**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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| **In re** | : | **Chapter 15** |
| **CINRAM INTERNATIONAL INC., *et al.*,[1]** | : | **Case No. 12-11882 (KJC)** |
| **Debtors in a Foreign Proceeding.** | : | **Jointly Administered** |
| | : | **Ref. Docket No. 29** |

**RULE 2002 NOTICE OF PETITIONS FOR RECOGNITION OF FOREIGN PROCEEDING AND OF COURT'S INTENTION TO COMMUNICATE WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVE**

**PLEASE TAKE NOTICE** that, on June 25, 2012, Cinram International ULC, in its capacity as the duly authorized foreign representative (the "**Foreign Representative**") for the above-captioned debtors (collectively, the "**Debtors**"), in the proceeding (the "**CCAA Proceeding**") commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C 36, as amended, and pending before the Ontario Superior Court of Justice (the "**Canadian Court**"), filed (a) petitions for relief (the "**Petitions**") under chapter 15 of title 11 of the United States Code, as amended from time to time (the "**Bankruptcy Code**") and (b) the *Foreign Representative's Motion for Orders Granting Provisional and Final Relief in Aid of Foreign CCAA Proceeding* (the "**Recognition Motion**"), seeking recognition of the CCAA Proceeding as a foreign main proceeding pursuant to section 1515 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"). A copy of the Recognition Motion and the *Foreign Representative's Memorandum of Law in Support of (I) Verified Chapter 15 Petitions and (II) Motion for Orders Granting Provisional and Final Relief in Aid of Foreign CCAA Proceeding* is attached hereto as Exhibit 1.

**PLEASE TAKE FURTHER NOTICE** that on June 26, 2012, the Bankruptcy Court entered an Order Directing Joint Administration of the Debtors' Chapter 15 Cases (Docket No. 27) under Case No. 12-11882 (KJC).

**PLEASE TAKE FURTHER NOTICE** that on on June 26, 2012, the Bankruptcy Court entered that certain order granting provisional, injunctive, and related relief pursuant to sections 105(a) and 1519 of the Bankruptcy Code (Docket No. 30) (the "**Provisional Order**"). The Provisional Order, among other things: (a) enjoins actions in

[1] The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, of each of the Debtors follow in parentheses: (a) Cinram International Inc. (4583); (b) Cinram (U.S.) Holding's Inc. (4792); (c) Cinram, Inc. (7621); (d) Cinram Distribution LLC (3854); (e) Cinram Manufacturing LLC (2945); (f) Cinram Retail Services LLC (1741); (g) Cinram Wireless LLC (5915); (h) IHC Corporation (4225); and (i) One K Studios, LLC (2132). The Debtors' executive headquarters is located at 2255 Markham Road, Toronto, Ontario, M1B 2W3, Canada.

the United States in contravention of orders of the Canadian Court in the CCAA Proceeding from the entry of such Provisional Order through and including the date of the Recognition Hearing (as defined below); (b) authorizes, on a provisional basis, the Debtors to enter into and perform under a debtor-in-possession credit facility; and (c) grants, on a provisional basis, certain protections afforded by the Bankruptcy Code, including those protections arising pursuant to sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, to and for the benefit of the lenders under such credit facility. A copy of the Provisional Order is attached hereto as Exhibit 2.

**PLEASE TAKE FURTHER NOTICE** that it is anticipated that the Bankruptcy Court will communicate directly with, or to request information or assistance directly from, the Canadian Court and Foreign Representative pursuant to section 1525 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that the Bankruptcy Court has scheduled a hearing before the Honorable Kevin J. Carey in Room 5 of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on July 25, 2012 at 10:00 a.m. (prevailing Eastern time) to consider approval of the Petitions and granting of the relief requested therein on a final basis (the "**Recognition Hearing**"), including recognition of the CCAA Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code and giving full force and effect to an order (the "**Initial CCAA Order**") entered in the CCAA Proceeding. Enclosed with this notice is a copy of the Initial CCAA Order attached hereto as Exhibit 3. The Initial CCAA Order, among other things, allows the Debtors to continue to operate their business substantially in the ordinary course and authorizes the Debtors to enter into a debtor in possession credit facility. The proposed final order granting recognition of the CCAA Proceeding is attached to the Recognition Motion as Exhibit B.

**PLEASE TAKE FURTHER NOTICE**, that any party in interest wishing to submit a response or objection to the Petitions or the relief requested by the Foreign Representative therein, must do so in accordance with the Bankruptcy Code, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, and the Federal Rules of Bankruptcy Procedure, by the deadline established in the Provisional Order, in a writing that sets forth the bases therefor with specificity and the nature and extent of the respondent's claims against the Debtors. Such response or objection must be filed with the Office of the Clerk of the Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon: (a) Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York 10022 (Attn: Douglas P. Bartner and Jill Frizzley); (b) Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Pauline K. Morgan and Kenneth J. Enos); (c) Goodmans LLP, Bay Adelaide Centre, 333 Bay Street, Suite 3400, Toronto, Ontario, M5H 2S7 (Attn: Robert Chadwick and Melaney Wagner); (d) Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019 (Attn: Richard G. Mason and Joshua A. Feltman); and (e) Ballard Spahr LLP, 919 North Market Street, 11th Floor, Wilmington, Delaware 19801 (Attn: Matthew G. Summers) **so as to be actually received by each of them no later than the deadline established in the Provisional Order, 4:00 p.m. (prevailing Eastern time) on July 18, 2012**.

**PLEASE TAKE FURTHER NOTICE** that all parties in interest opposed and wishing to object to the Debtors' petitions or the request for relief contained therein must appear at the Recognition Hearing at the time and place set forth above.

**PLEASE TAKE FURTHER NOTICE** that the Recognition Hearing may be adjourned from time to time without further notice other than a motion on the docket in these cases or an announcement in open court of the adjourned date or dates of any further adjourned hearing.

**PLEASE TAKE FURTHER NOTICE**, that if no response or objection is timely filed and served as provided above, the Bankruptcy Court may grant the relief requested by the Foreign Representative without further notice or hearing.

**PLEASE TAKE FURTHER NOTICE** that copies of the petitions and certain other pleadings filed contemporaneously therewith are available by (a) accessing the Bankruptcy Court's Electronic Case Filing System, which can be accessed from the Bankruptcy Court's website at https://ecf.deb.uscourts.gov (a PACER login and password are required to retrieve a document), (b) from the Foreign Representative through its website, www.kccllc.net/cinram, or (c) upon written request to the Foreign Representative's counsel (by email or facsimile) addressed to: Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, (Attn: Michelle Smith, e-mail: msmith@ycst.com, or Facsimile 302-576-3337).

Dated: Wilmington, Delaware
June 26, 2012

Respectfully submitted,

SHEARMAN & STERLING LLP
Douglas P. Bartner
Jill Frizzley
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-and-

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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*Co-Counsel to the Foreign Representative*

**Exhibit 1**

**Recognition Motion and**

**Foreign Representative's Memorandum of Law**

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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|---|---|---|
| **In re** | : | **Chapter 15** |
| **CINRAM INTERNATIONAL INC., *et al.*,[1]** | : | **Case No. 12-11882 (__)** |
| **Debtors in a Foreign Proceeding.** | : | **(Joint Administration Pending)** |

**FOREIGN REPRESENTATIVE'S MOTION FOR ORDERS GRANTING PROVISIONAL AND FINAL RELIEF IN AID OF FOREIGN CCAA PROCEEDING**

Cinram International ULC, in its capacity as the authorized foreign representative (the "**Foreign Representative**") for the above-captioned debtors (collectively, the "**Debtors**") in a proceeding (the "**CCAA Proceeding**") commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and pending before the Ontario Superior Court of Justice (the "**Canadian Court**"), respectfully submits this motion (this "**Motion**"), pursuant to sections 362, 364, 365, 1517, 1519, 1520, 1521, and 105(a) of title 11 of the United States Code, as amended from time to time (the "**Bankruptcy Code**"), for entry of (a) a provisional order (the "**Provisional Order**"): (i) recognizing and enforcing in the United States, on an interim basis, the Initial Order (the "**Initial CCAA Order**")[2] issued on June 25, 2012 by the Canadian Court, including, without limitation, the Canadian Court's decision (A) to authorize the Debtors to enter into and perform under that certain DIP Facility,[3] and (B) to

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1 The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, of each of the Debtors follow in parentheses: (a) Cinram International Inc. (4583); (b) Cinram (U.S.) Holding's Inc. (4792); (c) Cinram, Inc. (7621); (d) Cinram Distribution LLC (3854); (e) Cinram Manufacturing LLC (2945); (f) Cinram Retail Services LLC (1741); (g) Cinram Wireless LLC (5915); (h) IHC Corporation (4225); and (i) One K Studios, LLC (2132). The Debtors' executive headquarters is located at 2255 Markham Road, Toronto, Ontario, M1B 2W3, Canada.

2 A certified copy of the Initial CCAA Order is attached to the Bell Declaration (defined below) as Exhibit A. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Initial CCAA Order.

3 The DIP Facility is attached to the Bell Declaration as Exhibit D.

grant the DIP Charge to the DIP Lenders under the DIP Facility, (ii) granting, on an interim basis, to and for the benefit of the DIP Lenders and, to the extent of their adequate protection rights, the Prepetition Secured Lenders (defined below), certain protections afforded by the Bankruptcy Code, including those protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, (iii) granting an interim stay of execution against the Debtors' assets and applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases on an interim basis pursuant to sections 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, and (iv) granting such other and further relief as the Court deems just and proper; and (b) entry of a final order, after notice and a hearing (the "**Final Order**"), (i) granting the petitions in these cases and recognizing the CCAA Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the United States to the Initial CCAA Order, including any extensions or amendments thereof authorized by the Canadian Court and extending the protections of the Provisional Order to the Debtors on a final basis, (iii) granting the DIP Lenders and, to the extent of their adequate protection rights, the Prepetition Secured Lenders, certain protections afforded by the Bankruptcy Code, and (iv) granting such other and further relief as the Court deems just and proper. In support of this Motion, the Foreign Representative refers the Court to (x) the statements contained in the *Declaration of John Bell in Support of (I) Verified Chapter 15 Petitions, (II) Foreign Representative's Motion for Orders Granting Provisional and Final Relief in Aid of Foreign CCAA Proceeding, and (III) Certain Related Relief* (the "**Bell Declaration**"), and (y) the *Foreign Representative's Memorandum of Law in Support of (I) Verified Chapter 15 Petitions and (II) Motion for Orders Granting Provisional and Final Relief in Aid of Foreign CCAA Proceeding* (the "**Memorandum of Law**"), which were both filed concurrently herewith and are

incorporated herein by reference. In further support of the relief requested herein, the Foreign Representative respectfully represents as follows:

## Jurisdiction and Venue

1. The Court has jurisdiction to consider this Motion pursuant to sections 157 and 1334 of title 28 of the United States Code, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. These cases have been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of petitions for recognition (collectively, the "**Petitions for Recognition**") of the CCAA Proceeding pursuant to section 1515 of the Bankruptcy Code. This is a core proceeding pursuant to section 157(b)(2)(P) of title 28 of the United States Code. Venue is proper in this District pursuant to section 1410 of title 28 of the United States Code. The statutory predicates for the relief requested herein are sections 362, 364, 365, 1517, 1519, 1520, 1521, and 105 of the Bankruptcy Code.

## Background

2. The Debtors are wholly owned indirect subsidiaries of Cinram International Income Fund, which, together with its affiliates, is one of the world's largest providers of pre-recorded multimedia products and related logistics services. The Debtors and their affiliates manufacture DVDs™, Blu-ray™ discs, and CDs™ and provide distribution services for motion picture studios, music labels, video game publishers, computer software companies, telecommunication companies, and retailers around the world.

3. On the date hereof (the "**Petition Date**"), the Foreign Representative commenced these chapter 15 cases by filing, among other things, verified chapter 15 petitions

seeking recognition by the Court of the CCAA Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

4. Detailed information about the Debtors' business and operations, the events leading to the Petition Date, and the facts and circumstances surrounding the CCAA Proceeding and these cases is set forth in the Bell Declaration.

## Relief Requested

5. By this Motion, the Foreign Representative seeks entry of (a) the Provisional Order: (i) recognizing and enforcing in the United States, on an interim basis, the Initial CCAA Order issued by the Canadian Court, including, without limitation, the Canadian Court's decision (A) to authorize the Debtors to enter into and perform under that certain DIP Facility, and (B) to grant the DIP Charge to the DIP Lenders under the DIP Facility, (ii) granting, on an interim basis, to and for the benefit of the DIP Lenders and, to the extent of their adequate protection rights, the Prepetition Secured Lenders, certain protections afforded by the Bankruptcy Code, including those protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, (iii) granting an interim stay of execution against the Debtors' assets and applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases on an interim basis pursuant to sections 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, and (iv) granting such other and further relief as the Court deems just and proper; and (b) entry of the Final Order, after notice and a hearing, (i) granting the petitions filed in these cases and recognizing the CCAA Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the United States to the Initial CCAA Order, including any extensions or amendments thereof authorized by the Canadian Court and extending the protections of the Provisional Order to the Debtors on a final basis, (iii) granting

the DIP Lenders and, to the extent of their adequate protection rights, the Prepetition Secured Lenders, certain protections afforded by the Bankruptcy Code, and (iv) granting such other and further relief as the Court deems just and proper.

## Basis for Relief

### A. Sections 1519, 1521, and 105 of the Bankruptcy Code Authorize the Requested Provisional Relief

6. Section 1519 of the Bankruptcy Code authorizes the Court to grant the Foreign Representative certain enumerated relief pending the Court's entry of the Final Order:

> (a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including —
>
> (1) staying execution against the debtor's assets; [and]
>
> …
>
> (3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

11 U.S.C. § 1519(a).

7. Section 1519(a)(3) of the Bankruptcy Code authorizes the Court to grant provisionally to the Foreign Representative any relief referenced in section 1521(a)(7) of the Bankruptcy Code. As described in detail below, section 1521(a)(7) permits a court to grant any relief, with certain limited and inapplicable exceptions, that would be available to a trustee in bankruptcy, and therefore authorizes the Court to apply sections 362, 364(c), 364(d), 364(e), 365(e), and 105(a)[4] of the Bankruptcy Code, which are urgently needed to protect the Debtors' United States-based assets prior to entry of the Final Order.

[4] Section 105(a) states that a bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]."

## B. The Requested Provisional Relief is Justified

8. Provisional relief pursuant to section 1519 requires satisfaction of the standard for injunctive relief. 11 U.S.C. § 1519(e); *In re Innua Can. Ltd.*, 2009 WL 1025088, at *3 (Bankr. D.N.J. Mar. 25, 2009). In the Third Circuit, that standard requires a movant to show that: (a) it has a likelihood of success on the merits; (b) it will suffer irreparable harm if the requested injunction is denied; (c) granting preliminary relief will not result in even greater harm to the nonmoving party; and (d) the public interest favors such relief. *U.S. v. Bell*, 414 F.3d 474, 478 n.4 (3d Cir. 2005) (citing *ACLU of N.J. v. Black Horse Pike Reg'l Bd. Of Educ.*, 84 F.3d 1471, 1477 n. 2 (3d Cir. 1996)). *See also Rogers v. Corbett*, 468 F.3d 188, 192 (3d Cir. 2006) (citations omitted); *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004) (citations omitted). The Foreign Representative submits that the standard is satisfied in these cases with respect to the requested provisional relief, and that the relief is therefore justified.

### 1. There is a Substantial Likelihood of Recognition

9. As detailed more fully in the Petitions for Recognition, the Bell Declaration, and the Memorandum of Law, the Foreign Representative has set forth a compelling case for recognition of the CCAA Proceeding as a foreign main proceeding. The CCAA Proceeding is a "foreign proceeding" and Cinram International ULC is a "foreign representative," as those terms are defined in the Bankruptcy Code. In addition, these cases were duly and properly commenced by filing the Petitions for Recognition accompanied by all fees, documents, and information required by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), including: (a) a corporate ownership statement containing the information described in Bankruptcy Rule 7007.1; (b) a list containing (i) the names and addresses of all persons or bodies authorized to administer foreign proceedings of the Debtors, (ii) all parties to litigation pending in the United States to which the Debtors are a

party at the time of the filing of the Petitions for Recognition, and (iii) all entities against whom provisional relief is being sought pursuant to section 1519 of the Bankruptcy Code; (c) a statement identifying all foreign proceedings with respect to each of the Debtors that are known to the Foreign Representative; and (d) a certified copy of the Initial CCAA Order.

**2. The Debtors Will Suffer Irreparable Harm if the Request for Provisional Relief is Denied**

As set forth below, the provisional relief requested by the Debtors is necessary to prevent irreparable harm to the Debtors, their business and their assets.

**a. The Debtors will Suffer Irreparable Harm without the Protections of Sections 362 and 365(e) of the Bankruptcy Code**

10. The automatic stay embodied in section 362 is one of the most fundamental protections provided by the Bankruptcy Code. It halts all collection efforts, harassment, and foreclosure actions against debtors and provides them with necessary breathing room from the financial pressures that caused their bankruptcy filing. Similarly, section 365(e) of the Bankruptcy Code provides a debtor with relief by prohibiting counterparties from terminating contracts and leases solely because of the debtor's bankruptcy filing or insolvency. If these two protections were unavailable, the Debtors could face immediate and irreparable harm resulting from the potential termination of critical contracts and the piecemeal loss of assets as a result of individual creditor collection and enforcement efforts. For example, the Debtors are parties to numerous critical agreements with counterparties in the United States, such as supply agreements and leases, that contain provisions granting the counterparty termination rights for various reasons, including a bankruptcy filing, becoming a debtor under the Bankruptcy Code, or becoming insolvent. Absent the provisional relief requested, these counterparties may attempt to terminate these valuable contracts, which are integral to the Debtors' business.

11. The Court has extended and applied the automatic stay and so-called *ipso facto* provisions of the Bankruptcy Code to debtor and non-debtor entities on a provisional basis in chapter 15 cases where the relief was necessary to prevent irreparable harm. *See, e.g., In re W.C. Wood Corp., Ltd.*, Case No. 09-11893 (KG) (Bankr. D. Del. June 1, 2009) (extending stay protection to debtors and their officers and directors); *In re Fraser Papers Inc.*, Case No. 09-12123 (KJC) (Bankr. D. Del. June 19, 2009) (same).

**b. The Debtors will Suffer Irreparable Harm if They are Unable to Access the DIP Facility**

12. The Debtors will also suffer immediate and irreparable harm should they be unable to access the DIP Facility[5] approved by the Canadian Court. As described in the Bell Declaration, the Debtors are operating under significant liquidity constraints and require immediate access to the DIP Facility to fund working capital requirements, capital expenditures, general corporate expenses, and the costs of administering their bankruptcy cases. The Debtors' proposed DIP Lenders have conditioned availability under the DIP Facility on, among other things, the entry of the Provisional Order, including the grant of protections afforded under sections 364(c), 364(d), and 364(e) by the Court to the DIP Lenders and, to the extent of the adequate protection rights requested, the Prepetition Secured Lenders. If the interim requested relief is not granted, it is likely that the Debtors will be unable to secure necessary goods, and it is possible that they will lose customers and become unable to operate their manufacturing and warehousing facilities, pay employees, and generally maintain the operation of their business as a going concern.

13. In addition to providing the Debtors with the liquidity necessary to operate during these cases and consummate the Proposed Sale, the DIP Facility will help to preserve the

[5] Additional background on the proposed DIP Facility is contained in the Bell Declaration.

Debtors' business by providing assurance to their suppliers and customers that they will be able to maintain their business operations and satisfy their obligations pending the outcome of these cases and the CCAA Proceeding.

14. For these reasons, the Foreign Representative requests that the Court, on a provisional basis, recognize the liens and charges negotiated in connection with the DIP Facility and approved by the Canadian Court as well as the adequate protection negotiated in connection with the DIP Facility and described herein, and afford the DIP Lenders, and, to the extent of their adequate protection rights, the Prepetition Secured Lenders, the protections available pursuant to sections 364(c), 364(d), and 364(e) of the Bankruptcy Code. Relief that is the same or similar to the section 364 relief requested herein is often granted to debtors in domestic proceedings and, as it relates to the DIP Lenders, similar protections have been granted by the bankruptcy court in this District in other chapter 15 cases. *See, e.g.*, *In re Arctic Glacier Int'l Inc.*, Case No. 12-10605 (KG) (Bankr. D. Del. Feb. 23, 2012) (order granting provisional DIP relief); *In re Fraser Papers Inc.*, Case No. 09-12123 (KJC) (Bankr. D. Del. June 19, 2009); *In re W.C. Wood Corp.*, Ltd., Case No. 09-11893 (KG) (Bankr. D. Del. June 1, 2009); *In re Destinator Techs. Inc.*, Case No. 08-11003 (CSS) (Bankr D. Del. May 20, 2008). In addition, similar adequate protection rights have been granted to prepetition secured lenders in at least one chapter 15 case in this District. *In re Catalyst Paper Corp.*, Case No. 12-10221 (PJW) (Bankr. D. Del. Mar. 5, 2012).

**3. There Will Be No Greater Harm to Creditors if the Provisional Relief is Granted**

15. The Debtors' creditors will not suffer any significant harm by the requested provisional relief as it will merely preserve the *status quo* and enable the Debtors to continue to finance their operations during the short time necessary for the Court to rule on the

Petitions for Recognition.[6] In fact, the Foreign Representative believes that granting the request for provisional relief will benefit the Debtors' creditors because it will ensure the value of the Debtors' assets are preserved and maximized for the benefit of all creditors.

16. The Foreign Representative submits that there will be little, if any, harm to creditors if the Foreign Representative's request for provisional relief is granted; indeed, harm will come to the Debtors' creditors if the provisional relief is not granted.

**4. The Public Interest Favors Granting the Provisional Relief**

17. As noted above, the requested provisional relief is consistent with the policy underlying the Bankruptcy Code and is in the public interest because it will facilitate the Debtors' efforts to complete a court-supervised sale process for a going-concern sale of the Debtors' core business for the benefit of the Debtors' creditors and other stakeholders. *See Rehabworks, Inc. v. Lee (In re Integrated Health Servs., Inc.)*, 281 B.R. 231, 239 (Bankr. D. Del. 2002) ("In the context of a bankruptcy case, promoting a successful reorganization is one of the most important public interests."); *In re Lazarus Burman Assocs.*, 161 B.R. 891, 901 (Bankr. E.D.N.Y. 1993) ("The public interest, in the context of a bankruptcy proceeding, is in promoting a successful reorganization."); *see also In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 284 (Bankr. S.D.N.Y. 2007) ("The public interest requires bankruptcy courts to consider the good of the case as a whole."); *Am. Film Techs, Inc. v. Taritero (In re Am. Film Techs., Inc.)*, 175 B.R. 847, 849 (Bankr. D. Del. 1994) ("It is 'one of the paramount interests' of this court to assist the Debtor in its reorganization efforts.") (quoting *Gathering Rest., Inc. v. First Nat'l Bank of Valparaiso (In re Gathering Rest., Inc.)*, 79 B.R. 992, 1001 (Bankr. N.D. Ind. 1986)).

[6] The Provisional Order will allow any creditor that believes it has been harmed by the provisional relief to file a motion with the Court seeking relief upon notice and a hearing.

18. In addition, granting the provisional relief is in the public interest because it promotes cooperation between jurisdictions in cross-border insolvencies, which is an express purpose of chapter 15 of the Bankruptcy Code. 11 U.S.C. § 1501(a).

19. For these reasons, the Court has frequently granted requests for similar provisional relief in chapter 15 cases. *See, e.g., In re Elpida Memory, Inc.*, Case No. 12-10947 (CSS) (Bankr. D. Del. Mar. 21, 2012) (order granting provisional relief, including protections of automatic stay); *In re Arctic Glacier Int'l Inc.*, Case No. 12-10605 (KG) (Bankr. D. Del. Feb. 23, 2012) (order granting provisional relief, including DIP relief and the protections of automatic stay and section 365(e) of the Bankruptcy Code); *In re Catalyst Paper Corp.*, Case No. 12-10221 (PJW) (Bankr. D. Del. Feb. 8, 2012) (order granting provisional DIP relief); *In re Angiotech Pharm. Inc.*, Case No. 11-10269 (KG) (Bankr. D. Del. Jan. 31, 2011) (order granting provisional relief, including protections of automatic stay and section 365(e)); *In re Nortel Networks UK Ltd.*, Case No. 09-11972 (KG) (Bankr. D. Del. Oct. 27, 2010) (order granting provisional relief, including protections of automatic stay and section 365(e)); *In re MAAX Corp.*, Case No. 08-11443 (CSS) (Bankr. D. Del. July 14, 2008) (order granting provisional relief, including the protections of automatic stay and section 365(e)).

**C. Sections 1517, 1520, and 1521 of the Bankruptcy Code Authorize the Requested Final Relief**

20. Section 1517(a) of the Bankruptcy Code authorizes the Court to enter a final order, after notice and a hearing, recognizing a foreign proceeding if such proceeding is a foreign main proceeding or a foreign nonmain proceeding, the foreign representative applying for recognition is a person or body, and the application for recognition was properly filed in accordance with section 1515 of the Bankruptcy Code. Section 1517(b) of the Bankruptcy Code

further provides that such a proceeding shall be recognized as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests.

21. As more fully set forth in the Memorandum of Law, the Foreign Representative respectfully submits that (a) the CCAA Proceeding is a foreign main proceeding within the meanings of sections 101(23) and 1502(4) of the Bankruptcy Code, (b) it is a person within the meaning of section 101(41) of the Bankruptcy Code and is an authorized foreign representative within the meaning of section 101(24) of the Bankruptcy Code, and (c) the verified chapter 15 petitions were properly filed in accordance with section 1515 of the Bankruptcy Code.

22. Specifically, the CCAA Proceeding is pending in Canada, the center of each of the Debtors' and their corporate family's main interests. As described in the Memorandum of Law, the Debtors are functionally and operationally integrated under the ultimate control and supervision of their Canadian affiliates and individuals employed and working in Canada.

23. As described in the Memorandum of Law and set forth in the Initial CCAA Order, Cinram International ULC is a person (within the meaning of the Bankruptcy Code) authorized to act as a foreign representative and to administer the reorganization or liquidation of the Debtors' assets and affairs by the Canadian Court. Further, these cases were duly and properly commenced as required by sections 1504 and 1509(a) by filing the verified petitions and all other required documents in accordance with section 1515 of the Bankruptcy Code.

