

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant  
(Respondent in Appeal)

-and-

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

Respondents  
(Jaimee Lynn Gdak Appellant in Appeal)

**FACTUM COMPENDIUM OF THE RESPONDENT, CLEARFLOW  
COMMERCIAL FINANCE CORP.**

September 29, 2021

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TO: **THE SERVICE LIST**

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**FACTUM OF THE RESPONDENT,  
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September 30, 2021

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**FACTUM OF THE RESPONDENT,  
CLEARFLOW COMMERCIAL FINANCE CORP.**

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## **PART I - OVERVIEW**

1. The Appellant, Jaimee Lynn Gdak (“**Jaimee**”), appeals the Superior Court Order of the Honourable Justice Dietrich (the “**Motion Judge**”), dated May 26, 2021 (the “**Order**”), in which the Motion Judge found that an unlimited and continuing, personal guarantee (the “**Guarantee**”) executed by the Appellant Jaimee to be valid, binding and enforceable. Pursuant to the Guarantee, Jaimee guaranteed repayment of the full amount of indebtedness of the Respondent, Trigger Wholesale Inc. (“**Trigger**”) in favour of the Respondent, Clearflow Commercial Finance Corp. (“**Clearflow**”),

2. Clearflow submits that the Appellant has failed to identify any significant legal error by the Motion Judge justifying appellate intervention. The Motion Judge applied well-settled legal principles to the facts in determining that the Guarantee is valid and binding. The Appeal should be dismissed.

3. The Appeal arises from an application, commenced in October, 2020 in which Clearflow requested a number of Orders arising from a massive, pre-meditated fraud perpetrated over a number of years against Clearflow by the Appellant, Mark Gdak, and possibly others (the “**Application**”). The extent of the fraud against Clearflow runs into the tens of millions of dollars.

4. The proceeding appealed from on this Appeal was a motion within the context of the Application, in which Clearflow requested that the Court grant one element of the relief requested by Clearflow in the Notice of Application - namely, judgment against Jaimee and her husband (the Respondent Mark Gdak) in respect of personal guarantees executed by them relating to certain indebtedness owed by Trigger to Clearflow (the “**Motion**”).

5. The fraud forms a necessary part of the overall narrative, but the Motion Judge was not asked to make a finding in that regard. Rather, the Motion related solely to liability of Mark and Jaimee pursuant to the personal guarantees.

6. The Motions Judge found that both Mark (who did not file materials or take a position on the Motion below, and did not defend or deny his involvement in the fraud in respect of the Application generally) and Jaimee (who strenuously denied both involvement in the fraud and liability pursuant to her guarantee) are liable to Clearflow for the full amount of the Trigger indebtedness pursuant to their guarantees.

7. Jaimee appeals that decision to this Honourable Court, alleging various errors on the part of the Motions Judge. Clearflow respectfully submits that the decision of the learned Motions Judge was based on reasonable findings of fact, amply supported by the evidence. The Motion Judge's Reasons for Decision evince no palpable and overriding error in principle or of law, and even on a standard of review of correctness, which Clearflow submits is not the appropriate standard on this Appeal, the decision of the Motions Judge is manifestly correct.

## **PART II - FACTS**

### **The Parties**

8. Clearflow is a federally-incorporated Canadian company that has been in business for the past seven (7) years of providing financing to medium-sized businesses in Ontario, typically through factoring of accounts receivable. Occasionally, Clearflow extends other types of credit facilities to its customers in addition to the factoring of accounts receivable.<sup>1</sup>

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<sup>1</sup> Affidavit of Martin Rees sworn October 9, 2020 (the "**First Rees Affidavit**"), Respondent's Compendium ("**RC**"), Tab 4, p.106, para. 2.

9. The Respondent Trigger Wholesale, Inc. (“**Trigger**”) was 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.<sup>2</sup>

### **The Credit Facilities Extended by Clearflow to Gdak**

10. In 2014, a Clearflow partner, Martin Rees, who has over 35 years experience in banking in the U.K. and Canada, was introduced to Gdak by a common contact who was familiar with Trigger’s business potential. Gdak subsequently discussed with Mr. Rees the possibility of Clearflow extending credit facilities to Trigger, partly to retire prior indebtedness of Trigger in favour of another lender.<sup>3</sup>

11. Mr. Rees took the lead in conducting due diligence in respect of Trigger on behalf of Clearflow. He learned that Gdak had commenced the business as a sole proprietorship in 2012 and incorporated it in 2014. Mr. Rees also learned that the firearms distribution business in Canada is heavily regulated by both the federal and provincial governments, as well as the OPP and the RCMP. It typically takes a two-year period to acquire and establish the necessary licenses, distribution agreements and delivery channels before one can commence business as a firearms distributor in Canada.<sup>4</sup>

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<sup>2</sup> First Rees Affidavit, Tab 4, p. 107, para. 5, and Excerpt from Trigger website, Rees Affidavit, Exhibit “D”, Tab 4D, page 166b.

<sup>3</sup> First Rees Affidavit, RC, Tab 4, pp. 108 & 112, paras. 9 and 20.

<sup>4</sup> First Rees Affidavit, RC, Tab 4, p. 112 para. 21.

12. Given the specialized and heavily-regulated nature of this business, Clearflow was attracted to Trigger on the basis that the barriers to entry in this industry are considerable, and Trigger had spent the time and money to gain the required licenses, approvals, relationships and experience necessary to become a profitable company with positive long-term prospects. Accordingly, a committee consisting of all partners of Clearflow decided to put forward an offer of financing to Trigger.<sup>5</sup>

13. The credit facilities extended by Clearflow to Trigger were summarized in an Offer letter, dated April 23, 2015 (the “**Offer Letter**”), and consisted of:

- (a) a Master Purchase and Sale Agreement dated April 30, 2015 (the “**MPSA**”);
- (b) a Master Purchase Order Financing Agreement dated April 30, 2015 (the “**PO Financing Agreement**”); and
- (c) a Royalty Agreement dated April 30, 2015 (the “**Royalty Agreement**”).<sup>6</sup>

14. As part of the overall package of loan and security documents executed by the parties on April 30, 2015, Mark and Jaimee, who are each officers and directors of Trigger,<sup>7</sup> executed separate, unlimited, continuing guarantees (the “**Guarantees**”) of the full amount of the indebtedness of Trigger in favour of Clearflow.<sup>8</sup> Jaimee’s Guarantee is the one at issue on this Appeal.

15. Under the terms of the MPSA and the standard terms which form part thereof, Trigger was

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<sup>5</sup> First Rees Affidavit, RC, Tab 4, p. 113 para. 23

<sup>6</sup> First Kanichis Affidavit, RC, Tabs 5A, 5B and 5C, pp. 215-218, 221-226, and 229-267 at Exhibits “A”, “B” and “C”.

<sup>7</sup> Corporation Profile Reports, Exhibits “E”, “F” and “G”, RC, Tabs 4E, 4F, and 4G, pp. 168-173, 176-180, and 183-187, First Rees Affidavit.

<sup>8</sup> Guarantees, Exhibit “A”, RC, Tab 4A, pp. 129-131, First Rees Affidavit.

required to provide Clearflow with a monthly list of all outstanding invoices issued by it to its customers. Clearflow then had the option to purchase all or a portion of these accounts receivable based on a payment to Trigger of 85% of the amounts shown as due and outstanding.<sup>9</sup>

16. Clearflow then collected those receivables indirectly from Trigger's customers, supposedly on 30-60 day payment terms. In reality, however, most of these "customers" were not customers of Trigger at all. The factored invoices rendered to these customers, and purchase orders received from them, were faked by Gdak and possibly others.<sup>10</sup>

17. Unless and until Clearflow receives payment in respect of its financed purchase orders, any funds advanced to Trigger are considered loans outstanding from Clearflow to Trigger. To secure this temporary indebtedness in favour of Clearflow, pending receipt of payment of the purchased accounts by Trigger's customers, Trigger executed a general security agreement in favour of Clearflow,<sup>11</sup> which was duly perfected by registration pursuant to the Ontario *Personal Property Security Act*.<sup>12</sup>

### **Trigger's False Financial Statements Provided to Clearflow**

18. Following the execution of the Credit Facilities in April, 2015, the factoring relationship between Clearflow and Trigger continued for a period of approximately five and one-half years, between April, 2015 and September, 2020. During this period, Clearflow was Trigger's primary operating lender and first-ranking secured creditor.<sup>13</sup> In 2019, Trigger represented to Clearflow

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<sup>9</sup> First Kanichis Affidavit, RC, Tab 5, p. 205, para. 5

<sup>10</sup> First Rees Affidavit, RC, Tab 4, p.109, para. 10(b)

<sup>11</sup> General Security Agreement, RC, Exhibit B, First Rees Affidavit, RC, Tab 4B, p. 134-142.

<sup>12</sup> *Personal Property Security Act* search printout, Exhibit C, First Rees Affidavit, RC, Tab 4C, pp. 145-165.

<sup>13</sup> First Rees Affidavit, RC, Tab 4, p. 106, para. 3.

that the total AR owed to it by all of its customers was, collectively, \$64,074,258.69.<sup>14</sup> Trigger's 2019 financial statement, provided to Clearflow in June, 2020 indicated that Trigger's total sales in 2019 were in excess of \$78 million.<sup>15</sup> Also in June, 2020, Gdak provided to Clearflow monthly, internally generated financial statements. The Court below found that the 2019 financial statements and the monthly, internally-generated statements for 2020 were inaccurate.<sup>16</sup>

19. As of October 6, 2020, Clearflow had purchased almost-entirely phoney accounts from Trigger, or extended financing based on mainly fake purchase orders allegedly placed by customers of Trigger, with a total value of \$42,943,931.75, which it obviously can never collect upon.<sup>17</sup> In addition, further advances were made to Trigger totalling an additional \$5,600,000.00, for financing various business purposes, based on forged real estate documents that made it appear that Trigger or a company related to it owned significant real property in Waterloo, Ontario.<sup>18</sup>

### **Clearflow Unable to Recover \$48M Owed to it by Trigger**

20. 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

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<sup>14</sup> First Kanichis Affidavit, RC, Tab 5, p. 205, para. 7.

<sup>15</sup> Trigger 2019 Financial Statement, First Kanichis Affidavit, Exhibit "D", First Kanichis Affidavit, RC, Tab 5D, pp. 270-288; Second Report of the Receiver, RC, Tab 3, p.39, para. 15.

<sup>16</sup> Trigger 2019 Financial Statement, First Kanichis Affidavit, Exhibit "D", First Kanichis Affidavit, RC, Tab 5D, pp. 270-288; Second Report of the Receiver, RC, Tab 3, p.42, para. 32; Reasons for Judgment of the Honourable Justice Dietrich, dated May 26, 2021 ("**Motion Judge Decision**"), RC, Tab 2, p.13, para. 32.

<sup>17</sup> Trigger 2019 Financial Statement, First Kanichis Affidavit, Exhibit "D", First Kanichis Affidavit, RC, Tab 5D, pp. 270-288; Second Report of the Receiver, RC, Tab 3, p.43, para. 35.

<sup>18</sup> Trigger 2019 Financial Statement, First Kanichis Affidavit, Exhibit "D", First Kanichis Affidavit, RC, Tab 5D, pp. 270-288; Second Report of the Receiver, RC, Tab 3, p.43, para. 36.



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).

### **The Fraud**

21. The extent of the fraud was extensive and far-reaching. It took place over five years, and 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 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.<sup>19</sup>

22. Mark even went so far as to create an elaborate hoax in late 2019 / early 2020, including a photo of Jaimee at her mother's bedside in hospital, to the effect that his mother-in-law, Jaimee's mother, died after a lengthy illness and hospitalization; this fabrication was for the purpose of buying time to provide already-late (and fraudulent) financial reporting to Clearflow. Jaimee's mother is, in fact, alive and well.<sup>20</sup>

23. From the outset of the relationship, Mark insisted that Clearflow modify its normal lending and verification procedures, including modifications that allowed him to commit the fraud.<sup>21</sup>

24. The fraud involved a form of cheque kiting against Clearflow, in which invoices were forged and presented to Clearflow for purchase. The proceeds of each batch of falsified invoices

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<sup>19</sup> First Rees Affidavit, RC, Tab 4, p. 109-110, para. 10.

<sup>20</sup> Affidavit of Martin Rees sworn November 26, 2020 (the "**Second Rees Affidavit**"), RC, Tab 6, p.301-303, paras. 31-37 and Photo of Jaimee Gdak, Exhibit "M", Second Rees Affidavit, RC, Tab 6D, p. 323.

<sup>21</sup> First Kanichis Affidavit, RC, Tab 5, p.205-206, para. 8.

purchased by Clearflow were deposited into an account held by Trigger, which then drew cheques against that account in favour of itself, and deposited those cheques into a “blocked” account in the name of Trigger. The Gdaks would then provide periodic update emails to Clearflow, falsely advising Clearflow that the blocked account contained funds that constituted payments received from its false customers.<sup>22</sup> The funds in this blocked account were then swept by Clearflow and applied against the outstanding invoices that it had purchased.<sup>23</sup>

25. In reality, none, or very little, of the funds deposited into the blocked accounts originated from customers. The vast majority, if not all, of the funds deposited into the blocked account consisted of funds received from Clearflow representing the purchase of the next batch of invoices or purchase orders, re-circulated by cheque into the blocked account.<sup>24</sup>

26. Thus, the entire fraud depended on Clearflow always purchasing an ever-growing value of accounts receivable, the proceeds of which were simply re-circulated back to Clearflow, less a substantial sweep off the top which permitted the Gdaks to enjoy a well-heeled lifestyle. This included a Range Rover automobile, expensive jewellery, multiple watercraft with a value over \$800,000, a cottage, several investment properties, and multiple all terrain vehicles.<sup>25</sup>

### **Superior Court Orders Against Trigger and Related Companies**

27. Immediately upon discovering the fraud, Clearflow issued written demand for repayment and Notices of Intention to Enforce Security (“NITES”) to Trigger, Mark and Jaimee, and brought

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<sup>22</sup> Second Rees Affidavit, RC, Tab 6, p.292-293, para. 8.

<sup>23</sup> Second Rees Affidavit, RC, Tab 6, p.293, para. 9.

<sup>24</sup> Second Rees Affidavit, RC, Tab 6, p.293, para. 10.

<sup>25</sup> Second Rees Affidavit, RC, Tab 6, p.293, para. 11.

this application for, among other things, the appointment of Grant Thornton Limited (“GTL”) as interim receiver over the assets and undertaking of Trigger.<sup>26</sup>

28. On October 13, 2020, Clearflow sought and obtained from the Honourable Justice Gilmore, an Order appointing GTL as Interim Receiver over Trigger and a related company, The En Cadre Group Inc.<sup>27</sup>

29. Clearflow also sought and obtained, as part of the Order issued by Justice Gilmore, a Mareva injunction against Mark and Jaimee, which restricted their rights to deal with their personal assets pending final adjudication of this matter.<sup>28</sup>

30. On October 22, 2020, the Honourable Mr. Justice McEwen appointed GTL as a full, National Receiver over Trigger pursuant to s. 243 of the *Bankruptcy and Insolvency Act* with all of the usual powers granted to a Receiver in such circumstances.<sup>29</sup> The Mareva provisions included in the Order of Gilmore J. were incorporated into Justice McEwen’s October 22, 2020 Order.<sup>30</sup> The Mareva Injunction continues in force.

31. Mr. Rees states in his Second Affidavit that the Receiver did issue one Report to Court in its capacity as Interim Receiver, prior to its appointment as full Receiver.<sup>31</sup> Mr. Rees acknowledged that the Interim Receiver’s findings were preliminary in nature and GTL had not completed a full investigation into these matters at the time that it issued the First Report of the

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<sup>26</sup> Demand and NITES, Exhibit “H”, First Rees Affidavit, RC, Tab 4H, p.190-201.

<sup>27</sup> Interim Receivership Order of Gilmore J. dated October 13, 2020, Second Report of the Receiver, Appendix 1 [**“Interim Receivership Order of Gilmore J.”**], RC, Tab 3A, pp. 70-83.

<sup>28</sup> Interim Receivership Order of Gilmore J., RC, Tab 3A, pp.74-75, paras. 8-11.

<sup>29</sup> Receivership Order of McEwen J. dated October 22, 2020, Second Report of the Receiver, Appendix 4 [**“Receivership Order of McEwen J.”**], RC, Tab 3B, p.85-103.

<sup>30</sup> Receivership Order of McEwen J., RC, Tab 3B, p.90-91, paras. 8 -11.

<sup>31</sup> Second Rees Affidavit, RC, Tab 6, p.300, para. 29.

Interim Receiver. Notwithstanding those caveats, Mr. Rees cites the following passage from GTL's First Report to Court:

The preliminary investigation conducted by the IR has revealed that Trigger's management, specifically, Mr. Gdak, Mrs. Gdak and Mr. Searles, appears to have been involved in the following activity:

- Entering false customer sales and payments to Trigger's accounting records;
- Creating email accounts to impersonate Canadian Tire and Home Hardware employees;
- Preparing false customer cheques on false CIBC, BNS and RBC accounts and providing same to Clearflow, as evidence of customer payments;
- Providing false AR information to Clearflow; and
- Falsifying letters from the CFO and providing such falsified letters to Clearflow.

### **The Property Owned by the Gdaks Obtained with Monies Advanced by Clearflow**

32. Since its appointment, the Receiver has investigated various issues, including the disposition or location of millions of dollars defrauded from Clearflow. The Receiver has discovered that Jaimee and Jaimak Real Properties Inc. ("**Jaimak**"), a real estate holding company owned and operated by Jaimee, hold title to high-end watercraft and motor vehicles, expensive jewellery and four separate real properties located in Waterloo Ontario, and in Huron County, Ontario, all of which were directly acquired by Trigger with moneys advanced by Clearflow to Trigger based on the fraudulent claims and forgeries.<sup>32</sup>

33. Pursuant to the Order of the Honourable Justice Dietrich, dated March 8, 2021, the Court has declared all of this property, real and personal, to constitute assets of Trigger (rather than Jaimee or Jaimak, in whose name title was placed), and therefore, under the control of the receiver,

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<sup>32</sup> Second Report of the Receiver dated Feb. 12, 2021, RC, Tab 3, pp. 50-60, paras. 88 -157

to be liquidated by the Receiver to satisfy the claims of the creditors of Trigger (of which Clearflow is overwhelmingly the largest).

**This Appeal in Context: The Gdaks Three-Year, Continuing Campaign to Remove Jaimee from Liability under the Guarantee**

34. Since approximately 2018, the Gdaks have been desperately pressuring Clearflow to release Jaimee from her Guarantee,<sup>33</sup> including numerous and repetitive emails and telephone calls from Mark to Clearflow representatives. These efforts have continued to the present day, including this Appeal. Clearflow consistently refused to consider releasing Jaimee as part of an overall restructuring of the Trigger loan facilities, until a number of due diligence items were satisfied. Unfortunately, these due diligence items never were satisfied. The restructuring never occurred.<sup>34</sup>

35. The constant requests and pressure for the release of the Guarantee occurred at the same time (roughly 2018 through 2020) that Mark (and Clearflow alleges, Jaimee as well) were at the height of their fraudulent activities. It is submitted that the timing of these two events is not coincidental. It would be considerably easier for the Gdaks to conceal, and more difficult for Clearflow to recover, the proceeds of the fraud if Jaimee was released from her Guarantee.

**The Guarantees Are Valid**

36. A number of “transactional” details of the Guarantees are not disputed. Neither Jaimee nor Mark deny signing the Guarantees. They do not take the position that the signatures that appear on the Guarantees are not theirs, nor do they claim that the Guarantees were signed under duress.

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<sup>33</sup> Second Rees Affidavit, RC, Tab 6, pp.292 and 295-298, paras. 6 and 15-24

<sup>34</sup> *Ibid*, para. 14.

There is no evidence to suggest, nor does Jaimee claim, that she did not know what she was signing or the legal effect of her Guarantee.

37. On the Motion giving rise to this Appeal, the Motion Judge noted that Trigger, Mark and Jaimee were represented by legal counsel, Brian Kelly, in respect of the transaction.<sup>35</sup> Jaimee does not allege that she received inadequate legal advice, that her lawyer misled her in any material way, or that her lawyer's advice was negligent.

### **Jaimee's Positions before the Court Below**

38. Jaimee took the position before the Motion Judge, and asks this Honourable Court to find, that a combination of factors should lead to the Court releasing Jaimee from liability pursuant to the Guarantee, or that such liability should be pegged at a much lower level than it really is. These factors included Jaimee's alleged lack of sophistication, the fact that her lawyer also represented other parties to the transaction, the increase in the total loan amount over the five years of the parties' financial relationship (allegedly without Jaimee's knowledge or consent), and the language used in the Guarantee itself.

### **Jaimee's "Hands On" Role at Trigger**

39. Jaimee's positions on this Appeal are predicated on the Court accepting a characterization of Jaimee that is inconsistent with the evidence. Jaimee attempts to cast herself as an unsophisticated spouse who signed a personal guarantee of the debts of her husband's business; she alleges no involvement with the business and no benefit or consideration to her whatsoever.

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<sup>35</sup> Motion Judge Decision, RC, Tab 2, p.11, para. 13.

Further, it is submitted that Jaimee's argument presupposes that anyone with less than a high school level of education cannot read and understand a standard form personal guarantee.

40. However, the evidence before the Motion Judge demonstrates quite the opposite regarding Jaimee's role and level of sophistication with respect to Trigger. Specifically, Jaimee took a "hands on" role at a very senior level in all aspects of Trigger's business. This is particularly so with respect to those aspects of Trigger's business such as the collection of accounts receivable and cheque deposits that were most related to the fraud itself.

41. Literally thousands of emails were exchanged<sup>36</sup> between Jaimee and the Clearflow administration team with respect to<sup>37</sup>:

- (i) processing credit card payments;
- (ii) deposits made into the Trigger Ops Account and the Trigger Blocked Account;
- (iii) deposits made into BMO Bank Trigger Ops Account that consisted of non factored payments; and
- (iv) funding requests to Clearflow.<sup>38</sup>

42. Jaimee also had cheque-signing authority for Trigger.<sup>39</sup> If one conducts a Google search against Jaimee, a Trigger Zoom info page comes up as one of the first entries.<sup>40</sup> A corporate and organizational chart provided by Trigger to Clearflow shows Jaimee as the "Co-owner and SVP" of Trigger, on the same management level as Mark Gdak himself. These charts show that Jaimee

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<sup>36</sup> Affidavit of Sandy Kanichis (the "**Second Kanichis Affidavit**") sworn November 26, 2020, RC, Tab 7, p. 326, para. 4.

<sup>37</sup> Second Rees Affidavit, RC, Tab 6, p. 298-299, para. 27.

<sup>38</sup> First Kanichis Affidavit, RC, Tab 5, p. 210, para. 21.

<sup>39</sup> Second Kanichis Affidavit, RC, Tab 7, p. 328, para. 13.

<sup>40</sup> First Kanichis Affidavit, RC, Tab 5, p. 211, para. 23.

was the sole owner of the Gdak real estate company, one of the main components of the Trigger corporate structure. In Mr. Gdak's words: "Jaimee Gdak is my wife and business partner. She is 50% co-owner of the company (the new operations company and holding company)".<sup>41</sup> In addition to her account-collection and banking functions, Jaimee attended meetings and was present for numerous conference calls with Clearflow personnel during which she participated directly in discussions of high-level, operational issues.<sup>42</sup>

43. Jaimee had access to, and did access, the "Cadence" software, used by Clearflow and its customers for real-time updates respecting the state of the customer's financial position with Clearflow, including a standard opening screen that showed the total amount of all purchased invoices which had not yet been collected, and for which the customer is liable if Clearflow cannot collect.<sup>43</sup>

44. As an officer and director of Trigger, Jaimee was subject to a statutory duty pursuant to the Ontario *Business Corporations Act* to review and approve the annual financial statements of Trigger. The 2019 Trigger financial statements for the year ending March 31, 2019 show a debt owed to Clearflow in the form of "Loan Payable" in the amount of \$21,362,343. Note 5 to the 2019 Financial Statement provides:

Advances calculated on accounts receivable are based on a rate of up to 85% of the aggregate net face value of identified accounts. Clearflow has the option to factor receivable with

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<sup>41</sup> Second Rees Affidavit, RC, Tab 6, p. 298, para. 26, and corporate organizational chart, being Exhibit "H", Second Rees Affidavit, RC, Tab 6A, pp.308-309.

<sup>42</sup> Second Rees Affidavit, RC, Tab 6, p. 298, para. 26 and emails attached as Exhibit "L" Second Rees Affidavit, RC, Tab 6C, pp.316-320.

<sup>43</sup> Further Reply Affidavit of Sandy Kanichis sworn March 9, 2021 (the "**Third Kanichis Affidavit**"), RC, Tab 8, pp. 334-336, Cadence Opening Screen Printout, Third Kanichis Affidavit, Exhibit "B", Third Kanichis Affidavit, RC, Tab 8B, p.343; confirmatory email that Jaimee had logged onto Cadence, Third Kanichis Affidavit, Exhibit "A", Third Kanichis Affidavit, RC, Tab 8A, p.340.



recourse. Balance outstanding at year end totalled \$21,362,343 on eligible accounts receivable of \$26,438,422...**Clearflow and the Company continued to re-evaluate and increase the respective threshold for lending on an ongoing basis**”<sup>44</sup> [emphasis added]

45. Jaimee took a direct role in the deposit of cheques, collection of accounts receivable and funding requests from Clearflow. She was, at times, the point person for Trigger in dealing with funding requests from Clearflow. She signed cheques from Trigger to be deposited into the Clearflow sweep account amounting to millions of dollars.<sup>45</sup> Even if Jaimee is “unsophisticated”, which Clearflow disputes, no facts were apparent to Clearflow at the time that the Guarantee was signed that would put Clearflow on notice that there was a need for Jaimee to receive independent legal advice. Clearflow was aware that Jaimee was an officer and director of Trigger (which means in and of itself, in most circumstances, that independent legal advice was not necessary), and was aware of the information that had been provided by the Gdaks as set out above.

### **The Motion Judge Enforces the Personal Guarantees of Mark and Jaimee**

46. In the context of the above factual matrix, the Motions Judge ultimately enforced the personal Guarantees against Mark and Jaimee. The Motion Judge further held that:

- (a) Jaimee is not unsophisticated.<sup>46</sup> The fact that she did not complete high school did not equate to a lack of sophistication, or indicate a lack of intelligence or an inability to read and comprehend a one-page guarantee, written in the second person;<sup>47</sup>
- (b) On a balance of probabilities, Jaimee was not entirely unaware, or uninformed as to, the debt that Trigger was incurring.<sup>48</sup> While Jaimee may not have not known that Trigger’s liability to Clearflow exceeded \$48 million, it is more likely than not that she knew that her liability on her Guarantee exceeded the original \$900,000

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<sup>44</sup> 2019 Trigger Financial Statement, First Kanichis Affidavit, Exhibit “D”, RC, Tab 5D, p. 270-288.

<sup>45</sup> Second Rees Affidavit, RC, Tab 6, p.298, para. 27(a) and copies of Cheques, Exhibit “I”, Second Rees Affidavit, RC, Tab 6B, p.312-313

<sup>46</sup> Motion Judge Decision, RC, Tab 2, p.19 at para. 71.

<sup>47</sup> Motion Judge Decision, RC, Tab 2, p.18 at para. 62.

<sup>48</sup> Motion Judge Decision, RC, Tab 2, p.19 at para. 71.

loan amount by a considerable margin.<sup>49</sup> Moreover, it ought to have been apparent to Jaimee on February 21, 2018 (being the one date on which it can be confirmed that Jaimee accessed the Cadence software, and would have seen the opening screen containing the outstanding balance, to the penny) that her liability on her Guarantee far exceeded the original \$900,000 loan limit;<sup>50</sup>

- (c) There was no merit to Jaimee’s allegations that she did not have a title at Trigger or that she took on only administrative roles there;<sup>51</sup>
- (d) Jaimee’s evidence that she was not aware that she was a director of Trigger was not credible;<sup>52</sup>
- (e) Jaimee was represented by counsel, Mr. Kelly, who was present when the Guarantee was signed and signed the document as “witness.” Jaimee had ample opportunity to consult with Mr. Kelly for clarification or explanation;<sup>53</sup>
- (f) Jaimee did not meet her onus of showing an inequality of bargaining power and a resulting improvident bargain;<sup>54</sup>
- (g) The Guarantee transaction was not tainted by the presence of unconscionability or improper tactics;<sup>55</sup> and
- (h) The Guarantee was not released as a result of the fact that the amount of overall loan limit was increased over the six-year financial relationship between the parties.<sup>56</sup>

47. Jaimee now seeks to have the above factual findings overturned on this Appeal.<sup>57</sup>

### **PART III - ISSUES AND LAW**

48. This Appeal gives rise to a single issue: did the Motion Judge make a palpable and overriding error in enforcing Jaimee’s personal Guarantee?

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<sup>49</sup> Motion Judge Decision, RC, Tab 2, p.22 at para. 88.

<sup>50</sup> Motion Judge Decision, RC, Tab 2, pp.21-22 at para. 87.

<sup>51</sup> Motion Judge Decision, RC, Tab 2, p.20 at para. 74.

<sup>52</sup> Motion Judge Decision, RC, Tab 2, p.21 at para. 82.

<sup>53</sup> Motion Judge Decision, RC, Tab 2, p.23 at para. 94.

<sup>54</sup> Motion Judge Decision, RC, Tab 2, p.23 at para. 95.

<sup>55</sup> Motion Judge Decision, RC, Tab 2, p.23 at para. 95

<sup>56</sup> Motion Judge Decision, RC, Tab 2, pp.23-27 at paras. 96-118.

<sup>57</sup> Notice of Appeal, dated June 23, 2021, RC, Tab 1, pp.1-7.

**A. The Motion Judge Made no Palpable and Overriding Error in Enforcing Jaimee’s Personal Guarantee**

49. The Motion Judge’s findings of fact or mixed fact and law are entitled to significant deference on appeal and cannot be reversed absent palpable and overriding error.<sup>58</sup> To the extent that the Motion Judge’s findings involve issues of contractual interpretation and the factual matrix in which the Guarantee was executed, Clearflow submits that this Appeal raises questions of mixed fact and law, subject to the deferential standard of palpable and overriding error.<sup>59</sup>

50. Jaimee’s position on this Appeal that the Guarantee constitutes a “standard form” contract so as to attract a correctness standard of review is misplaced. In *Ledcor*, the 2016 decision of the Supreme Court of Canada on which the Appellant relies,<sup>60</sup> the Court established that in order for correctness review to apply to the interpretation of a contract, three requirements must be met: (i) the appeal must involve the interpretation of a standard form contract; (ii) the interpretation at issue is of precedential value; and (iii) there is no meaningful factual matrix that is specific to the parties to assist the interpretation process.<sup>61</sup>

51. On this Appeal, at least two of these three requirements are absent. The factual matrix was not only relevant, but of significant assistance to the Motion Judge in the process of interpreting the Guarantee, as set out below. Moreover, this Appeal has no precedential value – the Guarantees are specific to the parties and no extricable legal question may be derived from their interpretation

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<sup>58</sup> [Housen v. Nikolaisen](#), 2002 SCC 33, per Iacobucci and Major JJ. at paras. 10 & 28.

<sup>59</sup> [Sattva Capital Corp. v. Creston Moly Corp.](#), 2014 SCC 53, per Rothstein J. at paras. 52; [Corner Brook \(City\) v. Bailey](#), 2021 SCC 29, per Rowe J. at para. 44.

<sup>60</sup> [Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.](#), 2016 SCC 37, per Wagner J.

<sup>61</sup> [Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.](#), *supra* at para. 24.

in this case. Simply put, the interpretation of the Guarantees will have no effect on the well-established principles of contractual interpretation applied to them.

52. Accordingly, Clearflow submits that the Motion Judge's Order is entitled to significant deference on appeal. For the reasons set out below, Jaimee has failed to show that the Motion Judge committed a palpable and overriding error justifying appellate intervention. Alternatively, Clearflow submits that the Motion Judge's Order nonetheless survives scrutiny, even on a standard of review of correctness..

**i. No Palpable and Overriding Error Regarding Independent Legal Advice to Jaimee**

53. Ontario Courts have consistently held that a lack of independent legal advice is not, in and of itself, a defence to a guarantee claim, where the guarantor is an officer and director of the corporation whose liabilities are being guaranteed.<sup>62</sup> Absent undue influence, unconscionability, fraud, misrepresentation or evidence supporting a defence of *non est factum*, the lack of independent legal advice, on its own, is not fatal to a claim on a guarantee.<sup>63</sup>

54. In this case, the Motion Judge found that Jaimee had the opportunity to consult with a lawyer, or to ask a lawyer for clarification or explanation, given that the Guarantee was signed in the presence of Mr. Kelly, who witnessed the document.<sup>64</sup> The fact is that Jaimee was represented

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<sup>62</sup> [\*Meridian Credit Union v 2428128 Ontario Limited\*, 2017 ONSC 4578, per Maddalena J. at para 23, aff'd 2018 ONCA 201, per curiam; \*Toronto-Dominion Bank v 1503345 Ontario Ltd.\*, \[2006\] O.J. No. 1960 \(Sup. Ct.\), per DiTomaso J. at para. 22.](#)

<sup>63</sup> See [\*RBC v. 164393 Ont. Inc.\*, 2019 ONSC 5145, per Williams J. at para. 54](#), varied on other grounds, [\*2021 ONCA 98, per Roberts J.A.\*](#), citing [\*Bank of Montreal v. Featherstone\*, \[1989\] O.J. No. 613 \(C.A.\), per curiam.](#)

<sup>64</sup> Motion Judge Decision, RC, Tab 2, p. 23, at para. 94

by counsel, namely, Mr. Kelly, in connection with the Guarantee transaction. Jaimee has not suggested that Mr. Kelly was biased, misled her, or gave her incomplete or incorrect legal advice.

55. It is respectfully submitted that the Motion Judge did not make any error in finding that the fact that Jaimee received legal advice in respect of the transaction was one factor that the Court could take into consideration in deciding to enforce the Guarantee against Jaimee. Contrary to Jaimee's position, the Motion Judge held that the evidence demonstrated Mr. Kelly acted as Jaimee's lawyer.<sup>65</sup>

In my view, **[Jaimee] 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.

**I am also not satisfied that [Jaimee] 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.** [Jaimee] 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, [Jaimee] stated that **"they are our lawyers"**...<sup>66</sup>**[emphasis added]**

56. On this Appeal, Jaimee's position regarding the *independence* of that legal advice may have some relevance if the Motions Judge found, as a fact, that certain other factors were present in the factual matrix that would lead the Court to question the Guarantee - for example, if there was a finding that Jaimee was unsophisticated; that the Guarantee was an "accommodation guarantee" signed by Jaimee for the benefit of her husband; that Jaimee derived no benefit from the Guarantee herself; that Jaimee was not an officer and director of the principal borrower; that she did not take an active part in Trigger's business at a senior level; or that the terms of the

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<sup>65</sup> Motion Judge Decision, RC, Tab 2, p.19, paras. 65.

<sup>66</sup> Motion Judge Decision, RC, Tab 2, p.23, paras. 93-94.

Guarantee itself are unconscionable or arose from improper tactics on the part of Clearflow. The Motions Judge made no such finding.

57. Accordingly, the Motion Judge made no palpable and overriding error regarding Jaimee's argument that she was not given an opportunity to obtain independent legal advice on the Guarantee or any amendments to the credit arrangements.

**ii. No Palpable and Overriding Error Re the Validity of Jaimee's Guarantee**

58. Clearflow submits that, contrary to Jaimee's position on this Appeal, the size of the type-face used in a contract is neither determinative of, nor even relevant to its enforceability. What is relevant is whether the contract is fraudulent, contains a misrepresentation, or contains a very onerous term that a reasonable person would not expect, coupled with very small print that would make it difficult to take note of the surprisingly onerous term. As the Superior Court held in its 2009 decision, *Aviscar Inc v Muthukumar*:

**The law is that if a person signs a contract without reading it, that person is bound by the terms of the contract. That is the general rule.** There are exceptions if the signing person can establish that there was fraud, misrepresentation, or there was a very onerous term that a reasonable person would not expect to be in the contract.<sup>67</sup> **[emphasis added]**

59. In this case, the Motion Judge held that Jaimee failed to meet her onus of showing that the transaction was somehow unconscionable:

[Jaimee] has not met her onus to show an inequality of bargaining power and a resulting improvident bargain. **I am not persuaded that [Jaimee'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.<sup>68</sup> **[emphasis added]**

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<sup>67</sup> [Aviscar Inc v Muthukumar](#), [2009] O.J. No. 2894 (Sup. Ct.), per Matheson J. at para 23. See also [Forest Hill Homes v Ou](#), 2019 ONSC 4332, per Morgan J. at para. 21.

<sup>68</sup> Motion Judge Decision, RC, Tab 2, p.23, para. 95.

60. There is no evidence that the Guarantee in this case contains any clauses that are surprising; unexpected; or particularly onerous or uncommon in relation to other Guarantees. Clearflow further submits that the consumer protection considerations underpinning the exceptions to the general rule set out in *Aviscar* are not applicable to commercial transactions where, as here, there is no imbalance of bargaining power and the party attacking the contract was represented by legal counsel. This was not a case in which Jaimee was asked to sign a standard form car rental agreement without being given the chance to read it before signing.

61. Accordingly, the Motion Judge made no palpable and overriding error in upholding the validity of the Guarantee.

**iii. No Palpable and Overriding Error Re Jaimee Signing Off on the Financial Statements**

62. Subsection 159(1) of the *Ontario Business Corporations Act* (the “**OBCA**”)<sup>69</sup> required the board of directors of Trigger, which consisted of Jaimee and Mark, to consider and to approve the annual financial statements.<sup>70</sup> S. 159(1) of the OBCA further requires one of the Directors to sign the financial statements themselves.

63. Further, subsection 134(1) of the *OBCA* required Jaimee to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Subsection 134(2) of the *OBCA* also required Jaimee to comply with all applicable sections of the *OBCA*, which would include the requirement of the Board of Directors to review and approve the financial statements.<sup>71</sup> S.

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<sup>69</sup> [R.S.O. 1990, c.B.16 at s.159\(1\).](#)

<sup>70</sup> [OBCA, supra at s.159\(1\).](#)

<sup>71</sup> [OBCA, supra at s.134.](#)

64. In this case, the Motion Judge expressly held that, as a director, Jaimee “would have been required to sign off on the financial statements for these companies. The annual financial statements would have reflected the indebtedness to [Jaimee], which would have been easy for her to track year over year”.<sup>72</sup> The Motion Judge further noted that “[a]s a director [Jaimee] was responsible for signing off on the financial statements of [Trigger and En Cadre], which would have disclosed the companies’ indebtedness”.<sup>73</sup>

65. It is respectfully submitted that Jaimee has misinterpreted the law in respect of a director’s duty in Ontario regarding the financial statements issued by a corporation. Whether or not Jaimee was the particular director who “signed” the financial statements pursuant to s. 159(1) of the *OBCA* is irrelevant. She was still required to have participated in the consideration and approval of the financial statements, as required by the *OBCA*. It may be assumed that any director of an Ontario corporation has reviewed the financial statements of the corporation and that any such director is familiar with the general financial position of the corporation (including, at least approximately, the amount it owes to its principal operating lender). No director should be permitted to rely on their own breach of their statutory and fiduciary duties to the corporation by claiming ignorance of the contents of the corporation’s financial statements, over a period of several years.

66. In the alternative, it submitted that even if this Honourable Court is not prepared to find that, as a director, Jaimee is *deemed* to be familiar with the contents of the financial statements, and to be generally familiar with the financial position of the corporation, there is no basis to

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<sup>72</sup> Motion Judge Decision, RC, Tab 2, p.18, para. 61.

<sup>73</sup> Motion Judge Decision, RC, Tab 2, p.19, para. 71.



interfere with the factual finding of the Court below that it is simply not believable in the circumstances of this case that Jaimee was not *actually* familiar with same.

**iv. No Palpable and Overriding Error Re Change in Terms to the Guarantee**

67. It has long been the law that while a material change to the terms of the principal indebtedness can result in a release of the guarantee, parties may contract out of the protection that releases a guarantor from liability where the creditor and debtor agree to a material change in terms without the guarantor's consent.<sup>74</sup> In this case the Motion Judge held that the parties did exactly that:

In my view, the parties contracted out of this protection. The language of the Guarantee is unequivocal. It clearly states that [Jaimee'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..."

The extent of [Jaimee'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"...[Jaimee] agreed to these terms.<sup>75</sup>

68. Over the five-year period during which Clearflow provided financing to Trigger, the terms and conditions of the credit facilities extended by Clearflow never changed in any way that is not specifically authorized by the Guarantee itself or in any way that was not known to Jaimee.

69. While it is true that the authorized loan limit was gradually increased over time, the Motion Judge found that a relevant factor in this analysis was whether Jaimee was aware that the loan limit had increased, but took no steps to limit her exposure on the Guarantee. As the Motion Judge

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<sup>74</sup> Motion Judge Decision, RC, Tab 2, p.16, para. 51, citing [\*First City Capital Ltd. v. Hall \(1993\), 11 O.R. \(3d\) 792 \(C.A.\), per Abella J.A.\*](#) (as she then was).

<sup>75</sup> Motion Judge Decision, RC, Tab 2, p.17, paras. 52-53.

stated in her Reasons, after carefully reviewing the evidence: "...I find that it ought to have been apparent to Ms. Gdak on February 21, 2018 that her liability exceeded the original \$900,000 loan shown on the credit facility documents by a considerable margin...she took no steps to try to limit her exposure on the Guarantee".<sup>76</sup>

70. Even if Jaimee was not aware of the increases in the loan limit, which, it is submitted, and the Motions Judge found, is not credible, the definition of the "Obligations" guaranteed contained in paragraph 1 of the Guarantee makes it clear that the Guarantee is intended to be a "continuing guarantee", for all obligations and indebtedness of Trigger owed in favour of Clearflow. The Guarantee in this case is not specifically tied to any one document or loan limit. In fact, there is no monetary limit contained anywhere in the Guarantee.

71. In s. 3 of the Guarantee, Jaimee specifically acknowledged that she would remain liable under the Guarantee for any obligations of Trigger, howsoever arising, notwithstanding any change to the "terms, or the amount, or the existence" of the guaranteed obligations [**emphasis added**]. S. 7 of the Guarantee (reinstatement of Guarantee even if loan Obligations are reduced to zero at any one time), supports Clearflow's interpretation of the Guarantee. In other words, the Guarantee itself contemplated that the indebtedness of Trigger could be increased by the parties, to any amount, regardless of the original loan limit, without affecting the validity of the Guarantee. Even if the indebtedness went down to zero, the Guarantee still applied to further advances made by Clearflow to Trigger as long as the Guarantee remained in force.

72. Ontario Courts have made it clear that held that this type of clause is valid and enforceable and serves to prevent the release of the guarantee in exactly this situation. In its 2013 decision,

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<sup>76</sup> Motion Judge Decision, RC, Tab 2, p.21-22, paras.87-88

*Royal Bank of Canada v. Samson Management & Solutions Ltd.*,<sup>77</sup> this Honourable Court observed that “the purpose of a continuing all accounts guarantee is to allow the customer and the lender to alter their business arrangements without having to involve the guarantor”.<sup>78</sup> The Court held:

In my view, while the subsequent advances by RBC to Samson were material alterations to the principal loan contract, they were contemplated by the parties, permitted by the clear language of the guarantee, and inherent in a continuing all accounts guarantee that contemplates increases in the size of the underlying indebtedness. Further, clause (1) of the guarantee expressly permitted RBC to change the terms of the borrowing, which would include changes in performance standards...Thus, despite the material alterations in the underlying loan arrangements, Ms. Cusack’s personal guarantee remains enforceable given the clear and unambiguous language of the guarantee and the factual context.<sup>79</sup>

73. Similarly in *Royal Bank of Canada v. Adecon Transport Inc.*,<sup>80</sup> the Superior Court considered a form of guarantee that is materially similar to the one in the case at bar. The Court found that the defendants had provided personal “continuing all accounts guarantees” and that the creditor in that case, Royal Bank of Canada, had no duty to inform the guarantor about future credit facilities. The onus was on the guarantor to inquire about the state of accounts.<sup>81</sup> Subsequent, additional loan obligations were not “material alterations to the principal contract”, but, as in this case, were contemplated by the parties in the Guarantee itself.<sup>82</sup>

74. On this Appeal, Jaimee argues that even if the increase in the loan limit over time did not *per se* result in the release of the Guarantee, then this clause nonetheless constitutes a “surprisingly onerous” term, in a small font size, that ought to have resulted in a positive obligation on Clearflow

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<sup>77</sup> [2013 ONCA 313, per Lauwers J.A. at para. 32](#), leave to appeal to the Supreme Court of Canada denied [2013] S.C.C.A. No. 301.

<sup>78</sup> [Royal Bank of Canada v. Samson Management & Solutions Ltd., 2013 ONCA 313 at para 32](#) .

<sup>79</sup> [Samson Management, supra at para 63.](#)

<sup>80</sup> [Royal Bank of Canada v. Adecon Transport, \[2004\] O.J. No. 6249 \(Sup. Ct.\), per Echlin J. at paras. 11-12.](#)

<sup>81</sup> [Adecon Transport, supra , at para. 14.](#)

<sup>82</sup> [Adecon Transport, supra at para. 15.](#)

to recommend independent legal advice. Jaimee argues that this clause, in and of itself, is unconscionable if not specifically brought to the attention of the guarantor and their independent lawyer. Clearflow submits that this common type of guarantee clause is neither “surprising” or “unconscionable” in any way. Certainly, the Appellant did not lead expert evidence to suggest that s. 3 of the Guarantee is not common in guarantees in Canada. In fact, the opposite would appear to be true: this type of clause has been repeatedly reviewed by Courts in Canada, as set out above, making it difficult to infer that this type of clause is not common in guarantees of this type. Not one Court has held, or observed *in obiter*, that a clause similar to s. 3 of the Guarantee is unconscionable or unfair, or leads to the necessity of the guarantor receiving independent legal advice from a lawyer acting solely for them. To the contrary, as shown above, this type of clause has been held to be valid and binding by the Courts.

**v. No Palpable and Overriding Error by Motion Judge in Interpreting the Guarantee**

75. The interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine "the intent of the parties and the scope of their understanding". To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract.<sup>83</sup> Commercial contracts, in particular, should be interpreted in accordance with “sound commercial principles” and “good business sense” to avoid any commercial absurdities.<sup>84</sup>

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<sup>83</sup> [\*Sattva v. Creston Moly Corp.\*, \*supra\* at para. 47](#); *see also* [\*Corner Brook \(City\) v. Bailey\*, \*supra\* at para. 20](#).

<sup>84</sup> [\*Salah v. Timothy's Coffees of the World Inc.\*, 2010 ONCA 673, per Winkler C.J.O. at para. 16](#); *see also* [\*Old Navy \(Canada\) Inc. v. Eglinton Town Centre Inc.\*, 2019 ONSC 3740, per Quigley J. at para. 168](#), appeal dismissed on consent [2020 ONCA 679, per curiam](#).

76. The Guarantee in question includes the following wording:

In consideration of Clearflow Commercial Finance Corp....dealing with or continuing to deal with the Customer [Trigger], you [Jaimee] guarantee payment to us on demand, of all present and future lease payments and obligations, conditional sale instalments **and 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 Master Purchase and Sale Agreements and Special Provisions, lease agreements, conditional sale contracts, **credit facilities**, overdrafts, guarantees, letters of credit, indemnities together with all costs and expenses, including legal fees and expenses, incurred by us in connection with its connection with the Customer. **[emphasis added]**

77. First, on the plain and ordinary meaning of the words, any reasonable person would interpret the above definition of “Obligations” to include “other debts and liabilities” payable by Trigger under any “credit facilities” advanced by Clearflow in favour of Trigger. It is respectfully submitted that the above definition is not ambiguous. There is no need to resort to the doctrine of *contra preferentem* in order to interpret the meaning of the above definition of “Obligations”. As the Motion Judge held in rejecting the application of *contra proferentem* to the Guarantee:

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 [Jaimee’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”. [Jaimee] 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 application has led no evidence that falls into that class.

**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...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.<sup>85</sup> **[emphasis added]**

78. Clearflow submits that the Motion Judge made no palpable and overriding error in her interpretation of the Guarantee above. There were no leases or conditional sales contracts between Clearflow and Trigger at any time, nor is there is any evidence that the parties contemplated

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<sup>85</sup> Motion Judge Decision, RC, Tab 2, p.18, paras. 63-64.

entering into such agreements in the future. There is no evidence that Clearflow was even in the business of leasing or financing by way of conditional sales agreements. As such, the general wording that follows the terms “leases” and “conditional sales contracts” cannot possibly mean only “debts and liabilities” arising out of, or similar to leases or conditional sales contracts, as Jaimee proposes on this appeal. The result of the application of the doctrine of *esjudem generis* and *contra proferentem* as Jaimee proposes would lead to the absurd result that Jaimee guaranteed obligations of Trigger that never existed and were never contemplated. In effect, according to Jaimee, she guaranteed nothing. It is submitted that this is obviously not what the parties intended.

79. Given the wording and the context of the transaction, the obvious purpose of the Guarantee, and the intention of the parties, was that Jaimee would guarantee all obligations of Trigger in favour of Clearflow arising from any credit facilities advanced by Clearflow to Trigger. Accordingly, the Motion Judge made no palpable and overriding error in rejecting Jaimee’s interpretation of the Guarantee.

#### **vi. No Palpable and Overriding Error Regarding the Acceptance of Evidence**

80. In *Royal Bank of Canada v. 164397 Ontario Inc.*<sup>86</sup> this Honourable Court has held that, on a Motion for Summary Judgment, where the Motions Judge weighs the credibility of a witness or rejects that witness’ written testimony, the Motions Judge is required to explain the basis on which he or she is doing so. In *Royal Bank*, the Court observed that the plaintiff bank had filed no other evidence but the guarantees themselves and the evidence of the bank loan manager. There was no evidence available to the Court in the form of transcripts of cross examination that would have shed light on the parties’ allegations. Before rejecting the appellants’ evidence on this contested

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<sup>86</sup> [\*Royal Bank of Canada v. 164397 Ontario Inc.\*, 2021 ONCA 98.](#)

point, the motion judge ought to have weighed the evidence, evaluated it, or made findings of credibility. As the Court held, the motion judge “could not simply prefer one position over another without providing an explanation that insufficient for appellate review.”

81. It is respectfully submitted that the Motions Judge’s Reasons for Decision, which run to 19 single-spaced pages, contain an exhaustive review of the evidence given by each witness, and a thorough analysis of that evidence. In every instance where the Court refused to accept certain evidence given by Jaimee, the learned Judge was very careful to provide a detailed explanation as to the basis for doing so. It is submitted that the Reasons for Decision make it clear that the Court carefully considered and applied the principles set out by this Court in *Royal Bank*.

#### **PART IV - ADDITIONAL ISSUES**

82. The Respondent raises no additional issues on this Appeal.

#### **PART V - RELIEF REQUESTED**

83. For the reasons set out above, Clearflow requests that this Honourable Court dismiss this Appeal in its entirety, with costs to Clearflow to be paid by Jaimee personally.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 29th day of September, 2021.



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**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant  
(Respondent in Appeal)

-and-

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

Respondents  
(Jaimee Lynn Gdak Appellant in Appeal)

**CERTIFICATE**

I estimate that 2.5 hours will be needed for the oral argument of the Respondent, ClearFlow Commercial Finance Corp. on the appeal, not including reply. An Order under subrule 61.09(2) (original record and exhibits) is not required.

DATED AT Toronto, Ontario this 29th day of September, 2021.



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Jeffrey J. Simpson

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## SCHEDULE “A”

### LIST OF AUTHORITIES

1. [Housen v. Nikolaisen](#), 2002 SCC 33, per Iacobucci and Major JJ.
2. [Sattva Capital Corp. v. Creston Moly Corp.](#), 2014 SCC 53, per Rothstein J.
3. [Corner Brook \(City\) v. Bailey](#), 2021 SCC 29.
4. [Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.](#), 2016 SCC 37, per Wagner J.
5. [Meridian Credit Union v 2428128 Ontario Limited](#), 2017 ONSC 4578
6. [Toronto-Dominion Bank v 1503345 Ontario Ltd.](#), [2006] O.J. No. 1960 (Sup Ct J)
7. [RBC v. 164393 Ont. Inc.](#), 2019 ONSC 5145, per Williams J. varied on other grounds, 2021 ONCA 98, per Roberts J.A.
8. [Bank of Montreal v. Featherstone](#), [1989] O.J. No. 613 (C.A.), per curiam.
9. [Aviscar Inc v Muthukumar](#), [2009] O.J. No. 2894 (Sup. Ct.), per Matheson J.
10. [Forest Hill Homes v Ou](#), 2019 ONSC 4332, per Morgan J.
11. [First City Capital Ltd. v. Hall](#) (1993), 11 O.R. (3d) 792 (C.A.), per Abella J.A.
12. [Royal Bank of Canada v. Samson Management & Solutions Ltd.](#), 2013 ONCA 313, leave to appeal to the Supreme Court of Canada denied [2013] S.C.C.A. No. 301.
13. [Royal Bank of Canada v. Adecon Transport Inc.](#), [2004] O.J. No. 6249 (Sup Ct J).
14. [Salah v. Timothy's Coffees of the World Inc.](#), 2010 ONCA 673, per Winkler C.J.O.
15. [Old Navy \(Canada\) Inc. v. Eglinton Town Centre Inc.](#), 2019 ONSC 3740, per Quigley J., appeal dismissed on consent [2020 ONCA 679](#), per curiam.

## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY – LAWS**

#### **s. 134(1) Ontario Business Corporations Act:**

##### **Standards of care, etc., of directors, etc.**

**134** (1) Every director and officer of a corporation in exercising his or her powers and discharging his or her duties to the corporation shall,  
(a) act honestly and in good faith with a view to the best interests of the corporation; and  
(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. R.S.O. 1990, c. B.16, s. 134 (1); 2006, c. 34, Sched. B, s. 24.

##### **Duty to comply with Act, etc.**

(2) Every director and officer of a corporation shall comply with this Act, the regulations, articles, by-laws and any unanimous shareholder agreement. R.S.O. 1990, c. B.16, s. 134 (2).

#### **Ss. 159(1) and (2), Ontario Business Corporations Act:**

##### **Approval by directors**

**159** (1) The financial statements shall be approved by the board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet of any director authorized to sign and the auditor’s report, unless the corporation is exempt under section 148, shall be attached to or accompany the financial statements. R.S.O. 1990, c. B.16, s. 159 (1); 2010, c. 16, Sched. 5, s. 1 (2).

##### **Publishing, etc., copies of financial statements**

(2) A corporation shall not issue, publish or circulate copies of the financial statements, referred to in section 154 unless the financial statements are,  
(a) approved and signed in accordance with subsection (1); and  
(b) accompanied by the report of the auditor of the corporation, if any. R.S.O. 1990, c. B.16, s. 159 (2).

CLEARFLOW COMMERCIAL FINANCE CORP.  
Applicant (Respondent in Appeal)

-and- TRIGGER WHOLESALE, INC. et al.  
Respondents (Jaimee Lynn Gdak Appellant in Appeal)  
Court File No. Court File No. C69603

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT  
TORONTO

**FACTUM OF THE RESPONDENT,  
CLEARFLOW COMMERCIAL FINANCE  
CORP.**

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ClearFlow Commercial Finance Corp.

RCP-E 4C (May 1, 2016)

# TAB 1

02-Jul-2021 \*FB\*

REGISTRAR / GREFFIER  
COUR D'APPEL DE L'ONTARIO

Court of Appeal File No. C69603  
Court File No. CV-20-00649154-00CL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant  
(Respondent in Appeal)

- and -

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

Respondents  
(Appellant)

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 APPEAL**

THE RESPONDENT (APPELLANT), JAIME LYNN GDAK APPEALS to the Court of  
Appeal from the Judgment of The Honourable Justice Dietrich dated May 26, 2021, made at  
Toronto.

THE APPELLANT ASKS that the Judgment be set aside and judgment be granted as  
follows:

1. A declaration that the Guarantee executed by the Respondent, Jaimee Lynn Gdak (“**Ms Gdak**”), in favour of the Applicant, ClearFlow Commercial Finance Corp. (“**ClearFlow**”), dated April 30, 2015 (the “**Guarantee**”), is of no force and effect;
2. Costs of this appeal and the original motion payable by ClearFlow to Ms Gdak; and
3. Such further and other relief as to this Honourable Court sees fit.

THE GROUNDS OF APPEAL are as follows:

1. The Guarantee, when signed in 2015, guaranteed indebtedness of no more than \$1.4 million. When ClearFlow commenced proceedings, the alleged principal indebtedness had skyrocketed to nearly \$50 million. Despite Ms Gdak having no independent legal advice, despite the gulf in sophistication between Ms Gdak and ClearFlow, despite the contract of principal indebtedness being renewed without Ms Gdak's participation, despite ClearFlow breaching the contract of underlying indebtedness, and despite ambiguity in the Guarantee, the Motion Judge concluded that Ms Gdak was liable on the Guarantee. The Motion Judge erred in so doing as set out below.
2. The Motion Judge erred in law in reversing the onus of proof, placing the onus on Ms Gdak to prove that the retainer between the Respondent, Trigger Wholesale Inc. ("**Trigger**"), and lawyer Brian Kelly did not extend to representation of Ms Gdak in her individual capacity.
3. The Motion Judge erred in fact in finding that Brian Kelly provided independent legal advice to Ms Gdak.
4. The Motion Judge erred in law in paying no heed to the inscrutability of the Guarantee.
5. The Motion Judge erred in law in concluding that Ms Gdak "would have been required to sign off on the financial statements for [the Respondents Trigger and The En Cadre Group Inc.]".
6. The Motion Judge erred in fact in concluding that Ms Gdak had signed off on the financial statements.

7. The Motion Judge erred in law in failing to provide adequate reasons for preferring the evidence of ClearFlow over Ms Gdak, which error, *inter alia*, prevents meaningful appellate review.
8. The Motion Judge erred in fact in taking Ms Gdak's position as being predicated, in part, on ClearFlow's breach of the Guarantee when in fact Ms Gdak's position was that ClearFlow had breached the principal contract of indebtedness. By extension, the Motion Judge erred in law in failing to apply the Supreme Court of Canada case of *Pax Management Ltd. v. Canadian Imperial Bank of Commerce*, 1992 CanLII 27 (SCC), [1992] 2 SCR 998.
9. The Motion Judge erred in law in her interpretation and application of *Manulife Bank of Canada v. Conlin*, 1996 CanLII 182, 4 (SCC), [1996] 3 SCR 415, in particular in finding that a narrow interpretation of the Guarantee was "not warranted."
10. The Motion Judge erred in law in refusing to apply the interpretive principles of *contra proferentum* and *ejusdem generis*.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- (a) Section 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990 c.43.
- (b) The Judgment appealed from is final.
- (c) Leave to appeal is not required.

