties

37. Following Naverra’s eviction and abandonment of the Norwich Glass Plant, Antamex and Naverra canvassed their contacts in the glass fabrication industry to find a buyer to

purchase the equipment located at the Norwich Glass Plant and, possibly, to enter into a new lease with the Landlord. These efforts resulted in one potential buyer submitting a draft, non-binding letter of intent on or around December 12, 2023. EDC reviewed the letter and advised Antamex that it would not support the proposed transaction because, among other reasons, the letter provided that the purchase price would be paid over the course of nearly 10 years and required Antamex to incur significant obligations and liabilities, the value of which far exceed the purchase price. Antamex ultimately chose not to pursue the transaction and has since been in discussions with EDC with a view toward reaching an agreement with the Landlord and other alleged stakeholders to market and sell the equipment at the Norwich Glass Plant.

Smith Affidavit at para 61, AR, Tab 2, pp. A41-A42.

38. On January 30, 2024, Antamex produced to EDC a non-binding letter of intent from a prospective buyer providing for the purchase of the shares of Antamex and 256 Victoria. The proposed transaction was subject to a 90-day diligence period and, in EDC's view, did not reflect the fair value of the Property. On February 16, 2024, Antamex provided a non-binding "formal letter of intent" from the same prospective buyer, which proposes the same purchase price, and is subject to financing and a 30-day diligence period. In EDC's view the second letter did not present any material improvement over the first. The prospective buyer has not produced a binding letter of intent.

Smith Affidavit at para 60, AR, Tab 2, pp. A42-A43.

39. Near the end of January 2024, Antamex advised EDC that it did not have sufficient liquidity to continue its operations beyond the end of February 2024 and also advised that it did not have funds to pay its external legal counsel.

Smith Affidavit at para 62, AR, Tab 2, p. A43; Smith Affidavit, Exhibit “FF”, AR, Tab 2, pp. A362-366.

40. At that time, Antamex also advised EDC that it canvassed at least 33 lenders with the assistance of two financial advisors in an effort to obtain additional funding. Antamex’s efforts in this regard have failed, and Antamex has no binding offers for additional funding at this time.

Smith Affidavit at para 63, AR, Tab 2, p. A43.

41. Despite its continuing defaults and failure to pay the Indebtedness in full, Antamex continues to make its scheduled, ordinary course payments in accordance with the EDC Loan Documents. Based on the information provided by Antamex to EDC, Antamex will not be able to continue these payments beyond the end of March 2024.

Smith Affidavit at para 64, AR, Tab 2, p. A43.

PART III – ISSUE

42. This factum addresses the following issues:

- (a) Does this Court have jurisdiction to appoint the Receiver?
- (b) Is it just or convenient to appoint the Receiver without further delay?
- (c) Are the terms of the requested order appropriate?

PART IV – LAW & ARGUMENT

A. This Court Has the Jurisdiction to Appoint the Receiver

43. Section 243(1) of the *Bankruptcy and Insolvency Act* (“**BIA**”) and section 101 of the *Courts of Justice Act* (the “**CJA**”) each provide this Court with the authority to appoint a receiver if the Court finds such an appointment to be just or convenient.

Bankruptcy and Insolvency Act, RSC 1985, c B-3, s 243(1); Courts of Justice Act, RSO 1990, c C.43, s 101(1).

44. EDC has complied with the technical requirements of section 244 of the BIA by sending the 244 Notice and by waiting the prescribed ten (10) day notice period.

BIA, *supra*, s 244.

45. Deloitte has consented to its appointment as Receiver, subject to obtaining a Receivership Order on terms that are satisfactory.

Smith Affidavit, Exhibit “GG” (Consent to Act), AR, Tab 2, p. A368.

B. It is Just and Convenient to Appoint the Receiver without Further Delay

46. EDC seeks the appointment of the Receiver pursuant to both the BIA and CJA. As noted, both section 243 of the BIA and section 101 of the CJA permit the Court to appoint a receiver where it is “just or convenient” to do so.