24. As described in the Memorandum of Law and Section B.4. above, recognizing the CCAA Proceeding as a foreign main proceeding and granting the provisional

relief requested herein on a final basis, in addition to the relief automatically granted upon recognition pursuant to section 1520 of the Bankruptcy Code, is consistent with the purposes of chapter 15 of the Bankruptcy Code and public policy of the United States. Therefore, the Foreign Representative respectfully requests that, upon notice and a hearing, the Court grant the Final Order and such other and further relief as the Court may deem just and proper.

## Notice

25. Notice of this Motion has been provided to: (a) all persons or bodies authorized to administer foreign proceedings of the Debtors; (b) counsel to JPMorgan Chase Bank, N.A., as administrative agent under the Debtors' proposed DIP Facility; (c) counsel to JPMorgan Chase Bank, N.A. as administrative agent (in such capacity, the "**Prepetition Agent**") under that certain Amended and Restated Credit Agreement, dated April 11, 2011, among the Debtors, their affiliates party thereto, and the lenders party thereto, as amended from time to time (the "**First Lien Credit Agreement**") and under that Second Lien Credit Agreement, dated April 11, 2011, among the Debtors, their affiliates party thereto, and the lenders party thereto, as amended from time to time (the "**Second Lien Credit Agreement**"; the lenders party to the First Lien Credit Agreement and the Second Lien Credit Agreement collectively, the "**Prepetition Secured Lenders**"); and (d) the Office of the United States Trustee for the District of Delaware. The Foreign Representative proposes to further notify all creditors and parties in interest of the filing of the chapter 15 petitions and the Foreign Representative's request for entry of the Final Order in the form and manner set forth in the *Foreign Representative's Motion for Order Scheduling Hearing and Specifying the Form and Manner of Service of Notice*, which was filed concurrently herewith. In light of the relief requested herein, the Foreign Representative

respectfully submits that no other or further notice of this Motion is necessary under the circumstances.

**No Prior Request**

26. No previous request for the relief requested herein has been made to this or any other court.

## Conclusion

WHEREFORE, the Foreign Representative respectfully requests that the Court: (a) enter the Provisional Order, substantially in the form attached hereto as Exhibit A, (b) enter the Final Order, upon notice and a hearing, substantially in the form attached hereto as Exhibit B, and (c) grant such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
June 25, 2012

Respectfully submitted,

SHEARMAN & STERLING LLP
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-and-

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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Facsimile: (302) 571-1253

*Co-Counsel to the Foreign Representative*

# EXHIBIT A

## Proposed Provisional Order

**Included herein as Exhibit 2 and**

**also available at**

http://www.kccllc.net/cinram

**EXHIBIT B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| **In re** | : | **Chapter 15** |
| **CINRAM INTERNATIONAL INC., *et al.*,[1]** | : | **Case No. 12-11882 (__)** |
| **Debtors in a Foreign Proceeding.** | : | **(Jointly Administered)** |
| | : | **Ref. Docket No. __** |

**ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING AND CERTAIN RELATED RELIEF ON A FINAL BASIS**

Upon the motion (the "**Motion**")[2] of Cinram International ULC, in its capacity as the court-appointed monitor and authorized foreign representative for the above-captioned debtors (collectively, the "**Debtors**") in a proceeding commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and pending before the Ontario Superior Court of Justice, pursuant to sections 362, 364, 365, 1517, 1519, 1520, 1521, and 105(a) of title 11 of the United States Code, as amended from time to time (the "**Bankruptcy Code**") for entry of (a) a provisional order (the "**Provisional Order**"): (i) recognizing and enforcing in the United States, on an interim basis, the Initial Order (the "**Initial CCAA Order**") issued on June 25, 2012 by the Canadian Court, including, without limitation, the Canadian Court's decision (A) to authorize the Debtors to enter into and perform under that certain DIP Facility, and (B) to grant the DIP Charge to the DIP Lenders under the DIP Facility, (ii) granting, on an interim basis, to and for the benefit of the DIP Lenders and, to

[1] The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, of each of the Debtors follow in parentheses: (a) Cinram International Inc. (4583); (b) Cinram (U.S.) Holding's Inc. (4792); (c) Cinram, Inc. (7621); (d) Cinram Distribution LLC (3854); (e) Cinram Manufacturing LLC (2945); (f) Cinram Retail Services LLC (1741); (g) Cinram Wireless LLC (5915); (h) IHC Corporation (4225); and (i) One K Studios, LLC (2132). The Debtors' executive headquarters is located at 2255 Markham Road, Toronto, Ontario, M1B 2W3, Canada.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

the extent of their adequate protection rights, the Prepetition Secured Lenders, certain protections afforded by the Bankruptcy Code, including those protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, as applicable, (iii) granting an interim stay of execution against the Debtors' assets and applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases on an interim basis pursuant to sections 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, and (iv) granting such other and further relief as this Court deems just and proper; and (b) entry of a final order after notice and a hearing, (this "**Order**") (i) granting the petitions in these cases and recognizing the CCAA Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the United States to the Initial CCAA Order, including any extensions or amendments thereof authorized by the Canadian Court, and extending the protections of the Provisional Order to the Debtors on a final basis, (iii) granting the DIP Lenders and, to the extent of their adequate protection rights, the Prepetition Secured Lenders, certain protections afforded by the Bankruptcy Code, and (iv) granting such other and further relief as this Court deems just and proper; and it appearing that this Court has jurisdiction to consider the Motion pursuant to sections 157 and 1334 of title 28 of the United States Code, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having reviewed the Motion, the Petitions for Recognition, the Bell Declaration, and the Memorandum of Law, and having considered the statements of counsel with respect to the Motion at a hearing before this Court (the "**Hearing**"); and appropriate and timely notice of the filing of the Motion and the Hearing having been given; and no other or further notice being necessary or required; and this Court having determined that the legal and factual bases set forth in the Motion, the Petitions for Recognition, the Bell Declaration, the

Memorandum of Law, and all other pleadings and papers in these cases establish just cause to grant the relief ordered herein, and after due deliberation therefor;

**THIS COURT HEREBY FINDS AND DETERMINES THAT:**

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Foreign Representative is the duly appointed "foreign representative" of the Debtors within the meaning of section 101(24) of the Bankruptcy Code.

D. This chapter 15 case was properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

E. The Foreign Representative has satisfied the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 2002(q).

F. The CCAA Proceeding is a "foreign proceeding" pursuant to section 101(23) of the Bankruptcy Code.

G. The CCAA Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

H. Canada is the center of main interests of each of the Debtors, and accordingly the CCAA Proceeding is a "foreign main proceeding" as defined in section 1502(4) of the Bankruptcy Code, and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

I. The Foreign Representative has demonstrated that the borrowings under the DIP Facility authorized by the Initial CCAA Order are necessary to preserve the value of the Debtors' business.

J. The Foreign Representative has demonstrated that the terms of the DIP Facility, as approved in the Initial CCAA Order, are fair and reasonable and were entered into in good faith by the Debtors and the DIP Lenders and that the DIP Lenders would not extend financing without the protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, as made applicable by section 1521(a)(7) of the Bankruptcy Code. The Foreign Representative has demonstrated that the terms of the DIP Facility are reasonable under the circumstances.

K. The Foreign Representative has demonstrated that the incurrence of indebtedness under the DIP Facility, as authorized by the Initial CCAA Order, is necessary to prevent irreparable harm to the Debtors and their affiliates because, without such financing, they will be unable to continue operations, which will significantly impair the value of the Debtors' assets.

L. The Prepetition Agent, for itself and for the benefit of the Prepetition Secured Lenders, is entitled to adequate protection of their interests in the collateral securing their

indebtedness (the "**Prepetition Collateral**") from any diminution in value resulting from the use of their "cash collateral" within the meaning of section 363(a) of the Bankruptcy Code (the "**Cash Collateral**") and the use, sale, or lease of the Prepetition Collateral, the imposition of the automatic stay, and the priming of their liens by the DIP Lenders pursuant to section 364(d) of the Bankruptcy Code. Accordingly, the Debtors have agreed, in their reasonable business judgment, to provide adequate protection as set forth in this Order, which terms and conditions are fair and reasonable and were negotiated in good faith and at arm's-length.

M. The Foreign Representative is entitled to all the automatic relief available pursuant to section 1520 of the Bankruptcy Code without limitation.

N. The Foreign Representative is further entitled to the discretionary relief expressly set forth in section 1521(a) and (b) of the Bankruptcy Code.

O. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to sections 1517, 1520, and 1521 of the Bankruptcy Code.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Petitions for Recognition and the Motion are granted.

2. The CCAA Proceeding is granted recognition as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code.

3. The Initial CCAA Order, including any extensions, amendments, or modifications thereto, is hereby enforced on a final basis and given full force and effect in the United States.

4. All relief afforded foreign main proceedings pursuant to section 1520 of the Bankruptcy Code is hereby granted to the CCAA Proceeding, the Debtors, and the Foreign Representative, as applicable.

5. Sections 362 and 365(e) of the Bankruptcy Code shall hereby apply with respect to the Debtors and the property of the Debtors that is within the territorial jurisdiction of the United States; *provided* that upon the occurrence of an event of default under the DIP Documents (as defined below) or the DIP Lenders' Charge, this paragraph shall be deemed to be automatically modified to the extent necessary to allow the DIP Lenders and the Prepetition Secured Lenders to exercise their rights pursuant to Paragraph 54(b) of the Initial CCAA Order.

6. Subject to sections 1520 and 1521 of the Bankruptcy Code, the CCAA Proceeding and the Initial CCAA Order, and the transactions consummated or to be consummated thereunder, including without limitation, the DIP Facility, shall be granted comity and given full force and effect in the United States to the same extent that they are given effect in Canada, and each is binding on all creditors of the Debtors and any of their successors or assigns.

7. Pursuant to section 1521(a)(6) of the Bankruptcy Code, all prior relief granted to the Debtors or the Foreign Representative by this Court pursuant to section 1519(a) of the Bankruptcy Code shall be extended and the Provisional Order shall remain in full force and effect, notwithstanding anything to the contrary contained therein.

8. All entities (as that term is defined in section 101(15) of the Bankruptcy Code), other than the Foreign Representative and its expressly authorized representatives and agents, are hereby enjoined from:

a. execution against any of the Debtors' assets;

b. the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim, which in either

case is in any way related to, or would interfere with, the administration of the Debtors' estates in the CCAA Proceeding or the solicitation, implementation, or consummation of the transactions contemplated by the Initial CCAA Order, including without limitation any and all unpaid judgments, settlements, or otherwise against the Debtors in the United States;

c. taking or continuing any act to create, perfect, or enforce a lien or other security interest, set-off, or other claim against the Debtors or any of their property;

d. transferring, relinquishing, or disposing of any property of the Debtors to any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative; and

e. commencing or continuing an individual action or proceeding concerning the Debtors' assets, rights, obligations, or liabilities to the extent they have not been stayed pursuant to section 1520(a);

*provided*, in each case, that such injunction shall be effective solely within the territorial jurisdiction of the United States.

9. The obligations of the Debtors under the DIP Facility shall be an allowed administrative expense claim with priority, subject and subordinate only to the Carve-Out, under section 364(c)(1) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors, now existing or hereafter arising.

10. Pursuant to the Initial CCAA Order, the Debtors are hereby authorized to borrow up to USD $15 million under and in accordance with the terms of the DIP Facility. In addition, the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, and other documents as are contemplated by the DIP Facility (collectively, the "**DIP Documents**") or as may be reasonably requested by the DIP Lenders pursuant to the terms thereof, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the DIP Lenders under and pursuant to the DIP Facility (and in accordance with the budget delivered in connection therewith) including, but not limited to, the fees and expenses of the DIP Lenders' Canadian and United States counsel, and other advisors,

as and when the same become due and are to be performed, notwithstanding any other provision of this Order and without any further order of this Court.

11. Pursuant to section 364 of the Bankruptcy Code and subject to the priorities, terms, and conditions of the Initial CCAA Order, to secure current and future amounts outstanding under the DIP Facility, the DIP Lenders are hereby granted the DIP Lenders' Charge on all of the Debtors' United States assets up to the maximum amount of the obligations under the DIP Facility.

12. Any obligations incurred by the Debtors as a result of entering into or performing their obligations under the DIP Facility do not and will not constitute preferences, fraudulent conveyances or transfers, transfers at under value, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

13. This Order shall be sufficient and conclusive notice and evidence of the grant, validity, perfection, and priority of the liens granted to the DIP Lenders in the Initial CCAA Order without the necessity of filing or recording this Order or any financing statement, mortgage, or other instrument or document, which may otherwise be required under the law of any jurisdiction; *provided* that the Debtors are authorized to execute and the administrative agent under the DIP Facility may file or record financing statements, mortgages, or other instruments to further evidence the liens authorized, granted, and perfected hereby and by the Initial CCAA Order

14. The Prepetition Agent, for itself and for the benefit of the Prepetition Secured Lenders, is entitled to adequate protection of their interests in the Prepetition Collateral from any diminution in value resulting from the use of the Cash Collateral and the use, sale, or lease of the Prepetition Collateral, the imposition of the automatic stay, and the priming of their liens by the DIP Lenders pursuant to section 364(d) of the Bankruptcy Code. Accordingly, the Prepetition Secured Lenders hereby are (a) granted valid, binding, enforceable, and perfected liens (the "**Adequate Protection Liens**") in all collateral under the DIP Facility to secure an amount of their indebtedness equal to any diminution in the value of their interests in the Prepetition Collateral

subsequent to the date of the filing of the Petitions for Recognition resulting from the use of the Cash Collateral and the use, sale, or lease of the Prepetition Collateral, the imposition of the automatic stay, and the priming of their liens by the DIP Lenders, which Adequate Protection Liens shall be immediately junior to the DIP Lenders' Charge identified in the Initial CCAA Order, (b) granted on allowed administrative expense claim with priority under section 364(c)(1) of the Bankruptcy Code, subject and subordinate only to the carve-out and the obligations under the DIP Facility, and otherwise over all administrative expense claims and unsecured claims against the Debtors, now existing or hereafter arising and (c) entitled to receive payment for, and the Debtors are authorized to pay, the reasonable and documented fees and expenses incurred by Wachtell, Lipton, Rosen & Katz, Morris, Nichols, Arsht & Tunnell LLP, Blake Cassels & Graydon LLP, and Zolfo Cooper, as advisors to the Prepetition Secured Lenders, whether incurred before or after the Petition Date. Nothing herein shall prejudice, impair, or otherwise affect the rights of the Prepetition Secured Lenders to seek any other or supplemental relief in respect of their adequate protection rights.

15. The DIP Documents and the DIP Facility have been negotiated in good faith and at arm's-length between the Debtors and the DIP Lenders. Any financial accommodations made to the Debtors by the DIP Lenders pursuant to the Initial CCAA Order and the DIP Documents shall be deemed to have been made by the DIP Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code. Accordingly, pursuant to sections 364(e), 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, section 364(e) of the Bankruptcy Code hereby applies for the benefit of the DIP Lenders, and the validity of the indebtedness, and the priority of the liens authorized by the Initial CCAA Order made enforceable in the United States by this Order, shall not be affected by any reversal or modification of this Order on appeal or the entry of an order denying recognition of the CCAA Proceeding pursuant to section 1517 of the Bankruptcy Code.

16. No action, inaction, or acquiescence by the DIP Lenders or the prepetition secured lenders, including funding the Debtors' ongoing operations under this Order, shall be deemed to be or shall be considered as evidence of any alleged consent by the DIP Lenders or

the prepetition secured lenders to a charge against the collateral pursuant to sections 506(c), 552(b), or 105(a) of the Bankruptcy Code. The DIP Lenders and the prepetition secured lenders shall not be subject in any way whatsoever to the equitable doctrine of "marshaling" or any similar doctrine with respect to the collateral.

17. Effective upon entry of this Order, no person or entity shall be entitled, directly or indirectly, whether by operation of sections 506(c), 552(b), or 105 of the Bankruptcy Code or otherwise, to direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of collateral or property after an Event of Default under the DIP Facility, First Lien Credit Agreement, or Second Lien Credit Agreement, or termination or breach under the DIP Facility, the First Lien Credit Agreement, the Initial CCAA Order, the Provisional Order, or this Order.

18. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed pursuant to section 362 of the Bankruptcy Code or (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed.

19. The Foreign Representative is hereby authorized to apply to this Court to examine witnesses, take evidence, seek production of documents, and deliver information concerning the assets, affairs, rights, obligations, or liabilities of the Debtors, as such information is required in the CCAA Proceeding.

20. The Foreign Representative, the Debtors and/or each of their successors, agents, representatives, advisors, or counsel shall be entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code.

21. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon entry; (b) neither the Foreign Representative nor the DIP Lenders are subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Foreign Representative is authorized

and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

22. A copy of this Order, confirmed to be true and correct, shall be served, within three business days of entry of this Order, by facsimile, electronic mail, or overnight express delivery, upon all persons or bodies authorized to administer foreign proceedings of the Debtors, all entities against whom provisional relief was granted pursuant to section 1519 of the Bankruptcy Code, all parties to litigation pending in the United States in which any of the Debtors were a party at the time of the filing of the Petitions for Recognition, the Office of the United States Trustee for the District of Delaware, and such other entities as this Court may direct.

23. Such service shall be good and sufficient service and adequate notice for present purposes.

24. This Court shall retain jurisdiction with respect to: (a) the enforcement, amendment, or modification of this Order; (b) any requests for additional relief or any adversary proceeding brought in and through these cases; and (c) any request by an entity for relief from the provisions of this Order, for cause shown.

Dated: Wilmington, Delaware
_____, 2012

_____
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| **In re** | : | **Chapter 15** |
| | : | |
| **CINRAM INTERNATIONAL INC., *et al.*,[1]** | : | **Case No. 12-11882 (__)** |
| | : | |
| **Debtors in a Foreign Proceeding.** | : | **(Joint Administration Pending)** |
| | : | |

**FOREIGN REPRESENTATIVE'S MEMORANDUM OF LAW IN SUPPORT OF (I) VERIFIED CHAPTER 15 PETITIONS AND (II) MOTION FOR ORDERS GRANTING PROVISIONAL AND FINAL RELIEF IN AID OF FOREIGN CCAA PROCEEDING**

[1] The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, of each of the Debtors follow in parentheses: (a) Cinram International Inc. (4583); (b) Cinram (U.S.) Holding's Inc. (4792); (c) Cinram, Inc. (7621); (d) Cinram Distribution LLC (3854); (e) Cinram Manufacturing LLC (2945); (f) Cinram Retail Services LLC (1741); (g) Cinram Wireless LLC (5915); (h) IHC Corporation (4225); and (i) One K Studios, LLC (2132). The Debtors' executive headquarters is located at 2255 Markham Road, Toronto, Ontario, M1B 2W3, Canada.

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## Table of Authorities

### Cases

## Other Authorities



## Statutes

Cinram International ULC (the "**Foreign Representative**") is the authorized foreign representative of the above-captioned debtors (collectively, the "**Debtors**") in a proceeding (the "**CCAA Proceeding**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), pending before the Ontario Superior Court of Justice (the "**Canadian Court**"). On the date hereof, the Foreign Representative commenced these chapter 15 cases and filed verified petitions and the *Foreign Representative's Motion for Orders Granting Provisional and Final Relief in Aid of Foreign CCAA Proceeding* (the "**Recognition Motion**," and, together with the petitions, the "**Petitions for Recognition**"),[2] seeking (a) entry of a provisional order in the form attached thereto as Exhibit A (the "**Provisional Order**"): (i) recognizing and enforcing in the United States, on an interim basis, the Initial Order (the "**Initial CCAA Order**") issued on June 25, 2012 by the Canadian Court, including, without limitation, the Canadian Court's decision to (A) authorize the Debtors to enter into and perform under that certain DIP Facility, and (B) grant the DIP Charge to the DIP Lenders under the DIP Facility, (ii) granting, on an interim basis, to and for the benefit of the DIP Lenders and, to the extent of their adequate protection rights, the Prepetition Secured Lenders, certain protections afforded by title 11 of the United States Code, as amended from time to time (the "**Bankruptcy Code**"), including those protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, (iii) granting an interim stay of execution against the Debtors' assets and applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases on an interim basis pursuant to sections 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, and (iv) granting such other and further relief as the Court deems just and proper; and (b) entry of a final order, after notice and a hearing, in the form attached thereto as Exhibit B

[2] All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Recognition Motion.

(the "**Final Order**") (i) granting the petitions in these cases and recognizing the CCAA Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the United States to the Initial CCAA Order, including any extensions or amendments thereof authorized by the Canadian Court and extending the protections of the Provisional Order to the Debtors on a final basis, (iii) granting the DIP Lenders and, to the extent of their adequate protection rights, the Prepetition Secured Lenders, certain protections afforded by the Bankruptcy Code, and (iv) granting such other and further relief as the Court deems just and proper. The Foreign Representative respectfully submits this Memorandum of Law in support of the Petitions for Recognition.

## Preliminary Statement

The Foreign Representative is authorized by the Debtors and approved by the Canadian Court to, among other things, assist the Debtors in these proceedings, report to the Canadian Court, and take such actions as may be necessary or appropriate in furtherance of the recognition of the CCAA Proceedings. In furtherance of its duties, the Foreign Representative seeks (a) entry of the Provisional Order granting certain provisional relief to preserve the Debtors' assets in the United States and to protect against termination of executory contracts and leases based upon *ipso facto* bankruptcy provisions, as well as granting certain protections to the Debtors' DIP Lenders, and to the extent of their adequate protection rights, the Prepetition Secured Lenders, and (b) entry of the Recognition Order, after notice and a hearing, granting recognition of the CCAA Proceeding as a foreign main proceeding and granting relief similar to that requested in the Provisional Order on a final basis. Absent the relief requested, the CCAA Proceeding could be undermined, the Debtors' restructuring and sale efforts could be

jeopardized, and the Debtors, their creditors, and other parties in interest could suffer irreparable harm.

The ultimate purpose of the CCAA Proceeding is to facilitate the Proposed Sale (as defined in the Bell Affidavit (defined below)) pursuant to an order of the Canadian Court, with the aid of the U.S. Court. The Foreign Representative believes that granting the additional relief sought herein will best assure the fair and efficient administration of the CCAA Proceeding, facilitate the rescue of the salvageable assets of a financially troubled business, maximize the value of the Debtors' business for the benefit of creditors, and preserve many jobs, all of which is consistent with the principles set forth in chapter 15 of the Bankruptcy Code and the public policy of the United States of America.

Chapter 15 of the Bankruptcy Code authorizes the Court to recognize a "foreign proceeding," as defined by section 101(23) of the Bankruptcy Code, upon the proper commencement of a case under chapter 15 by a "foreign representative," as defined by section 101(24) of the Bankruptcy Code. Chapter 15 further authorizes the Court to grant assistance in the United States to a foreign representative in connection with a foreign proceeding, including by granting injunctive and other relief pursuant to sections 1519, 1520, and 1521 of the Bankruptcy Code.

The Petitions for Recognition satisfy all of the requirements set forth in sections 1515, 1517, 1519, 1520, and 1521 of the Bankruptcy Code, as applicable. Moreover, the relief requested therein is necessary and appropriate under chapter 15 of the Bankruptcy Code. Finally, granting recognition of the CCAA Proceeding and the related relief requested by the Foreign Representative is consistent with the goals of international cooperation with and assistance to foreign courts recognized by section 1501(a) of the Bankruptcy Code.

## Factual Background

The Court is respectfully referred to the Petitions for Recognition and the *Declaration of John Bell in Support of (I) Verified Chapter 15 Petitions, (II) Foreign Representative's Motion for Orders Granting Provisional and Final Relief in Aid of Foreign CCAA Proceeding, and (III) Certain Related Relief* (the "**Bell Declaration**"), which contains the facts relied on in this Memorandum of Law, and is incorporated herein by reference.

## Argument

### A. The CCAA Proceeding is Entitled to Recognition as a Foreign Main Proceeding

#### 1. The Court has Jurisdiction to Recognize the CCAA Proceeding and Grant the Relief Requested

The Court has jurisdiction to hear and determine cases commencing under the Bankruptcy Code and all core proceedings arising thereunder pursuant to 28 U.S.C. §§ 157 and 1334 and section 1501 of the Bankruptcy Code, as well as the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. A case under chapter 15 is a "case" under the Bankruptcy Code. Recognition of foreign proceedings and other matters under chapter 15 of the Bankruptcy Code have expressly been designated as core proceedings pursuant to 28 U.S.C. § 157(b)(2)(P).

Furthermore, venue is proper in this District. Cinram International Inc.'s principal asset in the United States is the stock of Cinram (U.S.) Holding's Inc., whose principal assets, in turn, are the stock and membership interests of the other Debtors, which are each organized under the laws of Delaware. Under Delaware general corporate law, these equity interests are all located in the State of Delaware.[3] Additionally, given the relative proximity of

[3] Del. Gen. Corp. Law § 169 provides: "For all purposes of title, action, attachment, garnishment and jurisdiction of all courts held in this State, but not for the purpose of taxation, the situs of the ownership of the capital stock of all corporations existing under the laws of this State, whether organized under this

this District to Ontario, Canada, the convenience of traveling to and from this District to Ontario, Canada, and the administrative savings of jointly administering each of the related Debtors' ancillary proceedings before one court, it is respectfully submitted that venue in this District is consistent with the interests of justice and the convenience of the parties. For these reasons, venue of these cases in this District is proper pursuant to 28 U.S.C. §§ 1410(1) and (3).

**2. These Cases Are Proper Under Chapter 15**

Chapter 15 of the Bankruptcy Code applies where a foreign representative seeks the assistance of a United States bankruptcy court in connection with a foreign proceeding. 11 U.S.C. § 1501(b)(1). The Debtors' cases are proper under chapter 15 because (a) these cases concern a "foreign proceeding," (b) these cases were commenced by Cinram International ULC, a duly authorized "foreign representative," (c) the Petitions for Recognition, and all required supporting documentation, were properly filed, and (d) the relief sought by the Petitions for Recognition is consistent with the objectives of chapter 15.

