

Court File No. CV-20-00649154-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule
40.01 of the *Rules of Civil Procedure*

MOTION RECORD
(Returnable April 22, 2022)

March 9, 2022

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TO: **THE SERVICE LIST**

SERVICE LIST
(as of January 18, 2022)

(ClearFlow v Trigger – Court File #CV-20-00649154-00CL)

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Court File No. CV-20-00649154-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule
40.01 of the *Rules of Civil Procedure*

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TAB 1

Court File No. CV-20-00649154-00CL

**ONTARIO
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B E T W E E N:

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R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule
40.01 of the *Rules of Civil Procedure*

NOTICE OF MOTION
(Terminating Mareva Injunction)

The Applicant, ClearFlow Commercial Finance Corp. (“**Clearflow**”) will make a Motion to a Judge presiding over the Commercial List on Friday, April 22, 2022 at 12:00 p.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

[] In writing under subrule 37.12.1(1) because it is
[insert on consent, unopposed or made without notice];

-2-

☐ In writing as an opposed motion under subrule 37.12.1(4);

☐ In person;

☐ By telephone conference;

☒ By video conference.

at the following location

zoom details to be provided

THE MOTION IS FOR

- (a) An Order amending the Receivership Order issued by the Honourable Mr. Justice McEwen dated October 22, 2022 (the “**Receivership Order**”) to remove paragraphs 10 and 11 from the Receivership Order, such that the amended Receivership Order will, effective as of the date of the Order requested herein, shall be in the form attached hereto as Schedule “A”;
- (b) An Order amending the Interim Receivership Order issued by the Honourable Madam Justice Gilmore dated October 13, 2020 (the “**Interim Receivership Order**”) to remove paragraph 9 from the Interim Receivership Order, such that the amended Interim Receivership Order will, effective as of the date of the Order requested herein, shall be in the form attached hereto as Schedule “B”;
- (c) If necessary, for greater certainty, an Order confirming that the terms of the Mareva injunction set out in the above-noted paragraphs of the Interim Receivership Order

and the Receivership Order are no longer operative or applicable, and relieving Clearflow or Grant Thornton Limited (“**GTL**”) from any further obligation to fund the reasonable living expenses or legal fees of any of the Respondents;

- (d) Such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

Brief Outline of the Relief Requested on this Motion

- (a) On this Motion, Clearflow seeks to discontinue a Mareva injunction obtained in October, 2020, by Clearflow against two of the Respondents, Mark Gdak and Jaimee Lynn Gdak (referred to individually as “**Mark**” or “**Jaimee**” or collectively as the “**Gdaks**”).
- (b) The terms of the Mareva injunction against the Gdaks first appeared in paragraphs 9, 10 and 11 of the Interim Receivership Order of the Honourable Madam Justice Gilmore. Those terms were continued in paragraphs 10 and 11 of the s.243 BIA National Receivership Order dated October 22, 2022 issued by the Honourable Mr. Justice McEwen.
- (c) In the same two Orders, the Court appointed GTL first as Interim Receiver, and then as Court-appointed Receiver over all of the assets and undertakings of the Respondent Trigger Wholesale, Inc., (“**Trigger**”) a company formerly operated by the Gdaks.

- (d) As the Receivership has progressed, numerous assets have been located by the Receiver that were either registered or acquired in the name of the Gdaks themselves, or that were registered or acquired in the name of Trigger with funds fraudulently obtained from Clearflow pursuant to a massive, multi-year fraud committed against Clearflow.
- (e) The investigations conducted by the receiver appear to have located all assets of significant value owned by, or under the control of, Trigger and the Gdaks. These assets have been the subject of a number of motions brought by GTL, supported by numerous reports to Court. All such assets have been either sold by the receiver, or remain under its control.
- (f) There is good reason to believe that all realizable assets owned by the Gdaks and Trigger have been located and dealt with by the Receiver.
- (g) There remain no issues outstanding for the Court to deal with as set out in the Notice of Application. There is no pending trial or other court hearing that requires a Mareva injunction in order to provide interim protection of the assets of the Gdaks. The Mareva terms at this point are no longer necessary or justified.
- (h) Accordingly, Clearflow wishes to discontinue the Mareva injunction against the Gdaks, and for Clearflow and/or GTL in its capacity as receiver, to be relieved of any responsibility for further funding of the Gdaks legal fees or living expenses.
- (i) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The affidavit of Alexandra (Sandy) Kanichis sworn February 16, 2022;
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

March 9, 2022

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Lawyers for the Applicant,
ClearFlow Commercial Finance Corp.

TO: **THE SERVICE LIST**

RCP-E 37A (September 1, 2020)

SCHEDULE “A”

Court File No. CV-20-00649154-00CL

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

THE HONOURABLE	)	THURSDAY, THE 22ND DAY OF
	)	OCTOBER, 2020
JUSTICE MCEWEN	)	

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule
40.01 of the *Rules of Civil Procedure*

AMENDED ORDER
(Appointing s.243 Receiver)

THIS MOTION made by the Applicant for an Order, among other relief, converting the Interim Receivership Order granted by the Honourable Madam Justice Gilmore dated October 13, 2020 (the “**Interim Receivership Order**”) to a national receiver, 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**”), appointing Grant Thornton Limited as receiver (in such capacity the “**Receiver**”) without security, of all of the assets, undertakings and properties of Trigger Wholesale, Inc. (“**Trigger**”), the En Cadre Group Inc. (“**En Cadre**”), and certain real property owned by each of Jaimak Real Properties

Inc. ("**Jaimak**") or Jaimee Lynn Gdak, as specified in the within Order (collectively, the "**Debtors**") was heard this day by Zoom videoconference due to the COVID-19 pandemic.

ON READING the Motion Record of the Applicant, filed, and the First Report of Grant Thornton Limited in its capacity as interim receiver dated October 21, 2020 (the "**First Report**"), filed, and the appendices thereto and on hearing the submissions of counsel for the Applicant, counsel for the Receiver and counsel for the Debtors Mark Gdak, Trigger, Jaimak Real Properties Inc. and En Cadre, and counsel for Brian Kelly, no one else appearing although it appears that they have been properly served as evidence by the Affidavit of Josset Johnson sworn October 21, 2020.

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Grant Thornton Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors including all proceeds thereof, and certain real property owned by each of Jaimak or Jaimee Lynn Gdak, as set out in Schedule "A" to this Order (the "**Property**").

3. **THIS COURT ORDERS** that the Interim Receivership Order and the interim receivership proceedings, is hereby converted into a receivership pursuant to s. 243 of the BIA and s. 101 of the CJA.

4. **THIS COURT ORDERS** that notwithstanding paragraph 3 of this Order, all of the protections and benefits provided for in the Interim Receivership Order, shall continue, until further Order of the Court.

RECEIVER'S POWERS

5. **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, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- (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;
- (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, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, 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 Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time 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;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in

collecting such monies, including, without limitation, to enforce any security held by the Debtors;

- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) 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 Debtors, for any purpose pursuant to this Order;
- (i) 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 Debtors, 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;
- (j) 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;
- (k) 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 \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1 million in total; 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*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) 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;
- (m) 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;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property, including the Property set out at Schedule “A” to this Order;
- (o) to register a copy of this Order against title to any of the Property set out at Schedule “A” to this Order and the Land Registry Office of Waterloo (No. 58) and the Land Registry Office of Bruce (No. 3) are hereby directed to effect the registration of this Order against title to the Property set out at Schedule “A” to this at the request of the Receiver;
- (p) 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 Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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 Debtors, and without interference from any other Person.

6. **THIS COURT ORDERS** that the Receiver shall be empowered and authorized, but not obligated to:

- (a) file an assignment in bankruptcy on behalf of the Debtors, Trigger and En Cadre; and
- (b) if necessary, transfer funds to Grant Thornton Limited, as the proposed trustee in bankruptcy for each of Trigger and En Cadre, in the amount of \$30,000 for each estate, from the within receivership proceedings, to fund the administration of the bankruptcy estates of Trigger and En Cadre.

7. **THIS COURT ORDERS** that Grant Thornton Limited is hereby authorized to act as the trustee in bankruptcy for each of Trigger and En Cadre.

POWER TO EXAMINE THIRD PARTIES AND OBTAIN INFORMATION

8. **THIS COURT ORDERS** that the Receiver shall have the power to conduct examinations of each of Mark Gdak, Jaimee Lynn Gdak, Brian Kelly, Mike Nero and Phil Searles, in respect of the Property and in the discharge of the duties of the Receiver in these proceedings.

9. **THIS COURT ORDERS** that Brian R. Kelly shall provide documents and information which is not otherwise subject to lawyer-client privilege to the Receiver to aid in the Receiver's efforts to take control of the Property and discharge its duties in these proceedings, including the provision of a copy of any fully signed Agreements of Purchase and Sale in Mr. Kelly's possession which have not closed and in which any of the Respondents are named as a vendor or purchaser.

~~10. **THIS COURT ORDERS** that the issue of payment by the Receiver from the assets of the Respondents of the legal expenses incurred by Brian R. Kelly regarding these matters is adjourned and to be heard on request of the lawyer for Mr. Kelly on notice to the parties.~~

~~CONTINUATION OF MAREVA INJUNCTION~~

~~11. THIS COURT ORDERS that paragraphs 8, 9, 10 and 11 of the Interim Receivership Order are hereby continued until further Order of this Court.~~

12. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to pay Lerner's LLP the sum of \$30,000, as a retainer in respect of Lerner's representation of the Respondents (with the exception of the Respondent Jaimee Gdak) in these proceedings, when: (1) any one of the properties listed on Schedule "A" to this Order is sold; and (2) the Receiver is in receipt of the net proceeds of sale of any such property listed on Schedule "A" to this Order.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

13. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, 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.

14. **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 Debtors, including, without limitation, any such information etc. relating to the affairs of the Respondent Jamie Gdak, 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 12 or in paragraph 13 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.

15. **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.

16. **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

17. **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 DEBTORS OR THE PROPERTY

18. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property 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 Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

19. **THIS COURT ORDERS** that all rights and remedies against the Debtors, 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 Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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

20. **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 Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

21. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors 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 Debtors 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 Debtors' 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 Debtors 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

22. **THIS COURT ORDERS** that, except as expressly provided for in this Order, 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

23. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. 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*.

PIPEDA

24. **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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

25. **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

26. **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

27. **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, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

28. **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.

29. **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

30. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$300,000 (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 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.

31. **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.

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

33. **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

34. **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 www.grantthornton.ca/twi.

35. **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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

GENERAL

36. **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.

37. **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.

38. **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.

39. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, 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 Debtors' estate with such priority and at such time as this Court may determine.

40. **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.

SCHEDULE "A"

<u>Properties</u>	<u>Owner</u>	<u>Legal Description</u>
652 Colby Dr, Waterloo, ON N2V 1A2	Jaimak Real Properties Inc.	LT 66 PL 1405 City Of Waterloo; City Of Waterloo
250 Lions Ct, Waterloo, ON N2L 6M8	Jaimee Gdak	Lot 46, Plan 58M-166; Subject To Easement N0. LT52777 In Favor Of The Corporation Of The City Of Waterloo And Union Gas Limited Over PT 46 ON 58R-12696; Together With Right Of Way N0. 443531 Over PTS 4 And 5 ON 58R- 12488; Waterloo.
157 Saugeen Beach Rd. Port Elgin, ON N0H 2C5	Jaimee Lynn Gdak	LT 1 PL 416; Saugeen Shores
43 Baker Rd, Port Elgin, ON N0H 2C5	Jaimee Gdak	LT 14 PL 497; Saugeen Shores
265 Old Post Rd. Waterloo, ON	Jaimee Gdak	Unit 3, Level 1, Waterloo North Condominium Plan No. 9 ; BLK A PL 1292; PTS 1 & 2 CTA 903 As More Fully Described In Schedule 'A' Of Declaration 486152 ; S/T Right Of Way Over PTS 4 & 5 58R12488 As In LT61266; Release Of Ease 443531 As In LT61267; T/W Right Of Way As In LT61268; Waterloo

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Grant Thornton Limited, the receiver (the "**Receiver**") of the assets, undertakings and properties of Trigger Wholesale, Inc., The En Cadre Group, Inc. acquired for, or used in relation, including all proceeds thereof, and certain real property owned by each of Jaimak Real Properties Inc. or Jaimee Lynn Gdak (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ____ day of _____, 20__ (the "**Order**") made in an action having Court file number CV-20-00649154-00CL, 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 _____ 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 liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

GRANT THORNTON LIMITED solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

CLEARFLOW COMMERCIAL FINANCE CORP.
Applicant

-and- TRIGGER WHOLESALE, INC. et al.
Respondents

Court File No. CV-20-00649154-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**AMENDED ORDER
(Appointing s.243 Receiver)**

TORKIN MANES LLP

Barristers & Solicitors
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Toronto ON M5C 2W7

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jsimpson@torkinmanes.com
Tel: 416-777-5413
Fax: 1-888-587-9143

Lawyers for the Applicant,
ClearFlow Commercial Finance Corp.

RCP-E 4C (May 1, 2016)

SCHEDULE "B"

Court File No. CV-20-00649154-00CL

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

THE HONOURABLE	)	TUESDAY, THE 13th DAY OF
	)	OCTOBER, 2020
JUSTICE GILMORE	)	

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule 40.01 of the *Rules of Civil Procedure*

AMENDED ORDER
(Appointment of Interim Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 47(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**") appointing Grant Thornton Limited as interim receiver (in such capacity the "**Interim Receiver**") without security, of all of the assets, undertakings and properties of Trigger Wholesale, Inc. and The En Cadre Group Inc. was heard, without-notice, this day via videoconference at Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Affidavits of Martin Rees (the “**Rees Affidavit**”), Sandy Kanichis and Glenn Petersen, each sworn October 9, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the proposed Interim Receiver and on reading the consent of Grant Thornton Limited to act as the Interim Receiver.

SERVICE

1. **THIS COURT ORDERS** that service of the Notice of Application and the Application Record is hereby dispensed with and that this Application is properly returnable today.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 47(1) of the BIA and section 101 of the CJA, Grant Thornton Limited is hereby appointed Interim Receiver, without security, of all of the assets, undertakings and properties (the “**Property**”) of Trigger Wholesale, Inc. and The En Cadre Group Inc. (collectively, the “**Debtors**”), until November 12, 2020.

3. **THIS COURT ORDERS** that the balance of this Application be adjourned to a date to be set in conjunction with the Commercial List Office.

RECEIVER’S POWERS

4. **THIS COURT ORDERS** that the Interim 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 Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (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;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to 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, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, 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 Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (g) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim 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 Interim Receiver deems advisable;
- (h) to register a copy of this Order and any other Orders in respect of the Property against title to any real property that forms part of the Property;
- (i) 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 Debtors; and

- (j) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Interim 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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, including, but not limited to, the following members of the management team of Trigger: Mark Gdak, Jaimee Gdak, Philip Searles, Mike Nero and Brian Kelly, 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 Interim 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 Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim 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 Debtors, or to the issues raised in the Application Record of the Applicant, 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 Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim 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 Interim

Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **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, including all such Records that are stored “in the cloud”, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim 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 Interim 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 Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

PRESERVATION OF EVIDENCE

8. **THIS COURT ORDERS** that, without limiting the generality of the foregoing, no Person shall delete, spoil, erase or in any way alter any Records in their possession, care or control, which Records shall be preserved by any such Person in their native format without alteration.

RESTRICTION OF TRANSFERS, ALIENATION OR ENCUMBRANCE OF ASSETS

9. ~~**THIS COURT ORDERS** that pending the return of the within Application, the Respondents Mark Gdak, Jaimee Gdak and Jaimak Real Properties Inc. shall not transfer, alienate, deplete or encumber any of their real or personal property with a value over \$5,000 in any one transaction and \$20,000 in the aggregate of all such transactions, except for the purpose of providing retainers to legal counsel.~~

10. **THIS COURT ORDERS** that any and all financial institutions, including banks, credit unions or any party holding assets of Mark Gdak, Jaimee Gdak and Jaimak Real Properties Inc. (the "Banks") forthwith prevent any removal or transfer of monies or assets of the Defendant held in any account or on credit on behalf of the Defendant, with the Banks, except as in accordance with this Order, until further Order of the Court

11. **THIS COURT ORDERS** that the Banks forthwith disclose and deliver up to the Interim Receiver or to the Applicant as may be the case any and all records held by the Banks concerning the Defendant's assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate, held on behalf of the Defendant by the Banks.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

13. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim 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 Interim Receiver or the Debtors to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtors 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

15. **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 Debtors, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

16. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors 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 Interim Receiver shall be entitled to the continued use of the Debtors' 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 Interim Receiver in accordance with normal payment practices of the Debtors 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.

INTERIM RECEIVER TO HOLD FUNDS

17. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim 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 Interim 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 Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

18. **THIS COURT ORDERS** that all employees of the any of the Debtors of shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Interim 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 Interim 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*.

PIPEDA

19. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Interim 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

20. **THIS COURT ORDERS** that nothing herein contained shall require the Interim 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 Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim 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 INTERIM RECEIVER'S LIABILITY

21. **THIS COURT ORDERS** that the Interim 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 Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

22. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim 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 Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "Interim 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 Interim 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, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

24. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim 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 Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

25. **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 www.grantthornton.ca/twi .

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim 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 Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

GENERAL

27. **THIS COURT ORDERS** that a copy of this Order, once issued and entered by the Court, shall be served forthwith by the Applicant, upon the Respondents, together with the Application Record herein, as well as the Demands and NITES as defined in the Rees Affidavit.

28. **THIS COURT ORDERS** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtors.

30. **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 Interim 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 Interim Receiver and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that the Interim 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 Interim 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.

32. **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 Interim Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. **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 Interim 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.