47. There are no pre-conditions for the exercise of the Court’s discretion to appoint a receiver. Each case depends on its own facts.

[Degroote v DC Entertainment Corp et al, 2013 ONSC 7101 at para 53.](#)

48. Factors to consider in determining whether it is appropriate to appoint a receiver include, among others:

- the fact that the creditor has the right to appoint a receiver under the documentation provided for the loan;
- the nature of the property;
- the conduct of the parties; and
- the likelihood of maximizing return to the parties.

[Textron Financial Canada Ltd v Chetwynd Motels Ltd, 2010 BCSC 477 at para 50.](#)

The EDC GSA Contemplates the Relief Sought

49. In determining what is just or convenient under section 243(1) of the BIA or section 101 of the CJA, the court must have regard to all circumstances, but in particular, the nature of the property and the rights and interests of all parties in relation thereto, which includes the rights of the secured creditor under its security. While the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver, because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties.

[RMB Australia Holdings Ltd v Seafield Resources Ltd, 2014 ONSC 5205 at paras 28-29.](#)

[Potentia Renewables Inc v Deltro Electric Ltd, 2018 ONSC 3437 at para 50.](#)

50. As mentioned above, the EDC GSA provides that, upon the occurrence of an event of default thereunder, EDC may appoint a receiver of the Property. The relief that EDC seeks is therefore not extraordinary or equitable. Rather, it is expressly contemplated by the EDC GSA.

Smith Affidavit at para 9, AR, Tab 2, p. A27; Smith Affidavit, Exhibit “L”, AR, Tab 2, pp. A146-A177.

The Receivership will Maximize the Return for all Stakeholders

51. Antamex has advised EDC that it does not have sufficient liquidity to continue its operations beyond the end of February 2024 and does not have funds to pay its external legal counsel (although, as noted above, Antamex has recently retained insolvency counsel on a limited retainer). Current efforts by Antamex to sell the Property and obtain funding have been unsuccessful.

Smith Affidavit at para 62, AR, Tab 2, p. A43; Smith Affidavit, Exhibit “FF”, AR, Tab 2, pp. A362-A366.

52. Antamex and Naverra have engaged in efforts to market and sell all or part of the Property (both in Canada and the US) and have canvassed more than 30 lenders in an effort to obtain additional funding. None of these efforts have produced a binding offer and, in EDC’s view, each transaction proposed thus far was unacceptable and did not represent the fair value of the Property or the Business.

Smith Affidavit at paras 61, 63, AR, Tab 2, pp. A42-A43.

53. If the Receiver is appointed, it can undertake a court-supervised sale process and determine the most beneficial and efficient process to maximize the return for all stakeholders. As part of this process the Receiver will consult with the other stakeholders, including the surety bond companies referred to above, in an effort to maximize the return for all stakeholders.

54. For the reasons set forth in paragraphs 13 to 15 above, it is necessary and appropriate to appoint the Receiver without any further delay. Failure to appoint the Receiver at this time will result in the further deterioration of EDC’s security position and is likely to result in

prejudice to Antamex's stakeholders generally. The most relevant factors in this regard are the risk that the Landlord and other lien claimants in the US will seek to enforce their alleged interests in the EDC Priority Collateral and other Leased Equipment at the Norwich Glass Plant, and also the material expenditures which Antamex is forecasted to pay next week.

The Property is Subject to Multiple Security Interests and the Receivership Will Bring Much-Needed Stability to Antamex

55. The Property is encumbered by the registered interests of eight (8) potential secured parties, some of whom may be related to Antamex. It would benefit all parties for the Property to be sold in a transparent, court-supervised process and to have a platform to determine the ultimate distribution of the proceeds of realization.

Smith Affidavit at para 65, AR, Tab 2, pp. A43-A44.