June 23, 2021

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AND TO: **SERVICE LIST**

|                        |                                                                                                                                                                                                                                                                 |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Applicant (Respondent) | Respondents (Appellant)                                                                                                                                                                                                                                         |
|                        | ONTARIO<br>COURT OF APPEAL<br><br>PROCEEDING COMMENCED AT<br>TORONTO                                                                                                                                                                                            |
|                        | NOTICE OF APPEAL                                                                                                                                                                                                                                                |
|                        | <b>COHEN HIGHLEY LLP</b><br>Lawyers<br>One London Place<br>255 Queens Avenue, 11th Floor<br>London ON N6A 5R8<br><br><b>Benjamin G. Blay (62688Q)</b><br><i>blay@cohenhighley.com</i><br>Tel: 519-672-9330<br><br>Lawyers for the Appellant<br>Jaimee Lynn Gdak |

# TAB 2

**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**

|                                |   |                                                        |
|--------------------------------|---|--------------------------------------------------------|
| <b>BETWEEN:</b>                | ) |                                                        |
|                                | ) |                                                        |
| CLEARFLOW COMMERCIAL FINANCE   | ) | <i>Jeffrey J. Simpson</i> , for the Applicant/Moving   |
| CORP.                          | ) | Party                                                  |
|                                | ) |                                                        |
| Applicant/Moving Party         | ) |                                                        |
|                                | ) |                                                        |
| <b>– and –</b>                 | ) |                                                        |
|                                | ) |                                                        |
| 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/Responding Parties | ) |                                                        |
|                                | ) | <i>Benjamin G. Blay</i> , for the                      |
|                                | ) | Respondent/Responding Party Jaimee Lynn                |
|                                | ) | Gdak                                                   |
|                                | ) |                                                        |
|                                | ) | <i>Roger Jaipargas</i> and <i>Douglas Smith</i> , for  |
|                                | ) | Grant Thornton Limited, the Receiver                   |
|                                | ) |                                                        |
|                                | ) | <i>Ed D’Agostino</i> , for J.B. Construction Inc.      |
|                                | ) |                                                        |
|                                | ) | <b>HEARD:</b> 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**

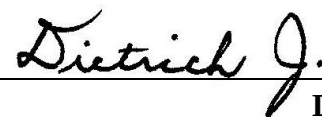
[120] A Judgment shall issue declaring:

- (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

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**REASONS FOR JUDGMENT**

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**Dietrich J.**

**Released:** May 26, 2021



# TAB 3

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

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

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*

**SECOND REPORT OF THE RECEIVER**

**February 12, 2021**



200 King Street West  
11<sup>th</sup> Floor  
Toronto, Ontario, M5H 3T4

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## INTRODUCTION

1. Grant Thornton Limited (“**GTL**”) was appointed as Interim Receiver (the “**Interim Receiver**”) of Trigger Wholesale, Inc. (“**Trigger**”) and The En Cadre Group Inc. (“**En Cadre**”) (collectively, the “**Debtors**”) by order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated October 13, 2020 (the “**Interim Receivership Order**”). Copies of the Interim Receivership Order and the Endorsement of the Honourable Madam Justice Gilmore are attached hereto as **Appendix “1”**.
2. Background information pertaining to the Debtors, including the circumstances leading to the appointment of the Interim Receiver, are contained in the affidavits of Martin Rees, Sandy Kanishis and Glenn Peterson, each sworn October 9, 2020 (the “**Clearflow Affidavits**”) in support of Clearflow Commercial Finance Corp.’s (“**Clearflow**”) application for the appointment of the Interim Receiver. A copy of the Clearflow Affidavits without appendices are attached hereto as **Appendix “2”**. Clearflow is the primary secured creditor of the Debtors.
3. The Interim Receiver filed its first report to Court dated October 21, 2020 (the “**Interim Receiver’s Report**”) in support of Clearflow’s application to convert the Interim Receivership Order, to a national receiver, pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”). A copy of the Interim Receiver’s Report is attached hereto as **Appendix “3”** without appendices.
4. Pursuant to an order of the Honourable Mr. Justice McEwen dated October 22, 2020, GTL was appointed as the Receiver (the “**Receiver**”) over the assets, undertakings and properties of the Debtors, as well as certain real property owned by each of Jaimak Real Properties Inc. (“**Jaimak**”) or Jaimee Lynn Gdak (“**J. Gdak**”), pursuant to subsection 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**Receivership Order**”). A copy of the Receivership Order is attached hereto as **Appendix “4”**.
5. The Receiver filed its first report to Court dated November 20, 2020 (the “**First Report**”) which, amongst other things, requested an order authorizing and directing the Receiver to complete the sale of 43 Baker Road, Port Elgin, Ontario.

A copy of the Receiver's First Report is attached hereto as **Appendix "5"** without appendices.

6. On December 1, 2020, the Court issued an order providing, amongst other things, the relief requested by the Receiver in the First Report (the "**Baker Road Approval and Vesting Order**"). A copy of the Baker Road Approval and Vesting Order along with the Endorsement of Justice Dietrich is attached hereto as **Appendix "6"**.
7. In accordance with the Court's e-service protocol all materials filed with the Court in this matter are available on the Receiver's case website at [www.GrantThornton.ca/TWI](http://www.GrantThornton.ca/TWI) .

#### **DISCLAIMER**

8. In preparing this report, the Receiver has reviewed certain unaudited financial information and certain financial information related to the Debtors. While the Receiver has performed a preliminary review of available books and records of the Debtors, such review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Auditing Standards ("**GAAS**") or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Receiver expresses no opinion or other form of assurance pursuant to GAAS or IFRS with respect to such information.
9. This report has been prepared for the use of this Court as general information to assist the Court in making a determination of whether to approve the relief sought by the Receiver. Accordingly, the reader is cautioned that this report may not be appropriate for any other purpose.
10. All references to dollar amounts in this report are in Canadian currency, unless otherwise noted.

#### **PURPOSE OF THE SECOND REPORT**

11. The purpose of this second report of the Receiver to Court (the "**Second Report**") is to advise the Court on the Receiver's activities since its appointment

and to provide information to the Court pertaining to the Receiver's request for Orders:

- a) approving the Second Report and the activities of the Receiver described therein;
- b) approving the Inventory Transaction (as defined herein) in connection with the sale of the Inventory and authorizing and directing the Receiver to complete the Inventory Transaction (as defined herein);
- c) vesting in the Inventory Purchaser (as defined herein), all of the Debtors' right, title and interest in and to the Inventory free and clear of all encumbrances;
- d) approving the Sea Ray Transaction (as defined herein) and authorizing and directing the Receiver to complete the Sea Ray Transaction (as defined herein);
- e) vesting in the Sea Ray Purchaser (as defined herein), all of the Debtors', Mark Gdak's or Jaimee Gdak's right, title and interest in and to the Sea Ray (as defined herein) free and clear of all encumbrances;
- f) declaring the Personal Property Assets (as defined herein) to be property of Trigger free and clear of any interests or claims of the other Respondents, and declaring the Personal Property Assets to be included as Property (as defined in the Receivership Order);
- g) directing the Respondents, as applicable, to execute and deliver such documentation as is necessary or desirable to evidence the fact that Trigger is the sole legal and beneficial owner of the Personal Property Assets;
- h) requiring any of the Respondents who may be in possession of the Personal Property Assets to deliver up the Personal Property Assets to the Receiver;
- i) declaring that the use of the Trigger funds to purchase the Personal Property Assets is a transfer at undervalue within the meaning of the BIA is void as against the Receiver;
- j) in the event that the Personal Property Assets have been disposed of, ordering the Respondents, as applicable, to pay to the Receiver the difference between the value of the consideration received by Trigger and the value of the consideration given by Trigger in the use of the Trigger funds to purchase the Personal Property Assets;



- k) declaring that the Respondents, as applicable, hold the Personal Property Assets as constructive trustee for the benefit of the creditors of Trigger;
- l) declaring the following real property to be property of Trigger free and clear of any interests or claims of the other Respondents;
  - a. 52 Baker Road, Waterloo, Ontario (“**Baker Road**”);
  - b. 652 Colby Drive, Waterloo, Ontario (“**Colby Drive**”);
  - c. 265 Old Post Road, Waterloo, Ontario (the “**Old Post Road**”); and
  - d. 157 Saugeen Beach Rd., Port Elgin, Ontario (the “**Saugeen Beach Road**”)

(Baker Road, Colby Drive, Old Post Road and Saugeen Beach Road are hereinafter referred to as the “**Trigger Real Property**”);
- m) directing the Respondents, as applicable, to execute and deliver such documentation as is necessary or desirable to evidence the fact that Trigger is the sole legal and beneficial owner of the Trigger Real Property;
- n) declaring that the use of the Trigger funds to purchase the Trigger Real Property is a transfer at undervalue within the meaning of the BIA and is void as against the Receiver;
- o) declaring that the Respondents, as applicable, hold the Trigger Real Property as constructive trustee for the benefit of the creditors of Trigger;
- p) authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable to market for sale the Trigger Real Property;
- q) authorizing and directing the Receiver to conduct the marketing and sale of the Trigger Real Property free and clear of any prior agreements to purchase any of the Trigger Real Property or any prior license or rental agreements in respect of the Trigger Real Property;
- r) authorizing and directing the Receiver to conduct the marketing and sale of Lions Court free and clear of any prior agreements to purchase Lions Court or any prior license or rental agreements in respect of the Lions Court;
- s) authorizing and directing the Receiver to conduct the marketing and sale of the Personal Property Assets in accordance with the provisions of the Receivership Order;
- t) approving the Receiver’s Statement of Receipts and Disbursements as at February 11, 2021 (the “**SRD**”);

- u) approving the fees and disbursements of the Receiver for the period from November 1, 2020 to January 31, 2021, as set out in the affidavit of Jacob Wiebe, sworn February 12, 2021;
- v) approving the fees and disbursements of Borden Ladner Gervais LLP (“**BLG**”), legal counsel to the Receiver, for the period from November 1, 2020 to January 31, 2021, as set out in the Affidavit of Christine Mason, sworn February 4, 2021; and
- w) sealing the Confidential Appendices to the Second Report until further Order of the Court.

## BACKGROUND

12. The Debtors are incorporated in Ontario and were in the business of importing and distributing firearms, particularly shotguns, and associated ammunition to customers throughout Canada. The Debtors’ customers allegedly included Canadian Tire and Home Hardware, as well as many small gun shops, outdoor stores, the military and police forces. The registered address for the Debtors is 588 Colby Drive, Suite #1, Waterloo, Ontario (the “**Premises**”). The directors of Trigger are Mark Gdak (“**Mr. Gdak**”), Jaimee Lynn Gdak (“**Mrs. Gdak**”) and Brian Richard Kelly (“**Brian Kelly**”). Brian Kelly also acted as the Debtors’ legal counsel. Brian Kelly resigned as director of the Trigger shortly after the Interim Receiver was appointed.
13. Clearflow provided accounts receivable (“**AR**”) factoring services to Trigger. Trigger provided Clearflow with a listing of AR that qualified for factoring and Clearflow would transfer funding to a bank account at Bank of Montreal (“**BMO**”) (the “**Clearflow Funding Account**”). Trigger would then transfer the funding to its operating account at BMO (the “**Trigger Operating Account**”). When customers paid their account, the amount was deposited to a blocked account from which Clearflow would sweep funds in repayment of its advances to Trigger (the “**Trigger Blocked Account**”). Trigger would provide Clearflow with a list of receivables that were collected such that Clearflow could maintain a record of outstanding AR that remained eligible for factoring.

**Fictitious Accounts Receivable**

14. As noted above, Clearflow factored Trigger's AR and advises the Receiver that it had factored Trigger AR totalling \$64,074,258 (the "**Factored AR**"), as at the date the Interim Receiver was appointed.
15. Mr. Gdak provided the Interim Receiver with an alternative AR listing totalling \$1,411,812 of which \$467,738 represents inventory held at customers on consignment. The actual amount owing from customers according to Mr. Gdak is therefore \$944,073. This AR was not included in the Factored AR. Mr. Gdak advised that all the Factored AR was fictitious, as the inventory detailed on these invoices had never been shipped to customers.
16. Trigger reported significant sales to Canadian Tire and Home Hardware. When Clearflow requested to Mr. Gdak that it be permitted to communicate directly with these customers to verify sales and outstanding AR, Mr. Gdak created fictitious email accounts for Canadian Tire and Home Hardware employees as follows:
  - matt.mcguire@cdntops.com;
  - c.shulist@hhdist.ca; and
  - r.egan@hhdist.ca.
17. The Interim Receiver located two laptop computers in Mr. Gdak and Mrs. Gdak's shared office that were logged into the email accounts for r.egan@hhdist.ca and matt.mcguire@cdntops.com. It would appear that Mr. Gdak and/or Mrs. Gdak were using these computers and email accounts to impersonate Canadian Tire and Home Hardware employees in order to respond to Clearflow inquiries and avoid detection of the fictitious activity.
18. In order to demonstrate that the fictitious AR was being collected, Trigger would write cheques from the Trigger Operating account in the amounts of fictitious AR invoices and would deposit those cheques into the Trigger Blocked Account.
19. In August 2020 Clearflow required that Trigger provide copies of customer cheques that were being deposited to the Blocked Account. Trigger thereafter printed fictitious blank cheque stock for Bank of Nova Scotia, Royal Bank of Canada and Canadian Imperial Bank of Commerce, on which fictitious customer payment details were printed. Copies of these cheques were then provided to Clearflow to correspond with the cheques drawn on the Trigger Operating Account that were being deposited to the Trigger Blocked Account.

### **Chief Firearms Office**

20. In the Interim Receiver's Report the Interim Receiver advised that its discussions with the Chief Firearms Office ("**CFO**") revealed that Trigger had altered a letter from the CFO in respect of its inventory audit in December 2019 and that Trigger had created an entirely fictitious letter from the CFO in respect of a 2020 audit that never occurred.

### **Trigger Operations Summary**

21. Mr. Gdak created an elaborate system to mislead Clearflow into believing that the Trigger business was much larger than it actually was in order to obtain financing far in excess of what would have been available based on Trigger's actual sales.

## **ACTIVIES OF THE RECEIVER**

### **The BMO Overdraft**

22. Trigger's banking facilities were with BMO. Beginning on July 31, 2020 Trigger began running an overdraft in the Trigger Operating Account such that by August 19, 2020 the overdraft had reached \$3,500,260.53 (the "**Overdraft**").
23. BMO does not have security over the assets, properties and undertaking of Trigger, nor does it have a registration against Trigger under the *Personal Property Security Act* (the "**PPSA**"). A copy of the Enquiry Response Certificate with a file currency of November 2, 2020, with respect to registrations made against Trigger under the PPSA is attached hereto as **Appendix "7"**.
24. In light of the foregoing, the Receiver made an enquiry with BMO as to the nature of any security held which would support an overdraft of this magnitude. BMO advised that it held no security and that the Overdraft was unauthorized. BMO further advised that it had requested that the Overdraft be repaid immediately, but did not take action against Trigger since Mr. Gdak provided copies of email correspondence between Trigger and Clearflow indicating that funding was imminently being provided by Clearflow. BMO provided this correspondence to the Receiver.
25. The Receiver reviewed this correspondence with Clearflow, who advised that the email communications were from email accounts that were similar to actual

Clearflow accounts, but were in fact fictitious. The email correspondence was from [SandyK@clearflowfinanceinc.com](mailto:SandyK@clearflowfinanceinc.com). The real email address of the Clearflow employee being impersonated is [SandyK@clearflowfinance.com](mailto:SandyK@clearflowfinance.com). Additionally, the contact phone number provided to BMO was 647-284-2622. Clearflow has advised that this phone number is incorrect. The Receiver called this number and it is no longer in service. Copies of this email correspondence is attached hereto as **Appendix “8”**.

26. It appears that the fictitious email accounts were created to convince BMO that Clearflow was providing funding to clear the Overdraft. The correspondence provided to BMO seems to have provided comfort to BMO that the overdraft was a result of a funding delay from Clearflow.
27. Trigger advised Clearflow that this funding was needed to complete the prepayment of inventory. Clearflow advises that it was unaware that Trigger was in overdraft with BMO.
28. Clearflow provided funding in the amount of \$4,068,155 on August 20, 2020, which funds were deployed to clear the Overdraft with BMO. By August 24, 2020, Trigger was again in overdraft with BMO by \$3,319,383.93 (the “**Second Overdraft**”), after which Clearflow provided additional funding of \$4,000,000 between August 24 and 25, 2020, which funds were deployed to clear the Second Overdraft with BMO.

## THE PERSONAL PROPERTY ASSETS

29. Since being appointed, the Receiver has undertaken a review of Trigger’s bank accounts, having regard to the allegations set out in the Clearflow Affidavits. The Receiver’s review of various transactions from Trigger’s bank account has uncovered payments to purchase numerous personal property assets. The Receiver was able to contact the various sellers of each of these assets and has learned that each asset was sold to and/or registered in the name of Mr. Gdak or Mrs. Gdak. The following is a listing of these assets:
  - a) 2018 Sea Ray SLX400 (the “**Sea Ray**”);
  - b) 2018 Scarab 255 Impulse boat with 2018 Karavan 255 trailer (the “**Scarab**”);
  - c) Two 2018 Can Am Outlander 850 XMR all terrain vehicles (the “**ATVs**”);

- d) Two 2018 Sea Doo GTI SE155 personal watercraft with 2018 Sea Doo Move II trailer (the “**Sea Doos**”);
- e) 2019 CTC 7X9 Black and Red Trailer (the “**Trailer**”);
- f) 2017 Land Rover Range Rover Sport (the “**Range Rover**”); and
- g) Rolex Diamond Dial Watch, Rolex Datejust Diamond Watch, Breitling Watch, Omega Watch, and a ladies 18 Karat Paladium Diamond Necklace (collectively, the “**Jewelry**”);

(all collectively herein referred to as the “**Personal Property Assets**”).

30. The Receiver conducted an examination of Mrs. Gdak on November 16, 2020, in accordance with paragraph 8 of the Receivership Order, at which time counsel for the Receiver questioned Mrs. Gdak about, *inter alia*, the purchase of certain of the Personal Property Assets (the “**Examination**”). A copy of the transcript of the Examination (the “**Examination Transcript**”) is attached hereto at **Appendix “9”**. A number of undertakings were provided at the Examination. On February 5, 2021, Benjamin Blay, a partner with Cohen Highley LLP, counsel to Mrs. Gdak, sent an email to Borden Ladner Gervais LLP (“**BLG**”), counsel to the Receiver, attaching a letter and various documents, providing various answers to the undertakings. A copy of Mr. Blay’s correspondence of February 5, 2021, together with the documents provided, is attached hereto as **Appendix “10”**.

### **The Sea Ray**

31. On or about November 10, 2020 the Receiver learned that Mr. Gdak or Mrs. Gdak owned the Sea Ray, which was stored at Pride Marine Group Limited (“**Pride Marine**”) in Orillia, Ontario and that Mr. Gdak may have been attempting to sell the Sea Ray. The Receiver therefore contacted Pride Marine and advised them of the Mareva provisions included in both the Interim Receivership Order and the Receivership Order and advised that the Sea Ray was not to be sold without Court authorization.
32. Pride Marine confirmed that they were in possession of the Sea Ray, that there were interested purchasers, and that Mr. Gdak was in the process of negotiating the sale of the Sea Ray. Pride Marine however advised that they would not complete a sale without the Receiver’s authorization.

33. On January 8, 2021, Pride Marine contacted the Receiver and advised that Mr. Gdak had advised that his legal issues were about to be resolved and that he wished to complete the sale of the Sea Ray. The Receiver advised that this was not accurate and that the Sea Ray could still not be sold.
34. During the Examination, Mrs. Gdak advised that the Sea Ray was registered in her name (question 237 of the Examination Transcript) and had been purchased using funds from her and Mr. Gdak's personal bank account and investments (see questions 236 and 247 of the Examination Transcript).
35. The Receiver asked Pride Marine to provide a copy of the original bill of sale for when the Sea Ray was purchased (the "**Sea Ray Marine Purchase Contract**") which confirms that, contrary to the statement made by Mrs. Gdak during the Examination, the purchaser was Mr. Gdak. The Sea Ray Marine Purchase Contract was also provided by Mr. Blay, as an attachment to his correspondence to BLG of February 5, 2021, as noted above. Pride Marine also provided the Sea Ray registration showing the Sea Ray is registered to Mr. Gdak (the "**Sea Ray Registration**"). The payment schedule provided by Pride Marine (the "**Sea Ray Payment Schedule**") details that the purchase price of \$797,094.75 was paid as follows:
  - a) January 26, 2019 - \$5,000.00 (AMEX);
  - b) March 26, 2019 – 250,000.00 (transfer);
  - c) March 28, 2019 – 250,000.00 (transfer); and
  - d) March 29, 2019 – 292,094.75 (transfer).
36. The Receiver reviewed the Trigger Operating Account details and noted that transfers were made in these exact amounts on March 26, 28 and 29, 2019 to a bank account which Pride Marine has confirmed is their account number.
37. Just prior to each payment to Pride Marine, there is a transfer from the Clearflow Funding Account. The Receiver has reviewed the Clearflow Funding Account details and notes that funds were advanced from Clearflow just prior to the transfers being made from the Clearflow Funding Account to the Trigger Operating Account.
38. The flow of funds was therefore as follows:
  - a) Clearflow to Clearflow Funding Account;
  - b) Clearflow Funding Account to Trigger Operating Account; and
  - c) Trigger Operating Account to Pride Marine.

39. Copies of the Sea Ray Marine Purchase Contract, the Sea Ray Registration, the Sea Ray Payment Schedule, the Trigger Operating Account details and the Clearflow Funding Account details are attached hereto together as **Appendix “11”**.
40. While Mrs. Gdak advised during the Examination that the Sea Ray was purchased with funds from Mr. Gdak and Mrs. Gdak’s personal bank account or investments, it is clear that payment for the Sea Ray came from Trigger’s bank account, using funds obtained from Clearflow.

#### Sale of the Sea Ray

41. On February 8, 2021, Mr. Justice Hainey issued a consent Endorsement (the **“Sea Ray Endorsement”**) authorizing the Receiver to market the Sea Ray for sale and enter into any agreements for a sale of the Sea Ray, but that any sale of the Sea Ray would be subject to Court approval. A copy of the Sea Ray Endorsement is attached hereto as **Appendix “12”**.
42. Pride Marine advises that Mr. Gdak signed a listing agreement for the Sea Ray on October 23, 2020 (the **“Sea Ray Listing Agreement”**). Pride Marine also advises that it has been approached by four different purchasers for the Sea Ray and has identified Scott R. Boldt as the purchaser with the highest offer (the **“Sea Ray Purchaser”**).
43. In accordance with the Sea Ray Endorsement, the Receiver has negotiated a proposed transaction and a form of agreement of purchase and sale with the Sea Ray Purchaser, for a price that appears reasonable to both Pride Marine and the Receiver (the **“Sea Ray APS”**). The Sea Ray APS is subject to Court approval. A copy of the Sea Ray APS, along with a schedule detailing the original purchase price, the listing price and all offers received by Pride Marine are provided in **Confidential Appendix “1”**. A copy of the Sea Ray APS which has been redacted to remove certain sensitive information is attached as **Appendix “13”**.
44. If the Court authorizes the Receiver to complete the sale of the Sea Ray, the Receiver proposes to complete the sale to the Sea Ray Purchaser in accordance with the Sea Ray APS (the **“Sea Ray Transaction”**).
45. Pride Marine has exposed the Sea Ray to the market and the proposed purchase price is reasonable given the original purchase price of the Sea Ray and the other offers obtained by Pride Marine.



46. Given the foregoing, the Receiver respectfully requests that this Court issue an order authorizing and directing the Receiver to complete the Sea Ray Transaction and vesting the Debtors', Mrs. Gdak's and Mr. Gdak's right, title and interest in and to the Sea Ray in the Sea Ray Purchaser, free and clear of all claims and encumbrances.
47. Upon completion of the sale, the Receiver intends to pay to Pride Marine the 10% selling commission, as specified in the Sea Ray Listing Agreement.

### **The Scarab**

48. The Receiver became aware of the Scarab which is located in the garage of the property located at Saugeen Beach Road (as defined below).
49. In the Examination, Mrs. Gdak advised that the Scarab had been purchased from Team Vincent in 2017 and that the Scarab may be registered in her name. She also advised that the Scarab was purchased using funds from her and Mr. Gdak's personal bank account (see questions 256 to 262 of the Examination Transcript).
50. The Receiver located a bank draft payable to Team Vincent in the amount of \$95,264.00 dated August 2, 2018 (the "**Scarab Bank Draft**") paid from the Trigger Operating Account.
51. Immediately prior to this payment, \$300,000 was transferred from the Clearflow Funding Account to the Trigger Operating Account, and immediately prior to this transfer, Clearflow transferred \$276,262.14 to the Clearflow Funding Account.
52. The Receiver contacted Team Vincent and obtained a copy of the invoice for the Scarab, which is dated July 31, 2018 and shows Mr. Gdak as the purchaser (the "**Scarab Invoice**").
53. Copies of the Scarab Invoice, the Scarab Bank Draft, along with the transfer details from the Trigger Operating Account and the Clearflow Funding Account are attached hereto as **Appendix "14"**.
54. While Mrs. Gdak advised during the Examination that the Scarab was purchased with funds from Mr. Gdak and Mrs. Gdak's personal bank account, it is clear that payment for the Scarab came from Trigger's bank account using funds obtained from Clearflow.

### **The ATVs**

55. The Receiver became aware of the ATVs which were located in the garage of Saugeen Beach Road.
56. The Receiver located a cheque payable to Team Vincent in the amount of \$32,336.07 dated October 26, 2018 (the “**ATVs Cheque**”) which cleared Trigger’s Operating Account on October 30, 2018.
57. Immediately prior to this payment, Clearflow transferred \$161,063.87 to the Clearflow Funding Account, from which \$175,396.25 was transferred to the Trigger Operating Account. Without this funding from Clearflow, there would have been insufficient funds in the Trigger Operating Account for the ATV Cheque to clear.
58. The Receiver contacted Team Vincent and obtained a copy of the invoice for the ATVs which is dated October 22, 2018 and shows Mr. Gdak as the purchaser (the “**ATVs Invoice**”).
59. Copies of the ATVs Invoice, ATVs Cheque along with the transfer details from the Trigger Operating Account and the Clearflow Funding Account are attached hereto as **Appendix “15”**.
60. It is clear that payment for the ATVs came from Trigger’s bank account using funds obtained from Clearflow.

### **The Sea Doos**

61. During the Receiver’s discussions with Team Vincent, the Receiver became aware that Mr. Gdak had also purchased the Sea Doos. The Receiver does not know the current location of the Sea Doos. Team Vincent provided the Receiver with a copy of the invoice for the Sea Doos, which is dated May 2, 2018 in the amount of \$34,897.77 and shows Mr. Gdak as the purchaser (the “**Sea Doos Invoice**”).
62. During the Examination, Mrs. Gdak advised that other than the Sea Ray, the Scarab, the Range Rover and the ATVs, she and Mr. Gdak did not own any other vehicles (see paragraphs 280 and 281 of the Examination Transcript).
63. The Receiver reviewed Trigger’s bank account transactions and located a bank draft payable to Team Vincent in the amount of \$33,897.77 dated May 16, 2018 (the “**Sea Doos Bank Draft**”) paid directly from the Clearflow Funding Account.

The amount of the Sea Doo Bank Draft is \$1,000.00 less than the amount of the Sea Doo Invoices, which likely represents a deposit.

64. Copies of the Sea Doos Invoice, Sea Doos Bank Draft along with the bank account details for the Clearflow Funding Account are attached hereto as **Appendix “16”**.
65. It is clear that payment for the Sea Doos came from Trigger’s bank account using funds obtained from Clearflow.

### **The Trailer**

66. Upon taking possession of the Premises, the Receiver noticed the Trailer in the parking lot. The Receiver asked Mr. Gdak if the Trailer was an asset of Trigger, to which Mr. Gdak replied that it was. The Receiver therefore took possession of the Trailer and made arrangements for its sale through a liquidator.
67. The liquidator subsequently learned that the Trailer was in fact registered to Mr. Gdak. Therefore, the Receiver made arrangements for Mr. Gdak to retrieve the Trailer.
68. The Receiver’s subsequent review of Trigger’s bank account transactions located two transfers to Troy’s Toys in the amounts of \$2,500.00 and \$9,413.59 on December 17, 2018 and January 28, 2019, respectively, from the Clearflow Funding Account totalling \$11,913.59 (the **“Trailer Payments”**).
69. The Receiver obtained a Used Vehicle Information Package from Service Ontario which states that the Trailer was registered to Mr. Gdak on January 25, 2019 (the **“UVIP”**).
70. The Receiver conducted an internet search on Troy’s Toys and located the website for this trailer dealer. The accounting department at Troy’s Toys provided the Receiver with a copy of the invoice for the Trailer dated January 26, 2019 in the amount of \$11,913.59 (the **“Trailer Invoice”**) and confirmed that payment was received as detailed above.
71. Copies of the Trailer Invoice, the UVIP and the Trailer Payments are attached hereto as **Appendix “17”**.
72. It is clear that payment for the Trailer came from Trigger’s bank account using funds obtained from Clearflow.

### **The Range Rover**

73. The Receiver was aware that Mrs. Gdak drives the Range Rover.
74. During the Receiver's review of Trigger's bank account transactions, the Receiver located a bank draft payable to Landrover Waterloo in the amount of \$127,000.00 dated November 22, 2017 (the "**Range Rover Bank Draft**") paid directly from the Clearflow Funding Account.
75. The Receiver contacted Landrover Waterloo and obtained a copy of the invoice for the Range Rover which is dated November 21, 2017 and is in the amount of \$127,000.00 and shows Trigger as the purchaser (the "**Range Rover Invoice**").
76. The Receiver conducted a registration search with the Ontario Ministry of Transportation, which revealed that despite the Range Rover being purchased by Trigger and paid for by Trigger, the Range Rover is registered to Mrs. Gdak (the "**Range Rover Registration**").
77. Copies of the Range Rover Bank Draft, the Range Rover Invoice along with the bank account details for the Clearflow Funding Account are attached hereto as **Appendix "18"**.
78. It is clear that payment for the Range Rover came from Trigger's bank account using funds obtained from Clearflow.

### **The Jewelry**

79. During the Receiver's review of Trigger's bank account transactions the Receiver located the following bank drafts payable to Raffi Jewelers:
  - a) \$54,240.00 dated December 27, 2017;
  - b) \$32,770.00 dated January 1, 2018;
  - c) \$7,684.00 dated January 9, 2018;
  - d) \$18,645.00 dated February 2, 2018; and
  - e) \$25,850.00 dated November 1, 2018(collectively, the "**Jewelry Bank Drafts**"). The Jewelry Bank Drafts identified in items a) through d) above were all drawn on the Clearflow Funding Account. The bank draft identified in item e) above was drawn on the Trigger Operating Account.
80. The Receiver contacted Raffi Jewelers and obtained copies of the invoices (the "**Jewelry Invoices**") for the Jewelry related to each of the Jewelry Bank Drafts.

Each of the Jewelry Invoices disclose Mr. Gdak and Mrs. Gdak as the purchasers.

81. The significant items detailed on each of the Jewelry Invoices, respectively, are described as:
  - a) Rolex Watch Diamond Dial Watch - \$54,240.00;
  - b) Breitling Watch - \$32,770.00;
  - c) Omega Watch - \$7,684.00;
  - d) Ladies 18 Karat Paladium Diamond Necklace - \$18,645.00; and
  - e) Rolex Datejust Diamount Dial Watch - \$25,850.00.
82. The Receiver has asked counsel for Mr. and Mrs. Gdak to confirm that Mr. and Mrs. Gdak remain in possession of the Jewelry and are aware the Jewelry may not be sold due to the Mareva provisions in the Receivership Order. Counsel has replied acknowledging the Mareva provisions but has not confirmed that Mr. and Mrs. Gdak remain in possession of the jewelry. A copy of the BLG email dated January 31, 2021 and the response from counsel to Mr. Gdak on February 1, 2021 is attached hereto as **Appendix "19"**.
83. Copies of the Jewelry Bank Drafts, the Jewelry Invoices along with the bank account details for the Clearflow Funding Account are attached hereto as **Appendix "20"**.
84. It is clear that payment for the Jewelry came from Trigger's bank account using funds obtained from Clearflow.

#### **Personal Property Assets Conclusion**

85. The Receiver's investigation into the purchase of the Personal Property Assets revealed that while the registered owner of the Personal Property Assets is either Mr. Gdak or Mrs. Gdak, all of the funds used to purchase the Personal Property Assets came from the Trigger bank accounts using funds advanced by Clearflow.
86. The Receiver requests that the Court declare that the Personal Property Assets are property of Trigger free and clear of any interests or claims of the other Respondents; are Transfers at Undervalue in accordance with the BIA and void as against the Receiver; or alternatively, are held by Mr. Gdak and Mrs. Gdak, as applicable, in a constructive trust for the sole benefit of Trigger.

87. The Receiver requests that the Court authorize the Receiver to sell the Personal Property Assets (subject to the provisions of the Appointment Order), free of any claims by Mr. Gdak and Mrs. Gdak and declare that the proceeds from the sale of the Personal Property Assets are the property of Trigger.

## THE REAL PROPERTY ASSETS

88. The Receivership Order appointed GTL as Receiver over the Property, as defined in the Receivership Order. Property was defined to include the following real property, owned by Mrs. Gdak or Jaimak, as noted on Schedule A to the Receivership Order:
- a) 250 Lions Court, Waterloo, Ontario (“**Lions Court**”);
  - b) Baker Road, located at 52 Baker Road, Waterloo, Ontario;
  - c) Colby Drive, located at 652 Colby Drive, Waterloo, Ontario;
  - d) Old Post Road, located at 265 Old Post Road, Waterloo, Ontario; and
  - e) Saugeen Beach Road, located at 157 Saugeen Beach Rd., Port Elgin, Ontario
- (collectively, referred to as the “**Real Property Assets**”).
89. The Receivership Order also authorized the Receiver to sell the Property (as defined in the Receivership Order), subject to certain sale limits, as provided for in the Receivership Order.

### **Baker Road**

90. Baker Road was registered in the name of Mrs. Gdak and was subject to a sale agreement when the Receiver was appointed, as detailed in the First Report.
91. The Receiver completed the sale of Baker Road, as directed by the Baker Road Approval and Vesting Order. The sale was completed on December 14, 2020, with adjusted sale proceeds of \$580,141.18 being paid to the Receiver. A copy of the Statement of Adjustments is attached hereto as **Appendix “21”**.
92. During the Examination, Mrs. Gdak stated that she assumes that the funds used to purchase Baker Road came from her and Mr. Gdak’s investments.
93. The Receiver’s review of Trigger’s banking records revealed that Clearflow advanced \$508,020.89 to the Clearflow Funding Account on October 31, 2019. On November 1, 2019 Trigger transferred \$700,000 from the Clearflow Funding

Account to the Trigger Operating Account, from which it issued a bank draft payable to Kelly & Co. dated November 1, 2019 in the amount of \$448,750.00 (the “**Baker Road Bank Draft**”). Without the transfer from the Clearflow Funding Account there would not have been sufficient funds in the Trigger Operating Account to draw the Baker Road Bank Draft.

94. Brian Kelly of Kelly & Co (“**Kelly & Co.**”) appears to have acted for Mrs. Gdak and registered the transfer. The Receiver requested that Kelly & Co. provide its trust ledger (the “**Baker Road Trust Ledger**”) showing the receipt and disposition of the funds received from Trigger. Kelly & Co. has provided a copy of the Baker Road Trust Ledger showing that the funds advanced by Trigger were used to complete the purchase of Baker Road.
95. Copies of the Baker Road Bank Draft, the Baker Road Trust Ledger as well as the Clearflow Funding Account and the Trigger Operating Account statements showing the flow of funds are attached hereto as **Appendix “22”**.
96. Contrary to Mrs. Gdak’s assumption that the funds used to purchase Baker Road came from her and Mr. Gdak’s investments, it is clear that Trigger funds were used to purchase Baker Road, using funding obtained from Clearflow.

### **Lions Court**

97. Lions Court is the matrimonial home of Mr. Gdak and Mrs. Gdak. The Receiver obtained a copy of the Parcel Register from the Ontario Land Registry Office (the “**Parcel Register**”) on February 10, 2021, which confirms that Mr. Gdak and Mrs. Gdak acquired Lions Court on December 16, 2005. A copy of the Parcel Register is attached hereto as **Appendix “23”**.
98. The Parcel Register discloses that Lions Court was the subject of a transfer from Mr. Gdak to Mrs. Gdak on July 2, 2019, for natural love and affection. A copy of the Transfer dated July 2, 2019 is attached hereto as **Appendix “24”**.
99. The Receiver’s review of Trigger’s banking records revealed that Clearflow advanced \$578,369.25 to the Clearflow Funding Account on March 21, 2018. On the same day Trigger obtained a bank draft payable to Kelly & Co. in the amount of \$136,320.00 (the “**Lions Court Bank Draft**”). Without funding from Clearflow, there would not have been sufficient funds the Clearflow Funding Account to draw the Lions Court Bank Draft.

100. The Receiver requested that Kelly & Co. provide its trust ledger (the “**Lions Court Trust Ledger**”) showing the receipt and disposition of the funds received from Trigger. Kelly & Co. has provided a copy of the Lions Court Trust Ledger showing that the funds advanced by Trigger were used to repay a mortgage on Lions Court held by Pedro Cuesta (the “**Cuesta Mortgage**”). Kelly & Co. provided the Receiver with a copy of the mortgage discharge statement in respect of the Cuesta Mortgage (the “**Cuesta Mortgage Discharge Statement**”).
101. Copies of the Lions Court Bank Draft, the Cuesta Mortgage Discharge Statement as well as the Clearflow Funding Account statement showing the flow of funds are attached hereto as **Appendix “25”**. The Receiver continues to investigate this matter and the activities preceding the Receiver’s appointment with respect to Lions Court.

#### Sale of Lions Court

102. The Receiver obtained an appraisal on Lions Court from a local realtor (the “**Lions Court Appraisal**”), as well as an email from BMO advising of the current mortgage balance (the “**Lions Court Mortgage Statement**”). There appears to be significant equity in Lions Court. A calculation of the equity, along with the Lions Court Appraisal and Lions Court Mortgage Statement, are attached hereto in **Confidential Appendix “2”**.
103. The Receiver was previously advised that Clearflow, Mr. Gdak and Mrs. Gdak are in settlement discussions. As a result, an agreement was reached whereby the following was agreed to, to facilitate the settlement discussions:
- “Counsel for ClearFlow, each of the Respondents in these proceedings and the Receiver agree that no steps will be taken in connection with the marketing or sale of the matrimonial home at 250 Lions Court, Waterloo, Ontario until the earlier of the discontinuation of settlement discussions or March 17, 2021.”
- (the “**Lions Court Agreement**”).
104. The Receiver has not been advised that settlement discussions have been discontinued, therefore the Receiver has not taken any steps in connection with the marketing and sale of Lions Court.
105. The Receivership Order authorizes the Receiver to market the Property for sale, which includes Lions Court. The Receiver therefore requests that the Court



authorize the Receiver to list Lions Court for sale, subsequent to March 17, 2021, in accordance with Lions Court Agreement.

106. The Receiver has received notice of a lien registration against Lions Court. The Receiver continues to investigate the validity of this lien and will report thereon in a subsequent report to the Court.

**Colby Drive**

107. The Receiver obtained a copy of the Transfer for Colby Drive from the Ontario Land Registry Office, which confirms that Colby Drive was transferred to Jaimak on June 30, 2020 and that the reported transaction price was \$2,695,000 (the “**Colby Drive Transfer**”).
108. The Receiver obtained a Corporate Profile Report for Jaimak, which discloses that Mrs. Gdak is the sole officer and director of Jaimak (the “**Jaimak Corporate Profile**”). A copy of the Jaimak Corporate Profile is attached hereto as **Appendix “26”**.
109. During the Examination, Mrs. Gdak stated that she believes that Jaimak obtained a loan from Trigger to purchase Colby Drive (the “**Jaimak Loan**”), however Mr. Gdak was responsible for all the paperwork related to the purchase. Mrs. Gdak undertook to make best efforts to obtain the documentation related to the Jaimak Loan (see questions 160 to 164 of the Examination Transcript).
110. As noted above, on February 5, 2021, counsel for Mrs. Gdak provided the Receiver with responses to the undertakings (see Appendix “10”) from the Examination, which included:
- a) an undated loan agreement between Trigger and Jaimak for \$3,000,000; and
  - b) a lease agreement between Trigger and Jaimak effective July 2, 2020.
111. The Receiver has reviewed Trigger’s electronic accounting records and has found no evidence of the Jaimak Loan.
112. The Receiver’s investigation into the purchase of Colby Drive revealed that Clearflow advanced \$5,850,000 to the Clearflow Funding Account on June 30, 2020. On the same day, Trigger transferred \$5,750,000 from the Clearflow Funding Account to the Trigger Operating Account from which it issued a bank draft payable to Kelly & Co. dated June 30, 2020 in the amount of \$2,620,000

(the “**Colby Drive Bank Draft**”). Without the advance from Clearflow, there would have been insufficient funds in Trigger’s bank accounts to fund the purchase of Colby Drive.

113. Brian Kelly of Kelly & Co appears to have acted for Jaimak and registered the transfer. As noted above, the Receiver requested that Kelly & Co. provide its trust ledger (the “**Colby Drive Trust Ledger**”) showing the receipt and disposition of the funds received from Trigger. Kelly & Co. has provided a copy of the Colby Drive Trust Ledger showing that the funds advanced by Trigger were used to complete the purchase of Colby Drive.
114. Copies of the Colby Drive Bank Draft, the Colby Drive Trust Ledger, as well as the Clearflow Funding Account and the Trigger Operating Account statements showing the flow of funds are attached hereto as **Appendix “27”**.
115. It is clear that Trigger funds were used to purchase Colby Drive, using funding obtained from Clearflow.
116. The Receiver has received notice of a lien registration against Colby Drive. The Receiver continues to investigate the validity of this lien and will report thereon in a subsequent report to the Court.

#### Sale of Colby Drive

117. The Receiver has obtained an appraisal of Colby Drive (the “**Colby Drive Appraisal**”).
118. The Receiver also obtained listing proposals from four reputable commercial realtors. Three of the realtors provided suggested listing prices based on comparable sales, however one realtor provided the highest suggested listing price, but it was not supported by comparable sales. The Receiver has therefore disregarded the unsupported proposal.
119. Colliers International (“**Colliers**”) advised they have an interested purchaser who wished to perform a roof inspection on Colby Drive. The Receiver permitted the inspection to occur, after which Colliers provided the Receiver with a copy of the inspection report and authorized the Receiver to share this report with any other prospective purchasers. Colliers is aware that the Receiver is not currently marketing Colby Drive for sale, however their prospective purchaser submitted an offer to the Receiver to indicate their interest in the property.

120. The Receiver believes that Colliers provided a reasonable proposal, has saved the Receiver time and funds in providing the roof inspection report free of charge, and have a serious prospective purchaser. Therefore, the Receiver proposes to enter into a listing agreement with Colliers.
121. Attached hereto as **Confidential Appendix “3”** is the Colby Drive Appraisal together with a summary of the appraised value, the material terms of each listing proposal, their suggested listing prices, estimated selling price, and the Receiver's proposed listing price.

### **Old Post Road**

122. During the Examination, Mrs. Gdak advised that she purchased Old Post Road using funds from her and Mr. Gdak's personal bank account. However, she did not know where the funds came from before they were deposited in their personal bank account (see questions 82 and 83 of the Examination Transcript).
123. The Receiver has obtained a copy of the Parcel Register from the Ontario Land Registry Office for Old Post Road which discloses that Old Post Road was transferred to Mrs. Gdak on September 21, 2018 for \$437,500 (the “**Old Post Road Register**”).
124. The Receiver's investigation into the purchase of Old Post Road revealed that Clearflow advanced \$774,555.72 to the Clearflow Funding Account on September 21, 2018. On the same day, Trigger transferred \$800,000.00 to the Trigger Operating Account, from which Trigger then issued a bank draft payable to Kelly & Co. dated September 21, 2018 in the amount of \$421,350.00. Without the advance from Clearflow, there would have been insufficient funds in Trigger's bank accounts to fund the purchase of Old Post Road.
125. Brian Kelly of Kelly & Co appears to have acted for Mrs. Gdak and registered the transfer. The Receiver requested that Kelly & Co provide its trust ledger (the “**Old Post Road Trust Ledger**”) showing the receipt and disposition of the funds received from Trigger. Kelly & Co has provided a copy of the Old Post Road Trust Ledger showing that the funds advanced by Trigger were used to complete the purchase of Old Post Road.

126. Copies of the Old Post Road Bank Draft, the Old Post Road Trust Ledger, as well as the Clearflow Funding Account and the Trigger Operating Account statements showing the flow of funds are attached hereto as **Appendix “28”**.
127. Contrary to Mrs. Gdak’s statement that Old Post Road was purchased with funds from her and Mr. Gdak’s personal bank account, it is clear that Trigger funds were used to purchase Old Post Road using funding obtained from Clearflow.
128. The Receiver has received notice of a lien registration against Old Post Road. The Receiver continues to investigate the validity of this lien and will report thereon in a subsequent report to Court.

#### Sale of Old Post Road

129. The Receiver understands that Old Post Road is currently occupied by Mrs. Gdak’s parents, William and Kathryn Clayton (the “**Claytons**”). In the Interim Receiver’s Report, the Interim Receiver reported that Mr. Gdak had advised Clearflow that Mrs. Gdak’s mother had passed away. During the Examination, Mrs. Gdak advised that the Claytons are both currently occupying Old Post Road.
130. Shortly after the Receiver’s appointment, Mr. Gdak advised the Receiver that there was a sale agreement for Old Post Road (the “**Clayton Sale Agreement**”). Despite the Receiver’s repeated requests to be provided with the Clayton Sale Agreement, Mr. Gdak did not provide a copy Clayton Sale Agreement until November 10, 2020.
131. In addition to the Old Post Road Sale Agreement, Mr. Gdak’s provided the Receiver with a Letter of Intent from the Claytons dated August 5, 2020 (the “**Clayton LOI**”) and a License Agreement with the Claytons dated April 18, 2020 (the “**Clayton License Agreement**”), with respect to the occupancy by the Claytons at Old Post Road.
132. The Clayton LOI simply states that the Claytons wish to purchase the Old Post Road, however, no sale price is stated therein.
133. The Clayton Sale Agreement states that the Claytons are permitted to occupy Old Post Road and are only responsible for payment of utilities, property taxes and condominium fees. No rent is payable under the Clayton License Agreement. There is also a requirement that Mrs. Gdak must give 180 days notice of cancellation of the Clayton License Agreement.

134. The Clayton Sale Agreement is dated September 1, 2020. The purchaser is not identified, however the agreement appears to be signed by the Claytons and Mrs. Gdak. A deposit of \$10,000.00 was required to be paid to Kelly & Co. However, the name of Kelly & Co. has been stricken out and no replacement has been named. The Receiver is not aware of any deposit having been paid by the Claytons.
135. The Receiver has obtained an appraisal of Old Post Road (the “**Old Post Road Appraisal**”) which values Old Post Road at a much higher price than the price set in the Clayton Sale Agreement.
136. The Receiver does not believe that the consideration provided for in the Clayton Sale Agreement is adequate or commercially reasonable. Accordingly, the Receiver is seeking relief from the Court that the Receiver be free to market and sell Old Post Road, free and clear of any existing agreements or license agreements, such as the Clayton Sale Agreement and the Clayton License Agreement.
137. On February 5, 2021, counsel for Mrs. Gdak provided the Receiver with an email from Jim Clayton to Mr. Gdak advising that the Claytons would be vacating Old Post Road by July 31, 2021. A copy of this email is attached hereto as **Appendix “29”**.
138. The Receiver contacted numerous realtors about providing proposals to list Old Post Road for sale, however, several realtors declined to submit a proposal after reading about the Gdak’s activities in the Interim Receiver’s Report.
139. Three realtors provided listing proposals. The Receiver believes that RE/Max TwinCity provided a superior proposal. The Receiver proposes to list Old Post Road for sale with RE/Max TwinCity, free of clear of the Clayton Sale Agreement and the Clayton License Agreement, although the Receiver recommends that the closing of any sale occur after July 31, 2021 to allow the Claytons time to vacate Old Post Road.
140. Attached hereto as **Confidential Appendix “4”** is the Old Post Road Appraisal, Clayton Sale Agreement, and the Clayton License Agreement together with a summary of the appraised value, the material terms of each listing proposal, their suggested listing prices and the Receiver’s proposed listing price.

**Saugeen Beach Road**

141. In the Examination, Mrs. Gdak advised that she purchased Saugeen Beach Road using funds she thought came from her and Mr. Gdak's personal bank account (see questions 216 and 217 of the Examination Transcript).
142. The Receiver has obtained a copy of the Parcel Register from the Ontario Land Registry Office, which discloses that Saugeen Beach Road was transferred to Mrs. Gdak on April 12, 2018 for \$600,000.00 (the "**Saugeen Beach Road Register**").
143. The Receiver's investigation into the purchase of Saugeen Beach Road revealed that Clearflow advanced \$209,629.62, \$253,961.11 and \$223,389.38 to the Clearflow Funding Account on April 5, 10 and 11, 2018, respectively. On each of April 6, 10 and 11, 2018, Trigger transferred \$250,000.00 to a Trigger bank account at CIBC (the "**CIBC Account**") from which it issued a bank draft payable to Kelly & Co. dated April 11, 2018 in the amount of \$605,900.00. Without the advance from Clearflow, there would have been insufficient funds in Trigger's bank accounts to fund the purchase of Saugeen Beach Road.
144. Brian Kelly of Kelly & Co appears to have acted for Mrs. Gdak and registered the transfer. The Receiver requested that Kelly & Co provide its trust ledger (the "**Saugeen Beach Road Trust Ledger**") showing the receipt and disposition of the funds received from Trigger. Kelly & Co has provided a copy of the Saugeen Beach Road Trust Ledger showing that the funds advanced by Trigger were used to complete the purchase of Saugeen Beach Road.
145. Copies of the Saugeen Beach Road Bank Draft, the Saugeen Beach Road Trust Ledger, as well as the Clearflow Funding Account and the CIBC Account statements showing the flow of funds are attached hereto as **Appendix "30"**.
146. Contrary to Mrs. Gdak's statement that Saugeen Beach Road was purchased with funds from her and Mr. Gdak's personal bank account, it is clear that Trigger funds were used to purchase Saugeen Beach Road, using funding obtained from Clearflow.
147. The Receiver has received two notices of liens registered against Saugeen Beach Road. The Receiver continues to investigate the validity of these liens and will report thereon in a subsequent report to the Court.

### Sale of Saugeen Beach Road

148. The Receiver has obtained an appraisal for Saugeen Beach Road (the “**Saugeen Beach Road Appraisal**”).
149. The Receiver contacted numerous realtors about providing proposals to list Saugeen Beach Road for sale and three realtors provided listing proposals.
150. The two best listing proposals contain similar terms, however RE/Max Land Exchange was very helpful to the Receiver in taking possession of Saugeen Beach Road and Baker Road. Therefore, the Receiver proposes to list Saugeen Beach Road for sale with RE/Max Land Exchange.
151. Attached hereto as **Confidential Appendix “5”** is the Saugeen Beach Road Appraisal together with a summary of the appraised value, the material terms of each listing proposal their suggested listing prices, and the Receiver’s proposed listing price.

### Real Property Conclusion

152. The Receiver’s investigation into the purchase of Baker Road, Colby Drive, Old Post Road and Saugeen Beach Road (collectively, the “**Trigger Real Property**”) revealed that while each of the Trigger Real Property is registered to either Mrs. Gdak or Jaimak, all of the funds used to purchase the Trigger Real Property came from Trigger bank accounts, using funds advanced by Clearflow.
153. The Receiver requests that the Court declare that the Trigger Real Property are property of Trigger; are Transfers at Undervalue in accordance with the BIA and void as against the Receiver; or alternatively, are held by Mrs. Gdak and Jaimak, as applicable, pursuant to a constructive trust, for sole benefit of Trigger.
154. As canvassed above, the Receiver has now become aware of the existence of two parties claiming liens for work done to the Trigger Real Property.
155. By letter dated December 16, 2020, the Receiver was advised by counsel for Ace Lawn Care Services Inc. (“**Ace Lawn Care**”) that Ace Lawn Care had registered construction liens against each of Saugeen Beach Road, Old Post Road, Colby Drive and Lions Court.
156. By letter dated December 17, 2020, the Receiver was advised by counsel for J.B. Construction Inc. (“**J.B. Construction**”) that J.B. Construction had registered a construction lien against Saugeen Beach Road. By letters dated December 21,

2020, BLG responded to each of counsel for Ace Lawn Care and J.B. Construction, to advise that while the Receiver consents to a lifting of the stay of proceedings provided for in the Receivership Order, solely for the purpose of permitting each of Ace Lawn Care and J.B. Construction to perfect their lien claims. The Receiver did not consent to such parties taking any further steps without the consent of the Receiver or Order of the Court. The BLG correspondence of December 21, 2020 to counsel to each of Ace Lawn Care and J.B. Construction indicated that by providing the limited consent, the Receiver did not acknowledge the validity or quantum of any of the liens and that the Receiver reserved its rights and remedies to contest each of these liens, including without limitation, the validity and quantum of such liens. Attached hereto as **Appendix “31”** are copies of the letters dated December 16 and 17, 2020 from counsel to each of Ace Lawn Care and J.B. Construction, respectively, as well as the two letters dated December 21, 2020 delivered by BLG to counsel for each of Ace Lawn Care and J.B. Construction.

## OTHER TRANSFERS

157. During the Receiver’s review of Trigger’s banking activity the Receiver identified the following three transactions whereby funds totalling \$130,000.00 appear to have been paid directly or indirectly to the Claytons:

|            |                                                |            |
|------------|------------------------------------------------|------------|
| 01/13/2017 | E-TRANSFER000000265619 JimClayton 4506*****671 | 3,000.00   |
| 01/16/2017 | E-TRANSFER000000263261 JimClayton 4506*****671 | 2,000.00   |
| 06/30/2020 | Bank Draft payable to Jim Clayton              | 125,000.00 |
|            |                                                | 130,000.00 |

158. The Receiver continues to investigate these payments.

## THE TRIGGER INVENTORY

159. In the Interim Receiver’s Report, the Interim Receiver advised that it took possession of all the Debtors’ assets located at 588 Colby Drive, Waterloo, Ontario (the “**Premises**”).
160. The Receiver obtained an inventory listing from Trigger’s electronic accounting records (“**Quickbooks**”) which disclosed Trigger’s inventory value at \$77,746,176.36.



161. Mr. Gdak previously advised the Receiver that Trigger did not properly maintain the inventory records in Quickbooks and provided the Receiver with an inventory schedule prepared in Excel which totalled \$1,999,058.22.
162. Mr. Gdak also advised the Receiver that there was a shipment of inventory arriving at Toronto Pearson Airport, for which Trigger had already paid (the **"Prepaid Inventory"**). In order to obtain delivery of this shipment, duties, taxes and shipping costs would need to be paid. These costs were estimated to be approximately \$74,800.39 (the **"Import Costs"**). The invoice price of the Prepaid Inventory was \$140,110.50 US Dollars. Therefore, it appeared reasonable to pay the Import Costs as the value of the Prepaid Inventory greatly exceeded the Import Costs.
163. The Receiver did not have the funds required to pay the Import Costs. After the Receiver explained the economics of this transaction to Clearflow, it agreed to provide the funding to the Receiver to pay the Import Costs and obtain possession of the Prepaid Inventory. After receiving funding from Clearflow, the Receiver paid the Import Costs and arranged for the Prepaid Inventory to be delivered to the Premises. Accordingly, to date, the Receiver has issued one Receiver's Certificate on October 26, 2020, in the amount of \$70,983.74 to Clearflow, pursuant to the Receivership Order.
164. Upon receipt of the Prepaid Inventory, the Receiver conducted an inventory count of the Prepaid Inventory to ensure that what was received matched what Trigger had paid to the supplier. The Receiver did not note any discrepancies.
165. Mr. Gdak advised that there were numerous other significant prepaid orders from other suppliers, however despite the Receiver's numerous requests for Mr. Gdak to provide details of the other prepaid orders, no further information has been provided by Mr. Gdak to the Receiver.
166. The Receiver made arrangements with the Chief Firearms Office to attend at the Premises to conduct a full inventory count of all restricted firearms. While certain discrepancies were initially noted, they were subsequently cleared.
167. The Receiver thereafter engaged an expert in firearms inventory counts to assist the Receiver in conducting a full inventory count of all non restricted firearms. The inventory listing provided by Mr. Gdak was updated to reflect the actual inventory at the Premises.

**The Inventory Sales Process**

168. The Receivership Order authorizes the Receiver to market for sale the Property, which includes inventory owned by Trigger (the “**Inventory**”). Therefore, the Receiver conducted a sales process to identify qualified purchasers for the inventory (the “**Sale Process**”).
169. The Receiver first requested that a liquidator provide a proposal to liquidate the inventory by selling it to Trigger’s existing customers. After reviewing the inventory and the customers list and consulting with former Trigger sale persons, the liquidator submitted a proposal which contemplated a three-month liquidation sale from the Premises and provided estimated gross and net proceeds from the sale.
170. After considering the proposal and consulting with Clearflow, the Receiver determined that it would not proceed with the proposal, as a better outcome could likely be obtained by selling the inventory en bloc. Clearflow supported the Receiver’s decision to reject the liquidator’s proposal.
171. The Receiver separated Trigger’s inventory into the following parcels (the “**Parcels**” and individually a “**Parcel**”):
  - a) ammunition;
  - b) archery;
  - c) handguns;
  - d) rifles;
  - e) surplus handguns and rifles;
  - f) parts; and
  - g) equipment.
172. The Receiver prepared a list of potential purchasers including:
  - a) parties who had participated in sale processes previously conducted by GTL in other receivership mandates;
  - b) parties that had contacted the Receiver to express an interest in the Inventory; and
  - c) the Debtors’ previous customers.
173. The Receiver prepared the following documents to support and advertise the Inventory and to advance the Sale Process:

- a) a notice of the Sale Process, which was published in the *National Post* on December 30, 2020 (the “**Notice of Sales Process**”);
- b) an introduction email highlighting the assets for sale, outlining the Sale Process and inviting recipients to express their interest in participating in the Sale Process (the “**Solicitation Email**”);
- c) an information memorandum (the “**Information Memorandum**”) describing the Inventory and the Sale Process in greater detail, which was made available to Prospective Bidders (as defined below);
- d) a form agreement of purchase and sale (the “**Template Sale Agreement**”); and
- e) an offer form (the “**Offer Form**”).