CLEARFLOW COMMERCIAL FINANCE CORP.
Applicant

-and- TRIGGER WHOLESale, INC. et al.
Respondents

Court File No. CV-20-00649154-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**AMENDED ORDER
(Appointing Interim Receiver)**

TORKIN MANES LLP

Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Jeffrey J. Simpson (39663M)
jsimpson@torkinmanes.com
Tel: 416-777-5413
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Lawyers for the Applicant,
ClearFlow Commercial Finance Corp.

CLEARFLOW COMMERCIAL FINANCE CORP.
Applicant

-and- TRIGGER WHOLESALE, INC. et al.
Respondents

Court File No. CV-20-00649154-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

TORKIN MANES LLP

Barristers & Solicitors
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Toronto ON M5C 2W7

Jeffrey J. Simpson (39663M)
jsimpson@torkinmanes.com
Tel: 416-777-5413

Lawyers for the Applicant,
ClearFlow Commercial Finance Corp.

RCP-F 4C (September 1, 2020)

TAB 2

Court File No. CV-20-00649154-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule
40.01 of the *Rules of Civil Procedure*

AFFIDAVIT OF ALEXANDRA (SANDY) KANICHIS

I, Alexandra (Sandy) Kanichis, of the Town of Woodbridge, in the Regional Municipality
of York, MAKE OATH AND SAY:

1. I am the Director of Operations, of the Applicant in this proceeding, and as such, have
knowledge of the following matters, either through my direct knowledge or by informing myself
in respect thereof, in which case I indicate the source of my information and belief.

Brief Outline of the Relief Requested on this Motion

2. I swear this Affidavit in support of a Motion brought by Clearflow to discontinue a Mareva injunction obtained in October, 2020, by Clearflow against two of the Respondents, Mark Gdak and Jaimee Lynn Gdak (referred to individually as “**Mark**” or “**Jaimee**” or collectively as the “**Gdaks**”).¹

Introduction to the Parties

3. Clearflow is a federally-incorporated Canadian company that has been in business for the past six years of providing financing to medium-sized businesses in Ontario, typically through factoring of accounts receivable, although Clearflow occasionally extends other types of credit facilities to its customers in addition to factoring of accounts receivable.

4. The Respondent Trigger Wholesale, Inc. (“**Trigger**”) is one of Clearflow’s customers pursuant to three separate credit facilities, summarized below. Trigger is an Ontario-incorporated company that was in the business of importing and distributing firearms and associated ammunition to customers throughout Canada. Trigger’s customers allegedly included small gun shops, the military, police forces and large retailers, specifically, Canadian Tire and Home Hardware..

5. The Respondents The En Cadre Group Inc. (“**En Cadre**”) Mark Gdak (“**Gdak**”) and Jaimee Gdak (“**Jaimee**”) have each executed continuing and unlimited guarantees of the indebtedness of Trigger in favour of Clearflow. Clearflow holds security against all of the personal

¹ Attached hereto as Exhibit “A” is a copy of the Notice of Application issued by Clearflow in this case.

property and assets of Trigger and En Cadre in the form of separate General Security Agreements over each company.

6. Between April, 2015 and September, 2020, Clearflow was Trigger's primary operating lender and first-ranking secured creditor. The financing provided by Clearflow to Trigger consisted of the purchase, or "factoring", of accounts receivable, purchase order financing and discrete advances made from time to time for alleged business purposes.

7. As of October 6, 2020, being the date referenced in the initial Affidavits of Clearflow personnel sworn in support of the Application, the total amount owed by Trigger in favour of Clearflow was, \$48,543,931.75. This amount consists of the total of the purchased accounts receivable and financed purchase orders, which is \$42,943,731.75, which cannot be recovered by Clearflow (as a result of the fact that those invoices and purchase orders were fictitious forgeries).

8. The fraud was perpetrated or supported, in part, through falsified invoices; a forged transfer of real property; fake email addresses; falsified emails allegedly sent by representatives of well-known, national Canadian retailers; falsified emails allegedly sent by Clearflow representatives to Bank of Montreal; falsified firearms storage inspection certificates allegedly issued by the Ontario Government; a falsified Real Property Agreement of Purchase and Sale; impersonations of executives employed by Canadian Tire and Home Hardware stores; and phony cheques.

9. Clearflow discovered the existence and the extent of the fraud starting in or about September, 2020 when Trigger failed a field audit conducted by an expert engaged by Clearflow to conduct a full field audit of the finances of Trigger. The field auditor discovered numerous inconsistencies and financial irregularities in the financial reporting made by Trigger to Clearflow.

10. The Court-appointed Receiver over the assets and undertaking of Trigger has concluded, that Mark, and possibly other accomplices, personally orchestrated the fraud in an effort to induce Clearflow to advance millions of dollars to Trigger, which it did over a five-year period, in good faith reliance on the truthfulness of the representations made, and documentation supplied, by Mark

11. Mark has not denied his involvement in the fraud or his liability pursuant to his Guarantee (in fact, he has never filed any materials whatsoever in this matter). Jaimee, however, denied under oath that she was involved in the fraud. She also took the position that Clearflow released her from liability under her Guarantee. On March 17, 2021, the Court heard arguments in respect of Jaimee's guarantee liability, and on May 26, 2021, the Honourable Madam Justice Dietrich released reasons for decision in which she found Jaimee to be liable pursuant to her personal guarantee.² That decision is under appeal, and the appeal will be heard on February 17, 2022. The Court is referred to the Reasons for Decision of Madam Justice Dietrich for further details and findings of fact in respect of the guarantees and other issues.

Previous Court Orders

12. Upon discovering the existence of the fraud in September, 2020, Clearflow sought the immediate appointment of a Court-appointed Receiver over Trigger and a Mareva injunction against Mark and Jaimee personally. The terms of the Mareva injunction against the Gdaks first appeared in paragraphs 9, 10 and 11 (the "**Mareva Terms**") of the Order of the Honourable

² Attached hereto as Exhibit "B" is a copy of the Decision of Madam Justice Dietrich dated May 26, 2021.

Madam Justice Gilmore dated October 13, 2020 (the “**Interim Receivership Order**”).³ I attach the Endorsement of Madam Justice Gilmore dated October 13, 2020⁴ which sets out the Court’s reasons for including the Mareva Terms in the Interim Receivership Order.

13. Those terms were continued in paragraphs 10 and 11 of the s.243 BIA National Receivership Order dated October 22, 2022 (the “**Receivership Order**”), issued by the Honourable Mr. Justice McEwen.⁵

14. The Reasons for Decision of Madam Justice Dietrich (particularly, paragraphs 15 through 38 thereof) dated May 26, 2021,⁶ which reasons relate to the issue of the liability of the Gdaks pursuant to personal guarantees signed by them, but that also provide additional background/factual finding in respect of the alleged fraud in this case.

15. As the Receivership has progressed, it became apparent that the Gdaks enjoyed, prior to the discovery of the fraud, an upscale lifestyle, with multiple properties, a cottage property, multiple water craft, all-terrain vehicles, a Range Rover automobile and expensive jewellery all acquired or registered in their personal names.

16. I attach hereto the various Orders of the Court in respect of the disposition of the assets of Gdaks by the Receiver. What these various Orders and Endorsements show is that (a) all real and personal property with any significant value owned by the Gdaks had been acquired with funds

³ Attached hereto as Exhibit “C” is a copy of the Interim Receivership Order.

⁴ Attached hereto as Exhibit “D” is a copy of the Endorsement of Gilmore J. dated October 13, 2020.

⁵ Attached hereto as Exhibit “E” is a copy of the Receivership Order.

⁶ Attached at Exhibit “B”

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advanced by Clearflow to Trigger as part of the fraud; (b) the Court has declared that these assets constitute assets of Trigger and has approved the sale of same by the Receiver; (c) the Court has approved approximately \$7.7 million in distributions to Clearflow from the Receivership.

- (a) Approval and Vesting Order (43 Baker Road, Port Elgin, Ontario) dated December 1, 2020;
- (b) Endorsement of Madam Justice Dietrich dated March 17, 2020 in respect of declaration regarding ownership of certain real and personal property and approving sale of same;
- (c) Approval and Vesting Order (Sea Ray) dated March 17, 2021;
- (d) Approval and Vesting Order (Sale of Inventory) dated March 17, 2021;
- (e) Approval and Vesting Order (157 Saugeen Beach Road, Port Elgin, Ontario) dated May 18, 2021;
- (f) Approval and Vesting Order (652 Colby Drive, Waterloo, Ontario) dated June 4, 2021;
- (g) Approval and Vesting Order (265 Old Post Road, Waterloo, Ontario) dated August 20, 2021;
- (h) Endorsement and Distribution Order dated December 6, 2020;

17. I believe that the Receiver has located, secured and dealt with all known assets of Trigger and the Gdaks. Given the fact that Mark has not opposed his liability under the guarantee; and the

Court has found (subject to the decision of the Court of Appeal) Jaimee to be liable pursuant to her guarantee, there remain no issues outstanding for the Court to deal with as set out in the Notice of Application. There is no pending trial or other court hearing that requires a Mareva injunction in order to provide interim protection of the assets of the Gdaks. Neither of the Gdaks appears to earn any significant income at this time.

18. Even if the Court of Appeal overturns the finding of liability on the part of Jaimee under her guarantee, it is not anticipated that there will be a continuing need to maintain the Mareva injunction against her.

19. Given the nature of a Mareva injunction, Clearflow is required to ensure that the Gdaks receive a monthly amount for living expenses in the amount of \$6,000 collectively, plus funding for their legal fees, which currently exceed \$200,000 collectively. These legal and living expenses, by necessity, have been paid for out off the realizations of the Receiver, as there is no other sources of funds to pay for same.

20. There is no reason to suspect that the Gdaks will divert money or assets out of the jurisdiction prior to any final hearing in this case.

21. Accordingly, Clearflow wishes to discontinue the Mareva injunction against the Gdaks, and to be relieved of any responsibility for further funding of the Gdaks legal fees or living expenses.

22. I make this Affidavit in good faith and for no improper purpose.

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SWORN by Alexandra (Sandy) Kanichis of
the Town of Woodbridge, in the Regional
Municipality of York, before me at the City of
Toronto, in the Province of Ontario, on
February 16, 2022 in accordance with
O. Reg. 431/20, Administering Oath or
Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

JEFFREY J. SIMPSON



ALEXANDRA (SANDY) KANICHIS

RCP-E 4D (February 1, 2021)

This is Exhibit “A” referred to in the Affidavit of Alexandra (Sandy) Kanichis sworn by Alexandra (Sandy) Kanichis of the Town of Woodbridge, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on February 16, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

JEFFREY J. SIMPSON

Court File No

CV-20-00649154
-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:



CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule 40.01
of the *Rules of Civil Procedure*

NOTICE OF APPLICATION

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for an initial hearing to be spoken to on Friday, October 9, 2020 at 10:30a.m., by way of video conference due to the COVID-19 pandemic before a judge presiding over the Commercial List at 330 University Avenue, 8th Floor, Toronto ON M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date OCT 09 2020

Issued by


Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: Trigger Wholesale, Inc.
588 Colby Drive, Suite 1
Waterloo ON N2V 1A2

Conrad Diamante

AND TO: The En Cadre Group Inc.
588 Colby Drive
Waterloo ON N2V 1A2

AND TO: Mark Gdak
250 Lion's Court
Waterloo ON N2L 6M8

AND TO: Jaimee Lynn Gdak
250 Lion's Court
Waterloo ON N2L 6M8

AND TO: Jaimak Real Properties Inc.
250 Lion's Court
Waterloo ON N2L 6M8

APPLICATION

1. The Applicant, ClearFlow Commercial Finance Corp., makes application for:
 - (a) An Order pursuant to s. 243 of the BIA and pursuant to s. 101 of the CJA appointing Grant Thornton Limited (the "**Receiver**") as Court-Appointed Receiver over all assets and undertaking of the Respondents, of any nature whatsoever, wherever situate, on the terms set out in the draft Receivership Order attached as Schedule "A";
 - (b) An interim Order pursuant to s. 47(1) of the BIA and pursuant to s. 101 of the CJA and Rule 40.01 of the *Rules of Civil Procedure* appointing Grant Thornton Inc. as Court-Appointed Interim Receiver over all assets and undertaking of the Respondents, of any nature whatsoever, wherever situate, on the terms set out in the draft Interim Receivership Order attached as Schedule "B";
 - (c) In the alternative, an interlocutory Order in the form of a Mareva injunction on the usual terms over the assets and undertaking of each or some of the Respondents;
 - (d) Judgment as against the Respondents the En Cadre Group Inc., Mark Gdak and Jaimee Lynn Gdak in the amount of \$48,625,279.75 representing the amount due and owing by each of them in favour of the Applicant pursuant to unlimited and continuing personal guarantees executed by each of them in respect of the full amount of the indebtedness owed by the Respondent Trigger Wholesale, Inc. ("**Trigger**") in favour of the Applicant.

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- (e) An Order granting the Applicant its costs of this proceeding, on a substantial indemnity scale, plus all applicable taxes; and
- (f) Interest in respect of the judgment amount set out above at the rate set out in the various agreements between the parties;
- (g) In the alternative, pre and post-prejudgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) Such further and other Relief as to this Honourable Court may seem just.

2. The grounds for the application are:

- (a) Clearflow is a federally-incorporated Canadian company that is in the business of providing financing to medium-sized businesses in Ontario, typically through factoring of accounts receivable, although as will be seen below, Clearflow occasionally extends other types of credit facilities to its customers in addition to factoring of accounts receivable.
- (b) The Respondent Trigger Wholesale, Inc. ("**Trigger**") is one of Clearflow's customers pursuant to three separate credit facilities, summarized below. The total amount owed by Trigger in favour of Clearflow was, as of October 6, 2020, \$48,625,279.75.¹

¹ The total amount of indebtedness shown on the Demands for Repayment to be served by Clearflow does not include additional amounts due and owing to Clearflow pursuant to the Royalty Agreement, defined below, as a result of the termination of Clearflow's credit facilities with Trigger.

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- (c) The Respondents The En Cadre Group, Inc, ("**En Cadre**") Mark Gdak ("**Gdak**") and Jaimee Gdak ("**Jaimee**") have each executed continuing and unlimited guarantees of the indebtedness of Trigger in favour of Clearflow.
- (d) Clearflow holds security against all of the personal property and assets of Trigger and En Cadre in the form of separate General Security Agreements over each company.
- (e) Trigger is an Ontario-incorporated company that is allegedly in the business of importing and distributing firearms, particularly shotguns, and associated ammunition to customers throughout Canada. Trigger's customers allegedly include Canadian Tire and Home Hardware as well as small gun shops, outdoor stores, the military and police forces. Trigger and/or En Cadre's assets consist of:
 - (i) accounts receivable due and owing from customers of Trigger;
 - (ii) firearms and ammunition inventory owned by Trigger allegedly stored in a secured facility in Waterloo, Ontario;
 - (iii) an alleged interest in real property located in Waterloo, Ontario, purportedly owned by the Respondent En Cadre, with a purported value of \$48 million, pursuant to an as-of-yet uncompleted, executed Agreement of Purchase and Sale provided to Clearflow by Trigger as evidence of the asset owned by the Respondents; and

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- (iv) miscellaneous assets including office equipment and computers, goodwill, and customer lists.
- (f) The Respondents Jaimee and Jaimak Real Properties Inc. ("**Jaimak**") own certain real property located in Waterloo, Ontario, and in Huron County, Ontario that appear to have been acquired with the proceeds of the fraudulent activity perpetrated by the Gdaks. There is good reason to believe that title to these properties has been placed in the names of Jaimee and Jaimak Real Properties Inc. in an effort to shield assets from the reach of Clearflow and other creditors in the event that the fraudulent scheme was discovered.
- (g) The directors and officers of Trigger include both Gdak ("**Gdak**") and his spouse Jaimee. Jaimee has been actively involved in Trigger's business and has served in a senior accounts receivable collection capacity. As a result of her position with Trigger and her involvement with the day to day affairs of Trigger, Jaimee was at all material times aware of and participated in the fraudulent action described below.
- (h) Jaimak is the holder of title to the real property known municipally as 652 Colby Drive, Waterloo, ON. Jaimee is the sole officer and director of Jaimak. It is just and convenient that the Receiver/Interim Receiver be appointed over Jaimak as well as the other Respondents.