56. In addition, the Landlord, certain alleged lien claimants, and others have all alleged competing claims in the US in respect of the Property located there. These stakeholders may contest Antamex's claim of ownership to the Property. EDC is already aware of two civil lawsuits commenced by such claimants in the US. The appointment of the Receiver is necessary at this time so that the Receiver can take steps on Antamex's behalf to protect Antamex's ownership interest in the Leased Equipment. Such steps may include a US recognition proceeding under chapter 15 of the US Bankruptcy Code. The Receiver will not be able to determine an appropriate realization strategy with any certainty until it is appointment and has access to Antamex's books and records.

Smith Affidavit at paras. 32, 58, 66(d)-(e), AR, Tab 2, pp. A33-A34, A41, A44. Deng Affidavit, Exhibit A, SAR, Tab 1.

57. Should this Receivership Order not be granted, it is likely that EDC and the other stakeholders will suffer prejudice in the form of, without limitation: (a) the risk of losing the ability to realize on the Leased Equipment in the US; (b) the risk that Antamex will make further expenditures to the detriment of EDC and the other stakeholders; and (c) the risk of various stakeholders in the US and also Canada commencing litigation and exercising self-help remedies.

58. The circumstances surrounding Antamex demand a solution which will stabilize the company and allow for a transparent assessment of realization strategies for the benefit of all stakeholders. The appointment of the Receiver, who will owe obligations to the Court and all stakeholders generally, will help achieve both of these ends.

C. The Terms of the Receivership Order are Appropriate

Receiver's Charge and Receiver's Borrowings Charge should be Granted

59. The proposed Receivership Order provides for a charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA (the "**Receiver's Charge**").

60. The proposed Receivership Order also provides that the Receiver, if appointed, will have the power to borrow up to \$500,000 (the "**Receiver's Borrowings**") for the purpose of funding the exercise of the powers and duties conferred on the Receiver by the Order, including interim expenditures and the fees and expenses of the Receiver and its counsel. The repayment of the Receiver's Borrowings will be secured by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") in priority to all security interests, trusts, liens, charges and encumbrances,

statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

61. The Receiver's Charge and Receiver's Borrowings Charge will rank first in priority to any purchase money security interest ("PMSI") and the security interest of HSBC. HSBC and the other PPSA registrants with financing statements registered in respect of Antamex in Ontario and British Columbia have been served with this Application and have not, at this time, objected to the requested relief.

62. EDC accordingly submits that the Receiver's Charge and Receiver's Borrowings Charge will not rank ahead of the security interest of any secured creditor who would be materially affected by the Receivership Order who does not have notice of these proceedings, and that the Receiver's Charge and Receiver's Borrowings Charge are therefore appropriate in the circumstances.

63. The Receiver's Charge and Receiver's Borrowings Charge are necessary and appropriate in the circumstances because:

- (a) The Receiver is essential to the proposed process, and the Receiver's Charge will secure the payment of the receiver and its counsel's fees incurred in respect of these proceedings.
- (b) It is anticipated that the orderly sale or liquidation of the Business and the Property will take some time, and that the Receiver will not have sufficient funds in the estate to meet necessary, interim expenditures. It is therefore appropriate for this Court to authorize the Receiver to borrow funds on a priority basis under Receiver's

certificates to fund the costs of the receivership, subject to the monetary limit set forth therein.

- (c) The Receivership Order also provides transparency to stakeholders regarding the receivership costs by providing that the Receiver's accounts remain subject to a passing of accounts before the Court, as is the practice on the Commercial List.

Termination of employees immediately prior to the date of the Appointment Order

64. Antamex employs approximately 250 employees in Ontario, some of whom are unionized. Antamex does not have sufficient liquidity to fund payroll obligations and will not have sufficient funds to continue funding payroll obligations. For this reason, the proposed Receiver has recommended that the Receivership Order provide that all employees of Antamex will be deemed to be terminated by Antamex immediately prior to the issuance of the requested Receivership Order.

Smith Affidavit at para 12(c), AR, Tab 2, p. A28.

65. This Court has granted this relief before in similar circumstances.

Corner Flag LLC v Erwin Hymer Group North America Inc., Order Appointing receiver dated February 15, 2019 (CV-19-614593-00CL), attached as Appendix "A" hereto.