Copies of the Notice of Sale Process, the Solicitation Email, the Information Memorandum with the Offer Form and the Template Sale Agreement are attached hereto as **Appendix “32”**.

- 174. On December 22, 2020, the Receiver began contacting approximately 212 parties identified as potential purchasers, of which 105 requested a copy of the Information Memorandum (the “**Prospective Bidders**”).
- 175. The Sales Process allowed for Prospective Bidders to conduct due diligence over almost four weeks (the “**Due Diligence Period**”), with a deadline to submit offers on January 15, 2021 (the “**Offer Deadline**”).
- 176. The Receiver provided all Prospective Bidders with the opportunity to schedule a site visit to allow for the Prospective Bidders to tour the Premises and inspect the Inventory during the Due Diligence Period. Site visits were conducted by eleven Prospective Bidders.
- 177. The Receiver received twenty offers by the Offer Deadline. The Receiver allowed Prospective Bidders to submit offers for any single Parcel, or all Parcels. Offer submissions included the following:
  - a) seven offers for all of the Parcels;
  - b) twelve offers for a combination of Parcels; and
  - c) one offer to conduct a retail sale of the Parcels with on a commission basis;
 (collectively, the “**Offers**” and individually, an “**Offer**”). A summary of the Prospective Bidders and Offers are attached hereto as **Confidential Appendix “6”**.

178. The highest overall offer was for all of the Parcels made by Bullets & Broadheads Shooting Center Ltd. (the “**Inventory Purchaser**”). The Receiver contacted the Inventory Purchaser and requested to exclude certain Parcels, as there were other Prospective Bidders with higher offers on those Parcels. The Inventory Purchaser was however unwilling to allow the Receiver to remove any Parcels from their offer. The Receiver therefore negotiated an overall price increase with the Inventory Purchaser (the “**Purchase Price**”), which the Receiver believes is the highest price that can be obtained for the Inventory.
179. The Receiver and the Inventory Purchaser have entered into an Agreement of Purchase and Sale (the “**Inventory APS**”), which is subject to Court approval, a copy of which, redacted to remove the selling price, is attached hereto as **Appendix “33”**. An unredacted copy of the Sale Agreement is attached hereto as **Confidential Appendix “7”**. If the Court approves the proposed Inventory sale, the Receiver proposes to complete the sale to the Inventory Purchaser in accordance with the Inventory APS (the “**Inventory Transaction**”).
180. As part of its dealings with the Inventory Purchaser, the Receiver ascertained that the Inventory Purchaser currently owes the Debtors the aggregate amount of \$12,000 (the “**Inventory Purchaser AR**”). In connection with the Inventory Transaction as contemplated in the Inventory APS, the Inventory Purchaser requested that the Inventory Purchaser AR be released upon the completion of the Inventory Transaction in exchange for the Inventory Purchaser releasing and discharging the Receiver and the Debtors from any and all claims, demands or obligations which the Inventory Purchaser has or hereafter may have against the Receiver or the Debtors. On account of the value to be obtained from the Inventory Transaction, the Receiver has agreed to such release of the Inventory Purchaser AR.
181. The Sale Process conducted by the Receiver has been robust with an extensive reach to the primary industry players. The Purchase Price is substantially higher than any other bid received and the Inventory Transaction contemplates the sale of all of the Inventory and not only specific and isolated Parcels.
182. The Receiver has advised Clearflow, which is the Debtors’ primary secured creditor, of the Purchase Price and Clearflow supports the Inventory Transaction.
183. Given the foregoing, the Receiver respectfully requests that this Court issue an order approving the Inventory Transaction and authorizing and directing the

Receiver to complete the Inventory Transaction and vesting the Debtors' right, title and interest in and to the Inventory, in the Inventory Purchaser, free and clear of all claims and encumbrances.

## ACCOUNTS RECEIVABLE COLLECTIONS

184. The Receiver obtained an accounts receivable ("**AR**") listing from Quickbooks which shows amounts owing to Trigger from customers totalling \$1,510,458.14.
185. Mr. Gdak advised the Receiver that Trigger did not maintain accurate accounting records in Quickbooks and that the AR in Quickbooks was not accurate.
186. The Receiver also obtained an AR listing from Clearflow totalling \$64,074,2258.69 (the "**Clearflow AR Listing**"), which Clearflow advised represented the accounts receivable that Clearflow had factored.
187. Mr. Gdak advised the Receiver that none of the AR on the Clearflow AR Listing were owing from customers.
188. Mr. Gdak provided the Receiver with an AR listing which was prepared in Excel showing \$1,411,812.20 owing from customers, of which \$467,738.44 was identified as being on consignment. Mr. Gdak advised that these were the only amounts owing from customers. It therefore appears that the actual amount owing from Trigger customers is \$944,073.76 from 196 customers (the "**Trigger AR**").
189. The Receiver obtained invoices in support of the Trigger AR from Quickbooks, sent letters to all customers signifying the AR balances and requiring that customers remit payment to the Receiver.
190. Clearflow offered to assist the Receiver in responding to responses from customers. Therefore, the Receiver directed the customers to contact Clearflow with any questions. While Clearflow was authorized by the Receiver to speak with customers, the Receiver retained all decision making authority.
191. Many customers have disputed the amount owing according to the Trigger AR for reasons including, invoices having already been paid and inventory being on consignment. The Receiver has investigated each dispute and has adjusted the Trigger AR where appropriate.

192. As of January 31, 2021, the Receiver has collected AR totalling \$274,294.71 and approximately \$669,779.05 remains outstanding. The Receiver's continues its efforts to collect these outstanding amounts.

### ACTIVITIES OF THE RECEIVER

193. Since its appointment, the Receiver's activities have included matters not otherwise described in the First Report and the Second Report, including, but not limited to:
- a) Preparing the First Report and Second Report to Court;
  - b) Securing and insuring the Property, as defined in the Receivership Order;
  - c) Freezing bank accounts of the Debtors and reviewing the bank account activity;
  - d) Collecting the AR balance from customers;
  - e) Making arrangements with Ford Canada to sell two leased Ford-150 pickup trucks;
  - f) Selling a 2004 GMC T6500 truck VIN 1GDJ6F1394F507895 owned by Trigger for \$4,670 net of selling costs; and
  - g) Corresponding with the Chief Firearms Office on regulations relating to the firearms.

### APPROVAL OF PROFESSIONAL FEES

194. The Receiver and its counsel have maintained detailed records of their professional fees.
195. Pursuant to paragraph 27 of the Receivership Order, the Receiver and its counsel shall be paid their reasonable fees and disbursements and a charge was granted on the Property (as defined in the Receivership Order), as security for such fees and disbursements.
196. The total fees and disbursements of the Receiver from November 1, 2020 to January 31, 2021 amount to \$336,008.87 inclusive of disbursements and HST and are more particularly described in the affidavit of Jacob Wiebe sworn February 12, 2021, a copy of which is attached hereto as **Appendix "34"**.
197. The total fees and disbursements of the Receiver's counsel, BLG, from November 1, 2020 to January 31, 2021 amount to \$229,791.31 inclusive of

disbursements and HST and are more particularly described in the affidavit of Christine Mason sworn February 4, 2021, a copy of which is attached hereto as **Appendix “35”**.

198. The Receiver believes that the fees described in the fee affidavits are fair and reasonable and respectfully requests that the Court approve same.

#### **RECEIPTS AND DISBURSEMENTS OF THE RECEIVERSHIP**

199. The interim statement of receipts and disbursements of the Interim Receiver and Receiver as at February 11, 2021 (the “**SRD**”, is attached hereto as **Appendix “36”**.

#### **CONFIDENTIAL APPENDICES**

200. The Receiver believes that the Confidential Appendices should remain sealed until further order of the Court, as the information contained therein is commercially sensitive and could prejudice the sale of the Sea Ray and the Inventory. In the absence of a sealing order, potential purchasers would have access to information obtained by the Receiver, which may impact the price that interested purchasers are willing to offer for the Sea Ray and the Inventory, should a transaction not close. Further, certain information is of a personal nature, which in the Receiver’s view, should not be disclosed.
201. The Receiver does not believe that any party will suffer prejudice if the information in Confidential Appendices are sealed in this manner.

**SUMMARY AND RECOMMENDATION**

202. Based on the foregoing, the Receiver respectfully requests that this Honourable Court grant the Orders sought, in respect of the relief set out in paragraph 11 of this Second Report.

All of which is respectfully submitted.

**GRANT THORNTON LIMITED**

*In its capacity as Court Appointed Interim Receiver and Receiver of Trigger Wholesale, Inc. The En Cadre Group Inc. and certain real property owned by each of Jaimak Real Properties Inc. and Jaimee Gdak*

Per:

  
 Blake Wiebe, CPA, CA, CFP, LIT

Senior Vice-President



# TAB A

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

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

THE HONOURABLE  
 JUSTICE GILMORE

)  
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TUESDAY, THE 13th DAY OF  
 OCTOBER, 2020

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ICE

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

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 C 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:

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;

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.

**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**

7. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms 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](http://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.

**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.

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

OCT 16 2020

PER / PAR: 

**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 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  
Fax: 1-888-587-9143

Lawyers for the Applicant,  
learFlow Commercial Finance Corp.

# TAB B



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

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

OUR HONOURABLE

MADAM JUSTICE  
MCGEEN

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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

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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

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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;

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- (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.

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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, Jalme Lynne 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.

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**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

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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

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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](http://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

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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.

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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.



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

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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:

34656.0004/17622659\_1

CLEARFLOW COMMERCIAL FINANCE CORP.  
Applicant

-and- Respondents

TRIGGER WHOLESAL, INC. et al.

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)

# TAB 4

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 MARTIN NICHOLAS REES**

I, Martin Nicholas Rees, of the City of Port Colborne, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am a shareholder and employee of the Applicant (“**Clearflow**”) 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.

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## **INTRODUCTION**

### **The Parties**

2. Clearflow is a federally-incorporated Canadian company that has been in business for the past five years 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.

3. The Respondent Trigger Wholesale, Inc. (“**Trigger**”) is one of Clearflow’s customers pursuant to three separate credit facilities, summarized in the Affidavit of Sandy Kanichis filed in support of this Application. The total amount owed by Trigger in favour of Clearflow was, as of October 6, 2020, \$48,625,279.75.<sup>1</sup>

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

**Attached hereto as Exhibit “A” are true copies of the guarantees referred to above**

**Attached hereto as Exhibit “B” are true copies of the General Security Agreements in favour of Clearflow executed by Trigger and En Cadre**

---

<sup>1</sup> 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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**Attached hereto as Exhibit “C” are copies of an Ontario  
Personal Property Security Act searches on Trigger and En  
Cadre**

5. 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 did also sell certain other weapons until banned by recent federal legislation. Trigger’s customers allegedly include small gun shops, the military, police forces and large retailers, specifically, Canadian Tire and Home Hardware. I attach as an Exhibit hereto a copy of the Home page of Trigger’s website, which will provide the Court with additional details regarding the business and operations of Trigger.

**Attached hereto as Exhibit “D” is a copy of the Home Page  
from Trigger’s website**

6. Trigger and/or En Cadre’s assets consist of:
- (a) accounts receivable due and owing from customers of Trigger;
  - (b) firearms and ammunition inventory owned by Trigger allegedly stored in a secured and licensed facility in Waterloo, Ontario;
  - (c) 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
  - (d) miscellaneous assets including office equipment and computers, a large and sophisticated 3D printer, goodwill, and customer lists.

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7. The Respondents Jaimee and Jaimak Real Properties Inc. (“**Jaimak**”) own certain real property located in Waterloo Ontario, and in Huron County, Ontario that I believe may 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 or Jaimak in an effort to shield assets from the reach of Clearflow and other creditors in the event that the fraudulent scheme was discovered.

8. The directors and officers of Trigger include both Gdak and his spouse Jaimee. Jaimee has been actively involved in Trigger’s business and has served in a senior accounts receivable collection capacity. I believe that, 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. Jamiee is the sole officer and director of Jaimak Real Properties Inc..

**Attached hereto as Exhibit “E” is a true copy of a Corporation Profile Report in respect of Trigger**

**Attached hereto as Exhibit “F” is a true copy of a Corporation Profile Report in respect of En Cadre**

**Attached hereto as Exhibit “G” is a true copy of a Corporation Profile Report in respect of Jaimak Real Properties Inc.**

9. Although I hold no formal title in this regard, I am essentially the “account manager” and main contact person at Clearflow in respect of the Trigger account. I have over 35 years of experience in the banking and lending industries in Canada and in the United Kingdom. I have been a partner at Clearflow since it was incorporated in 2014.



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**Nature of this Proceeding and Allegations of Fraudulent Activity**

10. This Application has become necessary as a result of:
- (a) the occurrence of certain events of default on the part of Trigger pursuant to the relevant credit facilities between Clearflow and Trigger. Copies of the Demand Letters (the “**Demands**”) and the Notice of Intention to Enforce Security (the “**NITES**”) that are about to be sent to Trigger and its guarantors are attached hereto as Exhibits. 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
  - (b) 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 and Trigger to Clearflow, assisted by Jaimee, backed up by falsified invoices, a forged transfer of real property, fake email addresses, a falsified Real Property Agreement of Purchase and Sale, impersonations of executives employed by Canadian Tire and Home Hardware stores, and phony cheques. I believe that the evidence supports the conclusion that Gdak personally has orchestrated the fraud in an effort to induce Clearflow to advance millions of dollars to Trigger, which it has done in good faith

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reliance on the truthfulness of the representations made, and documentation supplied, by Gdak.

**Attached as Exhibit “H” are true copies of the Demands and NITES that are about to be sent by Clearflow**

11. As a result of the events of default summarized in the Demands, Clearflow is hereby applying, in this Application, for the appointment of a Court-Appointed Receiver over the assets and undertaking of Trigger and En Cadre.

12. The recently-discovered evidence of a massive fraud, however, makes the normal receivership procedure inappropriate in this case. Given the previous conduct of the Respondents summarized herein and in the other Affidavit sworn in support of this Application, I believe that 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.

13. Clearflow is of the view that its security position will significantly erode if the Gdaks are permitted to remain in control of the assets, premises, inventory, books and records, computers and other property of Trigger, En Cadre, Jaimak or owned personally, during that period.

14. 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.

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15. 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 Trigger, En Cadre and Gdak personally, 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. I believe that the Interim Receivership is necessary in order to protect the interests of Clearflow and preserve the estate of the Respondents.

16. Clearflow's plan is to arrange for the Receiver, without advance notice to Gdak or Trigger, to attend at all 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.

17. The Demands and NITES will be served on Trigger and the guarantors 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.

18. 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 the purpose of recovering the debt owed to Clearflow.

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19. Jaimee, Gdak and En Cadre each executed separate continuing and unlimited guarantees of the indebtedness of Trigger in favour of Clearflow, and accordingly Clearflow is requesting judgment against those parties in this proceeding in connection with those guarantees.

### **BACKGROUND**

20. In 2014, I was introduced to Gdak by a common contact person who was familiar with Trigger's business potential. Gdak subsequently discussed with me the possibility of Clearflow extending credit facilities to Trigger, partly to retire prior indebtedness of Trigger in favour of another lender.

21. I took the lead in conducting due diligence in respect of Trigger on behalf of Clearflow. I learned that Gdak had commenced the business as a sole proprietorship in 2012 and incorporated 2014. I also learned that it typically takes a 2-year period to acquire and establish the necessary licenses, distribution agreements and delivery channels before one can commence business as a firearms distributor in Canada.

22. I also learned that the firearms distribution business in Canada is heavily regulated, as one might expect. Below is a summary of the regulatory measures in place:

- (a) DFAIT (Department of Foreign Affairs & International Trade) verify every transaction;
- (b) DFAIT issues IIC's (International Import Certificate) which are required to import firearms into Canada;
- (c) DFAIT works with the RCMP to ensure that all licensees, including Trigger, hold appropriate Licenses
- (d) All firearms are registered and approved on the FRT (Firearms Reference Table), a table of approved firearms for importation;
- (e) Each model of firearm is assigned unique FRT reference number;

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- (f) Trigger lists the FRT numbers on all TWI Import permits;
- (g) CBSA (Canadian Border Services Agency) requires advance notice of all shipments of firearms;
- (h) Any Distributor needs to hold a BFL (Business Firearms License) issued by Chief Firearms Office (CFO) and BFL's are managed and supervised by RCMP
- (i) Each firearm (unit with corresponding serial number) is inputted into the online RCMP firearms control systems a Trigger's facility upon arrival
- (j) All transfers to Trigger's customers are required to be completed through RCMP online systems; and
- (k) Trigger is required to keep records for 7 years.

23. Given the specialized and heavily-regulated nature of this business, Clearflow was attracted to Trigger on the basis that the barriers to entry in this industry are considerable, and Trigger had spent the time and money to gain the required licenses, approvals relationships and experience necessary to rapidly become a profitable company with positive long term prospects. A committee consisting of all partners of Clearflow decided to put forward an offer of financing to Trigger.

24. These credit facilities were summarized in an Offer letter dated April 5, 2015 (the "**Offer Letter**") and are set out in more detail in the Affidavit of Sandy Kanichis filed in support of this Application.

### **GROWTH IN TRIGGER'S BUSINESS**

25. For the initial 12 months of the relationship between Trigger and Clearflow, Trigger's sales remained relatively flat. Over the next four years, however, Trigger's business appeared to take off. Sales started expanding at a rapid rate.

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26. As a result of this phenomenal growth, the amount of AR factored by Clearflow increased exponentially. Although some customers appeared to be late in paying, prior to fall, 2020, Clearflow did not encounter major difficulties in collecting accounts receivable.

27. Contrary to usual practice in the factoring industry and contrary to the provisions of the MPSA, at the request of Gdak, Trigger handled its own cash, including receipt of cheques from its customers, and made payment to Clearflow as required. Typically, Clearflow would control those cheques, which would be sent by customers directly to Clearflow. In addition, Trigger was perennially late in making its required financial reporting and Gdak always seemed to have an excuse as to why he could not provide required information and documentation to verify the accounts receivable. We believed that there were legitimate reasons for all of these unusual items, including the rapid growth of Trigger's business and a lack of experienced management..

28. Clearflow maintains industry-standard account verification measures to ensure that the accounts receivable that it is purchasing are true and accurate. This process involves periodic field audits conducted by an independent field auditor. I also personally visited the Trigger firearms warehouse in Waterloo and I can verify that there existed a real warehouse, with real firearms, and that a small number of employees, including the sons of Trigger's legal counsel, Brian Kelly, worked in the business. I kept in close contact with Gdak through this period, and I can verify that I persisted in requesting that he provide all required back up to Clearflow as part of its usual verification procedures. I attended firearms trade shows with Gdak (always at the expense of Clearflow, not Trigger) in Canada and in the US and can confirm that he appeared to be a well-known player in the firearms importation and distribution business.

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**ANOMALIES DISCOVERED IN FIELD AUDIT**

29. Gdak was never particularly preoccupied with providing financial reporting to Clearflow in a timely manner and by 2020 this was starting to become a problem for Clearflow. Clearflow's field auditor, Steven Adler reported certain anomalies in Trigger's financial reporting to Clearflow, particularly an inability to provide verification of information provided to Clearflow. As just one example among many, Gdak was asked to produce the vendor number for Home Hardware, which he never did produce to Mr. Adler. This number would normally appear on every Home Hardware purchase order and would be easy for Gdak to obtain. Mr. Adler later advised us that, in fact, Trigger had "failed" the field audit, meaning Trigger had failed to supply sufficient evidence to Clearflow to support the existence of the accounts receivable against which Clearflow had lent Trigger tens of millions of dollars.

**PHONY EMAIL ADDRESSES AND IMPERSONATIONS OF EXECUTIVE OF CANADIAN TIRE AND HOME HARDWARE**

30. By early 2020, the amount of over 90-day accounts receivable owed by Canadian Tire and Home Hardware had increased dramatically. Accounts outstanding after 90 days are a source of great concern to Clearflow (or to any factoring lender) and Gdak was unable to provide satisfactory responses to the question of why the over – 90 AR had suddenly spiked. Pursuant to the MPSA, over-90 day AR is considered "ineligible" for factoring and Clearflow is permitted to require Trigger to re-purchase this AR from Clearflow, with the purchase price payable immediately.

31. As a result, we sought direct contact with representatives of Canadian Tire and Home Hardware in order to confirm the total amounts owing by these alleged Trigger customers and to ascertain the reason for the bulge in over-90 day AR.

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32. In July, 2020, Gdak provided Clearflow with the names of two senior managers: Matthew Maguire of Canadian Tire and Cathy Shulist of Home Hardware, whom I understand to be actual senior executives of these companies. We have no basis to suspect that either of these individuals is involved in the fraudulent scheme perpetrated by Gdak.

33. Unfortunately, the email address for Mr. Maguire and Ms. Shulist by Gdak are phony. The email address provided for Mr. Maguire is [matt.mcquire@cdntops.com](mailto:matt.mcquire@cdntops.com). This is neither the correct spelling of Mr. Maguire's name nor is this actually a Canadian Tire email address. Canadian Tire's email addresses use the URL @canadiantire.com. The email address provided for Ms. Shulist is [c.shulist@hhdist.ca](mailto:c.shulist@hhdist.ca). This is not a Home Hardware email address. Home Hardware's email addresses use the URL @homehardware.ca.

34. Mr. Adler has advised me and I verily believe that inquiries of the Canadian Internet Registration Authority (CIRA) indicate that "cdntops.ca" was created on July 12, 2020 with an expiry date of 8/12/21 and "hhdist.ca" was created on July 13, 2020 with an expiry date of 8/13/21. Both Registrant names are "Redacted for privacy purposes".

35. We duly engaged in email contact with the individuals in control of the "Cdntops" and "HHDist" email addresses, as well as conference calls, with individuals who purported to be Mr. Maguire and Ms. Shulist. I attach hereto two emails sent from these phony email addresses that purport to allay Clearflow's concerns over Trigger's escalating over-90 day AR. These two supposedly completely-separate emails sent by different individuals with no ostensible relationship to each other are remarkably similar in their structure and wording used, right down to the numbering of the points made by each of the alleged senders. Clearly, the senders of these emails were neither of Mr. Maguire nor Ms. Shulist and whomever did write and send these emails



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is impersonating these individuals. We believe that the retailers involved may be very interested in this information.

**Attached hereto as Exhibit "I" are the two emails described above from the phone email addresses**

**DISCOVERY OF THE FAKE INVOICES**

36. By September, 2020, the amount of over 90 day AR owed to Trigger by its customers had escalated sharply to a total of \$21,644,485.76. Corresponding deposits from customers had shrunk dramatically.

37. As a result, we asked Mr. Adler to contact a statistically-significant sample of Canadian Tire stores taken from across Canada and to ask the simple question: do you carry firearms, and if so, do you have in stock or carry certain models of firearms (being the models of firearms allegedly sold by Trigger to these particular stores)? Each store that was contacted had, according to invoices provided to Clearflow by Trigger, ordered significant volumes of firearms in the preceding month (typically with a value of over \$20,000 and often much more in the preceding month).

38. Mr. Adler contacted 40 stores which had collectively ordered, according to the invoices provided by Trigger, \$1,347,246 worth of firearms from Trigger in the previous month. 28 of those stores, representing \$939,321 of the total value of firearms alleged to have been ordered by Canadian Tire in the preceding month, do not sell firearms at all.

39. Twelve stores confirmed that they do carry firearms, but none carry the makes of firearms indicated in the invoices, namely, The Hunt Group or Balikili shotguns. Although they do carry shotgun ammunition, in many cases the representative of the particular store gave a consistent

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response: this type of firearm and ammunition are too “tactical” (to use the word that Mr. Adler advises was used by at least one representative of one particular Canadian Tire store), and are not consistent with Canadian Tire’s corporate image. Mr. Adler was told that only ammunition commonly known to be used by recreational hunters in Canada is carried by any Canadian Tire stores.

**Attached hereto as Exhibit “J” is a copy of a summary of  
Mr. Adler’s report dated October 7, 2020**

40. Mr. Adler has also advised me and I verily believe that as part of his investigation, which focused mainly on Canadian Tire and Home Hardware, he contacted one small firearms shop located in Thunder Bay, Ontario. The proprietor of this store told Mr. Adler that although he had ordered products from Trigger in the past, he had not ordered any product from Trigger in a considerable period of time. Trigger had provided Clearflow with an invoice showing that this particular small store had ordered a number of shotguns and ammunition within the past month. The proprietor of this shop indicated to Mr. Adler that this was simply impossible. He had not ordered nor been invoiced for those products.

41. Mr. Adler has terminated his engagement with Clearflow, and an Affidavit is not available from him on an immediate basis. He is aware very specifically of Clearflow’s intention to bring this proceeding and has been advised that Clearflow will be including the results of his investigations in the evidence before the Court. My personal belief is that at least part of the reason Mr. Adler is unwilling to proceed further with investigations into Trigger’s affairs may be his concern for his own personal safety. The fact is that Clearflow’s records indicate that \$306,357,777.75 has been deposited into Trigger’s bank account since 2015. The evidence seems to suggest that a large portion of these funds may not have originated with customers of Trigger. If

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indeed I am correct in assessing Mr. Adler's fears, those fears may not be overly-dramatic given all of the circumstances. It should be noted by the Court that Gdak is a firearms enthusiast who personally owns a number of firearms and is, or was at one time, one of the few non-peace officers in Canada to hold a license to carry a concealed firearm.

**THE FICTITIOUS REAL ESTATE TRANSACTION AND THE FORGED TRANSFER OF REAL PROPERTY**

42. In or about the first week of September, 2020, Clearflow requested yet again that Trigger catch up on providing required financial disclosures, and that Gdak advise how Trigger proposed to retire at least a portion of Clearflow's indebtedness,

43. In response, Gdak forged documents to make it appear that En Cadre owned real estate located in Waterloo, with a substantial value, that it was in the process of selling.

44. Specifically, Gdak advised me that Trigger owned a large parcel of land located in Waterloo that had received a special designation from the RCMP that permitted the storage of firearms, which Gdak claimed added enormously to its value. The alleged municipal address of the property was 1343 Martin Grove Rd., Township Road 43, consisting of some 90.0003 acres of land (the "**Martin Grove Property**").

45. Mr. Gdak advised that En Cadre held title to the Martin Grove Property and was in the process of selling same to two purchasers. Gdak provided me with a copy of the Transfer allegedly registered in the Waterloo Land Titles Office confirming that he personally was the owner of the Martin Grove Property in trust for En Cadre.

**Attached hereto as Exhibit "K" is a copy of the forged Transfer referenced above**

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46. Gdak also provided me with an alleged Amended Agreement of Purchase and Sale in respect of the Martin Grove Property. The purchase price was shown as \$48 million and the transaction was set to close at the end of September, 2020 (later extended to the end of November, 2020). The purchasers are shown as Abina Holdings Inc and Paul Dietrich Developments Inc.

**Attached hereto as Exhibit "L" is a copy of the Agreement of Purchase and Sale referenced above**

47. Gdak advised me that the sale of the Martin Grove Property his was to be the source of repayment of the \$5.6 million in non-factoring loans outstanding from Trigger in favour of Clearflow. He also advised that Trigger owed a significant amount, in excess of \$15 million in taxes to CRA, which also needed to be paid from the proceeds of the sale. Gdak indicated that he was prepared to execute a direction to the purchasers such that the non-factoring debt owed to Clearflow would be paid in full from the proceeds of the sale.

48. In fact, we went to the trouble of having our real estate financing counsel at Torkin Manes, Jeffrey Alpert, prepare the directions for signature and send them to counsel acting for En Cadre in connection with the sale of the Martin Grove Property. The directions have never been signed, nor would they be of any use in any event since the entire transaction is a fraud.

49. Both the Transfer produced by Gdak and the Agreement of Purchase and Sale are forgeries/fakes. I am advised by Mr. Alpert, and verily believe that:

**Transfer**

- (a) Torkin Manes pulled from title the real instrument number WR1267136, which is the registration number shown on the alleged transfer of the Martin Grove Property to Gdak. The actual Instrument number WR1267136 is the Transfer pursuant to

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which the Respondent Jaimee Gdak took title to an entirely different property located at 652 Colby Dr., Waterloo, Ontario.

- (b) The municipal address shown on the forged Transfer/Deed of land, namely 1343 Martin Grove, Waterloo, does not match the legal description or the PIN identifier of the property, which is 22281-0110. That PIN identifier corresponds with 652 Colby Dr. which is a property owned by either Jaimee or Jaimak Properties
- (c) 1343 Martin Grove Rd. is not owned by En Cadre or any other related company to Trigger and consists of raw land located in an agricultural area;
- (d) the names of the vendor and purchaser are entered on the document are incorrect. The name of the Transferor is shown as “Mr. Cleason Martin” and the name of the Transferee is shown as “Mr. Mark W. Gdak”. In the Ontario land titles system the title “Mr.” is never used, and the names of individuals always appear last name first, followed by a comma, followed by the first name. I am advised by Mr. Alpert that the land titles system will not accept entry of the names of vendors and purchasers in this way, so it is impossible that this is an actual, valid Transfer. It would not have been accepted for registration by the land titles computer system.

### **The Fake Agreement of Purchase and Sale**

50. The Agreement of Purchase and Sale provided to me by Gdak is also a forgery or a fake. Corporate searches conducted in every jurisdiction in Canada on the two alleged purchasers indicate that these alleged corporations do not exist. Further, the land described therein, namely, 1343 Martin Grove Rd., Township Rd 43, is not owned by En Cadre or any entity or individual

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related to it. There is no evidence that the real owner of this property has any connection with En Cadre or Gdak.

**Attached hereto as Exhibit "M" is a copy of the parcel page relating to the true property known municipally as 1343 Martin Grove**

51. I believe that these documents were provided to me in a fraudulent effort on the part of Gdak to induce Clearflow to continue the business relationship and to advance additional funds to Trigger.

### **MEETING WITH GDAK**

52. On September 28, 2020, my Clearflow partners Sandy Kanichis and Glenn Petersen and I met with Gdak and his accounts receivable manager Mike Nero. Without disclosing all that we knew to Gdak, we advised that Trigger had failed the field audit and that we needed Trigger's cooperation in a continued investigation by Mr. Adler. Gdak responded that he was very busy trying to complete his tax filing by the end of that date or he faced penalties of over \$1 million. On behalf of Clearflow, I then demanded that Trigger permit Clearflow to take over the cash management of Trigger's business as required pursuant to the MPSA. The cash management system, as we understand it, consists of a post office box to which cheques are sent by customers of Trigger. We demanded access to the post office box or that a second post office box be opened that we would have access to, so that we could take over processing cheques from customers.

53. This request was refused, on the basis that at times the post office box contains firearms and the regulator would not permit any party other than a duly authorized representative of Trigger to have access to same. This strains credulity. In the ordinary course, firearms would not be sent in the mail to a post office box for any reason.

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**FULL DISCLOSURE OF ALL RELEVANT FACTS**

54. I am advised by Clearflow counsel in this case, Jeffrey Simpson of Torkin Manes LLP that because we are moving without notice to Trigger, we are required to disclose to the Court all relevant facts, even those that do not support our theory of the case, and to present to the Court any facts or arguments that Trigger and Gdak would make if they were given the chance to respond. In compliance with that requirement:

- (a) Trigger has a high visibility in the industry, and it does indeed operate a real firearms warehouse, which I have personally attended at. I have seen many government/regulatory documents over the years that I do not believe are forgeries all of which suggests that Trigger does indeed exist as a business and does import and distribute firearms in Canada.
- (b) Trigger has detailed information about executives working at Canadian Tire and Home Hardware, suggesting that there is exists a real business relationship;
- (c) Although it seems impossible that this could be the case given the circumstances of this case, it is theoretically possible that Gdak could take the position that Clearflow won't suffer any loss at all if it can collect all outstanding accounts receivable, assuming that they do indeed exist;
- (d) Trigger has always benefitted from the assistance of professional chartered accountants and reputable legal counsel in the Waterloo area.
- (e) Trigger and Gdak hold the required licenses and designations from, as well as the trust of, the various regulatory authorities, whom I understand conduct exhaustive

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background checks into individuals involved in this business. These authorities are presumably aware of the sale of every firearm in Canada and keep careful track of the shipping, purchase and handling of every firearm sold.

- (f) There does not appear to be any obvious motive for Gdak and Trigger to engage in such a massive fraud in circumstances where his business appears to be growing exponentially.
- (g) There is no direct evidence that Gdak himself has personally benefitted from the fraud. There is no direct evidence that proceeds of fraud were utilized to acquire the real properties in Waterloo and Port Elgin.

55. Despite all of the above factors, my partners at Clearflow and I remain convinced that the preponderance of evidence of fraud is too overwhelming in this case. While we admit that we don't at this time have all the answers, there can be no reasonable explanation for the forged purchase orders, fake email addresses, the impersonation of others in emails and on conference calls, the forged transfer of real property, the phony agreement of purchase and sale and the indisputable massive exaggeration of accounts receivable by way of fabrication of invoices. Simply put, I cannot think of any way in which these items can be explained away by Mr. Gdak.

56. In any event, the unacceptable levels of over-90 day AR and constant default in providing required financial reporting would, in any event, have resulted in Clearflow terminating the credit facilities, issuing the Demands and NITES, and moving for the appointment of a Receiver even in the absence of evidence of fraud. While the evidence of the fraud demonstrates the need for the Court to appoint an Interim Receiver on an immediate basis for the protection of Trigger's estate



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and to protect the interests of Clearflow, Clearflow would in all likelihood be taking steps to place some or all of the Respondents into receivership within a short period of time anyway. It appears to Clearflow that Trigger may actually be insolvent. In these circumstances, I do not believe that it is possible that the Respondents will suffer any actual damages as a result of the interim Orders requested on this Application.

### **UNDERTAKING AS TO DAMAGES**

57. In the event that the Court grants the interim receivership appointment as requested, and the Court subsequently decides that such order ought not to have been made as a result of material misrepresentations by Clearflow in its Court materials, and it is proven that Trigger or any of the Respondents have suffered damages as a result, I am authorized by Clearflow solely in my capacity as a representative of Clearflow, and not in my personal capacity, to undertake on behalf of Clearflow to be responsible for any such damages incurred.

**SWORN** remotely by Martin Nicholas Rees of the City of Port Colborne, in the Regional Municipality of Niagara before me at the City of Toronto, in the Province of Ontario, on October , 2020 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

*Jeffrey J. Simpson*

\_\_\_\_\_  
MARTIN NICHOLAS REES

RCP-E 4D (July 1, 2007)

CLEARFLOW COMMERCIAL FINANCE CORP.  
Applicant

-and-  
Respondents

TRIGGER WHOLESALE, INC. et al.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT OF MARTIN NICHOLAS REES**

**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)

# TAB A

**ClearFlow Commercial Finance Corp. Guarantee****1. CUSTOMER GUARANTEED**

The name of the customer whose obligations you are guaranteeing is: TRIGGER WHOLESALE, INC  
(who, together with the Customer's successors, heirs and assigns, shall be referred to herein as the "Customer").

**2. OBLIGATIONS GUARANTEED**

In consideration of ClearFlow Commercial Finance Corp. (referred to as "we", "our", "ours" and "us" in this Guarantee) 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 legal fees and expenses, incurred by us in connection with its dealings with the Customer. You agree to be bound by each of the terms and conditions set out below.

**3. THE 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:

- the unenforceability of the Obligations, any security, or any of our other rights against the Customer or any other person
- any change in the terms or amount or existence of the Obligations
- the extension of time for payment to the Customer or the granting of any indulgence or concession to the Customer or any other person
- the taking or not taking of a guarantee from any other person
- not taking, perfecting, registering, or renewing any security
- accepting settlement from, or granting releases or discharges to, the Customer or any other person, including another guarantor
- any delay or default by us in the exercise of any right or remedy against you or the Customer
- your liability under any other guarantee
- the reorganization of the Customer's business (whether by amalgamation, merger, transfer, sale or otherwise)
- any change in the Customer's financial condition
- any change in control of the Customer (if the Customer is a corporation)
- a dissolution or change in membership of the Customer (if the Customer is a partnership)
- the bankruptcy of the Customer or any proceedings commenced by the Customer under the Bankruptcy and Insolvency Act or the Companies Creditors Arrangement Act or successor legislation
- our failure to abide by agreements relating to the Obligations
- a breach of any duty of ours (whether fiduciary or in negligence or otherwise) and whether owed to you, the Customer, or any other person
- incapacity, or lack of status or legal existence of the Customer
- the Customer's account being closed or our ceasing to deal with the Customer
- any irregularity, fraud, defect or lack of authority or formality in incurring the Obligation
- not providing our claim in a bankruptcy of the Customer or not proving our claim in full
- any event whatsoever that might be a defence available to the Customer for its obligation or a defence to you under this Guarantee, all of which are hereby waived

**4. MAXIMUM NOT LIABLE**

We do not owe you any duty (as a fiduciary or otherwise) and you hereby waive any right to make any claim or counterclaim and to raise any right of set off, equitable or otherwise, arising from any alleged breach of a duty owed to you, or the Customer or any other person. We will not be liable to you nor shall you make any claim for any negligence or any breaches or omissions on our part, or any of our employees, officers, directors or agents, or any receivers appointed by us, in the course of any of our actions or their actions.

**5. TERMINATING FURTHER LIABILITY**

You may cancel this Guarantee for any future Obligations by providing us with express written notice of any such cancellation. You will, however, continue to be liable under this Guarantee for any of the Obligations that the Customer incurs up to and including the day after we receive your notice and for Obligations arising out of agreements made prior to the receipt of your notice.

**6. NO SETOFF OR COUNTERCLAIM**

You will make all payments required to be made under this Guarantee without regard to any right of setoff or counterclaim that you have or may have against us or the Customer, which rights you waive. In addition to any rights now or hereafter granted under applicable law, and not by way of limitation of any such rights, we are authorized upon any amounts being payable by you to us hereunder, without notice, any such notice being expressly waived by you, to setoff, appropriate and apply any and all deposits and any other indebtedness at any time held by us, or owing to you, against and on account of the Obligations.

**7. REINSTATEMENT**

This Guarantee and all other terms of this agreement shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment (in whole or in part) of any of the Obligations is rescinded or must otherwise be returned or restored by us by reason of the insolvency, bankruptcy or reorganization of the Customer or for any other reason not involving our willful misconduct, all as though such payment had not been made.

**8. APPLICATION OF MONEYS RECEIVED**

We may, without notice, apply all moneys received from you, or the Customer or any other person (including under any security that we may from time to time hold) to such part of the Obligations as we, in our absolute discretion, consider appropriate. We may also revoke and alter any such application.

**9. EXHAUSTING RECOURSE**

We do not need to exhaust our recourse against the Customer or any other person or under any security interest we may from time to time hold before being entitled to full payment from you under this Guarantee. You waive all benefits of discussion and division.

**10. INDEMNITY**

As an original and independent obligation under this Guarantee, you shall (a) indemnify us and keep us indemnified against any cost, loss, expense or liability of whatever kind resulting from the failure by the Customer to make due and punctual payment of any of the Obligations or resulting from any of the Obligations being or becoming void, voidable, unenforceable or ineffective against the Customer (including, without limitation, all legal and other costs, charges and expenses incurred by us in connection with preserving or enforcing, or attempting to preserve or enforce, our rights under this Guarantee), and (b) pay on demand the amount of such cost, loss, expense or liability whether or not we have attempted to enforce any rights against the Customer, any other guarantor, or any other person.

**11. POSTPONED SUBROGATION**

Until the Obligations have been paid in full, you will not make any claim for repayment or contribution from the Customer or any guarantor, for any payment that you make under this Guarantee. Until all the Obligations are paid in full, we may include in our claim in the bankruptcy of the Customer the amount paid by you under this Guarantee and receive dividends in respect of that claim because you assign to us your right to prove your claim and receive dividends.

**12. COSTS AND EXPENSES**

You agree to pay all costs and expenses, including legal fees, of enforcing this Guarantee including the charges and expenses of our in-house lawyers. You will pay the legal fees on a solicitor and own client basis.

**13. ASSIGNMENT AND POSTPONEMENT OF CLAIMS**

You postpone the repayment of all present and future debts and liabilities that the Customer owes to you to the prior payment to us of the Obligations. You assign to us all such debts and liabilities, until the Obligations are repaid in full. If you receive any moneys in payment of any of such debts and liabilities, you will hold them in trust for, and will immediately pay them to, us without reducing your liability under this Guarantee.

**14. CONSENT TO DISCLOSE INFORMATION**

We may from time to time give any credit or other information about you to, or receive such information from, any credit bureau, reporting agency or other person.

**15. ASSIGNMENT OF OBLIGATIONS**

We may, without notice, sell or assign the Obligations and in such case, our assignee may enforce this Guarantee and we may enforce this Guarantee for any part of the Obligations not sold or assigned.

**16. GOVERNING LAW**

This Guarantee shall be construed in accordance with the laws of the province where the Customer's account is held and you irrevocably submit to the exclusive jurisdiction of the courts of that province.

**17. GENERAL**

Any provision of this Guarantee that is void or unenforceable in a jurisdiction is, as to that jurisdiction, ineffective to that extent without invalidating the remaining provisions. If two or more persons sign this Guarantee, each person's liability will be joint and several. This Guarantee is in addition and without prejudice to any security of any kind now or in the future held by us. There are no representations, collateral agreements, warranties, or conditions with respect to, or affecting your liability under this Guarantee other than as contained in this Guarantee. 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. Our written statement of the amount of the Obligations shall be conclusive and binding on you. You expressly waive notice of the existence or creation of all or any of the Obligations, presentment, demand, notice of dishonor, protest and all other notices whatsoever.

**18. FURTHER ASSURANCES**

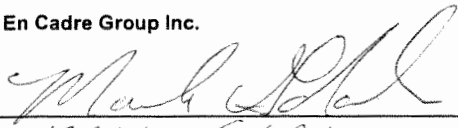
You shall do, execute and deliver or shall cause to be done, executed and delivered all such further acts, documents and things as we may reasonably request for the purpose of giving effect to this Guarantee.

**19. DEFINITIONS**

In this Guarantee "you" "your" and "yours" refer to the guarantor named below.

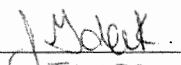
Dated this 30th day of April, 2015.

The En Cadre Group Inc.

BY: 

Name: MARK GIALAK

Title: PRESIDENT

BY: 

Name: Jaimee Gialak

Title: V.P.

## Guarantee



### 1. CUSTOMER GUARANTEED

The name of the Client whose obligations you are guaranteeing is: TRIGGER WHOLESAL, INC. (who, together with the Client's successors, heirs and assigns, shall be referred to herein as the "Customer").

### 2. OBLIGATIONS GUARANTEED

In consideration of ClearFlow Commercial Finance Corp. (referred to as "we", "our", "ours" and "us" in this Guarantee) 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 installments 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 Master Purchase and Sale Agreements and Special Provisions, lease agreements, conditional sale contracts, credit facilities, overdrafts, guarantees, letters of credit, indemnities together with all costs and expenses, including legal fees and expenses, incurred by us in connection with its dealings with the Customer. You agree to be bound by each of the terms and conditions set out below.

### 3. THE 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:

- the unenforceability of the Obligations, any security, or any of our other rights against the Customer or any other person
- any change in the terms or amount or existence of the Obligations
- the extension of time for payment to the Customer or the granting of any indulgence or concession to the Customer or any other person
- the taking or not taking of a guarantee from any other person
- not taking, perfecting, registering, or renewing any security
- accepting settlement from, or granting releases or discharges to, the Customer or any other person, including another guarantor
- any delay or default by us in the exercise of any right or remedy against you or the Customer
- your liability under any other guarantee
- the reorganization of the Customer's business (whether by amalgamation, merger, transfer, sale or otherwise)
- any change in the Customer's financial condition
- any change in control of the Customer (if the Customer is a corporation)
- a dissolution or change in membership of the Customer (if the Customer is a partnership)
- the bankruptcy of the Customer or any proceedings commenced by the Customer under the Bankruptcy and Insolvency Act or the Companies Creditors Arrangement Act or successor legislation
- our failure to abide by agreements relating to the Obligations
- a breach of any duty of ours (whether fiduciary or in negligence or otherwise) and whether owed to you, the Customer, or any other person
- incapacity, or lack of status or legal existence of the Customer
- the Customer's account being closed or our ceasing to deal with the Customer
- any irregularity, fraud, defect or lack of authority or formally in incurring the Obligation
- not providing our claim in a bankruptcy of the Customer or not proving our claim in full
- any event whatsoever that might be a defence available to the Customer for its obligation or a defence to you under this Guarantee, all of which are hereby waived

### 4. CLEARFLOW NOT LIABLE

We do not owe you any duty (as a fiduciary or otherwise) and you hereby waive any right to make any claim or counterclaim and to raise any right of set off, equitable or otherwise, arising from any alleged breach of a duty owed to you, or the Customer or any other person. We will not be liable to you nor shall you make any claim for any negligence or any breaches or omissions on our part, or any of our employees, officers, directors or agents, or any receivers appointed by us, in the course of any of our actions or their actions.

### 5. TERMINATING FURTHER LIABILITY

You may cancel this Guarantee for any future Obligations by providing us with express written notice of any such cancellation. You will, however, continue to be liable under this Guarantee for any of the Obligations that the Customer incurs up to and including the day after we receive your notice and for Obligations arising out of agreements made prior to the receipt of your notice.

### 6. NO SETOFF OR COUNTERCLAIM

You will make all payments required to be made under this Guarantee without regard to any right of setoff or counterclaim that you have or may have against us or the Customer, which rights you waive. In addition to any rights now or hereafter granted under applicable law, and not by way of limitation of any such rights, we are authorized upon any amounts being payable by you to us hereunder, without notice, any such notice being expressly waived by you, to setoff, appropriate and apply any and all deposits and any other indebtedness at any time held by us, or owing to you, against and on account of the Obligations.

### 7. REINSTATEMENT

This Guarantee and all other terms of this agreement shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment (in whole or in part) of any of the Obligations is rescinded or must otherwise be returned or restored by us by reason of the insolvency, bankruptcy or reorganization of the Customer or for any other reason not involving our willful misconduct, all as though such payment had not been made.

Dated this 30<sup>TH</sup> day of April, 2015.

### IN WITNESS WHEREOF:

BY:

Name: Witness Name

*BALAN KELLY*

BY:

*Mark Gdalk*

Mark Gdalk

S.I.N.:

505 254 355

### 8. APPLICATION OF MONEYS RECEIVED

We may, without notice, apply all moneys received from you, or the Customer or any other person (including under any security that we may from time to time hold) to such part of the Obligations as we, in our absolute discretion, consider appropriate. We may also revoke and alter any such application.

### 9. EXHAUSTING RECOURSE

We do not need to exhaust our recourse against the Customer or any other person or under any security interest we may from time to time hold before being entitled to full payment from you under this Guarantee. You waive all benefits of discussion and division.

### 10. INDEMNITY

As an original and independent obligation under this Guarantee, you shall (a) indemnify us and keep us indemnified against any cost, loss, expense or liability of whatever kind resulting from the failure by the Customer to make due and punctual payment of any of the Obligations or resulting from any of the Obligations being or becoming void, voidable, unenforceable or ineffective against the Customer (including, without limitation, all legal and other costs, charges and expenses incurred by us in connection with preserving or enforcing, or attempting to preserve or enforce, our rights under this Guarantee), and (b) pay on demand the amount of such cost, loss, expense or liability whether or not we have attempted to enforce any rights against the Customer, any other guarantor, or any other person.

### 11. POSTPONED SUBROGATION

Until the Obligations have been paid in full, you will not make any claim for repayment or contribution from the Customer or any guarantor, for any payment that you make under this Guarantee. Until all the Obligations are paid in full, we may include in our claim in the bankruptcy of the Customer the amount paid by you under this Guarantee and receive dividends in respect of that claim because you assign to us your right to prove your claim and receive dividends.

### 12. COSTS AND EXPENSES

You agree to pay all costs and expenses, including legal fees, of enforcing this Guarantee including the charges and expenses of our in-house lawyers. You will pay the legal fees on a solicitor and own client basis.

### 13. ASSIGNMENT AND POSTPONEMENT OF CLAIMS

You postpone the repayment of all present and future debts and liabilities that the Customer owes to you to the prior payment to us of the Obligations. You assign to us all such debts and liabilities, until the Obligations are repaid in full. If you receive any moneys in payment of any of such debts and liabilities, you will hold them in trust for, and will immediately pay them to, us without reducing your liability under this Guarantee.

### 14. CONSENT TO DISCLOSE INFORMATION

We may from time to time give any credit or other information about you to, or receive such information from, any credit bureau, reporting agency or other person.

### 15. ASSIGNMENT OF OBLIGATIONS

We may, without notice, sell or assign the Obligations and in such case, our assignee may enforce this Guarantee and we may enforce this Guarantee for any part of the Obligations not sold or assigned.

### 16. GOVERNING LAW

This Guarantee shall be construed in accordance with the laws of the province where the Customer's account is held and you irrevocably submit to the exclusive jurisdiction of the courts of that province.

### 17. GENERAL

Any provision of this Guarantee that is void or unenforceable in a jurisdiction is, as to that jurisdiction, ineffective to that extent without invalidating the remaining provisions. If two or more persons sign this Guarantee, each person's liability will be joint and several. This Guarantee is in addition and without prejudice to any security of any kind now or in the future held by us. There are no representations, collateral agreements, warranties, or conditions with respect to, or affecting your liability under this Guarantee other than as contained in this Guarantee. 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. Our written statement of the amount of the Obligations shall be conclusive and binding on you. You expressly waive notice of the existence or creation of all or any of the Obligations, presentment, demand, notice of dishonor, protest and all other notices whatsoever.

### 18. FURTHER ASSURANCES

You shall do, execute and deliver or shall cause to be done, executed and delivered all such further acts, documents and things as we may reasonably request for the purpose of giving effect to this Guarantee.

### 19. DEFINITIONS

In this Guarantee "you", "your" and "yours" refer to the guarantor named below.



## Guarantee



### 1. CUSTOMER GUARANTEED

The name of the Client whose obligations you are guaranteeing is: TRIGGER WHOLESAL, INC. (who, together with the Client's successors, heirs and assigns, shall be referred to herein as the "Customer").

### 2. OBLIGATIONS GUARANTEED

In consideration of ClearFlow Commercial Finance Corp. (referred to as "we", "our", "ours" and "us" in this Guarantee) 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 installments 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 Master Purchase and Sale Agreements and Special Provisions, lease agreements, conditional sale contracts, credit facilities, overdrafts, guarantees, letters of credit, indemnities together with all costs and expenses, including legal fees and expenses, incurred by us in connection with its dealings with the Customer. You agree to be bound by each of the terms and conditions set out below.

### 3. THE 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:

- the unenforceability of the Obligations, any security, or any of our other rights against the Customer or any other person
- any change in the terms or amount or existence of the Obligations
- the extension of time for payment to the Customer or the granting of any indulgence or concession to the Customer or any other person
- the taking or not taking of a guarantee from any other person
- not taking, perfecting, registering, or renewing any security
- accepting settlement from, or granting releases or discharges to, the Customer or any other person, including another guarantor
- any delay or default by us in the exercise of any right or remedy against you or the Customer
- your liability under any other guarantee
- the reorganization of the Customer's business (whether by amalgamation, merger, transfer, sale or otherwise)
- any change in the Customer's financial condition
- any change in control of the Customer (if the Customer is a corporation)
- a dissolution or change in membership of the Customer (if the Customer is a partnership)
- the bankruptcy of the Customer or any proceedings commenced by the Customer under the Bankruptcy and Insolvency Act or the Companies Creditors Arrangement Act or successor legislation
- our failure to abide by agreements relating to the Obligations
- a breach of any duty of ours (whether fiduciary or in negligence or otherwise) and whether owed to you, the Customer, or any other person
- incapacity, or lack of status or legal existence of the Customer
- the Customer's account being closed or our ceasing to deal with the Customer
- any irregularity, fraud, defect or lack of authority or formality in incurring the Obligation
- not providing our claim in a bankruptcy of the Customer or not proving our claim in full
- any event whatsoever that might be a defence available to the Customer for its obligation or a defence to you under this Guarantee, all of which are hereby waived

### 4. CLEARFLOW NOT LIABLE

We do not owe you any duty (as a fiduciary or otherwise) and you hereby waive any right to make any claim or counterclaim and to raise any right of set off, equitable or otherwise, arising from any alleged breach of a duty owed to you, or the Customer or any other person. We will not be liable to you nor shall you make any claim for any negligence or any breaches or omissions on our part, or any of our employees, officers, directors or agents, or any receivers appointed by us, in the course of any of our actions or their actions.

### 5. TERMINATING FURTHER LIABILITY

You may cancel this Guarantee for any future Obligations by providing us with express written notice of any such cancellation. You will, however, continue to be liable under this Guarantee for any of the Obligations that the Customer incurs up to and including the day after we receive your notice and for Obligations arising out of agreements made prior to the receipt of your notice.

### 6. NO SETOFF OR COUNTERCLAIM

You will make all payments required to be made under this Guarantee without regard to any right of setoff or counterclaim that you have or may have against us or the Customer, which rights you waive. In addition to any rights now or hereafter granted under applicable law, and not by way of limitation of any such rights, we are authorized upon any amounts being payable by you to us hereunder, without notice, any such notice being expressly waived by you, to setoff, appropriate and apply any and all deposits and any other indebtedness at any time held by us, or owing to you, against and on account of the Obligations.

### 7. REINSTATEMENT

This Guarantee and all other terms of this agreement shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment (in whole or in part) of any of the Obligations is rescinded or must otherwise be returned or restored by us by reason of the insolvency, bankruptcy or reorganization of the Customer or for any other reason not involving our willful misconduct, all as though such payment had not been made.

### 8. APPLICATION OF MONEYS RECEIVED

We may, without notice, apply all moneys received from you, or the Customer or any other person (including under any security that we may from time to time hold) to such part of the Obligations as we, in our absolute discretion, consider appropriate. We may also revoke and alter any such application.

### 9. EXHAUSTING RECOURSE

We do not need to exhaust our recourse against the Customer or any other person or under any security interest we may from time to time hold before being entitled to full payment from you under this Guarantee. You waive all benefits of discussion and division.

### 10. INDEMNITY

As an original and independent obligation under this Guarantee, you shall (a) indemnify us and keep us indemnified against any cost, loss, expense or liability of whatever kind resulting from the failure by the Customer to make due and punctual payment of any of the Obligations or resulting from any of the Obligations being or becoming void, voidable, unenforceable or ineffective against the Customer (including, without limitation, all legal and other costs, charges and expenses incurred by us in connection with preserving or enforcing, or attempting to preserve or enforce, our rights under this Guarantee); and (b) pay on demand the amount of such cost, loss, expense or liability whether or not we have attempted to enforce any rights against the Customer, any other guarantor, or any other person.

### 11. POSTPONED SUBROGATION

Until the Obligations have been paid in full, you will not make any claim for repayment or contribution from the Customer or any guarantor, for any payment that you make under this Guarantee. Until all the Obligations are paid in full, we may include in our claim in the bankruptcy of the Customer the amount paid by you under this Guarantee and receive dividends in respect of that claim because you assign to us your right to prove your claim and receive dividends.

### 12. COSTS AND EXPENSES

You agree to pay all costs and expenses, including legal fees, of enforcing this Guarantee including the charges and expenses of our in-house lawyers. You will pay the legal fees on a solicitor and own client basis.

### 13. ASSIGNMENT AND POSTPONEMENT OF CLAIMS

You postpone the repayment of all present and future debts and liabilities that the Customer owes to you to the prior payment to us of the Obligations. You assign to us all such debts and liabilities, until the Obligations are repaid in full. If you receive any moneys in payment of any of such debts and liabilities, you will hold them in trust for, and will immediately pay them to, us without reducing your liability under this Guarantee.

### 14. CONSENT TO DISCLOSE INFORMATION

We may from time to time give any credit or other information about you to, or receive such information from, any credit bureau, reporting agency or other person.

### 15. ASSIGNMENT OF OBLIGATIONS

We may, without notice, sell or assign the Obligations and in such case, our assignee may enforce this Guarantee and we may enforce this Guarantee for any part of the Obligations not sold or assigned.

### 16. GOVERNING LAW

This Guarantee shall be construed in accordance with the laws of the province where the Customer's account is held and you irrevocably submit to the exclusive jurisdiction of the courts of that province.

### 17. GENERAL

Any provision of this Guarantee that is void or unenforceable in a jurisdiction is, as to that jurisdiction, ineffective to that extent without invalidating the remaining provisions. If two or more persons sign this Guarantee, each person's liability will be joint and several. This Guarantee is in addition and without prejudice to any security of any kind now or in the future held by us. There are no representations, collateral agreements, warranties, or conditions with respect to, or affecting your liability under this Guarantee other than as contained in this Guarantee. 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. Our written statement of the amount of the Obligations shall be conclusive and binding on you. You expressly waive notice of the existence or creation of all or any of the Obligations, presentment, demand, notice of dishonor, protest and all other notices whatsoever.

### 18. FURTHER ASSURANCES

You shall do, execute and deliver or shall cause to be done, executed and delivered all such further acts, documents and things as we may reasonably request for the purpose of giving effect to this Guarantee.

### 19. DEFINITIONS

In this Guarantee "you", "your" and "yours" refer to the guarantor named below.

Dated this 30<sup>th</sup> day of April, 2015.

### IN WITNESS WHEREOF:

BY:

Name: Witness Name

BY:

Jaimee Gdak

S.I.N.: 498 911 684

# TAB B

## General Security Agreement

Customer: **TRIGGER WHOLESALE, INC.**Date: **April 30, 2015.**

## SECURITY INTEREST

In consideration of our dealing with or continuing to deal with you, you grant to us a continuing security interest in all of your Assets and Undertakings (defined below) and an assignment of your Accounts (defined below). The Assets and Undertakings over which you have granted us a security interest hereby, the Accounts assigned to us, together with the Proceeds (defined below) thereof, are herein collectively called the "Collateral". You agree that we have not agreed to postpone the time for attachment of the security interest granted hereby with respect to your presently existing Collateral, that such security interest shall attach to any Collateral acquired after the date hereof as soon as you obtain rights in such Collateral and that value has been given.

## INDEBTEDNESS AND LIABILITY SECURED

You agree that the obligations secured by the security interest granted hereby (collectively, the "Obligations") include, without limitation, all your present and future obligations, indebtedness and liability to us, direct and indirect, absolute and contingent, whether matured or not matured, and include all costs and expenses (including legal fees and expenses) incurred by us in connection with our dealings with you.