Nature of this Proceeding and Allegations of Fraudulent Activity

- (i) This Application has become necessary as a result of:

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- (i) the occurrence of certain events of default on the part of Trigger pursuant to the relevant credit facilities between Clearflow and Trigger. Written demand for repayment of the indebtedness owed to Clearflow (the “**Demands**”) and Notices of Intention to Enforce Security (the “**NITES**”) are about to be sent to Trigger and its guarantors. The Demands and NITES indicate to the Court the nature of the events of default on the part of Trigger that give rise to the Demands, as well as the total indebtedness owed by Trigger in favour of Clearflow, which as stated above, is nearly \$50 million; and
- (ii) a long-standing, organized pattern of fraud on the part of Trigger and Gdak that has come to the attention of Clearflow very recently, based on multiple instances of clear and convincing evidence from different and independent sources. Clearflow is not aware of the extent of its losses resulting from this fraud, except that it is in the millions and possibly tens of millions of dollars. The fraud consists of knowingly-false misrepresentations made by Gdak to Clearflow, on behalf of Trigger and En Cadre, with the knowledge and participation of Jaimee, allegedly evidenced by:
 - (1) dozens, if not hundred of falsified invoices provided to Clearflow as evidence of accounts receivable that did not exist at any time;
 - (2) multiple falsified purchase orders provided to Clearflow as further evidence that Trigger was doing business with Canadian Tire and Home Hardware when in fact, either Trigger was doing no business

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at all with these retailers, or was doing a much smaller volume of business with them than the falsified purchase orders would suggest;

- (3) a forged transfer of real property provided to Clearflow by Gdak on behalf of En Cadre, designed to make it look like En Cadre owns real property located in Waterloo, Ontario with an alleged value of \$48 million, when, in fact, En Cadre does not hold any interest in the said property;
- (4) fake email addresses provided to Clearflow by Gdak purporting to be the email addresses of executives at Canadian Tire and Home Hardware, which email addresses are, in fact, not email addresses of Canadian Tire or Home Hardware employees;
- (5) a falsified Real Property Agreement of Purchase and Sale, showing non-existent corporations as purchasers, provided to Clearflow as evidence that En Cadre is in the process of selling the property denoted above (which it does not own and the real owners of which are unconnected to En Cadre) for a purchase price of \$48 million;
- (6) verbal and email impersonations of executives employed by Canadian Tire and Home Hardware stores in connection with the phony email addresses; and

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- (7) forged cheques, made to look like payments by Canadian Tire and Home Hardware to Trigger for firearms allegedly purchased by and delivered to multiple locations of each of those retailers, which, are in fact, false.
- (j) The evidence supports the conclusion that Gdak and Jaimee have orchestrated the fraud in an effort to induce Clearflow to advance tens of millions of dollars to Trigger, which it has done in good faith reliance on the truthfulness of the representations made, and documentation supplied, by Gdak.
- (k) As a result of the events of default summarized in the written demands for repayment attached as Exhibits to the Affidavits filed in support of this Application, Clearflow is hereby applying, in this Application, for the appointment of a Court-Appointed Receiver over the assets and undertaking of all of the Respondents.
- (l) The recently-discovered evidence of a massive fraud, however, makes the normal receivership procedure inappropriate in this case. Details of the fraud are provided in the Affidavits filed in support of this Application, but as stated above, the evidence of fraud is clear and convincing, and arises from multiple, independent sources. The volume of the fraud runs into the tens of millions of dollars and there is good reason to believe that the fraud may be connected to money laundering in connection with other criminal behaviour.

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- (m) Given the conduct of Gdak summarized in the Affidavit filed in support of this Application, it is not only possible, but likely, that the Gdaks will destroy or alter evidence, remove assets from the jurisdiction and conceal the existence of assets during the 10-day period after service of the Demands and NITES. Presumably Trigger will wish to respond to this Application for the appointment of a Receiver, which could result in a delay significantly longer than the statutorily-required ten days between service of the Demands and NITES and the hearing of the Application.
- (n) Clearflow's security position will significantly erode if any of the Respondents are permitted to remain in control of the assets, premises, inventory, books and records, computers and other property of Trigger, En Cadre or owned personally, during that period.
- (o) Any indication that Clearflow is about to enforce its security or seek the appointment of a receiver will likely result in the spoliation of evidence, and concealment of assets by Gdak and/or Jaimee.
- (p) Accordingly, in addition to the usual receivership Order appointing Grant Thornton as receiver over the assets of the Respondents, Clearflow is also applying to the Court for an interim Order, without notice to the Respondents, appointing Grant Thornton as Interim Receiver over all of the Respondents, with immediate effect. The purpose of the requested interim receivership is to preserve evidence and assets pending a full hearing, on notice to the affected parties, with respect to the appointment of a receiver over the asset of these three parties, on the usual terms.

The Interim Receivership is necessary in order to protect the interests of Clearflow and preserve the estate of the Respondents.

- (q) As alternative relief, the Applicant requests Mareva injunction orders against some or all of the Respondents, but the Applicant is of the view that only the remedy of an interim receivership followed by a full receivership can adequately protect its interests as a secured creditor. The Applicant is contractually entitled to the appointment of a receiver pursuant to its GSA's held against Trigger and En Cadre.
- (r) Clearflow's plan is to arrange for the Receiver, without advance notice to Gdak or Trigger, to attend at both the Trigger business premises and the Gdak's personal residence, immediately after the issuance of the requested interim receivership Order, for the purpose of taking control of such assets, books and records, bank accounts, computers, and other property that the Interim Receiver may deem necessary.
- (s) The Demands and NITES will be served on Trigger at that time, and will not be served in advance so as not to tip off Gdak that Clearflow is aware of his fraudulent activities and is taking action as a result.
- (t) The overall purpose of the requested receivership herein is for the Receiver to undertake an investigation into the fraud committed by Gdak and Trigger with a view to determining the actual financial position of Clearflow and other stakeholders, if any, with respect to Trigger and to realize on the assets of Trigger and the other Respondents for purpose of recovering the debt owed to Clearflow.

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- (u) S. 243 of the BIA;
 - (v) S. 101 of the CJA;
 - (w) Rule 40.01 of the *Rules of Civil Procedure*;
 - (x) Such further and other grounds as the lawyers may advise.
3. The following documentary evidence will be used at the hearing of the application:
- (a) The Affidavit of Martin Rees sworn October 9, 2020;
 - (b) The Affidavit of Sandy Kanichis sworn October 9, 2020;
 - (c) The Affidavit of Glenn Petersen sworn October 9, 2020;
 - (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

October , 2020

TORKIN MANES LLP
Barristers & Solicitors
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Toronto ON M5C 2W7

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jsimpson@torkinmanes.com
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Lawyers for the Applicant,
ClearFlow Commercial Finance Corp.

SCHEDULE "A"

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE GILMORE

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FRIDAY, THE 9TH DAY OF
OCTOBER, 2020

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule
40.01 of the *Rules of Civil Procedure*

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Grant Thornton LLP as receiver (in such capacity the "Receiver") without security, of all of the assets, undertakings and properties of Trigger Wholesale, Inc., the En Cadre Group Inc. and Mark Gdak (the "**Debtors**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Martin Rees sworn October 9, 2020, and the Exhibits thereto (the "**Rees Affidavit**") and on hearing the submissions of counsel for the Applicant and counsel for the Respondents,

AND ON READING the consent of Grant Thornton LLP to act as the 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 motion 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, Grant Thornton LLP is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, 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:

- (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;
- (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, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, 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 Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time 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;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) 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 Debtors, for any purpose pursuant to this Order;
- (i) 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 Debtors, 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;

- (j) 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;
- (k) 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 \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000 in total; 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*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required;
- (l) 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;
- (m) 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;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) 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 Debtors;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, 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 Debtors, 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 DEBTORS OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property 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 Debtors or the Property 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 Debtors, 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 Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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 Debtors, 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 Debtors 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 Debtors 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 Debtors'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 Debtors 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 Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. 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*.

PIPEDA

15. **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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **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

17. **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

18. **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, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **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.

20. **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

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may

consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (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 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.

22. **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.

23. **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.

24. **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

25. **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 ''.

26. **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 Debtors's creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

GENERAL

27. **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.

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

29. **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.

30. **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.

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, 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 Debtors's estate with such priority and at such time as this Court may determine.

32. **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.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Grant Thornton Limited, the receiver (the "Receiver") of the assets, undertakings and properties of Trigger Wholesale, Inc., The En Cadre Group, Inc. acquired for, or used in relation and Mark Gdak personally, 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 _____, 20__ (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 \$250,000 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 liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

GRANT THORNTON LLP solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

**SUPERIOR COURT
COMMERCIAL**

**PROCEEDING CO
TORONTO**

**ORD.
(Appointing)**

TORKIN MANES LLP

Barristers & Solicitors

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Toronto ON M5C 2W7

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jsimpson@torkinmanes.com

Tel: 416-777-5413

Fax: 1-888-587-9143

**Lawyers for the Applicant,
ClearFlow Commercial Finance**

SCHEDULE "B"

Court File No.

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE
JUSTICE GILMORE

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FRIDAY, THE 9TH DAY OF
OCTOBER, 2020

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule
40.01 of the *Rules of Civil Procedure*

INTERIM ORDER
(Appointing Interim Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Grant Thornton Limited as receiver (in such capacity the "Receiver") without security, of all of the assets, undertakings and properties of Trigger Wholesale, Inc., the En Cadre Group Inc. and Mark Gdak (the "Debtors") was heard, in part on a without-notice basis this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Martin Rees sworn October 9, 2020 and the Exhibits thereto (the "**Rees Affidavit**") and on hearing the submissions of counsel for the Applicants

AND ON READING the consent of Grant Thornton LLP to act as the Receiver

AND ON HEARING the submissions of counsel for the Applicant, no one appearing for the Respondents as this portion of the Application, requesting interim relief, was heard on a without notice basis;

SERVICE

1. **THIS COURT ORDERS** that service of the Notice of Application and the Application Record is hereby dispensed with for purposes of the Interim Relief requested by the Applicant pursuant to s. 47(1) of the BIA, and that portion of this Application is properly returnable today.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 47(1) of the BIA and section 101 of the CJA, Grant Thornton Inc. is hereby appointed Interim Receiver, without security, of all of the assets, undertakings and properties of the Debtors (the "**Property**"). This appointment shall apply only for the time periods set out in s. 47.1(1.1) of the BIA, after which, this Order shall be of no further force or effect;

3. **THIS COURT ORDERS** that the balance of this Application be adjourned to a date to be set in conjunction with the Commercial List Office;

RECEIVER'S POWERS

4. **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:

- (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;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the power to enter into any premises owned or leased by any of the Debtors, including but not limited to the residential premises of the Debtor Mark Gdak, 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, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, 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 Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time 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;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (f) 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 Debtors, for any purpose pursuant to this Order;
- (g) 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;

- (h) to register a copy of this Order and any other Orders in respect of the Property against title to any real property that forms part of the Property;
- (i) 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 Debtors; and
- (j) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, 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.

6. **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 Debtors, 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.

7. **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.

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 Debtors or the Property 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 Debtors or the Property 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 Debtors, 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 Debtors to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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 Debtors, 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 Debtors 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 Debtors' 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 Debtors 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 any of the Debtors of shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. 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*.

PIPEDA

15. **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

16. **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

17. **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

18. **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, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their 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.

20. **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.

SERVICE AND NOTICE

21. **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 '

22. **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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

GENERAL

23. **THIS COURT ORDERS** that a copy of this Order, once issued and entered by the Court, shall be served forthwith upon the Respondents, together with the Application Record herein, as well as the Demands and NITES as defined in the Rees Affidavit.

24. **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.

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

26. **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.

27. **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.

28. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, 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.

29. **THIS COURT ORDERS** that this matter shall come back before the Court for a further hearing on XX [Court to determine date] after the Respondents have been served with this Application and this Interim Order

30. **THIS COURT ORDERS** notwithstanding the provisions of para. 31 above, 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.

**SUPERIOR COURT
COMMERCIAL**

**PROCEEDING
TORONTO**

**INTERIM
(Appointing Interim)**

TORKIN MANES LLP

Barristers & Solicitors

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**Lawyers for the Applicant,
ClearFlow Commercial Finance**

NOTICE OF AP

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Lawyers for the Applicant,

ClearFlow Commercial Finance

This is Exhibit “B” referred to in the Affidavit of Alexandra (Sandy) Kanichis sworn by Alexandra (Sandy) Kanichis of the Town of Woodbridge, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on February 16, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely..



Commissioner for Taking Affidavits (or as may be)

JEFFREY J. SIMPSON

CITATION: ClearFlow Commercial Finance Corp. v. Trigger Wholesale Inc., 2021 ONSC 3421
COURT FILE NO.: CV-20-00649154-00CL
DATE: 20210526

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
CLEARFLOW COMMERCIAL FINANCE	)	<i>Jeffrey J. Simpson</i> , for the Applicant/Moving
CORP.	)	Party
	)	
Applicant/Moving Party	)	
	)	
– and –	)	
	)	
TRIGGER WHOLESALE INC., THE EN	)	<i>Domenico Magisano</i> and <i>Jason Squire</i> , for
CADRE GROUP INC., MARK GDAK,	)	the Respondents/Responding Parties Trigger
JAIMEE LYNN GDAK and JAIMAK	)	Wholesale Inc., The En Cadre Group Inc.,
REAL PROPERTIES INC.	)	Jaimak Real Properties Inc., and Mark Gdak
	)	
Respondents	)	
	)	<i>Benjamin G. Blay</i> , for the
	)	Respondent/Responding Party Jaimee Lynn
	)	Gdak
	)	
	)	
	)	HEARD: March 18 and April 15, 2021

REASONS FOR JUDGMENT

DIETRICH J.

[1] The applicant ClearFlow Commercial Finance Corp. brings this motion to enforce guarantees executed by the respondents Mark Gdak and Jaimee Lynn Gdak in its favour.

[2] The applicant seeks a finding of liability against each of Mr. Gdak and Ms. Gdak in respect of separate, unlimited, continuing personal guarantees that each executed on April 30, 2015 in respect of the full amount of indebtedness of the respondent Trigger Wholesale, Inc. (“Trigger”) to the applicant (the “Guarantees”).

[3] Mr. Gdak and Ms. Gdak are shareholders, directors and officers of Trigger. This Court appointed Grant Thornton Limited, as an interim receiver over the assets and undertakings of Trigger on October 13, 2020, and as a full national receiver on October 22, 2020 (the “Receivership Order”).

[4] Mr. Gdak and Ms. Gdak are also shareholders, directors and officers of the respondent The En Cadre Group Inc. (“En Cadre”). It is an affiliate of Trigger, and also executed a guarantee of Trigger’s indebtedness on April 30, 2015 in favour of the applicant. The assets and undertakings of En Cadre are also subject to the Receivership Order.

[5] Mr. Gdak does not deny liability pursuant to his Guarantee. He has not filed any responding materials on this motion with respect to his Guarantee.

[6] Ms. Gdak denies liability on her Guarantee on the basis that there was an undisclosed material change in the principal amount of the indebtedness covered by the Guarantee, and because she did not have the opportunity to obtain independent legal advice. Alternatively, she asserts that the applicant, through its words and conduct, released her from her Guarantee.

[7] For the reasons that follow, I find that each of Mr. Gdak and Ms. Gdak is liable on his or her respective Guarantee in favour of the applicant, and the applicant is entitled to judgment with respect to that liability. The precise amount owing on the Guarantees remains to be determined.

Background Facts

[8] The applicant, a company incorporated pursuant to the laws of Canada, is in the business of providing financing to Ontario businesses, generally through the factoring of accounts receivable, and also by extending other types of credit facilities.

[9] Trigger is a company incorporated pursuant to the laws of Ontario, with an office in Waterloo, Ontario. Prior to the receivership, it was in the business of importing and distributing firearms and ammunition throughout Canada.

[10] The applicant made loans to Trigger pursuant to three separate credit facilities: factoring of accounts; purchase order financing; and discrete advances for business purposes. The applicant holds security against all the personal property and assets for Trigger and En Cadre in the form of a General Security Agreement in respect of each company.

[11] Martin Nicholas Rees, a partner at the applicant, took the lead with respect to the financing arrangements between the applicant and the respondents in 2015. Following its due diligence, the applicant made a financing offer, which involved a Master Purchase and Sale Agreement (the “MPSA”), a Master Purchase Order Financing Agreement, and a Royalty Agreement, each dated April 30, 2015 (the “Credit Agreements”). The Credit Agreements set out the details of the financing arrangements as between the parties. Trigger accepted the offer.

[12] As part of the loan and security documentation executed by Mr. Gdak and Ms. Gdak, on behalf of Trigger, each of them executed a Guarantee of the full amount of the indebtedness of Trigger arising out of the Credit Agreements. Each of them, as officers of En Cadre, also signed a similar guarantee on behalf of En Cadre.

[13] Neither Mr. Gdak nor Ms. Gdak denies signing their respective Guarantees. Neither alleges that the Guarantee was signed under duress. Each Guarantee was witnessed by Brian Kelly, a lawyer who represented Trigger.

[14] At the time each Guarantee was signed, the total maximum principal indebtedness shown on the Credit Agreements was \$1.4 million (though the applicant's funding proposal letter dated April 23, 2015 mistakenly states the total to be \$1.3 million).

[15] The applicant suffered losses through alleged schemes in which Trigger fabricated customer invoices and presented them to the applicant for purchase, and in which En Cadre forged documentation respecting a real property transfer.

[16] Pursuant to the terms of the MPSA, Trigger was obligated to provide to the applicant, monthly, a list of all outstanding invoices issued by it to its customers. The applicant could then choose to purchase some or all the accounts receivable and pay to Trigger 85 percent of the amount due and owing on the selected accounts receivable.

[17] When purchasing accounts receivable for factoring, the applicant would normally collect the receivables from the borrower's customers directly. Customers would typically be required to remit payment within 30 to 60 days from the invoice date. Until the applicant received payment on its purchase orders, any funds advanced to the borrower would be considered loans from the applicant.

[18] In the case of Trigger, however, Mr. Gdak asked the applicant to deviate from its usual procedure. He told the applicant that because the regulations imposed by the RCMP and other federal agencies stipulated that only he, as a licensee permitted to sell firearms, could handle payments from purchasers for those firearms, he would need to collect the receivables. This was untrue.

[19] When the applicant purchased customer invoices from Trigger, it deposited the proceeds into an account held by Trigger. It is alleged that Trigger then drew cheques on that account payable to itself, which it then deposited into a "blocked account" at the Bank of Montreal ("BMO"). It then represented to the applicant that these funds were payments from customers, which the applicant and the Receiver believe to be fake customers. The applicant then swept the blocked account and applied the funds collected against the outstanding invoices it had purchased.

[20] Based on the results of the applicant's field audit of Trigger, and the Receiver's reporting, it appears that most of the invoices presented by Trigger to the applicant for factoring were falsified. Trigger provided the applicant with multiple purchase orders as evidence that Trigger was doing business with large retailers, such as Canadian Tire and Home Hardware Stores Limited,

when, in fact, it was either doing no, or considerably less, business than the falsified purchase orders would suggest.