66. As noted, Antamex has advised EDC that it does not have sufficient liquidity to continue its operations beyond the end of February 2024, including liquidity to meet its payroll obligations as they become due. Eliminating such payroll obligations will enable the Receiver to focus its energies and Antamex's limited resources on evaluating realization strategies and options in respect of Antamex's Business and Property.

67. If appointed, the proposed Receiver will cause Antamex to retain sufficient former employees to assist with the receivership proceedings while it evaluates realization strategies and options.

68. The proposed Receiver supports all of the relief sought by EDC on this application, including the dismissal of the adjournment request.

PART V – ORDER REQUESTED

69. For the reasons set forth herein, EDC respectfully requests that this Honourable Court grant:

- (a) an order substantially in the form as the draft Receivership Order, among other things:
 - (i) abridging the time for service of the notice of application and the application record and validating service thereof;
 - (ii) appointing Deloitte as Receiver, without security, of all the Property pursuant to section 243(1) of the BIA and section 101 of the CJA;
 - (iii) empowering the Receiver upon its appointment to, among other things:
 - (1) take possession and exercise control over the Property;
 - (2) manage, operate, and carry on the Business of the Antamex;
 - (3) market and sell any or all of the Business or the Property;
 - (4) settle, extend, or compromise any indebtedness owing to the Debtor;
 - (5) borrow funds on a priority basis under Receiver's certificates to fund the costs of the receivership;

- (6) initiate, prosecute, and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property, or the Receiver, and to settle or compromise any such proceedings;
 - (7) act as foreign representative in any foreign recognition proceedings which may be taken;
 - (8) examine under oath any current or former directors or officers of the Debtor in accordance with Rule 34 of the Rules of Civil Procedure, R.R.O. 1990, Reg 194; and
 - (9) take any steps reasonably incidental to the exercise of the aforementioned powers or the performance of any statutory obligations;
- (b) awarding the Applicant its costs of this proceeding, including legal fees, disbursements, and HST thereon; and
- (c) such further and other relief as counsel may advise and this Honourable Court may deem just.

RESPECTFULLY SUBMITTED THIS 26TH DAY OF FEBRUARY, 2024

Fasken Martineau DuMoulin LLP

FASKEN MARTINEAU DuMOULIN LLP

Lawyers for the Applicant

**SCHEDULE “A”
AUTHORITIES CITED**

1. [*Degroote v DC Entertainment Corp et al*, 2013 ONSC 7101;](#)
2. [*Textron Financial Canada Ltd v Chetwynd Motels Ltd*, 2010 BCSC 477;](#)
3. [*RMB Australia Holdings Ltd v Seafield Resources Ltd*, 2014 ONSC 5205;](#)
4. [*Potentia Renewables Inc v Deltro Electric Ltd*, 2018 ONSC 3437.](#)

**SCHEDULE “B”
LEGISLATION**

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

Courts of Justice Act, RSO 1990, c C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

APPENDIX "A"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE MCEWEN

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FRIDAY, THE 15TH DAY
OF FEBRUARY, 2019



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
(Appointing Receiver)**

THIS APPLICATION made by Corner Flag LLC (“**Corner Flag**” or the “**Applicant**”) for an Order appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Erwin Hymer Group North America, Inc. (the “**Debtor**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended (the “**CJA**”), in each case, acquired for or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

Handwritten notes:
M → the Respondent, M
M → M

ON READING the affidavit of Mark Gottlieb sworn February 15, 2019 (the "**Gottlieb Affidavit**") and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the Receiver, and Erwin Hymer Group SE and the Respondent not appearing although duly served as appears from the affidavit of service of Caitlin McIntyre sworn February 15, 2019, and on reading the consent of A&M to act as Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, A&M is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable (provided that any disbursements made in connection therewith are made in accordance with the Receiver Term Sheet, as defined in the Gottlieb Affidavit):