## 1. DEFINITIONS OF COLLATERAL

**ASSETS AND UNDERTAKINGS** - all of your present and after acquired personal property and undertakings including without limitation, inventory, equipment, deposits and credit balances, investment property, life insurance (all as defined herein), all intangible and intellectual property, and all real and immovable property both freehold and leasehold, except for the last day of the term of any lease.

**INVENTORY** - all presently owned and after acquired goods and other property held for sale or lease or that have been leased or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process, or materials used or consumed in your business or profession.

**EQUIPMENT** - all presently owned and after acquired goods that are owned by you other than inventory and consumer goods.

**DEPOSITS AND CREDIT BALANCES** - all monies and credit balances which are now or may hereafter be on deposit with or standing to your credit with us, and/or with any of our subsidiaries and affiliates, up to the amount set out on Schedule A (or all deposit and credit balances, if no amount is set out on Schedule A) and any amount of interest due or accruing due to you in connection with any such deposit or credit balance.

**INVESTMENT PROPERTY** - all present and future investment property held by you, including securities, shares, options, rights, warrants, joint venture interests, interests in limited partnerships, trust units, bonds, debentures and all other documents which constitute evidence of a share, participation or other interest of yours in property or in an enterprise or which constitute evidence of an obligation of the issuer (collectively called "Investment Property") including, without limitation, any Investment Property specifically identified in Schedule A; and all substitutions therefor and, subject to Section 5, dividends and income derived therefrom.

**LIFE INSURANCE** - the life insurance policy or policies described on Schedule A and any proceeds derived therefrom, and any amounts held by the insurer as pre-paid premiums or for the payment of future premiums.

## 2. ACCOUNTS

You absolutely assign and transfer to us all debts, accounts, choses in action, claims, demands, and moneys now due, owing, accruing, or which may hereafter become due, owing or accruing to you, together with all rights, benefits, security interests, mortgages, instruments, rights of action, deeds, books and records and documents now or hereafter belonging to you in respect of or as security for any of the foregoing (collectively called "Accounts"). This assignment is and shall be a continuing security to us for the Obligations. All money or any other form of payment received by you in payment of any Accounts shall, following any continuing Event of Default under this Agreement, be received and held by you in trust for us.

## 3. INVESTMENT PROPERTY

If any of the Collateral consists of Investment Property, (a) you authorize us to transfer such Collateral or any part thereof into our own name or that of our nominee so that we or our nominee may appear of record as the sole owner of such Collateral; provided, that until the occurrence of any continuing Event of Default, we shall deliver promptly to you all notices, statements or other communications received by us or our nominee as such registered owner, and upon demand and receipt of payment of necessary expenses thereof, shall give you or your designee a proxy or proxies to vote and take all action with respect to such Collateral; provided further that after the occurrence of any continuing Event of Default, you waive all rights to be advised of or to receive any notices, statements or communications received by us or our nominee as such registered owner, and agree that no proxy or proxies given to you or your designee by us shall thereafter be effective; and (b) you further agree to execute such other documents and to perform such other acts, and to cause any issuer or securities intermediary

to execute such other documents and to perform such other acts as may be necessary or appropriate in order to give us "control" of such Investment Property, as defined in the *Securities Transfer Act, 2006* (Ontario), which "control" shall be in such manner as we shall designate in our sole judgment and discretion, including, without limitation, an agreement by any issuer or securities intermediary that it will comply with instructions in the case of an issuer or entitlement orders in the case of a securities intermediary, originated by us, whether before or after the occurrence of any continuing Event of Default, without further consent from you.

## 4. PROCEEDS

You grant us a security interest on all of your property in any form derived directly or indirectly from any use or dealing with any Assets and Undertakings or Accounts or that indemnifies or compensates for Assets and Undertakings destroyed or damaged (all of which property is herein collectively called "Proceeds"). Proceeds shall be received and held by you in trust for us.

## 5. INCOME AND INTEREST ON INVESTMENT PROPERTY

Until the occurrence of any continuing Event of Default, you reserve the right to receive all income from or interest on the Collateral consisting of Investment Property, and if we receive any such income or interest prior to the occurrence of any continuing Event of Default, we agree to pay you such income or interest promptly. After the occurrence of any continuing Event of Default, you will not demand or receive any income from or interest on such Collateral, and if you receive any such income or interest, such income or interest shall be held by you in trust for us in the same medium in which received, shall not be commingled with any of your other assets and shall be delivered to us in the form received, properly endorsed to permit collection, not later than the next business day following the day of its receipt. We may apply the net cash receipts from such income or interest to payment of any of the Obligations, provided that we account for and pay over to you any such income or interest remaining after payment in full of the Obligations.

## 6. COSTS AND EXPENSES

You agree to pay the costs and expenses we incur to enforce this Agreement, register this Agreement or notice of it, repossess, maintain, preserve, repair or sell the Collateral, or appoint a consultant, receiver, receiver and manager or agent, and to pay interest thereon. You also agree to pay all legal costs and fees (including in-house legal fees, charges and expenses), incurred by us to do any of the above or to defend any legal claim or counterclaim by you or others respecting the manner of our enforcement of, or our right to enforce, this Agreement. You will pay the legal fees incurred by us on a solicitor and own client basis.

## 7. FREE AND CLEAR

You hereby represent and warrant to us that you are the owner of the Collateral free from any hypothec, mortgage, lien, charge, security interest or any other interest or claim including any proprietary or trust interest or encumbrance claimed by any third party. You hereby covenant and agree to keep the Collateral free and clear of all taxes, assessments, and security or proprietary interests in favour of third parties. You hereby covenant and agree to not sell, give away, part with possession of or otherwise dispose of any part of the Collateral, (except inventory sold in the normal course of business and obsolete equipment) without our prior written consent.

## 8. INSURANCE

You will, at your cost, keep the Collateral insured from all risk of loss, theft or damage as are customarily insured by businesses in the industry in which you are engaged. If requested, you will provide us with a copy of the insurance policy. The insurance policy will name us as first loss payee and additional insured. We may, in our absolute discretion, pay any premium due on any insurance policy, including any life insurance policy forming part of the Collateral, and the amount of any premium we pay will be added to and form part of the Obligations.

## 9. LOCATION OF COLLATERAL

You will keep the Collateral at the location or locations set out on Schedule A. You will not



remove the Collateral from this location (except in the ordinary course of your business) without our prior written consent. If no location is set out on Schedule A, you will keep the Collateral at the address shown below your signature to this Agreement.

#### 10. LIMITATION ON OBLIGATIONS OF CLEARFLOW

Our sole obligation with respect to the custody, safekeeping and physical preservation of Collateral in our possession shall be to use reasonable care in the custody and safekeeping thereof, and we shall be deemed to have used reasonable care if we deal with such Collateral in the same manner as we deal with similar property for our own account. Neither we nor any of our directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon the Collateral or any part thereof or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral whether at your request or otherwise.

#### 11. REPRESENTATIONS AND WARRANTIES

You hereby represent and warrant to us that:

- (a) if applicable, you are a corporation duly existing, or a partnership duly established, under the laws of the jurisdiction of your incorporation or establishment, have all necessary power and authority to own your property and assets, to carry on your business as currently carried on by you and hold all necessary licenses, permits and consents as are required so to own your property and assets and so to carry on business in each jurisdiction in which you do so;
- (b) you have the capacity, power and authority and the legal right to execute and deliver, to perform your obligations under, this Agreement, and have taken all necessary action, corporate or otherwise, to authorize the execution and delivery of this Agreement and the performance of your obligations hereunder;
- (c) this Agreement constitutes a legal, valid and binding obligation of yours enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity;
- (d) except for consents which have been obtained and are in full force and effect, no consent of any person is required, or purports to be required, in connection with the execution and delivery of this Agreement by you or the performance of your obligations hereunder;
- (e) the execution and delivery by you of this Agreement and the performance of your obligations hereunder will not violate any applicable law or contractual obligation applicable to you; and
- (f) the representations and warranties set out in clauses (a) through (e) above or in any certificate or other document delivered to us by you or on your behalf are material, shall be deemed to have been relied upon by us notwithstanding any investigation heretofore or hereafter made by us or on our behalf, shall survive the execution and delivery of this Agreement and shall continue in full force and effect without time limit.

#### 12. REPORTING

You will:

- (a) if you are a corporation, a partnership or a sole proprietorship, provide to us accountant-prepared financial statements within 120 days of each of your fiscal year ends;
- (b) if you are an individual, provide to us your personal net worth statement upon request by us;
- (c) advise us of any Event of Default immediately upon the occurrence of such event;
- (d) inform us of any actual or probable material litigation and provide us with copies of all relevant documents upon request; and
- (e) provide us with such other information and financial data as we may request from time to time.
- (f) provide us with a monthly aged accounts receivable listing within 15 days of each month end.

#### 13. POSITIVE COVENANTS

You agree to:

- (a) make all payments when due or demanded to us (without any condition, deduction, set-off or holdback) at our address noted above (or any other address that we advise);
- (b) if applicable, maintain your existence as a corporation, partnership, or sole proprietorship, as the case may be, and keep all material agreements, rights, franchises, licences, operations, contracts or other arrangements in full force and effect;
- (c) pay all taxes, which may result in a lien or charge on any of your property and assets;

- (d) maintain, protect and preserve the Collateral in good repair and working condition;
- (e) provide such security as we may require;
- (f) continue to carry on, and maintain in good standing, the business being carried on by you at the date hereof;
- (g) permit us or our authorized representatives full and reasonable access to your premises, business, financial and computer records and allow the duplication or extraction of pertinent information therefrom;
- (h) notify us in writing at least 20 days prior to any change of your name; and
- (i) notify us in writing promptly of any significant loss of or damage to the Collateral.

#### 14. NEGATIVE COVENANTS

You will not:

- (a) create, incur, assume, or suffer to exist, any mortgage, deed of trust, pledge, lien, security interest, assignment, charge, or encumbrance (including without limitation, any conditional sale, or other title retention agreement, or finance lease) of any nature, upon or with respect to the Collateral, or sign or file under the *Personal Property Security Act* (Ontario) (the "PPSA") or similar registry system of any jurisdiction a financing statement which names you as a debtor, or sign any security agreement authorizing any secured party thereunder to file such financing statement creating a security interest in the Collateral;
- (b) if you are a corporation, a partnership or a sole proprietorship, as the case may be, permit any change of ownership or change your capital structure without our prior written consent, such consent not to be unreasonably withheld; or
- (c) transfer your interest in any part of the Collateral not expressly permitted under this Agreement or change the location(s) of the Collateral without our prior written consent.

#### 15. DEFAULT

You shall be in default under this Agreement upon the happening of any of the following events (each, an "Event of Default"):

- (a) you or any other person liable for the Obligations is in default under any agreement relating to the Obligations or any part thereof;
- (b) you or any other person liable for the Obligations is in default under any other loan, debt or obligation owed to anyone else, subject to the passage of any applicable grace period;
- (c) you fail to perform any of the terms or conditions of this Agreement or any other agreement between you and us;
- (d) you become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver, or a trustee or receiver shall be appointed for you or for a substantial part of your property without your consent;
- (e) bankruptcy, reorganization or insolvency proceedings shall be instituted by or against you;
- (f) any statement made by you to induce us to extend credit to you was false in any material respect when made, or becomes false;
- (g) anyone takes possession of or applies to any court for possession of the Collateral, or anyone claims to have rights in the Collateral superior to our rights;
- (h) if you are an individual, you are declared incompetent by a court, or you die, or, if you are a partnership, a partner dies;
- (i) you pledge, encumber, mortgage or otherwise create or permit the continued existence of any lien or any other interest or claim including any proprietary or trust interest or encumbrance claimed by any third party with respect to any of the Collateral, except for any lien granted by you in our favour;
- (j) you incur any indebtedness for borrowed money (including, without limitation, by guaranteeing the obligations of others) outside of the ordinary course of business;
- (k) you fail to deliver to us on a timely basis the financial information required by any agreement between us; or
- (l) any other event occurs which causes us in good faith, to deem ourselves insecure, or to believe that the Collateral, or any part thereof, or the value thereof, is or is about to be placed in jeopardy.

#### 16. REMEDIES

Upon the occurrence of an Event of Default, we may require you to repay any or all of the Obligations in full, whether matured or not, and we may enforce this Agreement by any method permitted by law, and we may exercise any rights and remedies under applicable law, and we may appoint any person, including our employee, to be an agent, a receiver or receiver and manager (the "Receiver") of the Collateral. We and the Receiver shall be entitled to:

- (a) seize and possess the Collateral;
- (b) carry on your business;
- (c) sell, lease or otherwise dispose of the Collateral;
- (d) foreclose on the Collateral;
- (e) in the case of Life Insurance, exercise any options available to you under the Life Insurance;

- (f) demand, sue for and receive Accounts, give effectual receipts and discharges for the Accounts, compromise any Accounts which may seem bad or doubtful to us and give time for payment thereof with or without security;
- (g) make any arrangement or compromise in our interest, or
- (h) take any other action deemed necessary to carry into effect the provisions of this Agreement.

The Receiver shall be your agent and you shall be solely responsible for the Receiver's actions. We shall not be in any way responsible for any misconduct or negligence on the part of the Receiver. If the proceeds of the realization of the Collateral are insufficient to repay us the Obligations in full, then you forthwith shall pay us such deficiency. The rights and powers in this paragraph are supplemental to and not in substitution for any other rights we may have from time to time.

#### 17. POWER OF ATTORNEY

You irrevocably appoint us your attorney, with power of substitution and appointment, to sign for you, at our option, all documents necessary or desirable to permit us to exercise any of our rights and remedies under this Agreement and to complete the Schedule attached hereto, with the right to use your name and to take proceedings in your name.

#### 18. NON WAIVER BY US

Any breach by you of this Agreement or the occurrence of an Event of Default may only be waived by us in writing. Any waiver by us does not mean that any subsequent breach or Event of Default is also waived. Any failure by us to notify you of an Event of Default shall not be deemed to be a waiver of such Event of Default. No course of conduct or omission on our part or on your part shall give rise to any expectation by you that we will not insist on strict compliance with the terms of this Agreement.

#### 19. DEALING WITH SECURITY INTEREST

We may take and give up any of the Collateral or modify or abstain from perfecting or taking advantage of our security interest in the Collateral and otherwise deal with any of the Collateral as we shall see fit without prejudice to your liability or to our rights under this Agreement or at law.

#### 20. PAY ENCUMBRANCES

We or the Receiver may pay any encumbrance that may exist or be threatened against the Collateral. In addition, we or the Receiver may borrow money required for the maintenance, preservation or protection of the Collateral and may grant further security interests in the Collateral in priority to the secured interest created hereby as security for the money so borrowed. In every such case, the amounts so paid or borrowed together with costs, charges, and expenses incurred in connection therewith shall become part of the Obligations, shall bear interest at the highest rate per annum charged by us on the Obligations and shall be secured by this Agreement.

#### 21. PAYMENTS

We shall have the right to appropriate any payment made by you to any of your Obligations as we see fit, and to revoke or alter any such appropriation.

#### 22. DEFINITIONS

In this agreement "you", "your" and "yours" refer to the Customer named above. "We", "our", "ours", and "us" refer to ClearFlow Commercial Finance Corp.

#### 23. CONTINUING EFFECTIVENESS

This Agreement shall be a continuing agreement in every respect, securing the payment of the Obligations. If any part of this Agreement is invalid or void, the remaining terms and provisions of this Agreement shall remain in full force and effect.

#### 24. ACKNOWLEDGEMENT & WAIVER

You acknowledge receipt of a copy of this Agreement. You waive any right you may have to receive a copy of any financing statement, verification statement, or similar

document we register or that we may receive by way of confirmation of a security registration in respect of this Agreement or any agreement amending, supplementing or replacing it.

#### 25. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon you, your heirs and your successors and assigns and shall enure to our benefit and to the benefit of our successors and assigns; provided that you shall not assign any of your rights or obligations hereunder without our prior written consent. We may assign our rights under this Agreement without your consent and without providing you notice of such assignment. This Agreement shall continue in full force and effect notwithstanding any change in the composition of or membership of any firm or corporation, which is a party hereto.

#### 26. NOTICES

Any notice required to be given under this Agreement may be delivered directly to you or us or may be sent by prepaid registered mail addressed to our address shown above or your address shown below, or such further address as we or you may notify to the other in writing from time to time, and if so given the notice shall be deemed to have been given on the day of delivery or the day when it is deemed or otherwise considered to have been received for the purposes of the PPSA, as the case may be.

#### 27. DISCHARGE

If you pay us all of the Obligations secured by this Agreement and otherwise observe and perform the terms and conditions hereof, then we shall, at your request and expense, release and discharge the security interest created by this Agreement and execute and deliver to you such deeds and other instruments as shall be required to effect any such release and discharge.

#### 28. ENTIRE AGREEMENT

You acknowledge that this is the entire agreement between you and us and there are no other written or oral representations or warranties, which apply to the Collateral or to this Agreement. This Agreement may only be amended by an agreement in writing signed by us.

#### 29. NO MERGER

Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish your liability to make payment of or satisfy the Obligations.

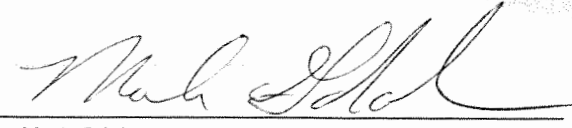
#### 30. FURTHER ASSURANCES

You shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered every such further act, deed, conveyance, instrument, transfer, assignment, security agreement and assurance as we may reasonably require in order to give effect to the provisions and purposes of this Agreement.

#### 31. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

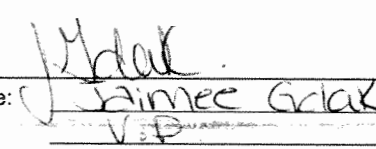
### THE EN CADRE GROUP INC.

BY: 

Name: Mark Gdak

Title: President

Address: 588 Colby Drive, Unit 1, Waterloo, Ontario N2V 1A2

BY: 

Name: Jaimee Gdak

Title: V.P.

**SCHEDULE A****DEPOSITS AND CREDIT BALANCES**

Unlimited

**INVESTMENT PROPERTY****LIFE INSURANCE POLICIES****LOCATIONS OF COLLATERAL**

**SCHEDULE A****DEPOSITS AND CREDIT BALANCES**

Unlimited

**INVESTMENT PROPERTY****LIFE INSURANCE POLICIES****LOCATIONS OF COLLATERAL**

**ClearFlow Commercial Finance Corp.**

ClearFlow Commercial Finance Corp.

30 Vogell Road, Suite 1  
 Richmond Hill, Ontario L4B 3K6  
 www.ClearFlowFinance.com

**General Security Agreement**Customer: **EN CADRE GROUP INC.**Date: **April 30, 2015.****SECURITY INTEREST**

In consideration of our dealing with or continuing to deal with you, you grant to us a continuing security interest in all of your Assets and Undertakings (defined below) and an assignment of your Accounts (defined below). The Assets and Undertakings over which you have granted us a security interest hereby, the Accounts assigned to us, together with the Proceeds (defined below) thereof, are herein collectively called the "Collateral". You agree that we have not agreed to postpone the time for attachment of the security interest granted hereby with respect to your presently existing Collateral, that such security interest shall attach to any Collateral acquired after the date hereof as soon as you obtain rights in such Collateral and that value has been given.

**INDEBTEDNESS AND LIABILITY SECURED**

You agree that the obligations secured by the security interest granted hereby (collectively, the "Obligations") include, without limitation, all your present and future obligations, indebtedness and liability to us, direct and indirect, absolute and contingent, whether matured or not matured, and include all costs and expenses (including legal fees and expenses) incurred by us in connection with our dealings with you.

**1. DEFINITIONS OF COLLATERAL**

**ASSETS AND UNDERTAKINGS** - all of your present and after acquired personal property and undertakings including without limitation, Inventory, Equipment, Deposits and Credit Balances, Investment Property, Life Insurance (all as defined herein), all intangible and intellectual property, and all real and immovable property both freehold and leasehold, except for the last day of the term of any lease.

**INVENTORY** - all presently owned and after acquired goods and other property held for sale or lease or that have been leased or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process, or materials used or consumed in your business or profession.

**EQUIPMENT** - all presently owned and after acquired goods that are owned by you other than Inventory and consumer goods.

**DEPOSITS AND CREDIT BALANCES** - all monies and credit balances which are now or may hereafter be on deposit with or standing to your credit with us, and/or with any of our subsidiaries and affiliates, up to the amount set out on Schedule A (or all deposit and credit balances, if no amount is set out on Schedule A) and any amount of interest due or accruing due to you in connection with any such deposit or credit balance.

**INVESTMENT PROPERTY** - all present and future investment property held by you, including securities, shares, options, rights, warrants, joint venture interests, interests in limited partnerships, trust units, bonds, debentures and all other documents which constitute evidence of a share, participation or other interest of yours in property or in an enterprise or which constitute evidence of an obligation of the issuer (collectively called "Investment Property") including, without limitation, any Investment Property specifically identified in Schedule A; and all substitutions therefor and, subject to Section 5, dividends and income derived therefrom.

**LIFE INSURANCE** - the life insurance policy or policies described on Schedule A and any proceeds derived therefrom, and any amounts held by the insurer as pre-paid premiums or for the payment of future premiums.

**2. ACCOUNTS**

You absolutely assign and transfer to us all debts, accounts, choses in action, claims, demands, and moneys now due, owing, accruing, or which may hereafter become due, owing or accruing to you, together with all rights, benefits, security interests, mortgages, instruments, rights of action, deeds, books and records and documents now or hereafter belonging to you in respect of or as security for any of the foregoing (collectively called "Accounts"). This assignment is and shall be a continuing security to us for the Obligations. All money or any other form of payment received by you in payment of any Accounts shall, following any continuing Event of Default under this Agreement, be received and held by you in trust for us.

**3. INVESTMENT PROPERTY**

If any of the Collateral consists of Investment Property, (a) you authorize us to transfer such Collateral or any part thereof into our own name or that of our nominee so that we or our nominee may appear of record as the sole owner of such Collateral; provided, that until the occurrence of any continuing Event of Default, we shall deliver promptly to you all notices, statements or other communications received by us or our nominee as such registered owner, and upon demand and receipt of payment of necessary expenses thereof, shall give you or your designee a proxy or proxies to vote and take all action with respect to such Collateral; provided further that after the occurrence of any continuing Event of Default, you waive all rights to be advised of or to receive any notices, statements or communications received by us or our nominee as such registered owner, and agree that no proxy or proxies given to you or your designee by us shall thereafter be effective; and (b) you further agree to execute such other documents and to perform such other acts, and to cause any issuer or securities intermediary

to execute such other documents and to perform such other acts as may be necessary or appropriate in order to give us "control" of such Investment Property, as defined in the *Securities Transfer Act, 2006* (Ontario), which "control" shall be in such manner as we shall designate in our sole judgment and discretion, including, without limitation, an agreement by any issuer or securities intermediary that it will comply with instructions in the case of an issuer or entitlement orders in the case of a securities intermediary, originated by us, whether before or after the occurrence of any continuing Event of Default, without further consent from you.

**4. PROCEEDS**

You grant us a security interest on all of your property in any form derived directly or indirectly from any use or dealing with any Assets and Undertakings or Accounts or that indemnifies or compensates for Assets and Undertakings destroyed or damaged (all of which property is herein collectively called "Proceeds"). Proceeds shall be received and held by you in trust for us.

**5. INCOME AND INTEREST ON INVESTMENT PROPERTY**

Until the occurrence of any continuing Event of Default, you reserve the right to receive all income from or interest on the Collateral consisting of Investment Property, and if we receive any such income or interest prior to the occurrence of any continuing Event of Default, we agree to pay you such income or interest promptly. After the occurrence of any continuing Event of Default, you will not demand or receive any income from or interest on such Collateral, and if you receive any such income or interest, such income or interest shall be held by you in trust for us in the same medium in which received, shall not be commingled with any of your other assets and shall be delivered to us in the form received, properly endorsed to permit collection, not later than the next business day following the day of its receipt. We may apply the net cash receipts from such income or interest to payment of any of the Obligations, provided that we account for and pay over to you any such income or interest remaining after payment in full of the Obligations.

**6. COSTS AND EXPENSES**

You agree to pay the costs and expenses we incur to enforce this Agreement, register this Agreement or notice of it, repossess, maintain, preserve, repair or sell the Collateral, or appoint a consultant, receiver, receiver and manager or agent, and to pay interest thereon. You also agree to pay all legal costs and fees (including in-house legal fees, charges and expenses), incurred by us to do any of the above or to defend any legal claim or counterclaim by you or others respecting the manner of our enforcement of, or our right to enforce, this Agreement. You will pay the legal fees incurred by us on a solicitor and own client basis.

**7. FREE AND CLEAR**

You hereby represent and warrant to us that you are the owner of the Collateral free from any hypothec, mortgage, lien, charge, security interest or any other interest or claim including any proprietary or trust interest or encumbrance claimed by any third party. You hereby covenant and agree to keep the Collateral free and clear of all taxes, assessments, and security or proprietary interests in favour of third parties. You hereby covenant and agree to not sell, give away, part with possession of or otherwise dispose of any part of the Collateral, (except Inventory sold in the normal course of business and obsolete equipment) without our prior written consent.

**8. INSURANCE**

You will, at your cost, keep the Collateral insured from all risk of loss, theft or damage as are customarily insured by businesses in the industry in which you are engaged. If requested, you will provide us with a copy of the insurance policy. The insurance policy will name us as first loss payee and additional insured. We may, in our absolute discretion, pay any premium due on any insurance policy, including any life insurance policy forming part of the Collateral, and the amount of any premium we pay will be added to and form part of the Obligations.

**9. LOCATION OF COLLATERAL**

You will keep the Collateral at the location or locations set out on Schedule A. You will not



remove the Collateral from this location (except in the ordinary course of your business) without our prior written consent. If no location is set out on Schedule A, you will keep the Collateral at the address shown below your signature to this Agreement.

#### 10. LIMITATION ON OBLIGATIONS OF CLEARFLOW

Our sole obligation with respect to the custody, safekeeping and physical preservation of Collateral in our possession shall be to use reasonable care in the custody and safekeeping thereof, and we shall be deemed to have used reasonable care if we deal with such Collateral in the same manner as we deal with similar property for our own account. Neither we nor any of our directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon the Collateral or any part thereof or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral whether at your request or otherwise.

#### 11. REPRESENTATIONS AND WARRANTIES

You hereby represent and warrant to us that:

- (a) if applicable, you are a corporation duly existing, or a partnership duly established, under the laws of the jurisdiction of your incorporation or establishment, have all necessary power and authority to own your property and assets, to carry on your business as currently carried on by you and hold all necessary licenses, permits and consents as are required so to own your property and assets and so to carry on business in each jurisdiction in which you do so;
- (b) you have the capacity, power and authority and the legal right to execute and deliver, to perform your obligations under, this Agreement, and have taken all necessary action, corporate or otherwise, to authorize the execution and delivery of this Agreement and the performance of your obligations hereunder;
- (c) this Agreement constitutes a legal, valid and binding obligation of yours enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity;
- (d) except for consents which have been obtained and are in full force and effect, no consent of any person is required, or purports to be required, in connection with the execution and delivery of this Agreement by you or the performance of your obligations hereunder;
- (e) the execution and delivery by you of this Agreement and the performance of your obligations hereunder will not violate any applicable law or contractual obligation applicable to you; and
- (f) the representations and warranties set out in clauses (a) through (e) above or in any certificate or other document delivered to us by you or on your behalf are material, shall be deemed to have been relied upon by us notwithstanding any investigation heretofore or hereafter made by us or on our behalf, shall survive the execution and delivery of this Agreement and shall continue in full force and effect without time limit.

#### 12. REPORTING

You will:

- (a) if you are a corporation, a partnership or a sole proprietorship, provide to us accountant-prepared financial statements within 120 days of each of your fiscal year ends;
- (b) if you are an individual, provide to us your personal net worth statement upon request by us;
- (c) advise us of any Event of Default immediately upon the occurrence of such event;
- (d) inform us of any actual or probable material litigation and provide us with copies of all relevant documents upon request; and
- (e) provide us with such other information and financial data as we may request from time to time.
- (f) provide us with a monthly aged accounts receivable listing within 15 days of each month end.

#### 13. POSITIVE COVENANTS

You agree to:

- (a) make all payments when due or demanded to us (without any condition, deduction, set-off or holdback) at our address noted above (or any other address that we advise);
- (b) if applicable, maintain your existence as a corporation, partnership, or sole proprietorship, as the case may be, and keep all material agreements, rights, franchises, licences, operations, contracts or other arrangements in full force and effect;
- (c) pay all taxes, which may result in a lien or charge on any of your property and assets;

- (d) maintain, protect and preserve the Collateral in good repair and working condition;
- (e) provide such security as we may require;
- (f) continue to carry on, and maintain in good standing, the business being carried on by you at the date hereof;
- (g) permit us or our authorized representatives full and reasonable access to your premises, business, financial and computer records and allow the duplication or extraction of pertinent information therefrom;
- (h) notify us in writing at least 20 days prior to any change of your name; and
- (i) notify us in writing promptly of any significant loss of or damage to the Collateral.

#### 14. NEGATIVE COVENANTS

You will not:

- (a) create, incur, assume, or suffer to exist, any mortgage, deed of trust, pledge, lien, security interest, assignment, charge, or encumbrance (including without limitation, any conditional sale, or other title retention agreement, or finance lease) of any nature, upon or with respect to the Collateral, or sign or file under the *Personal Property Security Act* (Ontario) (the "PPSA") or similar registry system of any jurisdiction a financing statement which names you as a debtor, or sign any security agreement authorizing any secured party thereunder to file such financing statement creating a security interest in the Collateral;
- (b) if you are a corporation, a partnership or a sole proprietorship, as the case may be, permit any change of ownership or change your capital structure without our prior written consent, such consent not to be unreasonably withheld; or
- (c) transfer your interest in any part of the Collateral not expressly permitted under this Agreement or change the location(s) of the Collateral without our prior written consent.

#### 15. DEFAULT

You shall be in default under this Agreement upon the happening of any of the following events (each, an "Event of Default"):

- (a) you or any other person liable for the Obligations is in default under any agreement relating to the Obligations or any part thereof;
- (b) you or any other person liable for the Obligations is in default under any other loan, debt or obligation owed to anyone else, subject to the passage of any applicable grace period;
- (c) you fail to perform any of the terms or conditions of this Agreement or any other agreement between you and us;
- (d) you become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver, or a trustee or receiver shall be appointed for you or for a substantial part of your property without your consent;
- (e) bankruptcy, reorganization or insolvency proceedings shall be instituted by or against you;
- (f) any statement made by you to induce us to extend credit to you was false in any material respect when made, or becomes false;
- (g) anyone takes possession of or applies to any court for possession of the Collateral, or anyone claims to have rights in the Collateral superior to our rights;
- (h) if you are an individual, you are declared incompetent by a court, or you die, or, if you are a partnership, a partner dies;
- (i) you pledge, encumber, mortgage or otherwise create or permit the continued existence of any lien or any other interest or claim including any proprietary or trust interest or encumbrance claimed by any third party with respect to any of the Collateral, except for any lien granted by you in our favour;
- (j) you incur any indebtedness for borrowed money (including, without limitation, by guaranteeing the obligations of others) outside of the ordinary course of business;
- (k) you fail to deliver to us on a timely basis the financial information required by any agreement between us; or
- (l) any other event occurs which causes us in good faith, to deem ourselves insecure, or to believe that the Collateral, or any part thereof, or the value thereof, is or is about to be placed in jeopardy.

#### 16. REMEDIES

Upon the occurrence of an Event of Default, we may require you to repay any or all of the Obligations in full, whether matured or not, and we may enforce this Agreement by any method permitted by law, and we may exercise any rights and remedies under applicable law, and we may appoint any person, including our employee, to be an agent, a receiver or receiver and manager (the "Receiver") of the Collateral. We and the Receiver shall be entitled to:

- (a) seize and possess the Collateral;
- (b) carry on your business;
- (c) sell, lease or otherwise dispose of the Collateral;
- (d) foreclose on the Collateral;
- (e) in the case of Life Insurance, exercise any options available to you under the Life Insurance;

- (f) demand, sue for and receive Accounts, give effectual receipts and discharges for the Accounts, compromise any Accounts which may seem bad or doubtful to us and give time for payment thereof with or without security;
- (g) make any arrangement or compromise in our interest, or
- (h) take any other action deemed necessary to carry into effect the provisions of this Agreement.

The Receiver shall be your agent and you shall be solely responsible for the Receiver's actions. We shall not be in any way responsible for any misconduct or negligence on the part of the Receiver. If the proceeds of the realization of the Collateral are insufficient to repay us the Obligations in full, then you forthwith shall pay us such deficiency. The rights and powers in this paragraph are supplemental to and not in substitution for any other rights we may have from time to time.

#### 17. POWER OF ATTORNEY

You irrevocably appoint us your attorney, with power of substitution and appointment, to sign for you, at our option, all documents necessary or desirable to permit us to exercise any of our rights and remedies under this Agreement and to complete the Schedule attached hereto, with the right to use your name and to take proceedings in your name.

#### 18. NON WAIVER BY US

Any breach by you of this Agreement or the occurrence of an Event of Default may only be waived by us in writing. Any waiver by us does not mean that any subsequent breach or Event of Default is also waived. Any failure by us to notify you of an Event of Default shall not be deemed to be a waiver of such Event of Default. No course of conduct or omission on our part or on your part shall give rise to any expectation by you that we will not insist on strict compliance with the terms of this Agreement.

#### 19. DEALING WITH SECURITY INTEREST

We may take and give up any of the Collateral or modify or abstain from perfecting or taking advantage of our security interest in the Collateral and otherwise deal with any of the Collateral as we shall see fit without prejudice to your liability or to our rights under this Agreement or at law.

#### 20. PAY ENCUMBRANCES

We or the Receiver may pay any encumbrance that may exist or be threatened against the Collateral. In addition, we or the Receiver may borrow money required for the maintenance, preservation or protection of the Collateral and may grant further security interests in the Collateral in priority to the secured interest created hereby as security for the money so borrowed. In every such case, the amounts so paid or borrowed together with costs, charges, and expenses incurred in connection therewith shall become part of the Obligations, shall bear interest at the highest rate per annum charged by us on the Obligations and shall be secured by this Agreement.

#### 21. PAYMENTS

We shall have the right to appropriate any payment made by you to any of your Obligations as we see fit, and to revoke or alter any such appropriation.

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In this agreement "you", "your" and "yours" refer to the Customer named above. "We", "our", "ours", and "us" refer to ClearFlow Commercial Finance Corp.

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document we register or that we may receive by way of confirmation of a security registration in respect of this Agreement or any agreement amending, supplementing or replacing it.

#### 25. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon you, your heirs and your successors and assigns and shall enure to our benefit and to the benefit of our successors and assigns; provided that you shall not assign any of your rights or obligations hereunder without our prior written consent. We may assign our rights under this Agreement without your consent and without providing you notice of such assignment. This Agreement shall continue in full force and effect notwithstanding any change in the composition of or membership of any firm or corporation, which is a party hereto.

#### 26. NOTICES

Any notice required to be given under this Agreement may be delivered directly to you or us or may be sent by prepaid registered mail addressed to our address shown above or your address shown below, or such further address as we or you may notify to the other in writing from time to time, and if so given the notice shall be deemed to have been given on the day of delivery or the day when it is deemed or otherwise considered to have been received for the purposes of the PPSA, as the case may be.

#### 27. DISCHARGE

If you pay us all of the Obligations secured by this Agreement and otherwise observe and perform the terms and conditions hereof, then we shall, at your request and expense, release and discharge the security interest created by this Agreement and execute and deliver to you such deeds and other instruments as shall be required to effect any such release and discharge.

#### 28. ENTIRE AGREEMENT

You acknowledge that this is the entire agreement between you and us and there are no other written or oral representations or warranties, which apply to the Collateral or to this Agreement. This Agreement may only be amended by an agreement in writing signed by us.

#### 29. NO MERGER

Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish your liability to make payment of or satisfy the Obligations.

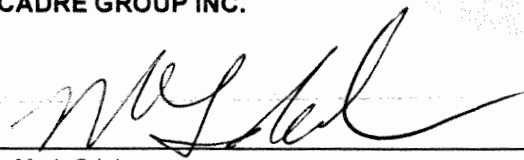
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#### 31. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

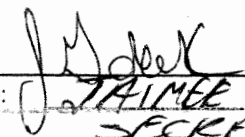
#### THE EN CADRE GROUP INC.

BY: 

Name: Mark Gdak

Title: President

Address: 588 Colby Drive, Unit 1, Waterloo, Ontario N2V 1A2

BY: 

Name: J. S. Deek

Title: SECRETARY

**SCHEDULE A****DEPOSITS AND CREDIT BALANCES**

Unlimited

**INVESTMENT PROPERTY****LIFE INSURANCE POLICIES****LOCATIONS OF COLLATERAL**



**TAB C**

RUN NUMBER : 190  
RUN DATE : 2019/07/09  
ID : 20190709081639.20

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 4658)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

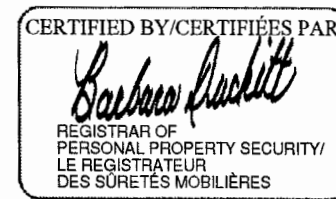
SEARCH CONDUCTED ON : TRIGGER WHOLESALE, INC.

FILE CURRENCY : 08JUL 2019

ENQUIRY NUMBER 20190709081639.20 CONTAINS 14 PAGE(S), 7 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME  
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER  
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

ONCORP - TORKIN MANES LLP - LINDA PLEDGER  
1500-151 YONGE STREET  
TORONTO ON M5C 2W7



(crj5 06/2019)

CONTINUED...

2

RUN NUMBER : 190  
 RUN DATE : 2019/07/09  
 ID : 20190709081639.20

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 2  
 ( 4659)

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : TRIGGER WHOLESale, INC.  
 FILE CURRENCY : 08JUL 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
 753113466

| CAUTION<br>FILING | PAGE<br>NO. OF | TOTAL<br>PAGES | MOTOR VEHICLE<br>SCHEDULE | REGISTRATION<br>NUMBER  | REGISTERED<br>UNDER | REGISTRATION<br>PERIOD |
|-------------------|----------------|----------------|---------------------------|-------------------------|---------------------|------------------------|
|                   | 001            | 1              |                           | 20190708 1403 1590 0597 | P PPSA              | 5                      |

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

DEBTOR  
NAME

BUSINESS NAME

TRIGGER WHOLESale, INC.

ONTARIO CORPORATION NO. 2425488  
 ON N2V 1A2

ADDRESS

588 COLBY DRIVE, UNIT 1

WATERLOO

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

DEBTOR  
NAME

BUSINESS NAME

ONTARIO CORPORATION NO.

ADDRESS

SECURED PARTY /  
LIEN CLAIMANT

CLEARFLOW COMMERCIAL FINANCE CORP.

ADDRESS

217 SPEERS ROAD, UNIT 3

OAKVILLE

ON L6K 0J3

COLLATERAL CLASSIFICATION

| CONSUMER<br>GOODS | INVENTORY | EQUIPMENT | ACCOUNTS | OTHER | MOTOR VEHICLE<br>INCLUDED | AMOUNT | DATE OF<br>MATURITY OR | NO FIXED<br>MATURITY DATE |
|-------------------|-----------|-----------|----------|-------|---------------------------|--------|------------------------|---------------------------|
| X                 | X         | X         | X        | X     | X                         |        |                        |                           |

YEAR MAKE

MODEL

V.I.N.

MOTOR  
VEHICLE

GENERAL  
COLLATERAL  
DESCRIPTION

MASTER PURCHASE AND SALE AGREEMENT AND GENERAL SECURITY AGREEMENT

REGISTERING  
AGENT

TORKIN MANES LLP (ATTN/J. ALPERT)

ADDRESS

1500-151 YONGE STREET

TORONTO

ON M5C 2W7

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Luckitt*  
 REGISTRAR OF  
 PERSONAL PROPERTY SECURITY/  
 LE REGISTREUR  
 DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)

RUN NUMBER : 190  
 RUN DATE : 2019/07/09  
 ID : 20190709081639.20

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 3  
 ( 4660)

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : TRIGGER WHOLESale, INC.  
 FILE CURRENCY : 08JUL 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
 748227834

00

01

| CAUTION FILING | PAGE NO. OF | TOTAL PAGES | MOTOR VEHICLE SCHEDULE | REGISTRATION NUMBER     | REGISTERED UNDER | REGISTRATION PERIOD |
|----------------|-------------|-------------|------------------------|-------------------------|------------------|---------------------|
|                | 01          | 003         |                        | 20190208 1446 1530 9277 | P PPSA           | 5                   |

02

03

04

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

DEBTOR NAME

BUSINESS NAME

TRIGGER WHOLESale, INC

ONTARIO CORPORATION NO.

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

DEBTOR NAME

BUSINESS NAME

ONTARIO CORPORATION NO.

07

08

09

ADDRESS

DE LAGE LANDEN FINANCIAL SERVICES CANADA INC.

ADDRESS

3450 SUPERIOR COURT, UNIT 1

OAKVILLE

ON

L6L 0C4

10

COLLATERAL CLASSIFICATION

| CONSUMER | GOODS | INVENTORY | EQUIPMENT | ACCOUNTS | OTHER | MOTOR VEHICLE INCLUDED | AMOUNT | DATE OF MATURITY | OR | NO FIXED MATURITY DATE |
|----------|-------|-----------|-----------|----------|-------|------------------------|--------|------------------|----|------------------------|
|          |       |           | X         | X        | X     |                        |        |                  |    | X                      |

11

12

YEAR MAKE

MODEL

V.I.N.

MOTOR VEHICLE

13

14

15

GENERAL

COLLATERAL

DESCRIPTION

ALL PERSONAL PROPERTY OF THE DEBTOR FINANCED BY THE SECURED PARTY,  
 WHEREVER SITUATED, CONSISTING OF ONE (1) KONICA ACCURIOPRESS  
 PRINTER, TOGETHER WITH ALL PARTS AND ACCESSORIES RELATING THERETO,

16

17

REGISTERING

AGENT

D+H LIMITED PARTNERSHIP

ADDRESS

SUITE 200, 4126 NORLAND AVENUE

BURNABY

BC

V5G 3S8

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...

4

CERTIFIED BY/CERTIFIÉES PAR

*Barbara Rachitt*  
 REGISTRAR OF  
 PERSONAL PROPERTY SECURITY/  
 LE REGISTRATEUR  
 DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)

RUN NUMBER : 190  
 RUN DATE : 2019/07/09  
 ID : 20190709081639.20

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 4  
 ( 4661)

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : TRIGGER WHOLESALE, INC.  
 FILE CURRENCY : 08JUL 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
 748227834

| CAUTION<br>FILING | PAGE<br>NO. OF | TOTAL<br>PAGES | MOTOR VEHICLE<br>SCHEDULE | REGISTRATION<br>NUMBER  | REGISTERED<br>UNDER | REGISTRATION<br>PERIOD |
|-------------------|----------------|----------------|---------------------------|-------------------------|---------------------|------------------------|
|                   | 02             | 003            |                           | 20190208 1446 1530 9277 |                     |                        |

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

DEBTOR  
NAME

BUSINESS NAME

ONTARIO CORPORATION NO.

ADDRESS

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

DEBTOR  
NAME

BUSINESS NAME

ONTARIO CORPORATION NO.

ADDRESS

SECURED PARTY /  
LIEN CLAIMANT

ADDRESS

COLLATERAL CLASSIFICATION

| CONSUMER<br>GOODS | INVENTORY | EQUIPMENT | ACCOUNTS OTHER | MOTOR VEHICLE<br>INCLUDED | AMOUNT | DATE OF<br>MATURITY OR | NO FIXED<br>MATURITY DATE |
|-------------------|-----------|-----------|----------------|---------------------------|--------|------------------------|---------------------------|
|                   |           |           |                |                           |        |                        |                           |

YEAR MAKE

MODEL

V.I.N.

MOTOR  
VEHICLE

GENERAL  
COLLATERAL  
DESCRIPTION

ALL ATTACHMENTS, ACCESSORIES AND ACCESSIONS THERETO OR THEREON, ALL  
 REPLACEMENTS, SUBSTITUTIONS, ADDITIONS AND IMPROVEMENTS OF ALL OR  
 ANY PART OF THE FOREGOING AND ALL PROCEEDS IN ANY FORM DERIVED

REGISTERING  
AGENT

ADDRESS

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...

5

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Duckitt*  
 REGISTRAR OF  
 PERSONAL PROPERTY SECURITY/  
 LE REGISTRATEUR  
 DES SÛRETÉS MOBILIÈRES

(cij1fu 06/2019)

RUN NUMBER : 190  
RUN DATE : 2019/07/09  
ID : 20190709081639.20

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
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( 4662)

149

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : TRIGGER WHOLESALE, INC.  
FILE CURRENCY : 08JUL 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
746227834

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD  
03 003 20190208 1446 1530 9277

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
03 NAME BUSINESS NAME

04 ADDRESS ONTARIO CORPORATION NO.

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
06 NAME BUSINESS NAME

07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY /  
09 LIEN CLAIMANT ADDRESS

10 COLLATERAL CLASSIFICATION  
CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE

11 MOTOR YEAR MAKE MODEL V.I.N.  
12 VEHICLE

13 GENERAL THEREFROM.  
14 COLLATERAL  
15 DESCRIPTION

16 REGISTERING  
17 AGENT ADDRESS

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...

6

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Pashitt*  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)

Ontario 

RUN NUMBER : 190  
RUN DATE : 2019/07/09  
ID : 20190709081639.20

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
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( 4663)

150

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : TRIGGER WHOLESALE, INC.  
FILE CURRENCY : 08JUL 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
744937902

| CAUTION<br>FILING | PAGE<br>NO. OF | TOTAL<br>PAGES | MOTOR VEHICLE<br>SCHEDULE | REGISTRATION<br>NUMBER  | REGISTERED<br>UNDER | REGISTRATION<br>PERIOD |
|-------------------|----------------|----------------|---------------------------|-------------------------|---------------------|------------------------|
|                   | 001            | 1              |                           | 20181018 1337 4085 7898 | P PPSA              | 05                     |

| DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME |
|---------------|------------------|---------|---------|
|---------------|------------------|---------|---------|

DEBTOR  
NAME

BUSINESS NAME

TRIGGER WHOLESALE, INC.

ONTARIO CORPORATION NO.

ADDRESS

588 COLBY DR UNIT 1

WATERLOO

ON N2V1A2

| DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME |
|---------------|------------------|---------|---------|
|---------------|------------------|---------|---------|

DEBTOR  
NAME

BUSINESS NAME

ONTARIO CORPORATION NO.

ADDRESS

SECURED PARTY /  
LIEN CLAIMANT

FORD CREDIT CANADA COMPANY

ADDRESS

PO BOX 2400

EDMONTON

AB T5J 5C7

COLLATERAL CLASSIFICATION

| CONSUMER | MOTOR VEHICLE | AMOUNT    | DATE OF  | NO FIXED |          |          |    |               |
|----------|---------------|-----------|----------|----------|----------|----------|----|---------------|
| GOODS    | INVENTORY     | EQUIPMENT | ACCOUNTS | OTHER    | INCLUDED | MATURITY | OR | MATURITY DATE |
|          |               |           |          |          |          |          |    |               |

YEAR MAKE  
2018 FORD

MODEL  
F150

V.I.N.  
1FTFW1E13JFD46719

GENERAL  
COLLATERAL  
DESCRIPTION

REGISTERING  
AGENT

D + H LIMITED PARTNERSHIP

ADDRESS

2 ROBERT SPECK PARKWAY, 15TH FLOOR

MISSISSAUGA

ON L4J 1H8

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...

7

CERTIFIED BY/CERTIFIÉES PAR

*Barbara Aschitt*

REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)

Ontario

RUN NUMBER : 190  
RUN DATE : 2019/07/09  
ID : 20190709081639.20

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
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151

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : TRIGGER WHOLESALE, INC.  
FILE CURRENCY : 08JUL 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
732656268

| CAUTION<br>FILING | PAGE<br>NO. | TOTAL<br>OF<br>PAGES | MOTOR VEHICLE<br>SCHEDULE | REGISTRATION<br>NUMBER  | REGISTERED<br>UNDER | REGISTRATION<br>PERIOD |
|-------------------|-------------|----------------------|---------------------------|-------------------------|---------------------|------------------------|
|                   | 01          | 001                  |                           | 20171005 1037 1529 6370 | P PPSA              | 5                      |

| DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME |
|---------------|------------------|---------|---------|
|---------------|------------------|---------|---------|

DEBTOR  
NAME

BUSINESS NAME

TRIGGER WHOLESALE INC.

ONTARIO CORPORATION NO.

ADDRESS

588 COLBY DRIVE UNIT 1

WATERLOO

ON N2V 1A2

| DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME |
|---------------|------------------|---------|---------|
|---------------|------------------|---------|---------|

DEBTOR  
NAME

BUSINESS NAME

ONTARIO CORPORATION NO.

ADDRESS

SECURED PARTY /  
LIEN CLAIMANT

FORD CREDIT CANADA COMPANY

ADDRESS

PO BOX 2400

EDMONTON

AB T5J 5C7

| COLLATERAL CLASSIFICATION |       |           |           |                | MOTOR VEHICLE | AMOUNT | DATE OF     | NO. FIXED     |
|---------------------------|-------|-----------|-----------|----------------|---------------|--------|-------------|---------------|
| CONSUMER                  | GOODS | INVENTORY | EQUIPMENT | ACCOUNTS OTHER | INCLUDED      |        | MATURITY OR | MATURITY DATE |
|                           |       |           | X         |                | X             |        |             | X             |

| MOTOR<br>VEHICLE | YEAR MAKE | MODEL | V.I.N.            |
|------------------|-----------|-------|-------------------|
|                  | 2017 FORD | F150  | 1FTEW1EF6HFC54487 |

GENERAL  
COLLATERAL  
DESCRIPTION

REGISTERING  
AGENT

CANADIAN SECURITIES REGISTRATION SYSTEMS

ADDRESS

4126 NORLAND AVENUE

BURNABY

BC V5G 3S8

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...

8

CERTIFIED BY/CERTIFIÉES PAR

*Barbara Puckett*

REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)

Ontario





RUN NUMBER : 190  
 RUN DATE : 2019/07/09  
 ID : 20190709081639.20

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 8  
 ( 4665)

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : TRIGGER WHOLESALE, INC.  
 FILE CURRENCY : 08JUL 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
 705619152

00

01

| CAUTION FILING | PAGE NO. | TOTAL OF PAGES | MOTOR VEHICLE SCHEDULE | REGISTRATION NUMBER     | REGISTERED UNDER | REGISTRATION PERIOD |
|----------------|----------|----------------|------------------------|-------------------------|------------------|---------------------|
|                | 001      | 1              |                        | 20150430 1405 1532 3175 | P PPSA           | 5                   |

02

03

| DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME |
|---------------|------------------|---------|---------|
|               |                  |         |         |

| DEBTOR NAME | BUSINESS NAME          |
|-------------|------------------------|
|             | TRIGGER WHOLESALE, INC |

| ONTARIO CORPORATION NO. |
|-------------------------|
|                         |

04

| ADDRESS                |          |    |         |
|------------------------|----------|----|---------|
| 588 COLBY DRIVE UNIT 1 | WATERLOO | ON | N2V 1A2 |

05

06

| DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME |
|---------------|------------------|---------|---------|
|               |                  |         |         |

| DEBTOR NAME | BUSINESS NAME          |
|-------------|------------------------|
|             | THE EN CADRE GROUP INC |

| ONTARIO CORPORATION NO. |
|-------------------------|
|                         |

07

| ADDRESS                |          |    |         |
|------------------------|----------|----|---------|
| 588 COLBY DRIVE UNIT 1 | WATERLOO | ON | N2V 1A2 |

08

09

| SECURED PARTY / LIEN CLAIMANT |                                    |
|-------------------------------|------------------------------------|
|                               | CLEARFLOW COMMERCIAL FINANCE CORP. |

| ADDRESS                 |               |    |         |
|-------------------------|---------------|----|---------|
| 30 VOGELL ROAD, SUITE 1 | RICHMOND HILL | ON | L4B 3K6 |

COLLATERAL CLASSIFICATION

10

| CONSUMER GOODS | INVENTORY | EQUIPMENT | ACCOUNTS | OTHER | MOTOR VEHICLE INCLUDED | AMOUNT | DATE OF MATURITY | OR | NO. FIXED MATURITY DATE |
|----------------|-----------|-----------|----------|-------|------------------------|--------|------------------|----|-------------------------|
| X              | X         | X         | X        | X     | X                      |        |                  |    |                         |

11

12

| YEAR MAKE | MODEL | V.I.N. |
|-----------|-------|--------|
|           |       |        |

13

14

15

| GENERAL COLLATERAL DESCRIPTION |
|--------------------------------|
|                                |

16

17

| REGISTERING AGENT | CSRS | ADDRESS          |         |    |         |
|-------------------|------|------------------|---------|----|---------|
|                   |      | 4126 NORLAND AVE | BURNABY | BC | V5G 3S8 |

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 9

CERTIFIED BY/CERTIFIÉES PAR

*Barbara Luckitt*

REGISTRAR OF  
 PERSONAL PROPERTY SECURITY/  
 LE REGISTRATEUR  
 DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)

RUN NUMBER : 190  
RUN DATE : 2019/07/09  
ID : 20190709081639.20

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 9  
( 4666)

153

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : TRIGGER WHOLESALE, INC.  
FILE CURRENCY : 08JUL 2019

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

| CAUTION FILING | PAGE NO. OF                  | TOTAL PAGES                              | MOTOR VEHICLE SCHEDULE                                    | REGISTRATION NUMBER         | REGISTERED UNDER                 |
|----------------|------------------------------|------------------------------------------|-----------------------------------------------------------|-----------------------------|----------------------------------|
| 01             | 01                           | 001                                      |                                                           | 20190625 1444 1530 7575     |                                  |
| 21             | RECORD REFERENCED            | FILE NUMBER                              | 705619152                                                 |                             |                                  |
| 22             | PAGE AMENDED                 | NO SPECIFIC PAGE AMENDED                 | X                                                         | CHANGE REQUIRED A AMENDMENT | RENEWAL YEARS                    |
| 23             | REFERENCE                    | FIRST GIVEN NAME                         | INITIAL                                                   | SURNAME                     |                                  |
| 24             | DEBTOR/ TRANSFEROR           | BUSINESS NAME                            | TRIGGER WHOLESALE, INC                                    |                             |                                  |
| 25             | OTHER CHANGE                 | REASON/ DESCRIPTION                      | CHANGE SECURED PARTY ADDRESS                              |                             |                                  |
| 26             |                              |                                          | FROM - 30 VOGEL ROAD, SUITE 1, RICHMOND HILL, ON, L4B 3K6 |                             |                                  |
| 27             |                              |                                          | TO - 217 SPEERS ROAD, UNIT 3, OAKVILLE, ON, L6K 0J3       |                             |                                  |
| 28             |                              |                                          |                                                           |                             |                                  |
| 02/            | DATE OF BIRTH                | FIRST GIVEN NAME                         | INITIAL                                                   | SURNAME                     |                                  |
| 05             | DEBTOR/ TRANSFEREE           | BUSINESS NAME                            |                                                           |                             |                                  |
| 06             |                              |                                          |                                                           |                             | ONTARIO CORPORATION NO.          |
| 04/07          | ADDRESS                      |                                          |                                                           |                             |                                  |
| 29             | ASSIGNOR                     | SECURED PARTY/LIEN CLAIMANT/ASSIGNEE     |                                                           |                             |                                  |
| 08             |                              |                                          | CLEARFLOW COMMERCIAL FINANCE CORP.                        |                             |                                  |
| 09             | ADDRESS                      | 217 SPEERS ROAD UNIT 3                   | OAKVILLE                                                  | ON                          | L6K 0J3                          |
| 10             | COLLATERAL CLASSIFICATION    | CONSUMER                                 | MOTOR VEHICLE                                             | DATE OF                     | NO FIXED                         |
|                |                              | GOODS                                    | INVENTORY EQUIPMENT ACCOUNTS OTHER                        | INCLUDED                    | AMOUNT MATURITY OR MATURITY DATE |
| 11             | MOTOR VEHICLE                | YEAR                                     | MAKE                                                      | MODEL                       | V.I.N.                           |
| 12             | GENERAL COLLATERAL           |                                          |                                                           |                             |                                  |
| 13             | DESCRIPTION                  |                                          |                                                           |                             |                                  |
| 14             | REGISTERING AGENT OR         | CANADIAN SECURITIES REGISTRATION SYSTEMS |                                                           |                             |                                  |
| 15             | SECURED PARTY/ LIEN CLAIMANT | ADDRESS                                  | 4126 NORLAND AVENUE                                       | BURNABY                     | BC V5G 3S8                       |

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 10

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Pechitt*  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj2fu 06/2019)

Ontario

RUN NUMBER : 190  
 RUN DATE : 2019/07/09  
 ID : 20190709081639.20

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
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 ( 4667)

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : TRIGGER WHOLESALE, INC.  
 FILE CURRENCY : 08JUL 2019

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

| CAUTION FILING | PAGE NO. OF                          | TOTAL PAGES                                                                                              | MOTOR VEHICLE SCHEDULE      | REGISTRATION NUMBER     | REGISTERED UNDER       |
|----------------|--------------------------------------|----------------------------------------------------------------------------------------------------------|-----------------------------|-------------------------|------------------------|
| 01             | 001                                  | 1                                                                                                        |                             | 20190708 1404 1590 0599 |                        |
| 21             | RECORD REFERENCED                    | FILE NUMBER                                                                                              | 705619152                   |                         |                        |
| 22             | PAGE AMENDED                         | NO SPECIFIC PAGE AMENDED                                                                                 | CHANGE REQUIRED A AMENDMENT | RENEWAL YEARS           | CORRECT PERIOD         |
| 23             | REFERENCE                            | FIRST GIVEN NAME                                                                                         | INITIAL                     | SURNAME                 |                        |
| 24             | DEBTOR/ TRANSFEROR                   | BUSINESS NAME                                                                                            | TRIGGER WHOLESALE, INC.     |                         |                        |
| 25             | OTHER CHANGE                         |                                                                                                          |                             |                         |                        |
| 26             | REASON/ DESCRIPTION                  | TO CHANGE SECURED PARTY'S ADDRESS AND TO DELETE REFERENCE TO CONSUMER GOODS IN COLLATERAL CLASSIFICATION |                             |                         |                        |
| 02/            | DATE OF BIRTH                        | FIRST GIVEN NAME                                                                                         | INITIAL                     | SURNAME                 |                        |
| 05             | DEBTOR/                              |                                                                                                          |                             |                         |                        |
| 03/            | TRANSFEREE                           | BUSINESS NAME                                                                                            |                             |                         |                        |
| 06             |                                      | ONTARIO CORPORATION NO.                                                                                  |                             |                         |                        |
| 04/07          | ADDRESS                              |                                                                                                          |                             |                         |                        |
| 29             | ASSIGNOR                             |                                                                                                          |                             |                         |                        |
| 08             | SECURED PARTY/LIEN CLAIMANT/ASSIGNEE | CLEARFLOW COMMERCIAL FINANCE CORP.                                                                       |                             |                         |                        |
| 09             | ADDRESS                              | 217 SPEERS ROAD, UNIT 3                                                                                  | OAKVILLE                    | ON                      | L6K 0J3                |
|                | COLLATERAL CLASSIFICATION            |                                                                                                          |                             |                         |                        |
|                | CONSUMER                             |                                                                                                          |                             |                         |                        |
| 10             | GOODS                                | INVENTORY                                                                                                | EQUIPMENT                   | ACCOUNTS OTHER          | MOTOR VEHICLE INCLUDED |
|                | X                                    | X                                                                                                        | X                           | X                       | X                      |
| 11             | MOTOR                                | YEAR                                                                                                     | MAKE                        | MODEL                   | V.I.N.                 |
| 12             | VEHICLE                              |                                                                                                          |                             |                         |                        |
| 13             | GENERAL                              |                                                                                                          |                             |                         |                        |
| 14             | COLLATERAL                           |                                                                                                          |                             |                         |                        |
| 15             | DESCRIPTION                          |                                                                                                          |                             |                         |                        |
| 16             | REGISTERING AGENT OR                 | TORKIN MANES LLP (ATTN/J. ALPERT)                                                                        |                             |                         |                        |
| 17             | SECURED PARTY/ LIEN CLAIMANT         | ADDRESS                                                                                                  | 1500-151 YONGE STREET       | TORONTO                 | ON M5C 2W7             |

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 11

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Pashitt*  
 REGISTRAR OF  
 PERSONAL PROPERTY SECURITY/  
 LE REGISTRATEUR  
 DES SÛRETÉS MOBILIÈRES

(crj2fu 06/2019)

RUN NUMBER : 190  
RUN DATE : 2019/07/09  
ID : 20190709081639.20

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 11  
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155

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : TRIGGER WHOLESALE, INC.  
FILE CURRENCY : 08JUL 2019

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

| CAUTION FILING | PAGE NO. OF                          | TOTAL PAGES                        | MOTOR VEHICLE SCHEDULE    | REGISTRATION NUMBER     | REGISTERED UNDER        |
|----------------|--------------------------------------|------------------------------------|---------------------------|-------------------------|-------------------------|
| 01             | 01                                   | 001                                |                           | 20190708 1451 1590 0623 |                         |
| 21             | RECORD REFERENCED                    | FILE NUMBER                        | 705619152                 |                         |                         |
| 22             | PAGE AMENDED                         | NO SPECIFIC PAGE AMENDED           | CHANGE REQUIRED B RENEWAL | RENEWAL YEARS           | CORRECT PERIOD          |
| 23             | REFERENCE                            |                                    | FIRST GIVEN NAME          | INITIAL                 | SURNAME                 |
| 24             | DEBTOR/ TRANSFEROR                   | BUSINESS NAME                      | TRIGGER WHOLESALE, INC.   |                         |                         |
| 25             | OTHER CHANGE                         |                                    |                           |                         |                         |
| 26             | REASON/                              |                                    |                           |                         |                         |
| 27             | DESCRIPTION                          |                                    |                           |                         |                         |
| 28             |                                      |                                    |                           |                         |                         |
| 02/            | DATE OF BIRTH                        | FIRST GIVEN NAME                   | INITIAL                   | SURNAME                 |                         |
| 05             | DEBTOR/                              |                                    |                           |                         |                         |
| 03/            | TRANSFeree                           | BUSINESS NAME                      |                           |                         |                         |
| 06             |                                      |                                    |                           |                         | ONTARIO CORPORATION NO. |
| 04/07          | ADDRESS                              |                                    |                           |                         |                         |
| 29             | ASSIGNOR                             |                                    |                           |                         |                         |
| 08             | SECURED PARTY/LIEN CLAIMANT/ASSIGNEE |                                    |                           |                         |                         |
| 09             | ADDRESS                              |                                    |                           |                         |                         |
| 10             | COLLATERAL CLASSIFICATION            |                                    |                           |                         |                         |
|                | CONSUMER                             |                                    | MOTOR VEHICLE             | DATE OF                 | NO FIXED                |
|                | GOODS                                | INVENTORY EQUIPMENT ACCOUNTS OTHER | INCLUDED                  | AMOUNT MATURITY OR      | MATURITY DATE           |
| 11             | MOTOR                                | YEAR MAKE                          | MODEL                     | V.I.N.                  |                         |
| 12             | VEHICLE                              |                                    |                           |                         |                         |
| 13             | GENERAL                              |                                    |                           |                         |                         |
| 14             | COLLATERAL                           |                                    |                           |                         |                         |
| 15             | DESCRIPTION                          |                                    |                           |                         |                         |
| 16             | REGISTERING AGENT OR                 | TORKIN MANES LLP (ATTN/J. ALPERT)  |                           |                         |                         |
| 17             | SECURED PARTY/ LIEN CLAIMANT         | ADDRESS                            | 1500-151 YONGE STREET     | TORONTO                 | ON M5C 2W7              |

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 12

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Luckitt*  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj2fu 06/2019)

RUN NUMBER : 190  
 RUN DATE : 2019/07/09  
 ID : 20190709081639.20

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 12  
 ( 4669)

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : TRIGGER WHOLESALE, INC.  
 FILE CURRENCY : 08JUL 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
 700663986

| CAUTION<br>FILING | PAGE<br>NO. OF | TOTAL<br>PAGES | MOTOR VEHICLE<br>SCHEDULE | REGISTRATION<br>NUMBER  | REGISTERED<br>UNDER | REGISTRATION<br>PERIOD |
|-------------------|----------------|----------------|---------------------------|-------------------------|---------------------|------------------------|
|                   | 001            | 001            |                           | 20141014 1458 1862 2829 | P PPSA              | 5                      |

| DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME |
|---------------|------------------|---------|---------|
|               |                  |         |         |

DEBTOR NAME BUSINESS NAME TRIGGER WHOLESALE, INC.