[21] It also appears that Mr. Gdak provided a forged real property transfer to the applicant designed to make it appear that En Cadre owned real property in the City of Waterloo, with an alleged value of \$48 million, and that En Cadre was selling this property. In fact, En Cadre had no interest in such property.

[22] In the spring of 2019, before the applicant became aware of the alleged fraudulent activities, Mr. Gdak approached the applicant to restructure the then-existing credit facilities that would soon expire. Mike Nero, an employee of Trigger, and Mr. Gdak negotiated on behalf of Trigger. Mr. Rees led the negotiations on behalf of the applicant. As part of those negotiations, which took place over the course of thirteen months, Trigger sought to renegotiate the Credit Agreements and to have Ms. Gdak released from her Guarantee.

[23] In an April 9, 2019 email to Mr. Nero, Mr. Rees confirmed that the partners at the applicant would need to agree to any amendments to the applicant's offer letter respecting the credit restructuring. He also reminded Mr. Nero of the April 15, 2019 deadline for providing financial information to the applicant and the need for the applicant to assess the financial standing of Trigger.

[24] The preliminary negotiations resulted in the applicant issuing a proposal dated May 2, 2019 (the "Proposal"), which, among other things, contemplated the renewal of the MPSA and a release of Ms. Gdak from her Guarantee.

[25] As a condition of the restructuring, over the course of the negotiations, the applicant continued to seek financial statements for the 2019 fiscal year, in a specified form. As the negotiations wore on, the applicant requested current financial statements for the fiscal 2020 year as well.

[26] Mr. Rees sent documentation prepared in support of the proposed restructuring to Mr. Gdak on May 16, 2019, by email. The documentation included an "Acknowledgement re Existing Security" (the "Acknowledgement"), which included a reference to a personal guarantee from Mr. Gdak and a guarantee from En Cadre. No reference was made to a personal guarantee from Ms. Gdak.

[27] On June 27, 2019, Mr. Rees sent another email to Mr. Gdak seeking a report on the timeframe for Trigger to provide Review Engagement Financial Statements, and he reminded Mr. Gdak and Mr. Nero that this was "a requirement."

[28] On July 3, 2019, Mr. Gdak signed the documents, and Mr. Nero returned them to the applicant via email. In an email exchange on the same day, in response to a request by Mr. Nero for a release letter discharging Ms. Gdak from her obligations, Mr. Rees agreed to provide a "letter of confirmation that the Guarantee of Jamie (*sic*) has been cancelled." In the same email, Mr. Rees stated: "We do need the Financial Statements to implement the documents-it's a condition."

[29] Mr. Rees never prepared a document confirming that Ms. Gdak's Guarantee had been cancelled or released.

[30] Approximately one year later, in June 2020, negotiations were still ongoing between the parties. No documents had been executed by the applicant, and it was still waiting to receive financial statements for the 2019 fiscal year and, by this point, the 2020 fiscal period as well. Because the applicant had not received financial statements from Trigger on a timely basis, it imposed additional conditions precedent to the credit restructuring, including a satisfactory field audit.

[31] Mr. Gdak confirmed in an email to Mr. Rees dated June 11, 2020 that three conditions precedent to the restructuring, which the applicant had imposed, remained outstanding.

[32] On June 25, 2020, Mr. Gdak provided inaccurate financial statements for the 2019 fiscal year. On the following day, he provided internally generated monthly statements for the 2020 fiscal year, which were also inaccurate.

[33] By September 2020, Mr. Adler had, in the course of his field audit, discovered the existence of the alleged fraudulent activity involving falsified invoices, a forged transfer of real property, phony email addresses, falsified firearms storage inspection certificates, impersonations of Canadian Tire and Home Hardware Stores Limited executives and phony cheques.

[34] The applicant did not accept the late-delivered financial statements and, in any event, Trigger had not met the satisfactory field audit condition. The documents drafted in support of the restructuring of the credit facilities were never approved by the applicant's credit committee or board and were never signed back to Trigger.

[35] As of October 6, 2020, according to the applicant's records, Trigger was indebted to it in the amount of \$48,543,931.75. Purchased accounts receivable and purchase orders accounted for \$42,943,931.75 of that amount, and separate advances made by the applicant accounted for \$5,600,000.

[36] The applicant cannot recover on the accounts receivable or the purchase orders because they appear to be forged documents. It cannot collect on the advances because it appears the advances were made based on forged real estate documentation.

[37] Following its discovery of these alleged fraudulent activities, the applicant issued a written demand for payment and Notices of Intention to Enforce Security to Mr. Gdak, Ms. Gdak, Trigger and En Cadre.

[38] Mr. Gdak has not denied his involvement in the alleged fraudulent activities. Ms. Gdak has denied any involvement in those activities. The parties agreed that this motion would be limited to the enforcement of the Guarantees and would not address allegations of fraud as against Ms. Gdak.

Positions of the Parties

[39] The applicant submits that the Guarantee signed by Ms. Gdak is a valid document, signed by her without duress, and witnessed by a lawyer, who was counsel to Trigger at the time the Credit Agreements and other financing arrangements were entered into. The applicant asserts that, given Ms. Gdak's direct involvement in Trigger as a director and officer, she had knowledge of Trigger's operations and obligations to the applicant, and she did not require independent legal advice with respect to the Guarantee.

[40] The applicant further submits that notwithstanding that there were discussions between representatives of Trigger and representatives of the applicant regarding Ms. Gdak's Guarantee, there was, in fact, no waiver of Ms. Gdak's Guarantee. The applicant asserts that it was consistent and clear that no restructuring of the credit facilities, including a waiver of Ms. Gdak's Guarantee, would be agreed to or implemented until certain conditions precedent were satisfied, including the delivery of financial statements by Trigger. Those conditions were never fulfilled, and Ms. Gdak was therefore never released from her Guarantee.

[41] Ms. Gdak submits that the Guarantee is not binding on her because there was an undisclosed material change to the principal indebtedness over the five years that followed her execution of the Guarantee. She asserts that her liability should be set aside based on unconscionability, or at least limited to \$1.4 million. She further asserts that she was not given an opportunity to obtain independent legal advice respecting the Guarantee.

[42] Ms. Gdak further submits that, in any event, the Guarantee is not binding on her because the applicant released her from the Guarantee through its words and conduct during the credit restructuring process.

[43] Mr. Gdak takes no position on the applicant's motion with respect to his liability under his Guarantee. The applicant submits that, because Mr. Gdak has not responded to this motion with respect to his Guarantee, judgment in respect of his liability should issue on an unopposed basis.

The Guarantee

[44] The relevant paragraphs of the Guarantee, shown in part, are as follows:

2. OBLIGATIONS GUARANTEED

In consideration of ClearFlow Commercial Finance Corp. ... dealing with or continuing to deal with the Customer, you guarantee payment to us on demand, of all present and future lease payments and obligations, conditional sale instalments and obligations, and any other debts and liabilities (collectively, the "Obligations"), both direct and indirect, (whether incurred alone or jointly with others, whether absolute or contingent, whether matured or not matured, and whether for principal, interest or fees) payable to us by the Customer under any and all lease agreements, conditional sale contracts, credit facilities, overdrafts, guarantees, letters of credit,

indemnities together with all costs and expenses, including fees and expenses, incurred by us in connection with its dealings with the Customer. ...

3. NATURE OF YOUR LIABILITY

Your liability under this Guarantee is CONTINUING, absolute and unconditional. It will not be limited, reduced, or otherwise affected by any one or more of the following events:

...

- any change in the terms or amount or existence of the Obligations

...

17. GENERAL

... No alteration or waiver of this Guarantee or any of its terms or conditions shall be binding on us unless expressly made in writing by us. ... [emphasis added]

Issues

[45] The issues on this motion are as follows:

- (1) Is Ms. Gdak released from liability under her Guarantee?
- (2) If Ms. Gdak is not released from liability on her Guarantee based on a material change in the contractual arrangement, did the applicant release Ms. Gdak from such liability through its words and conduct during the restructuring of Trigger's credit facilities?
- (3) Is Mr. Gdak liable pursuant to his Guarantee?

Is Ms. Gdak released from liability under her Guarantee because of a material change to the contractual arrangements?

[46] Ms. Gdak asserts that when she signed her Guarantee the applicant had agreed to provide funding to Trigger up to \$1.4 million. The \$1.4 million was comprised of three credit facilities described in the applicant's April 23, 2015 funding proposal letter as follows:

- a) \$320,000 maximum to fund the cost of importation of firearms, accessories and ammunition to Canada for resale;
- b) \$900,000 in respect of all eligible accounts receivable, for 24 months, automatically renewable; and

c) \$180,000 demand loan.

The funding proposal letter specifically refers to the “Corporate Guarantee of En Cadre and the Personal Unlimited Guarantee of Mark and Jamiee (sic) Gdak.”

[47] Ms. Gdak submits that she cannot be liable for anything in excess of \$1.4 million. She says that five years after the Guarantee was executed, the applicant claims the amount owing by her is now \$48,625,279.75 (as of October 6, 2020). Ms. Gdak asserts that she had no part in any discussions relating to the restructuring of the credit facilities at any time. Therefore, she asserts that her liability must be capped at \$1.4 million.

[48] Further, Ms. Gdak asserts that she had no opportunity to obtain independent legal advice. She asserts that if she had had the opportunity to obtain independent legal advice, the unconscionable exponential increase in the indebtedness, which arose as a consequence of the inequality of bargaining power between her and the applicant, could have been discovered by counsel and her improvident bargain could have been prevented.

[49] For the reasons that follow, I disagree that Ms. Gdak’s liability is limited to the \$1.4 million referred to in the funding proposal letter of April 23, 2015. I also find that Ms. Gdak has not met her burden to show unconscionability, and I do not agree that she was denied an opportunity to obtain independent legal advice.

Material change

[50] It is not disputed that a guarantor will be released from liability where the creditor and the principal debtor agree to a material change in the terms of the contract of debt without the guarantor’s consent: *Manulife Bank of Canada v. Conlin*, [1996] 3 S.C.R. 415 at para. 2.

[51] However, it is also not disputed that it is open to parties to contract out of this protection, provided that any contracting out is clear: *Conlin* at para. 4, citing *First City Capital Ltd. v. Hall* (1993), 11 O.R. (3d) 792 (C.A.).

[52] In my view, the parties contracted out of this protection. The language of the Guarantee is unequivocal. It clearly states that Ms. Gdak’s liability would be continuing and unaffected by any change in the amount of the “Obligations.” In respect of her obligations, paragraph 2 reads: “you guarantee payment to us on demand, of all present and future lease payments and obligations, conditional sale instalments and obligations, and any other debts and liabilities (collectively, the “Obligations”).” [emphasis added]

[53] The extent of Ms. Gdak’s liability is plainly stated in paragraph 3 of the Guarantee. There it states, in block capitals, that her liability is “CONTINUING” and that it will not be limited, reduced, or otherwise affected by “any change in the terms or amount or existence of the Obligations.” [emphasis added] Ms. Gdak agreed to these terms.

Breach of Contract

[54] Ms. Gdak further asserts that a guarantor can be discharged if the creditor breaches the contract of guarantee: *Pax Management Ltd. v. Canadian Imperial Bank of Commerce*, [1992] 2 S.C.R. 998. She asserts that the applicant has done just that by making advances far in excess of the maximum amounts set out in the documents underlying the credit facilities. Ms. Gdak submits that these advances resulted in a materially different risk being imposed on her.

[55] The applicant submits that over the six-year period during which the applicant provided financing to Trigger, the terms and conditions of the credit facilities did not change in any material way that would impact on Ms. Gdak's risk. For example, none of the security for the debt was released and none of the other guarantors was released.

[56] The alteration to the exact wording of the financing terms was an increase in the total amount lent such that by 2020 the total loan exceeded the amounts shown in the financing agreements.

[57] I do not agree that the applicant breached the terms of the Guarantee by making the additional advances. The language of the Guarantee clearly contemplates the possibility of additional advances by referring explicitly to "any change in the amount ... of the Obligations", and to the guarantor's obligation to pay on demand "present and future" obligations under the Guarantee. The risk of an increase in the amount of Ms. Gdak's obligation was a risk that was in existence at the time she signed the Guarantee. Had the applicant released some of its security provided by Trigger, that action would have resulted in a materially different risk being imposed on Ms. Gdak, which would likely have altered her liability under the Guarantee. The subject advances, which were specifically contemplated in language of the Guarantee, do not, in my view, result in a materially different risk for Ms. Gdak than the one to which she agreed.

Contra preferentem

[58] In the alternative, Ms. Gdak asserts that where there has been a waiver of material change, as I have found in this case, the guarantee language must be read narrowly, to protect the guarantor where the guarantor is a family member and unsophisticated or vulnerable. Ms. Gdak relies on *Conlin* in support of this submission, and in particular para. 8 where Cory J. states that "if there is any ambiguity in the terms of the guarantee, the words of the documents should be construed against the party which drew it."

[59] Mr. Gdak and Ms. Gdak are husband and wife. However, Ms. Gdak is also a director, officer, employee and shareholder of Trigger. There is no evidence to support the theory that she signed the Guarantee as a matter of accommodation or a favour for her husband.

[60] When Mr. Rees, on behalf of the applicant, was discussing the original financing arrangements with Mr. Gdak, Mr. Gdak provided him with corporate charts for Trigger and En Cadre. The corporate chart for Trigger showed Ms. Gdak to be a "Co-Owner" and "SVP." The notes to the corporate chart described Ms. Gdak as Mr. Gdak's "wife and business partner" and "a

50% owner of the company (the new operations company and the holding company).” In my view, it is more likely than not that Ms. Gdak signed her Guarantee in the capacity of a business owner, and not as a family member.

[61] As a director, Ms. Gdak would have been required to sign off on the financial statements for these companies. The annual financial statements would have reflected the indebtedness to the applicant, which would have been easy for her to track year over year.

[62] Also, based on the record, I do not find Ms. Gdak to be unsophisticated. The only real evidence she submits in support of this assertion is that she did not finish high school. Lack of a high school diploma, in my view, does not equate to a lack of sophistication. Nor does it, in my view, indicate a lack of intelligence or an inability to read and comprehend a one-page guarantee, written in the second person. Based on the record, Ms. Gdak had significant involvement in Trigger’s day-to-day operations. She had responsibility for handling of accounts receivable, writing cheques and making bank deposits. She was in regular communication with the applicant regarding accounts receivable and the assignment of those accounts, as well as reporting on what funds were deposited into the blocked account and when.

[63] Accordingly, I find that a narrow interpretation of the terms of the Guarantee is not warranted in this case. Had I decided this point differently, I would nonetheless have rejected Ms. Gdak’s interpretation of the definition of “Obligations” in the Guarantee. “Obligations” is defined to include “all present, and future lease payments and obligations, conditional sale instalments and obligations, and any other debts and liabilities.” Ms. Gdak submits that the *ejusdem generis* interpretation maxim ought to apply such that “any other debts and liabilities” must be read narrowly to include only debts of the same class or kind, being debts of a similar nature to lease payments and conditional sale instalments, and that the applicant has led no evidence of indebtedness that falls into that class.

[64] I reject this highly technical interpretation. I agree with the applicant that the phrase “other debts and liabilities” covers each of the credit facilities that the applicant offered and provided to Trigger. It would have been obvious to the parties entering into the financing arrangements that the Guarantees were in respect of the funds being advanced in accordance with the April 23, 2015 funding proposal. That proposal specifically refers to the credit being advanced and the Guarantees of each of En Cadre, Mr. Gdak and Ms. Gdak. Trigger’s credit facilities did not include lease payments or conditional sale instalments. It is therefore apparent that the Guarantees were intended to cover other debts and liabilities, such as those described in the April 23, 2015 funding proposal and advanced by the applicant. This is the only logical interpretation of the Guarantee considering the factual matrix at the time the credit facility documentation, including the Guarantees, was executed.

Independent legal advice

[65] Ms. Gdak asserts that she should not be found to be liable on her Guarantee because she was not given an opportunity to obtain independent legal advice on the Guarantee, or any

amendments to the credit arrangements. Notwithstanding that she signed the Guarantee in the presence of a lawyer, Mr. Kelly, who witnessed her signature, she asserts that Mr. Kelly was counsel to Trigger and not to her.

[66] Ms. Gdak further asserts that she had never consulted with the applicant, or its counsel, in respect of the Guarantee, and that there was an inequality of bargaining power to her disadvantage.

[67] The applicant asserts that, because Ms. Gdak was a director of Trigger, independent legal advice in respect of her Guarantee was not required.

[68] The lack of independent legal advice, on its own, is not fatal to a claim on a guarantee, absent undue influence, unconscionability, fraud, misrepresentation or evidence supporting a defence of *non est factum*: *RBC v. 164393*, 2019 ONSC 5145 at para. 54, citing *Bank of Montreal v. Featherstone*, 58 D.L.R. (4th) 567 (Ont. C.A.).

[69] A party asserting unconscionability must make out an inequality of bargaining power and a resulting improvident bargain: *Uber Technologies Inc. v. Heller*, 2020 SCC 16, 3 B.L.R. (6th) 1 at para. 65.

[70] Ms. Gdak submits that there was an inequality of bargaining power between her and the applicant. As evidence of her lack of sophistication, she submits that she never completed high school and needed clarification during her examination by the Receiver that a “charge” was another word for “mortgage.” By contrast, she submits that the applicant purports to be in the business of providing financing to medium-sized businesses in Ontario, through factoring accounts receivable, and that the applicant’s point of contact, Mr. Rees, had 35 years of experience in banking and lending in Canada and the United Kingdom. Accordingly, Ms. Gdak submits that there is a significant gulf in sophistication. She submits that the improvident bargain is manifest in the growth of the debt from \$1.4 million to over \$48 million with no input or participation from her.