(a) **The CCAA Proceeding is a "Foreign Proceeding"**

Section 101(23) of the Bankruptcy Code defines a "foreign proceeding" as:

> a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23). The CCAA Proceeding fits squarely within the Bankruptcy Code's definition of a "foreign proceeding" as it is an insolvency action brought under the CCAA and supervised by the Canadian Court. The CCAA provides for a controlled reorganization

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chapter or otherwise, shall be regarded as in this State." *See also Castro v. ITT Corp.*, 598 A.2d 674, 681 (Del. Ch. Ct. 1991) (holding that section 169 "continues to fix the situs of all stock of a Delaware corporation in [Delaware] for all purposes other than taxation.").

procedure designed to enable financially distressed companies to avoid foreclosure or seizure of assets while maximizing going concern value for the benefit of creditors and other parties in interest. *See, e.g., In re Arctic Glacier Int'l Inc.*, No. 12-10605 (Bankr. D. Del. Mar. 16, 2012) (order granting recognition of CCAA proceeding as a "foreign proceeding"); *In re Angiotech Pharm., Inc.*, No. 11-10269 (Bankr. D. Del. Feb. 22, 2011) (granting recognition of CCAA proceeding as a "foreign proceeding"); *In re Grant Forest Prod. Inc.*, No. 10-11132 (Bankr. D. Del. Apr. 26, 2010) (granting recognition of CCAA proceeding as a "foreign proceeding"); *In re Fraser Papers*., No. 09-12123 (Bankr. D. Del. July 13, 2009) (granting recognition of CCAA proceeding as a "foreign proceeding"); *In re W.C. Wood Corp., Ltd.*, No. 09-11893(Bankr. D. Del. June 18, 2009) (granting recognition of CCAA proceeding as a "foreign proceeding"); *In re MAAX Corp.*, No. 08-11443 (Bankr. D. Del. August 5, 2008) (granting recognition of CCAA proceeding as a "foreign proceeding"). Pursuant to the CCAA, the Debtors have obtained from the Canadian Court the Initial CCAA Order, a certified copy of which is attached to the Bell Declaration as Exhibit A.

(b) **Cinram International ULC is a Proper "Foreign Representative"**

Section 101(24) of the Bankruptcy Code provides that:

> The term "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24). The Initial CCAA Order specifically contemplates the commencement of these cases by Cinram International ULC, a "person" within the meaning of section 101(41) of the Bankruptcy Code, to assist the Debtors and the Canadian Court in the Debtors' reorganization efforts, and Cinram International ULC was duly appointed by the Canadian Court

to act as foreign representative pursuant to paragraphs 63 and 64 of the Initial CCAA Order, which provide as follows:

> THIS COURT ORDERS that Cinram International ULC is hereby authorized and empowered to act as the foreign representative in respect of the within proceedings for the purposes of having these proceedings recognized in a jurisdiction outside Canada.
>
> THIS COURT ORDERS that Cinram International ULC is hereby authorized, as the foreign representative of the CCAA Parties and of the within proceedings, to apply for foreign recognition of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to Chapter 15 of the *U.S. Bankruptcy Code*, and to take such actions necessary or appropriate in furtherance of the recognition of these proceedings or the prosecution of any sale transaction (including the Proposed Transaction) in any such jurisdiction.

Accordingly, Cinram International ULC is a "foreign representative" as defined in the Bankruptcy Code.

(c) **The Foreign Representative Properly Filed These Cases**

These cases were duly and properly commenced as required by sections 1504 and 1509(a) of the Bankruptcy Code by the filing of the Petitions for Recognition pursuant to section 1515(a) of the Bankruptcy Code, which was accompanied by all documents and information required by sections 1515(b) and (c). *See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 127 (Bankr. S.D.N.Y. 2007) ("A case under chapter 15 is commenced by a foreign representative filing a petition for recognition of a foreign proceeding pursuant to section 1515 of the Bankruptcy Code"), *aff'd*, 389 B.R. 325 (S.D.N.Y. 2008). Because the Foreign Representative has satisfied the requirements set forth in section 1515 of the Bankruptcy Code, these cases have been properly commenced.

(d) **The Petitions for Recognition are Consistent with the Purpose of Chapter 15**

One of the stated objectives of chapter 15 is the "fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor." 11 U.S.C. § 1501(a)(3). These cases have been commenced for the purpose of obtaining the assistance of the Court to ensure the effective and economical administration of the CCAA Proceeding by, among other things, restricting the Debtors' creditors from taking certain actions in the United States that would undermine the unified, collective, and equitable resolution of the Debtors' liabilities in the CCAA Proceeding before the Canadian Court through the Proposed Sale or otherwise. As such, the Petitions for Recognition are consistent with the purpose of chapter 15 and the cross-border coordination it promotes.

### 3. The CCAA Proceeding is a "Foreign Main Proceeding" Under Section 1502(4) and 1517(b)(1) of the Bankruptcy Code

The Foreign Representative respectfully submits that the Court should grant recognition of the CCAA Proceeding as a "foreign main proceeding" as defined in section 1502(4) of the Bankruptcy Code. The Bankruptcy Code provides that a foreign proceeding is a "foreign main proceeding" if it is pending in the country where the debtor has the center of its main interests. 11 U.S.C. § 1517(b)(1). Absent evidence to the contrary, a debtor's registered office is presumed to be the center of its main interests. 11 U.S.C. § 1516(c). *See In re Bear Stearns*, 374 B.R. at 127, 130 (noting that presumption that a debtor's center of main interests is the place of its registered office may be "rebutted by evidence to the contrary"). While the location of the debtor's registered office is indicative, many factors weigh into the center of main interests analysis, including "the location of the debtor's headquarters; the location of those who actually manage the debtor (which, conceivably could be the headquarters of a holding company); the location of the debtor's primary assets; the location of the majority of the debtor's creditors or of a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law

would apply to most disputes." *Bear Stearns*, 374 B.R. at 128 (citing *In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006), *aff'd*, 371 B.R. 10 (S.D.N.Y. July 5, 2007)).

The center of main interests for the Debtors' enterprise is Toronto, Ontario, Canada. The Debtors and their non-debtor affiliates are operationally and functionally integrated in many significant respects, largely organized under centralized senior management, and subject to combined cash management and accounting functions, all of which are based in Toronto, Ontario, Canada. Indeed, among others, the following critical functions are mostly or entirely performed for the Debtors and their non-debtor affiliates out of the Toronto office:

a. all of the Debtors and their non-debtor affiliates (collectively "**Cinram**") report to Cinram International Income Fund ("**CIIF**"), the ultimate parent company of Cinram, which is organized under the laws of Ontario;

b. the operations of all of the Debtors are managed and directed from their head office in Toronto;

c. corporate governance for all of the Debtors is directed from Canada;

d. in-person meetings of the Board of Trustees of CIIF are typically held in Toronto;

e. a majority of the members of the Boards of Directors or Managers of CII and each of the other Debtors maintain their offices in Ontario, Canada;

f. strategic and key operating decisions and key policy decisions for all of the Debtors are made by staff located in Toronto;

g. the Debtors' corporate accounting, accounts payable, insurance procurement, accounts receivable, financial planning, internal auditing, marketing, treasury, real estate, research & development, and tax services are provided from Toronto;

h. the Debtors' finance, legal, human resources, payroll, billing, freight management, procurement, and engineering services are shared among themselves and with CII in Toronto;

i. the Debtors' cash management functions are maintained and directed from Toronto;

j. although the Debtors and CII are separate entities and maintain distinct, complete books and records, funds are transferred between the Debtors' and

the Toronto office to settle inter-company balances, meet liquidity requirements and to concentrate surplus cash for investment in the Debtors' cash management system;

k. key information technology and systems used by certain of the Debtors and by certain of CII's European subsidiaries are provided from Toronto;

l. management and senior staff of the Debtors regularly attend meetings in Toronto;

m. all public company reporting and investor relations for the global Cinram enterprise are directed from Toronto by CIIF on a consolidated basis;

n. the chief executive officer that oversees financial management of the global Cinram enterprise is based in Toronto;

o. with the exception of routine maintenance expenditures, all capital expenditure decisions affecting the global Cinram enterprise are managed in Toronto, Ontario;

p. new business development initiatives are centralized and managed from Toronto, Ontario; and

q. each of the Debtors maintains a bank account in Canada with a balance of at least $1,000 in each account.

Thus, based on the facts present in these cases, the Foreign Representative respectfully submits that Toronto, Ontario, Canada should be found to be the center of the Debtors' main interests. *In re Tri-Continental Exch. Ltd.*, 349 B.R. 627, 634 (Bankr. E.D. Cal. 2006) (noting that a debtor's center of main interests is the "place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties"); *In re Fairfield Sentry Ltd.*, 440 B.R. 60, 66 (Bankr. S.D.N.Y. 2010).

Further, at least one court has equated a company's principal place of business to the center of its main interests. *Id.*; *In re Bear Stearns*, 374 B.R. at 127. As described above, nearly all of the Debtors' corporate business is conducted from Canada. As such, Canada is "ascertainable by third parties" as the Debtors' center of main interests. *In re Bear Stearns*, 374 B.R. at 130. Accordingly, given that the CCAA Proceeding is pending in Ontario, Canada,

which is the Debtors' center of main interests, the CCAA Proceeding should be recognized as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

An order recognizing a foreign proceeding shall be entered if all of the requirements for recognition have been met. 11 U.S.C. § 1517. As set forth above, the CCAA Proceeding is a "foreign main proceeding" within the meaning of section 1502(4) of the Bankruptcy Code, Cinram International ULC qualifies as a "foreign representative" under the Bankruptcy Code, and the Petitions for Recognition meet the requirements of Bankruptcy Code section 1515. Accordingly, based on the submissions contained herein and in the Bell Declaration, pursuant to section 1517(a) of the Bankruptcy Code, the Foreign Representative is entitled to entry of an order granting recognition to the CCAA Proceeding. 11 U.S.C. § 1517 (an order recognizing a foreign proceeding "shall be entered" if all of the requirements for recognition have been met).

**4. Recognizing the CCAA Proceeding as a Foreign Main Proceeding is Consistent with the Purpose of Chapter 15 and Public Policy**

Section 1506 of the Bankruptcy Code provides that nothing in chapter 15 shall prevent the court from refusing to take an action otherwise required therein if such action would be manifestly contrary to the public policy of the United States. 11 U.S.C. § 1506. The Foreign Representative submits that the relief requested is not manifestly contrary to, and is consistent with, public policy of the United States.

It is well established that one of the fundamental goals of the Bankruptcy Code is the centralization of disputes involving the debtor. *See, e.g., In re Ionosphere Clubs, Inc.*, 922 F.2d 984, 989 (2d Cir. 1990) ("The Bankruptcy Code 'provides for centralized jurisdiction and administration of the debtor, its estate and its reorganization in the Bankruptcy Court . . . .'") (internal citations omitted). Indeed, as one court has noted, "the firm policy of American courts

is the staying of actions against a corporation which is the subject of a bankruptcy proceeding in another jurisdiction." *Cornfeld v. Investors Overseas Servs., Ltd.*, 471 F. Supp. 1255, 1259 (S.D.N.Y. 1979) (recognizing that Canadian liquidation proceeding would not violate laws or public policy of New York or the United States).

The CCAA Proceeding is similar to cases under chapter 11 of the Bankruptcy Code because it provides for a centralized process to assert and resolve claims against an estate and to provide distributions to creditors in order of priority. Recognizing the CCAA Proceeding and enjoining certain actions or proceedings with respect to the Debtors and their assets will assist the orderly administration of the Debtors' assets. Such orderly administration is consistent with the public policy of the United States, as embodied in the Bankruptcy Code. Absent the relief requested, there is a possibility that the assets of the Debtors in the United States could be subject to attachments and/or post-judgment enforcement proceedings brought by individual creditors in the U.S. notwithstanding any stay order issued by the Canadian Court. This could result in unnecessary enforcement costs or the piecemeal disposition of assets to the detriment of the CCAA Proceeding and the Debtors' creditors. Avoiding such potential outcomes through the recognition of the CCAA Proceeding and enforcement of the Initial CCAA Order in the United States is consistent with United States public policy and promotes the public policies embodied in the Bankruptcy Code.

Further, recognition of the CCAA Proceeding is consistent with the purpose of chapter 15 and the UNCITRAL Model Law on Cross Border Insolvency. Section 1501(a) of the Bankruptcy Code provides, in pertinent part, that:

> The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of -
>
> (1) cooperation between -

* * *

> (B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

* * *

> (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor; [and]
>
> (4) protection and maximization of the value of the debtor's assets.

11 U.S.C. § 1501.

The relief requested by the Foreign Representative is consistent with the objectives of chapter 15. First, recognition of the CCAA Proceeding would foster cooperation between courts in Canada and the United States in the Debtors' restructuring proceedings. By granting recognition to the CCAA Proceeding and enforcing the Initial CCAA Order in the United States, the Court can effectively assist the Canadian Court in the orderly administration of the Debtors' assets. The Debtors' creditors would be enjoined from commencing or continuing actions against the Debtors and the assets of the Debtors, thereby assisting in the uniform resolution of claims against the Debtors.

Second, recognition of the CCAA Proceeding would promote the fair and efficient administration of a cross-border reorganization procedure that protects the interests of all creditors and interested entities. By recognizing the CCAA Proceeding and granting the relief requested, the process of resolving claims against the Debtors would be centralized in Canada. Claims would be treated in accordance with a plan of arrangement that comports with Canadian law, which is substantially similar to United States law, and any disputes would be subject to the uniform jurisdiction of one tribunal, the Canadian Court. If creditors' actions with respect to the Debtors' United States assets are not effectively stayed, the uniform and orderly voluntary administration of the Debtors in the CCAA Proceeding will be jeopardized.

Finally, the relief requested would protect the Debtors' assets located in the United States. Absent such relief, significant assets of the Debtors may be depleted and available resources may be expended unnecessarily to defend collection and other actions brought in the United States. Accordingly, the relief requested would further the objectives of chapter 15 by assisting the orderly voluntary administration of the Debtors in the CCAA Proceeding.

### 5. Specific Request for Relief Pursuant to Section 1521 of the Bankruptcy Code is Warranted and Appropriate

In addition to the relief automatically provided by section 1520 of the Bankruptcy Code upon recognition of a foreign main proceeding,[4] the Foreign Representative requests, in the event recognition of the CCAA Proceeding is granted, additional relief pursuant to section 1521 of the Bankruptcy Code to assist in the orderly administration of the Debtors' assets, including the extension of the provisional relief described in Section B below pursuant to section 1521(a)(6). Furthermore, upon recognition of a foreign proceeding and at the request of a foreign representative, the Court may grant, with certain express exceptions not applicable here, "any appropriate relief," including any injunctive relief and "any additional relief that may be available to a trustee," provided that the Court determines that doing so is necessary to effectuate the purpose of chapter 15 and to protect the assets of the debtor or the interests of the creditors. 11 U.S.C. § 1521(a). Accordingly, pursuant to section 1521(a)(7) of the Bankruptcy Code, the Foreign Representative requests that the Court extend the protections afforded by sections 364(c), 364(d), 364(e), and 365(e) of the Bankruptcy Code to the Debtors, the DIP

[4] Upon recognition of the CCAA Proceeding as a foreign main proceeding, certain relief is automatically granted as a matter of right, including a stay that enjoins actions against the Debtors and otherwise protects the Debtors. *See* 11 U.S.C. § 1520. In particular, upon the Court's recognition of the CCAA Proceeding as a foreign main proceeding, section 1520(a)(1) of the Bankruptcy Code triggers the automatic stay provisions of section 362 of the Bankruptcy Code with respect to the Debtors.

Lenders and the Prepetition Secured Lenders, as applicable, on a final basis after notice and a hearing.

(a) **Application of the Protections of Section 365(e) of the Bankruptcy Code is Appropriate**

As described in detail in Section B below, the Debtors rely on numerous leases and contracts in the United States to facilitate the manufacture, storage, and shipment of their products. Many of these contracts contain provisions that purportedly give counterparties the right to terminate the agreement and cease performance if the Debtors become insolvent or file bankruptcy proceedings. If lease and contract counterparties use *ipso facto* bankruptcy provisions to terminate those agreements, then the going concern value of the Debtors' business would be decimated. The Foreign Representative therefore submits that application of section 365(e) of the Bankruptcy Code through operation of section 1521(a)(7) of the Bankruptcy Code is necessary and appropriate in these cases.

(b) **Application of the Protections of Section 364 of the Bankruptcy Code is Appropriate**

As set forth more fully in the Bell Declaration, the Debtors commenced the CCAA Proceeding and the Foreign Representative commenced these cases to, among other things, assist the Debtors in consummating the Proposed Sale. To maintain sufficient operating liquidity and fund the administrative costs associated with the CCAA Proceeding and these cases while operating in the ordinary course prior to consummation of the Proposed Sale, the Debtors have made a good-faith business decision, after extensive arm's-length negotiations, to enter into an agreement with certain of their Prepetition Secured Lenders (the "**DIP Lenders**") to obtain access to a USD $15 million post-petition credit facility (the "**DIP Facility**").

The DIP Facility provides, among other things, as follows:[5]

1. Borrower: Cinram (U.S.) Holding's Inc.

2. Guarantors: Each of the Debtors that are not Borrowers have guaranteed the DIP Facility.

3. Lender: JPMorgan Chase Bank, N.A., as Administrative Agent, on behalf of certain of the Debtors' Prepetition Secured Lenders.

4. Availability: $15,000,000.00 in a single draw on a date to be selected by the Borrowers, which shall be a date occurring on or after the Draw Date and prior to the Outside Date. For the avoidance of doubt, the Debtors believe that they will need to, and expect to, draw the entire amount available prior to entry of the Final Order.

5. Use of Proceeds: The Borrowers will use the proceeds of the Loans to finance the working capital needs and other general corporate purposes of the Obligors.

6. Interest Rate: (a) during such periods as such Loan is a U.S. Base Rate Loan, a rate per annum equal at all times to the sum of (i) the U.S. Base Rate in effect from time to time *plus* (ii) 9.00%, and (b) during such periods as such loan is a Eurocurrency Rate Loan, a rate per annum equal at all times during each Interest Period for such Loan to the sum of (i) the Eurocurrency Rate for such Interest Period for such Loan *plus* (ii) 10.00%.

7. Default Interest: Upon the occurrence and during the continuance of any Event of Default, interest shall accrue on the unpaid (a) principal amount of each Loan at 2% per annum above the rate per annum required to be paid on such Loan and (b) amount of all outstanding interest, fees, and other amounts at 2% per annum above the U.S. Base Rate.

8. Term: The DIP Facility's Maturity Date is the earliest to occur of the following dates: (a) September 30, 2012, (b) the closing date of the Sale, (c) the effective date of any plan of compromise and arrangement approved by the creditors of the Obligors, sanctioned by the CCAA Court, and recognized by the U.S. Bankruptcy Court, (d) the date on which the stay under the Initial Order or the Interim or Final Recognition Order expires without being extended, (e) the date on which the CCAA Proceedings shall be dismissed or terminated or converted to a proceeding under the BIA, and (f) the date on which the U.S. Bankruptcy Court refuses to enter an order to recognize any order in the CCAA Proceedings, which the Administrative Agent determines in its reasonable discretion is material and which adversely effects the Lenders.

[5] Capitalized terms used in the following summary have the meanings given to them in the DIP Facility, which is attached as Exhibit D to the Bell Declaration. This summary is qualified in its entirety by reference to the provisions of the DIP Facility.

9. Security/Priority: Upon entry thereof, the DIP Financing Orders and the Loan Documents will create a valid and perfected super-priority priming security interest in favor of the Administrative Agent on behalf of the Lenders in the Obligors' Property, subordinate only to the Carve-Out.

10. Carve-Out: The Administration Charge and any validly perfected security interest in favor of a "secured creditor" as defined in the CCAA existing as of the CCAA Filing Date, other than Liens in favor of the lenders under the Prepetition Credit Agreement and the Second Lien Credit Agreement.

11. Events of Default: The DIP Facility includes such events of default as are usual and customary for comparable financings, including, without limitation, (a) failure to make payments or prepayments of principal when such payments are due, (b) if any representation or warranty proves to have been incorrect in any material respect when made, (c) failure to observe or perform any applicable covenant, condition, or agreement, including failure to comply with the DIP Budget, (d) if (i) any Proceeding is dismissed or terminated, (ii) any insolvency proceeding or case is commenced by or in respect of any Obligor, other than these Proceedings (iii) a bankruptcy order is made under the BIA against any Obligor, (iv) any Obligor seeks to dismiss or terminate any of the Proceedings, (v) a responsible officer is appointed in respect of any Obligor or its assets in any of the Proceedings, or (vi) an application is filed by any Obligor for approval of any superpriority claim in any of the Proceedings which is *pari passu* with or senior to the claims of the Administrative Agent and the Lenders against the Obligors, unless otherwise permitted in the DIP Financing Order, or if such motion is granted, (e) if any Obligor or any of its Subsidiaries is prevented from continuing to conduct all or any material part of its business affairs, (f) if any DIP Financing Order or other Bankruptcy Court Order material to the Administrative Agent or the Lenders is modified without the Administrative Agent's prior written consent, (g) if any expenditures are made by the Obligors without the consent of the Administrative Agent, (h) the issuance of a court order (i) lifting the Stay of Proceedings, (ii) discontinuing the Proceedings, or (iii) modifying the terms of the DIP Facility or the DIP Charge, (i) if an Initial Order is not entered within two days of the CCAA Filing Date, the Interim Recognition Order is not entered within seven days of the CCAA Filing Date, or the Final Recognition Order is not entered within 35 days of the CCAA Filing Date, (j) if there is any materially negative effect to the DIP Charge, (k) if any Obligor proposes or supports any plan of compromise and arrangement, or draft thereof that does not provide for the payment of the Obligations, (l) a Change of Control occurs, (m) a materially adverse event with respect to the Liens occurs, or (n) the Majority Consenting Lenders (as defined in the Support Agreement) have the right to terminate the Support Agreement or there is an automatic termination of the Support Agreement.

12. Use of Funds Limitations: The DIP Facility includes such use of funds limitations as are usual and customary for comparable financings, including, without limitation, certain limitations on Investments, Restricted Payments, the

> payment of debts other than in accordance with the DIP Budget or as approved by the Administrative Agent, contributions to any Defined Benefit Plans, and cash disbursements on Capital Expenditures.

None of the extraordinary provisions required to be highlighted pursuant to Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware are included in the Recognition and Relief Motion, the Interim Order, or the DIP Facility.

Due to the Debtors' liquidity constraints, and as discussed further below, the Debtors require access to the DIP Facility prior to entry of the Final Order. The DIP Lenders have conditioned availability thereunder upon the Court's grant of certain protections under section 364 of the Bankruptcy Code. In addition to section 364 protections, the DIP Lenders have conditioned the continuing effectiveness of the DIP Facility upon the Court's recognition in full of the Initial CCAA Order.

The Foreign Representative submits that the DIP Lenders and the Prepetition Secured Lenders are entitled to the protections of section 364 of the Bankruptcy Code as described herein and to the extent set forth in the Provisional Order and the Final Order. Pursuant to section 364(c) of the Bankruptcy Code:

> If the trustee is unable to obtain unsecured credit allowable under section 503(b)(l) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt . . .
>
> (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
>
> (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
>
> (3) secured by a junior lien on property of the estate that is subject to a lien.

Courts have articulated a three-part test to determine if a debtor is entitled to obtain financing pursuant to section 364(c) of the Bankruptcy Code: whether (a) the debtor is unable to obtain unsecured credit under section 364(b); (b) the credit transaction is necessary to preserve the assets of the estate; and (c) the terms of the transaction are fair, reasonable, and adequate under the circumstances. *See, e.g.*, *In re Aqua Assocs.*, 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991); *In re Ames Dep't Stores. Inc.*, 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990); *In re Crouse Group, Inc.*, 71 BR. 544, 546 (Bankr. E.D. Pa. 1987).

Given their overleveraged capital structure and current liquidity constraints, the Debtors have been unable to obtain (a) unsecured credit as an administrative expense, (b) credit secured solely by a lien on property of the estate that is not otherwise subject to a lien (because substantially all of their property has already been granted as collateral), or (c) credit secured by a junior lien on property of the estate which is already subject to a lien. Indeed, the Debtors are unable to obtain any credit for borrowed money on more favorable terms and conditions than those provided in the DIP Facility, or without granting to the DIP Lenders the protections afforded by section 364 of the Bankruptcy Code.

Given the Debtors' current financial situation, in the absence of financing from the DIP Lenders, the Debtors could face a shuttering of certain or all of their operations during the pendency of these cases. Accordingly, the Debtors have demonstrated "by a good faith effort that credit was not available without" the protections afforded by section 364(c) of the Bankruptcy Code. *Bray v. Shenandoah Fed. Sav. and Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) ("[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable"); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992); *In re Sky Valley, Inc.*, 100 B.R. 107,

113 (Bankr. N.D. Ga. 1988) (where there are few lenders likely to be able and/or willing to extend the necessary credit to the debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct an exhaustive search for financing."), aff'd sub nom., *Anchor Say. Bank FSB v. Sky Valley, Inc.*, 99 B R. 117, 120 n.4 (N.D. Ga. 1989).

Without the DIP Facility, the Debtors will not be able to fund the continued operation of the their business in a manner that will permit their pursuit of the Proposed Sale and avoid irreparable harm to the Debtors and their estates. The availability to the Debtors of sufficient working capital and liquidity through the incurrence of new indebtedness and other financial accommodations from the DIP Lenders and the Prepetition Secured Lenders is necessary to bolster the confidence of the Debtors' vendors and suppliers of other goods and services, as well as their customers and employees. Indeed, the preservation and maintenance of the going concern value of the Debtors' business is dependent on access to the DIP Facility, which was already approved on a final basis by the Canadian Court in the CCAA Proceeding.

**i. The DIP Financing Represents an Exercise of the Debtors' Sound Business Judgment and was Negotiated in Good Faith**

Bankruptcy courts routinely defer to a debtor's business judgment on most business decisions, including the decision to borrow money. *See Grp. of Inst. Inv. v. Chicago Mil. St. P. & Pac. Ry.*, 318 U.S. 523, 550 (1943); *In re Lifeguard Indus., Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983); *In re Hamilton Square Associates*, No. 9l-14720S, 1992 WL 98294, at *1 (Bankr. E.D. Pa. May 51992) (holding that a "debtor in possession's business judgment must be accepted if reasonable"). In general, a bankruptcy court should defer to a debtor in possession's business judgment regarding both the need for and the proposed use of funds unless such decision is arbitrary and capricious. *See In re Wheeling-Pittsburgh Steel Cow*, 72 BR. 845, 849 (Bankr. W.D. Pa. 1987) (holding that "the court should not interfere with or second-guess

the debtor's sound business judgment unless and until evidence is presented that establishes that the debtor's decision was one taken in bad faith or in gross abuse of its retained business discretion"). Courts generally will not second-guess a debtor in possession's business decisions when those decisions involve "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Code" *Curlew Valley*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (footnotes omitted); *In re Lynx Transport, Inc.*, No. 98-36433DAS, 1999 WL 615366. at *3 (Bankr. E.D. Pa. Aug. 11, 1999) (holding that "a debtor in possession (DIP) is authorized to make its own independent business judgments").