ONTARIO CORPORATION NO.  
 ON N2V 1A2

ADDRESS 588 COLBY DRIVE, UNIT 1 WATERLOO

| DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME |
|---------------|------------------|---------|---------|
|               |                  |         |         |

DEBTOR NAME BUSINESS NAME

ONTARIO CORPORATION NO.

ADDRESS

SECURED PARTY / MARK GDAK  
 LIEN CLAIMANT

ADDRESS 250 LIONS COURT WATERLOO ON N2L 6M8

| COLLATERAL CLASSIFICATION |       |           |           |                | MOTOR VEHICLE | AMOUNT | DATE OF     | NO FIXED      |
|---------------------------|-------|-----------|-----------|----------------|---------------|--------|-------------|---------------|
| CONSUMER                  | GOODS | INVENTORY | EQUIPMENT | ACCOUNTS OTHER | INCLUDED      |        | MATURITY OR | MATURITY DATE |
|                           | X     | X         | X         | X              | X             |        |             |               |

| YEAR MAKE | MODEL | V.I.N. |
|-----------|-------|--------|
|           |       |        |

MOTOR VEHICLE

GENERAL COLLATERAL DESCRIPTION

REGISTERING AGENT MCCARTER GRESPLAN BEYNON WEIR PROFESSIONAL CORPORATION 25508/LK

ADDRESS 675 RIVERBEND DRIVE KITCHENER ON N2K 3S3

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 13

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Duckitt*  
 REGISTRAR OF  
 PERSONAL PROPERTY SECURITY/  
 LE REGISTRATEUR  
 DES SÛRETÉS MOBILIÈRES

(crlfu 06/2019)

RUN NUMBER : 190  
 RUN DATE : 2019/07/09  
 ID : 20190709081639.20

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 13  
 ( 4670)

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : TRIGGER WHOLESALE, INC.  
 FILE CURRENCY : 08JUL 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
 698000193

| CAUTION<br>FILING | PAGE<br>NO. | TOTAL<br>OF<br>PAGES | MOTOR VEHICLE<br>SCHEDULE | REGISTRATION<br>NUMBER  | REGISTERED<br>UNDER | REGISTRATION<br>PERIOD |
|-------------------|-------------|----------------------|---------------------------|-------------------------|---------------------|------------------------|
|                   | 001         | 001                  |                           | 20140715 1023 1862 6420 | P PPSA              | 5                      |

| DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME |
|---------------|------------------|---------|---------|
|---------------|------------------|---------|---------|

DEBTOR  
NAME

BUSINESS NAME

TRIGGER WHOLESALE, INC.

ONTARIO CORPORATION NO.

ADDRESS

588 COLBY DRIVE, UNIT 1

WATERLOO

ON N2V 1A2

| DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME |
|---------------|------------------|---------|---------|
|---------------|------------------|---------|---------|

DEBTOR  
NAME

BUSINESS NAME

ONTARIO CORPORATION NO.

ADDRESS

SECURED PARTY /  
LIEN CLAIMANT

THE EN CADRE GROUP INC.

ADDRESS

588 COLBY DRIVE, UNIT 1

WATERLOO

ON N2V 1A2

COLLATERAL CLASSIFICATION

| CONSUMER | MOTOR VEHICLE | AMOUNT    | DATE OF  | NO. FIXED |
|----------|---------------|-----------|----------|-----------|
| GOODS    | INVENTORY     | EQUIPMENT | ACCOUNTS | OTHER     |
| INCLUDED | MATURITY      | OR        | MATURITY | DATE      |
| X        | X             | X         | X        | X         |

YEAR MAKE

MODEL

V.I.N.

MOTOR  
VEHICLE

GENERAL  
COLLATERAL  
DESCRIPTION

REGISTERING  
AGENT

MCCARTER GRESPLAN BEYNON WEIR PROFESSIONAL CORPORATION 25508/LK

ADDRESS

675 RIVERBEND DRIVE

KITCHENER

ON N2K 3S3

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 14

CERTIFIED BY/CERTIFIÉES PAR

*Barbara Luckitt*

REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)

RUN NUMBER : 190  
RUN DATE : 2019/07/09  
ID : 20190709081639.20

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

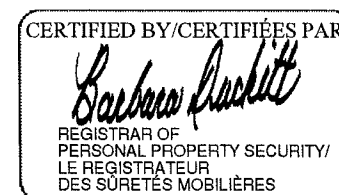
REPORT : PSSR060  
PAGE : 14  
( 4671)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : TRIGGER WHOLESALE, INC.  
FILE CURRENCY : 08JUL 2019

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

| FILE NUMBER | REGISTRATION NUMBER     | REGISTRATION NUMBER     | REGISTRATION NUMBER     | REGISTRATION NUMBER     |
|-------------|-------------------------|-------------------------|-------------------------|-------------------------|
| 753113466   | 20190708 1403 1590 0597 |                         |                         |                         |
| 748227834   | 20190208 1446 1530 9277 |                         |                         |                         |
| 744937902   | 20181018 1337 4085 7898 |                         |                         |                         |
| 732656268   | 20171005 1037 1529 6370 |                         |                         |                         |
| 705619152   | 20150430 1405 1532 3175 | 20190625 1444 1530 7575 | 20190708 1404 1590 0599 | 20190708 1451 1590 0623 |
| 700663986   | 20141014 1458 1862 2829 |                         |                         |                         |
| 698000193   | 20140715 1023 1862 6420 |                         |                         |                         |

10 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(crfj5 06/2019)

RUN NUMBER : 190  
RUN DATE : 2019/07/09  
ID : 20190709081347.34

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 4651)

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THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : THE EN CADRE GROUP INC.

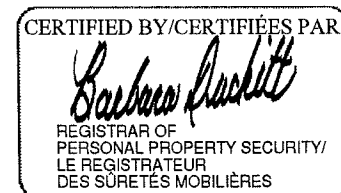
FILE CURRENCY : 08JUL 2019

ENQUIRY NUMBER 20190709081347.34 CONTAINS 7 PAGE(S), 2 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME  
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER  
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

ONCORP - TORKIN MANES LLP - LINDA PLEDGER

1500-151 YONGE STREET  
TORONTO ON M5C 2W7



(crj5 06/2019)

CONTINUED... 2



RUN NUMBER : 190  
RUN DATE : 2019/07/09  
ID : 20190709081347.34

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 2  
( 4652)

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TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : THE EN CADRE GROUP INC.  
FILE CURRENCY : 08JUL 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
753113493

| CAUTION<br>FILING | PAGE<br>NO. | TOTAL<br>OF<br>PAGES | MOTOR VEHICLE<br>SCHEDULE | REGISTRATION<br>NUMBER  | REGISTERED<br>UNDER | REGISTRATION<br>PERIOD |
|-------------------|-------------|----------------------|---------------------------|-------------------------|---------------------|------------------------|
|                   | 001         | 1                    |                           | 20190708 1403 1590 0598 | P PPSA              | 5                      |

| DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME |
|---------------|------------------|---------|---------|
|---------------|------------------|---------|---------|

DEBTOR  
NAME BUSINESS NAME THE EN CADRE GROUP INC.

ADDRESS 588 COLBY DRIVE, UNIT 1 WATERLOO

ONTARIO CORPORATION NO. 2425484  
ON N2V 1A2

| DATE OF BIRTH | FIRST GIVEN NAME | INITIAL | SURNAME |
|---------------|------------------|---------|---------|
|---------------|------------------|---------|---------|

DEBTOR  
NAME BUSINESS NAME

ADDRESS

ONTARIO CORPORATION NO.

SECURED PARTY /  
LIEN CLAIMANT CLEARFLOW COMMERCIAL FINANCE CORP.

ADDRESS 217 SPEERS ROAD, UNIT 3 OAKVILLE ON L6K 0J3

COLLATERAL CLASSIFICATION

| CONSUMER | MOTOR VEHICLE                               | AMOUNT | DATE OF     | NO FIXED      |
|----------|---------------------------------------------|--------|-------------|---------------|
| GOODS    | INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED |        | MATURITY OR | MATURITY DATE |
| X        | X                                           | X      | X           | X             |

| YEAR MAKE | MODEL | V.I.N. |
|-----------|-------|--------|
|-----------|-------|--------|

MOTOR  
VEHICLE

GENERAL  
COLLATERAL  
DESCRIPTION GENERAL SECURITY AGREEMENT

REGISTERING  
AGENT TORKIN MANES LLP (ATTN/J. ALPERT)

ADDRESS 1500-151 YONGE STREET TORONTO ON M5C 2W7

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR

*Barbara Pashitt*  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)

RUN NUMBER : 190  
 RUN DATE : 2019/07/09  
 ID : 20190709081347.34

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 3  
 ( 4653)

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : THE EN CADRE GROUP INC.  
 FILE CURRENCY : 08JUL 2019

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
 705619152

| CAUTION FILING | PAGE NO. | TOTAL OF PAGES | MOTOR VEHICLE SCHEDULE | REGISTRATION NUMBER     | REGISTERED UNDER | REGISTRATION PERIOD |
|----------------|----------|----------------|------------------------|-------------------------|------------------|---------------------|
| 01             | 001      | 1              |                        | 20150430 1405 1532 3175 | P PPSA           | 5                   |

| DEBTOR NAME | DATE OF BIRTH | BUSINESS NAME | FIRST GIVEN NAME | INITIAL | SURNAME | ONTARIO CORPORATION NO. |
|-------------|---------------|---------------|------------------|---------|---------|-------------------------|
| 02          |               |               |                  |         |         |                         |
| 03          |               |               |                  |         |         |                         |
| 04          |               |               |                  |         |         |                         |
| 05          |               |               |                  |         |         |                         |
| 06          |               |               |                  |         |         |                         |
| 07          |               |               |                  |         |         |                         |
| 08          |               |               |                  |         |         |                         |
| 09          |               |               |                  |         |         |                         |

| COLLATERAL CLASSIFICATION | CONSUMER GOODS | INVENTORY | EQUIPMENT | ACCOUNTS | OTHER | MOTOR VEHICLE INCLUDED | AMOUNT | DATE OF MATURITY | OR | NO FIXED MATURITY DATE |
|---------------------------|----------------|-----------|-----------|----------|-------|------------------------|--------|------------------|----|------------------------|
| 10                        | X              | X         | X         | X        | X     | X                      |        |                  |    |                        |

| MOTOR VEHICLE | YEAR MAKE | MODEL | V.I.N. |
|---------------|-----------|-------|--------|
| 11            |           |       |        |
| 12            |           |       |        |

13 GENERAL  
 14 COLLATERAL  
 15 DESCRIPTION

| REGISTERING AGENT | ADDRESS | CSRS | BURNABY | BC | V5G 3S8 |
|-------------------|---------|------|---------|----|---------|
| 16                |         |      |         |    |         |
| 17                |         |      |         |    |         |

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...

4

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Duckitt*  
 REGISTRAR OF  
 PERSONAL PROPERTY SECURITY/  
 LE REGISTRATEUR  
 DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)

RUN NUMBER : 190  
RUN DATE : 2019/07/09  
ID : 20190709081347.34

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 4  
( 4654)

162

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : THE EN CADRE GROUP INC.  
FILE CURRENCY : 08JUL 2019

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

| CAUTION FILING | PAGE NO. OF                          | TOTAL PAGES                                               | MOTOR VEHICLE SCHEDULE | REGISTRATION NUMBER         | REGISTERED UNDER          |
|----------------|--------------------------------------|-----------------------------------------------------------|------------------------|-----------------------------|---------------------------|
| 01             | 01                                   | 001                                                       |                        | 20190625 1444 1530 7575     |                           |
| 21             | RECORD REFERENCED                    | FILE NUMBER                                               | 705619152              |                             |                           |
| 22             | PAGE AMENDED                         | NO SPECIFIC PAGE AMENDED                                  | X                      | CHANGE REQUIRED A AMENDMENT | RENEWAL YEARS             |
| 23             | REFERENCE                            | FIRST GIVEN NAME                                          | INITIAL                | SURNAME                     |                           |
| 24             | DEBTOR/ TRANSFEROR                   | BUSINESS NAME                                             | TRIGGER WHOLESALE, INC |                             |                           |
| 25             | OTHER CHANGE                         |                                                           |                        |                             |                           |
| 26             | REASON/                              | CHANGE SECURED PARTY ADDRESS                              |                        |                             |                           |
| 27             | DESCRIPTION                          | FROM - 30 VOGEL ROAD, SUITE 1, RICHMOND HILL, ON, L4B 3K6 |                        |                             |                           |
| 28             |                                      | TO - 217 SPEERS ROAD, UNIT 3, OAKVILLE, ON, L6K 0J3       |                        |                             |                           |
| 02/            | DATE OF BIRTH                        | FIRST GIVEN NAME                                          | INITIAL                | SURNAME                     |                           |
| 05             | DEBTOR/                              |                                                           |                        |                             |                           |
| 03/            | TRANSFeree                           | BUSINESS NAME                                             |                        |                             |                           |
| 06             |                                      | ONTARIO CORPORATION NO.                                   |                        |                             |                           |
| 04/07          | ADDRESS                              |                                                           |                        |                             |                           |
| 29             | ASSIGNOR                             |                                                           |                        |                             |                           |
| 08             | SECURED PARTY/LIEN CLAIMANT/ASSIGNEE | CLEARFLOW COMMERCIAL FINANCE CORP.                        |                        |                             |                           |
| 09             | ADDRESS                              | 217 SPEERS ROAD UNIT 3                                    | OAKVILLE               | ON                          | L6K 0J3                   |
| 10             | COLLATERAL CLASSIFICATION            |                                                           |                        |                             |                           |
|                | CONSUMER                             | MOTOR VEHICLE                                             |                        |                             |                           |
|                | GOODS                                | INVENTORY                                                 | EQUIPMENT              | ACCOUNTS                    | OTHER                     |
|                |                                      | INCLUDED                                                  | AMOUNT                 | DATE OF MATURITY            | OR NO FIXED MATURITY DATE |
| 11             | MOTOR                                | YEAR                                                      | MAKE                   | MODEL                       | V.I.N.                    |
| 12             | VEHICLE                              |                                                           |                        |                             |                           |
| 13             | GENERAL                              |                                                           |                        |                             |                           |
| 14             | COLLATERAL                           |                                                           |                        |                             |                           |
| 15             | DESCRIPTION                          |                                                           |                        |                             |                           |
| 16             | REGISTERING AGENT OR                 | CANADIAN SECURITIES REGISTRATION SYSTEMS                  |                        |                             |                           |
| 17             | SECURED PARTY/ LIEN CLAIMANT         | ADDRESS                                                   | 4126 NORLAND AVENUE    | BURNABY                     | BC V5G 3S8                |

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...

5

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Duckitt*  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj2fu 06/2019)

RUN NUMBER : 190  
 RUN DATE : 2019/07/09  
 ID : 20190709081347.34

PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 5  
 ( 4655)

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : THE EN CADRE GROUP INC.  
 FILE CURRENCY : 08JUL 2019

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

| CAUTION FILING | PAGE NO. OF                          | TOTAL MOTOR VEHICLE PAGES SCHEDULE                           | REGISTRATION NUMBER     | REGISTERED UNDER                 |
|----------------|--------------------------------------|--------------------------------------------------------------|-------------------------|----------------------------------|
| 01             | 001                                  | 1                                                            | 20190708 1404 1590 0599 |                                  |
| 21             | RECORD FILE NUMBER                   | 705619152                                                    |                         |                                  |
| 22             | PAGE AMENDED                         | NO SPECIFIC PAGE AMENDED                                     | CHANGE REQUIRED         | RENEWAL CORRECT                  |
|                |                                      | X                                                            | A AMENDMENT             | YEARS PERIOD                     |
| 23             | REFERENCE                            | FIRST GIVEN NAME                                             | INITIAL                 | SURNAME                          |
| 24             | DEBTOR/ TRANSFEROR                   | BUSINESS NAME                                                | TRIGGER WHOLESALE, INC. |                                  |
| 25             | OTHER CHANGE                         |                                                              |                         |                                  |
| 26             | REASON/                              | TO CHANGE SECURED PARTY'S ADDRESS AND TO DELETE REFERENCE TO |                         |                                  |
| 27             | DESCRIPTION                          | CONSUMER GOODS IN COLLATERAL CLASSIFICATION                  |                         |                                  |
| 28             |                                      |                                                              |                         |                                  |
| 02/            | DATE OF BIRTH                        | FIRST GIVEN NAME                                             | INITIAL                 | SURNAME                          |
| 05             | DEBTOR/                              |                                                              |                         |                                  |
| 03/            | TRANSFEREE                           | BUSINESS NAME                                                |                         |                                  |
| 06             |                                      | ONTARIO CORPORATION NO.                                      |                         |                                  |
| 04/07          | ADDRESS                              |                                                              |                         |                                  |
| 29             | ASSIGNOR                             |                                                              |                         |                                  |
|                | SECURED PARTY/LIEN CLAIMANT/ASSIGNEE |                                                              |                         |                                  |
| 08             |                                      | CLEARFLOW COMMERCIAL FINANCE CORP.                           |                         |                                  |
| 09             | ADDRESS                              | 217 SPEERS ROAD, UNIT 3                                      | OAKVILLE                | ON L6K 0J3                       |
|                | COLLATERAL CLASSIFICATION            |                                                              |                         |                                  |
|                | CONSUMER                             | MOTOR VEHICLE                                                | DATE OF                 | NO FIXED                         |
| 10             | GOODS                                | INVENTORY EQUIPMENT ACCOUNTS OTHER                           | INCLUDED                | AMOUNT MATURITY OR MATURITY DATE |
|                | X                                    | X                                                            | X                       | X                                |
| 11             | YEAR                                 | MAKE                                                         | MODEL                   | V.I.N.                           |
| 12             | MOTOR                                |                                                              |                         |                                  |
| 13             | VEHICLE                              |                                                              |                         |                                  |
| 14             | GENERAL                              |                                                              |                         |                                  |
| 15             | COLLATERAL                           |                                                              |                         |                                  |
| 16             | DESCRIPTION                          |                                                              |                         |                                  |
| 17             | REGISTERING AGENT OR                 | TORKIN MANES LLP (ATTN/J. ALPERT)                            |                         |                                  |
|                | SECURED PARTY/                       | ADDRESS                                                      | 1500-151 YONGE STREET   | TORONTO ON M5C 2W7               |
|                | LIEN CLAIMANT                        |                                                              |                         |                                  |

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...

6

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Duckitt*  
 REGISTRAR OF  
 PERSONAL PROPERTY SECURITY/  
 LE REGISTRATEUR  
 DES SÛRETÉS MOBILIÈRES

(crj2tu 06/2019)

RUN NUMBER : 190  
RUN DATE : 2019/07/09  
ID : 20190709081347.34

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 6  
( 4656)

164

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : THE EN CADRE GROUP INC.  
FILE CURRENCY : 08JUL 2019

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

| CAUTION FILING | PAGE NO. OF                          | TOTAL PAGES                       | MOTOR VEHICLE SCHEDULE  | REGISTRATION NUMBER     | REGISTERED UNDER |
|----------------|--------------------------------------|-----------------------------------|-------------------------|-------------------------|------------------|
| 01             | 01                                   | 001                               |                         | 20190708 1451 1590 0623 |                  |
| 21             | RECORD REFERENCED                    | FILE NUMBER                       | 705619152               |                         |                  |
| 22             | PAGE AMENDED                         | NO SPECIFIC PAGE AMENDED          | CHANGE REQUIRED         | RENEWAL YEARS           | CORRECT PERIOD   |
|                |                                      |                                   | B RENEWAL               | 5                       |                  |
| 23             | REFERENCE                            | FIRST GIVEN NAME                  | INITIAL                 | SURNAME                 |                  |
| 24             | DEBTOR/ TRANSFEROR                   | BUSINESS NAME                     | TRIGGER WHOLESALE, INC. |                         |                  |
| 25             | OTHER CHANGE                         |                                   |                         |                         |                  |
| 26             | REASON/                              |                                   |                         |                         |                  |
| 27             | DESCRIPTION                          |                                   |                         |                         |                  |
| 28             |                                      |                                   |                         |                         |                  |
| 02/            | DATE OF BIRTH                        | FIRST GIVEN NAME                  | INITIAL                 | SURNAME                 |                  |
| 05             | DEBTOR/                              |                                   |                         |                         |                  |
| 03/            | TRANSFEREE                           | BUSINESS NAME                     |                         |                         |                  |
| 06             |                                      |                                   |                         |                         |                  |
| 04/07          | ADDRESS                              |                                   |                         |                         |                  |
| 29             | ASSIGNOR                             |                                   |                         |                         |                  |
| 08             | SECURED PARTY/LIEN CLAIMANT/ASSIGNEE |                                   |                         |                         |                  |
| 09             | ADDRESS                              |                                   |                         |                         |                  |
|                | COLLATERAL CLASSIFICATION            |                                   |                         |                         |                  |
|                | CONSUMER                             |                                   |                         |                         |                  |
|                | GOODS                                | INVENTORY                         | EQUIPMENT               | ACCOUNTS                | OTHER            |
| 10             |                                      |                                   |                         |                         |                  |
|                | YEAR                                 | MAKE                              | MODEL                   | V.I.N.                  |                  |
| 11             | MOTOR                                |                                   |                         |                         |                  |
| 12             | VEHICLE                              |                                   |                         |                         |                  |
| 13             | GENERAL                              |                                   |                         |                         |                  |
| 14             | COLLATERAL                           |                                   |                         |                         |                  |
| 15             | DESCRIPTION                          |                                   |                         |                         |                  |
| 16             | REGISTERING AGENT OR                 | TORKIN MANES LLP (ATTN/J. ALPERT) |                         |                         |                  |
| 17             | SECURED PARTY/                       | ADDRESS                           | 1500-151 YONGE STREET   | TORONTO                 | ON M5C 2W7       |
|                | LIEN CLAIMANT                        |                                   |                         |                         |                  |

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED...

7

CERTIFIED BY/CERTIFIÉES PAR  
*Barbara Pashitt*  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj2fu 06/2019)

RUN NUMBER : 190  
RUN DATE : 2019/07/09  
ID : 20190709081347.34

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

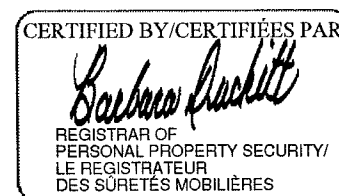
REPORT : PSSR060  
PAGE : 7  
( 4657)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : THE EN CADRE GROUP INC.  
FILE CURRENCY : 08JUL 2019

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

| FILE NUMBER | REGISTRATION NUMBER     | REGISTRATION NUMBER     | REGISTRATION NUMBER     | REGISTRATION NUMBER     |
|-------------|-------------------------|-------------------------|-------------------------|-------------------------|
| 753113493   | 20190708 1403 1590 0598 |                         |                         |                         |
| 705619152   | 20150430 1405 1532 3175 | 20190625 1444 1530 7575 | 20190708 1404 1590 0599 | 20190708 1451 1590 0623 |

5 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(crfj5 06/2019)

# TAB D





PRODUCTS ▾

SUPPORT ▾

LOCATIONS

ABOUT TWI

CONTACT ▾



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MAGAZINES

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# TAB E

## CORPORATION PROFILE REPORT

| Ontario Corp Number       | Corporation Name        | Incorporation Date        |
|---------------------------|-------------------------|---------------------------|
| 2425488                   | TRIGGER WHOLESale, INC. | 2014/07/07                |
|                           |                         | Jurisdiction              |
|                           |                         | ONTARIO                   |
| Corporation Type          | Corporation Status      | Former Jurisdiction       |
| ONTARIO BUSINESS CORP.    | ACTIVE                  | NOT APPLICABLE            |
| Registered Office Address | Date Amalgamated        | Amalgamation Ind.         |
| 588 COLBY DRIVE           | NOT APPLICABLE          | NOT APPLICABLE            |
| Suite # 1                 | New Amal. Number        | Notice Date               |
| WATERLOO                  | NOT APPLICABLE          | NOT APPLICABLE            |
| ONTARIO                   |                         |                           |
| CANADA N2V 1A2            |                         |                           |
| Mailing Address           |                         |                           |
| 588 COLBY DRIVE           |                         |                           |
| Suite # 1                 | Revival Date            | Continuation Date         |
| WATERLOO                  | NOT APPLICABLE          | NOT APPLICABLE            |
| ONTARIO                   | Transferred Out Date    | Cancel/Inactive Date      |
| CANADA N2V 1A2            | NOT APPLICABLE          | NOT APPLICABLE            |
|                           |                         | Letter Date               |
|                           |                         | NOT APPLICABLE            |
|                           |                         | EP Licence Eff.Date       |
|                           |                         | NOT APPLICABLE            |
|                           |                         | EP Licence Term.Date      |
|                           |                         | NOT APPLICABLE            |
|                           |                         | Date Ceased in Ontario    |
|                           |                         | NOT APPLICABLE            |
|                           |                         | Date Commenced in Ontario |
|                           |                         | NOT APPLICABLE            |
|                           |                         | Number of Directors       |
|                           |                         | Minimum                   |
|                           |                         | Maximum                   |
|                           |                         | 00001                     |
|                           |                         | 00010                     |
| Activity Classification   |                         |                           |
| NOT AVAILABLE             |                         |                           |

Request ID: 025089842  
Transaction ID: 76767991  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/10/05  
Time Report Produced: 08:50:35  
Page: 2

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## CORPORATION PROFILE REPORT

### Ontario Corp Number

2425488

### Corporation Name

TRIGGER WHOLESale, INC.

### Corporate Name History

TRIGGER WHOLESale, INC.

### Effective Date

2014/07/07

### Current Business Name(s) Exist:

NO

### Expired Business Name(s) Exist:

NO

### Administrator: Name (Individual / Corporation)

MARK  
GDAK

### Address

250 LIONS COURT  
  
WATERLOO  
ONTARIO  
CANADA N2L 6M8

### Date Began

2014/07/07

### First Director

NOT APPLICABLE

### Designation

DIRECTOR

### Officer Type

### Resident Canadian

Y

# CORPORATION PROFILE REPORT

## Ontario Corp Number

2425488

## Corporation Name

TRIGGER WHOLESale, INC.

## Administrator:

### Name (Individual / Corporation)

MARK

GDAK

### Address

250 LIONS COURT

WATERLOO  
ONTARIO  
CANADA N2L 6M8

## Date Began

2014/07/07

## First Director

NOT APPLICABLE

## Designation

OFFICER

## Officer Type

PRESIDENT

## Resident Canadian

Y

## Administrator:

### Name (Individual / Corporation)

JAIMEE  
LYNN  
GDAK

### Address

250 LIONS COURT

WATERLOO  
ONTARIO  
CANADA N2L 6M8

## Date Began

2014/07/07

## First Director

NOT APPLICABLE

## Designation

DIRECTOR

## Officer Type

## Resident Canadian

Y

# CORPORATION PROFILE REPORT

## Ontario Corp Number

2425488

## Corporation Name

TRIGGER WHOLESale, INC.

## Administrator:

### Name (Individual / Corporation)

JAIMEE  
LYNN  
GDAK

### Address

250 LIONS COURT

WATERLOO  
ONTARIO  
CANADA N2L 6M8

## Date Began

2014/07/07

## First Director

NOT APPLICABLE

## Designation

OFFICER

## Officer Type

SECRETARY

## Resident Canadian

Y

## Administrator:

### Name (Individual / Corporation)

JAIMEE  
LYNN  
GDAK

### Address

250 LIONS COURT

WATERLOO  
ONTARIO  
CANADA N2L 6M8

## Date Began

2014/07/07

## First Director

NOT APPLICABLE

## Designation

OFFICER

## Officer Type

TREASURER

## Resident Canadian

Y

# CORPORATION PROFILE REPORT

|                            |                         |
|----------------------------|-------------------------|
| <b>Ontario Corp Number</b> | <b>Corporation Name</b> |
| 2425488                    | TRIGGER WHOLESale, INC. |

|                                                                 |                                                                   |
|-----------------------------------------------------------------|-------------------------------------------------------------------|
| <b>Administrator:</b><br><b>Name (Individual / Corporation)</b> | <b>Address</b>                                                    |
| BRIAN<br>RICHARD<br>KELLY                                       | 76 SCHNEIDER AVENUE<br><br>KITCHENER<br>ONTARIO<br>CANADA N2G 1K8 |

|                    |                       |                          |
|--------------------|-----------------------|--------------------------|
| <b>Date Began</b>  | <b>First Director</b> | <b>Resident Canadian</b> |
| 2017/10/10         | NOT APPLICABLE        |                          |
| <b>Designation</b> | <b>Officer Type</b>   |                          |
| DIRECTOR           |                       | Y                        |

Request ID: 025089842  
Transaction ID: 76767991  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/10/17 17:35  
Time Report Produced: 08:50:35  
Page: 6

# CORPORATION PROFILE REPORT

**Ontario Corp Number**

2425488

**Corporation Name**

TRIGGER WHOLESale, INC.

**Last Document Recorded**

| Act/Code | Description        | Form | Date                           |
|----------|--------------------|------|--------------------------------|
| CIA      | ANNUAL RETURN 2019 | 1C   | 2020/07/05 (ELECTRONIC FILING) |

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

# TAB F



## CORPORATION PROFILE REPORT

| Ontario Corp Number                                      | Corporation Name          | Incorporation Date     |
|----------------------------------------------------------|---------------------------|------------------------|
| 2425484                                                  | THE EN CADRE GROUP INC.   | 2014/07/07             |
|                                                          |                           | Jurisdiction           |
|                                                          |                           | ONTARIO                |
| Corporation Type                                         | Corporation Status        | Former Jurisdiction    |
| ONTARIO BUSINESS CORP.                                   | ACTIVE                    | NOT APPLICABLE         |
| Registered Office Address                                | Date Amalgamated          | Amalgamation Ind.      |
| 588 COLBY DRIVE                                          | NOT APPLICABLE            | NOT APPLICABLE         |
| WATERLOO<br>ONTARIO<br>CANADA N2V 1A2                    | New Amal. Number          | Notice Date            |
|                                                          | NOT APPLICABLE            | NOT APPLICABLE         |
|                                                          | Letter Date               | NOT APPLICABLE         |
| Mailing Address                                          |                           |                        |
| 588 COLBY DRIVE                                          | Revival Date              | Continuation Date      |
|                                                          | NOT APPLICABLE            | NOT APPLICABLE         |
| Suite # SUITE 1<br>WATERLOO<br>ONTARIO<br>CANADA N2V 1A2 | Transferred Out Date      | Cancel/Inactive Date   |
|                                                          | NOT APPLICABLE            | NOT APPLICABLE         |
|                                                          |                           | EP Licence Eff.Date    |
|                                                          |                           | NOT APPLICABLE         |
|                                                          |                           | EP Licence Term.Date   |
|                                                          |                           | NOT APPLICABLE         |
| Activity Classification                                  | Number of Directors       |                        |
|                                                          | Minimum                   | Maximum                |
| NOT AVAILABLE                                            | 00001                     | 00010                  |
|                                                          | Date Commenced in Ontario | Date Ceased in Ontario |
|                                                          | NOT APPLICABLE            | NOT APPLICABLE         |

Request ID: 023074395  
Transaction ID: 71752816  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/05/17  
Time Report Produced: 09:18:10  
Page: 2

# CORPORATION PROFILE REPORT

## Ontario Corp Number

2425484

## Corporation Name

THE EN CADRE GROUP INC.

## Corporate Name History

THE EN CADRE GROUP INC.

## Effective Date

2014/07/07

## Current Business Name(s) Exist:

NO

## Expired Business Name(s) Exist:

NO

## Administrator: Name (Individual / Corporation)

MARK  
GDAK

## Address

250 LIONS COURT  
  
WATERLOO  
ONTARIO  
CANADA N2L 6M8

## Date Began

2014/07/07

## First Director

NOT APPLICABLE

## Designation

DIRECTOR

## Officer Type

## Resident Canadian

Y

Request ID: 023074395  
Transaction ID: 71752816  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/05/13  
Time Report Produced: 09:18:10  
Page: 3

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## CORPORATION PROFILE REPORT

### Ontario Corp Number

2425484

### Corporation Name

THE EN CADRE GROUP INC.

### Administrator:

#### Name (Individual / Corporation)

MARK

GDAK

#### Address

250 LIONS COURT

WATERLOO  
ONTARIO  
CANADA N2L 6M8

### Date Began

2014/07/07

### First Director

NOT APPLICABLE

### Designation

OFFICER

### Officer Type

PRESIDENT

### Resident Canadian

Y

### Administrator:

#### Name (Individual / Corporation)

JAIMEE  
LYNN  
GDAK

#### Address

250 LIONS COURT

WATERLOO  
ONTARIO  
CANADA N2L 6M8

### Date Began

2014/07/07

### First Director

NOT APPLICABLE

### Designation

DIRECTOR

### Officer Type

### Resident Canadian

Y

# CORPORATION PROFILE REPORT

## Ontario Corp Number

2425484

## Corporation Name

THE EN CADRE GROUP INC.

## Administrator:

### Name (Individual / Corporation)

JAIMEE  
LYNN  
GDAK

### Address

250 LIONS COURT

WATERLOO  
ONTARIO  
CANADA N2L 6M8

## Date Began

2014/07/07

## First Director

NOT APPLICABLE

## Designation

OFFICER

## Officer Type

SECRETARY

## Resident Canadian

Y

## Administrator:

### Name (Individual / Corporation)

JAIMEE  
LYNN  
GDAK

### Address

250 LIONS COURT

WATERLOO  
ONTARIO  
CANADA N2L 6M8

## Date Began

2014/07/07

## First Director

NOT APPLICABLE

## Designation

OFFICER

## Officer Type

TREASURER

## Resident Canadian

Y

Request ID: 023074395  
Transaction ID: 71752816  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2019/05/18  
Time Report Produced: 09:18:10  
Page: 5

# CORPORATION PROFILE REPORT

## Ontario Corp Number

2425484

## Corporation Name

THE EN CADRE GROUP INC.

## Last Document Recorded

| Act/Code | Description        | Form | Date                           |
|----------|--------------------|------|--------------------------------|
| CIA      | ANNUAL RETURN 2017 | 1C   | 2018/12/23 (ELECTRONIC FILING) |

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

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The issuance of this report in electronic form is authorized by the Ministry of Government Services.

**TAB G**

## CORPORATION PROFILE REPORT

| Ontario Corp Number                   | Corporation Name                       | Incorporation Date           |
|---------------------------------------|----------------------------------------|------------------------------|
| 2734849                               | JAIMAK REAL PROPERTIES INC.            | 2020/01/02                   |
|                                       |                                        | Jurisdiction                 |
|                                       |                                        | ONTARIO                      |
| Corporation Type                      | Corporation Status                     | Former Jurisdiction          |
| ONTARIO BUSINESS CORP.                | ACTIVE                                 | NOT APPLICABLE               |
| Registered Office Address             | Date Amalgamated                       | Amalgamation Ind.            |
| 250 LION'S COURT                      | NOT APPLICABLE                         | NOT APPLICABLE               |
|                                       | New Amal. Number                       | Notice Date                  |
| WATERLOO<br>ONTARIO<br>CANADA N2L 6M8 | NOT APPLICABLE                         | NOT APPLICABLE               |
|                                       |                                        | Letter Date                  |
| Mailing Address                       |                                        | NOT APPLICABLE               |
| 250 LION'S COURT                      | Revival Date                           | Continuation Date            |
|                                       | NOT APPLICABLE                         | NOT APPLICABLE               |
| WATERLOO<br>ONTARIO<br>CANADA N2L 6M8 | Transferred Out Date                   | Cancel/Inactive Date         |
|                                       | NOT APPLICABLE                         | NOT APPLICABLE               |
|                                       | EP Licence Eff.Date                    | EP Licence Term.Date         |
|                                       | NOT APPLICABLE                         | NOT APPLICABLE               |
|                                       | Number of Directors<br>Minimum Maximum | Date Commenced<br>in Ontario |
|                                       | 00001 00009                            | NOT APPLICABLE               |
|                                       |                                        | Date Ceased<br>in Ontario    |
|                                       |                                        | NOT APPLICABLE               |
| Activity Classification               |                                        |                              |
| NOT AVAILABLE                         |                                        |                              |

# CORPORATION PROFILE REPORT

|                            |                             |
|----------------------------|-----------------------------|
| <b>Ontario Corp Number</b> | <b>Corporation Name</b>     |
| 2734849                    | JAIMAK REAL PROPERTIES INC. |

|                               |                       |
|-------------------------------|-----------------------|
| <b>Corporate Name History</b> | <b>Effective Date</b> |
| JAIMAK REAL PROPERTIES INC.   | 2020/01/02            |

|                                        |    |
|----------------------------------------|----|
| <b>Current Business Name(s) Exist:</b> | NO |
| <b>Expired Business Name(s) Exist:</b> | NO |

|                                                           |                                                               |
|-----------------------------------------------------------|---------------------------------------------------------------|
| <b>Administrator:<br/>Name (Individual / Corporation)</b> | <b>Address</b>                                                |
| JAIMEE<br>GDAK                                            | 250 LION'S COURT<br><br>WATERLOO<br>ONTARIO<br>CANADA N2L 6M8 |

|                    |                       |                          |
|--------------------|-----------------------|--------------------------|
| <b>Date Began</b>  | <b>First Director</b> |                          |
| 2020/01/02         | NOT APPLICABLE        |                          |
| <b>Designation</b> | <b>Officer Type</b>   | <b>Resident Canadian</b> |
| DIRECTOR           |                       | Y                        |



CORPORATION PROFILE REPORT

|                     |                             |
|---------------------|-----------------------------|
| Ontario Corp Number | Corporation Name            |
| 2734849             | JAIMAK REAL PROPERTIES INC. |

|                                                   |                                                               |
|---------------------------------------------------|---------------------------------------------------------------|
| Administrator:<br>Name (Individual / Corporation) | Address                                                       |
| JAIMEE<br>GDAK                                    | 250 LION'S COURT<br><br>WATERLOO<br>ONTARIO<br>CANADA N2L 6M8 |

|             |                |                   |
|-------------|----------------|-------------------|
| Date Began  | First Director |                   |
| 2020/01/02  | NOT APPLICABLE |                   |
| Designation | Officer Type   | Resident Canadian |
| OFFICER     | PRESIDENT      | Y                 |

|                                                   |                                                               |
|---------------------------------------------------|---------------------------------------------------------------|
| Administrator:<br>Name (Individual / Corporation) | Address                                                       |
| JAIMEE<br>GDAK                                    | 250 LION'S COURT<br><br>WATERLOO<br>ONTARIO<br>CANADA N2L 6M8 |

|             |                |                   |
|-------------|----------------|-------------------|
| Date Began  | First Director |                   |
| 2020/01/02  | NOT APPLICABLE |                   |
| Designation | Officer Type   | Resident Canadian |
| OFFICER     | SECRETARY      | Y                 |

# CORPORATION PROFILE REPORT

|                     |                             |
|---------------------|-----------------------------|
| Ontario Corp Number | Corporation Name            |
| 2734849             | JAIMAK REAL PROPERTIES INC. |

|                                                   |                                                               |
|---------------------------------------------------|---------------------------------------------------------------|
| Administrator:<br>Name (Individual / Corporation) | Address                                                       |
| JAIMEE<br>GDAK                                    | 250 LION'S COURT<br><br>WATERLOO<br>ONTARIO<br>CANADA N2L 6M8 |

|             |                |                   |
|-------------|----------------|-------------------|
| Date Began  | First Director |                   |
| 2020/01/02  | NOT APPLICABLE |                   |
| Designation | Officer Type   | Resident Canadian |
| OFFICER     | TREASURER      | Y                 |

Request ID: 025046511  
Transaction ID: 76663767  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2020/09/21 18:17  
Time Report Produced: 08:09:04  
Page: 5

# CORPORATION PROFILE REPORT

**Ontario Corp Number**

2734849

**Corporation Name**

JAIMAK REAL PROPERTIES INC.

**Last Document Recorded**

| Act/Code | Description   | Form | Date                           |
|----------|---------------|------|--------------------------------|
| CIA      | CHANGE NOTICE | 1    | 2020/02/05 (ELECTRONIC FILING) |

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ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

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**TAB H**

**Torkin Manes LLP**  
Barristers & Solicitors  
151 Yonge Street, Suite 1500  
Toronto, Ontario M5C 2W7

Tel: 416-863-1188  
Fax: 416-863-0305  
www.torkinmanes.com

**Jeffrey J. Simpson**  
*Legal Services provided through*  
*Jeffrey J. Simpson Professional Corporation*  
Direct Tel: 416-777-5413  
Direct Fax: 1-888-587-9143  
jsimpson@torkinmanes.com

Our File No: 34656.0004

An international  
member of  
**AllyLaw**

**Torkin|Manes**  
Barristers & Solicitors

October 8, 2020

**PERSONAL AND CONFIDENTIAL  
VIA COURIER, REGISTERED MAIL AND EMAIL TO**

**mark@triggerwholesale.com**

Trigger Wholesale, Inc.  
588 Colby Drive, Suite 1  
Waterloo Ontario N2V 1A2

Trigger Wholesale, Inc.  
250 Lions Court  
Waterloo, Ontario N2L 6M8

Trigger Wholesale, Inc.  
76 Schneider Avenue,  
Kitchener, Ontario N2G 1K8

**Attention: Mark Gdak, Jaimee Lynn Gdak and Brian Richard Kelly, Directors**

Dear Sirs/Mesdames:

**Re: ClearFlow Commercial Finance Corp. advances to Trigger Wholesale, Inc. ("Trigger")**

We are the solicitors for ClearFlow Commercial Finance Corp. ("**ClearFlow**") with respect to its lending and factoring relationship with Trigger and write with respect to Trigger's indebtedness to ClearFlow as set out below (the "**Indebtedness**").

Trigger is in default of the terms of the Master Purchase and Sale Agreement dated April 30, 2015 (the "**MPSA**") and the Royalty Purchase Agreement dated April 30, 2015 (the "**Royalty Agreement**"). The events of default committed by Trigger include, but are not limited to those events of default defined in s13 (a),(f), (g), (i) and (j) of the Standard Provisions incorporated by reference into the MPSA. In addition, Clearflow has determined that it no longer wishes to continue the factoring and lending relationship with Trigger and has chosen to exercise its right to terminate all credit, factoring and royalty agreements with Trigger. This termination and demand for repayment is without prejudice to Clearflow's right to claim at a later date further amounts due and owing to it as a result of the termination of the various agreements specified above and otherwise entered into between the parties.

Clearflow hereby requires and demands immediate repayment of all outstanding balances and advances pursuant to the existing credit facilities or otherwise made to Trigger.

Trigger is currently indebted to ClearFlow, calculated as of October 5, 2020, in the amount of **\$48,625,279.75**. Please note that this does not include legal fees incurred and to be incurred.

The Indebtedness is secured by a general security agreement executed by Trigger dated April 30, 2015. Clearflow's security interest in the personal property of Trigger was registered under the *Personal Property Security Act* (Ontario) as file reference no. 705619152.

ClearFlow hereby declares that the full amount of the Indebtedness is now immediately due and payable, including any part thereof which is not by its terms, payable until demand is made.

Please be advised that unless payment or arrangements satisfactory to ClearFlow for payment of the Indebtedness are made immediately, ClearFlow will take such further steps as it deems necessary to recover the Indebtedness.

We are enclosing with this letter a Notice of Intention to Enforce Security ("NITES") in accordance with the provisions of Section 244(1) of the *Bankruptcy and Insolvency Act*. Please note the *Bankruptcy and Insolvency Act* provides that a debtor can waive the statutory 10-day period by consenting to a waiver in writing. We have enclosed a waiver of the 10-day period for your consideration and, if you so elect, you can execute same and return it to our office.

ClearFlow expressly reserves the right to proceed without further notice to you with the enforcement of its right at any time if ClearFlow becomes aware of any circumstances which might impair its position.

If you have any questions concerning the demand and or NITES we ask that you have your legal counsel contact the writer.

There are serious consequences that flow from any failure to deal with the demand and NITES and I strongly suggest you retain legal counsel to assist you in dealing with these matters.

Govern yourself accordingly.

Yours truly,

**TORKIN MANES LLP**

Per:

  
*Electronic Signature*

Jeffrey J. Simpson

JJS/sj

Enclosures

**NOTICE OF INTENTION TO ENFORCE SECURITY  
UNDER SECTION 244 (1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*  
(Statutory Form 115, SOR/92-579, s. 40)**

|            |                                                                                                                                                                      |                                                                         |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| <b>TO:</b> | Trigger Wholesale, Inc.<br>588 Colby Drive, Suite 1<br>Waterloo Ontario N2V 1A2<br><br>Trigger Wholesale, Inc.<br>76 Schneider Avenue,<br>Kitchener, Ontario N2G 1K8 | Trigger Wholesale, Inc.<br>250 Lions Court<br>Waterloo, Ontario N2L 6M8 |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|

**TAKE NOTICE THAT:**

1. CLEARFLOW COMMERCIAL FINANCE CORP., a secured creditor, intends to enforce its security on the property of Trigger Wholesale, Inc. as described below:  
     All property, undertaking and assets, including all equipment, fixtures, improvements, inventory, accounts receivable, customer lists, goodwill and other intangible property. (the “**Property**”).
2. The Indebtedness is secured by a general security agreement dated April 30, 2015 and has been registered under the Personal Property Security Act (Ontario) as file reference no. 705619152.
3. The total amount of indebtedness is **\$48,625,279.75** as of October 5, 2020, together with interest accruing on a per diem basis until repaid.
4. The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

Dated at Toronto, this 8th day of October, 2020.

**CLEARFLOW COMMERCIAL FINANCE  
CORP.,**  
 By its Solicitors  
**TORKIN MANES LLP**

  
*Electronic Signature*  
 Per: \_\_\_\_\_

Jeffrey J. Simpson

**ACKNOWLEDGEMENT & CONSENT TO WAIVER  
OF STATUTORY 10-DAY PERIOD**

**TO: CLEARFLOW COMMERCIAL FINANCE CORP. (“ClearFlow”)**

**RE: TRIGGER WHOLESale, INC.**

---

We, Trigger Wholesale, Inc., hereby acknowledge receipt of a letter of demand, dated October 8, 2020, from ClearFlow for payment of the sum of **\$48,625,279.75** plus legal and enforcement fees incurred and to be incurred plus interest accruing on a per diem basis and in addition acknowledge receipt of Notice of Intention to Enforce Security under Section 244(1) of the *Bankruptcy and Insolvency Act*, dated October 8, 2020 (the “BIA Notice”).

We hereby consent to the immediate enforcement by ClearFlow of its rights as a secured creditor and hereby waive the ten-day notice period provided for in the BIA Notice.

**DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020**, this Acknowledgment has been executed, sealed and delivered by the parties hereto.

**TRIGGER WHOLESale, INC.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I/We have the authority to bind the corporation



**Torkin Manes LLP**  
Barristers & Solicitors  
151 Yonge Street, Suite 1500  
Toronto, Ontario M5C 2W7

Tel: 416-863-1188  
Fax: 416-863-0305  
www.torkinmanes.com

**Jeffrey J. Simpson**  
Direct Tel: 416-777-5413  
Direct Fax: 1-888-587-9143  
jsimpson@torkinmanes.com

Our File No: 34656.0004

An international  
member of  
**Ally Law**

**Torkin | Manes**  
Barristers & Solicitors

October 8, 2020

**PERSONAL AND CONFIDENTIAL  
VIA COURIER AND REGISTERED MAIL**

The En Cadre Group Inc.  
588 Colby Drive, Suite 1  
Waterloo Ontario N2V 1A2

The En Cadre Group Inc.  
250 Lions Court  
Waterloo, Ontario N2L 6M8

The En Cadre Group Inc.  
76 Schneider Avenue,  
Kitchener, Ontario N2G 1K8

**Attention: Mark Gdak, Jaimee Lynn Gdak and Brian Richard Kelly, Directors**

Dear Sirs/Mesdames:

**Re: ClearFlow Commercial Finance Corp. advances to Trigger Wholesale, Inc.**

We are counsel to ClearFlow Commercial Finance Corp. (“**ClearFlow**”).

Enclosed please find a copy of our letter dated October 8, 2020, to Trigger Wholesale, Inc. demanding payment of its obligations to ClearFlow, which obligations amount to the sum of **\$48,625,279.75** (the “**Indebtedness**”) as at October 5, 2020, together with interest thereon.

According to ClearFlow’s records, you guaranteed in writing payment of the entire Indebtedness pursuant to a continuing, unlimited guarantee dated April 30, 2015 (the “**Guarantee**”).

As security for your Guarantee, you granted a general security agreement in favour of ClearFlow dated April 30, 2015. Clearflow’s security interest has been registered under the *Personal Property Security Act* (Ontario) as file reference number 705619152 (the “**Security Agreement**”).

On behalf of ClearFlow, we hereby demand payment from you, pursuant to the terms of the Guarantee, of the sum of **\$48,625,279.75**, together with interest on that sum from demand plus legal fees incurred and to be incurred. The exact amount of interest accruing to any proposed date of payment may be obtained by contacting ClearFlow directly.

We are enclosing with this letter a Notice of Intention to Enforce Security in accordance with the provisions of Section 244(1) of the *Bankruptcy and Insolvency Act*. Please note the *Bankruptcy and Insolvency Act* provides that a debtor can waive the statutory 10 day period by consenting to a waiver in writing. We have enclosed a waiver of the 10 day period for your consideration and, if you so elect, you can execute same and return it to our office.

Please be advised that unless payment is made to ClearFlow, or arrangements satisfactory to ClearFlow for payment are made within the prescribed time, ClearFlow will be at liberty to take such further steps as it deems necessary to recover your indebtedness under the Guarantee and Security Agreement.

On behalf of ClearFlow, we expressly reserve ClearFlow's right to proceed without further notice to you with the enforcement of its rights at any time, if ClearFlow becomes aware of any circumstances which might impair its position or security.

If you have any questions or concerns, please have your counsel contact the writer.

Govern yourself accordingly.

Yours truly,

**TORKIN MANES LLP**

Per:

  
*Electronic Signature*

Jeffrey J. Simpson  
JJS/sj

Enclosures

**NOTICE OF INTENTION TO ENFORCE SECURITY  
UNDER SECTION 244 (1) OF THE *BANKRUPTCY AND INSOLVENCY ACT***

**(Statutory Form 115, SOR/92-579, s. 40)**

|            |                                                                                 |                                                                         |
|------------|---------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| <b>TO:</b> | The En Cadre Group Inc.<br>588 Colby Drive, Suite 1<br>Waterloo Ontario N2V 1A2 | The En Cadre Group Inc.<br>250 Lions Court<br>Waterloo, Ontario N2L 6M8 |
|            | The En Cadre Group Inc.<br>76 Schneider Avenue,<br>Kitchener, Ontario N2G 1K8   |                                                                         |

**TAKE NOTICE THAT:**

1. CLEARFLOW COMMERCIAL FINANCE CORP., a secured creditor, intends to enforce its security on the property of The En Cadre Group Inc. as described below:  
     All property, undertaking and assets, including all equipment, fixtures, improvements, inventory, accounts receivable, customer lists, goodwill and other intangible property.
2. The indebtedness is secured by a general security agreement dated April 30, 2015 and registered under the *Personal Property Security Act* (Ontario) as file reference number 705619152.
3. The total amount of indebtedness is **\$48,625,279.75** as of October 5, 2020, together with interest accruing on a per diem basis until repaid.
4. The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

Dated at Toronto, this 8th day of October, 2020.

**CLEARFLOW COMMERCIAL FINANCE  
CORP.,**  
 By its Solicitors  
**TORKIN MANES LLP**

  
*Electronic Signature*

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

Jeffrey J. Simpson

**ACKNOWLEDGEMENT & CONSENT TO WAIVER  
OF STATUTORY 10-DAY PERIOD**

**TO: CLEARFLOW COMMERCIAL FINANCE CORP. (“ClearFlow”)**

**RE: THE EN CADRE GROUP INC.**

---

We, The En Cadre Group Inc., hereby acknowledge receipt of a letter of demand, dated October 8, 2020, from ClearFlow for payment of the sum of **\$48,625,279.75** plus legal and enforcement fees incurred and to be incurred plus interest accruing on a per diem basis and in addition acknowledge receipt of Notice of Intention to Enforce Security under Section 244(1) of the *Bankruptcy and Insolvency Act*, dated October 8, 2020 (the “BIA Notice”).

We hereby consent to the immediate enforcement by ClearFlow of its rights as a secured creditor and hereby waive the ten-day notice period provided for in the BIA Notice.

**DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020**, this Acknowledgment has been executed, sealed and delivered by the parties hereto.