[71] As noted, I do not accept that Ms. Gdak was unsophisticated. On a balance of probabilities, I find that she was not entirely unaware of, or uninformed as to, the debt that Trigger was incurring. Ms. Gdak was a director and officer of each of Trigger and En Cadre when she signed the Guarantee. As a director she was responsible for signing off on the financial statements of these companies, which would have disclosed the companies’ indebtedness.

[72] Ms. Gdak is the sole director, officer and shareholder of the respondent Jaimark Properties Inc. (“Jaimark”), which owns or owned several valuable real properties. Based on the record, Ms. Gdak, either on behalf of Jaimark, or personally, has entered into agreements of purchase and sale and a licence agreement as part of transactions in respect of which she sought the advice of legal counsel.

[73] On examination, Ms. Gdak deposed that she did not know that she was a director of Trigger and En Cadre. She also deposed that she did not have a title and that at Trigger she took on jobs like taking photographs for marketing materials, building a website, and “administrative roles.”

[74] I do not accept Ms. Gdak's evidence that she did not have a title at Trigger or that she took on only administrative roles there. At the time of the hearing, the applicant had not had an opportunity to review the large volume of emails retrieved by the Receiver from computers at Trigger. Even so, the record is replete with examples of Ms. Gdak's involvement and responsibilities at Trigger, as evidenced by numerous emails.

[75] Apart from Mr. Gdak promoting Ms. Gdak as his "business partner", her involvement in Trigger's business was recognized by others at Trigger as well. In an email from Mr. Nero to Mr. Rees, dated May 13, 2015, in response to Mr. Rees' concerns about accounts receivables and other matters, Mr. Nero stated: "As for the A/R, I understand the pressure point, Jaimee [Ms. Gdak] and I are going to be finally handling this moving forward."

[76] Alexandra Kanichis, the Director of Operations at the applicant, and the partner who supervised the Trigger credit facilities, deposed that Ms. Gdak was involved with daily accounting operations at Trigger and that "literally hundreds of emails have been exchanged" between Ms. Gdak, Ms. Kanichis and the applicant's administration team with respect to processing credit card payments, deposits made into the BMO blocked account and deposits made into a BMO account of non-factored payments, and funding requests to the applicant.

[77] Under examination, Ms. Gdak agreed that Ms. Kanichis' statement about the number of emails exchanged between them "could be accurate."

[78] Ms. Gdak also deposed that prior to 2020 she worked four or five hours a day at Trigger, but that she did not do much work for Trigger in 2020.

[79] However, in an email to Mr. Rees on June 11, 2020, Mr. Gdak notes that Ms. Gdak did not "facilitate the cashing of cheques", as expected, because she was at the hospital, and that he would provide a solution for this concern of the applicant. In the same email, Mr. Gdak describes a "Process Change" at Trigger to "ensure future success/compliance" which involves a "signoff on the previous weeks activity (bank accounts, sales, shipping, purchases, transfers, expenses, etc.) on the Monday following the previous week from 830am-12 pm each week. This will be completed by Mark, Mike, Jaimee [Ms. Gdak], Amy and Phil (*sic*)."

In an email to the applicant dated December 11, 2019, Mr. Gdak advises that "Mike, Jaimee [Ms. Gdak] and I are all at RLB [the accountants] today (working with them to close several projects) and then RLB is at our facility Thursday and Friday. We are scrambling to get our accounting up until current day." In another report to the applicant, dated December 26, 2019, Mr. Gdak reports that Ms. Gdak is "mapping our payment for deposits" on five specified days between December 27, 2019 and January 3, 2020.

[80] Ms. Kanichis deposed that at a meeting at Trigger on October 1, 2020 between Mr. Gdak and Mr. Nero, from Trigger, and Ms. Kanichis and Glenn Peterson (president and director), from the applicant, Mr. Gdak advised that Ms. Gdak was working from home because of the global pandemic, but that she was making collection calls on all the past due accounts of independent stores.

[81] Ms. Kanichis' evidence includes several email exchanges between Ms. Gdak and the applicant, as well as a copy of an Assignment Schedule summarizing alleged sales of firearms to purchasers, totaling over \$185,000. Ms. Gdak included the invoices in support of the alleged sales and alleged proof of delivery by courier for each sale. Together with these documents, Ms. Gdak sent an email to Ms. Kanichis confirming that these documents had been "successfully uploaded."

[82] I do not find Ms. Gdak's evidence that she did not know that she was a director of Trigger credible.

[83] There is reliable evidence to show that Ms. Gdak, in fact, held herself out as a vice president, which she noted when signing documents on behalf of Trigger or En Cadre.

[84] Ms. Gdak had authority to write and sign cheques on behalf of Trigger. Ms. Kanichis' evidence included copies of many cheques written and signed by Ms. Gdak on behalf of Trigger. Many of these cheques were in the hundreds of thousands of dollars.

[85] Ms. Kanichis also deposed that Ms. Gdak was "deeply involved in the day-to-day financial administration of Trigger and takes an active part in managing the financial and accounts receivable side of Trigger's business. She is one of the individuals at Trigger whom I would describe as part of the senior management team." Ms. Kanichis adduced a series of update emails from Ms. Gdak to the applicant that show that Ms. Gdak was one of the primary persons responsible for collection of accounts receivable at Trigger; was one of the individuals who personally handled cheques as they were received by Trigger from its customers; and who deposited cheques into the BMO blocked account and reported to the applicant on the deposits. Mr. Rees deposed that Ms. Gdak served in a "senior accounts receivable collection capacity." Neither Ms. Kanichis nor Mr. Rees was cross-examined on their respective affidavits.

[86] Ms. Kanichis also deposed that Ms. Gdak had ready access to the status of Trigger's indebtedness. Ms. Kanichis deposed that the applicant used software called "Cadence", which allowed its customers, like Trigger, to upload documents, such as invoices to be factored, and to view and update their precise financial position *vis-à-vis* the applicant, including their indebtedness to the applicant. According to Ms. Kanichis' evidence, it was Ms. Gdak who frequently accessed Cadence to upload invoices and bills of lading until Mr. Nero took over this function in 2018. The applicant's records show that Ms. Gdak last logged on to Cadence on February 21, 2018 to upload a number of invoices and bills of lading. Later that same day, Ms. Gdak sent an email to Ms. Kanichis confirming a successful uploading of "invoices and POD's."

[87] Ms. Kanichis further deposed that, like any user of Cadence, Ms. Gdak would have seen a standard-form opening screen that showed the current balance of the account. According to Ms. Kanichis' evidence, on February 21, 2018, Trigger's balance stood at \$8,404,091. In addition to the balance, the screen would have shown a bar chart showing Trigger's purchase and collection history. Accordingly, I find that it ought to have been apparent to Ms. Gdak on February 21, 2018, that her liability on her Guarantee exceeded the original \$900,000 loan shown on the credit facility documents by a considerable margin.

[88] Ms. Gdak does not deny that she accessed the Cadence program, but she deposed that she used it on rare occasions and needed technical assistance with it. She deposed that she had “no recollection” of seeing the opening screen described by Ms. Kanichis. On a balance of probabilities, I find that while Ms. Gdak may not have known that Trigger’s indebtedness had grown to over \$48 million, it is more likely than not that she knew the indebtedness was considerably greater than \$900,000. The information was readily available to her. Even if she did not choose to access the information using the Cadence system, she could have made inquiries of Ms. Kanichis with whom she was in regular contact. Ms. Gdak took no steps to try to limit her exposure on the Guarantee.

[89] The applicant argues that it had no duty to advise Ms. Gdak to obtain independent legal advice because she was a director of Trigger. It relies on the case of *Meridian Credit Union Limited v. 2428128 Ontario Limited*, 2017 ONSC 4578, 73 B.L.R. (5th) 262, in which the court found that independent legal advice is not required prior to the signing of a guarantee if the guaranteeing party is an officer and director of the corporation receiving the loan, citing *Toronto-Dominion Bank v. 1503345 Ontario Ltd.*, [2006] O.J. No. 1960 (ONSC).

[90] I do not agree entirely with the applicant’s conclusion. The analysis in *Meridian* was considered in the more recent decision of Glustein J. in *Royal Bank of Canada v. 2414973*, 2020 ONSC 6047, where the court held that the principle enunciated in *Meridian* only applies where a party pleads that the guarantee is “invalidated” because of a lack of independent legal advice at the time the guarantee was signed.

[91] Where a guarantor is raising the lack of independent legal advice to “invalidate” the guarantee, the fact that the guarantor was a director may be determinative. However, whether or not a party was a director of the corporation, the presence or absence of independent legal advice remains relevant where that party is raising the defence of unconscionability, and arguing that the party did not have an opportunity to review the guarantee with counsel who might have identified an inequality of bargaining power and a resulting improvident bargain.

[92] Where a guarantor relies on a lack of independent legal advice in raising a defence of unconscionability, *non est factum*, misrepresentation or the like, the fact that the guarantor is a director is only a factor to be considered. In such cases, merely holding the title of “director” does not necessarily alleviate the need for independent legal advice. Rather, the overriding question remains whether the guarantee is tainted by the presence of undue influence, unconscionability or similar circumstances of improper tactics, and whether the lender should have been put on notice of same. Where a spouse lacks sophistication or meaningful involvement with the corporation, the mere fact that he or she holds the title of “director” should not preclude the defence of unconscionability: see, for example, *Royal Bank v. Hussain*, [1997] 38 B.L.R. (2d) 92.

[93] In my view, Ms. Gdak was not a director in name only. Nor do I find that she performed only administrative tasks at Trigger or that she had no knowledge of the increase of the indebtedness of Trigger to the applicant, such that her dealings with the applicant are tainted by unconscionability.

[94] I am also not satisfied that Ms. Gdak did not have the opportunity to review her Guarantee with counsel. All the credit facility documents were signed in the presence of and witnessed by a lawyer, Mr. Kelly, of Kelly & Co. Ms. Gdak asserts that Mr. Kelly was the lawyer for Trigger and not her lawyer. However, in her examination, when questioned about documents relating to the sale of a condominium owned by her, in September 2020, and in particular about the reference to “Kelly & Co.” on the agreement of purchase and sale, Ms. Gdak stated that “they are our lawyers.” There is no documentary evidence before the court with respect to the nature and extent of Kelly & Co’s retainer *vis-à-vis* Trigger, En Cadre, Mr. Gdak and Ms. Gdak.

[95] Ms. Gdak has not met her onus to show an inequality of bargaining power and a resulting improvident bargain. I am not persuaded that Ms. Gdak’s Guarantee transaction was tainted by the presence of unconscionability or improper tactics such that the applicant ought to have been put on notice of such and encouraged her to obtain independent legal advice.

Did the applicant release Ms. Gdak from her Guarantee?

[96] Ms. Gdak asserts that the applicant released Ms. Gdak from her Guarantee through its words and conduct, and it is now estopped from asserting that the negotiations relating to Ms. Gdak’s release from her Guarantee were never consummated.

[97] For the reasons that follow, I find that the applicant did not conduct itself in a way that constituted a waiver of Ms. Gdak’s Guarantee. Paragraph 17 of the Guarantee clearly states that no waiver of the Guarantee or any of its terms or conditions shall be binding on the applicant unless expressly made in writing by the applicant. The applicant made no such express writing.

[98] As set out in *Maracle v. Travellers Indemnity Co. of Canada*, [1991] 2 S.C.R. 50, a party seeking to rely on promissory estoppel must show that:

- (a) the other party made a promise or assurance, through words or conduct, that was intended to affect the legal relationship between them and was to be acted on; and
- (b) in reliance on the representation, the representee changed her position.

[99] Ms. Gdak asserts that on multiple occasions the applicant represented that it had released her from her Guarantee. Ms. Gdak further asserts she changed her position in reliance on this conduct. For example, she deposed that, based on this reliance, she accepted a transfer of Mr. Gdak’s one-half interest in their family home to separate business assets from personal assets.

[100] In my view, Ms. Gdak has not made out promissory estoppel. She has not established that the applicant represented that it had released her from her Guarantee, nor that she relied on that representation to her detriment.

[101] In support of her argument that her Guarantee was released through the conduct of the applicant, Ms. Gdak relies primarily on the Proposal (dated May 2, 2019) sent by Mr. Rees to Mr. Gdak. The Proposal contemplates a renewal of the existing MPSA and a termination of the existing

Royalty Agreement, among other things. Under the section “Additional Information and Agreement” it states: “No Personal Guarantees moving forward from Jaimee Gdak.” Below, in the same section, it states:

The foregoing Proposal does not constitute an offer, commitment or binding agreement to enter the Amended Credit Facilities unless and until approved by ClearFlow’s Credit Committee and/or Board in writing and execution of Documentation as described herein. ... Trigger Wholesale also authorizes ClearFlow to share this information with ClearFlow’s affiliates, assigns, lenders, designees or other third parties ClearFlow deems necessary to receive the appropriate approvals.

[102] Ms. Gdak asserts that, based on this provision, the only part of the Proposal, which was not a binding agreement, was the part that dealt specifically with the two credit facilities, being the MPSA and the Royalty Agreement. She further asserts that it naturally followed that the section dealing with Additional Information and Agreement, which followed the section dealing with the credit facilities, was binding and indeed an “agreement”, which included the agreement that there would be no personal guarantees moving forward from Ms. Gdak. Both Mr. Gdak and Mr. Rees signed the Proposal on May 6, 2019.

[103] I find this interpretation, too, to be highly technical, and neither correct nor commercially reasonable. Even if it could be said that the parties agreed to treat the Amended Credit Facilities as distinct from the Guarantees, and not as part of the same package of credit documents as presented to Trigger in 2019, the language in the Proposal nonetheless affirms that “moving forward” Ms. Gdak will not be asked to provide a personal guarantee. “Moving forward” anticipates the execution of the Amended Credit Facilities. It is implicit that if the Amended Credit Facilities were not approved by ClearFlow’s Credit Committee and/or its Board, in writing, the restructuring would not advance, and, in that case, Ms. Gdak would not be relieved of her Guarantee obligations. An agreement to relieve Ms. Gdak from entering into a fresh guarantee as part of the credit restructuring is not the equivalent of a waiver of her existing Guarantee. A waiver of the existing Guarantee, by its terms, must be in writing by the applicant.

[104] There is no evidence of any such waiver by the applicant. Further, based on the testimony of the president of the applicant, Mr. Peterson, in order to be binding on the applicant, the waiver would have had to be signed by the Board of Directors comprised Randy Rutherford and himself. Mr. Rees did not have the authority to waive Ms. Gdak’s Guarantee.

[105] Ms. Gdak confirmed that she was not involved in the negotiations regarding the credit restructuring. There is no evidence of any representation having been made to her by the applicant regarding her Guarantee. It was Mr. Gdak who was involved in the negotiations relating to the credit restructuring. Based on the evidentiary record, Mr. Gdak appreciated that Ms. Gdak’s Guarantee had not been waived on May 6, 2020, when he accepted the Proposal. Mr. Petersen deposed that on May 6, 2020, he and others met with Mr. Gdak in Trigger’s parking lot following their earlier meeting. Then and there, Mr. Gdak emphasized his desire that Ms. Gdak’s Guarantee

be released. Mr. Petersen's evidence is that he explained to Mr. Gdak that "that should be possible when the new expanded facility and MPSA agreements were finalized."

[106] Shortly thereafter, when Trigger's financial statements were not forthcoming, Mr. Rees sent Mr. Gdak an email advising him that the applicant was imposing an additional condition precedent to the credit restructuring – a third party field audit. Attached to Mr. Rees' email was a checklist of items that would need to be satisfied before the applicant would consider moving forward with the proposed restructuring of the credit facilities.

[107] Mr. Gdak's conduct after the May 6, 2019 meeting reinforces that he appreciated that Ms. Gdak's Guarantee had not been released.

[108] On May 16, 2019, Mr. Rees sent an email attaching draft documents to reflect the terms set out in the Proposal. Nowhere in his covering email does Mr. Rees state that the documents are in execution form or ready for signature. While he does not specifically state in his email that the documents are drafts, he does state that he will send copies of the existing signed documents "for Brian Kelly's reference/convenience." This statement suggests that the documents are drafts to be reviewed by Trigger's counsel, Mr. Kelly. In the same email, Mr. Rees provides the contact details for the applicant's counsel, which further reinforces that the attached documents are drafts to be negotiated and finalized between counsel. Mr. Rees does not ask Mr. Gdak to sign and return these documents. The documents do not include a waiver of Ms. Gdak's Guarantee. Mr. Rees later deposed that the documents he sent on May 16, 2019 were indeed drafts for review by legal counsel.

[109] A few months later, on July 2, 2019, Mr. Nero, of Trigger, on behalf of Mr. Gdak, returned the documents signed by Mr. Gdak to Mr. Rees via email.

[110] On July 3, 2019, Mr. Nero, on behalf of Mr. Gdak, wrote to Mr. Rees asking for copies of the documents signed by the applicant and "the release letter you confirmed would be sent discharging Jaimee's obligations." This inquiry confirms Mr. Nero's understanding that, as of July 3, 2019, Ms. Gdak's obligations under the Guarantee had not been discharged.

[111] Mr. Rees replied the same day stating that he "will prepare a letter of confirmation that the Guarantee of Jamie (*sic*) has been cancelled." I accept Mr. Rees' evidence that he never intended to indicate that the applicant had agreed to release Ms. Gdak's Guarantee, and that he neither had instructions from the applicant to release the Guarantee, nor any authority to do so. Mr. Rees knew that the release of the Guarantee was conditional on Trigger providing the requested financial statements. For that reason, he included this reminder in his email reply: "We do need the Financial Statements to implement the documents-it's a condition."