The Debtors, in the exercise of their prudent business judgment and consistent with their fiduciary duties, have concluded that the terms and conditions of the DIP Facility are fair, reasonable, and the best available under the circumstances and are supported by reasonably equivalent value and consideration. Among other reasons, obtaining the DIP Facility from the DIP Lenders will assure the Debtors of the support of their Prepetition Secured Lenders throughout this restructuring process. That support is critical to achieving the Proposed Sale, preserving the Debtors' business as a going-concern, and maximizing value for all of the Debtors' creditors.

Furthermore, the Debtors submit that the DIP Facility was negotiated in good faith and at arm's-length by all parties involved and, accordingly, the Debtors believe that any credit extended and loans made to the Debtors under the DIP Facility should be deemed to have been extended in good faith, within the meaning of section 364(e) of the Bankruptcy Code. The Debtors further submit that the proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses, as a consequence of which the DIP Lenders are entitled to the protection and benefits of section 364(e) of the Bankruptcy Code.

### ii. Use of Cash Collateral and Grant of Adequate Protection is Warranted Under the Circumstances

Pursuant to the Motion and as set forth in the Provisional Order, the Debtors also seek authority to use the Prepetition Secured Lenders' cash collateral (the "**Cash Collateral**") and approval to grant adequate protection to the Prepetition Secured Lenders. Section 363(c)(2) of the Bankruptcy Code permits a debtor to use, sell, or lease cash collateral if the entity with an interest in such cash collateral consents or the court authorizes such use. 11 U.S.C. § 363(c)(2). The Court should authorize the use of the Cash Collateral in these cases because the Debtors need the Cash Collateral to meet their ongoing payroll-related obligations and obligations to other essential providers of goods and services and because the Prepetition Secured Lenders have consented to the use of their Cash Collateral, subject to (among other things) entry of the Provisional Order and the Final Order in the forms attached to the Motion. *See, e.g., Mbank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1397-98 (10th Cir. 1987); *accord Hoffman v. Portland Bank (In re Hoffman)*, 51 B.R. 42, 47 (Bankr. W.D. Ark. 1985); *Chrysler Creditor Corp. v. Ruggiere (In re George Ruggiere Chrysler-Plymouth, Inc.)*, 727 F.2d 1017, 1019 (11th Cir. 1984).

As adequate protection for the interests of the Prepetition Secured Lenders in their prepetition collateral (including Cash Collateral) on account of the granting of priming liens under the DIP Facility, subordination to the Carve-Out (as defined in the DIP Facility), the Debtors' use of the Cash Collateral, and any other decline in value arising out of the automatic stay or the Debtors' use, sale, disposition, or other depreciation of the prepetition collateral, the Debtors request authority, pursuant to section 364(d) of the Bankruptcy Code, to provide the Prepetition Secured Lenders the adequate protections described below. The Debtors submit that the terms of the proposed adequate protection arrangements and the use of Cash Collateral are

fair and reasonable, reflect the Debtors' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the consent of the Prepetition Secured Lenders to the DIP Facility and support of the Proposed Sale.

Specifically, the Debtors request authority to protect the interest of the Prepetition Secured Lenders by granting to the Prepetition Agent for the benefit of each Prepetition Secured Lender a replacement lien on the post-petition assets of the Debtors to the same extent held prepetition and superpriority administrative expense claims. Accordingly, to the extent of the diminution of value of the interests of the Prepetition Secured Lenders in their prepetition collateral, the Debtors seek authority to grant the Prepetition Secured Lenders pursuant to section 364(d) of the Bankruptcy Code, valid, binding, enforceable, and automatically perfected post-petition security interests in and liens on the Collateral (as defined in the DIP Facility) (the "**Replacement Liens**"). The Replacement Liens shall be junior only to (a) the Carve Out, (b) the DIP Lenders' liens on the Collateral, and (c) certain Permitted Priority Liens (as defined in the DIP Facility). The Debtors further seek authority to grant the Prepetition Secured Lenders an allowed administrative expense claim under section 364(c)(1) of the Bankruptcy Code with priority, subject and subordinate only to the Carve Out and the obligations under the DIP Facility, and otherwise over all administrative expense claims and unsecured claims against the Debtors, whether now existing or hereafter arising, in each case as set forth in the Provisional Order and the Final Order

In addition, the Debtors request authority to provide adequate protection to their Prepetition Secured Lenders in the form of ongoing payment of the reasonable and documented professional fees and expenses of legal and financial advisors to the Prepetition Lenders under

the Pre-Petition Credit Agreement (as defined in the DIP Facility) in accordance with the DIP Budget (as defined in the DIP Facility).

For all of the reasons set forth in this Section A, the Foreign Representative is requesting that the Court, pursuant to sections 1520, 1521(a)(7), and 105(a) of the Bankruptcy Code, give full force and effect to the Initial CCAA Order of the Canadian Court in the United States, afford the Debtors the protections of section 1520 of the Bankruptcy Code, afford the protections of the Bankruptcy Code's *ipso facto* provisions to the Debtors, approve the DIP Facility, and grant to the DIP Lenders and, to the extent provided in the DIP Facility and the Motion, the Prepetition Secured Lenders, the protections of sections 364(c), 364(d), and 364(e) of the Bankruptcy Code. The Foreign Representative submits that the relief requested herein and in the Petitions for Recognition is consistent with well-established practice under the Bankruptcy Code, and that similar relief is routinely granted to trustees in domestic proceedings.

**B. The Provisional Relief Requested by the Foreign Representative is Within the Scope of Section 1519 of the Bankruptcy Code and Appropriate Under the Circumstances**

Pursuant to the Recognition Motion, the Foreign Representative also seeks entry of an order making sections 362, 364(c), 364(d), 364(e), and 365(e) of the Bankruptcy Code applicable in these ancillary cases on a provisional basis pending entry of the Final Order pursuant to sections 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code. As noted, the Foreign Representative believes that application of these provisions in these cases is crucial to prevent irreparable injury to the value of the Debtors' assets by not subjecting them to diminution in value resulting from the collection, enforcement, or termination efforts of creditors or contract counterparties prior to the disposition of the Petitions for Recognition and by ensuring the Debtors' continued access to the necessary liquidity to consummate the Proposed Sale and maximize value for all creditors in these cases.

### 1. The Relief Requested is Authorized by Sections 1519(a)(3), 1521(a)(7), and 105(a)

Section 1519(a)(3) of the Bankruptcy Code authorizes the Court to grant, on a provisional basis, any relief available pursuant to section 1521(a)(7). Section 1521(a)(7) provides that the Court may grant any relief available to a trustee, subject to certain exceptions not relevant here. The automatic stay of section 362 is an essential feature of the Bankruptcy Code. Section 365(e) of the Bankruptcy Code provides similarly invaluable protection to Debtors against the termination of contracts or leases based solely on so-called *ipso facto* bankruptcy provisions. Although not automatic upon filing, the Court has discretion to grant section 362 and 365(e) relief on a provisional basis pursuant to sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code. In addition, section 105(a) of the Bankruptcy Code further allows the Court to "issue any order . . . necessary or appropriate to carry out the provisions of [title 11]."

The provisional application of sections 362 and 365(e) of the Bankruptcy Code, among others, has been approved in several cases, both within and outside of this jurisdiction. *See, e.g.*, *In re Elpida Memory, Inc.*, No. 12-10947 (Bankr. D. Del. Mar. 21, 2012) (applying section 362 of the Bankruptcy Code on a provisional basis to the actions of all creditors against the debtors and their property located within the United States, pursuant to section 1519 of the Bankruptcy Code); *In re Arctic Glacier Int'l Inc.*, No. 12-10605 (Bankr. D. Del. Feb. 23, 2012) (granting provisional relief, through sections 1519 and 1521 of the Bankruptcy Code, sections 108, 362, and 365(e)); *In re Catalyst Paper Corp.*, No. 12-10221 (Bankr. D. Del. Feb. 8, 2012) (granting provisional DIP relief, through sections 1519 and 1521 of the Bankruptcy Code); *In re Angiotech Pharm. Inc.*, No. 11-10269 (Bankr. D. Del. Jan. 31, 2011) (granting provisional relief, including protections of automatic stay and section 365(e)); *In re Nortel Networks UK Ltd.*, No.

09-11972 (Bankr. D. Del. Oct. 27, 2010) (granting provisional relief, including protections of automatic stay and section 365(e); *In re Innua Canada Ltd.*, No. 09-16362 (Bankr. D.N.J. Mar 25, 2009) (granting provisional relief, including protections of automatic stay); *In re MAAX Corp.*, No. 08-11443 (Bankr. D. Del. July 14, 2008) (applying section 1519 of the Bankruptcy Code and section 365(e) to protect against contract termination); *In re Destinator Techs. Inc.*, No. 08-11003 (Bankr. D. Del. May 23, 2008) (incorporating sections 363 and 364 in the interim period). As further set forth below, provisional application of sections 362 and 365(e) of the Bankruptcy Code is appropriate here, and in the best interests of the Debtors and their creditors.

Similarly, as discussed in Section A above, access to the Debtors' DIP Facility has been conditioned upon, among other things, the extension to the DIP Lenders, and to the extent of their adequate protection, the Prepetition Secured Lenders, of the protections afforded pursuant to sections 364(c), 364(d), and 364(e) of the Bankruptcy Code. The provisional application of section 364 of the Bankruptcy Code has been approved by the Court in other chapter 15 cases. *See In re Arctic Glacier Int'l Inc.*, No. 12-10605 (Bankr. D. Del. Feb. 23, 2012) (granting provisional relief, through sections 1519 and 1521 of the Bankruptcy Code, of section 364(e)). Further, relief pertaining to post-petition financing has been granted by the Court and courts in other districts in chapter 15 proceedings. *See e.g., In re Arctic Glacier Int'l Inc.*, No. 12-10605 (Bankr. D. Del. Feb. 23, 2012) (order granting provisional DIP relief); *In re Fraser Papers Inc.*, No. 09-12123 (Bankr. D. Del. June 19, 2009); *In re W.C. Wood Corp., Ltd.*, No. 09-11893 (Bankr. D. Del. June 1, 2009); *In re Destinator Techs. Inc.*, No. 08-11003 (Bankr D. Del. May 20, 2008). In addition, similar adequate protection rights have been granted to prepetition secured lenders in at least one chapter 15 case in this District. *In re Catalyst Paper Corp.*, No. 12-10221 (Bankr. D. Del. Mar. 5, 2012).

### 2. The Relief Requested is Necessary and Appropriate to Prevent Irreparable Harm

Relief pursuant to section 1519 of the Bankruptcy Code is available where the foreign representative can satisfy the standard for injunctive relief. 11 U.S.C. § 1519(e); *In re Innua Canada Ltd.*, No. 09-16362, 2009 WL 1025088, at *3 (Bankr. D.N.J. Mar. 25, 2009). In the Third Circuit, the factors considered for injunctive relief include "(1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest." *United States v. Bell*, 414 F.3d 474, 478 n.4 (3d Cir. 2005) (citing *ACLU of N.J. v. Black Horse Pike Reg'l Bd. of Educ.*, 84 F.3d 1471, 1477 n. 2 (3d Cir. 1996)). *See also Rogers v. Corbett*, 468 F.3d 188, 192 (3d Cir. 2006) (citations omitted); *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004) (citations omitted).

The greater the relative hardship to the party seeking the preliminary injunction, the less probability of success must be shown. *Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir. 2003). In the cross-border restructuring context, courts have consistently recognized that "the premature piecing out of property involved in a foreign liquidation proceeding constitutes irreparable injury." *In re Lines*, 81 B.R. 267, 270 (Bankr. S.D.N.Y 1988). The Foreign Representative submits that this standard is satisfied here and that it is therefore entitled to the requested provisional relief pursuant to section 1519 of the Bankruptcy Code, including the entry of the Provisional Order.

#### (a) There is a Substantial Likelihood of Foreign Recognition

As set forth in Section A above, the Foreign Representative has provided a solid basis for recognition of the CCAA Proceeding, and has thereby more than demonstrated a

reasonable probability that such proceeding will be recognized as a foreign main proceeding. Based on the facts that (a) the CCAA Proceeding is pending in Canada, the location of the Debtors' center of main interests, (b) all proper supporting documentation was filed contemporaneously with the Verified Petitions, and (c) these cases were properly commenced by a duly appointed foreign representative, there is a high likelihood that recognition of the CCAA Proceeding as a foreign main proceeding will be granted.

(b) **The Debtors Will Suffer Irreparable Injury if the Provisional Order is Not Entered**

The Foreign Representative believes that application of provisional relief pursuant to sections 362 and 365 of the Bankruptcy Code in these cases is critical to the prevention of irreparable damage to the value of the Debtors' assets and business. These cases were commenced for the purpose of obtaining the assistance of the Court in respect of the CCAA Proceeding and to give effect in the United States to the Initial CCAA Order of the Canadian Court. Unless the Provisional Order is entered, the Debtors face the real possibility of immediate and irreparable harm from (a) individual creditors' collection and enforcement actions, (b) the termination of certain valuable contracts and critical leases as a result of the filing of these cases and the CCAA Proceeding, (c) prejudice that could result from decentralized administration of the Debtors' assets, and (d) the decreased value of the Debtors' business in the event of administrative insolvency, or potential administrative insolvency.

With respect to the potential for collection activity on a piecemeal basis, a number of courts have recognized the need for provisional relief to prevent individual creditors from taking extrajudicial advantage of the recognition process. *See Victrix S.S. Co., S.A. v. Salen Dry Cargo, A.B.*, 825 F.2d 709, 713-14 (2d Cir. 1987) (harm to an estate exists where the orderly determination of claims and the fair distribution of assets are disrupted); *In re Banco Nacional de*

*Obras y Servicios Publicos, S.N.C.*, 91 B.R. 661, 664 (Bankr. S.D.N.Y. 1988) (stating that injunctive relief is necessary "to prevent individual American creditors from arrogating to themselves property belonging to the creditors as a group"); *In re Lines*, 81 B.R. at 270 (stating that "the premature piecing out of property involved in a foreign liquidation proceeding constitutes irreparable injury").

If all creditors are not enjoined, the assets of the Debtors located in the United States may be prematurely seized and the orderly determination of claims in the foreign proceeding will be rendered impossible. If creditors unilaterally pursue collection or enforcement efforts, contract termination, or application of setoff, it could diminish the value of the Debtors' assets and cause significant delay and disruption to the Debtors' restructuring process and the Proposed Sale.

Further, the Debtors rely on a number of critical leased properties and contracts in the United States to manufacture, store, and ship their products to their customers. If lease and contract counterparties used *ipso facto* bankruptcy provisions to terminate those agreements, then the going concern value of the Debtors' business would be decimated. Without the protections afforded by section 365(e) of the Bankruptcy Code, should such leases and other contracts be terminated, the Debtors would lose important rights and benefits thereunder, to the detriment of the Debtors' business and, in turn, their creditors. Thus, absent the provisional relief requested, the Debtors and their creditors may suffer irreparable harm.

Without the certainty that the automatic stay and section 365(e) protection can provide, the Debtors would be at risk of facing collection proceedings, termination of valuable contracts and leases, and other harmful actions by creditors resulting in major disruptions of the

Debtors' reorganization through the CCAA Proceeding. The purpose of chapter 15 is to prevent such harm. *See* 11 U.S.C. § 1501.

Similarly, as set forth above, without access to working capital and liquidity prior to entry of the Final Order, the Debtors cannot effectively operate their business and will face increased risk that suppliers and other critical parties will cease doing business with them. Lack of liquidity, or perceived lack of liquidity, could thus quickly result in administrative insolvency and a significantly diminished recovery for all of the Debtors' creditors. Therefore, the Debtors submit that entry of the Provisional Order and the approval granted therein of the DIP Facility, the incurrence of indebtedness thereunder, and other financial accommodations associated therewith, including the use of Cash Collateral and granting of related adequate protection rights to the Prepetition Secured Lenders are each necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the hearing on the Final Order. In the Debtors' sound business judgment, entry of the Provisional Order is in the best interests of the Debtors and their creditors as it will, among other things, allow for the continued operation and ultimate preservation of the Debtors' existing business while providing the greatest recovery possible to all of the Debtors' creditors.

Accordingly, the Debtors respectfully request that, pending the hearing on the Final Order, the Provisional Order be approved in all respects and that the terms and provisions of the Provisional Order be implemented and that, after the Final Hearing, the Final Order be approved in all respects and the terms and provision of the Final Order be implemented.

(c) **There Will Be No Greater Harm to Others if the Relief is Granted**

In contrast to the hardships described above, preservation of the *status quo* through imposition of the automatic stay, approval of the necessary protections of 364(c), 364(d), and 364(e) that are a prerequisite to the Debtors' access to the DIP Facility, and application of

section 365(e) of the Bankruptcy Code while the Foreign Representative and the Debtors undertake the reorganization process in the CCAA Proceeding will not prejudice creditors. The relief requested in the Recognition Motion is intended to be temporary, extending only through the disposition of the Petitions for Recognition. If recognition of the CCAA Proceeding is granted, some of the same relief being requested on a provisional basis would come into effect automatically. Moreover, the Provisional Order specifically provides that any creditor that believes it has been harmed by the provisional relief granted therein may file a motion with the Court seeking relief therefrom. Accordingly, the balance of the hardships tips decidedly in favor of the Debtors, as there will be negligible, if any, harm to others if the relief is granted.

(d) **Granting the Requested Relief is Consistent with U.S. Public Policy**

Granting the provisional relief requested in the Recognition Motion will help advance the purpose of chapter 15, "to provide effective mechanisms for dealing with cases of cross-border insolvency," with the express objectives of cooperation between United States courts, trustees, examiners, debtors, the courts, and other competent authorities of foreign countries; greater legal certainty for trade and investment; fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the debtor; the protection and maximization of the debtor's assets; and the facilitation of the rescue of financially troubled businesses. 11 U.S.C. § 1501(a)(1)-(5). *See In re SPhinX, Ltd.*, 351 B.R. 103, 112 (Bankr. S.D.N.Y. 2006), *aff'd*, 371 B.R. 10 (S.D.N.Y. 2007); *In re Bear Stearns*, 374 B.R. at 126. If the provisional relief sought is not granted, the Debtors will be exposed to the risks detailed above, including potential enforcement actions by creditors in the United States. Such actions on the part of creditors would violate the stay provisions of the Initial CCAA Order and thereby interfere with the orderly administration of the CCAA

Proceeding, which is exactly the type of harm chapter 15 is intended to prevent. *See* 11 U.S.C. § 1501. Further, if the relief requested herein pursuant to section 364 of the Bankruptcy Code is not granted on a provisional basis, the Debtors believe that the DIP Lenders could refuse to grant the Debtors or their Canadian affiliates access to the DIP Facility, which has already been reviewed and approved by the Canadian Court in the CCAA Proceeding. Accordingly, the provisional relief requested is consistent with the public policy embodied in chapter 15 of the Bankruptcy Code and will promote the fair and efficient administration of this cross-border insolvency proceeding.

In addition, and as set forth above with respect to final recognition of the CCAA Proceeding, the provisional relief promotes cooperation between foreign jurisdictions and comity among tribunals. By its Initial CCAA Order, the Canadian Court has requested the assistance of the Court to effectuate its orders in the United States. *See* Initial CCAA Order ¶ 65. Accordingly, providing the requested assistance would effectuate the public policy considerations underpinning section 1525 of the Bankruptcy Code which mandates cooperation "to the maximum extent possible" between the Court and a foreign court. *See* 11 U.S.C. § 1525.

## Conclusion

WHEREFORE, the Foreign Representative respectfully requests that the Court grant the relief requested in the Petitions for Recognition, and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
June 25, 2012

Respectfully submitted,

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*Co-Counsel to the Foreign Representative*

# Exhibit 2

## Provisional Order

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| **In re** | : | **Chapter 15** |
| **CINRAM INTERNATIONAL INC., *et al.*,[1]** | : | **Case No. 12-11882 (KJC)** |
| **Debtors in a Foreign Proceeding.** | : | **(Joint Administration Pending)** |
| | : | **Ref. Docket No. 6** |

**ORDER GRANTING PROVISIONAL RELIEF**

Upon the motion (the "**Motion**")[2] of Cinram International ULC, in its capacity as the authorized foreign representative for the above captioned debtors (collectively, the "**Debtors**") in a proceeding commenced under Canada's *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended, and pending before the Ontario Superior Court of Justice, pursuant to sections 362, 364, 365, 1517, 1519, 1520, 1521, and 105(a) of title 11 of the United States Code, as amended from time to time (the "**Bankruptcy Code**") for entry of (a) a provisional order (this "**Order**"): (i) recognizing and enforcing in the United States, on an interim basis, the Initial Order (the "**Initial CCAA Order**") issued on June 25, 2012 by the Canadian Court, including, without limitation, the Canadian Court's decision (A) to authorize the Debtors to enter into and perform under that certain DIP Facility, and (B) to grant the DIP Charge to the DIP Lenders under the DIP Facility, (ii) granting, on an interim basis, to and for the benefit of the DIP Lenders and, to the extent of their adequate protection rights, the

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1 The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, of each of the Debtors follow in parentheses: (a) Cinram International Inc. (4583); (b) Cinram (U.S.) Holding's Inc. (4792); (c) Cinram, Inc. (7621); (d) Cinram Distribution LLC (3854); (e) Cinram Manufacturing LLC (2945); (f) Cinram Retail Services LLC (1741); (g) Cinram Wireless LLC (5915); (h) IHC Corporation (4225); and (i) One K Studios, LLC (2132). The Debtors' executive headquarters is located at 2255 Markham Road, Toronto, Ontario, M1B 2W3, Canada.

2 Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

Prepetition Secured Lenders, certain protections afforded by the Bankruptcy Code, including those protections provided by sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, as applicable, (iii) granting an interim stay of execution against the Debtors' assets and applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases on an interim basis pursuant to sections 1519(a)(3), 1521(a)(7), and 105(a), of the Bankruptcy Code, and (iv) granting such other and further relief as this Court deems just and proper; and (b) entry of a final order after notice and a hearing (the "**Final Order**") (i) granting the petitions in these cases and recognizing the CCAA Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code, (ii) giving full force and effect in the United States to the Initial CCAA Order, including any extensions or amendments thereof authorized by the Canadian Court and extending the protections of this Order to the Debtors on a final basis, (iii) granting the DIP Lenders and, to the extent of their adequate protection rights, the Prepetition Secured Lenders, certain protections afforded by the Bankruptcy Code, and (iv) granting such other and further relief as this Court deems just and proper; and it appearing that this Court has jurisdiction to consider the Motion pursuant to sections 157 and 1334 of title 28 of the United States Code, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having reviewed the Motion, the Petitions for Recognition, the Bell Declaration, and the Memorandum of Law, and having considered the statements of counsel with respect to the Motion at a hearing before this Court (the "**Hearing**"); and due and sufficient notice of the provisional relief sought in the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the provisional relief requested by the Motion is in the best interest of the Debtors,

their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

**THIS COURT HEREBY FINDS AND DETERMINES THAT:**

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, as well as the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Foreign Representative has demonstrated a substantial likelihood of success on the merits that (a) the Debtors are subject to a pending "foreign main proceeding" as that term is defined in section 1502(4) of the Bankruptcy Code, (b) the Foreign Representative is a "foreign representative" as that term is defined in section 101(24) of the Bankruptcy Code, and (c) all statutory elements for recognition of the CCAA Proceeding are satisfied in accordance with section 1517 of the Bankruptcy Code.

D. The Foreign Representative has demonstrated that (a) the commencement of any proceeding or action against the Debtors and their respective businesses and all of their assets should be enjoined pursuant to sections 1519, 1521, and 105(a) of the Bankruptcy Code,

which protections, in each case, shall be coextensive with the provisions of section 362 of the Bankruptcy Code, to permit the fair and efficient administration of the CCAA Proceeding and an orderly sale process for substantially all of the property and assets used in connection with the business carried on by the Debtors in North America pursuant to the Initial CCAA Order and any other applicable orders of the Canadian Court, for the benefit of all stakeholders; and (b) the relief requested will neither cause an undue hardship nor create any hardship to parties in interest that is not outweighed by the benefits of the relief granted herein.

E. The Foreign Representative has demonstrated that unless this Order is entered, there is a material risk that one or more parties in interest will take action against the Debtors or their assets, thereby interfering with the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code and interfering with and causing harm to the efforts to maximize the value of the Debtors' assets, including through the sale process, pursuant to the terms of the Initial CCAA Order. As a result, the Debtors will suffer immediate and irreparable harm for which they will have no adequate remedy at law and therefore it is necessary that this Court grant the relief requested without prior notice to parties in interest or their counsel.

F. The Foreign Representative has demonstrated that the incurrence of indebtedness under the DIP Facility, as authorized by the Initial CCAA Order, is necessary to prevent irreparable harm to the Debtors because without such financing, the Debtors will be unable to continue operations, which will significantly impair the value of their assets.

G. The Foreign Representative has demonstrated that the terms of the DIP Facility are fair and reasonable and were entered into in good faith by the Debtors and the DIP Lenders, as defined in the Initial CCAA Order, and the DIP Lenders would not have extended financing without conditions precedent requiring a final recognition order by this Court and the

interim protection pursuant to sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, as made applicable by sections 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, while consideration of final recognition was pending.

H. The Prepetition Agent, for itself and for the benefit of the Prepetition Secured Lenders, is entitled to adequate protection of their interests in the collateral securing their indebtedness (the "**Prepetition Collateral**") from any diminution in value resulting from the use of their "cash collateral" within the meaning of section 363(a) of the Bankruptcy Code (the "**Cash Collateral**") and the use, sale or lease of the Prepetition Collateral, the imposition of the automatic stay, and the priming of their liens by the DIP Lenders pursuant to section 364(d) of the Bankruptcy Code. Accordingly, the Debtors have agreed, in their reasonable business judgment, to provide adequate protection as set forth in this Order, which terms and conditions are fair and reasonable and were negotiated in good faith and at arm's-length.