**THE EN CADRE GROUP INC.**

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

Name:

Title:

I/We have the authority to bind the corporation

**Torkin Manes LLP**  
Barristers & Solicitors  
151 Yonge Street, Suite 1500  
Toronto, Ontario M5C 2W7

Tel: 416-863-1188  
Fax: 416-863-0305  
www.torkinmanes.com

**Jeffrey J. Simpson**  
*Legal Services provided through*  
*Jeffrey J. Simpson Professional Corporation*  
Direct Tel: 416-777-5413  
Direct Fax: 1-888-587-9143  
jsimpson@torkinmanes.com

Our File No: 34656.0004

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**AllyLaw**

**Torkin|Manes**  
Barristers & Solicitors

October 8, 2020

**PERSONAL AND CONFIDENTIAL  
VIA COURIER, REGISTERED MAIL AND EMAIL TO**

**mark@triggerwholesale.com**

Mark Gdak  
250 Lions Court  
Waterloo, Ontario N2L 6M8

**Re: ClearFlow Commercial Finance Corp. advances to Trigger Wholesale, Inc.**

We are counsel to ClearFlow Commercial Finance Corp. (“**ClearFlow**”)

Enclosed please find a copy of our letter dated October 8, 2020, to Trigger Wholesale, Inc. demanding payment of its obligations to ClearFlow, which obligations amount to the sum of \$48,625,279.75 (the “**Indebtedness**”) as at October 5, 2020, together with per diem interest thereon.

According to ClearFlow’s records, you guaranteed in writing payment of the entire Indebtedness pursuant to a continuing, unlimited guarantee dated April 30, 2015 (the “**Guarantee**”).

On behalf of ClearFlow, we hereby demand payment from you of the sum of **\$48,625,279.75** plus legal fees incurred and to be incurred, together with interest on that sum from October 5, 2020. The exact amount of interest accruing to any proposed date of payment may be obtained by contacting ClearFlow.

Please be advised that unless payment is made to ClearFlow, or arrangements satisfactory to ClearFlow for payment are made within the prescribed time, ClearFlow will be at liberty to take such further steps as it deems necessary to recover your indebtedness under your Guarantee.

On behalf of ClearFlow, we expressly reserve ClearFlow’s right to proceed without further notice to you with the enforcement of its rights at any time, if ClearFlow becomes aware of any circumstances which might impair its position or security.

Page 2

If you have any questions or concerns, please have your counsel contact the writer.

Govern yourself accordingly.

Yours truly,

**TORKIN MANES LLP**

Per:

A blue ink electronic signature consisting of a stylized, cursive 'J' followed by a horizontal line.

*Electronic Signature*

Jeffrey J. Simpson

JJS/sj

**Torkin Manes LLP**  
 Barristers & Solicitors  
 151 Yonge Street, Suite 1500  
 Toronto, Ontario M5C 2W7  
  
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Our File No: 34656.0004

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 member of  
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**Torkin|Manes**  
 Barristers & Solicitors

October 8, 2020

**PERSONAL AND CONFIDENTIAL  
 VIA COURIER AND REGISTERED MAIL**

Jaimee Lynn Gdak  
 250 Lions Court  
 Waterloo, Ontario N2L 6M8

**Re: ClearFlow Commercial Finance Corp. advances to Trigger Wholesale, Inc.**

We are counsel to ClearFlow Commercial Finance Corp. (“**ClearFlow**”)

Enclosed please find a copy of our letter dated October 8, 2020, to Trigger Wholesale, Inc. demanding payment of its obligations to ClearFlow, which obligations amount to the sum of \$48,625,279.75 (the “**Indebtedness**”) as at October 5, 2020, together with per diem interest thereon.

According to ClearFlow’s records, you guaranteed in writing payment of the entire Indebtedness pursuant to a continuing, unlimited guarantee dated April 30, 2015 (the “**Guarantee**”).

On behalf of ClearFlow, we hereby demand payment from you of the sum of **\$48,625,279.75** plus legal fees incurred and to be incurred, together with interest on that sum from October 5, 2020. The exact amount of interest accruing to any proposed date of payment may be obtained by contacting ClearFlow.

Please be advised that unless payment is made to ClearFlow, or arrangements satisfactory to ClearFlow for payment are made within the prescribed time, ClearFlow will be at liberty to take such further steps as it deems necessary to recover your indebtedness under your Guarantee.

On behalf of ClearFlow, we expressly reserve ClearFlow’s right to proceed without further notice to you with the enforcement of its rights at any time, if ClearFlow becomes aware of any circumstances which might impair its position or security.

Page 2

If you have any questions or concerns, please have your counsel contact the writer.

Govern yourself accordingly.

Yours truly,

**TORKIN MANES LLP**

Per:



*Electronic Signature*

Jeffrey J. Simpson  
JJS/sj



# TAB 5

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 Province of Ontario,  
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.
  
2. I have read the draft Affidavit of Martin Rees to be filed in support of this Application and to the extent I have personal knowledge of the facts set out therein, I agree with his evidence.

-2-

3. I am the partner at Clearflow who supervises the day to day administration of the Trigger credit facilities. I swear this Affidavit for the following purposes:

- (a) To supply additional details regarding the Trigger credit facilities;
- (b) To provide additional details regarding the growth in over-90 day AR with respect to Trigger's accounts receivable and other details regarding the growth in Trigger's business over the years;
- (c) To provide details with respect to Clearflow's suspicions that certain cheques allegedly issued by Trigger customers are forgeries;
- (d) To provide details of measures taken by Clearflow in response to Gdak's chronic lack of financial reporting; and
- (e) To provide additional details as to the involvement of Jaimee Gdak in the business operations of Trigger.

#### **DETAILS OF THE CREDIT FACILITIES**

4. The total amount owed by Trigger in favour of Clearflow was, as of October 6, 2020, \$48,625,279.75. The credit facilities extended by Clearflow to Trigger were summarized in an Offer letter dated April 23, 2015 (the "**Offer Letter**"), and consisted of:

- (a) a Master Purchase and Sale Agreement dated April 30, 2015 (the "**MPSA**");
- (b) a Master Purchase Order Financing Agreement dated April 30, 2015 (the "**PO Financing Agreement**"); and

-3-

- (c) a Royalty Agreement dated April 30, 2015 (the “**Royalty Agreement**”).

**Attached hereto as Exhibits “A”, “B” and “C” respectively are copies of the Offer Letter, the MPSA, the PO Financing Agreement and the Royalty Agreement.**

**THE MPSA**

5. Pursuant to the terms of the MPSA and the standard terms which form part thereof, Trigger is required to provide Clearflow with a monthly list of all outstanding invoices issued by it to its customers. Clearflow then has the option to purchase all or a portion of these accounts receivable based on a payment to Trigger of 85% of the amounts shown as due and outstanding.

6. Clearflow then collects those receivables in the ordinary course as they are paid by Trigger’s customers, which are typically retail stores ranging from small, “mom and pop” shops to, as indicated above, national chains such as Canadian Tire and Home Hardware. These customers remit payment to Trigger on 30-60 day payment terms from the invoice date in respect of products ordered and delivered. Unless and until Clearflow receives payment in respect of its financed purchase orders, any funds advanced to Trigger are considered loans outstanding from Clearflow to Trigger.

7. As of October 6, 2020, Clearflow had purchased accounts from Trigger with a total value of \$43,025,279.75, based on total accounts receivable allegedly due to Trigger by all of its customers collectively of \$64,074,258.69.

8. At the request of Gdak, Clearflow has not followed its usual procedure for collection of accounts receivable, provided for in the MPSA, Gdak’s stated reason for this request is that the

-4-

regulations imposed by the RCMP and other federal agencies, require that only Gdak could collect and handle the payments received from customers in respect of sales of firearms.

9. In addition to the accounts receivable financing described above, Clearflow also advanced the sum of \$10,284,932.38 in the form of purchase order financing pursuant to the PO Financing Agreement. This amount is included in the total indebtedness indicated in my Affidavit above.

10. In addition to the financing summarized above, Clearflow has made occasional advances to Trigger based on discrete requests for specific financing for various business purposes. The aggregate total of these various one-time loans advanced by Clearflow to Trigger is \$5,600,000.00. This amount is included in the total indebtedness owed to Clearflow set out above.

#### **RAPID EXPANSION OF TRIGGER'S BUSINESS**

11. As stated by Mr. Rees in his Affidavit, for the initial 12 months of the relationship between Trigger and Clearflow, Trigger's sales remained relatively flat. Over the next four years, however, Trigger's business appeared to take off. Sales started expanding at a rapid rate. I attach hereto review engagement financial statements for Trigger for the financial years ending March 31, 2019 and March 31, 2020. The 2019 statement, for example, shows sales in 2018 of \$19,482,802, which increased to \$60,980,735 in 2019. The internal statement for the year ended March 31, 2020 showed that annual sales had increased to \$151,310,849.30. Gross profits for the same period increased from \$7,509,508 in 2018 to \$59,017,623.91 in 2020.

**Attached hereto as Exhibit "D" are the draft review engagement financial statements for Trigger for the year ended March 31, 2019 and the draft, internal financial statement for the year ended March 31, 2020**

-5-

12. In particular, over the years, it appeared that the largest growth in Trigger's business was with the major retail channels, specifically Canadian Tire and Home Hardware, which were allegedly purchasing from Trigger a large volume of firearms. As of October 6, 2020, Clearflow has purchased, since the beginning of the relationship with Trigger, Canadian Tire accounts receivable with a total value of \$131,390,049 of which \$84,744,429.38 has been collected, and \$35,637,636.27 remains outstanding. The corresponding figures for Home Hardware are \$58,083,426 of purchases of which \$41,716,118.67 has paid and \$16,367,307.58 remains outstanding respectively.

13. According to information furnished by Gdak, in December 2015, Trigger's sales started increasing from approximately \$100k per month to over approximately \$1 million per month by the end of June, 2017. This was accompanied by increases in the balance of AR owed to Trigger by its customers.

14. By June 2018 sales had increased to \$5.1 million per month and the accounts receivable ending balance as of the end of June, 2018 was \$13.45 million. Two years later, by the end of June, 2020, those figures had increased to sales of \$16.31 million per month with an Ending AR Balance of \$58.75 million.

15. By September, 2020, the amount of over 90 day AR owed to Trigger by its customers had escalated sharply to a total of \$21,644,485.76. Corresponding deposits from customers had shrunk dramatically.

-6-

**REQUIREMENTS IMPOSED ON TRIGGER AFTER THE SEPT. 28/20 MEETING WITH GDAK**

16. After the September 28<sup>th</sup>, 2020 meeting between Gdak and Clearflow, Mr. Rees was temporarily unavailable and Mr. Petersen subsequently dealt with Gdak. Glenn and I had one additional meeting with Mr. Gdak on October 1, 2020, and I have spoken to Gdak a number of times since then.

17. In addition to demanding that Trigger allow Clearflow to control its cash management and cheque deposits, we subsequently demanded that Trigger agree to install at Trigger's premises a cheque deposit machine that will electronically provide Clearflow with notice of all cheques in favour of Trigger that pass through the Canadian cheque clearing system. Gdak agreed to this request, and since installing the machine, activity in Trigger's accounts has dropped to almost nothing and Trigger has never used the machine. A small fraction of the deposits that would historically have been made into Trigger's bank account are now being made.

**FORGED CHEQUES**

18. We then obtained and examined a series of Canadian Tire and Home Hardware cheques allegedly deposited into Trigger's bank account during the months of July and August, 2020. These cheques are obviously suspicious:

- (a) The bottoms of each cheque have been cut off in the photocopy provided by Gdak, such that account numbers and other information is not visible;
- (b) The cheques are stamped on the front with the name of an "attention of" person, namely Mr. Maguire and Ms. Shulist. I have never seen business cheques in my

-7-

years of banking that would include an “attention of” name of an individual. There would be no reason for same;

- (c) These cheques, if they had been negotiated, would have stamps on the front or the back. The front sides of the cheques have no endorsement stamps and the backs of the cheques were not included in the copies sent by Gdak;
- (d) Finally, and perhaps most conspicuous is the fact that Mr. Maguire’s name is spelled differently (“Matt Maguire”) on the face of the supposed Canadian Tire cheques than the spelling of his name in the fake email address supplied by Gdak (“Matt Mcguire”). At the very least, this confirms that one or the other, if not both, of the cheques or the email addresses are faked.

#### **INVOLVEMENT OF JAIMEE GDAK IN TRIGGER’S BUSINESS**

19. The Respondents Jaimee and Jaimak Real Properties Inc. (“**Jaimak**”) own certain real property located in Waterloo, Ontario, and in Huron County, Ontario that I believe may have been acquired with the proceeds of the fraudulent activity perpetrated by the Gdaks. It appears to me that it is entirely possible that title to these properties has been placed in the names of Jaimee or Jaimak in an effort to shield assets from the reach of Clearflow and other creditors in the event that the fraudulent scheme was discovered.

**Attached hereto as Exhibit “E” are copies of parcel pages showing that Jaimee or Jaimak hold title to the following real properties:**

**265 Old Post Road, Waterloo ON**

**250 Lion’s Court, Warterloo, ON**



-8-

**652 Colby Dr., Waterloo ON**

**47 Baker Rd., Port Elgin ON**

**157 Saugeen Beach Road, Port Elgin, ON**

20. Jaimee Gdak is involved with daily accounting operations of Trigger Wholesale, Inc. Literally hundreds of emails have been exchanged between Jaimee, myself and the Clearflow admin Team with respect to:

- (a) processing credit card payments;
- (b) deposits made into the Trigger Ops Account and the Trigger Blocked Account;
- (c) deposits made into BMO Bank Trigger Ops Account that consisted of non factored payments.

21. The last email that she sent us was August 13, 2020 for credit card processing. After that date a new email address was created called [Accounting@triggerwholesale.com](mailto:Accounting@triggerwholesale.com), which I believe is another email for Jaimee Gdak and the admin team at Trigger. We also have an email from February 21, 2018 in which Jaimee submitted a schedule for funding. In a September 11, 2018 email Jaimee advised that she physically went to BMO Bank to make a deposit, and we have an email confirmation that she completed that day's deposit.

**Attached hereto as Exhibit "F" are copies of all of the above-noted emails**

22. In addition, at our meeting at Trigger Wholesale, Inc., on October 1, 2020, in attendance was Mark Gdak, Mike Nero from Trigger and Glenn Petersen and myself from Clearflow. Mark

-9-

stated that Jaimee was working from home due to the Corona Virus Pandemic but that she was making collection calls on all the past due accounts of Independent Stores.

23. Lastly, I conducted a Google search against "Jaimee Gdak". One of the first entries that comes up on that search is a Zoom info page in the name of Trigger. In other words, if one Googles Jaimee, a Trigger Zoom info page comes up as one of the first entries.

24. Jamie is 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 individuals at Trigger whom I would describe as part of the senior management team. It is impossible that she could not be aware of, and most likely actively participating in, fraud on such a massive scale.

25. I make this Affidavit in support of Clearflow's application for the appointment of a Receiver and for no other or improper purpose.

**SWORN** remotely 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 October 9, 2020 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 (July 1, 2007)

CLEARFLOW COMMERCIAL FINANCE CORP.  
Applicant

-and-  
Respondents

TRIGGER WHOLESALE, INC. et al.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT OF ALEXANDRA (SANDY) KANICHIS**

**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)

# TAB A



30 Vogell Road, Suite 1 • Richmond Hill • Ontario • L4B 3K6

April 23rd, 2015.

Trigger Wholesale Inc.  
588 Colby Drive, Unit 1  
Waterloo  
Ontario N2V 1A2

**Attention of Mark Gdak - President**

Dear Mark,

ClearFlow Commercial Finance Corp. ("ClearFlow") is pleased to present the following proposal to provide funding up to an amount of **One Million Three Hundred Thousand Canadian Dollars** (\$1,300,000) to Trigger Wholesale Inc. ("TWI") by the purchase of certain TWI Accounts Receivable and to provide credit facilities to provide for the funding of certain Purchase Order Agreements. In addition, ClearFlow will provide a demand loan to fund existing inventory, subject to the terms and conditions outlined below. In addition to the fees provided for below, in recognition of providing the following financing, ClearFlow will be awarded an ongoing 2% royalty on TWI revenues.

#### **FACILITY #1**

|                           |                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CUSTOMER:</b>          | Trigger Wholesale Inc.                                                                                                                                                                                                                                                                                                                                                          |
| <b>CREDIT FACILITY:</b>   | \$320,000 CAD maximum at commencement and reviewable after initial 90 day period to a budget/cash flow projection acceptable to ClearFlow.                                                                                                                                                                                                                                      |
| <b>ADVANCE RATE:</b>      | Up to 90% of all confirmed Purchase Orders deemed to be acceptable to ClearFlow at its sole discretion.                                                                                                                                                                                                                                                                         |
| <b>PURPOSE:</b>           | To fund the cost of importation of firearms, goods, accessories and ammunition to Canada for resale.                                                                                                                                                                                                                                                                            |
| <b>FEE:</b>               | An administration fee of 3% (three percent) on the face value amount of each and every accepted Purchase Order for the initial 30 day period.<br>An additional discount rate fee of 3% (three percent), every 30 days, or partial increment thereof, that each Purchase Order remains outstanding until goods delivered and invoice issued. Billed and payable at invoice date. |
| <b>REPAYMENT:</b>         | From Facility #2 as outlined below.                                                                                                                                                                                                                                                                                                                                             |
| <b>TERM OF AGREEMENT:</b> | 24 months, automatically renewable, subject to review by ClearFlow                                                                                                                                                                                                                                                                                                              |



**FACILITY #2**

**CUSTOMER:** Trigger Wholesale Inc

**CREDIT FACILITY:** \$900,000 CAD

**ADVANCE RATE:** Up to 85% of eligible accounts receivable

**ELIGIBLE ACCOUNTS:** Eligible accounts are invoices (along with required supporting documentation) related to credit worthy customers billed in arrears and due payable within 90 days of invoice date.  
ClearFlow will approve and agree certain Accounts Receivable as "ineligible", these being defined and stated in an appendix to the Master Purchase Agreement, as Accounts Receivable paid in full within 7 Calendar days of the completion of work/services.  
C.O.D., Credit Card, and Consumer Accounts are ineligible.

**RECOURSE:** Recourse to Trigger Wholesale Inc., at 90 days.

**PLATFORM:** All eligible accounts receivable, with no minimum monthly volume.

**FEES:** An administration fee of 1.0% (one percent) on the face amount of each and every invoice upon purchase, an additional discount fee of 1.25% (one point two five percent) for the initial 30 days.  
An additional discount fee of 1.0 % (one percent), every 30 days, or partial increment thereof, that each receivable is not paid in full, until each receivable is paid.

**TERM OF AGREEMENT:** 24 months, automatically renewable, subject to review by ClearFlow

**FACILITY #3**

**CUSTOMER:** Trigger Wholesale Inc.

**CREDIT FACILITY:** \$180,000 CAD

**ADVANCE RATE:** up to 65% of Inventory at cost of goods value

**RECOURSE:** Recourse to Trigger Wholesale for outstanding balance at 60 days maximum

**PLATFORM:** Demand Loan

**FEE:** An administration fee of 3% (three percent) on the balance advanced representing advance rate for the initial 30 day period. An additional 3% per month calculated on outstanding balance amount at 30 day should the loan need to extend to 60 days.

**REPAYMENT:** Repayment from Facility #1

**SECURITY:** GSA in 1<sup>st</sup> position over all assets of Trigger Wholesale Inc.

**POSTPONEMENTS:** All parties registered in priority on PPSA as at completion date.

**GUARANTEES:** Corporate Guarantee of The EnCadre Group Incorporated  
Personal Unlimited Guarantee of Mark and Jamiee Gdak

**EXISTING FACTOR:** We shall require full and satisfactory settlement of Bridging Factor Inc., to include a Buy-Out Agreement between all parties, achieved through a legal closing.

#### **ADDITIONAL INFORMATION AND AGREEMENT:**

Trigger Wholesale Inc. must submit all credit and/or financial supporting schedules required by ClearFlow. Trigger Wholesale Inc. acknowledges that all information is true and correct as of the stated date and there exists no liabilities (direct or contingent) except as described by Customer in writing, and that title to all assets disclosed are owned by Trigger Wholesale Inc. and in Trigger Wholesale's name except as noted. Trigger Wholesale shall immediately notify ClearFlow of any material change in the information represented.

The foregoing Proposal constitutes a binding offer, subject to Trigger Wholesale Inc.'s completion of ClearFlow's documentation for the Credit and Purchase Facilities presented.

We understand settlement with Bridging Factor Inc., will be funded partially from our proposed facilities and certain other monies from various third parties. Our Offer is subject to the participation of all parties and satisfactory documentation to ClearFlow being executed.

This Offer Letter is presented with the understanding that neither it, nor its substance, shall be disclosed to any third party, except those who are in confidential relationship with seller, such as its financial advisor(s), legal counsel or accountant.

By executing this letter, Trigger Wholesale Inc. authorizes all companies with whom business is conducted, all consumers reporting agencies or other persons, organizations, and all banks or institutions, to release any credit and/or financial information to ClearFlow, or its authorized representatives, which ClearFlow deems necessary to conduct its documentation. Trigger Wholesale also authorizes ClearFlow to share this information with ClearFlow's affiliates, assigns, designees or other third parties ClearFlow deems necessary to receive the appropriate approvals.

If the above terms and conditions meet with your approval, please indicate your acceptance by signing and completing details below and return this signed Proposal to ClearFlow. Upon receipt of same ClearFlow will forward to you the applicable agreements for your consideration and execution.

Sincerely,

CLEARFLOW COMMERCIAL FINANCE CORP.

A handwritten signature in dark ink, appearing to read 'Glenn Petersen', written over a horizontal line.

Glenn Petersen, President

ACCEPTED AND AGREED TO:

TRIGGER WHOLESale INC.

A handwritten signature in dark ink, appearing to read 'Mark Gdak', written over a horizontal line.

Mark Gdak, President



# TAB B



30 Vogell Road, Suite 1 • Richmond Hill • Ontario • L4B 3K6

T/F • 888 551 1518

**MASTER PURCHASE AND SALE AGREEMENT**

**BETWEEN**

**CLEARFLOW COMMERCIAL FINANCE CORP.**

**AND**

**TRIGGER WHOLESALE, INC.**

THIS Master Purchase and Sale Agreement is made as of April 30, 2015 by and between ClearFlow Commercial Finance Corp. ("ClearFlow") and Trigger Wholesale, Inc. ("Seller"). All capitalized terms in this Master Purchase and Sale Agreement shall have the meanings given to them as herein or in the Standard Provisions applicable to this Master Purchase and Sale Agreement ("Standard Provisions"), or if not defined herein or in the Standard Provisions as they may be defined in the *Personal Property Security Act* (Ontario) (the "PPSA"), unless the context otherwise requires

**A. Parties.**

1. ClearFlow is a corporation existing under the laws of Canada and has its place of business located at 30 Vogell Road, Suite 1, Richmond Hill, Ontario L4B 3K6.
2. Seller is a corporation existing under the laws of Ontario and has its place of business located at 588 Colby Drive, Unit 1, Waterloo, Ontario N2V 1A2. ClearFlow and Seller are sometimes collectively referred to herein as the "Parties."

**B. Terms of Master Purchase and Sale Agreement and Construction.**

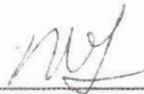
The Parties intend that this Master Purchase and Sale Agreement and the Standard Provisions, a copy of which Seller acknowledges it has heretofore received and which is affixed hereto, shall be construed and interpreted as a single integrated and complete agreement between the Parties under which, among other things, the Seller will offer for sale its Accounts to ClearFlow. Hereafter, this Master Purchase and Sale Agreement and the Standard Provisions shall be collectively referred to as the "MPSA."

**C. Commencement of Term.**

The MPSA shall be effective as of the day and year first written above.

**D. Definitions.**

1. In addition to those terms defined in Section 18 of the Standard Provisions, the following terms shall have the following meanings:
  - 1.1 "Advance Rate" means an amount, as determined by ClearFlow in its sole discretion, of up to eighty-five percent (85%) of the Aggregate Net Face Value of Accounts identified in each Assignment Schedule provided by Seller to ClearFlow.
  - 1.2 "Chargeback Fee" means a fee in the amount of two hundred and fifty dollars (\$250.00) CAD in respect of each Account Purchased which is not for any reason paid by the applicable customer of the Seller within ninety (90) days of the applicable invoice date and is not repurchased by the Seller from ClearFlow

 Seller

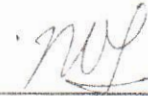
\_\_\_\_ ClearFlow

within three (3) days after ClearFlow requests that Seller so repurchase the applicable Account Purchased. The Chargeback Fee is due and payable on the third day immediately following the date that ClearFlow requests that the applicable Account Purchased be repurchased if the applicable Account Purchased is not repurchased by such date;

1.3 "Due Diligence Fee" means a fee charged to compensate ClearFlow's evaluation of the transaction and the expenses incurred to document the transaction and is payable in the amount of zero dollars (\$0) from the initial Accounts Purchased.

1.4 "Fees" mean collectively:

- (a) the Chargeback Fee;
- (b) the Due Diligence Fee;
- (c) the Misdirected Payment Fee;
- (d) the Liquidation Administration Fee;
- (e) an administration fee (the "Administration Fee") in the amount of two point twenty-five percent (2.25%) of the face value of each Account Purchased, for the initial thirty (30) days. The Administration Fee will increase or decrease respectively by point zero two of one percent (0.02%) for each point twenty five percent (0.25%) change in the Prime Rate above or below its current rate of two point eight five percent (2.85%), becoming effective on the first day of the month following the date the Prime Rate change comes into effect.
- (f) an additional administration fee ("Additional Administration Fee") in the amount of one point zero percent (1.0%) of the face value of each Account Purchased for every thirty (30) days from and including the 30<sup>th</sup> day after an Account Purchased remains unpaid, or partial increment thereof until each Account Purchased is paid. The Additional Administration Fee will increase or decrease respectively by point zero two of one percent (0.02%) for each point twenty five percent (0.25%) change in the Prime Rate above or below its current rate of two point eight five percent (2.85%), becoming effective on the first day of the month following the date the Prime Rate change comes into effect.
- (g) a fee (the "Over 90 Day Fee") in the amount of one percent (1%) for each Account Purchased for which Seller has received an Advance, which Account Purchased represents any invoice outstanding over ninety (90) days from date of invoice and which fee shall continue at a rate of one percent (1%) each thirty (30) days or any portion thereof for as long as such Account Purchased remains over ninety (90) days old; and

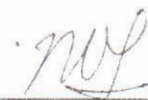
 Seller

\_\_\_\_ ClearFlow



within three (3) days after ClearFlow requests that Seller so repurchase the applicable Account Purchased. The Chargeback Fee is due and payable on the third day immediately following the date that ClearFlow requests that the applicable Account Purchased be repurchased if the applicable Account Purchased is not repurchased by such date;

- 1.3 "Due Diligence Fee" means a fee charged to compensate ClearFlow's evaluation of the transaction and the expenses incurred to document the transaction and is payable in the amount of zero dollars (\$0) from the initial Accounts Purchased.
- 1.4 "Fees" mean collectively:
- (a) the Chargeback Fee;
  - (b) the Due Diligence Fee;
  - (c) the Misdirected Payment Fee;
  - (d) the Liquidation Administration Fee;
  - (e) an administration fee (the "Administration Fee") in the amount of two point twenty-five percent (2.25%) of the face value of each Account Purchased, for the initial thirty (30) days. The Administration Fee will increase or decrease respectively by point zero two of one percent (0.02%) for each point twenty-five percent (0.25%) change in the Prime Rate above or below its current rate of two point eight five percent (2.85%), becoming effective on the first day of the month following the date the Prime Rate change comes into effect.
  - (f) an additional administration fee ("Additional Administration Fee") in the amount of one point zero percent (1.0%) of the face value of each Account Purchased for every thirty (30) days from and including the 30<sup>th</sup> day after an Account Purchased remains unpaid, or partial increment thereof until each Account Purchased is paid. The Additional Administration Fee will increase or decrease respectively by point zero two of one percent (0.02%) for each point twenty-five percent (0.25%) change in the Prime Rate above or below its current rate of two point eight five percent (2.85%), becoming effective on the first day of the month following the date the Prime Rate change comes into effect.
  - (g) a fee (the "Over 90 Day Fee") in the amount of one percent (1%) for each Account Purchased for which Seller has received an Advance, which Account Purchased represents any invoice outstanding over ninety (90) days from date of invoice and which fee shall continue at a rate of one percent (1%) each thirty (30) days or any portion thereof for as long as such Account Purchased remains over ninety (90) days old; and

 Seller

\_\_\_\_ ClearFlow

(h) any other fees payable by the Seller to ClearFlow in accordance with the MPSA.

- 1.5 "Maximum Debtor Concentration" means in respect of a single Account Debtor at any time, twenty-five percent (25%) of the Seller's total outstanding funded Accounts Purchased at such time.
- 1.6 "Maximum Sale Terms" means thirty (30) days from the date of the invoice.
- 1.7 "Minimum Assignment Schedule Amount" for the Seller means one thousand Canadian dollars (\$1,000 CAD).
- 1.8 "Near Cash Terms" means any Account which is paid in full within seven (7) calendar days of the completion of work and/or services rendered by Seller in connection with such Account.
- 1.9 "Prime Rate" means the prime lending rate in effect from time to time as a reference rate of Toronto-Dominion (TD) Bank for loans in Canadian dollars.
- 1.10 "Total Maximum Facility" means nine hundred thousand dollars (\$900,000) CAD.

**E. Fees**

The Seller agrees to pay to ClearFlow when due the following Fees:

- (a) the Chargeback Fee
- (b) the Due Diligence fee;
- (c) the Misdirected Payment Fee;
- (d) the Liquidation Administration Fee;
- (e) the Administration Fee which shall become due and payable in respect of each Account Purchased on the date that ClearFlow purchases such Account Purchased;
- (f) the Additional Administration Fee, which shall, if applicable, become due and payable on the first day of each applicable 30 day period;
- (g) the Minimum Monthly Sales Shortfall Fee;
- (h) the early termination fee as described in section F below; and
- (i) the Over 90 Day Fee which shall become due and payable monthly upon demand by ClearFlow.

 Seller

\_\_\_\_ ClearFlow

Unless otherwise provided in the MPSA all Fees are chargeable against Seller's Available Funds, and at the option of ClearFlow payable on demand.

**F. Additional Conditions.**

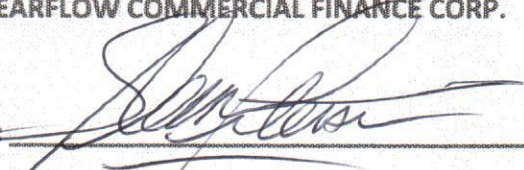
In the event that this Agreement is terminated during the term of this Agreement (see Section 17 of the Standard Provisions), the Seller shall pay to ClearFlow an early termination fee in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000). In the event that this Agreement is terminated in any subsequent year, the Seller shall pay to ClearFlow an early termination fee in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000) unless the termination is made in accordance with the notice provisions set out in Section 17 of the Standard Provisions.

Additional Conditions see attached Addendum 1 and/or Appendix 1.

**G. Execution.**

IN WITNESS WHEREOF the Parties hereto have caused this MPSA to be duly executed by their respective authorized officers as of the day, month and year first written above.

**CLEARFLOW COMMERCIAL FINANCE CORP.**

BY: 

TITLE: Managing Director

NAME: Glenn Petersen

**TRIGGER WHOLESale, INC.**

BY: 

TITLE: President

NAME: Mark Gdak

BY: \_\_\_\_\_

TITLE:

NAME:



Seller

\_\_\_\_\_  
ClearFlow

**TAB C**





## **MASTER PURCHASE ORDER FINANCING AGREEMENT**

**THIS MASTER PURCHASE ORDER FINANCING AGREEMENT** (this "Agreement") dated as of the 30th day of April, 2015.

**B E T W E E N:**

TRIGGER WHOLESALÉ, INC.,  
a corporation incorporated under the laws of Ontario,  
  
(hereinafter called the "Client")

**OF THE FIRST PART**

- and -

CLEARFLOW COMMERCIAL FINANCE CORP.,  
  
(hereinafter called "ClearFlow")

**OF THE SECOND PART**

**WHEREAS** ClearFlow is a financial services company providing financial and trade related services to its clients;

**AND WHEREAS** the parties to this Agreement desire to enter into a master purchase order financing program under which ClearFlow will, at the request of the Client, from time to time finance the payment for Product (as defined below) from a third party vendor, in order to fill a Customer P.O. (as defined below).

**NOW THEREFORE** in consideration of the foregoing recitals and in consideration of the payments to be made and the obligations to be assumed and/or performed, as set forth in this Agreement, the parties agree as follows:

### **1. Definitions**

Capitalized terms used in this Agreement shall have the following definitions:

- (a) **"Acceptance Date"** means the date on which ClearFlow delivers notice of acceptance of the P.O.;
- (b) **"Accepted P.O."** means a P.O. that is accepted by ClearFlow pursuant to Section 3 of this Agreement;

- (c) **"Accounts Receivable Purchase Agreement"** means an agreement in the form attached hereto as Exhibit A executed by the Client as seller and ClearFlow as purchaser, as amended or restated from time to time;
- (d) **"Addendum"** means an addendum in the form of Exhibit B;
- (e) **"Annual Commitment Fee"** means a commitment fee to be paid by the Client annually to ClearFlow in consideration of ClearFlow's commitment to reserve and have available sufficient funds to finance the purchase of Product in connection with Accepted P.O.s;
- (f) **"Business Day"** means a day other than a Saturday, Sunday or a legal holiday on which ClearFlow is closed for the conduct of its finance business;
- (g) **"Clearance Date"** means the date on which ClearFlow has received the Release Amount in full in available funds in connection with an Accepted P.O.;
- (h) **"ClearFlow's Deal Fees"** has the meaning set forth in Section 6(b) of this Agreement;
- (i) **"ClearFlow's Expenses"** has the meaning set forth in Section 7 of this Agreement;
- (j) **"ClearFlow's Shipment Fees"** has the meaning set forth in Section 6(c) of this Agreement;
- (k) **"Customer P.O."** means a purchase order for the supply of Product by the Client to one of its customers;
- (l) **"Effective Date"** has the meaning set forth in Section 17 of this Agreement;
- (m) **"Event of Default"** has the meaning set forth in Section 16(c) of this Agreement;
- (n) **"Freight Forwarder"** means the freight forwarder that shall be responsible for transporting the Product from the third-party supplier of the Product to the Premises;
- (o) **"Freight Forwarder Agreement"** means a Freight Forwarder Agreement in the form attached hereto as Exhibit E;
- (p) **"Funding Date"** means the date on which payment is made following the issuance of a Letter of Credit for Product or other payment for the purchase of Product or expenses relating thereto, including, but not limited to, custom's charges or fees, freight forwarder's charges, delivery fees and the like, pursuant to this Agreement;
- (q) **"Guarantor"** means each Person who now or hereafter executes a Guarantee, including, without limit, the guarantor(s) described in Schedule 3 hereof;

- 3 -

- (r) **"Guarantee"** means a Guarantee or Guarantees in the form attached hereto as Exhibit C, each executed by a Guarantor in favour of ClearFlow;
- (s) **"Indemnified Party"** and **"Indemnified Parties"** each has the meaning set forth in Section 12 of this Agreement;
- (t) **"Letter of Credit"** means each letter of credit issued by ClearFlow or its assignee on behalf of the Client in connection with an Accepted P.O.;
- (u) **"Person"** means and includes any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, sole proprietorship, association, trust, unincorporated association, joint stock company, government, institution, municipality, political subdivision or agency, or other entity of whatever nature;
- (v) **"P.O."** means a purchase order submitted or to be submitted by the Client to a third-party supplier;
- (w) **"Premises"** means the Client's facility or such other third-party facility identified in an Addendum by address where the Product will be delivered;
- (x) **"Price"** means the purchase price to be paid on behalf of the Client by ClearFlow for the Product in the form of the posting of a Letter of Credit, a payment undertaking, or otherwise as determined by ClearFlow in its sole and absolute discretion;
- (y) **"Product"** means inventory from a third-party supplier to be purchased pursuant to a P.O., which inventory will be used to fill part or all of a Customer P.O.;
- (z) **"Release Amount"** means the financed amount to be repaid to ClearFlow with respect to Product on the Transfer Date, and shall include, without limitation, the Price with respect to such Product, and all fees, charges and other amounts due hereunder including, but not limited to, ClearFlow's Expenses, ClearFlow's Deal Fees and ClearFlow's Shipment Fee. The Release Amount shall be paid in (i) immediately available funds, or (ii) in ClearFlow's sole, absolute, and explicit permission, which permission must be in writing in every event, through a financing arrangement with ClearFlow, including a factoring arrangement or inventory loan;
- (aa) **"Security Agreement"** means an agreement in the form attached hereto as Exhibit D, executed by Client as debtor in favour of ClearFlow as secured party, as amended or restated from time to time; and
- (bb) **"Transaction Documents"** has the meaning set forth in Section 17(a) of this Agreement.
- (cc) **"Transfer Date"** means the date on which an eligible invoice is raised from the Client's customer;

2. Client Request of ClearFlow to Acquire Product on behalf of Client

- (a) Subject to the terms of this Agreement, from time to time after the Effective Date and prior to any termination of this Agreement pursuant to Section 16 hereof, the Client may request that ClearFlow advance funds and provide financing for Product pursuant to a P.O.
- (b) Each such request by the Client shall be made by Client submitting to ClearFlow a written, completed and signed Addendum in accordance with the notice provisions set forth in Section 18(d) hereof.
- (c) The Addendum shall set forth, among other things, the Product and quantity thereof, the P.O., the Premises, the Price, the Transfer Date, the Freight Forwarder and its address, the delivery date and all other relevant information requested by ClearFlow.
- (d) The Client agrees that during the term of this Agreement, the Client must first offer to ClearFlow the opportunity to finance each P.O. for Product to be sold by the Client.

3. Acceptance of P.O.

- (a) Subject to the conditions and requirements set forth in this Section 3, ClearFlow may, in its sole and absolute discretion, accept or reject a request that it provide financing for Product pursuant to an Addendum submitted by Client to ClearFlow in accordance with the provisions of Section 2 above. ClearFlow will deliver such acceptance or rejection by written notice by 5:00 p.m. Toronto time on or before the tenth (10th) full Business Day after ClearFlow receives the Addendum, in accordance with the notice provisions set forth in Section 18(c) hereof. If ClearFlow accepts a P.O. in such manner, such P.O. shall be called an "**Accepted P.O.**", subject to the last sentence of Subsection (c) below. If ClearFlow fails to respond by 5:00 p.m. Toronto time on or before the tenth (10th) full Business Day after ClearFlow receives the Addendum from the Client requesting ClearFlow to purchase Product, then such failure to respond shall be deemed to be a notification to the Client that ClearFlow has rejected the Client's request.
- (b) Notwithstanding the provisions of Section 3(a) above, ClearFlow shall not accept the Client's request that ClearFlow advance funds for the Product pursuant to any P.O. unless each of the following requirements is satisfied:
  - (i) ClearFlow's aggregate outstanding funding pursuant to this Agreement (including the face amount of outstanding Letters of Credit posted) shall not at any time exceed the sum of Three Hundred and Twenty Thousand Canadian Dollars (\$320,000 CAN);
  - (ii) ClearFlow shall not finance more than 90% of the Price payable in connection with any P.O.;

- 5 -

- (iii) An original signed counterpart of the Addendum shall have been delivered to ClearFlow;
  - (iv) The Addendum shall be accompanied by written assurances from the Freight Forwarder, substantially in the form of Exhibit E hereto and otherwise in form and substance satisfactory to ClearFlow, that the Freight Forwarder will pay all customs, duties and other costs necessary to ship Product from the supplier of the Product to the Premises and shall seek reimbursement for such customs, duties and other costs solely from the Client, and that the Freight Forwarder will not deliver the Product to the Client or any other Person until the Freight Forwarder has received written confirmation from ClearFlow to do so;
  - (v) The Client shall have provided ClearFlow with assurances, in form and substance satisfactory to ClearFlow in its sole and absolute discretion, that (and Client hereby covenants to ClearFlow and agrees that) (A) the Client will pay the Release Amount to ClearFlow on the Transfer Date, (B) the supplier of Product will transfer title to the Product to Client upon or prior to payment of the Price to such supplier, and (C) ClearFlow shall at no time be liable to pay the supplier of the Product for any portion of the purchase price for Product in excess of the Price;
  - (vi) The Client shall have assigned the Customer P.O. to ClearFlow for its sole and exclusive benefit and such assignment shall be in the form attached hereto as Exhibit G;
  - (vii) The Client shall have delivered to ClearFlow evidence of insurance pursuant to the terms of Section 12 hereof, in form satisfactory to ClearFlow; and
  - (viii) The Client shall have delivered to ClearFlow such additional reasonable and necessary information and documentation as ClearFlow may have from time to time requested.
- (c) Notwithstanding the other provisions of this Section 3, an Accepted P.O. shall be deemed cancelled, and to have been rejected by ClearFlow, if by the delivery date specified in the Addendum (i) the supplier of the Product has not delivered the Product to the Freight Forwarder, (ii) ClearFlow has not received documents, in form and substance satisfactory to it in its sole discretion, evidencing that title to the Product is in the name of Client, (iii) all of the conditions precedent to satisfaction of any letter or letters of credit or payment undertaking with respect to the Product have not been met or waived in writing, or (iv) ClearFlow shall have ~~deemed in its sole and absolute discretion that the quality or quantity of the~~ Product are not within specifications and are not acceptable to ClearFlow. ClearFlow's Deal Fees with respect to any such cancelled and rejected Accepted P.O. shall accrue from the Acceptance Date to the date of cancellation and rejection and shall be due and payable by Client on such date of cancellation. A

- 6 -

P.O. shall be deemed an Accepted P.O. only if such P.O. is not deemed by ClearFlow to be cancelled prior to delivery of the Product to the Freight Forwarder.

4. Payment and Release

- (a) The Client irrevocably and unconditionally agrees to pay to ClearFlow, with respect to each Accepted P.O., the Release Amount on the Transfer Date, as well as all other amounts from time to time due and owing to ClearFlow under this Agreement, the other Transaction Documents as defined in Section 17(a), and any and all other agreements, instruments or documents from time to time executed with respect to the transactions contemplated hereby. In the event that the Release Amount is not paid to ClearFlow in immediately available funds in accordance with the terms hereof, the Client agrees that if ClearFlow so consents in writing, in its sole and absolute discretion, the Client shall have an irrevocable and mandatory obligation to sell the accounts receivable generated by the sale of the Product on the Transfer Date to ClearFlow pursuant to the terms and conditions of the Accounts Receivable Purchase Agreement executed in connection with this Agreement, without any further consent required on the part of the Client.
- (b) If necessary, ClearFlow may, in its sole and absolute discretion, give consent in writing, to the Client, that storing, packing, or processing the Product, at the Client's premises or at the premises of a third party is acceptable to ClearFlow. In the event such consent is granted, the Product shall remain segregated from any other merchandise at the Client's premises or in any third-party premises, as applicable. ClearFlow may require delivery of a Landlord's Waiver in the form of Exhibit F attached hereto and may inspect the Product, whether on the premises of the Client or elsewhere, at any time during normal hours of operation without prior notice.
- (c) At such time as ClearFlow has received the Release Amount, ClearFlow shall direct the Freight Forwarder to deliver such Product to the Premises.

5. Early Termination Fee

In the event that this Agreement is terminated during the term of this Agreement, the Client shall pay to ClearFlow an early termination fee in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000). In the event that this Agreement is terminated in any subsequent year, the Client shall pay to ClearFlow an early termination fee in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000) unless the termination is made in accordance with the notice provisions set out in Section 16(a).

6. Compensation of ClearFlow

- (a) Payments received by ClearFlow on account of Accepted P.O.s will be applied in the following order of priority:
  - (i) First, to pay ClearFlow's Expenses to the extent that such expenses are then due pursuant to the terms of Section 7;
  - (ii) Second, to the payment of ClearFlow's Deal Fees in connection with the Accepted P.O.;
  - (iii) Third, to the payment of ClearFlow's Shipment Fee in connection with the Accepted P.O.;
  - (iv) Fourth, to reimburse ClearFlow for the Price of Product purchased in connection with Accepted P.O.; and
  - (v) Fifth, to satisfy all other amounts owing by Client to ClearFlow under this Agreement and under all other Transaction Documents.
- (b) ClearFlow's Deal Fees with respect to each Accepted P.O. shall be:
  - (i) A transaction initiation and set-up fee in a sum equal to three percent (3%) of the Price advanced by ClearFlow; plus
  - (ii) An extended transaction fee in a sum equal to three percent (3%) of the Price advanced by ClearFlow, for each Thirty (30) days (or portion thereof) between the thirtieth (30th) day after the Acceptance Date and the Clearance Date.
- (c) ClearFlow's Shipment Fee with respect to each Accepted P.O. shall be equal to ● Dollars (\$●) [*specify currency*] for each shipment of Product.

7. ClearFlow's Expenses

Immediately upon ClearFlow's demand, the Client shall pay or reimburse ClearFlow for all ClearFlow's Expenses. "**ClearFlow's Expenses**" means and includes all expenses, fees, and costs incurred by ClearFlow in connection with the creation of and performance of this Agreement and the transactions contemplated hereby, including without limitation, the insurance expenses (including, but not limited to, product warranty and shipping insurance), audit costs, reasonable legal fees, inspection fees, Letter of Credit fees and expenses, ClearFlow's travel expenses, and filing fees. ClearFlow's demand for payment of ClearFlow's Expenses will be made in writing and will include reasonable documentation of the expenses for which reimbursement is demanded.

8. Repayment

- (a) ClearFlow shall have the right, but not the obligation, to require the Client to immediately repay ClearFlow for any Product on the applicable Transfer Date for an amount equal to the Release Amount. ClearFlow's reasonable determination of the Release Amount shall be binding on all parties.
- (b) In the event that ClearFlow consents as set forth in Section 4(b) above to the storing, packing or processing of the Product, ClearFlow shall have the right to require the Client to immediately repay ClearFlow for any Product for an amount equal to the Release Amount upon ClearFlow's demand at any point after delivery of the Product to the Client.
- (c) In the event that the Client makes all payments due pursuant to this Agreement with respect to an Accepted P.O., ClearFlow shall release its security interest in and to the applicable Product to the Client upon ClearFlow's receipt of all such payments in available funds.

9. Security Interests

As security for the payment and performance by the Client of each of its obligations under this Agreement and the other Transaction Documents, the Client has granted to ClearFlow a security interest in the collateral described in the Security Agreement.

10. Warranties and Representations of the Client

The Client hereby makes the following warranties and representations to ClearFlow, each of which is deemed a material inducement to ClearFlow to enter into and perform in accordance with the provisions of this Agreement and each of which shall be deemed automatically renewed and restated by the Client as of the Acceptance Date of each Accepted P.O.:

- (a) The Client is a corporation incorporated and validly subsisting under the laws of Ontario and is qualified or licensed to do business in every jurisdiction in which it carries on its business and in which the laws thereof require the Client to be so qualified or licensed;
- (b) The Client has all corporate rights and powers and is duly authorized and empowered to enter into, execute, deliver, and perform this Agreement, the other Transaction Documents and all other agreements and documents described herein or therein;
- (c) The execution, delivery, and performance by the Client of this Agreement, all other Transaction Documents and all other agreements and documents described herein or therein or delivered in connection with this Agreement does not constitute a violation of any law, regulation, judgment, order, contract, charter, by-laws, or other instrument to which the Client is a party or is otherwise bound or subject;



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- (d) The Client is not in default under any loan agreement, letter of credit agreement, guarantee, mortgage, lease, trust deed, security agreement or any other agreement with ClearFlow or with any other party relating to the borrowing of money or the sale of the Client's receivables to which the Client is a party or is otherwise bound, except as disclosed on Schedule 10(d) hereof;
- (e) Each P.O. submitted by the Client is a bona fide purchase order and conforms in all respects to the representations and information contained in the Addendum, which Addendum is true and correct in all respects;
- (f) Except as set forth in Schedule 1 hereto (Permitted Liens), there are no liens, security interests, judgments or claims affecting or relating to the Client or any of its assets;
- (g) Except as set forth on Schedule 2 (suits, proceedings, etc.), there are no suits, administrative proceedings, arbitration proceedings or other adversarial proceedings or investigations (governmental or otherwise) pending or (to the best of the Client's knowledge) threatened against the Client or any of its assets;
- (h) All of the financial information (including projections) provided by the Client to ClearFlow in connection with ClearFlow's consideration of the transactions contemplated by this Agreement are true and accurate, contain no material misstatement of any facts, contain all material information concerning the Client's financial condition, and do not omit to state any facts which, if disclosed, would reflect adversely on the financial condition of the Client (it being understood that projections are by their nature forecasts of financial performance and do not guarantee such performance); and
- (i) The Client has duly filed all federal, provincial, municipal, and foreign income, excise, sales, customs, property, withholding, and other tax and information returns and reports required to be filed by it to the date hereof, or in the alternative, has obtained extensions for filing pursuant to established procedures, and has paid or made provision for payment of all taxes (including interest and penalties) due and payable. The Client has no material liability for any taxes of any nature whatsoever which are not accrued for and presented on Client's financial statements.

#### 11. Covenants of the Client

The Client hereby agrees to perform each of the following covenants until this Agreement has been terminated and all obligations of the Client to ClearFlow have been fully paid and satisfied:

- (a) Not to pledge any of its assets or cause or permit any lien or security interest to attach to or otherwise encumber any of its assets, except for the permitted liens described in Schedule 1 hereto, and except for liens or security interests in favour of ClearFlow;

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- (b) To immediately notify ClearFlow of any pending or threatened litigation, proceeding, arbitration or investigation concerning or relating to the Client or any of the Products; and
- (c) To immediately notify ClearFlow of any occurrence or event that would render the representations and warranties made herein, if they were made on the date of such event, inaccurate.

## 12. Insurance and Indemnity

The Client shall at all times maintain such types and amounts of insurance coverages with respect to Client's business operations, the Premises and the Products (the property coverage for the Products shall be in an amount no less than the Price for such Products), as ClearFlow may from time to time require, such insurance to name ClearFlow as lender's loss payee and an additional insured in the manner and to the extent required by ClearFlow from time to time. The obligations of the Client pursuant to the preceding sentence shall include, without limitation, an obligation to insure all Products during shipment thereof.

Without limiting the generality of the foregoing paragraph: (a) the Client shall, at its sole cost and expense, keep and maintain the Products insured for its full insurable value against loss or damage (including, without limit, theft or destruction) by fire, theft, explosion, sprinklers and all other hazards and risks, with such companies, in such amounts, with such deductibles, and under policies in such form, as shall be satisfactory to ClearFlow. Each such policy insuring the Products shall name ClearFlow as the sole insured and shall not contain a co-insurance clause. Such policy shall provide that the insurer shall give ClearFlow at least thirty (30) days written notice before any such policy of insurance is altered or canceled. All proceeds of such insurance shall be payable directly to ClearFlow (and Client hereby irrevocably assigns all such proceeds to ClearFlow), and (b) the Client shall, at its sole cost and expense, keep and maintain such public liability and third party property damage insurance and product liability insurance, with such companies and in such amounts, with such deductibles and under policies in such form, as shall be satisfactory to ClearFlow. Each such policy shall contain an endorsement showing ClearFlow as additional insured thereunder and providing that the insurer shall give ClearFlow at least thirty (30) days written notice before any such policy shall be altered or canceled. The Client will provide to ClearFlow certificates of insurance in favour of ClearFlow to evidence such insurance coverages, in form satisfactory to ClearFlow, and further provide to ClearFlow certified copies of the insurance policies and evidence of payment for all such insurance coverages.

**UNLESS THE CLIENT PROVIDES CLEARFLOW WITH EVIDENCE OF THE INSURANCE COVERAGES REQUIRED BY THIS AGREEMENT, CLEARFLOW MAY PURCHASE SUCH INSURANCE AT THE CLIENT'S EXPENSE TO PROTECT CLIENT'S AND CLEARFLOW 'S INTERESTS IN THE PRODUCTS AND POTENTIAL PUBLIC LIABILITY. THIS INSURANCE MAY, BUT NEED NOT, PROTECT THE CLIENT'S INTERESTS. THE COVERAGE THAT CLEARFLOW PURCHASES MAY NOT PAY ANY CLAIM THAT IS MADE AGAINST THE CLIENT IN CONNECTION WITH THE PRODUCTS. THE CLIENT MAY LATER CANCEL ANY INSURANCE PURCHASED BY CLEARFLOW, BUT ONLY AFTER PROVIDING CLEARFLOW**

WITH EVIDENCE THAT THE CLIENT HAS OBTAINED INSURANCE AS REQUIRED BY THIS AGREEMENT. IF CLEARFLOW PURCHASES INSURANCE REQUIRED BY THE PRECEDING PARAGRAPH, THE CLIENT WILL BE RESPONSIBLE TO IMMEDIATELY REIMBURSE CLEARFLOW FOR ALL OF THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES THAT MAY BE IMPOSED WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF THE INSURANCE THE CLIENT MAY BE ABLE TO OBTAIN ON ITS OWN. THE COST OF SUCH INSURANCE COVERAGES PURCHASED BY CLEARFLOW SHALL BE PART OF CLEARFLOW'S EXPENSES.

The terms "Indemnified Party" and "Indemnified Parties" shall mean, respectively, each of ClearFlow and its successors and assigns, and each of ClearFlow's and its successor's and assigns' shareholders, officers, directors, employees, members, managers, agents, contractors and other representatives and all of such parties and entities. The Client expressly assumes and agrees to defend (with counsel satisfactory to ClearFlow), protect, indemnify, exonerate, and hold harmless each Indemnified Party from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and distributions of any kind or nature (including, without limitation, the disbursements and the reasonable fees of counsel for each Indemnified Party thereto), which may be imposed on, incurred by, or asserted against, any Indemnified Party in any manner relating to or arising (i) out of any warranty (including express and implied warranties) made in connection with the Products, or (ii) from the use of the Products or their manufacture, sale, re-sale, license, lease, exchange, transportation, distribution or disposition (regardless of the theory of liability asserted, whether strict liability in tort, negligence or any other theory whatsoever).

Any liability, obligation, loss, damage, penalty, cost or expense covered by this indemnity shall be paid by the Client to each Indemnified Party on demand, and failing prompt payment, together with interest accruing thereon at the rate of three percent (3%) per month (or if less, the highest rate permitted by law) from the date incurred by each Indemnified Party until paid by the Client.

### 13. Financial/Data and Audit Rights

The Client shall deliver to ClearFlow monthly/quarterly financial statements of the Client as well as such additional information and documentation as ClearFlow may request from time to time. In addition, ClearFlow shall have the right to inspect, audit and copy any of Client's financial books, computer programs, specifically but not exclusive to the Client's QuickBooks accounts for which direct password access shall be provided, and other data containing financial information in connection with the Client at any time during regular business hours. The Client agrees to reimburse ClearFlow for any costs associated with such an audit at the then going rate charged by ClearFlow (for informational purposes only, the going rate at the time of the execution of this Agreement is One Thousand Two Hundred Dollars (\$1,200) CAD per day of audit). The Client agrees to prepare and maintain complete and accurate business records with respect to the transactions contemplated by this Agreement.

14. Relationship of the Parties

The parties hereto are independent contractors and are not (and shall not be deemed to be) partners, joint venturers, agents or representatives of the other party. Each party is exclusively responsible for the conduct of its own business and is not authorized to bind the other party in any manner whatsoever. However, the Client agrees that subject to applicable laws and regulations, ClearFlow is permitted to fulfill the P.O. on the Client's behalf and in the Client's name and finance the sale of the Product to the Client's customer, and further to engage in such other activities as expressly provided for in this Agreement.

15. Indemnification/Release

- (a) The Client, at its expense, will indemnify, defend and hold harmless the Indemnified Parties from all liabilities, costs, losses, damages, penalties and expenses (including legal fees and experts' fees and expenses as well as interparty damages caused by the Client or third parties) threatened or brought against any of the Indemnified Parties as a result of the following, and will reimburse such fees and expenses as they are incurred as a consequence of or resulting from or in any manner relating to:
  - (i) breach of this Agreement or any of the other Transaction Documents by the Client, any breach of a warranty made by the Client hereunder or under any of the other Transaction Documents, or the failure of any representation made by the Client hereunder or any of the other Transaction Documents to be true;
  - (ii) misconduct or negligence of the Client;
  - (iii) any suit or threat of suit by any Person with respect to any of the Products, including, without limitation, all claims under or with respect to Product warranties;
  - (iv) any product liability claims of any kind, including, without limitation, all claims under or with respect to Product warranties;
  - (v) violation, breach or non-compliance of the Client or the Product of any domestic or foreign laws, regulations, administrative decisions including, but not limited to, customs laws and regulations, international trade laws and regulations and embargoes applicable to the Client or the Products;
  - (vi) environmental liability of any kind; and
  - (vii) any matter, claim or litigation relating to the transactions contemplated by this Agreement or by any document executed in connection with the transactions contemplated by this Agreement, including, without limitation, any claims or suits brought by any customer of the Client or any other Person.

These indemnity provisions and the indemnity provisions in Section 12 hereof shall survive the termination of this Agreement.

- (b) The Client acknowledges and agrees that ClearFlow shall have no duty of care with respect to any Product and shall have no liability to the Client with respect to any loss or damage (including, without limit, theft or destruction) to any Product, whether occurring before, during or after the time in which ClearFlow makes payment for and or finances such Product on behalf of and in the name of the Client. The Client hereby releases ClearFlow from any liability with respect to any loss or damage to any Product.
- (c) The Client will have the right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise except that ClearFlow may in its sole discretion participate in the defense of any such claim or action at ClearFlow's expense, unless ClearFlow has been advised by counsel that a reasonable likelihood exists of a conflict of interest between the Client and ClearFlow, in which case the Client shall pay all the fees and expenses of such separate counsel of ClearFlow. Without limiting the foregoing, the Client may not, without ClearFlow's prior written consent, settle, compromise or consent to the entry of any judgment in any such commenced or threatened claim or action, unless such settlement, compromise or consent: (i) includes an unconditional release of the relevant Indemnified Parties from all liability arising out of such commenced or threatened claim or action; and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, any Indemnified Party or otherwise adversely affect any Indemnified Party; and (iii) is otherwise acceptable to ClearFlow. If the Client fails to appoint legal counsel within ten (10) days after ClearFlow has notified the Client of any such claim or action, or after the Client becomes aware of such claim or action, whichever is earlier, ClearFlow will have the right to select and appoint an alternative legal counsel and the reasonable cost and expense thereof will be paid by the Client.