[112] On July 9, 2019, Mr. Rees sent an email to Mr. Gdak indicating that "Glenn will sign off the original legal documents when next in Toronto." This statement can only be interpreted in the context of the entire transaction. At that time, both the applicant and Mr. Gdak were aware of the conditions precedent that needed to be fulfilled before the credit restructuring, including the release

of Ms. Gdak's Guarantee, would be approved. Those conditions included a review of Trigger's financial statements for 2019 and 2020 in a form prescribed by the applicant as well as a satisfactory field audit.

[113] Mr. Gdak was fully aware of the conditions precedent to the proposed credit restructuring, which could have resulted in the release of Ms. Gdak's Guarantee. Notwithstanding that Mr. Gdak returned signed documents to the applicant on July 2, 2019, he understood that the credit facilities would not be restructured until the conditions were met. Nearly a year later, on June 11, 2020, Mr. Gdak sent an email to Mr. Rees in which Mr. Gdak, himself, lists the "Conditions Precedent", which include "Review Engagement Fiscal 2019", "Management Prepared Financial Statement 2020" and "Field Audit by Steven Adler", and he reports on the status of each with a commitment that Trigger will deliver the 2020 Review Engagement by July 31, 2020.

[114] Mr. Rees deposed that the draft "Acknowledgement" of the waiver of Ms. Gdak's Guarantee, which had been included in the package of draft documents sent for review by counsel, was only sent to Mr. Gdak as an example of the type of acknowledgement that could be signed if there were agreement on all the other terms relating to the restructuring and all of the conditions precedent had been met. It was not an express waiver of Ms. Gdak's existing Guarantee.

[115] Because financial statements in the form requested by the applicant were never delivered, and because Trigger failed the field audit, the conditions of the credit restructuring were never met. Neither the draft Acknowledgement, nor any other document expressly releasing Ms. Gdak from her Guarantee, was ever finalized, or signed by the applicant, and she was never released from her Guarantee by any means.

[116] It defies logic that Ms. Gdak or Mr. Gdak would have believed that the applicant would have agreed to the waiver of Ms. Gdak's Guarantee or any other Guarantee in July 2019. At that time, Trigger had not provided its financial statements for fiscal 2019 and fiscal 2020, or met the condition for a satisfactory field audit. The applicant had not signed a single document to give effect to the restructuring of the credit facilities.

[117] On June 19, 2020, prior to the completion of the field audit, Mr. Gdak returned to the applicant a signed version of the MPSA, which he had unilaterally backdated to July 3, 2019. The applicant's evidence is that it never considered that document to be legally binding because, not only had no one on behalf of the applicant signed the document, but also the MPSA was but one part of a package of documents the whole of which formed the basis for the restructuring and renewal of the credit facilities. Until all of them were approved and signed by both parties, Ms. Gdak's Guarantee would not be released.

[118] Mr. Gdak did not provide 2019 Review Engagement statements until June 25, 2020, 86 days following the fiscal year end, and he never produced the most recent 2020 financial statements on a Review Engagement basis, as requested by the applicant. Rather, he produced internal monthly statements for fiscal 2020. These financial statements were not accurate, and they were

not acceptable to the applicant. By this time, the applicant was also aware that the field audit had uncovered extensive activities at Trigger that it believed to be fraudulent.

Is Mr. Gdak liable pursuant to his Guarantee?

[119] As noted above, Mr. Gdak did not deny liability pursuant to his Guarantee, and he did not file any responding materials on this motion with respect to his Guarantee. I agree with the applicant that judgment in respect of his liability should issue on an unopposed basis.

Disposition

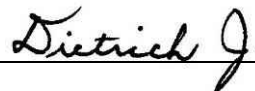
[120] A Judgment shall issue declaring:

- (a) the personal Guarantee executed by the respondent, Mark Gdak, in favour of the applicant, ClearFlow Commercial Finance Corp., in respect of the indebtedness of Trigger Wholesale Inc., dated April 30, 2015, enforceable; and
- (b) the personal Guarantee executed by the respondent Jaimee Lynn Gdak in favour of the applicant, ClearFlow Commercial Finance Corp., in respect of the indebtedness of Trigger Wholesale Inc., dated April 30, 2015, enforceable.

The parties and the Receiver may arrange a case conference to address the quantum of the liability on the Guarantees.

Costs

[121] Any party seeking costs in this matter may serve and file written costs submissions not exceeding three pages in length (excluding a costs outline and offers to settle, if any) within ten days of these reasons. Any party wishing to respond to such written submissions shall serve and file similar written costs submissions within ten days thereafter.



Dietrich J.

Released: May 26, 2021

CITATION: ClearFlow Commercial Finance Corp. v. Trigger Wholesale Inc., 2021 ONSC 3421
COURT FILE NO.: CV-20-00649154-00CL
DATE: 20210526

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant/Moving Party

– and –

TRIGGER WHOLESALE INC., THE EN CADRE
GROUP INC., MARK GDAK, JAIMEE LYNN GDAK
and JAIMAK REAL PROPERTIES INC.

Respondents/Responding Parties

REASONS FOR JUDGMENT

Dietrich J.

Released: May 26, 2021

This is Exhibit “C” referred to in the Affidavit of Alexandra (Sandy) Kanichis sworn by Alexandra (Sandy) Kanichis of the Town of Woodbridge, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on February 16, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

JEFFREY J. SIMPSON

Court File No. CV-20-00649154-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

)

TUESDAY, THE 13th DAY OF

JUSTICE GILMORE

)

OCTOBER, 2020

)



CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
 MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule 40.01 of the *Rules of Civil Procedure*

ORDER
(Appointment of Interim Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 47(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**") appointing Grant Thornton Limited as interim receiver (in such capacity the "**Interim Receiver**") without security, of all of the assets, undertakings and properties of Trigger Wholesale, Inc. and The En Cadre Group Inc. was heard, without-notice, this day via videoconference at Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Affidavits of Martin Rees (the "**Rees Affidavit**"), Sandy Kanichis and Glenn Petersen, each sworn October 9, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the proposed Interim Receiver and on reading the consent of Grant Thornton Limited to act as the Interim Receiver.

SERVICE

1. **THIS COURT ORDERS** that service of the Notice of Application and the Application Record is hereby dispensed with and that this Application is properly returnable today.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 47(1) of the BIA and section 101 of the CJA, Grant Thornton Limited is hereby appointed Interim Receiver, without security, of all of the assets, undertakings and properties (the "**Property**") of Trigger Wholesale, Inc. and The En Cadre Group Inc. (collectively, the "**Debtors**"), until November 12, 2020.

3. **THIS COURT ORDERS** that the balance of this Application be adjourned to a date to be set in conjunction with the Commercial List Office.

RECEIVER'S POWERS

4. **THIS COURT ORDERS** that the Interim 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 Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (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;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to 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, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, 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 Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (g) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim 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 Interim Receiver deems advisable;
- (h) to register a copy of this Order and any other Orders in respect of the Property against title to any real property that forms part of the Property;
- (i) 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 Debtors; and

- (j) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Interim 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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, including, but not limited to, the following members of the management team of Trigger: Mark Gdak, Jaimee Gdak, Philip Searles, Mike Nero and Brian Kelly, 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 Interim 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 Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim 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 Debtors, or to the issues raised in the Application Record of the Applicant, 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 Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim 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 Interim

Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **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, including all such Records that are stored "in the cloud", all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim 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 Interim 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 Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

PRESERVATION OF EVIDENCE

8. **THIS COURT ORDERS** that, without limiting the generality of the foregoing, no Person shall delete, spoil, erase or in any way alter any Records in their possession, care or control, which Records shall be preserved by any such Person in their native format without alteration.

RESTRICTION OF TRANSFERS, ALIENATION OR ENCUMBRANCE OF ASSETS

9. **THIS COURT ORDERS** that pending the return of the within Application, the Respondents Mark Gdak, Jaimee Gdak and Jaimak Real Properties Inc. shall not transfer, alienate, deplete or encumber any of their real or personal property with a value over \$5,000 in any one transaction and \$20,000 in the aggregate of all such transactions, except for the purpose of providing retainers to legal counsel.

10. **THIS COURT ORDERS** that any and all financial institutions, including banks, credit unions or any party holding assets of Mark Gdak, Jaimee Gdak and Jaimak Real Properties Inc. (the "Banks") forthwith prevent any removal or transfer of monies or assets of the Defendant held in any account or on credit on behalf of the Defendant, with the Banks, except as in accordance with this Order, until further Order of the Court

11. **THIS COURT ORDERS** that the Banks forthwith disclose and deliver up to the Interim Receiver or to the Applicant as may be the case any and all records held by the Banks concerning the Defendant's assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate, held on behalf of the Defendant by the Banks.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

13. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim 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 Interim Receiver or the Debtors to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtors 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

15. **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 Debtors, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

16. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors 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 Interim Receiver shall be entitled to the continued use of the Debtors' 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 Interim Receiver in accordance with normal payment practices of the Debtors 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.

INTERIM RECEIVER TO HOLD FUNDS

17. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim 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 Interim 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 Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

18. **THIS COURT ORDERS** that all employees of the any of the Debtors of shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Interim 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 Interim 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*.

PIPEDA

19. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Interim 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

20. **THIS COURT ORDERS** that nothing herein contained shall require the Interim 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 Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim 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 INTERIM RECEIVER'S LIABILITY

21. **THIS COURT ORDERS** that the Interim 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 Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

22. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim 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 Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "Interim 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 Interim 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, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

24. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim 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 Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

25. **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 www.grantthornton.ca/twi.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim 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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

GENERAL

27. **THIS COURT ORDERS** that a copy of this Order, once issued and entered by the Court, shall be served forthwith by the Applicant, upon the Respondents, together with the Application Record herein, as well as the Demands and NITES as defined in the Rees Affidavit.

28. **THIS COURT ORDERS** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtors.

30. **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 Interim 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 Interim Receiver and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that the Interim 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 Interim 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.

32. **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 Interim Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. **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 Interim 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.

C. [Signature]

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

OCT 16 2020

PER / PAR: *[Signature]*

**SUPERIOR COURT
(COMMERCIAL)**

**PROCEEDING C
TORO**

**OR
(Appointing In**

TORKIN MANES LLP

Barristers & Solicitors

**151 Yonge Street, Suite 1500
Toronto ON M5C 2W7**

Jeffrey J. Simpson (39663M)

jsimpson@torkinmanes.com

Tel: 416-777-5413

Fax: 1-888-587-9143

**Lawyers for the Applicant,
ClearFlow Commercial Finan**

This is Exhibit “D” referred to in the Affidavit of Alexandra (Sandy) Kanichis sworn by Alexandra (Sandy) Kanichis of the Town of Woodbridge, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on February 16, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

JEFFREY J. SIMPSON

Counsel: See my endorsement below.

Endorsement of Gilmore, J.

The Applicant seeks appointment of an interim receiver on this *ex-parte* motion pursuant to s.47(1) of the *Bankruptcy and Insolvency Act* (“BIA”). The Receivership Order is intended to cover the assets of the Respondents Trigger Wholesale Inc. (“Trigger”) and The En Cadre Group (“En Cadre”).

Clearflow provides financing to medium-sized businesses typically through factoring of accounts receivable. The total credit facility owed by Trigger to Clearflow as of October 6, 2020 was \$48,625,279.75. Trigger is in the business of importing and distributing firearms and ammunition in Canada. Its customers include the military, Home Hardware and Canadian Tire.

The Respondents Jamiee and Mark Gdak are directors of Trigger and both are actively involved in the business.

The fraud perpetrated on Clearflow as outlined in the affidavits in support of this Application is significant and includes allegations of hundreds of falsified invoices as evidence of accounts receivable that did not exist, falsified purchase orders, a forged transfer of real property owned by Mark Gdak on behalf of En Cadre, fake email addresses of executives at Canadian and Home Hardware, verbal and email impersonations of executives employed by Canadian Tire and Home Hardware, and forged cheques made to look like payments by Canadian Tire and Home Hardware to Trigger for the alleged purchase of firearms.

Clearflow is necessarily concerned that it has advanced tens of millions of dollars to Trigger based on misrepresentations and falsified documentation. It is also concerned with a massive increase in 90 day accounts receivable and Trigger’s resistance to providing agreed upon financial information upon request.

I am satisfied pursuant to the principles set out in *2092280 Ontario Inc v. Voralto Group Inc.*, 2018 ONSC 2305 (CanLII) that where a strong *prima facie* case of fraud has been made out, “the law’s reluctance to allow prejudgment execution must yield to the more important goal of ensuring that the civil justice system provides a just and enforceable remedy against such serious conduct.” (para 28). There is substantial evidence of a significant fraud in this case that goes beyond simple manipulation but includes fake emails, documents and pre-meditated actions on the part of the Respondents to induce further advances from the Applicant.

In terms of irreparable harm I find that there is an extreme risk of the destruction of documents if the Respondents are given notice of this proceeding which may impede their ability to collect on real invoices.

With respect to the balance of convenience, the interim receivership is only for a period of 30 days and a comeback date will be set for October 23, 2020. There is also provision for Jamiee and Mark Gdak to access funds for personal use.

I am also satisfied that the appointment of an interim receiver is necessary to protect the debtor's estate, enforce rights between the parties, and protect assets in the face of a serious apprehension about the safety of the assets.

Given all of the above, I make the following Orders:

1. The Order attached hereto is immediately in effect.
2. The Applicant to forthwith serve all material on the Respondents.
3. **The matter to return for a comeback hearing before any judge on October 23, 2020 at 9:30 a.m. or such other time on that date that the Trial Coordinator may set.**

C. Gilmore, J.

October 13, 2020

This is Exhibit “E” referred to in the Affidavit of Alexandra (Sandy) Kanichis sworn by Alexandra (Sandy) Kanichis of the Town of Woodbridge, in the Regional Municipality of York, before me at the City of Toronto, in the Province of Ontario, on February 16, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

JEFFREY J. SIMPSON

Court File No. CV-20-00649154-00CL

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



THE HONOURABLE
JUSTICE MCEWEN

) THURSDAY, THE 22ND DAY OF
) OCTOBER, 2020
)

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule
40.01 of the *Rules of Civil Procedure*

**ORDER
(Appointing s.243 Receiver)**

THIS MOTION made by the Applicant for an Order, among other relief, converting the Interim Receivership Order granted by the Honourable Madam Justice Gilmore dated October 13, 2020 (the "**Interim Receivership Order**") to a national receiver, 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**"), appointing Grant Thornton Limited as receiver (in such capacity the "**Receiver**") without security, of all of the assets, undertakings and properties of Trigger Wholesale, Inc. ("**Trigger**"), the En Cadre Group Inc. ("**En Cadre**"), and certain real property owned by each of Jaimak Real Properties

Inc. ("**Jaimak**") or Jaimee Lynn Gdak, as specified in the within Order (collectively, the "**Debtors**") was heard this day by Zoom videoconference due to the COVID-19 pandemic.

ON READING the Motion Record of the Applicant, filed, and the First Report of Grant Thornton Limited in its capacity as interim receiver dated October 21, 2020 (the "**First Report**"), filed, and the appendices thereto and on hearing the submissions of counsel for the Applicant, counsel for the Receiver and counsel for the Debtors Mark Gdak, Trigger, Jaimak Real Properties Inc. and En Cadre, and counsel for Brian Kelly, no one else appearing although it appears that they have been properly served as evidence by the Affidavit of Josset Johnson sworn October 21, 2020.

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Grant Thornton Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors including all proceeds thereof, and certain real property owned by each of Jaimak or Jaimee Lynn Gdak, as set out in Schedule "A" to this Order (the "**Property**").

3. **THIS COURT ORDERS** that the Interim Receivership Order and the interim receivership proceedings, is hereby converted into a receivership pursuant to s. 243 of the BIA and s. 101 of the CJA.

4. **THIS COURT ORDERS** that notwithstanding paragraph 3 of this Order, all of the protections and benefits provided for in the Interim Receivership Order, shall continue, until further Order of the Court.

RECEIVER'S POWERS

5. **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, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- (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;
- (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, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, 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 Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time 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;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in

collecting such monies, including, without limitation, to enforce any security held by the Debtors;

- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) 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 Debtors, for any purpose pursuant to this Order;
- (i) 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 Debtors, 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;
- (j) 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;
- (k) 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 \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1 million in total; 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*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) 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;
- (m) 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;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property, including the Property set out at Schedule "A" to this Order;
- (o) to register a copy of this Order against title to any of the Property set out at Schedule "A" to this Order and the Land Registry Office of Waterloo (No. 58) and the Land Registry Office of Bruce (No. 3) are hereby directed to effect the registration of this Order against title to the Property set out at Schedule "A" to this at the request of the Receiver;
- (p) 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 Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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 Debtors, and without interference from any other Person.

6. **THIS COURT ORDERS** that the Receiver shall be empowered and authorized, but not obligated to:

- (a) file an assignment in bankruptcy on behalf of the Debtors, Trigger and En Cadre; and
- (b) if necessary, transfer funds to Grant Thornton Limited, as the proposed trustee in bankruptcy for each of Trigger and En Cadre, in the amount of \$30,000 for each estate, from the within receivership proceedings, to fund the administration of the bankruptcy estates of Trigger and En Cadre.

7. **THIS COURT ORDERS** that Grant Thornton Limited is hereby authorized to act as the trustee in bankruptcy for each of Trigger and En Cadre.

POWER TO EXAMINE THIRD PARTIES AND OBTAIN INFORMATION

8. **THIS COURT ORDERS** that the Receiver shall have the power to conduct examinations of each of Mark Gdak, Jaimee Lynn Gdak, Brian Kelly, Mike Nero and Phil Searles, in respect of the Property and in the discharge of the duties of the Receiver in these proceedings.

