

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

THE HONOURABLE MR.
JUSTICE MCEWEN

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MONDAY, THE 17th
DAY OF JUNE, 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
(Roadtrek 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 “**Roadtrek Transaction**”) contemplated by an asset purchase agreement appended as Appendix “F” to the Receiver’s Second Report (as hereinafter defined) (the “**APA**”) between the Receiver, RT Acquisition Corp., as purchaser (the “**Purchaser**”), and VDL Participation SAS, as guarantor (the “**Guarantor**”) dated

as of May 31, 2019, and vesting in the Purchaser the Debtor's right, title and interest in and to the Purchased Assets (as defined in the APA), and approving the transition services and occupation agreement, substantially in the form appended to the APA (the "TSA"), 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 ("**Corner Flag**"), 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 APA, the TSA or the Second Report.

APPROVAL OF APA AND TSA

3. **THIS COURT ORDERS AND DECLARES** that the Roadtrek Transaction is hereby approved, and the execution of the APA and the TSA by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver and the Purchaser may deem necessary and mutually agree to. 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 Roadtrek 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 described in the APA 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 (including possessory liens), executions, levies, charges, warranties (other than those expressly provided in the APA and not expressly excluded according to the provisions thereof), 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;
- (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, including those listed in Schedule "B" hereto; and
- (c) those construction lien claims and certificates of action listed on Schedule "C" hereto (the "**Construction Liens**");

(all of which, as set out in the foregoing paragraphs 4(a) – 4 (c) are collectively referred to as the "**Encumbrances**"), but excluding the Permitted Encumbrances under the APA as listed in Schedule "D" hereto and, for greater certainty, this Court orders that (i) the Construction Liens are hereby vacated as if an order had been made to vacate them by the posting of security for such claims pursuant to s. 44(1) of the *Construction Act* (Ontario); and (ii) the remaining Encumbrances

affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that upon registration in the Land Registry Office for the Land Titles Division of Waterloo (No. 58) of a copy of this Order in the manner prescribed by the *Land Titles Act* (Ontario), the Land Registrar is hereby directed to specifically discharge, cancel, delete, vacate and remove from title to the real property described in Schedule "C", the Construction Liens listed on Schedule "C", notwithstanding that the time for appeal of this Order has not yet expired.

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 (the "**Net Proceeds**") 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 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, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) and similar provisions under applicable provincial private sector privacy legislation, the Receiver is authorized and ordered, where applicable, to disclose and transfer personal information in the Debtor's records ("**Personal Information**") to the Purchaser in accordance with the APA and the TSA. The Purchaser shall (i) use and disclose the Personal Information solely for the purposes for which the Personal

Information was collected, permitted to be used or disclosed by the Debtor, except as otherwise permitted by law; (ii) protect the Personal Information by security safeguards appropriate to the sensitivity of such information; (iii) give effect to any withdrawal of consent by an individual to the collection, use or disclosure of the Personal Information; and (iv) notify the individuals to whom such Personal Information relates, within a reasonable time after the Roadtrek Transaction is completed, that their Personal Information has been disclosed in connection with the Roadtrek Transaction.

9. **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 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 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.

CONSTRUCTION LIEN RESERVE

10. **THIS COURT ORDERS** that the Receiver shall establish a reserve from the Net Proceeds for the benefit of those parties that registered the Construction Liens (each, a “**Construction Lien Claimant**”) in an amount equal to Cdn\$1,120,240.50, being the aggregate amounts claimed by each Construction Lien Claimant together with security for costs, or such lesser amount as mutually agreed between the Receiver and the Construction Lien Claimant (the “**Construction Lien Claim Reserve**”). For greater certainty, the creation of the Construction Lien Claim Reserve does not in itself create, enhance, affect or impair any rights of any parties in relation to such funds.

GENERAL

11. **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.



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 asset purchase agreement (the “**APA**”) between the Receiver, RT Acquisition Corp., as purchaser (the “**Purchaser**”), and VDL Participation SAS as guarantor (the “**Guarantor**”) dated as of May 31, 2019, and provided for the vesting in the Purchaser of the Debtor’s 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 6.1, 6.2 and 6.3 of the APA 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 APA.

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 APA;
2. The conditions to Closing as set out in sections 6.1, 6.2 and 6.3 of the APA have been satisfied or waived by the Receiver and the Purchaser, as applicable; 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].