16. Term and Termination; Event of Default

(a) Term of Agreement

This Agreement is for an initial term of Twenty Four (24) months from the date hereof, and shall renew for successive Twelve (12) month periods on each anniversary hereof unless one party gives the other party ninety (90) days prior written notice of its intent to not renew on any anniversary date. Notwithstanding the foregoing, ClearFlow may terminate this Agreement immediately upon the Client's default under Section 16(c) or at any other time at ClearFlow's option upon a thirty (30) day prior written notice given by ClearFlow to Client.

(b) Obligations Upon Termination.

Upon termination of this Agreement, each party shall remain liable to pay and perform all of its obligations under this Agreement, the other Transaction Documents, and any other agreement or document related to the transactions contemplated herein or therein, which remain unperformed as of the termination date as if this Agreement remained in full force and effect. Upon termination of this Agreement and upon completion of the foregoing obligations, all obligations hereunder shall terminate except the continuing obligations of the parties under Sections 10, 11, 12, 13, 14, 15 and 16 hereof.

(c) Default

- (i) The Client shall be considered to be in default hereunder if any of the following events of default (each, an "**Event of Default**") shall occur: (A) Client fails to make any payment due to ClearFlow under this Agreement or under any of the other Transaction Documents on the due date thereof; or (B) Client fails in any other respect to perform any of its other obligations under this Agreement, under the Security Agreement, any other Transaction Document or any other document entered into between the Client and ClearFlow and such failure continues unremedied for a period of three (3) Business Days following ClearFlow's notice to the Client of an Event of Default; or (C) Client has made a representation which proves to be false or breaches a warranty made under this Agreement or under any other Transaction Document or any other document entered into between the Client and ClearFlow; or (D) any event occurs or condition exists (other than those described in clauses (A) through (C) above) which is specified as an event of default under any of the other Transaction Documents, and is not cured within the applicable cure period specified therein, if any; or (E) the filing of a petition in bankruptcy by or against Client or any Guarantor, or institution of any proceeding by Client or any Guarantor for reorganization, readjustment, or similar arrangement under any bankruptcy or insolvency statute (and with respect to any involuntary petition or proceeding, such petition or proceeding is not dismissed within sixty (60) days after filing), filing of any proceeding by or against Client or any Guarantor for appointment of a receiver, trustee or liquidator for it or him, or all or any substantial part of its or his assets or properties, filing of a petition for dissolution or liquidation of Client or any Guarantor, or making by Client or any Guarantor of an assignment for the benefit of creditors, or Client or any Guarantor admits in writing its or his inability to pay its or his debts as they become due, or Client or any Guarantor ceases doing business as a going concern; or (F) there shall occur any uninsured damage to or loss, theft, or destruction of any Product; or (G) a notice of lien, levy or assessment is filed of record with respect to all or any portion of Client's assets by any government, or any department, agency or instrumentality thereof, or by any federal, provincial, municipal or other governmental

agency, or any taxes or debts owing to any of the foregoing becomes a lien or encumbrance upon all or any portion of Client's assets; or (H) any Guarantor shall terminate, repudiate, revoke or disavow any of his obligations under the Guarantee executed by such Guarantor or breach any of the terms thereof, or any Guarantor shall die or become incompetent; or (I) Client fails to make any payment due to any third party on or before the due date therefor if the failure to make such payment gives rise to or creates (or if unremedied would give rise to or create) an encumbrance upon the Products or any of them or otherwise restricts ClearFlow's sale or disposition of the Products or any of them; or (J) Client is in default pursuant to any lending or financing agreement; or (K) ClearFlow in good faith deems the prospect of the Client's payment or performance of the obligations of the Client to have been impaired; or (L) any proceeding shall be commenced or filing made under applicable law by any officer, member or employee of Client or other Person to dissolve or liquidate the Client, or any order, judgment or decree shall be entered against Client decreeing its involuntary dissolution or split up; or Client shall otherwise dissolve or cease to exist; or (M) Client engages or participates in the sale or title transfer of any Products to any individual, party or entity outside of Canada or USA without the express prior written consent of ClearFlow.

- (ii) Without waiving or limiting any of ClearFlow's other rights and remedies in the event of a default by the Client, upon the occurrence of any Event of Default, the Client shall be liable for immediate payment to ClearFlow of all amounts due and to become due to ClearFlow under this Agreement and under all other Transaction Documents, including, without limitation, the Price pursuant to each Accepted P.O., ClearFlow's Expenses, ClearFlow's Deal Fees, ClearFlow's Shipment Fee and the Annual Commitment Fee. ClearFlow shall further be entitled to reimbursement for all of its costs of collection, whether or not suit has been filed or judgment entered, including, without limitation, reasonable legal fees and legal expenses. All amounts owed to ClearFlow pursuant to this Section 16(c) shall carry interest at the rate of three percent (3%) per month ("**Default Rate of Interest**") from the effective date of a default or Event of Default, pursuant to this Agreement, or, in the case of ClearFlow's costs of collection, from the date such costs are incurred, until paid in full.
- (iii) If an Event of Default shall occur and be continuing (A) ClearFlow may exercise and pursue any and all rights and remedies available to it hereunder, under the other Transaction Documents or otherwise available under applicable law or in equity, and (B) ClearFlow shall further be entitled to sell or otherwise dispose of all Product and apply the proceeds thereof to satisfy the obligations of the Client hereunder and/or exercise all the rights and remedies of a secured party under the *Personal Property Security Act* (Ontario) or any other applicable legislation or as otherwise provided under the Security Agreement or the Accounts Receivable Purchase Agreement.



- (iv) To the extent that the Client's obligations hereunder are now or hereafter secured by property other than the collateral described in the Security Agreement or by the guarantee, endorsement or property of any other Person, then ClearFlow shall have the right in its sole discretion to determine which rights, security, liens, security interests or remedies ClearFlow shall at any time pursue, relinquish, subordinate, modify or take any other action with respect thereto, without in any way modifying or affecting any of them or any of ClearFlow's rights hereunder.

17. Conditions Precedent To Credit Extensions

This Agreement shall become effective on and as of the first date (the "**Effective Date**") on which all of the following conditions precedent shall have been satisfied or waived in writing by ClearFlow:

- (a) ClearFlow's receipt of the following, each of which shall be originals or facsimiles (followed promptly by originals, in each case in a number of copies sufficient for distribution to ClearFlow and the Client) unless otherwise specified, each properly executed by an authorized officer of the Client, and the other parties thereto, and each in form and substance reasonably satisfactory to ClearFlow and its legal counsel (documents, instruments and certificates identified in clauses (i) through (vii) below are collectively referred to as the "**Transaction Documents**"):
  - (i) this Agreement;
  - (ii) an Accounts Receivable Purchase Agreement;
  - (iii) a Security Agreement together with all necessary filings or registrations relating thereto;
  - (iv) a Guarantee executed by each Person listed on Schedule 3 hereto;
  - (v) if required by ClearFlow, a Subordination Agreement executed by each Person listed on Schedule 3 hereto;
  - (vi) such certificates of resolutions or other action, incumbency certificates and/or other certificates of the appropriate and authorized officers of the Client as ClearFlow may reasonably require evidencing the identity, authority and capacity of each officer of the Client authorized to act on behalf of the Client in connection with this Agreement and the other agreements contemplated hereby to which the Client is a party or is to be a party;
  - (vii) a certificate of a responsible officer of the Client either (A) listing all consents, licenses and approvals required in connection with the execution, delivery and performance by the Client and enforceability of the Transaction Documents to which it is a party, and such consents,



licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

- (viii) such documents and certifications as ClearFlow may reasonably require to evidence that the Client is duly incorporated, and that the Client is validly subsisting in its jurisdiction of incorporation and is qualified to do business in each jurisdiction in which it carries on its business in which it is required to be qualified to do business; and
- (ix) such other documents and instruments executed by Client in favour of ClearFlow, as ClearFlow may reasonably require Client to execute in order to carry out the terms of this Agreement and the transactions contemplated hereby, and to protect ClearFlow's rights and interests in the Products, the Accepted P.O.'s, any accounts arising from the sale or other disposition of the Product, and all collateral securing Client's obligations to ClearFlow.

#### 18. Miscellaneous Provisions

- (a) **CHOICE OF LAW, VENUE, JURISDICTION AND SERVICE.** THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS HAVE BEEN SUBMITTED TO CLEARFLOW AT CLEARFLOW'S PRINCIPAL PLACE OF BUSINESS IN THE PROVINCE OF ONTARIO, WILL BE PERFORMED BY THE PARTIES IN THE PROVINCE OF ONTARIO, AND SHALL BE DEEMED TO HAVE BEEN MADE IN THE PROVINCE OF ONTARIO. THE VALIDITY OF EACH OF THE TRANSACTION DOCUMENTS AND THE CONSTRUCTION, INTERPRETATION AND ENFORCEMENT THEREOF, AND THE RIGHTS OF THE PARTIES THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE PROVINCE OF ONTARIO.
- (b) Notices. All notices required or permitted pursuant to this Agreement shall be in writing and either personally delivered, sent by facsimile transmission or electronic transmission in PDF file format (provided evidence of transmission is maintained and the original of the transmittal notice is sent by mail), or courier delivery service, addressed to the respective addresses or facsimile number of the parties set forth on the last page of this Agreement. Notices given in the manner prescribed herein shall be deemed given on the date sent or transmitted (as the case may be).
- (c) Severability. The Sections of this Agreement are severable, and in the event that any Section or portion of this Agreement is declared illegal or unenforceable, the remainder of this Agreement will be effective and binding upon the parties.
- (d) Waiver; Entire Agreement. This Agreement and the other Transaction Documents contain the entire understanding of the parties with respect to the

subject matter hereof, and supersedes all prior oral or written agreements, understandings, or arrangements. No waiver of or modifications to the provisions of this Agreement will be valid unless in writing and signed by all parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, assigns, and legal representatives.

ClearFlow's failure at any time or times hereafter to require strict performance by Client of any provision of this Agreement shall not waive, affect or diminish any right of ClearFlow thereafter to demand strict compliance and performance therewith. Any suspension or waiver by ClearFlow of an Event of Default by Client under this Agreement shall not suspend, waive or affect any other Event of Default by Client under this Agreement, whether the same is prior or subsequent thereto and whether of the same or of a different kind or character. None of the undertakings, agreements, warranties, covenants and representations of Client contained in this Agreement and no Event of Default by Client hereunder shall be deemed to have been suspended or waived by ClearFlow unless such suspension or waiver is in writing signed by an officer of ClearFlow and directed to Client specifying such suspension or waiver, and then such suspension or waiver shall be effective only for the specific purpose for which given.

- (e) No Withholding. Any amount payable by the Client under the Transaction Documents will be paid in Canadian Dollars (CAD) via wire transfer or otherwise in immediately available funds free and clear of any wiring fees and without deduction of any withholding taxes. Withholding taxes are taxes, duties or governmental charges of any kind whatsoever which are imposed or levied in, by or on behalf of the country, state or province in which the Client is situated, and which are deducted from any payment hereunder and/or under the Transaction Documents. If the deduction of withholding taxes is required by law, then Client shall pay such additional amounts as may be necessary in order that the net amounts received by ClearFlow after such deduction shall equal the amount that would have been receivable had no such deduction been required.
- (f) Reinstatement of Obligations. To the extent that Client makes a payment or payments to ClearFlow or ClearFlow receives any payment or proceeds of collateral for Client's benefit, which payment(s) or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state, provincial, or federal law, common law or equitable cause, then, to the extent of such payment(s) or proceeds received, the obligations or part thereof intended to be satisfied shall be reinstated and shall continue in full force and effect, as if such payment(s) or proceeds had not been received by ClearFlow.
- (g) Assignment. The Client may not transfer or assign its rights or obligations under the Transaction Documents without the prior written consent of ClearFlow, and any attempted transfer or assignment by Client shall be null and void. ClearFlow may assign its rights and obligations under the Transaction Documents, without the consent of Client, and upon such assignment, the assignee of ClearFlow shall

enjoy and be entitled to all of ClearFlow's rights, remedies, powers, privileges and benefits under the Transaction Documents, as if the assignee were originally named in the Transaction Documents, instead of ClearFlow.

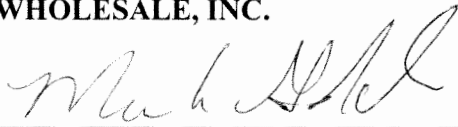
- (h) Performance. Time is of the essence in making payments of all amounts due ClearFlow under this Agreement and all other Transaction Documents and in the performance and observance by the Client of each covenant, agreement, provision and term of this Agreement and all other Transaction Documents.
- (i) Further Assurances. From and after the date hereof, each party will execute all documents and take such further actions as the other may from time to time reasonably request in order to carry out the transactions provided for herein and accomplish the purposes contemplated hereby.
- (j) Counterparts: Facsimile Delivery. This Agreement may be executed in one or more counterparts, each of which taken together shall constitute one and the same instrument, admissible into evidence. Delivery of an executed counterpart of this Agreement by facsimile or email shall be equally as effective as delivery of a manually executed original counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile or email shall also promptly deliver a manually executed original counterpart of this Agreement to the other party, but the failure to deliver a manually executed original counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

**Signature Page Follows**

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This Agreement has been signed on the day and year first above written.

CLIENT:

**TRIGGER WHOLESale, INC.**Per: 

Name: Mark Gdak

Title: President

I have the authority to bind the corporation

Address:

588 Colby Dr., Unit 1  
Kitchener, ON N2V1A2Facsimile No. 877-767-2292

PURCHASER:

**CLEARFLOW COMMERCIAL FINANCE CORP.**

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

Name: Glenn Petersen

Title: President

I have the authority to bind the corporation

Address:

30 Vogell Road, Suite 1  
Richmond Hill, ON L4B 3K6  
Facsimile No.: 1 (888) 551-1518

**EXHIBIT A**  
**ACCOUNTS RECEIVABLE PURCHASE AGREEMENT**

Provided Separately

**EXHIBIT B****ADDENDUM**

This Addendum is executed by ●, who is the ● of ● ("Client"), on behalf of Client, in connection with the Master Purchase Order Finance Agreement dated as of ●, ● (as amended or restated from time to time, the "**Agreement**") with CLEARFLOW COMMERCIAL FINANCE CORP. ("**ClearFlow**"). All capitalized terms used herein and not defined shall have the meaning ascribed in the Agreement.

The undersigned certifies to ClearFlow that all of the information contained in this Addendum is true, complete and accurate and is furnished to ClearFlow to induce ClearFlow to purchase Product in accordance with the Agreement:

1. Client's P.O. to Supplier Information

Attached is a purchase order number \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_\_\_ to be submitted by Client to Supplier (name with complete address for letter of credit issuance and contact person with telephone number and e-mail address):

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Supplier's advising bank name, address, and swift code:

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Requested letter of credit issuance date:

Estimated shipping date from supplier's facility:

Shipping terms from Supplier: (i.e. FOB geographical point)

Latest shipment date for letter of credit per

Inspection Agent:

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2. Customer P.O. Information

Attached is a purchase order issued by  
company:

For Product:

Cancel date of order:

Shipping terms:

Transfer Date (date no later than which  
ownership of the goods will transfer to the  
Client to be invoiced to the customer) :

3. Cost of Goods Information

Specify Currency for Purchase Price and all  
Costs:

Purchase Price from Supplier:

Cost of Freight and handling:

Cost of Customs Duties:

Other Transaction Costs:

Due Date for Balance of Purchase Price and  
source (i.e. Factor):

4. Logistics Information

Shipment from Supplier to be by air or ocean:

Shipment to be made in one lot or in partial  
shipments:

Port or airport of entry in the U.S. or Canada:

Name, Address and other Contact Information  
of Freight Forwarder:

Name, address, and other contact information  
of customs' broker:

Due Date for Balance of Purchase Price:

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The facility to which the Product will be delivered:

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5. Reaffirmation.

Client hereby reaffirms to ClearFlow and agrees to abide by all terms and provisions set forth in the Agreement. Client hereby represents and warrants to ClearFlow, its successors and assigns, that as of the date hereto, each of the representations and warranties set forth in the Agreement are true and correct and the Client is in full compliance with all of the terms and conditions of the Agreement, and no Event of Default has occurred and is continuing.

Dated: \_\_\_\_\_, 201\_\_.

CLIENT:

●

Per:

\_\_\_\_\_  
Name:

Title:

I have the authority to bind the corporation

**ACCEPTANCE OF PURCHASE ORDER:**

The foregoing P.O., as prepared and delivered by the Client, is hereby accepted and approved.

Dated: \_\_\_\_\_, 201\_\_.

**CLEARFLOW COMMERCIAL FINANCE CORP.**

Per:

\_\_\_\_\_  
Name:

Title:

I have the authority to bind the corporation



**EXHIBIT C**  
**GUARANTEE(S)**

Provided Separately

**EXHIBIT D**  
**SECURITY AGREEMENT**

Provided Separately

**EXHIBIT E****AGREEMENT OF FREIGHT FORWARDER**

Provided Separately

**EXHIBIT F**  
**LANDLORD'S WAIVER**

Provided Separately

**EXHIBIT G****ASSIGNMENT OF PURCHASE ORDER**

For value received, ● (the "**Assignor**") hereby assigns, transfers and delivers to CLEARFLOW COMMERCIAL FINANCE CORP. (the "**Assignee**") all of the Assignor's right, title and interest in, to, and under that certain Purchase Order, identified as follows, for the purposes and pursuant to the terms and conditions of that certain Master Purchase Order Finance Agreement dated as of ● (as amended or restated from time to time) between the Assignor and the Assignee:

Assignor's P.O. No.: \_\_\_\_\_

Customer Name: \_\_\_\_\_

P.O. Date: \_\_\_\_\_

DATED \_\_\_\_\_, 20\_\_\_\_.

●

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

Name:

Title:

I have the authority to bind the corporation

**SCHEDULE 1**  
**PERMITTED LIENS**

None

**SCHEDULE 2**  
**SUITS, PROCEEDINGS, ETC.**

None

**SCHEDULE 3**

Guarantor(s):                   ●

Subordinated Lender(s):       None



**SCHEDULE 10(D)**

**DEFAULT UNDER LOAN AGREEMENT, LETTER OF CREDIT AGREEMENT,  
GUARANTEE, MORTGAGE, LEASE, TRUST DEED, SECURITY AGREEMENT, OR  
OTHER AGREEMENT RELATING TO THE BORROWING OF MONEY**

None

WV 918505.4



## ROYALTY AGREEMENT

Made as of the 30th day of April, 2015.

BETWEEN:

TRIGGER WHOLESale, INC.,  
a corporation incorporated under the laws of Ontario,  
(hereinafter called the "Client")

OF THE FIRST PART

- and -

CLEARFLOW COMMERCIAL FINANCE CORP.,  
(hereinafter called "ClearFlow")

OF THE SECOND PART

WHEREAS the Client has requested the provision of a certain purchase order financing facility, receivables financing facility and inventory financing facility (collectively, the "Facilities") from ClearFlow and ClearFlow has agreed to make the facilities available to the Client subject to the terms and conditions applicable to each of the Facilities;

AND WHEREAS ClearFlow requires the entering into of this agreement as a condition to it providing the Facilities to Client;

NOW THEREFORE, THIS AGREEMENT WITNESSES that, in consideration of the promises, covenants and agreements herein contained, the parties hereto agree as follows:

### ARTICLE 1 Definitions

The terms defined in this section shall, for all purposes of this Agreement, as the same may be amended or supplemented from time to time, have the meaning herein specified:

1.1 **"Financial Statements"** means, in the case of annual financial statements, the audited financial statements of the Client, and, in the case of monthly financial statements, internally prepared financial statements of the Client including an income statement, a cashflow statement and a balance sheet.

1.2 **"MPSA"** means the Master Purchase and Sale Agreement between the Client and ClearFlow dated as of the date hereof, as the same may be amended, supplemented, replaced or restated from time to time.

1.3 **"Report"** shall mean the quarterly report certified true and delivered by the Client setting out Total Revenue recorded by the Client for the fiscal quarter referred to in such report, such Report to be provided to ClearFlow substantially in the form attached hereto as Schedule "A".

1.4 **"Total Revenues"** shall mean, for any period, the gross revenues reflected on the financial statements of the Client for such period.

1.5 Schedule "A" attached hereto is hereby incorporated into this Agreement by reference and deemed to be a part hereof.

## **ARTICLE 2**

### **Royalties**

2.1 **Royalty:** The Client agrees to pay to ClearFlow, in consideration for the provision by ClearFlow to the Client of the Facilities, and for so long as the Facilities are made available to the Client by ClearFlow, a royalty (the "Royalty") in the amount of 2% of Total Revenues.

2.2 **Royalty Payment:** The Royalty shall be paid by the Client to ClearFlow quarterly for the three month period then ended. ClearFlow may set-off the amount of the Royalty against amounts owing by ClearFlow to the Client under the MPSA.

2.3 **Term of Royalty Payments:** The Royalty shall continue to be paid by the Client to ClearFlow until either (a) ClearFlow terminates the Facilities, or (b) the Client wishes to repurchase the Royalty after terminating its Facilities with ClearFlow according to the terms of the Facilities. In the event of either (a) or (b) above, the Client shall repurchase the Royalty for an amount equal to three times the Royalties paid by the Client to ClearFlow over the most recent 12 months then ended.

2.3 **Books & Records:** In order that the Reports may be verified, the Client shall:

(a) keep full, clear and accurate books and records showing the quantity of sales, of products sold by, through or under the Client; and

(b) permit such independent chartered accountant as may from time to time be designated by ClearFlow to inspect and examine the books and records of the Client relating to the sale of products yearly, upon the provision of at least 24 hours advance notice, to determine and verify Royalty payments due hereunder. The costs of such verification shall be at the expense of ClearFlow unless a material discrepancy adverse to ClearFlow is found, in which event such costs shall be at the expense of the Client. Whomever makes such inspection and examination shall be entitled to make notes and copies of any information contained in such records and accounts applicable to the Royalty obligations hereunder. The Client shall not be required to keep records for longer than seven years after the date of the transaction so recorded.

2.4 **Interest on Arrears:** If an amount of Royalty is not paid to ClearFlow when due, then interest shall accrue on such overdue amount at the rate of 20% per annum, calculated and compounded monthly, until paid in full, and before and after each of demand, default and judgment.

2.5 **Taxes:** The Client shall pay applicable HST (or any successor value added federal tax) on Royalties paid to ClearFlow hereunder.

### **ARTICLE 3**

#### **General**

3.1 **Further Assurances:** Each party shall, at the request and the expense of the other, execute and deliver such additional conveyances, transfers, assignments, filings, registrations and other assurances, and do such further things and actions, as may be necessary or desirable, in the opinion of the requesting party, to be reasonably required effectually to carry out the spirit and intent of this Agreement.

3.2 **Entire Agreement, Amendments:** This Agreement, including the Schedules hereto, constitutes the entire Agreement between the parties, superseding and replacing all other agreements of the same subject matter. There are not and shall not be any verbal agreements, representations, warranties, undertakings or other agreements between the parties. This Agreement may not be amended or modified in any respect except by written instrument signed by both parties and expressed to be an amendment hereof.

3.3 **Time of Essence:** Time shall be of the essence of this Agreement.

3.4 **Headings:** The paragraph headings in this Agreement have been inserted for purpose of reference only, and shall have no effect whatsoever on the meaning, interpretation, or construction of the provisions hereof.



3.5 **Governing Law:** This Agreement shall be governed by and construed and interpreted in accordance with the laws in force from time to time in the Province of Ontario.

3.6 **Successors & Assigns:** This Agreement shall enure to the benefit of and be binding upon the parties hereto and the respective heirs, executors, administrators, successors and assigns. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the non-assigning party, which consent shall not be withheld unreasonably.

3.7 **Notices:** Any notice, request, consent or other communication required or desired to be given by one party hereto to the other under this Agreement shall be in writing and shall for all purposes be deemed to be fully given and received if and when received by personal delivery or five days after posting by prepaid registered mail, return receipt requested, or by 10:00 a.m. the next ordinary business day if by cable, telegram, facsimile or telex, addressed to the party to be notified at the respective address of such party as set forth herein:

For the Client: \_\_\_\_\_

For ClearFlow: \_\_\_\_\_

unless and until other addresses are supplied in writing by the parties.

3.8 **Severability:** If any provision of this Agreement should be or become fully or partially invalid or unenforceable for any reason whatsoever or should violate any applicable law, this Agreement is to be considered divisible as to such provision and such provision is to be deleted from this Agreement and the remainder of this Agreement shall be valid and binding as if such provision were not included herein. There shall be substituted for any such provision deemed to be deleted a suitable provision which, so far as legally possible, comes nearest to what the parties desired or would have desired according to the sense and purpose of this Agreement.

3.9 **Counterparts: Facsimile Delivery:** This Agreement may be executed in one or more counterparts, each of which taken together shall constitute one and the same instrument, admissible into evidence. Delivery of an executed counterpart of this Agreement by facsimile or email shall be equally as effective as delivery of a manually executed original counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile or email shall also promptly deliver a manually executed original counterpart of this Agreement to the other party, but the failure to deliver a manually executed original counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date and year first above written.

**TRIGGER WHOLESale, INC.**

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

Name: Mark Gdak

Title: President

I have the authority to bind the corporation

Address:

588 Colby Dr., Unit 1  
Kitchener, Waterloo, ON N2V1A2

Facsimile No. 877-767-2292

**CLEARFLOW COMMERCIAL FINANCE CORP.**

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

Name: Glenn Petersen

Title: President

I have the authority to bind the corporation

Address:

30 Vogell Road, Suite 1  
Richmond Hill, ON L4B 3K6  
Facsimile No.: 1 (888) 551-1518

Attached:  
Schedule "A" - Report

**SCHEDULE "A"**  
**REPORT**

**TO:** ClearFlow Commercial Finance Corp.

**DATE:** \_\_\_\_\_

**PERIOD COVERED:** From \_\_\_\_\_ to \_\_\_\_\_

Calculation of Royalty:

A. Total Revenue from sale of products in the period above specified: \$ \_\_\_\_\_

B. Royalty Payable this Period @ 2%: \$ \_\_\_\_\_

I, \_\_\_\_\_ am \_\_\_\_\_ of Trigger Wholesale Inc.,  
and in such capacity, I hereby certify that the foregoing Report is true, correct and  
complete in all material respects.

\_\_\_\_\_  
Name:

Title:

# TAB D



**TRIGGER WHOLESALE, INC.****FINANCIAL STATEMENTS****FOR THE YEAR ENDED MARCH 31, 2019**

(Unaudited - See Independent Practitioner's Review Engagement Report)

**TRIGGER WHOLESALE, INC.****INDEX TO THE FINANCIAL STATEMENTS****YEAR ENDED MARCH 31, 2019**

(Unaudited - See Independent Practitioner's Review Engagement Report)

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## INDEPENDENT PRACTITIONER'S REVIEW ENGAGEMENT REPORT

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To the shareholders of Trigger Wholesale, Inc.

We have reviewed the accompanying financial statements of Trigger Wholesale, Inc. that comprise the balance sheet as at March 31, 2019 and the statements of earnings and retained earnings and cash flows for the year then ended and a summary of significant accounting policies and other explanatory information.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian accounting standards for private enterprises and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Practitioner's Responsibility**

Our responsibility is to express a conclusion on the accompanying financial statements based on our review. We conducted our review in accordance with Canadian generally accepted standards for review engagements, which require us to comply with relevant ethical requirements.

A review of the financial statements in accordance with Canadian generally accepted standards for review engagements is a limited assurance engagement. The practitioner performs procedures, primarily consisting of making inquiries of management and others within the entity, as appropriate, and applying analytical procedures, and evaluates the evidence obtained.

The procedures performed in a review are substantially less in extent than, and vary in nature from, those performed in an audit conducted in accordance with Canadian generally accepted auditing standards. Accordingly, we do not express an audit opinion on these financial statements.

### **Conclusion**

Based on our review, nothing has come to our attention that causes us to believe that the financial statements do not present fairly, in all material respects, the financial position of Trigger Wholesale, Inc. as at March 31, 2019 and the results of its operations and its cash flows for the year then ended in accordance with Canadian accounting standards for private enterprises.



Kitchener, Ontario  
June 24, 2020

Chartered Professional Accountants  
Licensed Public Accountants

**TRIGGER WHOLESALÉ, INC.****BALANCE SHEET****AS AT MARCH 31, 2019**

(Unaudited - See Independent Practitioner's Review Engagement Report)

|                                                                                      | 2019                        | 2018                        |
|--------------------------------------------------------------------------------------|-----------------------------|-----------------------------|
| <b>ASSETS</b>                                                                        |                             |                             |
| <b>CURRENT</b>                                                                       |                             |                             |
| Cash                                                                                 | \$ 6,005,981                | \$ 1,215,394                |
| Accounts receivable (note 5)                                                         | 27,519,796                  | 11,013,990                  |
| Inventory                                                                            | 4,653,866                   | 4,523,354                   |
| Prepaid expenses and deposits                                                        | <u>1,026,960</u>            | <u>740,105</u>              |
|                                                                                      | 39,206,603                  | 17,492,843                  |
| <b>CAPITAL ASSETS</b> (note 4)                                                       | <u>326,349</u>              | <u>208,056</u>              |
|                                                                                      | <u><u>\$ 39,532,952</u></u> | <u><u>\$ 17,700,899</u></u> |
| <b>LIABILITIES</b>                                                                   |                             |                             |
| <b>CURRENT</b>                                                                       |                             |                             |
| Accounts payable and accrued liabilities                                             | \$ 253,000                  | \$ 461,370                  |
| Government remittances payable                                                       | 2,311,507                   | 452,330                     |
| Income taxes payable                                                                 | 4,037,195                   | 1,406,519                   |
| Loan payable (note 5)                                                                | 21,362,343                  | 9,192,522                   |
| Current portion of long term debt (note 6)                                           | <u>14,141</u>               | <u>6,316</u>                |
|                                                                                      | 27,978,186                  | 11,519,057                  |
| <b>LONG TERM DEBT</b> (note 6)                                                       | 43,633                      | 22,513                      |
| <b>LOAN PAYABLE TO SHAREHOLDER</b> (note 7)                                          | <u>3,034,487</u>            | <u>3,165,034</u>            |
|                                                                                      | <u><u>31,056,306</u></u>    | <u><u>14,706,604</u></u>    |
| <b>SHAREHOLDERS' EQUITY</b>                                                          |                             |                             |
| <b>SHARE CAPITAL</b>                                                                 |                             |                             |
| Authorized                                                                           |                             |                             |
| Unlimited Common shares, voting, non-cumulative                                      |                             |                             |
| Unlimited Class A Special shares, voting, non-cumulative, redeemable and retractable |                             |                             |
| Issued Capital                                                                       |                             |                             |
| 100 Class A Common shares                                                            | 100                         | 100                         |
| 100,000 Class A Special shares                                                       |                             |                             |
| (total redemption value of \$4,450)                                                  | <u>96</u>                   | <u>96</u>                   |
|                                                                                      | 196                         | 196                         |
| <b>RETAINED EARNINGS</b>                                                             | <u>8,476,450</u>            | <u>2,994,099</u>            |
|                                                                                      | <u><u>8,476,646</u></u>     | <u><u>2,994,295</u></u>     |
|                                                                                      | <u><u>\$ 39,532,952</u></u> | <u><u>\$ 17,700,899</u></u> |

**TRIGGER WHOLESALE, INC.****STATEMENT OF EARNINGS AND RETAINED EARNINGS****FOR THE YEAR ENDED MARCH 31, 2019**

(Unaudited - See Independent Practitioner's Review Engagement Report)

|                                             | <b>2019</b>          | <b>2018</b>          |
|---------------------------------------------|----------------------|----------------------|
| <b>SALES</b>                                | <u>\$ 78,961,162</u> | <u>\$ 26,992,310</u> |
| <b>COST OF SALES</b>                        |                      |                      |
| Inventory - beginning of year               | 4,523,354            | 761,203              |
| Purchases                                   | 51,265,982           | 20,367,173           |
| Freight                                     | 9,810,566            | 2,866,454            |
| Subcontractors                              | <u>34,699</u>        | <u>11,326</u>        |
|                                             | 65,634,601           | 24,006,156           |
| Inventory - end of year                     | <u>(4,653,866)</u>   | <u>(4,523,354)</u>   |
|                                             | <u>60,980,735</u>    | <u>19,482,802</u>    |
| <b>GROSS PROFIT</b>                         | 17,980,427           | 7,509,508            |
| <b>OPERATING EXPENSES</b> (schedule 1)      | <u>7,243,779</u>     | <u>2,771,397</u>     |
| <b>EARNINGS FROM OPERATIONS</b>             | <u>10,736,648</u>    | <u>4,738,111</u>     |
| <b>OTHER INCOME</b>                         |                      |                      |
| Interest income                             | 23,684               | 23,476               |
| Realized gain on lawsuit settlement         | <u>0</u>             | <u>706,871</u>       |
|                                             | <u>23,684</u>        | <u>730,347</u>       |
| <b>EARNINGS BEFORE INCOME TAXES</b>         | 10,760,332           | 5,468,458            |
| <b>PROVISION FOR CURRENT INCOME TAXES</b>   | <u>2,977,981</u>     | <u>1,417,761</u>     |
| <b>NET EARNINGS for the year</b>            | 7,782,351            | 4,050,697            |
| <b>RETAINED EARNINGS, beginning of year</b> | 2,994,099            | 243,402              |
| <b>DIVIDENDS</b>                            | <u>(2,300,000)</u>   | <u>(1,300,000)</u>   |
| <b>RETAINED EARNINGS, end of year</b>       | <u>\$ 8,476,450</u>  | <u>\$ 2,994,099</u>  |

**TRIGGER WHOLESALE, INC.****STATEMENT OF CASH FLOWS****FOR THE YEAR ENDED MARCH 31, 2019**

(Unaudited - See Independent Practitioner's Review Engagement Report)

|                                                        | <b>2019</b>         | <b>2018</b>         |
|--------------------------------------------------------|---------------------|---------------------|
| <b>CASH PROVIDED BY (USED IN) OPERATING ACTIVITIES</b> |                     |                     |
| Net earnings for the year                              | \$ 7,782,351        | \$ 4,050,697        |
| Items not requiring an outlay of cash                  |                     |                     |
| Amortization                                           | <u>84,462</u>       | <u>43,488</u>       |
|                                                        | 7,866,813           | 4,094,185           |
| Changes in non-cash working capital                    |                     |                     |
| Accounts receivable                                    | (16,505,806)        | (8,470,687)         |
| Inventory                                              | (130,512)           | (3,762,151)         |
| Prepaid expenses and deposits                          | (286,855)           | (674,473)           |
| Accounts payable and accrued liabilities               | (208,370)           | (820,912)           |
| Government remittances payable                         | 1,859,177           | 244,515             |
| Income taxes payable                                   | <u>2,630,676</u>    | <u>1,371,196</u>    |
|                                                        | <u>(4,774,877)</u>  | <u>(8,018,327)</u>  |
| <b>CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES</b> |                     |                     |
| Change in loan payable                                 | 12,169,821          | 7,866,008           |
| Long term debt                                         | 28,945              | 28,829              |
| Advances from (to) shareholders                        | (130,547)           | 2,800,172           |
| Dividends                                              | <u>(2,300,000)</u>  | <u>(1,300,000)</u>  |
|                                                        | <u>9,768,219</u>    | <u>9,395,009</u>    |
| <b>CASH (USED IN) INVESTING ACTIVITIES</b>             |                     |                     |
| Additions to capital assets                            | <u>(202,755)</u>    | <u>(172,028)</u>    |
| <b>NET INCREASE IN CASH</b>                            | 4,790,587           | 1,204,654           |
| <b>NET CASH, BEGINNING OF YEAR</b>                     | <u>1,215,394</u>    | <u>10,740</u>       |
| <b>NET CASH, END OF YEAR</b>                           | <u>\$ 6,005,981</u> | <u>\$ 1,215,394</u> |

**TRIGGER WHOLESALE, INC.****NOTES TO THE FINANCIAL STATEMENTS****FOR THE YEAR ENDED MARCH 31, 2019**

(Unaudited - See Independent Practitioner's Review Engagement Report)

**1. NATURE OF BUSINESS**

The company is incorporated under the provisions of the Ontario Business Corporations Act and is primarily involved in the wholesale and distribution of firearms, ammunition and other ancillary items.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

The financial statements have been prepared in accordance with Canadian accounting standards for private enterprises and include the following significant accounting policies:

**(a) ACKNOWLEDGEMENT OF RESPONSIBILITY**

Trigger Wholesale, Inc. acknowledges their responsibility for the creation and compilation of the following significant accounting policy decisions and the related policy notes.

**(b) REVENUE RECOGNITION**

Revenue from interest income is recognized as earned.

Sales revenue is recognized at the date of shipment to the customer. Collection is reasonably assured when the goods have been shipped.

Sales revenue derived from dealer programs, where inventory is held on consignment, is recognized as the consignee sells the goods to the end customer. Collection is reasonably assured once the goods have been sold.

Revenue from realized gain on lawsuit settlement is recognized in the period the courts awarded damages for the settlement of the lawsuit.

**(c) INVENTORY**

Inventory is measured at the lower of cost and net realizable value, with cost being determined on a specific item basis. Net realizable value is the estimated selling price in the ordinary course of business, less any applicable variable selling costs. Inventory is comprised by substantially all finished goods.

**(d) CAPITAL ASSETS**

Capital assets are recorded at cost and amortized on the basis of their estimated useful life using the following methods and rates:

|                        |                                |
|------------------------|--------------------------------|
| Vehicles               | - 30 % declining balance basis |
| Furniture and fixtures | - 20 % declining balance basis |
| Warehouse equipment    | - 20 % declining balance basis |
| Computer hardware      | - 55 % declining balance basis |
| Forklift               | - 30 % declining balance basis |

Amortization is recorded at 50% of the above rates in the year of addition.

**TRIGGER WHOLESALE, INC.****NOTES TO THE FINANCIAL STATEMENTS****FOR THE YEAR ENDED MARCH 31, 2019**

(Unaudited - See Independent Practitioner's Review Engagement Report)

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**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)****(e) USE OF ESTIMATES**

The preparation of financial statements in conformity with Canadian generally accepted accounting principles for private enterprises requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the year. Significant areas requiring management's estimates include useful life for assets, inventory valuation, and bad debts. Actual results could differ from those estimates.

**(f) FINANCIAL INSTRUMENTS**Measurement of financial instruments

The company initially measures its financial assets and liabilities at fair value.

The company subsequently measures all its financial assets and financial liabilities at amortized cost.

Financial assets measured at amortized cost include cash and accounts receivable.

Financial liabilities measured at amortized cost include accounts payable and accrued liabilities, term loan, long term debt, and loan payable to shareholders.

Impairment

Financial assets measured at amortized cost are tested for impairment when there are indicators of impairment. If an impairment has occurred, the carrying amount of financial assets measured at amortized cost is reduced to the greater of the discounted future cash flows expected or the proceeds that could be realized from the sale of the financial asset. The amount of the write-down is recognized in net earnings. The previously recognized impairment loss may be reversed to the extent of the improvement, directly or by adjusting the allowance account, provided it is no greater than the amount that would have been reported at the date of the reversal had the impairment not been recognized previously. The amount of the reversal is recognized in net earnings.

Transaction costs

The company recognizes its transaction costs in net income in the period incurred. However, financial instruments that will not be subsequently measured at fair value are adjusted by the transaction costs that are directly attributable to their origination, issuance or assumption.

**(g) INCOME TAXES**

The company applies the future income taxes method of accounting for income taxes.



**TRIGGER WHOLESALE, INC.****NOTES TO THE FINANCIAL STATEMENTS****FOR THE YEAR ENDED MARCH 31, 2019**

(Unaudited - See Independent Practitioner's Review Engagement Report)

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)****(h) LEASES**

Leases are classified as either capital or operating leases. A lease that transfers substantially all the benefits and risks incidental to the ownership of property is classified as a capital lease. All other leases are accounted for as operating leases wherein rental payments are amortized on a straight-line basis over the term of the lease to rental expense. At the inception of a capital lease, an asset and obligation is recorded at an amount equal to the lesser of the present value of the minimum lease payments and the property's fair value at the beginning of such lease.

**(i) FOREIGN EXCHANGE**

Foreign currencies denominated transactions occurring during the year are translated at the exchange rate in effect on the date of the related transaction. Foreign currency denominated cash and accounts payable which exist at year end are translated into Canadian dollars at the exchange rate prevailing at year end. Exchange gains (losses) are recorded as realized.

**3. FINANCIAL INSTRUMENTS**

Unless otherwise noted, it is management's opinion that the company is not exposed to significant interest, credit, currency, liquidity, or other price risks arising from the financial instruments.

The extent of the company's exposure to these risks did not change in 2019 compared to the previous period.

The company does not have a significant exposure to any individual customer or counterpart.

Transacting in financial instruments exposes the company to certain financial risks and uncertainties. These risks include:

Credit risk

The company is exposed to credit risk which may result from failure to collect accounts receivable. Although no concentration of exposure to individual customers, at the end of the year, approximately 2.37% (2018 - 3.23%) of the accounts receivable balance was owing by three customers.

Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. The company is exposed to interest rate risk as a result of the floating interest rate on the ClearFlow credit facility.

Currency risk

The currency risk refers to the risk that the fair value of the financial instruments or future cash flows associated with them will fluctuate relative to the Canadian dollar due to changes in foreign exchange rates. The company is exposed to United States currency rate risk on foreign accounts payable balances in the amount of \$223,330 (2018 - \$381,596) and prepaid deposits in the amount of \$1,026,960 (2018 - \$740,105). Included in cost of sales is an exchange loss of \$10,924,011 (2018 - \$191,371).

**TRIGGER WHOLESALE, INC.****NOTES TO THE FINANCIAL STATEMENTS****FOR THE YEAR ENDED MARCH 31, 2019**

(Unaudited - See Independent Practitioner's Review Engagement Report)

**3. FINANCIAL INSTRUMENTS (continued)**Liquidity risk

Liquidity risk is the risk that the company will encounter difficulty in meeting obligations associated with financial liabilities. The company is exposed to liquidity risk as a result of number of outstanding receivable accounts, and inventory turnover in the event of any new firearms ban. The company controls liquidity risk by management of working capital, cash flows and the availability of borrowing facilities.

**4. CAPITAL ASSETS**

|                        | <b>Cost</b>       | <b>Accumulated<br/>Amortization</b> | <b>Net<br/>2019</b> | <b>Net<br/>2018</b> |
|------------------------|-------------------|-------------------------------------|---------------------|---------------------|
| Vehicles               | \$ 189,811        | \$ 44,686                           | \$ 145,125          | \$ 54,047           |
| Furniture and fixtures | 139,439           | 34,930                              | 104,509             | 61,027              |
| Warehouse equipment    | 92,125            | 36,065                              | 56,060              | 59,403              |
| Computer hardware      | 45,278            | 29,655                              | 15,623              | 26,391              |
| Forklift               | <u>9,956</u>      | <u>4,924</u>                        | <u>5,032</u>        | <u>7,188</u>        |
|                        | <u>\$ 476,609</u> | <u>\$ 150,260</u>                   | <u>\$ 326,349</u>   | <u>\$ 208,056</u>   |

**TRIGGER WHOLESALE, INC.****NOTES TO THE FINANCIAL STATEMENTS****FOR THE YEAR ENDED MARCH 31, 2019**

(Unaudited - See Independent Practitioner's Review Engagement Report)

**5. LOAN PAYABLE**

ClearFlow credit facilities are secured by a first ranking general security agreement over the assets of Trigger Wholesale, Inc., a personal guarantee from the director of the company and a corporate guarantee from the corporate shareholder.

Advances calculated on accounts receivable are based on a rate of up to 85% of the aggregate net face value of identified accounts. ClearFlow has the option to factor receivables with recourse. Balance outstanding obligation at year end totalled \$21,362,343 (2018 - \$9,192,522), based on eligible accounts totalling \$26,438,422 (2018 - \$10,372,369). Subsequent to the year end, the maximum lending facility was extended to \$27,500,000; effective July 3, 2019. It is management's position that no conditions have been breached as at year end, as ClearFlow and the company continued to re-evaluate and increase the respective threshold for lending on an ongoing basis.

Applicable fees included in interest and bank charges are comprised of administration fees at 2.25% of face value of each account receivable for initial thirty days (fluctuating, up or down, by 0.02% for each 0.25% fluctuation in the prime rate), with additional administration fees at 1% of face value of accounts receivable for each additional 30 days the account remains unpaid. Administration fees will increase or decrease to reflect any change in the prime rate. There is an additional fee of 1% for accounts over 90 days. Included in expenses are total fees of \$3,001,137 (2018 - \$923,443). Additional fees are comprised of chargeback fees, due diligence fees, misdirected payment fees, liquidation administration fees, "over 90 day fee", and other incidental costs, totalling \$10,875 (2018 - \$9,415).

There is a master purchase order financing agreement. The maximum credit facility must not exceed the sum of \$320,000. It is management's position that no conditions have been breached as at year end, as ClearFlow and the company continued to re-evaluate and increase the respective threshold for lending on an ongoing basis. Subsequent to the year end, on July 3, 2019, the maximum lending facility was extended and shall not exceed \$2,500,000. ClearFlow shall not finance more than 90% of the price payable in connection with any purchase order, unless otherwise agreed to in writing. As at year end, there was a balance outstanding on this credit facility in the amount of \$nil (2018 - \$869,149). Transaction initiation and set-up fee is a sum equal to 2% of the price advanced by ClearFlow. An extended transaction fee in a sum equal to 2% of the price advanced by ClearFlow, for each 30 days between the 30th day after the acceptance date and the clearance date. Fees, including interest and bank charges related to this facility, totalled \$nil (2018 - \$100,104).

Included in interest and bank charges are additional charges totalling NIL (2018 - \$15,795).

A royalty in the amount of 2% of total revenues shall be paid to ClearFlow quarterly, and ClearFlow may offset the amount of the royalty against amounts owing by the company under the master purchase and sale agreement. Included in royalties are charges totaling \$1,774,526 (2018 - \$576,751). The royalty shall continue to be paid until either (a) ClearFlow terminates the facilities, or (b) the client repurchases the royalty after terminating its facilities with ClearFlow. In the event of (a) or (b) above, the client shall repurchase the royalty for an amount equal to three times the royalties paid by the client to ClearFlow over the most recent 12 months then ended.

**TRIGGER WHOLESALE, INC.****NOTES TO THE FINANCIAL STATEMENTS****FOR THE YEAR ENDED MARCH 31, 2019**

(Unaudited - See Independent Practitioner's Review Engagement Report)

**5. LOAN PAYABLE (continued)**

Subsequent to the year end, effective July 3, 2019, Trigger Wholesale Inc. and ClearFlow agreed that the original Royalty Agreement, from April 30, 2015 would be terminated, and replaced by the terms and conditions of the new Master Purchase and Sale Agreement (MPSA). The MPSA is for an initial term of 36 months from the effective date. There is an early termination fee for both the master purchase order financing agreement and the MPSA; if client terminates within the initial 12, 24 and 36 months of the agreement. The early termination fee is equal to all fees paid by the client to ClearFlow, under the Accounts Receivable Purchase Agreement and this Agreement, over the most recent 12 month, 6 month and 3 month period; respectively, depending on when the agreement is terminated.

**6. LONG TERM DEBT**

|                                                                                                                                                                      | <b>2019</b>             | <b>2018</b>             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|-------------------------|
| Ford truck loan, due September 30, 2022, repayable in monthly installments of \$570, interest charged at 1.99%, secured by vehicle with a carrying value of \$34,561 | \$ 21,987               | \$ 28,829               |
| Ford truck loan, due October 4, 2023, repayable in monthly installments of \$642, non-interest bearing, secured by vehicle with a carrying value of \$65,245         | <u>35,787</u><br>57,774 | <u>0</u><br>28,829      |
| Less current portion:                                                                                                                                                |                         |                         |
| Cash repayments required within 12 months                                                                                                                            | <u>14,141</u>           | <u>6,316</u>            |
|                                                                                                                                                                      | \$ <u><u>43,633</u></u> | \$ <u><u>22,513</u></u> |

Future minimum payments on long term obligations are as follows:

|      |                         |
|------|-------------------------|
| 2020 | \$ 14,141               |
| 2021 | 14,270                  |
| 2022 | 14,402                  |
| 2023 | 9,969                   |
| 2024 | <u>4,992</u>            |
|      | \$ <u><u>57,774</u></u> |

**TRIGGER WHOLESALE, INC.****NOTES TO THE FINANCIAL STATEMENTS****FOR THE YEAR ENDED MARCH 31, 2019**

(Unaudited - See Independent Practitioner's Review Engagement Report)

**7. LOAN PAYABLE TO SHAREHOLDERS**

Amounts due to shareholders are non-interest bearing and have no set terms or repayment. Shareholder loans are subordinate to the ClearFlow credit facilities. The shareholders have agreed not to demand repayment within the next year.

The loan payable to the individual shareholder is secured by a general security agreement with second ranking position next to ClearFlow. The individual shareholder has agreed not to demand payment on the remaining balance within the next year.

The corporate shareholder, The En Cadre Group Inc., owns 100% of the common shares.

|                                        | <b>2019</b>                | <b>2018</b>                |
|----------------------------------------|----------------------------|----------------------------|
| Loan payable to individual shareholder | \$ 2,234,487               | \$ 2,165,034               |
| Loan payable to corporate shareholder  | <u>800,000</u>             | <u>1,000,000</u>           |
|                                        | <u><u>\$ 3,034,487</u></u> | <u><u>\$ 3,165,034</u></u> |

**8. COMMITMENTS**

The company has an operating lease for the premises & copier. Future minimum lease payments are as follows:

|      |                          |
|------|--------------------------|
| 2020 | \$ 52,365                |
| 2021 | 31,890                   |
| 2022 | 17,265                   |
| 2023 | 17,265                   |
| 2024 | <u>14,388</u>            |
|      | <u><u>\$ 133,173</u></u> |

Other commitments include that the company is liable for additional costs including taxes, maintenance and insurance.

**9. ECONOMIC DEPENDENCE**

The company has key relationships with certain suppliers. Four vendors comprise of 93% (2018 - three for 64%) of total purchases during the year. Management believes that the volume of activity is in the normal course of business, and that any one of these relationships could be easily replaced without disruption to the business.

**TRIGGER WHOLESALE, INC.****NOTES TO THE FINANCIAL STATEMENTS****FOR THE YEAR ENDED MARCH 31, 2019**

(Unaudited - See Independent Practitioner's Review Engagement Report)

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**10. LEGISLATIVE CHANGES**

On May 1, 2020, the government of Canada issued an Order in Council prohibiting certain firearms. The AR15 was included in that ban and prohibited. AR15 constitutes about 1% of sales and this will change the working relationship with one vendor. Trigger Wholesale Inc. (TWI) did not have any inventory of these products on hand at the time of the order, as TWI had anticipated the ban.

On May 20, 2020, additional firearms were banned and some shotguns that TWI carries were included in that ban. TWI did not have inventory of any of the newly banned products on hand. Dealers and retailers have quickly migrated to other products with little disruption to TWI. Despite the limited exposure, TWI has launched a legal challenge of the reclassification.

The government did use an Order in Council to ban certain firearms. TWI's advanced licenses, all classes of firearms, and some forward planning - including not having inventory at the time of the ban - limited their exposure.

Portions of Bill C-71 that were implemented, including enhanced background checks, extended how far back the RCMP could conduct a criminal background check for a Possession and Acquisition License (PAL). As a result, TWI had to terminate an employment arrangement with one staff. Other portions of Bill C-71 have not been implemented yet. The bill bans eleven rifles and some shotguns that will be of no detriment to the operations of TWI. New legislation (alterations to the Firearms Act) can take multiple years to implement from the draft phase.

Economic issues and COVID-19 make a buy-back program for semi-auto rifles difficult to facilitate. In response to legislative changes and economic issues, TWI has started to focus and expand other products, specifically archery. 52% of the base of Independent Dealers and 95% of National Retailers that work with TWI already sell archery, making it the easiest segment of the market to attract and target as they expand. In 2020, due to the Order in Council (Bans), this number will increase dramatically as Dealers scramble for additional revenue sources. Early entrance into this segment has positioned TWI well for future sales and distribution.

**11. SUBSEQUENT EVENTS**

Subsequent to year end, the impact of COVID-19 in Canada and on the global economy increased significantly. The global pandemic has disrupted economic activities and although the disruption from the virus is expected to be temporary, given the dynamic nature of these circumstances, the duration of business disruption and the related financial impact cannot be reasonably estimated at this time. Specific to the industry that the company operates in, COVID-19 has limited group gatherings, thus impacting the pre-book cycle for the industry in 2020 for 2021. The company, operates differently than competitors, being a stocking distributor, and thus sales and orders have increased significantly. In relation to the newly prohibited firearms from the Order in Council in May 2020, and COVID-19, this makes it difficult for the Government to facilitate a buy-back program of newly restricted firearms.

**TRIGGER WHOLESALE, INC.****SCHEDULE OF EXPENSES****Schedule 1****FOR THE YEAR ENDED MARCH 31, 2019**

(Unaudited - See Independent Practitioner's Review Engagement Report)

|                                    | <b>2019</b>         | <b>2018</b>         |
|------------------------------------|---------------------|---------------------|
| Advertising                        | \$ 358,887          | \$ 144,382          |
| Amortization                       | 84,462              | 43,488              |
| Automotive                         | 9,746               | 10,305              |
| Bad debts                          | 67,364              | 98,241              |
| Insurance                          | 115,170             | 30,607              |
| Interest and bank charges (note 5) | 3,420,349           | 1,060,342           |
| Licences and fees                  | 36,031              | 19,679              |
| Office                             | 195,876             | 114,180             |
| Royalties (note 5)                 | 1,774,526           | 576,751             |
| Professional fees                  | 86,178              | 34,329              |
| Rent                               | 73,356              | 57,881              |
| Repairs and maintenance            | 38,247              | 24,171              |
| Salaries                           | 494,684             | 310,390             |
| Consulting                         | 113,000             | 77,750              |
| Supplies                           | 7,236               | 15,836              |
| Telephone                          | 19,466              | 12,381              |
| Travel                             | 343,766             | 132,149             |
| Utilities                          | 5,435               | 8,535               |
|                                    | <u>\$ 7,243,779</u> | <u>\$ 2,771,397</u> |

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2020-06-10

Accrual Basis

**Trigger Wholesale Inc.**  
**Profit & Loss**  
 April 2019 through March 2020

|                                        | Apr '19 - Mar 20 |
|----------------------------------------|------------------|
| <b>Ordinary Income/Expense</b>         |                  |
| <b>Income</b>                          |                  |
| 47900 · Sales                          | 151,310,849.30   |
| 48900 · Shipping and Delivery Income   | 21,549.78        |
| 49900 · Processing Fee                 | 1,301.57         |
| <b>Total Income</b>                    | 151,333,700.65   |
| <b>Cost of Goods Sold</b>              |                  |
| Duty on Imports                        | 3,460,598.00     |
| Gunsmithing Repair                     | 31,855.00        |
| 50000 · Cost of Goods Sold             | 70,980,522.26    |
| 51200 · Freight Costs                  | 17,146,686.47    |
| 51225 · Terminal Fees                  | 5,552.11         |
| 51230 · Storage fees                   | 669,060.01       |
| 51240 · Brokerage fees                 | 21,802.89        |
| <b>Total COGS</b>                      | 92,316,076.74    |
| <b>Gross Profit</b>                    | 59,017,623.91    |
| <b>Expense</b>                         |                  |
| Meals & Entertainment, Foreign         | 37,498.81        |
| Mileage Reimbursement                  | 4,224.84         |
| Tip, Food & Entertainment              | 12,804.15        |
| Warehouse expenses                     | 13,140.53        |
| 53000 · Wages                          | 383,346.60       |
| 60000 · Advertising and Promotion      | 146,454.16       |
| 60100 · Auto and Truck Expenses        | 12,372.29        |
| 60400 · Bank Service Charges           | 12,999.04        |
| 61000 · Business Licenses and Permits  | 813.53           |
| 61400 · Charitable Contributions       | 11,000.00        |
| 61700 · Computer and Internet Expenses | 10,298.26        |
| 62000 · Continuing Education           | 225.00           |
| 62500 · Dues and Subscriptions         | 50,834.79        |
| 62600 · Equipment Rental               | 31,973.74        |
| 63300 · Insurance Expense              |                  |
| 63310 · General Liability Insurance    | 134,440.22       |
| 63320 · Health Insurance               | 68,031.63        |
| 63300 · Insurance Expense - Other      | 44,503.18        |
| <b>Total 63300 · Insurance Expense</b> | 246,975.03       |
| 63400 · Interest Expense               | 11,280,443.09    |
| 64300 · Meals and Entertainment        | 71,119.10        |
| 64900 · Office Supplies                | 57,941.07        |
| 66500 · Postage and Delivery           | 195,610.60       |
| 66600 · Printing and Reproduction      | 13,917.72        |
| 66700 · Professional Fees              | 64,300.84        |
| 67100 · Rent Expense                   | 62,400.00        |
| 67200 · Repairs and Maintenance        | 57,920.73        |
| 68100 · Telephone Expense              | 15,592.45        |
| 68400 · Travel Expense                 | 176,395.27       |
| 68600 · Utilities                      | 6,960.95         |
| 69800 · Uncategorized Expenses         | 2,380.93         |
| <b>Total Expense</b>                   | 12,979,943.52    |
| <b>Net Ordinary Income</b>             | 46,037,680.39    |
| <b>Other Income/Expense</b>            |                  |
| <b>Other Income</b>                    |                  |
| 70000 · Finance Charge Income          | 24,181.22        |
| 70200 · Interest Income                | 0.00             |
| <b>Total Other Income</b>              | 24,181.22        |
| <b>Other Expense</b>                   |                  |
| Staff Entertainment                    | 0.00             |



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2020-06-10

Accrual Basis

**Trigger Wholesale Inc.**  
**Profit & Loss**  
**April 2019 through March 2020**

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|                               | Apr '19 - Mar 20     |
|-------------------------------|----------------------|
| 77000 · Exchange Gain or Loss | 24,656,237.65        |
| Total Other Expense           | 24,656,237.65        |
| Net Other Income              | -24,632,056.43       |
| Net Income                    | <u>21,405,623.96</u> |

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2020-06-10

Accrual Basis

## Trigger Wholesale Inc.

## Balance Sheet

As of 31 March 2020

|                                         | 31 Mar 20            |
|-----------------------------------------|----------------------|
| <b>ASSETS</b>                           |                      |
| <b>Current Assets</b>                   |                      |
| <b>Chequing/Savings</b>                 |                      |
| Bank Act 0337-1063-426                  | 45.00                |
| BMO, Business Chequing, CDN             | 6,125,707.48         |
| BMO, Chequing, Personal                 | 661.05               |
| Cash - MG Expenses                      | -35,935.60           |
| En Cadre Group 0337-1063-522            | 5,500,000.00         |
| USD BMO 0337-4795-656                   | 2,069,051.47         |
| 1000 · BMO ACT 0337 1998-328 CDN        | -40,074.25           |
| 10050 · Cash (SH Account)               | -588,444.24          |
| <b>Total Chequing/Savings</b>           | <b>13,031,010.91</b> |
| <b>Accounts Receivable</b>              |                      |
| 11000 · Accounts Receivable             | 52,820,335.09        |
| 11001 · Accounts Receivable - USD       | 313.53               |
| <b>Total Accounts Receivable</b>        | <b>52,820,648.62</b> |
| <b>Other Current Assets</b>             |                      |
| Inventory exchange                      | 29,470.39            |
| 11180 · Prepaid Expenses                | 141,077.71           |
| 12000 · Undeposited Funds               | 663,326.15           |
| 12100 · Inventory Asset                 | 7,973,279.08         |
| 12150 · Consignment Inventory           | 107,128.05           |
| <b>Total Other Current Assets</b>       | <b>8,914,281.38</b>  |
| <b>Total Current Assets</b>             | <b>74,765,940.91</b> |
| <b>Fixed Assets</b>                     |                      |
| 14000 · Computer Equipment              | 47,520.44            |
| 14010 · Accumulated Depreciation - Comp | -13,719.00           |
| 14100 · Vehicle                         | 63,585.38            |
| 15000 · Furniture and Equipment         | 153,734.61           |
| 15010 · Accumulated Depreciation - Furn | -16,537.00           |
| 16300 · Tractors and Trailers           | 10,543.00            |
| 16400 · Forklift                        | 9,955.75             |
| 16410 · Accumulated Depreciation- Forkl | -2,768.00            |
| 16415 · Accumulated Depreciation - Vehi | -9,538.00            |
| 16500 · Warehouse Equipment             | 140,148.43           |
| 16510 · Accumulated Depreciation - Ware | -23,236.00           |
| <b>Total Fixed Assets</b>               | <b>359,689.61</b>    |
| <b>Other Assets</b>                     |                      |
| 11005 · Accounts Receivable - Contra    | -345,527.09          |
| <b>Total Other Assets</b>               | <b>-345,527.09</b>   |
| <b>TOTAL ASSETS</b>                     | <b>74,780,103.43</b> |
| <b>LIABILITIES &amp; EQUITY</b>         |                      |
| <b>Liabilities</b>                      |                      |
| <b>Current Liabilities</b>              |                      |
| <b>Accounts Payable</b>                 |                      |
| 20000 · Accounts Payable                | -124,024.99          |
| 20001 · *Accounts Payable               | 69,481.98            |
| 20002 · Accounts Payable - USD          | 151,596.80           |
| <b>Total Accounts Payable</b>           | <b>97,053.79</b>     |
| <b>Credit Cards</b>                     |                      |
| Mastercard, C-One, CDN, Mark            | 850.00               |
| Mastercard, CDN, Jaimee                 | 4,000.33             |
| <b>Total Credit Cards</b>               | <b>4,850.33</b>      |
| <b>Other Current Liabilities</b>        |                      |

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2020-06-10

Accrual Basis

**Trigger Wholesale Inc.**  
**Balance Sheet**  
 As of 31 March 2020

|                                         | 31 Mar 20            |
|-----------------------------------------|----------------------|
| Accrued liabilities                     | 13,400.00            |
| Corporate Taxes Payable                 | -7,036,010.00        |
| 20110 · A/P Exchange                    | 88,536.14            |
| 22000 · Current Portion of LTD          | 6,316.15             |
| 22001 · Contra - Current Portion Of LTD | -6,316.15            |
| 22200 · Federal Tax Payable             | -314,121.64          |
| 24000 · Payroll Liabilities             | 14,953.90            |
| 25500 · GST/HST Payable                 | 9,898,141.95         |
| 25530 · GST/QST Payable                 | -839.36              |
| 25552 · PST Payable (ON)                | 0.80                 |
| 26000 · Due to Shareholder              | -1,881,688.35        |
| 27000 · Loan- Clearflow                 | 37,274,936.09        |
| 27050 · PO Loan Payable Clearflow       | -25.00               |
| <b>Total Other Current Liabilities</b>  | <b>38,057,284.53</b> |
| <b>Total Current Liabilities</b>        | <b>38,159,188.65</b> |
| Long Term Liabilities                   |                      |
| Ford Motor Credit Truck Loan            | 45,482.69            |
| 26001 · Due From En Cadre               | 1,000,000.00         |
| 27100 · Note Payable - Mark Gdac        | 196,550.29           |
| <b>Total Long Term Liabilities</b>      | <b>1,242,032.98</b>  |
| <b>Total Liabilities</b>                | <b>39,401,221.63</b> |
| Equity                                  |                      |
| Class A special shares                  | 96.00                |
| 30410 · Common shares                   | 100.00               |
| 30500 · Dividends Paid                  | -1,300,000.00        |
| 31400 · Shareholder Distributions       | -8,499.62            |
| 32000 · Retained Earnings               | 15,281,561.46        |
| Net Income                              | 21,405,623.96        |
| <b>Total Equity</b>                     | <b>35,378,881.80</b> |
| <b>TOTAL LIABILITIES &amp; EQUITY</b>   | <b>74,780,103.43</b> |

# TAB 6

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*

**REPLY AFFIDAVIT OF MARTIN NICHOLAS REES  
(SWORN NOVEMBER 26, 2020)**

I, Martin Nicholas Rees, of the City of Port Colborne, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am a shareholder and employee of the Applicant (“**Clearflow**”) 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.