9. **THIS COURT ORDERS** that Brian R. Kelly shall provide documents and information which is not otherwise subject to lawyer-client privilege to the Receiver to aid in the Receiver's efforts to take control of the Property and discharge its duties in these proceedings, including the provision of a copy of any fully signed Agreements of Purchase and Sale in Mr. Kelly's possession which have not closed and in which any of the Respondents are named as a vendor or purchaser.

10. **THIS COURT ORDERS** that the issue of payment by the Receiver from the assets of the Respondents of the legal expenses incurred by Brian R. Kelly regarding these matters is adjourned and to be heard on request of the lawyer for Mr. Kelly on notice to the parties.

CONTINUATION OF MAREVA INJUNCTION

11. **THIS COURT ORDERS** that paragraphs 8, 9, 10 and 11 of the Interim Receivership Order are hereby continued until further Order of this Court.

12. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to pay Lerner's LLP the sum of \$30,000, as a retainer in respect of Lerner's representation of the Respondents (with the exception of the Respondent Jaimee Gdak) in these proceedings, when: (1) any one of the properties listed on Schedule "A" to this Order is sold; and (2) the Receiver is in receipt of the net proceeds of sale of any such property listed on Schedule "A" to this Order.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

13. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, 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.

14. **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 Debtors, including, without limitation, any such information etc. relating to the affairs of the Respondent Jamie Gdak, 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 12 or in paragraph 13 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.

15. **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.

16. **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

17. **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 DEBTORS OR THE PROPERTY

18. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property 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 Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

19. **THIS COURT ORDERS** that all rights and remedies against the Debtors, 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 Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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

20. **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 Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

21. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors 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 Debtors 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 Debtors' 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 Debtors 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

22. **THIS COURT ORDERS** that, except as expressly provided for in this Order, 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

23. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. 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*.

PIPEDA

24. **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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

25. **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

26. **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

27. **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, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

28. **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.

29. **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

30. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$300,000 (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 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.

31. **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.

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

33. **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

34. **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 www.grantthornton.ca/twi.

35. **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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

GENERAL

36. **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.

37. **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.

38. **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.

39. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, 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 Debtors' estate with such priority and at such time as this Court may determine.

40. **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 A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

NOV 12 2020

PER / PAR:



SCHEDULE "A"

<u>Properties</u>	<u>Owner</u>	<u>Legal Description</u>
652 Colby Dr, Waterloo, ON N2V 1A2	Jaimak Real Properties Inc.	LT 66 PL 1405 City Of Waterloo; City Of Waterloo
250 Lions Ct, Waterloo, ON N2L 6M8	Jaimee Gdak	Lot 46, Plan 58M-166; Subject To Easement N0. LT52777 In Favor Of The Corporation Of The City Of Waterloo And Union Gas Limited Over PT 46 ON 58R-12696; Together With Right Of Way N0. 443531 Over PTS 4 And 5 ON 58R- 12488; Waterloo.
157 Saugeen Beach Rd. Port Elgin, ON N0H 2C5	Jaimee Lynn Gdak	LT 1 PL 416; Saugeen Shores
43 Baker Rd, Port Elgin, ON N0H 2C5	Jaimee Gdak	LT 14 PL 497; Saugeen Shores
265 Old Post Rd. Waterloo, ON	Jaimee Gdak	Unit 3, Level 1, Waterloo North Condominium Plan No. 9 ; BLK A PL 1292; PTS 1 & 2 CTA 903 As More Fully Described In Schedule 'A' Of Declaration 486152 ; S/T Right Of Way Over PTS 4 & 5 58R12488 As In LT61266; Release Of Ease 443531 As In LT61267; T/W Right Of Way As In LT61268; Waterloo

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Grant Thornton Limited, the receiver (the "**Receiver**") of the assets, undertakings and properties of Trigger Wholesale, Inc., The En Cadre Group, Inc. acquired for, or used in relation, including all proceeds thereof, and certain real property owned by each of Jaimak Real Properties Inc. or Jaimee Lynn Gdak (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ____ day of _____, 20__ (the "**Order**") made in an action having Court file number CV-20-00649154-00CL, 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 _____ 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 liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

GRANT THORNTON LIMITED solely in its
capacity as Receiver of the Property, and not in
its personal capacity

Per: _____

Name:

Title:

CLEARFLOW COMMERCIAL FINANCE CORP.
Applicant

-and- TRIGGER WHOLESALE, INC. et al.
Respondents

Court File No. CV-20-00649154-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(Appointing s.243 Receiver)**

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Jeffrey J. Simpson (39663M)
jsimpson@torkinmanes.com
Tel: 416-777-5413
Fax: 1-888-587-9143

Lawyers for the Applicant,
ClearFlow Commercial Finance Corp.

RCP-E 4C (May 1, 2016)

CLEARFLOW COMMERCIAL FINANCE CORP.
Applicant

-and- TRIGGER WHOLESALE, INC. et al.
Respondents

Court File No. CV-20-00649154-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF ALEXANDRA (SANDY) KANICHIS

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Lawyers for the Applicant,
ClearFlow Commercial Finance Corp.

RCP-F 4C (September 1, 2020)

TAB 3

Court File No. CV-20-00649154-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE	)	FRIDAY, THE 22 ND
	)	
MR. JUSTICE MCEWEN	)	DAY OF APRIL, 2022

B E T W E E N:

(Court Seal)

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule
40.01 of the *Rules of Civil Procedure*

**ORDER
[Terminating Mareva Injunction]**

THIS MOTION, made by the Applicant, ClearFlow Commercial Finance Corp. (“**Clearflow**”), for an Order terminating the Mareva injunction obtained by Clearflow against the Respondents Mark Gdak and Jaimee Gdak by way of amendments to the Order of the Honourable Madam Justice Gilmore dated October 13, 2020 (the “**Interim Receivership Order**”) and the

-2-

Order of the Honourable Mr. Justice McEwen dated October 22, 2022 (the “**Receivership Order**”) was heard this day by Zoom video conference in accordance with the protocols established for remote hearings by the Ontario Superior Court of Justice and the Commercial List

ON READING the Motion Record and on hearing the submissions of the lawyer(s) for the parties,

1. **THIS COURT ORDERS** that the Receivership Order issued by the Honourable Mr. Justice McEwen dated October 22, 2022 be amended to remove paragraphs 10 and 11 from the Receivership Order, such that the amended Receivership Order will, effective as of the hereof, be in the form attached hereto as Schedule “A”.

2. **THIS COURT FURTHER ORDERS** that the Interim Receivership Order issued by the Honourable Madam Justice Gilmore dated October 13, 2020 be amended to remove paragraph 9 from the Interim Receivership Order, such that the amended Interim Receivership Order will, effective as of the date hereof, be in the form attached hereto as Schedule “B”.

3. **THIS COURT FURTHER ORDERS** that neither Clearflow, nor Grant Thornton Limited, in its capacity as Court- Appointed Receiver and Trustee in Bankruptcy over the assets and undertakings of the Respondent Trigger Wholesale Inc., (the “**Receiver**”) shall have any further obligation to fund living expenses, legal fees or any other costs and expenses of the Respondents Mark Gdak and Jamie Gdak.

SCHEDULE “A”

Court File No. CV-20-00649154-00CL

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

THE HONOURABLE	)	THURSDAY, THE 22ND DAY OF
	)	OCTOBER, 2020
JUSTICE MCEWEN	)	

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule
40.01 of the *Rules of Civil Procedure*

AMENDED ORDER
(Appointing s.243 Receiver)

THIS MOTION made by the Applicant for an Order, among other relief, converting the Interim Receivership Order granted by the Honourable Madam Justice Gilmore dated October 13, 2020 (the “**Interim Receivership Order**”) to a national receiver, 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**”), appointing Grant Thornton Limited as receiver (in such capacity the “**Receiver**”) without security, of all of the assets, undertakings and properties of Trigger Wholesale, Inc. (“**Trigger**”), the En Cadre Group Inc. (“**En Cadre**”), and certain real property owned by each of Jaimak Real Properties

Inc. ("**Jaimak**") or Jaimee Lynn Gdak, as specified in the within Order (collectively, the "**Debtors**") was heard this day by Zoom videoconference due to the COVID-19 pandemic.

ON READING the Motion Record of the Applicant, filed, and the First Report of Grant Thornton Limited in its capacity as interim receiver dated October 21, 2020 (the "**First Report**"), filed, and the appendices thereto and on hearing the submissions of counsel for the Applicant, counsel for the Receiver and counsel for the Debtors Mark Gdak, Trigger, Jaimak Real Properties Inc. and En Cadre, and counsel for Brian Kelly, no one else appearing although it appears that they have been properly served as evidence by the Affidavit of Josset Johnson sworn October 21, 2020.

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Grant Thornton Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors including all proceeds thereof, and certain real property owned by each of Jaimak or Jaimee Lynn Gdak, as set out in Schedule "A" to this Order (the "**Property**").

3. **THIS COURT ORDERS** that the Interim Receivership Order and the interim receivership proceedings, is hereby converted into a receivership pursuant to s. 243 of the BIA and s. 101 of the CJA.

4. **THIS COURT ORDERS** that notwithstanding paragraph 3 of this Order, all of the protections and benefits provided for in the Interim Receivership Order, shall continue, until further Order of the Court.

RECEIVER'S POWERS

5. **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, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- (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;
- (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, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, 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 Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time 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;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in

collecting such monies, including, without limitation, to enforce any security held by the Debtors;

- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) 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 Debtors, for any purpose pursuant to this Order;
- (i) 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 Debtors, 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;
- (j) 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;
- (k) 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 \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1 million in total; 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*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) 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;
- (m) 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;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property, including the Property set out at Schedule “A” to this Order;
- (o) to register a copy of this Order against title to any of the Property set out at Schedule “A” to this Order and the Land Registry Office of Waterloo (No. 58) and the Land Registry Office of Bruce (No. 3) are hereby directed to effect the registration of this Order against title to the Property set out at Schedule “A” to this at the request of the Receiver;
- (p) 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 Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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 Debtors, and without interference from any other Person.

6. **THIS COURT ORDERS** that the Receiver shall be empowered and authorized, but not obligated to:

- (a) file an assignment in bankruptcy on behalf of the Debtors, Trigger and En Cadre; and
- (b) if necessary, transfer funds to Grant Thornton Limited, as the proposed trustee in bankruptcy for each of Trigger and En Cadre, in the amount of \$30,000 for each estate, from the within receivership proceedings, to fund the administration of the bankruptcy estates of Trigger and En Cadre.

7. **THIS COURT ORDERS** that Grant Thornton Limited is hereby authorized to act as the trustee in bankruptcy for each of Trigger and En Cadre.

POWER TO EXAMINE THIRD PARTIES AND OBTAIN INFORMATION

8. **THIS COURT ORDERS** that the Receiver shall have the power to conduct examinations of each of Mark Gdak, Jaimee Lynn Gdak, Brian Kelly, Mike Nero and Phil Searles, in respect of the Property and in the discharge of the duties of the Receiver in these proceedings.

9. **THIS COURT ORDERS** that Brian R. Kelly shall provide documents and information which is not otherwise subject to lawyer-client privilege to the Receiver to aid in the Receiver's efforts to take control of the Property and discharge its duties in these proceedings, including the provision of a copy of any fully signed Agreements of Purchase and Sale in Mr. Kelly's possession which have not closed and in which any of the Respondents are named as a vendor or purchaser.

~~10. **THIS COURT ORDERS** that the issue of payment by the Receiver from the assets of the Respondents of the legal expenses incurred by Brian R. Kelly regarding these matters is adjourned and to be heard on request of the lawyer for Mr. Kelly on notice to the parties.~~

~~CONTINUATION OF MAREVA INJUNCTION~~

~~11. THIS COURT ORDERS that paragraphs 8, 9, 10 and 11 of the Interim Receivership Order are hereby continued until further Order of this Court.~~

12. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to pay Lerner's LLP the sum of \$30,000, as a retainer in respect of Lerner's representation of the Respondents (with the exception of the Respondent Jaimee Gdak) in these proceedings, when: (1) any one of the properties listed on Schedule "A" to this Order is sold; and (2) the Receiver is in receipt of the net proceeds of sale of any such property listed on Schedule "A" to this Order.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

13. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, 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.

14. **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 Debtors, including, without limitation, any such information etc. relating to the affairs of the Respondent Jamie Gdak, 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 12 or in paragraph 13 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.

15. **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.

16. **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

17. **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 DEBTORS OR THE PROPERTY

18. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property 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 Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

19. **THIS COURT ORDERS** that all rights and remedies against the Debtors, 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 Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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

20. **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 Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

21. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors 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 Debtors 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 Debtors' 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 Debtors 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

22. **THIS COURT ORDERS** that, except as expressly provided for in this Order, 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

23. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. 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*.

PIPEDA

24. **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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

25. **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

26. **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

27. **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, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

28. **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.

29. **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

30. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$300,000 (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 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.

31. **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.

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

33. **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

34. **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 www.grantthornton.ca/twi.

35. **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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

GENERAL

36. **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.

37. **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.

38. **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.

39. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, 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 Debtors' estate with such priority and at such time as this Court may determine.

40. **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.

SCHEDULE "A"

<u>Properties</u>	<u>Owner</u>	<u>Legal Description</u>
652 Colby Dr, Waterloo, ON N2V 1A2	Jaimak Real Properties Inc.	LT 66 PL 1405 City Of Waterloo; City Of Waterloo
250 Lions Ct, Waterloo, ON N2L 6M8	Jaimee Gdak	Lot 46, Plan 58M-166; Subject To Easement N0. LT52777 In Favor Of The Corporation Of The City Of Waterloo And Union Gas Limited Over PT 46 ON 58R-12696; Together With Right Of Way N0. 443531 Over PTS 4 And 5 ON 58R- 12488; Waterloo.
157 Saugeen Beach Rd. Port Elgin, ON N0H 2C5	Jaimee Lynn Gdak	LT 1 PL 416; Saugeen Shores
43 Baker Rd, Port Elgin, ON N0H 2C5	Jaimee Gdak	LT 14 PL 497; Saugeen Shores
265 Old Post Rd. Waterloo, ON	Jaimee Gdak	Unit 3, Level 1, Waterloo North Condominium Plan No. 9 ; BLK A PL 1292; PTS 1 & 2 CTA 903 As More Fully Described In Schedule 'A' Of Declaration 486152 ; S/T Right Of Way Over PTS 4 & 5 58R12488 As In LT61266; Release Of Ease 443531 As In LT61267; T/W Right Of Way As In LT61268; Waterloo

SCHEDULE "B"**RECEIVER CERTIFICATE**

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Grant Thornton Limited, the receiver (the "**Receiver**") of the assets, undertakings and properties of Trigger Wholesale, Inc., The En Cadre Group, Inc. acquired for, or used in relation, including all proceeds thereof, and certain real property owned by each of Jaimak Real Properties Inc. or Jaimee Lynn Gdak (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ____ day of _____, 20__ (the "**Order**") made in an action having Court file number CV-20-00649154-00CL, 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 _____ 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 liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

GRANT THORNTON LIMITED solely in its
capacity as Receiver of the Property, and not in
its personal capacity

Per: _____

Name:

Title:

CLEARFLOW COMMERCIAL FINANCE CORP.
Applicant

-and- TRIGGER WHOLESALE, INC. et al.
Respondents

Court File No. CV-20-00649154-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**AMENDED ORDER
(Appointing s.243 Receiver)**

TORKIN MANES LLP

Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Jeffrey J. Simpson (39663M)
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Lawyers for the Applicant,
ClearFlow Commercial Finance Corp.

RCP-E 4C (May 1, 2016)

SCHEDULE "B"

Court File No. CV-20-00649154-00CL

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

THE HONOURABLE	)	TUESDAY, THE 13th DAY OF
	)	OCTOBER, 2020
JUSTICE GILMORE	)	

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule 40.01 of the *Rules of Civil Procedure*

AMENDED ORDER
(Appointment of Interim Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 47(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**") appointing Grant Thornton Limited as interim receiver (in such capacity the "**Interim Receiver**") without security, of all of the assets, undertakings and properties of Trigger Wholesale, Inc. and The En Cadre Group Inc. was heard, without-notice, this day via videoconference at Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Affidavits of Martin Rees (the “**Rees Affidavit**”), Sandy Kanichis and Glenn Petersen, each sworn October 9, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the proposed Interim Receiver and on reading the consent of Grant Thornton Limited to act as the Interim Receiver.

SERVICE

1. **THIS COURT ORDERS** that service of the Notice of Application and the Application Record is hereby dispensed with and that this Application is properly returnable today.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 47(1) of the BIA and section 101 of the CJA, Grant Thornton Limited is hereby appointed Interim Receiver, without security, of all of the assets, undertakings and properties (the “**Property**”) of Trigger Wholesale, Inc. and The En Cadre Group Inc. (collectively, the “**Debtors**”), until November 12, 2020.

3. **THIS COURT ORDERS** that the balance of this Application be adjourned to a date to be set in conjunction with the Commercial List Office.

RECEIVER’S POWERS

4. **THIS COURT ORDERS** that the Interim 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 Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (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;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to 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, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, 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 Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (g) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim 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 Interim Receiver deems advisable;
- (h) to register a copy of this Order and any other Orders in respect of the Property against title to any real property that forms part of the Property;
- (i) 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 Debtors; and

- (j) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Interim 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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, including, but not limited to, the following members of the management team of Trigger: Mark Gdak, Jaimee Gdak, Philip Searles, Mike Nero and Brian Kelly, 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 Interim 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 Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim 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 Debtors, or to the issues raised in the Application Record of the Applicant, 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 Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim 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 Interim

Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **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, including all such Records that are stored “in the cloud”, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim 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 Interim 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 Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

PRESERVATION OF EVIDENCE

8. **THIS COURT ORDERS** that, without limiting the generality of the foregoing, no Person shall delete, spoil, erase or in any way alter any Records in their possession, care or control, which Records shall be preserved by any such Person in their native format without alteration.