I. Absent the relief granted herein, the Debtors may suffer immediate and irreparable injury, loss, or damage for which there is no adequate remedy at law. Further, unless this Order is entered, the assets of the Debtors located in the United States could be subject to efforts by creditors to control, possess, or execute upon such assets and such efforts could result in the Debtors suffering immediate and irreparable injury, loss, or damage by, among other things, (a) interfering with the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code, and (b) interfering with or undermining the success of the CCAA Proceeding and the Debtors' efforts to pursue a going-concern sale of their core business for the benefit of all their stakeholders.

J. The Foreign Representative has demonstrated that without the protection of section 365(e) of the Bankruptcy Code, there is a material risk that counterparties to certain of

the Debtors' contracts and leases may take the position that the commencement of the CCAA Proceeding authorizes them to terminate such contracts or accelerate obligations thereunder. Such termination or acceleration, if permitted and valid, would severely disrupt the Debtors' operations and efforts to consummate a sale, resulting in irreparable damage to the value of the Debtors' business, and causing substantial harm to the Debtors' creditors and other parties in interest.

K. The Foreign Representative has demonstrated that no injury will result to any party that is greater than the harm to the Debtors' business, assets, and property in the absence of the requested relief.

L. The interests of the public and the public policy of the United States will be served by entry of this Order.

M. The Foreign Representative and the Debtors are entitled to the full protections and rights available pursuant to section 1519(a)(1)-(3) of the Bankruptcy Code.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted to the extent set forth herein.

2. The Initial CCAA Order is hereby enforced on an interim basis, including, without limitation, (a) authorizing the Debtors to obtain credit under the DIP Facility and granting the Lenders the DIP Charge, and (b) staying the commencement or continuation of any actions against the Debtors or their assets, and shall be given full force and effect in the United States until otherwise ordered by this Court.

3. While this Order is in effect, the Foreign Representative and the Debtors shall be entitled to the full protections and rights pursuant to section 1519(a)(1), which

protections shall be coextensive with the provisions of section 362 of the Bankruptcy Code, and this Order shall operate as a stay of any execution against the Debtors' assets within the territorial jurisdiction of the United States; *provided* that upon the occurrence of an event of default under the DIP Documents (as defined below) or the DIP Lenders' Charge, this paragraph shall be deemed to be automatically modified to the extent necessary to allow the DIP Lenders and the Prepetition Secured Lenders to exercise their rights pursuant to Paragraph 54(b) of the Initial CCAA Order. Specifically, all persons and entities are hereby enjoined from continuing any action or commencing any additional action involving the Debtors, their assets or the proceeds thereof, (b) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order, or arbitration award against the Debtors or their assets, (c) commencing or continuing any action to create, perfect, or enforce any lien, setoff, or other claim against the Debtors or any of their property, or (d) managing or exercising control over the Debtors' assets located within the territorial jurisdiction of the United States, except as expressly authorized by the Debtors in writing.

4. While this Order is in effect, pursuant to sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, (a) section 362 of the Bankruptcy Code is hereby made applicable in these cases to the Debtors and the property of the Debtors within the territorial jurisdiction of the United States and (b) section 365(e) of the Bankruptcy Code is hereby made applicable to the Debtors in these cases.

5. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed pursuant to section 362 of the

Bankruptcy Code or (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed.

6. To the extent authorized under the Initial CCAA Order, the DIP Lenders are hereby granted, on a provisional basis, the DIP Lenders' Charge, as defined in the Initial CCAA Order, on all of the Debtors' United States assets in the amount outstanding from time to time under the DIP Facility up to a maximum of USD $15 million, subject to the priorities, terms, and conditions of the Initial CCAA Order, to secure current and future amounts outstanding under the DIP Facility. The obligations under the DIP Facility shall be on a joint and several basis for all Debtors.

7 The obligations of the Debtors under the DIP Facility shall be an allowed administrative expense claim with priority under section 364(c)(1) of the Bankruptcy Code, subject and subordinate only to the Carve-Out, and otherwise over all administrative expense claims and unsecured claims against the Debtors, now existing or hereafter arising.

8 To the extent provided in the Initial CCAA Order, the Debtors are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, and other definitive documents as are contemplated by the DIP Facility (collectively, the "**DIP Documents**") or as may be reasonably required by the DIP Lenders pursuant to the terms thereof, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the DIP Lenders under and pursuant to the DIP Facility (and in accordance with the budget delivered in connection therewith) including, but not limited to, the fees and expenses of the DIP Lenders' Canadian and United States counsel, and other advisors, as and when the

same become due and are to be performed, notwithstanding any other provision of this Order and without any further order of this Court.

9. This Order shall be sufficient and conclusive notice and evidence of the grant, validity, perfection, and priority of the liens granted to the DIP Lenders in the Initial CCAA Order without the necessity of filing or recording this Order or any financing statement, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction; *provided* that the Debtors are authorized to execute and the administrative agent under the DIP Facility may file or record financing statements, mortgages, or other instruments to further evidence the liens authorized, granted, and perfected hereby and by the Initial CCAA Order.

10. The Prepetition Agent, for itself and for the benefit of the Prepetition Secured Lenders, is entitled to adequate protection of their interests in the Prepetition Collateral from any diminution in value resulting from the use of the Cash Collateral and the use, sale, or lease of the Prepetition Collateral, the imposition of the automatic stay, and the priming of their liens by the DIP Lenders pursuant to section 364(d) of the Bankruptcy Code. Accordingly, the Prepetition Secured Lenders hereby are (a) granted valid, binding, enforceable and perfected liens (the "**Adequate Protection Liens**") in all collateral under the DIP Facility to secure an amount of their indebtedness (the "**Adequate Protection Claims**") equal to any diminution in the value of their interests in the Prepetition Collateral subsequent to the date of the filing of the Petitions for Recognition resulting from the use of the Cash Collateral and the use, sale or lease of the Prepetition Collateral, the imposition of the automatic stay, and the priming of their liens by the DIP Lenders, which Adequate Protection Liens shall be immediately junior to the DIP Lenders' Charge identified in the Initial CCAA Order, (b) granted an allowed administrative

expense claim with priority under section 364(c)(1) of the Bankruptcy Code in an amount equal to the Adequate Protection Claims, subject and subordinate only to the carve-out and the obligations under the DIP Facility, and otherwise over all administrative expense claims and unsecured claims against the Debtors, now existing or hereafter arising and (c) entitled to receive payment for, and the Debtors are authorized to pay, the reasonable and documented fees and expenses incurred by Wachtell, Lipton, Rosen & Katz, Morris, Nichols, Arsht & Tunnell LLP, Blake Cassels & Graydon LLP, and Zolfo Cooper, as advisors to the Prepetition Secured Lenders, whether incurred before or after the Petition Date. Nothing herein shall prejudice, impair, or otherwise affect the rights of the Prepetition Secured Lenders to seek any other or supplemental relief in respect of their adequate protection rights.

11. The DIP Documents have been negotiated in good faith and at arm's-length between the Debtors and the DIP Lenders. Any financial accommodations made to the Debtors by the DIP Lenders pursuant to the Initial CCAA Order and the DIP Documents shall be deemed to have been made by the DIP Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code. Accordingly, pursuant to sections 364(e), 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, section 364(e) of the Bankruptcy Code hereby applies for the benefit of the DIP Lenders, and the validity of the indebtedness, and the priority of the liens authorized by the Initial CCAA Order made enforceable in the United States by this Order, shall not be affected by any reversal or modification of this Order, on appeal or the entry of an order denying recognition of the CCAA Proceeding pursuant to section 1517 of the Bankruptcy Code.

12. No action, inaction or acquiescence by the DIP Lenders or the Prepetition Secured Lenders, including funding the Debtors' ongoing operations under this Order, shall be

deemed to be or shall be considered as evidence of any alleged consent by the DIP Lenders or the Prepetition Secured Lenders to a charge against the collateral pursuant to sections 506(c), 552(b), or 105(a) of the Bankruptcy Code. The DIP Lenders shall not be subject in any way whatsoever to the equitable doctrine of "marshaling" or any similar doctrine with respect to the collateral.

13. Effective on a provisional basis upon entry of this Order, no person or entity shall be entitled, directly or indirectly, whether by operation of sections 506(c), 552(b), or 105 of the Bankruptcy Code or otherwise, to direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of collateral or property after an Event of Default under the DIP Facility, the First Lien Credit Agreement, or the Second Lien Credit Agreement, or termination or breach under the DIP Facility, the First Lien Credit Agreement, the Second Lien Credit Agreement, the Initial CCAA Order, or this Order.

14. Any party in interest may make a motion seeking relief from, or modification of, this Order, by filing a motion on not less than seven business days' written notice to Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York 10022, Attn: Douglas P. Bartner and Jill Frizzley, and this Court will hear such motion on a date to be scheduled by this Court.

15. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon entry; (b) the Foreign Representative shall not be subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Foreign Representative is authorized and empowered, and may in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

16. Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, made applicable to these proceedings pursuant to Bankruptcy Rule 7065, no notice to any person is required prior to entry and issuance of this Order. Pursuant to Bankruptcy Rule 7065, the provisions of Federal Rule of Civil Procedure 65(c) are hereby waived, to the extent applicable.

17. This Court shall retain jurisdiction with respect to any and all matters relating to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
JUNE 26, 2012

KEVIN GROSS
CHIEF UNITED STATES BANKRUPTCY JUDGE

# Exhibit 3

## Certified Initial CCAA Order

Court File No. CV12 – 9767 – 00CL

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

| | | |
|---|---|---|
| THE HONOURABLE MR. | ) | MONDAY, THE 25TH |
| | ) | |
| JUSTICE MORAWETZ | ) | DAY OF JUNE, 2012 |

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CINRAM INTERNATIONAL INC., CINRAM INTERNATIONAL INCOME FUND, CII TRUST AND THE COMPANIES LISTED IN SCHEDULE "A"**

Applicants

**INITIAL ORDER**

THIS APPLICATION, made by Cinram International Inc. ("**CII**"), Cinram International Income Fund ("**Cinram Fund**"), CII Trust and the companies listed in Schedule "A" hereto (collectively, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of John Bell sworn June 23, 2012 and the Exhibits thereto (the "**Bell Affidavit**") and the Pre-filing Report of the Proposed Monitor, FTI Consulting Canada Inc. ("**FTI**"), and on being advised that the Pre-Petition First Lien Agent (as hereinafter defined) and the Administrative Agent under the Second Lien Credit Agreement (the "**Pre-Petition Second Lien Agent**", with the lenders under the Second Lien Credit Agreement being the "**Pre-Petition Second Lien Lenders**") were given notice of this Application, and on hearing the submissions of counsel for the Applicants and Cinram International Limited

Partnership (the "**Cinram LP**"), FTI and the Pre-Petition First Lien Agent and the DIP Agent (as hereinafter defined) (collectively, the "**Agent**"), and on reading the consent of FTI to act as the Court-appointed monitor (the "**Monitor**"),

**SERVICE**

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

**CAPITALIZED TERMS**

2. THIS COURT ORDERS that unless otherwise indicated or defined herein, capitalized terms have the meaning given to them in the Bell Affidavit.

**APPLICATION**

3. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not an Applicant, Cinram LP (together with the Applicants, the "**CCAA Parties**") shall enjoy the benefit of the protections and authorizations provided by this Order.

**PLAN OF ARRANGEMENT**

4. THIS COURT ORDERS that the Applicants, or any one of them, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, one or more of the CCAA Parties and one or more classes of creditors.

**POSSESSION OF PROPERTY AND OPERATIONS**

5. THIS COURT ORDERS that the CCAA Parties shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the CCAA Parties shall each continue

to carry on business in the ordinary course and in a manner consistent with the preservation of their business (the "**Business**") and the Property. The CCAA Parties shall each be authorized and empowered to continue to retain and employ the emplo yees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the CCAA Parties shall be entitled to continue to utilize the central cash management system currently in place, including the CCAA Parties' current business forms, cheques and bank accounts, as described in the Bell Affidavit, including for the purpose of completing intercompany transfers among the CCAA Parties (other than between a CCAA Party that is not a Fund Entity (as hereinafter defined) and a Fund Entity) in the ordinary course of business, or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the CCAA Parties of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the CCAA Parties, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that, subject to the terms and conditions of the DIP Credit Agreement (as hereinafter defined) and subject to the applicable cash flow budget approved by the DIP Lenders (as hereinafter defined) (the "**Cash Flow Budget**"), the CCAA Parties shall be entitled but not required to pay the following expenses and satisfy the following obligations whether incurred prior to, on or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order to employees and contractors, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) the fees and disbursements of any Assistants retained or employed by the CCAA Parties in respect of these proceedings or any other similar or ancillary proceedings in other jurisdictions in which the CCAA Parties or any subsidiaries or affiliates are domiciled or in respect of related corporate matters, at their standard rates and charges, including the fees and disbursements of legal counsel, financial advisors and investment bankers retained by the CCAA Parties;

(c) all amounts owing for goods and services actually supplied to the CCAA Parties, or to obtain the release of goods contracted for prior to the date of this Order, with the prior consent of the Monitor and the Agent, if in the opinion of the CCAA Parties and the Monitor the supplier is critical to the Business and ongoing operations of any of the CCAA Parties;

(d) with the prior consent of the Monitor and the Agent, all amounts owing in respect of the CCAA Parties' customer programs including rebates, refunds, relocation payments, warranties and similar programs or obligations (the "**Customer Programs**");

(e) with the prior consent of the Monitor, amounts owing by one or more of the CCAA Parties to another CCAA Party (other than between a CCAA Party that is not a Fund Entity and a Fund Entity) in order to settle their intercompany accounts and to make intercompany loans in the ordinary course of business, including as a result of the shared services (as described in the Bell Affidavit); and

(f) with the prior consent of the Monitor, any amounts owing prior to the date of this Order in respect of customs or duties for goods supplied to the CCAA

Parties where such goods have been paid for but lawfully retained or subject to a possessory lien.

8. THIS COURT ORDERS that, subject to the terms and conditions of the DIP Credit Agreement and subject to the Cash Flow Budget, and except as otherwise provided to the contrary herein, the CCAA Parties shall be entitled but not required to pay all reasonable expenses incurred by the CCAA Parties in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance and directors and officers tail insurance, provided that the premium for the tail insurance does not exceed $300,000), maintenance and security services;

(b) payment for goods or services actually supplied to the CCAA Parties following the date of this Order; and

(c) payments and credits in respect of the Customer Programs.

9. THIS COURT ORDERS that the CCAA Parties shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the CCAA Parties in connection with the sale of goods and services by the CCAA Parties, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes

were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the CCAA Parties.

10. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the CCAA Parties shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the CCAA Parties and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. THIS COURT ORDERS that, except as specifically permitted herein, the CCAA Parties are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the CCAA Parties to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

**RESTRUCTURING**

12. THIS COURT ORDERS that the CCAA Parties shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of redundant or non-material assets not exceeding $500,000 in any one transaction or $1,000,000 in the aggregate;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate and to deal with any claims arising from such termination in the Plan;

(c) in accordance with paragraphs 13 and 14, vacate, abandon or quit the whole but not the part of any leased premises and/or disclaim any real property lease and any ancillary agreements relating to the leased premises, in accordance with section 32 of the CCAA;

(d) disclaim such of their arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the CCAA Parties deem appropriate, in accordance with section 32 of the CCAA and to deal with any claims arising from such disclaimer in the Plan; and

(e) pursue all avenues of refinancing and offers for their Business or the Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a) above),

all of the foregoing to permit the CCAA Parties to proceed with an orderly restructuring or sale of the Business, including effecting the Proposed Transaction (the "**Restructuring**").

13. THIS COURT ORDERS that the CCAA Parties shall provide each of the relevant landlords with notice of the relevant CCAA Party'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 CCAA Party'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 relevant CCAA Party, or by further Order of this Court upon application by the relevant CCAA Party on at least two (2) days notice to such landlord and any such secured creditors. If a CCAA Party disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the CCAA Party's claim to the fixtures in dispute.

14. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant CCAA Party and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the CCAA Party in respect of such lease or leased premises and such landlord shall be entitled to notify the CCAA Party of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**SUPPORT AGREEMENT**

15. THIS COURT ORDERS that the Applicants party to the support agreement dated as of June 22, 2012 (the "**Support Agreement**") between, among others, certain Applicants and certain Pre-Petition First Lien Lenders (the "**Initial Consenting Lenders**"), appended as Exhibit F to the Bell Affidavit, are authorized and empowered to take all steps and actions in respect thereof and to comply with all of their obligations pursuant thereto and the Applicants will cooperate with the Pre-Petition First Lien Agent in providing notice in any reasonable manner to lenders (the "**Pre-Petition First Lien Lenders**") under the Pre-Petition First Lien Credit Agreement (as hereinafter defined) of the Support Agreement to enable additional Pre-Petition First Lien Lenders to execute a

Consent Agreement in the form attached as Schedule "C" to the Support Agreement and to become bound thereby as Consenting Lenders (as defined in the Support Agreement).

16. THIS COURT ORDERS that any Pre-Petition First Lien Lender under the Pre-Petition First Lien Credit Agreement (other than an Initial Consenting Lender) who wishes to become a Consent Date Lender (as defined in the Support Agreement) and become entitled to the Early Consent Consideration (as defined in the Support Agreement) (if such Early Consent Consideration becomes payable pursuant to the terms of the Support Agreement, and subject to such Pre-Petition First Lien Lender providing evidence satisfactory to the Applicants in accordance with the Support Agreement of the aggregate principal amount of loans held under the Pre-Petition First Lien Credit Agreement by such Pre-Petition First Lien Lender as at the Consent Date) must execute a Consent Agreement and return it to the Applicants in accordance with the instructions set out in the Support Agreement such that it is received by the Applicants prior to the Consent Date and, upon doing so, such Pre-Petition First Lien Lender shall become a Consent Date Lender and shall be bound by the terms of the Support Agreement.

17. THIS COURT ORDERS that as soon as practicable after the Consent Date, the Applicants shall provide to the Monitor copies of all executed Consent Agreements received from Pre-Petition First Lien Lenders prior to the Consent Date.

18. THIS COURT ORDERS that the Applicants are authorized to pay the Early Consent Consideration to the Consent Date Lenders in accordance with the Support Agreement if the Consent Date Lenders become entitled thereto.

19. THIS COURT ORDERS that the Consent Date Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**Consent Consideration Charge**") on the Charged Property as security for the obligations to pay the Early Consent Consideration to the Consent Date Lenders if they become entitled thereto in accordance with the Support Agreement. The Consent Consideration Charge shall have the priority set out in paragraphs 57 and 59 herein. "**Charged Property**" as used in this Order shall mean all assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof of the CCAA Parties other than Cinram Fund, CII

Trust, Cinram International General Partner Inc. and Cinram LP (collectively, the "**Fund Entities**").

**NO PROCEEDINGS AGAINST THE CCAA PARTIES OR THE PROPERTY**

20. THIS COURT ORDERS that until and including July 25, 2012, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the CCAA Parties or the Monitor, or affecting the Business or the Property, except with the written consent of the CCAA Parties and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the CCAA Parties or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

21. THIS COURT ORDERS that until and including the Stay Period, no Proceeding shall be commenced or continued against or in respect of any of the CCAA Parties' direct or indirect subsidiaries that are also party to an agreement with a CCAA Party (whether as surety or guarantor or otherwise) (each, a "**Subsidiary Counterparty**"), including any contract or credit agreement, or against or in respect of any of a Subsidiary Counterparty's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Subsidiary Property**") with respect to any guarantee, contribution or indemnity obligation, liability or claim in respect of or that relates to any agreement involving a CCAA Party and a Subsidiary Counterparty or the obligations, liabilities and claims of and against the CCAA Parties (collectively, the "**Related Claims Against Subsidiaries**"), except with the written consent of the CCAA Parties and the Monitor, or with leave of this Court, and any and all Proceedings currently under way by a Person against or in respect of any Subsidiary Counterparty or Subsidiary Property in respect of Related Claims Against Subsidiaries are hereby stayed and suspended pending further Order of this Court. For the purposes of paragraphs 21 and 23 of this Order: (a) "**Subsidiary Counterparty**" does not include Cinram Optical Discs S.A.S. that has filed insolvency proceedings in France; and (b) in the event a direct or indirect subsidiary of the CCAA Parties files insolvency proceedings in a foreign

jurisdiction (other than the United States), "**Subsidiary Counterparty**" shall be deemed to exclude any such subsidiary.

**NO EXERCISE OF RIGHTS OR REMEDIES**

22. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the CCAA Parties or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the CCAA Parties, the Monitor and the DIP Agent, or leave of this Court, provided that nothing in this Order shall (i) empower the CCAA Parties to carry on any business which the CCAA Parties are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

23. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any Person against or in respect of a Subsidiary Counterparty or Subsidiary Property in respect of Related Claims Against Subsidiaries are hereby stayed and suspended and shall not be commenced, proceeded with or continued, except with the written consent of the CCAA Parties and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower any Subsidiary Counterparty to carry on any business which such Subsidiary Counterparty is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (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 RIGHTS**

24. THIS COURT ORDERS that during the Stay Period, 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 CCAA

Parties, except with the written consent of the CCAA Parties and the Monitor, or leave of this Court.

**CONTINUATION OF SERVICES**

25. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with a CCAA Party or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, licenses, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or a CCAA Party, 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 CCAA Parties, and that the CCAA Parties shall be entitled to the continued use of their current premises, 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 CCAA Parties in accordance with normal payment practices of the CCAA Parties or such other practices as may be agreed upon by the supplier or service provider and each of the applicable CCAA Parties and the Monitor, or as may be ordered by this Court.

**NON-DEROGATION OF RIGHTS**

26. THIS COURT ORDERS that, subject to paragraphs 20 to 25, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the CCAA Parties. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## KEY EMPLOYEE RETENTION PROGRAM

27. THIS COURT ORDERS that the key employee retention program (the "**KERP**") as described in the Bell Affidavit relating to key employees, including certain key officers (collectively, the "**Key Employees**") is hereby approved.

28. THIS COURT ORDERS that the CCAA Parties (and any other person that may be appointed to act on behalf of the CCAA Parties, including without limitation, any trustee, liquidator, receiver, interim receiver, receiver and manager or other person acting on behalf of any such person) are authorized and directed to perform the obligations under the KERP, including making all payments to the Key Employees of amounts due and owing under the KERP at the time specified and in accordance with the terms of the KERP.

29. THIS COURT ORDERS that the CCAA Parties are hereby authorized to execute and deliver such additional documents as may be necessary to give effect to the KERP, subject to prior approval of such documents by the Monitor or as may be ordered by this Court.

30. THIS COURT ORDERS that the Key Employees shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Charged Property, which charge shall not exceed an aggregate amount of $3 million, as security for the obligations of the CCAA Parties to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraph 57 and 59 herein.

31. THIS COURT ORDERS that the summary of the KERP attached as Exhibit K to the Bell Affidavit be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

## INVESTMENT BANKER

32. THIS COURT ORDERS that CII is authorized to carry out and perform its obligations under its engagement letter with Moelis & Company LLC (the "**Engagement Letter**") as investment banker for the CCAA Parties (the "**Investment Banker**") (including payment of the amounts due to be paid pursuant to the terms of the Engagement Letter, including but not limited to any success or transaction fee under the Engagement Letter).

33. THIS COURT ORDERS that all claims of the Investment Banker pursuant to the Engagement Letter are not claims that may be compromised pursuant to any Plan under the CCAA, any proposal ("**Proposal**") under the *Bankruptcy and Insolvency Act* or any other restructuring and no such Plan, Proposal or restructuring shall be approved that does not provide for the payment of all amounts due to the Investment Banker pursuant to the terms of the Engagement Letter.

34. THIS COURT ORDERS that notwithstanding any order in these proceedings, the CCAA Parties are authorized to make all payments required by the Engagement Letter, including all fees and expenses, if and when due.

35. THIS COURT ORDERS that the Investment Banker, its affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of either its engagement by CII as Investment Banker or any matter referred to in the Engagement Letter except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Investment Banker in performing its obligations under the Engagement Letter.

## PROCEEDINGS AGAINST TRUSTEES, DIRECTORS AND OFFICERS

36. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future trustees, directors or officers of the Applicants with respect to any claim against the trustees, directors or officers that arose before the date

hereof and that relates to any obligations of the CCAA Parties whereby the trustees, directors or officers are alleged under any law to be liable in their capacity as trustees, directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the CCAA Parties, if one is filed, is sanctioned by this Court or is refused by the creditors of the CCAA Parties or this Court.

**TRUSTEES', DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

37. THIS COURT ORDERS that the Applicants shall indemnify their trustees, directors and officers against obligations and liabilities that they may incur as trustees, directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any trustee, officer or director, the obligation or liability was incurred as a result of the trustee's, director's or officer's gross negligence or wilful misconduct.

38. THIS COURT ORDERS that the trustees, directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Charged Property, which charge shall not exceed an aggregate amount of $13 million, as security for the indemnity provided in paragraph 37 of this Order. The Directors' Charge shall have the priority set out in paragraphs 57 and 59 herein.

39. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' trustees, directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 37 of this Order.

**APPOINTMENT OF MONITOR**

40. THIS COURT ORDERS that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the CCAA Parties with the powers and obligations set out in the CCAA or set forth herein and

that the CCAA Parties and their shareholders, officers, directors, trustees, partners and Assistants shall advise the Monitor of all material steps taken by the CCAA Parties pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

41. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the CCAA Parties' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Agent and the administrative agent (the "**Pre-Petition First Lien Agent**") under the amended and restated credit agreement dated April 11, 2011 (the "**Pre-Petition First Lien Credit Agreement**") and their counsel and financial advisors, on a weekly or bi-weekly basis as set out in the DIP Credit Agreement of financial and other information as agreed to between the Applicants party thereto and the Agent which may be used in these proceedings including reporting on a basis to be agreed with the Agent;

(d) advise the CCAA Parties in their preparation of the CCAA Parties' cash flow statements and reporting required by the Agent, which information shall be reviewed with the Monitor and delivered to the Agent and its counsel and financial advisors on a periodic basis, but not less than bi-weekly, or as otherwise agreed to by the Agent;

(e) advise the CCAA Parties in their development of the Plan and any amendments to the Plan;

(f) assist the CCAA Parties, to the extent required by the CCAA Parties, with any matters relating to any of the CCAA Parties' subsidiaries and any foreign proceedings commenced in relation thereto, including retaining independent legal counsel, agents, experts, accountants or such other persons as the Monitor deems necessary or advisable respecting the exercise of this power;

(g) assist the CCAA Parties, to the extent required by the CCAA Parties, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the CCAA Parties, to the extent that is necessary to adequately assess the CCAA Parties' business and financial affairs or to perform its duties arising under this Order;

(i) assist the CCAA Parties and/or the Investment Banker with respect to any sales and marketing process to sell the Property and the Business or any part thereof;

(j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

(k) perform such other duties as are required by this Order or by this Court from time to time.

42. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

43. THIS COURT ORDERS that nothing herein contained shall require the Monitor 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

44. THIS COURT ORDERS that that the Monitor shall provide any creditor of the CCAA Parties and the Agent with information provided by the CCAA Parties in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the CCAA Parties is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the CCAA Parties may agree.

45. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

46. THIS COURT ORDERS that the Monitor, counsel to the Monitor, Canadian counsel to the CCAA Parties and U.S. Counsel to the CCAA Parties (together with

Canadian counsel to the CCAA Parties, "**CCAA Parties' Counsel**") and the Canadian and U.S. counsel to the DIP Agent and DIP Lenders and the Pre-Petition First Lien Agent and Pre-Petition First Lien Lenders (collectively, the "**Lenders' Counsel**") and the financial advisor of the DIP Lenders and Pre-Petition First Lien Lenders (the "**Lenders' Financial Advisor**") shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by the CCAA Parties as part of the costs of these proceedings. The CCAA Parties are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, CCAA Parties' Counsel, Lenders' Counsel and Lenders' Financial Advisor on a bi-weekly basis and, in addition, the CCAA Parties are hereby authorized to pay to the Monitor, counsel to the Monitor, and CCAA Parties' Counsel, new retainers in the aggregate amount of up to $250,000 to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

48. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Investment Banker, the CCAA Parties' Counsel, the Lenders' Counsel and the Lenders' Financial Advisor shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Charged Property, which charge shall not exceed an aggregate amount of $3.5 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the CCAA Parties' Counsel, Lenders' Counsel, Lenders' Financial Advisor and the Monitor and, in the case of the Investment Banker, pursuant to the Engagement Letter, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 57 and 59 hereof.

**DIP FINANCING**

49. THIS COURT ORDERS that the Applicants party thereto are hereby authorized and empowered to obtain and borrow under a credit facility from JP Morgan Chase Bank N.A., as administrative agent (the "**DIP Agent**"), and as lender and certain other lenders (collectively, the "**DIP Lenders**") in order to finance the CCAA Parties' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed US$15 million unless permitted by further Order of this Court.

50. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the DIP credit agreement between the Applicants party thereto and the DIP Lenders dated as of June 22, 2012 (the "**DIP Credit Agreement**"), filed, as such terms of such DIP Credit Agreement may be amended by the Applicants party thereto and the DIP Lenders with the consent of the Monitor.

51. THIS COURT ORDERS that each of Schedule 2.01, Part D, E and G of Schedule 5.15, Part A.2 of Schedule 5.17, Schedule 7.06 and Schedule 7.08 to the DIP Credit Agreement be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

52. THIS COURT ORDERS that the Applicants party thereto are hereby authorized and empowered to execute and deliver the DIP Credit Agreement and such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (such documents, together with the DIP Credit Agreement, collectively, the "**Definitive Documents**"), as are contemplated by the DIP Credit Agreement or as may be reasonably required by the DIP Lenders pursuant to the terms thereof, and the Applicants party thereto are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the DIP Credit

Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

53. THIS COURT ORDERS that the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**DIP Lenders' Court Charge**") on the Charged Property, including, without limitation, the real property described in Schedule "B" hereto, which DIP Lenders' Court Charge shall not secure an obligation that exists before this Order is made. The DIP Lenders' Court Charge and any contractual security interests granted pursuant to the Definitive Documents (collectively with the DIP Lenders' Court Charge, the "**DIP Lenders' Charge**") shall attach to the Charged Property and shall secure all obligations under the Definitive Documents. The DIP Lenders' Charge shall have the priority set out in paragraphs 57 and 59 hereof.

54. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

(a) the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lenders' Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lenders' Charge (A) the DIP Agent and DIP Lenders may cease making advances to the Applicants, and (B) the DIP Agent, DIP Lenders, Pre-Petition First Lien Agent and Pre-Petition First Lien Lenders may (i) set off and/or consolidate any amounts owing by the DIP Lenders or the Pre-Petition First Lien Lenders to the Applicants against the obligations of the Applicants to the DIP Lenders or Pre-Petition First Lien Lenders under the DIP Credit Agreement, the Definitive Documents, the DIP Lenders' Charge or the Pre-Petition First Lien Credit Agreement and may make demand, accelerate payment and give other notices, and (ii) upon five days notice to the CCAA Parties and the Monitor, exercise any and all of its rights and remedies against the Applicants or the Charged Property under or pursuant to the DIP Credit Agreement, Definitive Documents, DIP Lenders' Charge, Pre-Petition First Lien Credit Agreement or the *Personal Property Security Act* of Ontario or any other applicable

jurisdiction, the *Uniform Commercial Code* of the applicable jurisdiction and/or *Mortgages Act* (Ontario) and equivalent legislation in the applicable jurisdiction, including, without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants;

(c) upon receipt of any notice referenced in paragraph 54(b)(ii), the Monitor shall immediately advise the Court in a Monitor's Report that such notice was received and the 5 day notice period shall commence upon the filing of such Monitor's Report with the Court; and

(d) the foregoing rights and remedies of the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Charged Property.

55. THIS COURT ORDERS AND DECLARES that all claims of the DIP Agent and DIP Lenders pursuant to the Definitive Documents are not claims that may be compromised pursuant to any Plan filed by the CCAA Parties or any one of them under the CCAA, or any Proposal filed by the CCAA Parties or any one of them under the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**") or any other restructuring, and the DIP Agent and the DIP Lenders shall be treated as unaffected in any Plan, Proposal or other restructuring with respect to any obligations outstanding to the DIP Agent or DIP Lenders under or in respect of the Definitive Documents.

56. THIS COURT ORDERS that the CCAA Parties or any one of them shall not file a Plan or Proposal in these proceedings or proceed with any other restructuring that does not provide for the indefeasible payment in full in cash of the obligations outstanding under the DIP Credit Agreement and the other Definitive Documents as a pre-condition to the implementation of any such Plan or Proposal or any other restructuring, without the prior written consent of the DIP Agent. Further, if the Support Agreement terminates in accordance with Section 7(a)(iv)(C) thereof, the stays of proceedings provided for herein shall not apply to the Pre-Petition First Lien Agent, Pre-Petition First Lien Lenders or their

respective rights under or in respect of the Pre-Petition First Lien Credit Agreement and the Pre-Petition First Lien Agent and Pre-Petition First Lien Lenders may (A) set off and/or consolidate any amounts owing by the Pre-Petition First Lien Lenders to the Applicants against the obligations of the Applicants to the Pre-Petition First Lien Lenders under the Pre-Petition First Lien Credit Agreement and may make, demand, accelerate payment and give other notices, and (B) upon 5 days notice to the CCAA Parties and the Monitor, exercise any and all of their rights and remedies under or pursuant to the Pre-Petition First Lien Credit Agreement or the *Personal Property Security Act* of Ontario or any other applicable jurisdiction, the *Uniform Commercial Code* of the applicable jurisdiction and/or *Mortgages Act* (Ontario) and equivalent legislation in the applicable jurisdiction, including, without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants. Upon receipt of any notice referenced in clause (B) above, the Monitor shall immediately advise the Court in a Monitor's Report that such notice was received and the 5 day notice period shall commence upon the filing of such Monitor's Report with the Court.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

57. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge, the KERP Charge, the Consent Consideration Charge and the DIP Lenders' Charge, as among them, shall be as follows, subject to paragraph 59 of this Order:

First – Administration Charge (to the maximum amount of $3.5 million);

Second – DIP Lenders' Charge;

Third – Directors' Charge (to the maximum amount of $13 million);

Fourth – KERP Charge (to the maximum amount of $3 million); and

Fifth – Consent Consideration Charge.

58. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the KERP Charge, the Consent Consideration Charge or the DIP Lenders' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

59. THIS COURT ORDERS that each of the Directors' Charge, the Administration Charge, the KERP Charge, the Consent Consideration Charge and the DIP Lenders' Charge (all as constituted and defined herein) shall constitute a charge on the Charged Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, notwithstanding the order of perfection or attachment, except for any validly perfected security interest in favour of a "secured creditor" as defined in the CCAA existing as at the date hereof other than any validly perfected security interest in favour of the Pre-Petition First Lien Agent, Pre-Petition Second Lien Agent, Pre-Petition First Lien Lenders or Pre-Petition Second Lien Lenders; provided that the Consent Consideration Charge is subordinate to the prior payment in full of all obligations under the Pre-Petition First Lien Credit Agreement in respect of the First-Out Revolving Credit Commitments (as defined in the Pre-Petition First Lien Credit Agreement). No Charge created by this Order shall attach to or create any claim, lien, charge, security interest or encumbrance on the property of a customer of a CCAA Party or where a customer has title to such property, notwithstanding that such property may be in a CCAA Party's possession. Nothing in this Order affects the priority of the Pre-Petition First Lien Agent, Pre-Petition Second Lien Agent, Pre-Petition First Lien Lenders and the Pre-Petition Second Lien Lenders against the rights of third parties (other than beneficiaries of the Charges) as of the date of this Order.

60. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the CCAA Parties shall not grant any Encumbrances over any Charged Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge, the KERP Charge, the Consent Consideration Charge

or the DIP Lenders' Charge, unless the CCAA Parties also obtain the prior written consent of the Monitor, the DIP Lenders and the beneficiaries of the Directors' Charge, the Administration Charge, the KERP Charge and the Consent Consideration Charge, or further Order of this Court.

61. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the KERP Charge, the Consent Consideration Charge, the DIP Credit Agreement, the Definitive Documents and the DIP Lenders' Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the CCAA Parties, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Credit Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the CCAA Parties of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the DIP Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the CCAA Parties pursuant to this Order, the DIP Credit Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at

undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

62. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the CCAA Parties' interest in such real property leases.

**FOREIGN PROCEEDINGS**

63. THIS COURT ORDERS that Cinram International ULC is hereby authorized and empowered to act as the foreign representative in respect of the within proceedings for the purposes of having these proceedings recognized in a jurisdiction outside Canada.

64. THIS COURT ORDERS that Cinram International ULC is hereby authorized, as the foreign representative of the CCAA Parties and of the within proceedings, to apply for foreign recognition of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to Chapter 15 of the *U.S. Bankruptcy Code*, and to take such actions necessary or appropriate in furtherance of the recognition of these proceedings or the prosecution of any sale transaction (including the Proposed Transaction) in any such jurisdiction.

65. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or in any other foreign jurisdiction, to give effect to this Order and to assist the CCAA Parties, the Monitor and their respective 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 CCAA Parties and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to Cinram International ULC in any foreign proceeding, or to assist the CCAA Parties and the Monitor and their respective agents in carrying out the terms of this Order.

66. THIS COURT ORDERS that each of the CCAA Parties and the Monitor 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 any other Order issued in these proceedings.

**SERVICE AND NOTICE**

67. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the Globe and Mail and the Wall Street Journal a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the CCAA Parties of more than $5000, and (C) prepare a list showing the names and addresses of those creditors, save and except creditors who are individuals, and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

68. THIS COURT ORDERS that the CCAA Parties and the Monitor be at liberty to serve 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 electronic transmission to the CCAA Parties' creditors or other interested parties at their respective addresses as last shown on the records of the CCAA Parties and that any such service or notice by courier, personal delivery or electronic 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.

69. THIS COURT ORDERS that the CCAA Parties, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on the Monitor's Website.

**GENERAL**

70. THIS COURT ORDERS that the CCAA Parties or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

71. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the CCAA Parties, the Business or the Property.

72. THIS COURT ORDERS that any interested party (including the CCAA Parties and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided however that the DIP Lenders shall be entitled to rely on this Order as issued for all advances made under the DIP Credit Agreement and Definitive Documents up to and including the date this Order may be varied or amended.

73. THIS COURT ORDERS that, notwithstanding the immediately preceding paragraph, no order shall be made varying, rescinding or otherwise affecting the provisions of this Order with respect to the DIP Credit Agreement or the Definitive Documents, unless notice of a motion is served on the Monitor and the CCAA Parties and the DIP Agent, returnable no later than July 12, 2012.

74. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

JUN 25 2012

## SCHEDULE A

### Additional Applicants

Cinram International General Partner Inc.
Cinram International ULC
1362806 Ontario Limited
Cinram (U.S.) Holding's Inc.
Cinram, Inc.
IHC Corporation
Cinram Manufacturing LLC
Cinram Distribution LLC
Cinram Wireless LLC
Cinram Retail Services, LLC
One K Studios, LLC

## SCHEDULE B

Charged Real Property Description

**2255 Markham Road, Toronto, Ontario**

Firstly:

PIN 06079-0067 (LT)

Part of Lot 18, Concession 3 Scarborough, designated as Parts 2 and 3 on Plan 64R6927 and Part 1 on Plan 64R7116, confirmed by 64B1990, subject to SC574898, Toronto, City of Toronto

Secondly:

PIN 06079-0280 (LT)

Part of Lot 18, Concession 3 Scarborough, designated as Parts 2 and 3 on Plan 66R23795, subject to an easement over Part 3 on Plan 66R23795 as in SC574898, City of Toronto

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT* ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CINRAM INTERNATIONAL INC., CINRAM INTERNATIONAL INCOME FUND, CII TRUST AND THE COMPANIES LISTED IN SCHEDULE "A"

Applicants

Court File No: CV12 – 9767 – 00CL

*ONTARIO*
**SUPERIOR COURT OF JUSTICE-COMMERCIAL LIST**

Proceeding commenced at Toronto

**INITIAL ORDER**

**GOODMANS LLP**
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Robert J. Chadwick LSUC#: 35165K
Melaney J. Wagner LSUC#: 44063B
Caroline Descours LSUC#: 58251A

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Applicants

\6082974

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| **In re** | : | **Chapter 15** |
| **CINRAM INTERNATIONAL INC., *et al.*,[1]** | : | **Case No. 12-11882 (__)** |
| **Debtors in a Foreign Proceeding.** | : | **(Jointly Administered)** |

**DECLARATION OF MARK HOOTNICK IN SUPPORT OF FOREIGN REPRESENTATIVE'S MOTION FOR ENTRY OF AN ORDER (I) RECOGNIZING THE CANADIAN SALE ORDER, (II) AUTHORIZING AND APPROVING THE SALE FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

Pursuant to 28 U.S.C. § 1746, Mark Hootnick declares as follows:

I am a Managing Director and duly authorized agent of Moelis & Company LLC, which has been engaged by Cinram International Inc. (together with its affiliates, "**Cinram**") to assist Cinram with a comprehensive and thorough review of its strategic alternatives, with the goal of maximizing value for all of its stakeholders. Attached hereto as Exhibit A is a true and correct copy of the *Affidavit of Mark Hootnick* (the "**Canadian Affidavit**"), which was sworn to by me on the date hereof, and was submitted to the Ontario Superior Court of Justice in connection with Cinram's proceeding under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C 36 (as amended), in support of the Approval and Vesting Order

[1] The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, of each of the Debtors follow in parentheses: (a) Cinram International Inc. (4583); (b) Cinram (U.S.) Holding's Inc. (4792); (c) Cinram, Inc. (7621); (d) Cinram Distribution LLC (3854); (e) Cinram Manufacturing LLC (2945); (f) Cinram Retail Services LLC (1741); (g) Cinram Wireless LLC (5915); (h) IHC Corporation (4225); and (i) One K Studios, LLC (2132). The Debtors' executive headquarters is located at 2255 Markham Road, Toronto, Ontario, M1B 2W3, Canada.

(as defined in the Canadian Affidavit). Each of the statements and allegations contained in the Canadian Affidavit is true and accurate to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 23rd day of June, 2012.

By: Mark Hootnick
Title: Managing Director, Moelis & Company

# EXHIBIT A

## Canadian Affidavit

Court File No. _____

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT* ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CINRAM INTERNATIONAL INC., CINRAM INTERNATIONAL INCOME FUND, CII TRUST AND THE COMPANIES LISTED IN SCHEDULE "A"**

Applicants

**AFFIDAVIT OF MARK HOOTNICK**
**(sworn June 23, 2012)**

I, Mark Hootnick, of the City of New York, in the State of New York, **MAKE OATH AND SAY:**

## I. INTRODUCTION

1. I am a Managing Director at Moelis & Company LLC ("**Moelis**"). Moelis was engaged by Cinram International Inc. ("**CII**") in September 2011 to assist Cinram (defined below) with a comprehensive and thorough review of Cinram's strategic alternatives with the goal of maximizing value for Cinram's stakeholders. As such, I have personal knowledge of the matters to which I depose in this Affidavit. Where I do not possess personal knowledge, I have stated the source of my information and in all such cases believe it to be true.

2. CII, Cinram International Income Fund ("**Cinram Fund**"), CII Trust and the companies listed in Schedule "A" hereto are collectively referred to herein as the "**Applicants**". The Applicants, together with Cinram International Limited Partnership, are collectively referred

to herein as the "**CCAA Parties**"). Cinram Fund collectively with its direct and indirect subsidiaries is referred to herein as "**Cinram**" or the "**Cinram Group**". All dollar amounts expressed herein, unless otherwise noted, are in the United States currency.

3. Cinram's strategic review process has culminated in a sale transaction that, as more fully described in the Asset Purchase Agreement, the Share Purchase Offer and the Share Purchase Agreement (each as defined below), will see Cinram Acquisition, Inc. (the "**Purchaser**") and/or one or more of its nominees acquire: (a) substantially all of the property and assets used in connection with the business carried on by Cinram in North America (except for certain excluded assets) (the "**Asset Sale Transaction**"); and (b) all of the issued and outstanding shares of Cooperatie Cinram Netherlands UA (the "**Purchased Shares**") and thereby the business carried on by Cinram in Europe (the "**Share Sale Transaction**", together with the Asset Sale Transaction, the "**Sale Transaction**").

4. This Affidavit is sworn in support of a motion (the "**Sale Approval Motion**") by the Applicants for an Order (the "**Approval and Vesting Order**"), *inter alia*:

(a) approving the Asset Sale Transaction pursuant to the Asset Purchase Agreement dated June 22, 2012 (the "**Asset Purchase Agreement**") between CII and the Purchaser;

(b) approving the Share Sale Transaction pursuant to the binding purchase offer dated June 22, 2012 (the "**Share Purchase Offer**") provided by the Purchaser to CII and 1362806 Ontario Limited (together with CII, the "**Share Sellers**");

(c) authorizing CII to enter into the Asset Purchase Agreement and the Share Sellers to enter into the Share Purchase Offer;

(d) authorizing CII, Cinram, Inc., Cinram Retail Services LLC, One K Studios, LLC, Cinram Distribution LLC and Cinram Manufacturing LLC (collectively, the "**Asset Sellers**") to complete the Asset Sale Transaction;

(e) authorizing the Share Sellers to complete the Share Sale Transaction, including, without limitation, entering into a share purchase agreement in the form attached as Exhibit A to the Share Purchase Offer (the "**Share Purchase Agreement**") upon due exercise of the Share Purchase Offer; and

(f) upon delivery of closing certificates by the Court-appointed Monitor (the "**Monitor**") in these proceedings to the Purchaser, vesting all of the Asset Sellers' right, title and interest in and to the Purchased Assets (as defined in the Asset Purchase Agreement) and the Share Sellers' right, title and interest in and to the Purchased Shares in the Purchaser, or one or more of its nominees, free and clear of all interests, liens, charges and encumbrances, other than permitted encumbrances, as set out in the Approval and Vesting Order.

## II. BACKGROUND

5. As more fully described in the affidavit of John Bell, sworn June 23, 2012, (the "**Bell Affidavit**") in support of the Applicants' application for the Initial CCAA Order (as defined below), the CCAA Parties are part of a consolidated business in Canada, the United States and Europe that is headquartered in Canada and operationally and functionally integrated in many significant respects. Cinram is one of the world's largest providers of pre-recorded multimedia products and related logistics services and is a leader in the industry for production, service, delivery and customer satisfaction. With facilities in North America and Europe, Cinram (i) manufactures DVDs, Blu-ray discs and CDs, and provides distribution services for motion picture studios, music labels, video game publishers, computer software companies, telecommunication companies and retailers around the world; (ii) provides various digital media services through its subsidiary One K Studios, LLC; and (iii) provides retail inventory control and forecasting services through Cinram Retail Services, LLC (collectively, the "**Cinram Business**").

6. As discussed in the Bell Affidavit, Cinram operates in an industry where there is a high degree of customer concentration and where production levels and cash flows in any period are materially affected by the timing and commercial success of customer product releases. The economic downturn in Cinram's primary markets of North America and Europe has impacted consumers' discretionary spending and adversely affected the industry generally. Over the past four years, Cinram has experienced significant declines in revenue and EBITDA, resulting in part due to customer losses, reductions in pricing and declining customer order volumes.

7. As more fully described in the Bell Affidavit, declining revenues and EBITDA have made it increasingly difficult for Cinram to service its debt obligations and comply with its financial covenants under the Amended and Restated Credit Agreement dated as of April 11, 2011 (the "**First Lien Credit Agreement**") among CII, Cinram, Inc. and Cinram (U.S.) Holding's Inc., as borrowers, the guarantors party thereto, the lenders from time to time party thereto, and JPMorgan Chase Bank N.A., as administrative agent, and the Second Lien Credit Agreement dated as of April 11, 2011 (the "**Second Lien Credit Agreement**", together with the First Lien Credit Agreement, the "**Credit Agreements**") among Cinram (U.S.) Holding's Inc., as borrower, Cinram International ULC and the other guarantors party thereto, the lenders from time to time party thereto (collectively with the lenders party to the First Lien Credit Agreement, the "**Lenders**") and JPMorgan Chase Bank N.A., as administrative agent (together with the administrative agent under the First Lien Credit Agreement, the "**Administrative Agent**").

8. As more fully described in the Bell Affidavit, with respect to the First Lien Credit Agreement, as at March 31, 2012, there was approximately $233 million outstanding under the term loan facility; $19 million outstanding under the revolving credit facilities; and approximately $12 million of letter of credit exposure. With respect to the Second Lien Credit

Agreement as at March 31, 2012, there was approximately $12 million outstanding. The Lenders under the Credit Agreements have security over substantially all of the assets of each of the Borrowers and Guarantors thereunder (with the exception of the Cinram Holdings GmbH and Cinram GmbH whose guarantees are limited as a result of German corporate law).

9. As more fully described in the Bell Affidavit, Cinram has been unable to satisfy certain financial covenants under the Credit Agreements and is unable to repay or refinance the amounts owing under the Credit Agreements or find an out-of-court transaction for the sale of the Cinram Business with proceeds that equal or exceed the amounts owing under the Credit Agreements.

10. On June 25, 2012, the Applicants intend to seek an Order of this Honourable Court (the "**Initial CCAA Order**") protecting the CCAA Parties from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", with these proceedings commenced thereunder referred to herein as the "**CCAA Proceedings**").

11. Based on my understanding from Robert J. Chadwick of Goodmans LLP ("**Chadwick**"), Cinram's Canadian counsel, it is contemplated that these CCAA Proceedings will be the primary Court-supervised restructuring of the CCAA Parties. In conjunction therewith, the Applicants intend to commence proceedings (the "**Chapter 15 Proceedings**") under Chapter 15 of the United States Bankruptcy Code ("**Chapter 15**") to seek recognition of these CCAA Proceedings as "Foreign Main Proceedings" as soon as practicable. The Applicants also intend to seek an order which, among other things, recognizes the proposed Approval and Vesting Order and authorizes the sale of the Purchased Assets located in the United States, free

and clear of all liens, claims, encumbrances and interests, other than permitted encumbrances (the "**Sale Recognition Order**") under the Chapter 15 Proceedings.

12. As discussed in the Bell Affidavit, since 2009, Cinram has taken several steps in an effort to strengthen its operational and financial position by, among other things, reducing its debt levels, reducing its cost structure, limiting capital expenditures, and focusing on its core business of producing standard DVDs and Blu-ray discs and related distribution services, with the intention of disposing of non-core assets, including facility rationalization where appropriate.

13. As part of its extensive restructuring efforts, on April 11, 2011, Cinram completed a refinancing and recapitalization transaction (the "**Refinancing and Recapitalization**") to, among other things, reduce its debt and extend the maturity date of its credit facilities in an effort to provide Cinram with increased liquidity and a more sustainable capital structure.

14. In the first half of 2011, results of operations disappointed due primarily to a decline in customer order volumes and as a result, Cinram sought amendments to the Credit Agreements in August 2011 (the "**August 2011 Amendment**"). In addition to certain changes to financial and other covenants, as well as certain requirements under the Credit Agreements, the August 2011 Amendment resulted in Cinram engaging Moelis to assist in a review of its strategic alternatives (as further discussed below).

15. Continued decline in customer volumes for the fourth quarter of 2011 resulted in Cinram seeking waivers to certain covenants in the Credit Agreements. A series of waivers extending from December 2011 through June 30, 2012, were obtained, relating to, among other things, certain financial covenants.

16. Additional factual background concerning the Cinram Group and its restructuring efforts is set forth in the Bell Affidavit.

17. Cinram has been unable to find an out-of-court solution to its financial difficulties, and I do not believe there is a reasonable expectation that the Cinram Group's financial condition will improve absent these restructuring proceedings. Without a successful restructuring, indications suggest that the Cinram Group's liquidity and ability to service its cash payment obligations will deteriorate further with a corresponding erosion of the value of the Cinram Business.

## III. STRATEGIC REVIEW PROCESS

18. As noted above, pursuant to the August 2011 Amendment, in September, 2011, Cinram engaged Moelis as investment banker to assist Cinram in a comprehensive and thorough review of Cinram's strategic alternatives with the goal of maximizing value for Cinram's stakeholders.

19. Moelis is a global investment bank that provides financial advisory, capital raising and asset management services to a broad client base including corporations, institutions and governments. Established in 2007, Moelis is headquartered in New York with eleven offices in North America, Europe, Asia and Australia and employs 580 employees globally.

20. In addition to its expertise in mergers and acquisitions, recapitalization and restructuring, capital market risk advisory and asset management, Moelis is recognized for its leading global media practice having completed over $50 billion in transaction volume across over 60 transactions. Moelis has a wide range of experience and relationships in all key media

subsectors, having represented companies and creditors on both the buy-side and the sell-side of transactions.

21. As part of Cinram's strategic review process, Moelis sought to identify a potential transaction such as a sale of the company, strategic combination or new money investment from a strategic or financial investor, while concurrently evaluating a possible stand-alone transaction with Cinram's lenders.