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## **INTRODUCTION**

2. I swear this Affidavit in response to the allegations contained in Jaimee Lynn Gdak in her Affidavit sworn November 13, 2020.

3. Ms. Gdak makes two general points in her Affidavit, which I will deal with in turn below. Neither allegation is valid or accurate:

(a) The personal guarantee (the “**Guarantee**”) executed by Ms. Gdak in favour of the Applicant Clearflow that appears at page 64, Tab 2(a) of the Application Record has been allegedly released by Clearflow and is no longer valid and binding upon her;

(b) Ms Gdak has no knowledge of the alleged fraudulent misconduct alleged in the Application materials;

## **ALLEGED RELEASE OF THE GUARANTEE**

### **The May 2, 2019 Conditional Proposal**

4. Clearflow has never released, nor agreed to release Jaimee’s Guarantee. Clearflow acknowledges that in early 2018, Mark Gdak requested that Clearflow consider restructuring the existing 2015 credit facilities, a concept that Clearflow was prepared to discuss, given the fact that the term of the original credit facilities was set to expire in 2020. These discussions culminated in my execution on behalf of Clearflow of a non-binding, conditional, proposal (the “**Proposal**”) dated May 2, 2019.

**Attached hereto as Exhibit “A” is a copy of the Proposal dated May 2, 2019**

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5. Two things appeared to be of paramount importance to Mr. Gdak: obtaining a release of the guarantee and obtaining a release of a Royalty Agreement dated April 30, 2015 (the “**Royalty Agreement**”) that had been executed by Trigger as part of the original credit facilities executed by Trigger and its principals in 2015. The Royalty Agreement requires Trigger to pay a perpetual royalty to Clearflow expressed as a percentage of sales revenue pursuant to a formula set out therein.

**Attached as Exhibit “B” is a copy of the Guarantee**

**Attached as Exhibit “C” is a copy of the Royalty Agreement**

6. In retrospect, it is clear why Gdak was so persistent in requesting that the Guarantee and the Royalty Agreement be released. Given the massive fraud that he and Jaimee were perpetrating, it was important to them to insulate Jaimee from any liability so that assets could be placed into her name and, according to the Gdak’s plan, placed beyond the reach of creditors if the fraud was ever discovered.

7. The Royalty Agreement presented the Gdaks with a different problem. In order to understand the reason why the Royalty Agreement was a thorn in the Gdak’s side, it is necessary to understand the nature of the fraud. The falsification of invoices with a massive dollar value created, by implication, the appearance of a tremendous increase in sales volume over a relatively short period, which resulted in the requirement for significant royalty payments to be made to Clearflow.

8. The fraud involved a form of cheque kiting against Clearflow, in which invoices were forged and presented to Clearflow for purchase. The proceeds of each batch of falsified invoices

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purchased by Clearflow were deposited into an account held by Trigger, which then drew cheques against that account in favour of itself, and deposited those cheques into a “blocked” account in the name of Trigger. The Gdaks would then provide periodic update emails to Clearflow, falsely advising Clearflow that the blocked account contained funds that constituted payments received from its false customers.

9. The funds in this blocked account were then swept by Clearflow and applied against the outstanding invoices that it had purchased.

10. In reality, none, or very little, of the funds deposited into the blocked account originated from customers. The vast majority, if not all, of the funds deposited by representatives of Trigger (including Jaimee) into the blocked account consisted of funds received from Clearflow representing the purchase of the next batch of invoices or purchase orders, and transferred by cheque into the blocked account.

11. Thus, the entire fraud depended on Clearflow always purchasing an ever-growing value of accounts receivable, the proceeds of which were simply re-circulated back to Clearflow, less a substantial sweep off the top which permitted the Gdaks to enjoy a substantial lifestyle, that included a Range Rover automobile, multiple watercraft with a value in the hundreds of thousands of dollars, a cottage, several investment properties, and multiple all terrain vehicles.

12. The payments required under the Royalty Agreement could potentially result in a situation in which more money was due to be paid on a monthly basis to Clearflow than could be recouped by Trigger from the sale of the next batch of invoices to Clearflow. In other words, the payments under the Royalty Agreement presented a problem for the smooth operation of the fraud.



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**Conditions Contained in the Proposal Itself**

13. The first indication that the Proposal is not a binding agreement on the parties can be found by review of the document itself:

- (a) First line, page 1: “I wish to confirm that Clearflow....is pleased to present the following proposal to renew the Master Purchase Agreement dated April 30, 2015 and to terminate and replace the Royalty Agreement dated April 30, 2015...” The document is expressed from the outset as a proposal, rather than an agreement or a commitment letter. I would not refer to any document in which I intended to create legally-binding obligations on the part of Clearflow as a “proposal”;
- (b) Page 4, paragraph 10: “The foregoing does not constitute an offer, commitment of binding agreement to enter [into] 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”. Neither the Credit Committee, nor the Board, of Clearflow ever approved the restructuring or authorized anyone on behalf of Clearflow to sign the amended credit facility documents.
- (c) Further, the “Documentation” referenced at page 4, paragraph 10 consisted of an Amended Master Purchase and Sale Agreement and an Amended Master Purchase Order Financing Agreement. Neither document was ever signed by Clearflow. It is clear from the wording of the Proposal that each individual element of the proposed restructuring was conditional upon the overall restructuring being agreed to and implemented in its entirety.

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- (d) For greater certainty, the Proposal provides, under the heading “Coterminus” on page 3, that: “The Master Purchase and Sale Agreement and the Master Purchase Order Financing Agreement will be written on a coterminous basis” reinforcing the concept that no one part of the proposed restructuring was effective until all of the required documents had been signed by both parties.

14. None of the documents proposed as part of the restructuring was ever signed by Clearflow. In particular, no specific release of the guarantee was ever signed by Clearflow. The form of the release document itself was not even agreed to by the parties.

**Additional Conditions Precedent**

15. In addition to the conditions precedent that are evident from the wording of the Proposal itself, I made it abundantly clear to Trigger and its principals from the outset of the discussions that no restructuring would be agreed to or implemented (including the specific release of Jaimee’s Guarantee) until certain conditions precedent were satisfied.

16. On April 9, 2019, I emailed Mike Nero, a member of the senior management team at Trigger, and advised that “I shall need to have the partners [of] Clearflow agree to any amendments to the Offer Letter of April 5, 2019 [being a prior iteration of the April 9, 2019 Proposal]. As I stressed yesterday, the deadline of April 15 for financial information is looming, and I truly need some as to the financial standing of the entity”

**Attached hereto as Exhibit D is a copy of my April 9, 2019 email**

17. Discussions ensued between the parties and it became clear that the parties were not in agreement on all terms of the Proposal. This is reflected in an email I sent to Mark Gdak on June

-7-

27, 2019, in which I made it clear that certain changes to Clearflow's standard form documents that had been requested by Trigger could not be accommodated. More importantly, I stressed in this letter, once again: **"the receipt of Review Engagement Financial Statements is a requirement** and I seek a timeframe for these outstanding Statements." (emphasis added).

**Attached hereto as Exhibit "E" is a copy of my June 27, 2019 email**

18. By July, 2019, the parties were still engaged in discussions regarding the proposed restructuring of the credit facilities. Interestingly, Mark seemed more concerned with obtaining a release letter in respect of Jaimee's guarantee than in the restructuring of the credit facilities themselves. This is reflected in an exchange of emails between myself, Mr. Nero and Mr. Gdak dated July 3, 2019. In this email exchange, I specifically stated that: **"We do need the Financial Statements to implement the documents – it's a condition"** (emphasis added).

**Attached hereto as Exhibit "F" is a true copy of the July 3, 2019 exchange of emails**

19. It is also important to note that the various exchanges of emails between the parties makes it clear that the Gdaks were seeking a specific form of release letter from Clearflow in respect of the Guarantee. Trigger was invited by me to provide the wording of such a letter, but no such wording was ever proposed. To be clear, Clearflow would not have executed any such specific release letter in any event, until the conditions precedent had been satisfied, but the lack of any agreed-upon wording for the release letter shows how far apart the parties were from being in agreement that the Guarantee would be released..

20. A year later, in June, 2020, the restructuring was still being discussed. The documents had not been executed, Clearflow's Credit Committee had not authorized the restructuring, and the

-8-

financial statements remained outstanding. As time wore on, an additional condition precedent was imposed by Clearflow, namely, a satisfactory result of a field audit commissioned by Clearflow and conducted by Mr. Steven Adler in respect of Trigger's finances, which is referenced in my first Affidavit.

21. In an email to me dated June 11, 2020, Mark specifically acknowledged the three conditions precedent that had been imposed by Clearflow with respect to the restructuring. To summarize Gdak's words, the conditions precedent consisted of: (1) Review engagement financial statements for 2019; (2) management-prepared financial statements for 2020; (3) satisfactory results of the field audit undertaken by Steven Adler.

**Attached hereto as Exhibit "G" is a copy of Mr. Gdak's June 11, 2020 email**

22. In this email, Mr. Gdak takes the position that Trigger had done all it could to satisfy the conditions precedent. It is clear, however, that Gdak acknowledged that the conditions had not, as of the date of this email, been satisfied. Indeed, he is asking that Clearflow agree to implement the restructuring set out in the Proposal notwithstanding the fact that the conditions precedent had not been satisfied.

23. As noted in my previous Affidavit, the field audit of Mr. Adler was required by Clearflow in summer, 2020 as a result of ongoing issues with respect to the financial disclosure made by Trigger. As also noted in my previous Affidavit, Trigger not only failed the field audit, but Mr. Adler was one of the first to uncover direct evidence of the fraud on behalf of Clearflow.

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24. In light of the above, I do not see how Trigger or Ms. Gdak can possibly take the position that any part of the restructuring, particularly the proposed release of the Guarantee, was, or would have been, agreed to by Clearflow.

### **INVOLVEMENT OF JAIMEE GDAK IN THE BUSINESS**

25. I have reviewed the Affidavit of Sandy Kanichis, one of the partners of Clearflow, which sets out what I believe to be clear and convincing evidence that Jaimee Gdak was not only aware of the fraudulent activity, but, in fact, participated in it.

26. To add to Ms. Kanichis' evidence, I attach to this Affidavit corporate and organizational charts provided by Trigger to Clearflow that show Ms. Gdak as the "Co-owner and SVP" of Trigger, on the same management level as Mark Gdak himself. These charts show that she was the sole owner of the Gdak real estate company, one of the main components of the Trigger corporate structure. In Mr. Gdak's words: "Jaimee Gdak is my wife and business partner. She is 50% co-owner of the company (the new operations company and holding company)."

### **Attached hereto as Exhibit "H" are copies of the Organizational Chart and Corporate Chart referenced above**

27. I also attached hereto emails exchanged between the parties that demonstrate that Ms. Gdak held a very senior role in the company, and that she was directly involved in:

- (a) depositing of cheques into the Trigger blocked account and moving money from one Trigger account to another;

### **Attached hereto as Exhibit "I" are copies of emails dated November 23, 2016 and November 6, 2013 showing Jaimee's direct involvement with the banking functions of Trigger**

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- (b) the collection of accounts receivable from Trigger's alleged and actual customers. The collection process was an acknowledged weakness for Trigger, and in the words of Mr. Nero, one of the ways in which the company proposed to improve the situation was "inclusion of Mike and Jaimee into collections process (been talked about for too long now)..."

**Attached hereto as Exhibit "J" is a copy of an email from Mr. Nero dated November 10, 2016**

- (c) a weekly "signoff on the previous week's activity (bank accounts, sales, shipping, purchases, transfers, expenses, etc.) involving Jaimee, Mark, Mike and Amy".

**Attached hereto as Exhibit "K" is a true copy of an email from Mr. Gdak dated December 26, 2019 including the above statement**

28. In addition to the above emails that specifically link Jaimee to senior roles in respect of banking and accounts receivable collection, I also attach three other emails, dated respectively May 13, 2016, August 31, 2016, and December 11, 2019 regarding high-level operational issues that support the conclusion that Ms. Gdak did not play a minor role in the company, but in fact was aware of and took part in the banking and collection functions at Trigger at a very senior and "hands on" level.

**Attached hereto as Exhibit "L" are copies of the three emails set out above**

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**THE FINDINGS OF THE RECEIVER****Conclusions set out in the First Report**

29. It bears mentioning at this point that, after its appointment as Interim Receiver, representatives of Grant Thornton Limited (“GTL”) attended at and secured the premises of Trigger in Waterloo. The Receiver did issue one Report to Court in its capacity as Interim Receiver, prior to its appointment as full Receiver. I acknowledge that the Interim Receiver’s findings were preliminary in nature and that GTL had not completed a full investigation into these matters at the time that it issued the First Report of the Interim Receiver, and I acknowledge that the receiver will report its findings to the Court directly. Notwithstanding those caveats, GTL stated in its First Report to Court:

The preliminary investigation conducted by the IR as revealed that Trigger’s management, specifically, Mr. Gdak, **Mrs. Gdak** and Mr. Searles, appears to have been involved in the following activity (emphasis added):

- Entering false customer sales and payments to Trigger’s accounting records;
- Creating email accounts to impersonate Canadian Tire and Home Hardware employees;
- Preparing false customer cheques on false CIBC, BNS and RBC accounts and providing same to Clearflow, as evidence of customer payments;
- Providing false AR information to Clearflow; and
- Falsifying letters from the CFO and providing such falsified letters to Clearflow.

30. I am not aware of any communications or further reports in which the Receiver has backed down from its original conclusions.

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**The Receiver's Examination of Jaimee Gdak**

31. In addition to the conclusions reached in its First Report to Court, on November 16, 2020, counsel for the Receiver conducted an examination under oath of Ms. Gdak, as authorized by the Receivership Order dated October 22, 2020.

32. Part of the subject matter of this examination was to confirm the status of a number of real properties owned by Ms. Gdak or the Respondent Jaimak Real Properties Inc. One of those properties is a condominium located at 265 Old Post Rd, Waterloo Ontario, which is apparently occupied by Ms. Gdak's parents (plural). In fact, the receiver has provided Clearflow with a copy of an agreement of purchase and sale relating to this property signed by both of Jaimee's parents, (plural), as joint purchasers.

33. I was taken aback when Clearflow's counsel reported on the results of the examination, and, in particular, the fact that Ms. Gdak's parents (plural), lived in and are in the process of purchasing, the condominium property.

34. The reason this seemed so strange to me is that Clearflow had been told that, on or about January 2, 2020, that Ms. Gdak's mother had died after a lengthy and difficult illness. I personally delivered flowers and a card of condolence to Trigger's offices in Waterloo.

35. I summarize below in chronological order, a series of text messages exchanged with Mark Gdak relating to the death of Mrs. Clayton (Jaimee's mother):

- Monday December 30<sup>th</sup> 2019: I asked Mark Gdak to contact me



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- Monday December 30<sup>th</sup> @ 12.46pm: I was sent a photo purportedly showing Jaimee attending at her mother's side in hospital.
- Monday December 30<sup>th</sup> @ 3.02pm: messaged from Mark Gdak: "Phil is in Kingston with his family and Mike is in Port Elgin with his family. Darren is in Ottawa travelling back to town."
- Further texts received from Mark: "Jaimee's mom is deteriorating and she is having seizures"; "Can I commit to getting you the details of the schedule from Phil shortly. Deposit information can also be sent shortly and I can do the deposit at 9.30am tomorrow"; "I cannot leave Jaimee and the kids right now";
- Monday December 30<sup>th</sup> @8.18pm, from Mark Gdak: "I will drop you a line in the morning. Just getting g dinner with the kids. It's been a difficult day and Jaimees mom will most likely have to be induced into a coma. I will be up very early"
- Tuesday December 31<sup>st</sup> @ 9.11 am from Mark Gdak: "I will call momentarily. Jaimee's mother is receiving her last rites at 10.00am. She was in organ failure around 5 this morning and they are shutting down life support after priest performs his duties"
- Thursday January 2<sup>nd</sup> @ 7.59 a.m. from Mark Gdak: "Just jumping in the shower. Will call once I'm out. We have a small family funeral for Jaimee's mother this morning. But I can call before we get started"

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**Attached hereto as Exhibit “M” is a copy of a photo of what I understood to be Jaimee attending at her dying mother’s bedside**

36. I met Mark at his offices Friday January 3<sup>rd</sup> at 10am at which time I personally delivered a condolence card and a floral arrangement on behalf of everyone at Clearflow.

37. Clearly, Jaimee’s mother is not deceased and the entire episode was fabricated in order to buy time for Mark and to provide an excuse not to provide long-promised financial information.

38. To my mind, lying to a creditor about the death of a close family member in order to buy time demonstrates that it is an understatement to say that the Gdak’s cannot be trusted in any way. It appears that there is almost nothing they will not lie about in order to achieve short-term ends. Although not conclusive, the photo of Jaimee at her mother’s bedside tends to indicate to me that she was involved in this fabrication.

### **CONCLUSION**

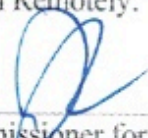
39. Based on the documents and exchanges of emails set out above, I verily believe that:

- (a) Clearflow never signed the documentation relating to the restructuring of the Trigger credit facilities, never agreed to implement the restructuring, and the conditions precedent to the implementation of the Proposal, which were specifically acknowledged in writing by Mr. Gdak and Mr. Nero, were never fulfilled. Importantly, Trigger did not achieve a satisfactory result in respect of Mr. Adler’s field audit; instead, Mr. Adler discovered evidence of the fraud. Accordingly, Ms. Gdak’s Guarantee has never been released by Clearflow, and Clearflow has never agreed to release that Guarantee, except on the fulfilment of the previously-discussed conditions precedent, which were never fulfilled;

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- (b) Ms. Gdak held a very senior role at Trigger and was directly involved in the collection of accounts receivable, depositing cheques into various bank accounts including the blocked account, and communicating with Clearflow in respect of the company's finances, collections and deposits. In my view, it defies belief that she could not have been aware of the fraud, and based on the Affidavit of Ms. Kanichis, I believe that she was not only aware of the fraud, but participated directly in it.

**SWORN** remotely by Martin Nicholas Rees of the City of Port Colborne, in the Regional Municipality of Niagara before me at the City of Toronto, in the Province of Ontario, on November 26, 2020 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

Jeffrey J. Simpson

  
\_\_\_\_\_  
MARTIN NICHOLAS REES

RCP-E 4D (July 1, 2007)

CLEARFLOW COMMERCIAL FINANCE CORP.  
Applicant

-and-  
Respondents

TRIGGER WHOLESALE, INC. et al.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**REPLY AFFIDAVIT OF MARTIN NICHOLAS REES**

**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)

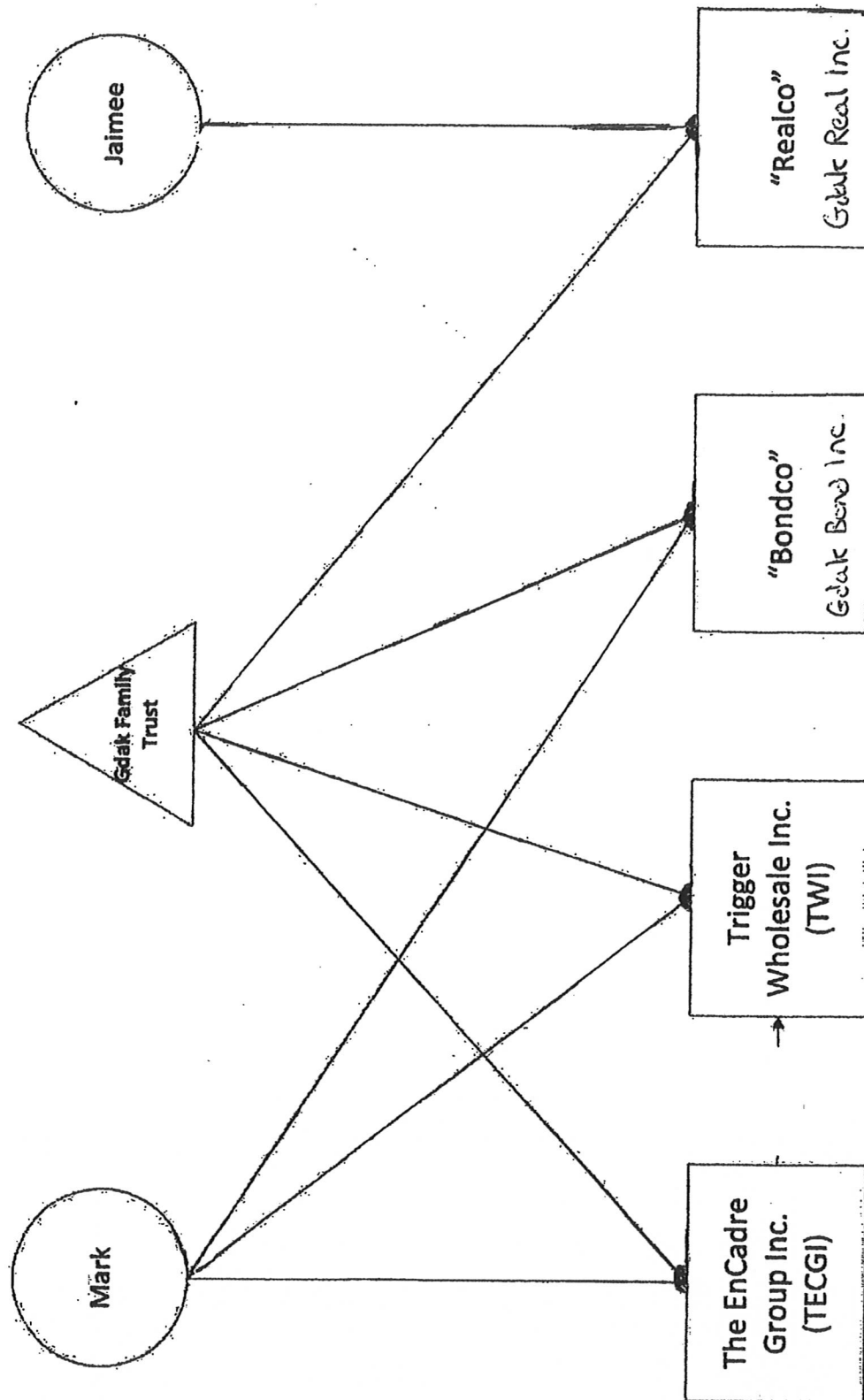
# TAB A

DRAFT

# Trigger Wholesale Group of Companies

Subsequent to May 15, 2018 and Phase 2 of reorganization (freeze of TECGI and TWI)

DRAFT

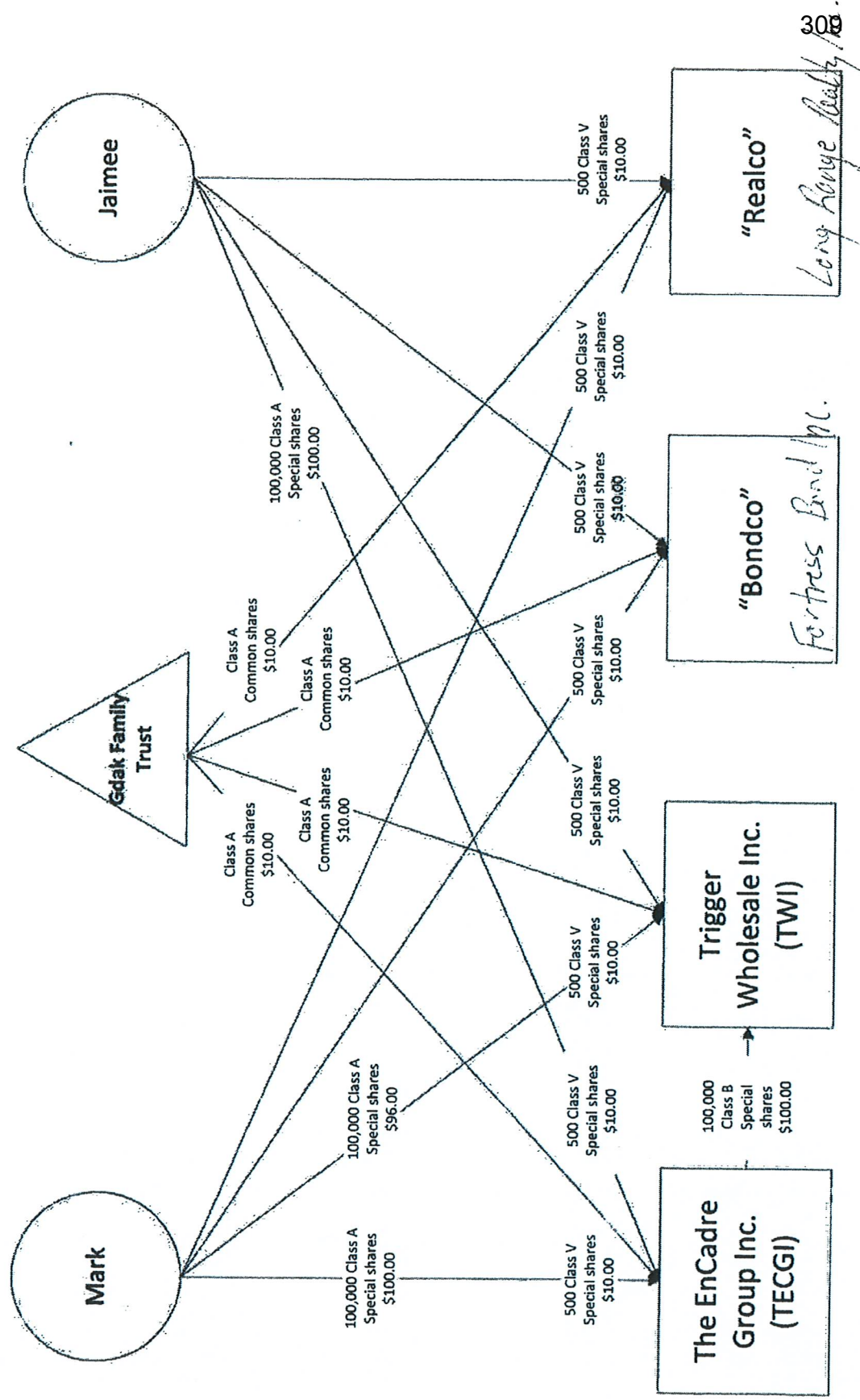


DRAFT

# Trigger Wholesale Group of Companies

DRAFT

Subsequent to May 15, 2018 and Phase 2 of reorganization (freeze of TECGI and TWI)



# TAB B



**From:** TWI, Mark Gdak <mark@triggerwholesale.com>  
**Sent:** Wednesday, November 23, 2016 10:39 AM  
**To:** Sandy Kanichis; 'Mike Nero'; Erika Albert; Martin Rees  
**Cc:** 'Jaimee'  
**Subject:** RE: Deposits

Sorry but I thought Jaimee deposited the Interacs and she thought I did it. They are in there now.

**From:** Sandy Kanichis [mailto:SandyK@clearflowfinance.com]  
**Sent:** November 23, 2016 8:18 AM  
**To:** Mike Nero <mike@melero.ca>; Erika Albert <erikaa@clearflowfinance.com>; Martin Rees <MartinR@clearflowfinance.com>  
**Cc:** Mark Gdak <mark@triggerwholesale.com>; 'Jaimee' <jaimie@triggerwholesale.com>  
**Subject:** RE: Deposits

Hi Mike:

I just logged into BMO and the 4 last cheques that are listed in this email were not deposited into the blocked account?

Total amount of deposit for November 22 = \$6483.72

Can you let us know why these are listed and not deposited? When will the deposit be made?

Thanks

**Sandy Kanichis**

Director, Operations

Clearflow Commercial Finance Corp.



30 Vogel Road, Suite 1, Richmond Hill, Ontario L4B 3K6  
Tel. and Fax: 416-455-8340 or 888-551-1518  
Cell: 416-894-7896  
[sandyk@clearflowfinance.com](mailto:sandyk@clearflowfinance.com)

**From:** Mike Nero [mailto:mike@melero.ca]  
**Sent:** Tuesday, November 22, 2016 9:41 PM  
**To:** Erika Albert <erikaa@clearflowfinance.com>; Sandy Kanichis <SandyK@clearflowfinance.com>; Martin Rees <MartinR@clearflowfinance.com>  
**Cc:** Mark Gdak <mark@triggerwholesale.com>  
**Subject:** Fwd: Deposits



30 Vogell Road, Suite 1, Richmond Hill, Ontario L4B 3K6  
Tel. and Fax: 416-455-8340 or 888-551-1518  
Cell: 416-894-7896  
[sandyk@clearflowfinance.com](mailto:sandyk@clearflowfinance.com)

**From:** Mark Gdak [<mailto:mark@triggerwholesale.com>]  
**Sent:** Friday, November 06, 2015 3:08 PM  
**To:** Sandy Kanichis <[SandyK@clearflowfinance.com](mailto:SandyK@clearflowfinance.com)>  
**Subject:** Fw: Subscription Statement from Intuit

I believe that I can get the account active again for \$544.89. See below.

Also, Jaimee just deposited:

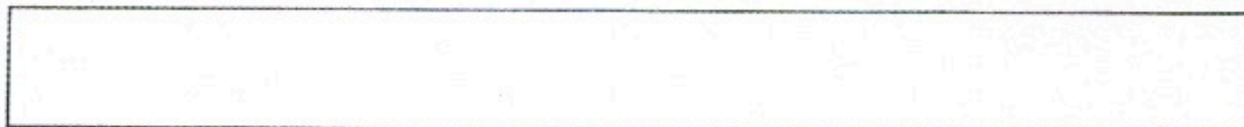
- Invoice 858: Reliable Gun: \$864.15 (yesterday)
- Invoice 860: Kenogami: \$1193.31
- Cambridge Arms just sent an EMT for \$100 as well

Sincerely,  
Mark Gdak  
President, Trigger Wholesale Inc.  
[www.triggerwholesale.com](http://www.triggerwholesale.com)

---

**From:** QuickBooks Billing Team <[quickbooks-billing@intuit-email.ca](mailto:quickbooks-billing@intuit-email.ca)>  
**Sent:** Friday, November 6, 2015 7:30 AM  
**To:** [mark@triggerwholesale.com](mailto:mark@triggerwholesale.com)  
**Subject:** Subscription Statement from Intuit

View on [web](#).



## QuickBooks Subscription Statement

### Your monthly payment has been declined

As we have been unable to process payments on your account, your service has been suspended.

# TAB C

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**From:** Mike Nero <mike@melero.ca>  
**Sent:** May 13, 2016 11:30 AM  
**To:** Martin Rees  
**Subject:** Re: Friday 13th

Hi Martin, we will be getting information to you today.

As for the A/R, I understand the pressure point, Jaimee and I are going to be finally handling this moving forward, it just took a lot of time to get delegated, internal politics. Mark is learning to relay on the rest of the team more and pass on things but it has been a lengthy process. Having said that we are there and I believe will have the A/R looking a lot cleaner quickly.

Sorry for the time this has taken and some of the broken promises, I hope we can start producing weekly summaries not only on the clean up to reverse the reserves and get them positive quickly (not happy with that) but also to prevent the aging past 60-75 days, certainly not 90 days.

This message is for your benefit, it has been a process internally here to get responsibilities divided, I hate to say it but took the aged A/R to finally get this done. As I said before, I do not think there is a collectability issue overall, just constant contact and follow-up.

Will send updates shortly.

Regards,

Mike Nero  
Business Consultant  
Melero Consulting  
Tel: 519-831-8063

On 13 May 2016 at 08:49, Martin Rees <[MartinR@clearflowfinance.com](mailto:MartinR@clearflowfinance.com)> wrote:

Mike,

I need the information promised Tuesday from Mark, which I followed up on Wednesday.

Reserves are now (\$13,863.88) plus there is another 52K in the 60-90 column which will be due for recourse soon.

The invoices that we are also buying to cover PO's are not all eligible invoices to buy...we are over credit limits...so we are calling credit agency reports.

*2 months ago you stated you and Jamie were going to implement new credit collection policies, may I enquire if these were ever put into effect? We have been warning about overdue invoices for a couple of weeks.*

Can you please confirm that all credit notes have been issued and ClearFlow have been advised appropriately.

I need to sit down with Sandy and yet again review the entire account due to negative reserves and a request for an over payment.

## Martin N Rees

Director

Clearflow Commercial Finance Corp.



30 Vogell Road, Suite 1, Richmond Hill, Ontario L4B 3K6

Cell: [416-894-7946](tel:416-894-7946)

[martinr@clearflowfinance.com](mailto:martinr@clearflowfinance.com)

**From:** Mike Nero [mailto:[mike@melero.ca](mailto:mike@melero.ca)]

**Sent:** Wednesday, May 11, 2016 4:46 PM

**To:** Martin Rees <[MartinR@clearflowfinance.com](mailto:MartinR@clearflowfinance.com)>

**Subject:** Updates

Hi Martin, we will be sitting down tomorrow to go over and send you the information. Sorry for the delay, just need to get everyone together to go over,

Regards,

Mike Nero

Business Consultant

Melero Consulting

Tel: [519-831-8063](tel:519-831-8063)



**Martin Rees**

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**From:** Sandy Kanichis  
**Sent:** Wednesday, August 31, 2016 11:03 AM  
**To:** Mark Gdak; Jaimee Gdak  
**Cc:** Mike Nero; Martin Rees  
**Subject:** account update  
**Attachments:** a r aging aug 31 - invoices older that 75 days - 20160831.pdf; a r aging aug 31 - invoices over 60 days - 20160831.pdf

Hi Everyone:

Attached is the latest aging as of today.

There are a lot of invoices starting to age and we will start to hold back for these from future fundings.

Currently we have:

\$9,430.83 over 120 days – reserves are holding against this balance

\$55,116.00 over 90 days – reserves are holding against this balance

\$26,917.55 – over 87 days

\$3,503.00 – over 80 days

\$47,934.66 – over 60 days

Please advise when the next batch of cheques will be deposited for all old invoices so that we can reduce the inventory loan. As of today our balance is \$169,033.03 and interest will added to that balance by end of day today.

The PO should be cleared off today. I will be checking for more deliveries from the invoices submitted to Clearflow for Clever.

Let me know if you have any questions.

**Sandy Kanichis**

Director, Operations

Clearflow Commercial Finance Corp.

30 Vogell Road, Suite 1, Richmond Hill, Ontario L4B 3K6  
Tel. and Fax: 416-455-8340 or 888-551-1518  
Cell: 416-894-7896  
[sandyk@clearflowfinance.com](mailto:sandyk@clearflowfinance.com)

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**From:** Mark Gdak <Mark@triggerwholesale.com>  
**Sent:** December 11, 2019 11:30 AM  
**To:** Sandy Kanichis; Mike Nero  
**Cc:** Erika Albert; Gaylene Heffern; Martin Rees  
**Subject:** RE: Funding and Invoices past 90 days

Hello Sandy,

Mike, Jaimee and I are all at RLB 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.

We will bring the entire account up to date by Friday with mass deposits and start feeding the data to you to prepare in advance.

I have debated shutting down the company to get through this as it is my critical priority at this moment.

Sincerely,

Mark W. Gdak  
President & CEO, Trigger Wholesale Inc. (TWI)  
[mark@triggerwholesale.com](mailto:mark@triggerwholesale.com)  
1-519-574-1012 (Mobile)  
1-877-650-5515, Ext 101 (Toll Free, 24/7)  
1-877-767-2292 (Fax)

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**From:** Sandy Kanichis <[SandyK@clearflowfinance.com](mailto:SandyK@clearflowfinance.com)>  
**Sent:** December 11, 2019 11:13 AM  
**To:** Mark Gdak <[Mark@triggerwholesale.com](mailto:Mark@triggerwholesale.com)>; Mike Nero <[mike@melero.ca](mailto:mike@melero.ca)>  
**Cc:** Erika Albert <[erikaa@clearflowfinance.com](mailto:erikaa@clearflowfinance.com)>; Gaylene Heffern <[gayleneh@clearflowfinance.com](mailto:gayleneh@clearflowfinance.com)>; Martin Rees <[MartinR@clearflowfinance.com](mailto:MartinR@clearflowfinance.com)>  
**Subject:** Funding and Invoices past 90 days

Hi Mark and Mike

We have not see a schedule for almost a week nor any collections?

Can you confirm when we will be receiving deposits into BMO bank account?  
We currently show \$2.244M in over 90 day invoices?

Please advise

Thanks

**Sandy Kanichis**  
Director, Operations  
Clearflow Commercial Finance Corp.



217 Speers Road Unit 3, Oakville, Ont., L6K 0J3

Tel. and Fax: 416-455-8340 or 888-551-1518

Cell: 416-894-7896

[sandyk@clearflowfinance.com](mailto:sandyk@clearflowfinance.com)



# TAB D



# TAB 7

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*

**REPLY AFFIDAVIT OF ALEXANDRA (SANDY) KANICHIS**

**(Sworn November 26, 2020)**

I, Alexandra (Sandy) Kanichis, of the Town of Woodbridge, in the Province of Ontario,  
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.

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2. I swear this Affidavit in response to the allegations contained in Jaimee Lynn Gdak in her Affidavit sworn November 13, 2020.

3. I have read the Reply Affidavit of Martin Rees also responding to Ms. Gdak's Affidavit, and to the extent I have personal knowledge of the facts set out therein, I agree with his evidence.

4. I am the partner at Clearflow who supervises the day to day administration of the Trigger credit facilities. I have searched my Clearflow computer inbox and I can confirm that I have received approximately 1100 emails from Jaimee Gdak since the inception of the debtor/creditor relationship between Clearflow and Trigger in 2015.

5. For the most part, the emails referenced above deal with deposits made into Trigger's "blocked account", held at Bank of Montreal. A "blocked account" is standard for the vast majority of Clearflow's factoring customers. A "blocked account" consists of a bank account established in the name of the borrower into which the borrower is required to deposit all payments received from customers for goods and services rendered. The borrower has no ability to make withdrawals from this account, and the amounts deposited into the account are "swept" by Clearflow on a periodic basis, and applied against the outstanding accounts receivable purchased by Clearflow.

6. In the case of Trigger, at the request of Mark Gdak, an exception was made to Clearflow's usual procedure. Clearflow was provided with limited ability to monitor the blocked account, including the ability to sweep funds out of the account when advised by the Gdaks that funds had been deposited into the blocked account. Mr. Gdak's purported reasoning for this exception was

-3-

that because Trigger dealt in firearms, the regulatory framework was such that no one but Trigger, the holder of the relevant licenses, could access or review the activity in this particular account.

7. Clearflow felt it had no choice but to acquiesce to this request, provided that Trigger provided constant updates as customer payments were deposited into the blocked accounts. This reporting took a standard form, in which a representative of Trigger (usually Jaimee, Mr. Nero or Mark) provided a list of all cheques received from customers, identified by invoice number, and the total amount of the deposit made into the blocked account. This allowed Clearflow to track the payment of invoices that it had purchased. It would then sweep the blocked account.

8. Clearflow assumed, in good faith, at all material times that all monies deposited into the blocked account consisted of payments made by Trigger's customers. Unfortunately, this was not the case.

9. Jaimee and Mark Gdak and Mike Nero were the point persons at Trigger for depositing the cheques received by Trigger from its customers into the blocked account. They would then send to me, sometimes on a daily basis, sometimes less frequently, the standard-form update email referenced above.

10. I attach hereto four random examples of these update emails dated in 2017 and 2018. I believe that these emails show that (a) Jaimee Gdak was not only involved in, but was one of the primary persons responsible for collection of accounts receivable at Trigger; (b) was one of the individuals who personally handled cheques as they were received by Trigger from its customers; and (c) was one of the designated Trigger representatives who deposited those cheques into the

-4-

blocked account. On a more general level, Jaimee was obviously deeply involved in the financial aspects of Trigger's business.

**Attached hereto as Exhibit "A" are copies of the four emails referenced above, dated December 7, 2017, March 28, 2018, May 15, 2018 and October 19, 2018 respectively**

11. In addition to the blocked account, Trigger held several other bank accounts, that Clearflow did not have eyes on, including but not limited to an "operations" account, a "reserve" account and a US dollar account.

12. In the course of the receivership of Trigger, the receiver has obtained access to these other bank accounts (i.e., other than the blocked account). Clearflow has obtained copies of certain cheques written on one of those other accounts, namely, the "reserve" account, which were deposited into the blocked account. I attach as an Exhibit hereto copies of three of these cheques, in the amounts of \$210,787.30, \$259,668.80 and \$695,853.40 respectively.

**Attached hereto as Exhibit "B" is a copy of the three cheques in question**

13. The first aspect of these cheques that is important to note is that they are signed by Ms. Gdak on behalf of Trigger. She is obviously an authorized cheque signing authority on behalf of the company, and obviously did move money around by way of cheques written from one account to the other, between various Trigger accounts.

14. The movement of funds in this way (i.e., by way of writing cheques from account to another in the name of the same person) is inherently suspicious and can be an indication of "cheque kiting". In fact, the account records from the particular account in question show that Jaimee and/or Mark signed no fewer than 78 cheques between June 2018 and March 2020, drawn in favour

-5-

of Trigger Wholesale, from the “reserve” account. Jaimee signed, and by the appearance of the handwriting on the face of the cheques, drew up, 38 of those cheques.

**Attached hereto as Exhibit “C” are copies of the 38 cheques referenced above**

15. More to the point is the fact that the three cheques shown in Exhibit “B”, in the amounts of \$210,787.30, \$259,668.80 and \$695,853.40 respectively, correspond to, the cents, the **exact amount** shown in the standard-form notification emails from Ms. Gdak and Mr. Nero **from the same dates as the cheques**, located in my Clearflow computer inbox, dated July 12, 2018, July 13, 2018 and October 24, 2019 respectively.

**Attached hereto as Exhibit “D” are copies of the emails referenced above**

16. A review of these emails in the Exhibits above indicates that Ms. Gdak or Mr. Nero communicated to Clearflow the following information:

- (a) 15, 19 and 38 customers respectively had sent cheques to Trigger as payment for firearms supplied to those customers, including Home Hardware and Canadian Tire stores in various locations;
- (b) Ms. Gdak and Mr. Nero had personally handled these cheques or seen them, in order to identify them;
- (c) Ms. Gdak or Mr. Nero had personally deposited or seen to the deposit of these particular cheques into the blocked account.



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17. None of the above is true. As we now know, Canadian Tire never did any business whatsoever with Trigger and the vast majority, if not all, of the Home Hardware invoices were fraudulent. Any reference to cheques being received from these customers is, by definition, a knowing falsehood on the part of Ms. Gdak and Mr. Nero.

18. Further, it cannot be a coincidence that the amounts of the single cheques drawn from one Trigger account and deposited into the blocked account correspond exactly to the amounts claimed by Ms. Gdak or Mr. Nero to have been the exact amount of the total of customer deposits into the blocked account as reflected in their emails of July 12, 2018, July 13, 2018 and October 24, 2019, which allegedly are the totals of customer payments.

19. Clearly the update emails dated July 12, 2018, July 13, 2016 and October 24, 2019 are knowingly untrue and are part of the overall fraud. The money deposited into the blocked account did **not** originate from payments made by Trigger customers (which we now know were fictitious in any event). Those funds were transferred into the blocked account by way of kited cheques signed by Jaimee or Mark Gdak drawn against the reserve account.

20. I cannot imagine that there is any way that Ms. Gdak and Mr. Nero were not aware of these facts when they drafted and sent these emails, considering that they were responsible for collecting and handling the cheques. These cheques, together with the update emails, prove conclusively that Jaimee and Nero were inextricably involved in the fraud.

## **CONCLUSION**

21. The fraud perpetrated on Clearflow consisted of (a) falsification of invoices, purchase orders, email messages and accounts receivable; and (b) a form of cheque kiting that gave the false

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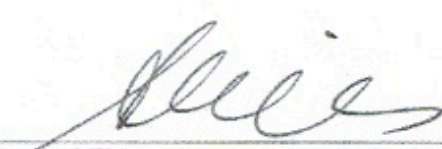
impression that customers were paying Trigger invoices in the ordinary course, when those customers not only were not making those payments, and, in fact, were not customers at all of Trigger.

22. The funds deposited into the blocked account came not from the fictitious customers, but originated from monies advanced by Clearflow itself in respect of the purchase of new accounts receivable, almost all fictitious.

23. I make this Affidavit in support of the within application and for no other or improper purpose.

**SWORN** remotely 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 November 26, 2020 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

  
\_\_\_\_\_  
ALEXANDRA (SANDY) KANICHIS

RCP-E 4D (July 1, 2007)

CLEARFLOW COMMERCIAL FINANCE CORP.  
Applicant

-and-  
Respondents

TRIGGER WHOLESALE, INC. et al.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**REPLY AFFIDAVIT OF ALEXANDRA (SANDY)  
KANICHIS**

**TORKIN MANES LLP**  
Barristers & Solicitors  
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jsimpson@torkinmanes.com  
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Fax: 1-888-587-9143

Lawyers for the Applicant,  
ClearFlow Commercial Finance Corp.

RCP-E 4C (May 1, 2016)

# TAB 8

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***

**FURTHER REPLY AFFIDAVIT OF ALEXANDRA (SANDY) KANICHIS**

**(Sworn March 9, 2021)**

I, Alexandra (Sandy) Kanichis, of the Town of Woodbridge, in the Province of Ontario,  
**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.

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2. I swear this Affidavit to provide the Court with additional detail which I believe is critical to the Court's determination of the liability of Jaimee Gdak pursuant to her Guarantee dated April 30, 2015.

3. In preparing for this case, I recalled that Clearflow uses software called Cadence, pursuant to which Clearflow's customers are able to log in in order to upload documents such as invoices and reports, and to view and update their exact financial position vis a vis Clearflow.

4. Until Mike Nero of Trigger took over this function in 2018, Jaimee was frequently the individual at Trigger who accessed Cadence to upload invoices and CanPar bills of lading (all fraudulent).

5. Cadence also provides the particular users with basic information regarding the debtor's position with, and indebtedness owed to, Clearflow.

6. The last time that Clearflow's records show that Jaimee logged into Cadence was February 21, 2018. Jaimee sent me a follow up email the same day confirming that it was specifically her who had logged into Cadence that day, and not Mark or someone else.<sup>1</sup> Jaimee had logged in that day to upload a number of invoices and Canpar Bills of Lading.

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<sup>1</sup> Attached hereto as Exhibit "A" is copy of Jaimee's email to myself and others dated Feb. 21/18.



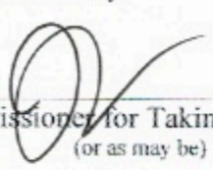
-3-

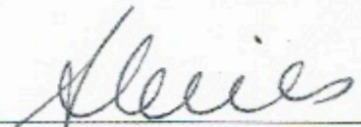
7. Upon logging into Cadence, Jaimee, like any user, would have seen a standard-form opening screen that contains the current balance of the account, which stood at \$8,404,091.56, and a bar chart showing the purchase and collection history of Trigger with respect to Clearflow.<sup>2</sup>

8. This bar chart, and supporting email from Jaimee indicate that Jaimee was specifically aware that the total A/R/ balance owed to Clearflow, for which she was responsible under her Guarantee, was \$8,404,091.56 as of February 21, 2018. Clearly, Jaimee was aware as of this date that her liability under her Guarantee greatly exceeded the original \$900,000 loan limit.

9. I make this Affidavit in support of the within application and for no other or improper purpose.

**SWORN** remotely 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 March 9, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

  
Commissioner for Taking Affidavits  
(or as may be)

  
ALEXANDRA (SANDY) KANICHIS

RCP-E 4D (July 1, 2007)

<sup>2</sup> Attached hereto as Exhibit "B" is a copy of the standard-form introduction screen from Cadence. The bar chart reflects current information, but I have adjusted the "starting" and "ending" dates to reflect the exact information that Jaimee would have seen in the "Current Balances" section when she logged in on February 21, 2018.

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

**FURTHER REPLY AFFIDAVIT OF ALEXANDRA**  
**(SANDY) KANICHIS**

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Lawyers for the Applicant,  
ClearFlow Commercial Finance Corp.

RCP-E 4C (May 1, 2016)

34656.0004/17560596\_1

34656.0004/25691483\_1



# TAB A

**Jeffrey Simpson**

---

**From:** Jaimee Gdak <jaimie@triggerwholesale.com>  
**Sent:** February 21, 2018 7:03 PM  
**To:** Erika Albert; Sandy Kanichis  
**Cc:** Mark Gdak; Mike Nero  
**Subject:** Schedule 10439  
**Attachments:** TWI, Sales, Feb 21.pdf; SignedSchedule10439 feb 21 2018.pdf

Hello Erika and Sandy,

I have attached schedule 10439 along with the invoices and POD's. The upload was completed successfully.  
Amount: \$185 683.90

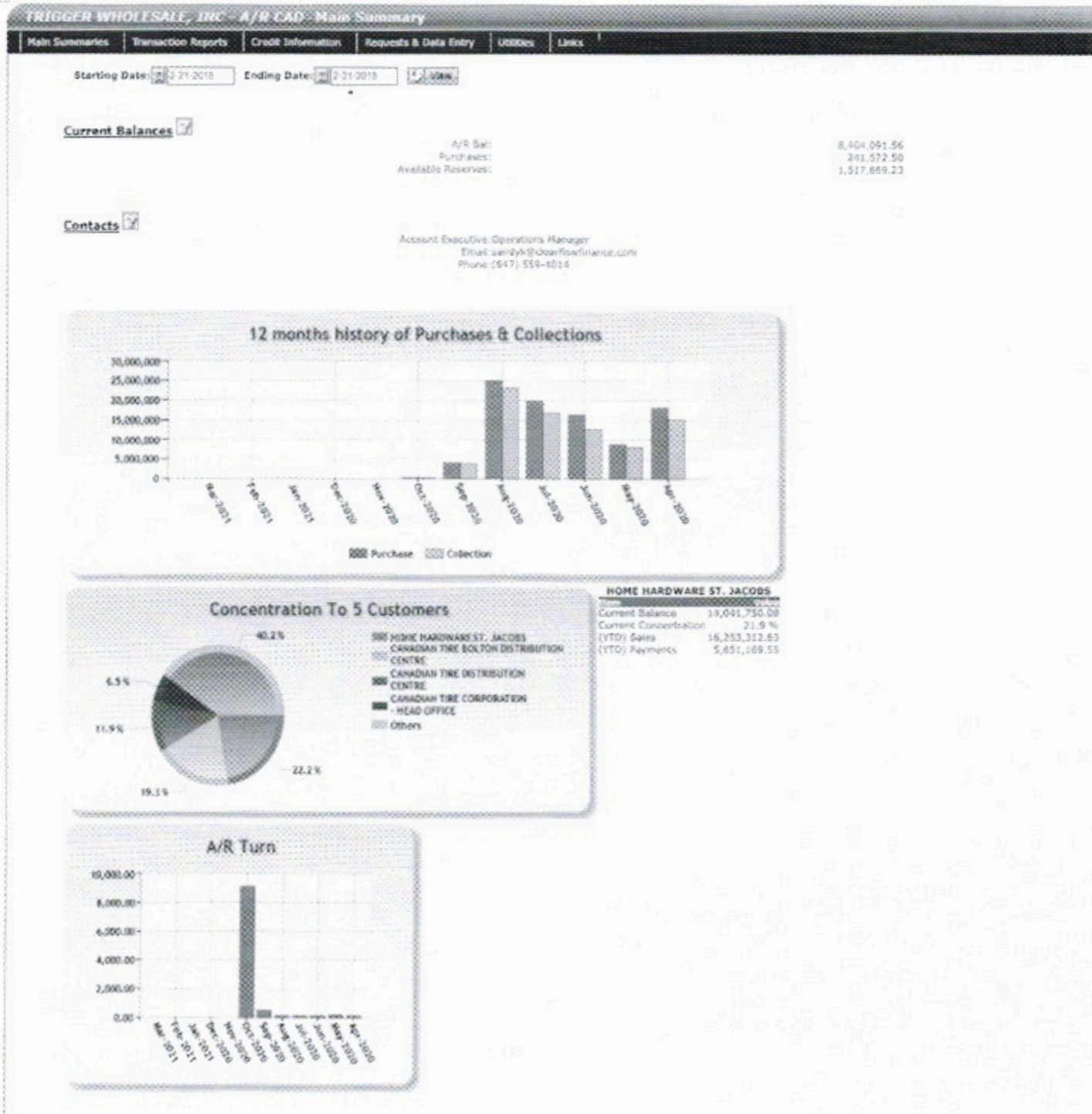
Sincerely,

**Jaimee Gdak**  
Trigger Wholesale Inc.  
[triggerwholesale.com](http://triggerwholesale.com)  
1-877-650-5515, Ext 102 (TF)  
1-877-767-2292 (FX)  
1-519-572-5773 (M)

# TAB B

**Exhibit B:**  
**Opening Page of Cadence Current Balances on February 21, 2018**

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CLEARFLOW COMMERCIAL FINANCE CORP.  
Applicant (Respondent in Appeal)

-and- TRIGGER WHOLESALE, INC. et al.  
Respondents (Jaimee Lynn Gdak Appellant in Appeal)  
Court File No.: C69603

**COURT OF APPEAL FOR ONTARIO**

PROCEEDING COMMENCED AT  
TORONTO

**FACTUM COMPENDIUM OF THE  
RESPONDENT, CLEARFLOW COMMERCIAL  
FINANCE CORP.**

**TORKIN MANES LLP**  
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Toronto ON M5C 2W7

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Lawyers for the Applicant (Respondent),  
ClearFlow Commercial Finance Corp.

RCP-E 4C (September 1, 2020)