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, provided, however, that the Receiver shall not be entitled or authorized to operate the business of the Debtor without further Order of this Court or consent of the Applicant;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage the business of the Debtor, including the powers to enter into any agreements (including any amendments and modifications thereto), repudiate or disclaim any agreement, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to cause the Debtor to retain such former employees of the Debtor as independent contractors or employees of the Debtor as the Receiver may consider necessary or desirable to secure their assistance in the exercise of the Receiver's powers and the performance of the Receiver's duties hereunder;
- (e) to engage consultants, contractors, appraisers, agents, experts, auditors, accountants, managers, assistants, counsel and such other persons from time to time (each a "**Professional Advisor**") and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to consult with the Applicant from time to time and to provide such information to the Applicant as may be reasonably requested, including pursuant to the Receiver Term Sheet;
- (g) to pay the retainer, fees and disbursements of any Professional Advisor retained by the Applicant, the Debtor or the Receiver in connection with or relation to this application, in each case at their standard rates and charges incurred prior to the date of this Order;

- (h) to pay, remit or make, as applicable, any employee wages, employee vacation pay, employee expenses, employee disbursements, source deductions, pension contributions, employee health taxes, payments in respect of employee benefits and/or fees owing to independent contractors of the Debtor, which have accrued up to and including the date of this Order, even if not payable until after the date of this Order;
- (i) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to manage the business of the Debtor or any part or parts thereof;
- (j) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (k) to settle, extend or compromise any indebtedness owing to the Debtor;
- (l) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (m) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (n) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (o) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- i. without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
- ii. with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required.

- (p) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (q) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (r) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (s) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (t) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (u) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;

- (v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (w) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, advisors, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property (including for greater certainty, any Property located on third-party premises) or any

assets located on premises belonging to or leased by the Debtor shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property or any assets located on premises belonging to or leased by the Debtor are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers,

facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall be deemed to have been terminated by the Debtor immediately prior to the issuance of this Order. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

15. THIS COURT ORDERS that the Receiver is expressly authorized and empowered to send notices of termination to employees of the Debtor in the name of and on behalf of the Debtor and to do or cause to be done all such further acts and things necessary or desirable in respect of the termination of the employees of the Debtor, including, without limitation, any applicable statutory notices or filings in the name of and on behalf of the Debtor.

PIPEDA

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise (each, an "**Encumbrance**"), in favour of any Person, except for any Encumbrance in favour of a secured creditor who would be materially affected by this Order and who was not given notice of this application, and subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant pursuant to the Receiver Term Sheet (as defined in the Gottlieb Affidavit), such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$5.5 million, (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all Encumbrances in favour of any Person, but subordinate in priority to (i) any Encumbrance in favour of a secured creditor who would be materially affected by this Order and who was not given notice of this application, (ii) the Receiver's Charge, and (iii) the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List

website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<<http://www.alvarezandmarsal.com/ehgna>>’.

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor’s creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. THIS COURT ORDERS that the Receiver and counsel to the Receiver are at liberty to serve or distribute this Order and any other materials and Orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

29. 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.

30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

31. 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.

32. 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, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including without limitation, Chapter 15 of the U.S. Bankruptcy Code.

33. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

34. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

FEB 15 2019

PER / PAR:



SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada Inc. the receiver (the "**Receiver**") of the assets, undertakings and properties of Erwin Hymer Group North America, Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of _____, 2019 (the "**Order**") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal or corporate liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2019.

ALVAREZ & MARSAL CANADA INC.
solely in its capacity as Receiver of the Property,
and not in its personal or corporate capacity

Per: _____

Name:

Title:

APPLICATION UNDER SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED,
AND SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3 AS AMENDED
CORNER FLAG LLC - and - ERWIN HYMER GROUP NORTH AMERICA, INC.
Applicant Respondent

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

Proceeding Commenced at Toronto

**ORDER
(Appointing Receiver)**

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Lawyers for the Applicant, Corner Flag LLC

EXPORT DEVELOPMENT CANADA

-and- ANTAMEX INDUSTRIES ULC
Applicant

Respondent

Court File No. CV-24-00715153-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at
Toronto

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(Appointing Receiver)

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