22. Commencing in the fall of 2011, Moelis conducted preliminary discussions with certain key parties-in-interest, including the Lenders' financial advisors, key customers and certain strategic parties. Moelis next commenced the initial stages of the marketing process by assisting, together with Cinram management, in preparing a Confidential Information Memorandum (the "**CIM**") for prospective purchasers to review upon execution of a confidentiality agreement and began to contact prospective investors, communicating the Cinram investment opportunity and providing interested parties with a brief overview of the Cinram Business.

23. Moelis undertook a comprehensive assessment of the market for the Cinram Business to identify potential parties that might be interested in considering an acquisition or investment transaction and contacted approximately 59 parties, including 54 financial investors and 5 strategic parties. Approximately 26 parties executed confidentiality agreements and were provided with the CIM and access to Cinram's data room. Moelis continued to engage with prospective bidders interested in moving forward with the process. Non-binding proposals were requested from interested parties by January 20, 2012.

24. Several potential bidders submitted non-binding expressions of interest in January 2012. Upon consideration of these proposals and discussion with Cinram management, Moelis invited each of the potential bidders to participate in the next round of the process. Cinram, its advisors and Moelis engaged in detailed discussions with the interested parties in order to determine the optimal structure of a potential transaction and the value that could be obtained for the benefit of Cinram's stakeholders.

25. During February 2012, materials further detailing the Cinram Business were prepared and Cinram management presented to each of the individual bidders, or a diligence session was provided in lieu of a management presentation. Cinram, its advisors and Moelis worked diligently with potential bidders, responding to inquiries, discussing the Cinram Business and the acquisition or investment opportunity and otherwise providing the prospective bidders with information necessary to formulate an offer for the Cinram Business.

26. On February 28, 2012, Moelis provided to each potential bidder a process letter requesting a detailed proposal (a "**Detailed Proposal**") from each bidder by March 12, 2012. The Detailed Proposal required bidders to outline proposed transaction terms, due diligence and other conditions, and a timetable for the proposed transaction. A more limited number of second round bids were received on or about March 12, 2012, and were reviewed by Moelis, Cinram management and its advisors.

27. Moelis and Cinram continued discussions with certain of the second round bidders each of whom conducted more detailed due diligence, including telephonic and in person meetings with Cinram management and its advisors, as well as visits to key operating facilities. Moelis requested receipt of binding indications of interest from the second round bidders by

April 6, 2012, which binding proposals were to include specific details, including: (a) value and form of consideration; (b) transaction structure; (c) assumed and excluded assets and liabilities; (d) timing to close; (e) evidence of financing; (f) details of any proposed price adjustments; and (g) assumptions of existing indebtedness.

28. In April, Moelis received an inbound inquiry from a new party expressing interest in Cinram, who also executed a confidentiality agreement and was provided with access to the Cinram data room. This was followed shortly with a formal indication of interest.

29. Moelis, Cinram management and its advisors continued discussions and conducted meetings with the interested parties, while also continuing discussions with the Lenders in connection with pursuing a possible stand-alone transaction.

30. After reviewing and considering all of the submissions in the strategic review process, Cinram, after discussion and consultation with Moelis, Cinram's other advisors and the Lenders' advisors, determined that the offer submitted in respect of the Purchaser was the best offer submitted in the circumstances taking into account such factors as (i) purchase price; (ii) conditions for closing; (iii) required financing; (iv) structuring of the transaction; (v) the timeframe within which the transaction could be closed, and (vi) certainty of close.

31. Accordingly, Cinram, with the assistance of Moelis and Cinram's counsel, entered into negotiations with the Purchaser in respect of the execution of definitive agreements for the sale of the Purchased Assets and Purchased Shares.

32. The strategic review process culminated with the execution of the Asset Purchase Agreement by CII and the Purchaser on June 22, 2012, and the execution of the Share Purchase

Offer by the Purchaser on June 22, 2012. A copy of the Asset Purchase Agreement and a copy of the Share Purchase Offer are attached hereto as Exhibit "A" and "B", respectively. The Purchaser has paid a deposit of $5,000,000 to JPMorgan Chase Bank to be held in escrow in accordance with the Asset Purchase Agreement. The key elements of the Sale Transaction are discussed below.

33. The Purchaser is a newly formed entity owned by the Najafi Companies ("**Najafi**"), an international private investment firm based in Phoenix, Arizona. As referenced on the firm's website, Najafi makes selective investments up to $1 billion in transaction value in companies with strong management teams across a variety of industries, taking a long-term view on its investments and focusing its efforts on creating value through growth and superior performance. Najafi's operating investments include, among others, Direct Brands (including Columbia House), Innovative Brands, Trend Homes and Snowflake Power.

34. As noted in the Bell Affidavit, throughout the strategic review process, Cinram kept key stakeholders, including the lenders and major customers, apprised of its progress. In addition to discussions in connection with a potential stand-alone transaction, the lenders engaged in extensive discussions with Cinram and its advisors from the commencement of the process and also participated in discussions with potential bidders. Cinram and its advisors also partook in discussions with Cinram's major customers and provided updates as to the developments in the process. Such parties have been supportive of Cinram's efforts in pursuing a successful restructuring of its business, including through the Sale Transaction.

## IV. SALE TRANSACTION

35. The Sale Transaction involves the Asset Sale Transaction contemplated by the Asset Purchase Agreement and the Share Sale Transaction contemplated by the Share Purchase Offer and, upon exercise thereof, the Share Purchase Agreement. I am advised by Chadwick, Cinram's Canadian counsel it is structured in this way due to certain regulatory consultation requirements involving works councils in France, which must occur prior to the transfer of Cinram's European business to the Purchaser through the Share Sale Transaction. I understand from Chadwick that the requirement involves consultation only – consent of the works councils in France to the transaction is not required. Completion of the consultation with the applicable French works councils is a key pre-condition to the Share Sellers' ability to accept the Share Purchase Offer. Upon due exercise of the Share Purchase Offer, the Share Sellers and the Purchaser shall, pursuant to the terms and conditions of the Share Purchase Offer, execute the Share Purchase Agreement pursuant to which the Share Sale Transaction will be completed. The goal is to close the Asset Sale Transaction and the Share Sale Transaction simultaneously in August 2012; however, the closing of the Share Sale Transaction may be extended if necessary to complete certain regulatory consultation matters and subject to the Purchaser's right to extend the closing to December 17, 2012.

### (a) Asset Purchase Agreement

36. I have reviewed the Asset Purchase Agreement and note the following terms:

(i) an aggregate cash purchase price of $82,500,000 to be allocated among the Purchased Assets and the Purchased Shares, subject to certain adjustments as provided in the Asset Purchase Agreement;

(ii) the purchase from the Asset Sellers of substantially all of the property and assets used in connection with the business carried on by Cinram in North America (other than certain excluded assets) (the "**North America Purchased Business**"), including, without limitation, the assumption of the contracts, personal property leases, real property leases and third party licenses as set out in the Asset Purchase Agreement, pursuant to the terms and conditions of the Asset Purchase Agreement;

(iii) the effective date of the Asset Sale Transaction is April 30, 2012 (the "**Asset Sale Effective Date**"), with the Purchaser entitled to the benefit of all revenues and profits of the North America Purchased Business as of the Asset Sale Effective Date, and bearing the responsibility of all expenses and losses of the North America Purchased Business as of the Asset Sale Effective Date;

(iv) the Purchaser will continue to fulfill obligations to customers and suppliers relating to the North America Purchased Business, as set out in the Asset Purchase Agreement;

(v) the Asset Purchase Agreement may be terminated by either party if, among other reasons, the closing does not occur on or before September 15, 2012, or such later date agreed to by both parties (the "**Sunset Date**");

(vi) CII shall not, and shall cause its affiliates not, to pursue an Acquisition Proposal (as defined in the Asset Purchase Agreement), except that CII may consider an Acquisition Proposal that could reasonably be expected to lead to a Superior Proposal (as defined in the Asset Purchase Agreement) subject to the terms and conditions set forth in the Asset Purchase Agreement;

(vii) if CII terminates the Asset Purchase Agreement for the purpose of entering into a binding written agreement with respect to a Superior Proposal, or the Purchaser terminates the Asset Purchase Agreement as a

result of: (1) CII withdrawing or seeking authority to withdraw the Approval and Vesting Order or the Sale Recognition Order; (2) CII selling, transferring or otherwise disposing of any material portion of the Purchased Assets, except in connection with the CCAA Proceedings and/or the Chapter 15 Proceedings, and except with the consent of the Purchaser; or (3) a condition to closing not being satisfied by the Sunset Date due to a material breach by CII that cannot be timely cured, CII must pay to the Purchaser a fee in the amount of $2,250,000;

(viii) the Purchaser may nominate one or more entities to take title to the Purchased Assets;

(ix) the granting of the Approval and Vesting Order being sought by the Applicants, together with the Sale Recognition Order, the form and substance of which have been agreed to by the Purchaser, is a condition to the completion of the Asset Sale Transaction;

(x) aside from closing deliveries, additional conditions to the completion of the Asset Sale Transaction include: (1) obtaining the regulatory approvals under the *Investment Canada Act* (Canada); (2) assignment of the Material Contracts (as defined in the Asset Purchase Agreement) to the Purchaser or its nominees, or a replacement thereof with new contracts in a manner acceptable to the Purchaser; (3) obtaining the consents of the Material Customers and the European Material Customers (each as defined in the Asset Purchase Agreement); and (iv) executing the Transition Services Agreement (as defined in the Asset Purchase Agreement); and

(xi) Permitted Encumbrances include Encumbrances associated with, and financing statements evidencing, the rights of equipment lessors under equipment contracts and personal property leases acquired by the Purchaser as part of the Purchased Assets.

**(b) Share Purchase Offer and Share Purchase Agreement**

37. I have reviewed the Share Purchase Offer and the Share Purchase Agreement and note the following terms:

(i) a cash purchase price of $82,500,000, less the purchase price paid for the Purchased Assets pursuant to the Asset Purchase Agreement;

(ii) the purchase from the Share Sellers of all of the issued and outstanding shares in Cooperatie Cinram Netherlands UA, and indirectly, each of its direct and indirect subsidiaries (with the exception of Cinram Iberia SL);

(iii) the Purchaser may nominate one or more entities to take title to the Purchased Shares;

(iv) the Share Sellers' ability to accept the Share Purchase Offer is conditioned upon the completion of the consultation process with the French works councils;

(v) upon due exercise of the Share Purchase Offer, the Share Sellers and the Purchaser shall execute the Share Purchase Agreement;

(vi) aside from closing deliveries, additional conditions to closing of the Share Sale Transaction include: (i) the closing of the Asset Sale Transaction in accordance with the Asset Purchase Agreement; and (ii) the cancellation or termination of all debt obligations and guarantees of Cinram's European entities to third party senior secured lenders and the release of all securities related thereto;

(vii) the Purchaser has the right to extend the closing of the Share Sale Transaction up to December 17, 2012;

(viii) the Share Sellers and their affiliates shall not solicit or encourage any inquiries or proposals for, or enter into any discussions with respect to, the

acquisition by any other person of any shares of Cinram's European entities; and

(ix) the Share Purchase Offer may be rescinded by either party if the Asset Purchase Agreement is terminated.

## V. SUPPORT AGREEMENT

38. As described in the Bell Affidavit, on June 22, 2012, lenders who are members of the steering committee with respect to the First Lien Credit Agreement and who are subject to confidentiality agreements (the "**Initial Consenting Lenders**"), Cinram Fund and the Borrowers under the Credit Agreements entered into a support agreement (the "**Support Agreement**") pursuant to which the Initial Consenting Lenders agreed to support the Sale Transaction to be pursued through these CCAA Proceedings. More specifically, the Sale Transaction has the support of lenders representing approximately 40% of the loans under the First Lien Credit Agreement. Cinram anticipates further support of the Sale Transaction from additional lenders under the Credit Agreements following the public announcement of the Sale Transaction. A copy of the Support Agreement is attached as Exhibit "F" to the Bell Affidavit.

## V. MOTION FOR APPROVAL OF THE SALE TRANSACTION

39. After completion of a comprehensive strategic review process, I believe that the Sale Transaction represents the best available alternative in the circumstances taking into account such factors as (i) aggregate value to stakeholders, (ii) the timeframe within which the transaction could be close, and (iii) the probability of closing. The Sale Transaction enables the Cinram Business to continue as a going concern. Additionally, through the Asset Purchase

Agreement, the Share Purchase Offer and the Share Purchase Agreement, the transaction is intended to result in a transition of ownership with minimal disruption to the business.

40. As indicated above, the Asset Purchase Agreement and the Share Purchase Offer represent the best offer made for the Cinram Business and have been consented to by lenders representing approximately 40% of the loans under the First Lien Credit Agreement, the Lenders being Cinram's primary secured creditors over substantially all of the assets of the Cinram Business.

41. I have been advised by Chadwick, Cinram's Canadian counsel that, among others, parties with a registered security interest under the *Personal Property Security Act* (Ontario) will be served with the within motion.

## VI. SEALING ORDER

42. Schedules 2.1(i), 4.3 and 4.6 to the Asset Purchase Agreement and Schedule I.3 to Exhibit I to the Asset Purchase Agreement contain sensitive, competitive information of the CCAA Parties. These schedules will be provided to the Court under seal and a sealing order will be sought with respect to such information. I believe sealing these schedules is appropriate in the circumstances.

## VII. CONCLUSION

43. After carrying out a comprehensive strategic review process for the Cinram Business, it became apparent that the Cinram Group would not be able to enter into a transaction that permitted the Cinram Group to repay amounts owing to the Lenders under the Credit Agreements in full and that the Cinram Group does not have the ability to refinance the Credit

Agreements in full. I believe that taking into account, among other factors, the transaction consideration, the nature of the purchased assets, timing and probability of closing, the Sale Transaction contemplated by the Asset Purchase Agreement, the Share Purchase Offer and the Share Purchase Agreement represents the best available alternative in the circumstances to the Cinram Group and its stakeholders as a whole and the best opportunity to normalize its capital structure and preserve the value of the Cinram Business.

SWORN BEFORE ME at the City of New York, in the State of New York, on June 23, 2012

Mary M. Glennon

A Notary Public in and for the State of New York.

MARY M. GLENNON
Notary Public, State of New York
No. 01GL6139228
Qualified in Kings County
Commission Expires January 1, 2014

Mark Hootnick

**SCHEDULE "A"**

**Additional Applicants**

Cinram International General Partner Inc.

Cinram International ULC

1362806 Ontario Limited

Cinram (U.S.) Holding's Inc.

Cinram, Inc.

IHC Corporation

Cinram Manufacturing LLC

Cinram Distribution LLC

Cinram Wireless LLC

Cinram Retail Services, LLC

One K Studios, LLC

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT* ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CINRAM INTERNATIONAL INC., CINRAM INTERNATIONAL INCOME FUND, CII TRUST AND THE COMPANIES LISTED IN SCHEDULE "A"

Applicants

Court File No: _____

*ONTARIO*
SUPERIOR COURT OF JUSTICE-
COMMERCIAL LIST

Proceeding commenced at Toronto

**AFFIDAVIT OF MARK HOOTNICK**
**(sworn June 23, 2012)**

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Robert J. Chadwick LSUC#: 35165K
Melaney J. Wagner LSUC#: 44063B
Caroline Descours LSUC#: 58251A

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Applicants

\6093045

This is Exhibit "A" referred to in the

affidavit of Mark Hootnick

sworn before me, this 23rd

day of June, 2012.

Mary M. Glennon

A Notary Public in and for the
State of New York.

MARY M. GLENNON
Notary Public, State of New York
No. 01GL5139223
Qualified in Kings County
Commission Expires January 1, 2014

**On file with the Bankruptcy Court**

**and available at**

http://www.kccllc.net/cinram

This is Exhibit "B" referred to in the

affidavit of Mark Hootnick

sworn before me, this 23rd

day of June, 2012.

Mary M. Glennon

A Notary Public in and for the

State of New York.

MARY M. GLENNON
Notary Public, State of New York
No. 01GL6139228
Qualified in Kings County
Commission Expires January 1, 2014

**On file with the Bankruptcy Court**

**and available at**

http://www.kccllc.net/cinram

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| **In re** | : | **Chapter 15** |
| **CINRAM INTERNATIONAL INC., *et al.*,[1]** | : | **Case No. 12-11882 (__)** |
| **Debtors in a Foreign Proceeding.** | : | **(Joint Administration Pending)** |

**FOREIGN REPRESENTATIVE'S MOTION FOR ORDER SCHEDULING HEARING AND SPECIFYING THE FORM AND MANNER OF SERVICE OF NOTICE**

Cinram International ULC, in its capacity as the authorized foreign representative (the "**Foreign Representative**") for the above-captioned debtors (collectively, the "**Debtors**") in a proceeding (the "**CCAA Proceeding**") commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and pending before the Ontario Superior Court of Justice (the "**Canadian Court**"), files this motion (this "**Motion**") for entry of an order, pursuant to sections 1514 and 105(a) of title 11 of the United States Code, as amended from time to time (the "**Bankruptcy Code**") and Rules 2002, 9006, 9007, and 9008 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), specifying the form and manner of service of notice of: (a) the filing of the Debtors' petitions for recognition under chapter 15 of the Bankruptcy Code; (b) the Court's entry of a temporary order (the "**Provisional Order**") recognizing and enforcing in the United States, on an interim basis, the Initial Order (the "**Initial CCAA Order**") issued on June 25, 2012 by the Canadian Court, and granting other relief sought in the *Foreign Representative's Motion for Orders Granting*

[1] The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, of each of the Debtors follow in parentheses: (a) Cinram International Inc. (4583); (b) Cinram (U.S.) Holding's Inc. (4792); (c) Cinram, Inc. (7621); (d) Cinram Distribution LLC (3854); (e) Cinram Manufacturing LLC (2945); (f) Cinram Retail Services LLC (1741); (g) Cinram Wireless LLC (5915); (h) IHC Corporation (4225); and (i) One K Studios, LLC (2132). The Debtors' executive headquarters is located at 2255 Markham Road, Toronto, Ontario, M1B 2W3, Canada.

*Provisional and Final Relief in Aid of Foreign CCAA Proceeding* (the "**Recognition Motion**"); (c) the deadline to object to the Court's entry of a final order (the "**Final Order**") granting the relief sought in the Recognition Motion on a final basis; and (d) the hearing for the Court to consider the chapter 15 petitions and the Recognition Motion (the "**Recognition Hearing**"). In support of this Motion, the Foreign Representative refers the Court to (a) the statements contained in the *Declaration of John Bell in Support of (I) Verified Chapter 15 Petitions, (II) Foreign Representative's Motion for Orders Granting Provisional and Final Relief in Aid of Foreign CCAA Proceeding, and (III) Certain Related Relief* (the "**Bell Declaration**"), and (b) the *Foreign Representative's Memorandum of Law in Support of (I) Verified Chapter 15 Petitions and (II) Motion for Orders Granting Provisional and Final Relief in Aid of Foreign CCAA Proceeding* (the "**Memorandum of Law**"), which were both filed concurrently herewith and are incorporated herein by reference. In further support of the relief requested herein, the Foreign Representative respectfully represents as follows:

## Jurisdiction and Venue

1. The Court has jurisdiction to consider this Motion pursuant to sections 157 and 1334 of title 28 of the United States Code, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. These cases have been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of petitions for recognition of the CCAA Proceeding pursuant to section 1515 of the Bankruptcy Code. This is a core proceeding pursuant to section 157(b)(2)(P) of title 28 of the United States Code. Venue is proper in this District pursuant to section 1410 of title 28 of the United States Code. The statutory predicates for the relief requested herein are sections 1514

and 105(a) of the Bankruptcy Code, as supplemented by Bankruptcy Rules 2002, 9006, 9007, and 9008.

## Background

2. The Debtors are wholly owned indirect subsidiaries of Cinram International Income Fund, which, together with its affiliates, is one of the world's largest providers of pre-recorded multimedia products and related logistics services. The Debtors and their affiliates manufacture DVDs™, Blu-ray™ discs, and CDs™ and provide distribution services for motion picture studios, music labels, video game publishers, computer software companies, telecommunication companies, and retailers around the world.

3. On the date hereof (the "**Petition Date**"), the Foreign Representative commenced these chapter 15 cases by filing, among other things, verified chapter 15 petitions seeking recognition by the Court of the CCAA Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

4. Detailed information about the Debtors' business and operations, the events leading to the Petition Date, and the facts and circumstances surrounding the CCAA Proceeding and these cases is set forth in the Bell Declaration.

## Relief Requested

5. By this Motion, the Foreign Representative respectfully requests that the Court enter an order (the "**Proposed Notice Order**"): (a) approving the notice, substantially in the form attached as Exhibit 1 to the Proposed Notice Order (the "**Recognition Hearing Notice**"), of (i) the filing of the chapter 15 petitions and certain related pleadings, including the Recognition Motion, (ii) the Court's entry of the Provisional Order, (iii) the deadline to object to the Court's entry of the Final Order (the "**Recognition Objection Deadline**"), and (iv) the Recognition Hearing; (b) approving the manner of service of the Recognition Hearing Notice on

any party that files a notice of appearance in the chapter 15 cases; (c) approving the manner of service on the Master Service List (as defined below) of any pleadings that the Foreign Representative files in these chapter 15 cases; and (d) granting certain related relief.

**A.** ***Recognition Hearing Notice***

6. Pursuant to Bankruptcy Rule 2002(q), the Foreign Representative proposes to serve the Recognition Hearing Notice, the Provisional Order, the proposed Final Order, and the Initial CCAA Order by United States or Canadian mail, first class postage prepaid, within three business days of the later of (a) the entry of the Proposed Notice Order, or (b) the entry of the Provisional Order, on the following persons and entities (collectively, the "**Notice Parties**"): (i) all persons or bodies authorized to administer foreign proceedings of the Debtors; (ii) all entities against whom provisional relief is being sought pursuant to section 1519 of the Bankruptcy Code, including, but not limited to, all known creditors of the Debtors; (iii) all parties to litigation pending in the United States to which the Debtors are a party at the time of the filing of the chapter 15 petitions; (iv) counsel to the Debtors' prepetition secured lenders; (v) the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**"); and (vi) all other parties which have requested notice in these cases as of the date of such service.

7. The Recognition Hearing Notice will: (a) notify the Notice Parties of the filing of the chapter 15 petitions and certain related pleadings pursuant to chapter 15 of the Bankruptcy Code; (b) include a copy of the Provisional Order, the Recognition Motion, the proposed Final Order, and the Initial CCAA Order; (c) set forth the Recognition Objection Deadline and the date and time of the Recognition Hearing; and (d) provide a website address, email address, and phone number that interested parties may use to obtain pleadings filed in these cases.

**B.** ***Notice of Appearance***

8. In the event any party files a notice of appearance in these cases subsequent to the Foreign Representative's initial service of the Recognition Hearing Notice as provided for above, the Foreign Representative will serve the Recognition Hearing Notice on such party within three business days of the filing of such notice of appearance to the extent the Foreign Representative has not already done so.

**C.** ***Master Service List***

9. The Foreign Representative proposes to serve all pleadings that it files in these cases by United States or Canadian mail, first class postage prepaid, on: (a) counsel to JPMorgan Chase Bank, N.A., as agent under the Debtors' proposed debtor in possession financing facility; (b) counsel to JPMorgan Chase Bank, N.A., as Administrative Agent to the Debtors' prepetition secured lenders; (c) principal parties that have appeared in the CCAA Proceeding as of the date of the service of the relevant pleading; (d) the U.S. Trustee; and (e) all parties that have requested notice of these proceedings pursuant to Bankruptcy Rule 2002 (collectively, the "**Master Service List**").

## Basis for Relief

10. Bankruptcy Rule 2002(q) provides, in pertinent part, that:

> The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 21 days' notice by mail of the hearing on the petition for recognition of a foreign proceeding. The notice shall state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding.

Fed. R. Bankr. P. 2002(q)(1).

11. Bankruptcy Rule 2002(m) provides that "the court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by [the Bankruptcy Rules]." Fed. R. Bankr. P. 2002(m).

12. Further, section 105(a) of the Bankruptcy Code provides the Court with the power to grant the relief requested herein by the Debtors.[2]

13. The Debtors have thousands of creditors, potential creditors, and other parties in interest, all of whom need to be provided with notice of the Provisional Order, the proposed Final Order, the Recognition Objection Deadline, and the Recognition Hearing. Under the facts and circumstances of the Debtors' chapter 15 cases, the Foreign Representative submits that service of the Recognition Hearing Notice in the manner proposed herein will provide the Notice Parties due and sufficient notice of the relief requested in the Recognition Motion and associated objection deadline and hearing dates.

14. Furthermore, the Recognition Hearing Notice provides multiple efficient ways for any party receiving such notice to obtain copies of pleadings filed in these chapter 15 cases, as it provides a website address, email address, and phone number that can be used to obtain critical documents including the Recognition Motion, the Provisional Order, the Initial CCAA Order, and the proposed Final Order. Additionally, service by the Foreign Representative of all pleadings that it files in these cases by United States or Canadian mail, first class postage prepaid, on the Master Service List is an efficient and effective way to provide notice to such key parties in these cases and the CCAA Proceeding. At the same time, it will not over-burden the

[2] Section 105(a) states that a bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]."

Foreign Representative with the significant costs associated with copying and mailing all the various documents filed in these cases to the entire matrix of putative creditors and other parties.

15. Accordingly, the Foreign Representative requests that the Court declare that service to the Notice Parties of the Recognition Hearing Notice, the Provisional Order, the Recognition Motion, the proposed Final Order, and the Initial CCAA Order, as proposed herein, is due and sufficient notice and service on all interested parties of the filing of the chapter 15 petitions, the Recognition Motion, the Court's entry of the Provisional Order, and the proposed Final Order.

16. Bankruptcy Rule 1011(b) provides, among other things, that a party objecting to a petition to commence a proceeding under chapter 15 of the Bankruptcy Code has 21 days from the date of service of the summons to respond thereto. Fed. R. Bankr. P. 1011(b). The Foreign Representative believes that the reference to a "summons" in Bankruptcy Rule 1011(b) is inapplicable because the summons requirement of Bankruptcy Rule 1010 does not apply to petitions for recognition of foreign main proceedings in these cases. Accordingly, the Foreign Representative requests the Court to declare that no summons is required under Bankruptcy Rule 1011(b).