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 or corporate capacity

Per: _____

Name:

Title:

Schedule B – Claims to be Released, Discharged and Expunged from Purchased Assets

File Number	Registration Number	Secured Party	Collateral Class
Debtor: Roadtrek Motorhomes Inc.			
708712542	20150805 1435 1530 4678	De Lage Landen Financial Services Canada Inc.	E, A, O, MV
706972599	20150610 1039 8077 3816	RCAP Leasing Inc.	E, A, O
Debtor: Erwin Hymer Group North America Inc.			
749233863	20190320 1044 1529 8374	Tandet Nationalease Ltd	E, MV
748569303	20190225 1944 1531 0912	Tandet Nationalease Ltd.	E, MV
748569231	20190225 1944 1531 0905	Tandet Nationalease Ltd.	E, MV
748569222	20190225 1944 1531 0904	Tandet Nationalease Ltd.	E, MV
748569213	20190225 1944 1531 0903	Tandet Nationalease Ltd.	E, MV
748569204	20190225 1944 1531 0902	Tandet Nationalease Ltd.	E, MV
748569195	20190225 1944 1531 0901	Tandet Nationalease Ltd.	E, MV
748569186	20190225 1944 1531 0900	Tandet Nationalease Ltd.	E, MV
748569177	20190225 1944 1531 0899	Tandet Nationalease Ltd.	E, MV
748569168	20190225 1944 1531 0898	Tandet Nationalease Ltd.	E, MV
748454562	20190220 1233 1590 0351	Mercedes-Benz Financial Services USA LLC	I, E, O
748370925	20190215 1048 1793 0195 (as amended by 20190411 1056 1793 2391)	C.F. Maier Systems Inc	CG, I, E, A, O
748211193	20190208 1041 1590 9673	Corner Flag LLC	I, E, A, O, MV
748039833	20190201 1149 1590 9141	RS Finishing Systems Inc.	I, E, A
748017297	20190131 1756 1590 9110 (as amended by 20190204 1250 1590 9260)	Erwin Hymer Group SE	I, E, A, O, MV
736092288	20180131 1036 1529 4973	Royal Bank Of Canada	CG, O, MV
723214692	20161207 1557 1624 2485	Scherer Leasing Inc	CG, E, MV
672326406	20110819 1451 1530 1422 (as amended by 20110824 1453 1530 5098 and 20160308 1950 1531 3309)	Mercedes-Benz Financial Services	I, E, A, O, MV
668180466	20110309 1945 1531 8304 (as amended by 20160308 1950 1531 3308)	Mercedes-Benz Financial Services Canada Corporation, Mercedes-Benz Financial Services and Daimler Truck Financial	I, E, A, O, MV

File Number	Registration Number	Secured Party	Collateral Class
667755387	20110217 1138 1793 6123 (as renewed by 20151222 1445 1530 6069, and 20160211 1405 1462 2758; as amended by 20160211 1405 1462 2759, 20160226 1643 1793 1572, 20160229 0808 1793 1581, and 20170216 1524 1793 1929; as assigned by 20190128 1321 1590 8770 and 20190401 1125 1590 3321)	Erwin Hymer Group SE	I, E, A

Schedule C – Construction Lien Claims to be deleted and expunged from title to Real Property

20 Tyler Street, Cambridge, Ontario (PIN 03765-0923 (LT))

1. WR1167102 registered on February 1, 2019 being a construction lien in favour of Jay Fencing Ltd. in the amount of \$65,002.12
2. WR1169694 registered on February 19, 2019 being a construction lien in favour of Travis Mitchell in the amount of \$817,125.36
3. WR1174846 registered on March 22, 2019 being a construction lien in favour of Toromont Industries Ltd. in the amount of \$14,064.92

Schedule D – Permitted Encumbrances

- (i) Encumbrances given by the Debtor as security to a public utility or any Governmental Authority when required in the ordinary course of the Business but only insofar as they relate to any amounts not due as at the Closing Date;
- (ii) reservations, limitations, provisos and conditions, if any, expressed in any original grants of land from the Crown and any statutory limitations, exceptions, reservations and qualifications;
- (iii) statutory liens for current property Taxes, assessments or other governmental charges not yet due and payable;
- (iv) Encumbrances for charges for electricity, power, gas, water and other services and utilities in connection with the Property that have accrued but are not yet due and owing;
- (v) the provisions of all Applicable Laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning of the Property;
- (vi) all Off-Title Compliance Matters;
- (vii) all instruments which are registered against title to a Leased Property;
- (viii) all Encumbrances permitted by this Agreement or caused by the Purchaser or its affiliates, agents, or representatives;
- (ix) the Encumbrances and other rights in favour of the Landlord contained in the Real Property Lease;
- (x) the Encumbrances which the Real Property Lease and/or any Leased Property are stated to be subject to or bound by pursuant to the terms of the Real Property Lease;
- (xi) any ground lease, head lease or other lease which is superior to the Real Property Lease (each a “**Head Lease**”), any Encumbrances or other rights in favour of the applicable landlord contained in any Head Lease, and any Encumbrances which the Head Leases and/or leasehold interests created thereby are stated to be subject to or bound by pursuant to the terms of the applicable Head Lease;
- (xii) Encumbrances encumbering the intervening leasehold interest pursuant to a Head Lease; and
- (xiii) all Encumbrances affecting a Landlord’s freehold interest in any Leased Property.

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
(Roadtrek Approval and Vesting)**

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