RESTRICTION OF TRANSFERS, ALIENATION OR ENCUMBRANCE OF ASSETS

9. ~~**THIS COURT ORDERS** that pending the return of the within Application, the Respondents Mark Gdak, Jaimee Gdak and Jaimak Real Properties Inc. shall not transfer, alienate, deplete or encumber any of their real or personal property with a value over \$5,000 in any one transaction and \$20,000 in the aggregate of all such transactions, except for the purpose of providing retainers to legal counsel.~~

10. **THIS COURT ORDERS** that any and all financial institutions, including banks, credit unions or any party holding assets of Mark Gdak, Jaimee Gdak and Jaimak Real Properties Inc. (the "Banks") forthwith prevent any removal or transfer of monies or assets of the Defendant held in any account or on credit on behalf of the Defendant, with the Banks, except as in accordance with this Order, until further Order of the Court

11. **THIS COURT ORDERS** that the Banks forthwith disclose and deliver up to the Interim Receiver or to the Applicant as may be the case any and all records held by the Banks concerning the Defendant's assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate, held on behalf of the Defendant by the Banks.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

13. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim 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 Interim Receiver or the Debtors to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtors 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

15. **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 Debtors, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

16. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors 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 Interim Receiver shall be entitled to the continued use of the Debtors' 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 Interim Receiver in accordance with normal payment practices of the Debtors 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.

INTERIM RECEIVER TO HOLD FUNDS

17. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim 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 Interim 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 Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

18. **THIS COURT ORDERS** that all employees of the any of the Debtors of shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Interim 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 Interim 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*.

PIPEDA

19. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Interim 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

20. **THIS COURT ORDERS** that nothing herein contained shall require the Interim 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 Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim 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 INTERIM RECEIVER'S LIABILITY

21. **THIS COURT ORDERS** that the Interim 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 Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

22. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim 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 Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "Interim 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 Interim 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, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

24. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim 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 Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

25. **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 www.grantthornton.ca/twi .

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim 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 Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

GENERAL

27. **THIS COURT ORDERS** that a copy of this Order, once issued and entered by the Court, shall be served forthwith by the Applicant, upon the Respondents, together with the Application Record herein, as well as the Demands and NITES as defined in the Rees Affidavit.

28. **THIS COURT ORDERS** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtors.

30. **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 Interim 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 Interim Receiver and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that the Interim 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 Interim 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.

32. **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 Interim Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. **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 Interim 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.

CLEARFLOW COMMERCIAL FINANCE CORP.
Applicant

-and- TRIGGER WHOLESALE, INC. et al.
Respondents

Court File No. CV-20-00649154-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**AMENDED ORDER
(Appointing Interim Receiver)**

TORKIN MANES LLP

Barristers & Solicitors
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Toronto ON M5C 2W7

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Tel: 416-777-5413
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Lawyers for the Applicant,
ClearFlow Commercial Finance Corp.

CLEARFLOW COMMERCIAL FINANCE CORP.
Applicant

-and- TRIGGER WHOLESALE, INC. et al.
Respondents

Court File No. CV-20-00649154-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Jeffrey J. Simpson (39663M)
jsimpson@torkinmanes.com
Tel: 416-777-5413

Lawyers for the Applicant, ClearFlow Commercial Finance
Corp.

RCP-F 4C (September 1, 2020)

TAB 4

Court File No. CV-20-00649154-00CL

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

THE HONOURABLE	)	TUESDAY, THE 13th DAY OF
	)	OCTOBER, 2020
JUSTICE GILMORE	)	

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule 40.01 of the *Rules of Civil Procedure*

AMENDED ORDER
(Appointment of Interim Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 47(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**") appointing Grant Thornton Limited as interim receiver (in such capacity the "**Interim Receiver**") without security, of all of the assets, undertakings and properties of Trigger Wholesale, Inc. and The En Cadre Group Inc. was heard, without-notice, this day via videoconference at Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Affidavits of Martin Rees (the “**Rees Affidavit**”), Sandy Kanichis and Glenn Petersen, each sworn October 9, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the proposed Interim Receiver and on reading the consent of Grant Thornton Limited to act as the Interim Receiver.

SERVICE

1. **THIS COURT ORDERS** that service of the Notice of Application and the Application Record is hereby dispensed with and that this Application is properly returnable today.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 47(1) of the BIA and section 101 of the CJA, Grant Thornton Limited is hereby appointed Interim Receiver, without security, of all of the assets, undertakings and properties (the “**Property**”) of Trigger Wholesale, Inc. and The En Cadre Group Inc. (collectively, the “**Debtors**”), until November 12, 2020.

3. **THIS COURT ORDERS** that the balance of this Application be adjourned to a date to be set in conjunction with the Commercial List Office.

RECEIVER’S POWERS

4. **THIS COURT ORDERS** that the Interim 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 Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (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;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to 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, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, 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 Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Interim Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (g) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim 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 Interim Receiver deems advisable;
- (h) to register a copy of this Order and any other Orders in respect of the Property against title to any real property that forms part of the Property;
- (i) 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 Debtors; and

- (j) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Interim 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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, including, but not limited to, the following members of the management team of Trigger: Mark Gdak, Jaimee Gdak, Philip Searles, Mike Nero and Brian Kelly, 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 Interim 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 Interim Receiver, and shall deliver all such Property to the Interim Receiver upon the Interim Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim 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 Debtors, or to the issues raised in the Application Record of the Applicant, 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 Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim 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 Interim

Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **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, including all such Records that are stored “in the cloud”, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim 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 Interim 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 Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer or other system and providing the Interim Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

PRESERVATION OF EVIDENCE

8. **THIS COURT ORDERS** that, without limiting the generality of the foregoing, no Person shall delete, spoil, erase or in any way alter any Records in their possession, care or control, which Records shall be preserved by any such Person in their native format without alteration.

RESTRICTION OF TRANSFERS, ALIENATION OR ENCUMBRANCE OF ASSETS

9. ~~**THIS COURT ORDERS** that pending the return of the within Application, the Respondents Mark Gdak, Jaimee Gdak and Jaimak Real Properties Inc. shall not transfer, alienate, deplete or encumber any of their real or personal property with a value over \$5,000 in any one transaction and \$20,000 in the aggregate of all such transactions, except for the purpose of providing retainers to legal counsel.~~

10. **THIS COURT ORDERS** that any and all financial institutions, including banks, credit unions or any party holding assets of Mark Gdak, Jaimee Gdak and Jaimak Real Properties Inc. (the "Banks") forthwith prevent any removal or transfer of monies or assets of the Defendant held in any account or on credit on behalf of the Defendant, with the Banks, except as in accordance with this Order, until further Order of the Court

11. **THIS COURT ORDERS** that the Banks forthwith disclose and deliver up to the Interim Receiver or to the Applicant as may be the case any and all records held by the Banks concerning the Defendant's assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate, held on behalf of the Defendant by the Banks.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

13. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim 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 Interim Receiver or the Debtors to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Interim Receiver or the Debtors 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

15. **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 Debtors, without written consent of the Interim Receiver or leave of this Court.

CONTINUATION OF SERVICES

16. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors 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 Interim Receiver shall be entitled to the continued use of the Debtors' 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 Interim Receiver in accordance with normal payment practices of the Debtors 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.

INTERIM RECEIVER TO HOLD FUNDS

17. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim 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 Interim 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 Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

18. **THIS COURT ORDERS** that all employees of the any of the Debtors of shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Interim 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 Interim 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*.

PIPEDA

19. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Interim 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

20. **THIS COURT ORDERS** that nothing herein contained shall require the Interim 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 Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim 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 INTERIM RECEIVER'S LIABILITY

21. **THIS COURT ORDERS** that the Interim 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 Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

22. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim 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 Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "Interim 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 Interim 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, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

24. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim 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 Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

SERVICE AND NOTICE

25. **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 www.grantthornton.ca/twi .

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim 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 Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

GENERAL

27. **THIS COURT ORDERS** that a copy of this Order, once issued and entered by the Court, shall be served forthwith by the Applicant, upon the Respondents, together with the Application Record herein, as well as the Demands and NITES as defined in the Rees Affidavit.

28. **THIS COURT ORDERS** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a trustee in bankruptcy of the Debtors.

30. **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 Interim 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 Interim Receiver and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that the Interim 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 Interim 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.

32. **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 Interim Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. **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 Interim 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.

CLEARFLOW COMMERCIAL FINANCE CORP.
Applicant

-and- TRIGGER WHOLESALE, INC. et al.
Respondents

Court File No. CV-20-00649154-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**AMENDED ORDER
(Appointing Interim Receiver)**

TORKIN MANES LLP

Barristers & Solicitors
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Toronto ON M5C 2W7

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Tel: 416-777-5413
Fax: 1-888-587-9143

Lawyers for the Applicant,
ClearFlow Commercial Finance Corp.

TAB 5

Court File No. CV-20-00649154-00CL

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

THE HONOURABLE	)	THURSDAY, THE 22ND DAY OF
	)	OCTOBER, 2020
JUSTICE MCEWEN	)	

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*,
R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule
40.01 of the *Rules of Civil Procedure*

AMENDED ORDER
(Appointing s.243 Receiver)

THIS MOTION made by the Applicant for an Order, among other relief, converting the Interim Receivership Order granted by the Honourable Madam Justice Gilmore dated October 13, 2020 (the “**Interim Receivership Order**”) to a national receiver, 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**”), appointing Grant Thornton Limited as receiver (in such capacity the “**Receiver**”) without security, of all of the assets, undertakings and properties of Trigger Wholesale, Inc. (“**Trigger**”), the En Cadre Group Inc. (“**En Cadre**”), and certain real property owned by each of Jaimak Real Properties

Inc. ("**Jaimak**") or Jaimee Lynn Gdak, as specified in the within Order (collectively, the "**Debtors**") was heard this day by Zoom videoconference due to the COVID-19 pandemic.

ON READING the Motion Record of the Applicant, filed, and the First Report of Grant Thornton Limited in its capacity as interim receiver dated October 21, 2020 (the "**First Report**"), filed, and the appendices thereto and on hearing the submissions of counsel for the Applicant, counsel for the Receiver and counsel for the Debtors Mark Gdak, Trigger, Jaimak Real Properties Inc. and En Cadre, and counsel for Brian Kelly, no one else appearing although it appears that they have been properly served as evidence by the Affidavit of Josset Johnson sworn October 21, 2020.

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Grant Thornton Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors including all proceeds thereof, and certain real property owned by each of Jaimak or Jaimee Lynn Gdak, as set out in Schedule "A" to this Order (the "**Property**").

3. **THIS COURT ORDERS** that the Interim Receivership Order and the interim receivership proceedings, is hereby converted into a receivership pursuant to s. 243 of the BIA and s. 101 of the CJA.

4. **THIS COURT ORDERS** that notwithstanding paragraph 3 of this Order, all of the protections and benefits provided for in the Interim Receivership Order, shall continue, until further Order of the Court.

RECEIVER'S POWERS

5. **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, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- (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;
- (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, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, 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 Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time 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;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in

collecting such monies, including, without limitation, to enforce any security held by the Debtors;

- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) 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 Debtors, for any purpose pursuant to this Order;
- (i) 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 Debtors, 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;
- (j) 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;
- (k) 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 \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1 million in total; 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*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) 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;
- (m) 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;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property, including the Property set out at Schedule “A” to this Order;
- (o) to register a copy of this Order against title to any of the Property set out at Schedule “A” to this Order and the Land Registry Office of Waterloo (No. 58) and the Land Registry Office of Bruce (No. 3) are hereby directed to effect the registration of this Order against title to the Property set out at Schedule “A” to this at the request of the Receiver;
- (p) 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 Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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 Debtors, and without interference from any other Person.

6. **THIS COURT ORDERS** that the Receiver shall be empowered and authorized, but not obligated to:

- (a) file an assignment in bankruptcy on behalf of the Debtors, Trigger and En Cadre; and
- (b) if necessary, transfer funds to Grant Thornton Limited, as the proposed trustee in bankruptcy for each of Trigger and En Cadre, in the amount of \$30,000 for each estate, from the within receivership proceedings, to fund the administration of the bankruptcy estates of Trigger and En Cadre.

7. **THIS COURT ORDERS** that Grant Thornton Limited is hereby authorized to act as the trustee in bankruptcy for each of Trigger and En Cadre.

POWER TO EXAMINE THIRD PARTIES AND OBTAIN INFORMATION

8. **THIS COURT ORDERS** that the Receiver shall have the power to conduct examinations of each of Mark Gdak, Jaimee Lynn Gdak, Brian Kelly, Mike Nero and Phil Searles, in respect of the Property and in the discharge of the duties of the Receiver in these proceedings.

9. **THIS COURT ORDERS** that Brian R. Kelly shall provide documents and information which is not otherwise subject to lawyer-client privilege to the Receiver to aid in the Receiver's efforts to take control of the Property and discharge its duties in these proceedings, including the provision of a copy of any fully signed Agreements of Purchase and Sale in Mr. Kelly's possession which have not closed and in which any of the Respondents are named as a vendor or purchaser.

~~10. **THIS COURT ORDERS** that the issue of payment by the Receiver from the assets of the Respondents of the legal expenses incurred by Brian R. Kelly regarding these matters is adjourned and to be heard on request of the lawyer for Mr. Kelly on notice to the parties.~~

~~CONTINUATION OF MAREVA INJUNCTION~~

~~11. THIS COURT ORDERS that paragraphs 8, 9, 10 and 11 of the Interim Receivership Order are hereby continued until further Order of this Court.~~

12. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to pay Lerner's LLP the sum of \$30,000, as a retainer in respect of Lerner's representation of the Respondents (with the exception of the Respondent Jaimee Gdak) in these proceedings, when: (1) any one of the properties listed on Schedule "A" to this Order is sold; and (2) the Receiver is in receipt of the net proceeds of sale of any such property listed on Schedule "A" to this Order.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

13. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, 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.

14. **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 Debtors, including, without limitation, any such information etc. relating to the affairs of the Respondent Jamie Gdak, 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 12 or in paragraph 13 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.

15. **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.

16. **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

17. **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 DEBTORS OR THE PROPERTY

18. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property 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 Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

19. **THIS COURT ORDERS** that all rights and remedies against the Debtors, 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 Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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

20. **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 Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

21. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors 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 Debtors 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 Debtors' 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 Debtors 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

22. **THIS COURT ORDERS** that, except as expressly provided for in this Order, 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

23. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. 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*.

PIPEDA

24. **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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

25. **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

26. **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

27. **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, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

28. **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.

29. **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

30. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$300,000 (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 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.

31. **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.

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

33. **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

34. **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 www.grantthornton.ca/twi.

35. **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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

GENERAL

36. **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.

37. **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.

38. **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.

39. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, 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 Debtors' estate with such priority and at such time as this Court may determine.

40. **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.

SCHEDULE "A"

<u>Properties</u>	<u>Owner</u>	<u>Legal Description</u>
652 Colby Dr, Waterloo, ON N2V 1A2	Jaimak Real Properties Inc.	LT 66 PL 1405 City Of Waterloo; City Of Waterloo
250 Lions Ct, Waterloo, ON N2L 6M8	Jaimee Gdak	Lot 46, Plan 58M-166; Subject To Easement N0. LT52777 In Favor Of The Corporation Of The City Of Waterloo And Union Gas Limited Over PT 46 ON 58R-12696; Together With Right Of Way N0. 443531 Over PTS 4 And 5 ON 58R- 12488; Waterloo.
157 Saugeen Beach Rd. Port Elgin, ON N0H 2C5	Jaimee Lynn Gdak	LT 1 PL 416; Saugeen Shores
43 Baker Rd, Port Elgin, ON N0H 2C5	Jaimee Gdak	LT 14 PL 497; Saugeen Shores
265 Old Post Rd. Waterloo, ON	Jaimee Gdak	Unit 3, Level 1, Waterloo North Condominium Plan No. 9 ; BLK A PL 1292; PTS 1 & 2 CTA 903 As More Fully Described In Schedule 'A' Of Declaration 486152 ; S/T Right Of Way Over PTS 4 & 5 58R12488 As In LT61266; Release Of Ease 443531 As In LT61267; T/W Right Of Way As In LT61268; Waterloo

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Grant Thornton Limited, the receiver (the "**Receiver**") of the assets, undertakings and properties of Trigger Wholesale, Inc., The En Cadre Group, Inc. acquired for, or used in relation, including all proceeds thereof, and certain real property owned by each of Jaimak Real Properties Inc. or Jaimee Lynn Gdak (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ____ day of _____, 20__ (the "**Order**") made in an action having Court file number CV-20-00649154-00CL, 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 _____ 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 liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

GRANT THORNTON LIMITED solely in its
capacity as Receiver of the Property, and not in
its personal capacity

Per: _____

Name:

Title:

CLEARFLOW COMMERCIAL FINANCE CORP.
Applicant

-and- TRIGGER WHOLESALE, INC. et al.
Respondents

Court File No. CV-20-00649154-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**AMENDED ORDER
(Appointing s.243 Receiver)**

TORKIN MANES LLP

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Lawyers for the Applicant,
ClearFlow Commercial Finance Corp.

RCP-E 4C (May 1, 2016)

CLEARFLOW COMMERCIAL FINANCE CORP.
Applicant

-and- TRIGGER WHOLESALE, INC. et al.
Respondents

Court File No. CV-20-00649154-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
(Returnable April 22, 2022)

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

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Tel: 416-777-5413

Lawyers for the Applicant,
ClearFlow Commercial Finance Corp.

RCP-F 4C (September 1, 2020)