17. Finally, section 1514(c) of the Bankruptcy Code states that when "a notification of commencement of a case is to be given to foreign creditors, such notification shall (1) indicate the time period for filing proofs of claim and specify the place for filing such proofs of claim; [and] (2) indicate whether secured creditors need to file proofs of claim." 11 U.S.C. § 1514(c). It is not clear that section 1514 of the Bankruptcy Code has any application in the context of an ancillary case under chapter 15 of the Bankruptcy Code. According to Collier, section 1514 of the Bankruptcy Code is the "last in a series of sections dealing with the

international aspects of cases under chapters other than chapter 15." 8 COLLIER ON BANKRUPTCY, ¶ 1514.01 (Alan N. Resnick, et al., 15th ed. rev. 2006). Therefore, out of an abundance of caution, the Foreign Representative respectfully requests that, to the extent applicable, the notice requirements of section 1514(c) of the Bankruptcy Code be waived in these chapter 15 cases.

18. The Court has granted requests for similar relief under section 1514(c) in other chapter 15 cases. *See e.g., In re Arctic Glacier Int'l Inc.*, No. 12-10605 (Bankr. D. Del. Feb. 23, 2012) (order stating that all notice requirements specified in section 1514(c) of the Bankruptcy Code are waived or otherwise deemed inapplicable to the chapter 15 cases); *In re Angiotech Pharm. Inc.*, No. 11-10269 (Bankr. D. Del. Jan. 31, 2011) (order finding that all 1514(c) notice requirements are waived or deemed inapplicable to the chapter 15 cases); *In re Nortel Networks UK Ltd.*, No. 09-11972 (Bankr. D. Del. June 11, 2009) (order stating that the 1514(c) notice requirements are inapplicable in the context of the chapter 15 case or are waived); *In re MAAX Corp.*, No. 08-11443 (Bankr. D. Del. July 15, 2008) (order waiving all notice requirements specified in section 1514(c) of the Bankruptcy Code).

19. To the extent that there is a claims process established in the CCAA Proceeding, the Foreign Representative will comply with any relevant orders issued by the Canadian Court with respect to providing notice of any applicable deadlines or procedures for the filing of claims.

**Notice**

20. Notice of this Motion has been provided to: (a) all persons or bodies authorized to administer foreign proceedings of the Debtors; (b) counsel to JPMorgan Chase Bank, N.A., as administrative agent under the Debtors' proposed debtor in possession financing facilities; (c) counsel to JPMorgan Chase Bank, N.A., as administrative agent to the Debtors'

prepetition secured lenders; and (d) the Office of the United States Trustee for the District of Delaware. The Foreign Representative requests that the Court grant this Motion without further notice to creditors. The Foreign Representative proposes to notify all creditors and parties in interest of the filing of the chapter 15 petitions and the Foreign Representative's request for entry of an order recognizing the CCAA Proceeding as a foreign main proceeding in the form and manner set forth herein. In light of the nature of the relief requested herein, the Foreign Representative submits that no other or further notice of this Motion is necessary or required.

**No Prior Request**

21. No prior request for the relief sought in this Motion has been made to this or any other court.

## Conclusion

WHEREFORE, the Foreign Representative respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
June 25, 2012

Respectfully submitted,

SHEARMAN & STERLING LLP
Douglas P. Bartner
Jill Frizzley
Robert Britton
599 Lexington Avenue
New York, New York 10022
Telephone: (212) 848-4000
Facsimile: (646) 848-8174

-and-

YOUNG CONAWAY STARGATT & TAYLOR, LLP

*/s/ Kenneth J. Enos*
Pauline K. Morgan (No. 3650)
Kenneth J. Enos (No. 4544)
Rodney Square
1000 North King Street
Wilmington, DE 19801
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*Co-Counsel to the Foreign Representative*

# EXHIBIT A

## Notice Order

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| **In re** | : | **Chapter 15** |
| **CINRAM INTERNATIONAL INC., *et al.*,[1]** | : | **Case No. 12-11882 (KJC)** |
| **Debtors in a Foreign Proceeding.** | : | **(Joint Administration Pending)** |
| | : | **Ref. Docket No. 5** |

**ORDER SCHEDULING HEARING AND SPECIFYING**
**THE FORM AND MANNER OF SERVICE OF NOTICE**

This matter coming before this Court on the motion (the "**Motion**")[2] of Cinram International ULC, the duly authorized foreign representative (the "**Foreign Representative**") of the above-captioned debtors (collectively, the "**Debtors**") in a proceeding commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and pending before the Ontario Superior Court of Justice, for entry of an order scheduling a hearing and specifying the form and manner of service of notice (this "**Order**"); this Court having reviewed the Motion, the statements contained in the (a) *Declaration of John Bell in Support of (I) Verified Chapter 15 Petitions, (II) Foreign Representative's Motion for Orders Granting Provisional and Final Relief in Aid of Foreign CCAA Proceeding, and (III) Certain Related Relief* (the "**Bell Declaration**"), and (b) the *Foreign Representative's Memorandum of Law in Support of (I) Verified Chapter 15 Petitions and (II) Motion for Orders Granting Provisional and Final Relief in Aid of Foreign CCAA*

---

1 The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, of each of the Debtors follow in parentheses: (a) Cinram International Inc. (4583); (b) Cinram (U.S.) Holding's Inc. (4792); (c) Cinram, Inc. (7621); (d) Cinram Distribution LLC (3854); (e) Cinram Manufacturing LLC (2945); (f) Cinram Retail Services LLC (1741); (g) Cinram Wireless LLC (5915); (h) IHC Corporation (4225); and (i) One K Studios, LLC (2132). The Debtors' executive headquarters is located at 2255 Markham Road, Toronto, Ontario, M1B 2W3, Canada.

2 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

*Proceeding* (the "**Memorandum of Law**"); and it appearing that this Court has jurisdiction to consider the Motion pursuant to sections 157 and 1334 of title 28 of the United States Code, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interest of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted.

2. The Recognition Hearing Notice, substantially in the form attached hereto as Exhibit 1, is hereby approved.

3. Prior to mailing the Recognition Hearing Notice, the Foreign Representative may fill in any missing dates and other information, correct any typographical errors, conform the provisions thereof to the provisions of this Order and make such other and further non-material, non-substantive changes as the Foreign Representative deems necessary or appropriate.

4. The Foreign Representative shall serve, or caused to be served, on the Notice Parties the Recognition Hearing Notice, the Recognition Motion, the Provisional Order, the proposed Final Order, and the Initial CCAA Order by United States or Canadian mail, first class postage prepaid, within three business days of the later of (a) the entry of this Order or (b) the entry of the Provisional Order.

5. The Foreign Representative shall serve, or caused to be served, on the Master Service List, including any party requesting to be added thereto, all pleadings filed by the Foreign Representative in these cases by United States or Canadian mail, first class postage prepaid.

6. To the extent not previously served, in the event any party files a notice of appearance in these cases subsequent to the Foreign Representative's initial service of the Recognition Hearing Notice as provided for in this Order, the Foreign Representative shall serve, or caused to be served, on such party the Recognition Hearing Notice, the Provisional Order, the proposed Final Order, and the Initial CCAA Order (or, to the extent the proposed Final Order has previously been entered by this Court, the Final Order) within three business days of the filing of such notice of appearance by United States or Canadian mail, first class postage prepaid.

7. Service of the Recognition Hearing Notice, the Provisional Order, the proposed Final Order, and the Initial CCAA Order in accordance with this Order is hereby approved as due and sufficient notice and service of the filing of the chapter 15 petitions, the Recognition Motion, the Provisional Order, the proposed Final Order, the Recognition Hearing, and the Recognition Objection Deadline on all interested parties in the chapter 15 cases.

8. Bankruptcy Rule 1010 shall not apply to the Debtors' petitions seeking recognition of a foreign main proceeding and, therefore, the summons requirements in Bankruptcy Rule 1011(b) are inapplicable to the chapter 15 petitions and the Recognition Motion and any requirements under the Bankruptcy Code, the Bankruptcy Rules, or otherwise for notice thereof.

9. All notice requirements specified in section 1514(c) of the Bankruptcy Code are hereby waived or otherwise deemed inapplicable to these cases.

10. This Court shall retain jurisdiction with respect to any and all matters arising from or relating to the interpretation or implementation of this Order.

Dated: Wilmington, Delaware
June 26, 2012

KEVIN GROSS
CHIEF UNITED STATES BANKRUPTCY JUDGE

# EXHIBIT 1

## Recognition Hearing Notice

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| **In re** | : | **Chapter 15** |
| **CINRAM INTERNATIONAL INC., *et al.*,[1]** | : | **Case No. 12-11882 (KJC)** |
| **Debtors in a Foreign Proceeding.** | : | **Jointly Administered** |
| | : | **Ref. Docket No. 29** |

**RULE 2002 NOTICE OF PETITIONS FOR RECOGNITION OF FOREIGN PROCEEDING AND OF COURT'S INTENTION TO COMMUNICATE WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVE**

**PLEASE TAKE NOTICE** that, on June 25, 2012, Cinram International ULC, in its capacity as the duly authorized foreign representative (the "**Foreign Representative**") for the above-captioned debtors (collectively, the "**Debtors**"), in the proceeding (the "**CCAA Proceeding**") commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C 36, as amended, and pending before the Ontario Superior Court of Justice (the "**Canadian Court**"), filed (a) petitions for relief (the "**Petitions**") under chapter 15 of title 11 of the United States Code, as amended from time to time (the "**Bankruptcy Code**") and (b) the *Foreign Representative's Motion for Orders Granting Provisional and Final Relief in Aid of Foreign CCAA Proceeding* (the "**Recognition Motion**"), seeking recognition of the CCAA Proceeding as a foreign main proceeding pursuant to section 1515 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"). A copy of the Recognition Motion and the *Foreign Representative's Memorandum of Law in Support of (I) Verified Chapter 15 Petitions and (II) Motion for Orders Granting Provisional and Final Relief in Aid of Foreign CCAA Proceeding* is attached hereto as Exhibit 1.

**PLEASE TAKE FURTHER NOTICE** that on June 26, 2012, the Bankruptcy Court entered an Order Directing Joint Administration of the Debtors' Chapter 15 Cases (Docket No. 27) under Case No. 12-11882 (KJC).

**PLEASE TAKE FURTHER NOTICE** that on on June 26, 2012, the Bankruptcy Court entered that certain order granting provisional, injunctive, and related relief pursuant to sections 105(a) and 1519 of the Bankruptcy Code (Docket No. 30) (the "**Provisional Order**"). The Provisional Order, among other things: (a) enjoins actions in

[1] The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, of each of the Debtors follow in parentheses: (a) Cinram International Inc. (4583); (b) Cinram (U.S.) Holding's Inc. (4792); (c) Cinram, Inc. (7621); (d) Cinram Distribution LLC (3854); (e) Cinram Manufacturing LLC (2945); (f) Cinram Retail Services LLC (1741); (g) Cinram Wireless LLC (5915); (h) IHC Corporation (4225); and (i) One K Studios, LLC (2132). The Debtors' executive headquarters is located at 2255 Markham Road, Toronto, Ontario, M1B 2W3, Canada.

the United States in contravention of orders of the Canadian Court in the CCAA Proceeding from the entry of such Provisional Order through and including the date of the Recognition Hearing (as defined below); (b) authorizes, on a provisional basis, the Debtors to enter into and perform under a debtor-in-possession credit facility; and (c) grants, on a provisional basis, certain protections afforded by the Bankruptcy Code, including those protections arising pursuant to sections 364(c), 364(d), and 364(e) of the Bankruptcy Code, to and for the benefit of the lenders under such credit facility. A copy of the Provisional Order is attached hereto as Exhibit 2.

**PLEASE TAKE FURTHER NOTICE** that it is anticipated that the Bankruptcy Court will communicate directly with, or to request information or assistance directly from, the Canadian Court and Foreign Representative pursuant to section 1525 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that the Bankruptcy Court has scheduled a hearing before the Honorable Kevin J. Carey in Room 5 of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on July 25, 2012 at 10:00 a.m. (prevailing Eastern time) to consider approval of the Petitions and granting of the relief requested therein on a final basis (the "**Recognition Hearing**"), including recognition of the CCAA Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code and giving full force and effect to an order (the "**Initial CCAA Order**") entered in the CCAA Proceeding. Enclosed with this notice is a copy of the Initial CCAA Order attached hereto as Exhibit 3. The Initial CCAA Order, among other things, allows the Debtors to continue to operate their business substantially in the ordinary course and authorizes the Debtors to enter into a debtor in possession credit facility. The proposed final order granting recognition of the CCAA Proceeding is attached to the Recognition Motion as Exhibit B.

**PLEASE TAKE FURTHER NOTICE**, that any party in interest wishing to submit a response or objection to the Petitions or the relief requested by the Foreign Representative therein, must do so in accordance with the Bankruptcy Code, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, and the Federal Rules of Bankruptcy Procedure, by the deadline established in the Provisional Order, in a writing that sets forth the bases therefor with specificity and the nature and extent of the respondent's claims against the Debtors. Such response or objection must be filed with the Office of the Clerk of the Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon: (a) Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York 10022 (Attn: Douglas P. Bartner and Jill Frizzley); (b) Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Pauline K. Morgan and Kenneth J. Enos); (c) Goodmans LLP, Bay Adelaide Centre, 333 Bay Street, Suite 3400, Toronto, Ontario, M5H 2S7 (Attn: Robert Chadwick and Melaney Wagner); (d) Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019 (Attn: Richard G. Mason and Joshua A. Feltman); and (e) Ballard Spahr LLP, 919 North Market Street, 11th Floor, Wilmington, Delaware 19801 (Attn: Matthew G. Summers) **so as to be actually received by each of them no later than the deadline established in the Provisional Order, 4:00 p.m. (prevailing Eastern time) on July 18, 2012**.

**PLEASE TAKE FURTHER NOTICE** that the Recognition Hearing may be adjourned from time to time without further notice other than a motion on the docket in these cases or an announcement in open court of the adjourned date or dates of any further adjourned hearing.

**PLEASE TAKE FURTHER NOTICE**, that if no response or objection is timely filed and served as provided above, the Bankruptcy Court may grant the relief requested by the Foreign Representative without further notice or hearing.

**PLEASE TAKE FURTHER NOTICE** that copies of the petitions and certain other pleadings filed contemporaneously therewith are available by (a) accessing the Bankruptcy Court's Electronic Case Filing System, which can be accessed from the Bankruptcy Court's website at https://ecf.deb.uscourts.gov (a PACER login and password are required to retrieve a document), (b) from the Foreign Representative through its website, www.kccllc.net/cinram, or (c) upon written request to the Foreign Representative's counsel (by email or facsimile) addressed to: Young Conaway Stargatt & Taylor LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, (Attn: Michelle Smith, e-mail: msmith@ycst.com, or Facsimile 302-576-3337).

Dated: Wilmington, Delaware
June ___, 2012

Respectfully submitted,

SHEARMAN & STERLING LLP
Douglas P. Bartner
Jill Frizzley
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-and-

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*Co-Counsel to the Foreign Representative*

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| **In re** | : | **Chapter 15** |
| **CINRAM INTERNATIONAL INC., *et al.*,[1]** | : | **Case No. 12-11882 (__)** |
| **Debtors in a Foreign Proceeding.** | : | **(Joint Administration Pending)** |

**FOREIGN REPRESENTATIVE'S MOTION FOR ENTRY OF AN ORDER (I) RECOGNIZING THE CANADIAN SALE ORDER, (II) AUTHORIZING AND APPROVING THE SALE FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

Cinram International ULC, in its capacity as the authorized foreign representative (the "**Foreign Representative**") for the above-captioned debtors (collectively, the "**Debtors**") in a proceeding (the "**CCAA Proceeding**") commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and pending before the Ontario Superior Court of Justice (the "**Canadian Court**"), respectfully submits this motion (this "**Motion**"), pursuant to sections 363, 365, 1501, 1507, 1520, 1521, 1525, 1527, and 105(a) of title 11 of the United States Code, as amended from time to time (the "**Bankruptcy Code**"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 6004-1(b) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**") for entry of an order (a) recognizing the Approval and Vesting Order to be

[1] The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, of each of the Debtors follow in parentheses: (a) Cinram International Inc. (4583); (b) Cinram (U.S.) Holding's Inc. (4792); (c) Cinram, Inc. (7621); (d) Cinram Distribution LLC (3854); (e) Cinram Manufacturing LLC (2945); (f) Cinram Retail Services LLC (1741); (g) Cinram Wireless LLC (5915); (h) IHC Corporation (4225); and (i) One K Studios, LLC (2132). The Debtors' executive headquarters is located at 2255 Markham Road, Toronto, Ontario, M1B 2W3, Canada.

entered by the Canadian Court (the "**Proposed Canadian Sale Order**"),[2] a copy of which is attached hereto as Exhibit D, (b) authorizing and approving the sale (the "**Proposed Sale**") of substantially all of the property and assets used in connection with the business carried on by the Debtors in North America (the "**Assets**"), pursuant to the terms and conditions set forth in that certain Asset Purchase Agreement (the "**APA**")[3] between Cinram International Inc. and Cinram Acquisition, Inc. (the "**Proposed Purchaser**"), a copy of which is attached hereto as Exhibit B, free and clear of liens, claims, encumbrances, and other interests, (c) authorizing the assumption and assignment of certain executory contracts and unexpired leases (collectively, the "**Assumed Contracts**") to the Proposed Purchaser, and (d) granting certain relief related thereto. In support of this Motion, the Foreign Representative refers the Court to the statements contained in the (a) *Declaration of John Bell in Support of (I) Verified Chapter 15 Petitions, (II) Foreign Representative's Motion for Orders Granting Provisional and Final Relief in Aid of Foreign CCAA Proceeding, and (III) Certain Related Relief* (the "**Bell Declaration**"), and (b) *Declaration of Mark Hootnick in Support of the Foreign Representative's Motion for Entry of an Order (I) Recognizing the Canadian Sale Order, (II) Authorizing and Approving the Sale Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (together with all the exhibits thereto, (the "**Hootnick Declaration**"), both of which were filed concurrently herewith and are

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[2] The Foreign Representative expects that the Proposed Canadian Sale Order will be approved and entered by the Canadian Court before the hearing on this Motion. The Foreign Representative will file a notice of entry of the Proposed Canadian Sale Order as soon as practicable after its entry by the Canadian Court and, in any case, no later than two business days prior to the hearing on this Motion.

[3] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the APA.

incorporated herein by reference. In further support of the relief requested herein, the Foreign Representative respectfully represents as follows:

## Jurisdiction and Venue

1. The Court has jurisdiction to consider this Motion pursuant to sections 157 and 1334 of title 28 of the United States Code. These cases have been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of petitions for recognition (collectively, the "**Petitions for Recognition**") of the CCAA Proceeding pursuant to section 1515 of the Bankruptcy Code. This is a core proceeding pursuant to section 157(b)(2)(P) of title 28 of the United States Code. Venue is proper in this District pursuant to section 1410 of title 28 of the United States Code. The statutory predicates for the relief requested herein are sections 363, 365, 1501, 1507, 1520, 1521, 1525, 1527 and 105(a) of the Bankruptcy Code.

## Background

2. The Debtors are wholly owned indirect subsidiaries of Cinram International Income Fund, which, together with its affiliates, is one of the world's largest providers of pre-recorded multimedia products and related logistics services. The Debtors and their affiliates manufacture DVDs™, Blu-ray™ discs, and CDs™ and provide distribution services for motion picture studios, music labels, video game publishers, computer software companies, telecommunication companies, and retailers around the world.

3. On the date hereof (the "**Petition Date**"), the Foreign Representative commenced these chapter 15 cases by filing, among other things, verified chapter 15 petitions seeking recognition by the Court of the CCAA Proceeding as a foreign main proceeding under chapter 15 of the Bankruptcy Code.

4. Detailed information about the Debtors' business and operations, the events leading to the Petition Date, and the facts and circumstances surrounding the CCAA Proceeding and these cases is set forth in the Bell Declaration.

## Relief Requested

5. By this Motion, the Foreign Representative respectfully requests the Court to enter an order, in substantially the form attached hereto as Exhibit A (the "**Proposed Order**"), pursuant to sections 363, 365, 1501, 1507, 1520, 1521, 1525, 1527, and 105(a) of the Bankruptcy Code, Bankruptcy Rules 2002 and 6006, and Local Rule 6004-1(b), (a) recognizing the Proposed Canadian Sale Order, which will (i) approve the APA and certain ancillary agreements thereto, (ii) authorize and direct the Debtors and their Canadian affiliates to take all steps necessary to consummate the transactions contemplated by the APA, (iii) vest in the Proposed Purchaser absolute, clear, and unencumbered title in and to the Purchased Assets free and clear of all liens and encumbrances relating to, accruing or arising any time prior to the Closing Date (collectively, the "**Liens**"), with such Liens attaching to the proceeds generated from the sale of the Assets, and (iv) find that the APA is commercially reasonable and is in the best interest of the Debtors, their Canadian affiliates, and all of their stakeholders, (b) authorizing and approving the Proposed Sale free and clear of any Liens, (c) authorizing the assumption and assignment of certain executory contracts and unexpired leases, and (d) granting certain related relief.

6. As set forth in the Hootnick Declaration, the Foreign Representative believes that a sale of the Assets in accordance with the terms and conditions of the APA will generate the highest possible value for the Debtors and their creditors, and that the Court's recognition of the Proposed Canadian Sale Order and approval of the Proposed Sale free and clear of Liens is a critical step in achieving that result.

7. The Proposed Sale provides for the continuation of the Debtors' business as a going concern, thus preserving jobs, maintaining customers and vendor relationships, and providing significant benefits to the Debtors' many stakeholders. As described in the Bell Declaration, the bid for the Assets that is memorialized in the APA represents the highest and best offer for the Assets. Further, entry of an order granting the relief requested herein is a condition precedent to the closing of the APA, and absent entry of this Proposed Order, the Debtors and their creditors will likely suffer irreparable harm from their inability to close the Proposed Sale. *See* ¶ 5 Proposed Canadian Sale Order.

## A. The Initial CCAA Order and the Proposed Canadian Sale Order

8. On June 25, 2012, the Canadian Court entered an order (the "**Initial CCAA Order**"). Among other things, the Initial CCAA Order (a) authorized the Debtors to enter into and perform under that certain DIP Facility,[4] and (b) granted the DIP Lenders' Charge to the DIP Lenders.

9. On the same date, the Foreign Representative filed the Proposed Canadian Sale Order with the Canadian Court,[5] and requested a hearing on the Proposed Canadian Sale Order which is set for July 12, 2012. The Proposed Canadian Sale Order provides, among other things, that (a) the Proposed Sale is commercially reasonable and is approved in accordance with the terms and conditions of the APA, (b) the Foreign Representative is authorized to consummate the Proposed Sale contemplated by the APA and to take any additional steps and execute any additional documents as may be necessary for the completion of the Proposed Sale, (c) upon the closing of the Proposed Sale, all of the Debtors' right, title, and interest in and to the

[4] The DIP Facility is described in the Bell Declaration.

[5] A copy of the Proposed Canadian Sale Order is attached to the Asset Purchase Agreement as Exhibit B.

Assets shall vest absolutely in the Proposed Purchaser, free and clear of security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts, or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered, or filed and whether secured, unsecured, or otherwise, except as otherwise provided in the APA or the Proposed Canadian Sale Order, and (d) the aid and recognition of any court, tribunal, regulatory, or administrative body having jurisdiction in Canada or in the United States is requested to give effect to the Proposed Canadian Sale Order and to assist the Foreign Representative and its agents in carrying out the terms of the Proposed Canadian Sale Order. As permitted by the terms of the Proposed Canadian Sale Order and required by the terms of the APA, by this Motion the Foreign Representative seeks entry of the Proposed Order recognizing the Proposed Canadian Sale Order and approving the Proposed Sale in the United States.

**B. Assumption and Assignment of Contracts**

10. In furtherance of the Proposed Sale and as required by the APA, the Foreign Representative also seeks the Court's authorization to assume and assign certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code. The Debtors are parties to many executory contracts and unexpired leases (collectively, the "**Contracts**"), including agreements with customers, vendors, employees, contractors, and landlords. The Proposed Purchaser is in the process of identifying those Contracts it requires to operate the business as a going concern after the Proposed Sale (collectively, the "**Assumed Contracts**").

11. The assumption and assignment of the Assumed Contracts is integral to the Proposed Sale. Accordingly, the Foreign Representative seeks the Court's approval of the

notice to be provided to counterparties to the Assumed Contracts (the "**Assumption and Assignment Notice**") and related procedures described herein (the "**Assumption and Assignment Procedures**"). The Assumption and Assignment Notice will notify counterparties to the Assumed Contracts that the Debtors intend to assume and assign the relevant Contract to the Proposed Purchaser, set forth the amount of any cure claim related to the relevant Contract to be paid in accordance with the APA in connection with assumption, and provide that the Contract counterparty has the right to object to the assumption and assignment of its Contract as set forth in the Notice. The form of proposed Assumption and Assignment Notice is attached hereto as Exhibit C.[6]

## Basis for Relief

### A. The Court Should Recognize the Proposed Canadian Sale Order and Authorize and Approve the Proposed Sale Pursuant to Sections 363, 1521, 1525, and 1527 of the Bankruptcy Code

#### *1. Recognition of the Proposed Canadian Sale Order is Authorized under Sections 1521, 1525, and 1527 of the Bankruptcy Code*

12. Section 1521 of the Bankruptcy Code sets forth various forms of relief that may be granted upon recognition of a foreign proceeding. Specifically, section 1521(b) of the Bankruptcy Code provides, in pertinent part, that "[u]pon recognition of a foreign proceeding . . . the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative." 11 U.S.C. § 1521(b).

13. Further, sections 1525 and 1527 of the Bankruptcy Code, when read in conjunction, direct the Court to "cooperate to the maximum extent possible" with the Canadian

[6] A form substantially similar to the form of Assumption and Assignment Notice attached hereto as Exhibit C shall be used in connection with the Assumption and Assignment of Closing Assumed Contracts, Open Contracts, and Olyphant Contracts (each as defined herein).

Court regarding the "coordination of the administration and supervision" of the Debtors' assets and affairs. 11 U.S.C. §§ 1525, 1527(3); *see also In re Metcalfe & Mansfield Alt. Invs.*, 421 B.R. 685 (Bankr. S.D.N.Y. 2010) (generally recognizing, on the basis of the statutory provisions of chapter 15 and the principles of comity, orders entered in a CCAA proceeding). Indeed, a Bankruptcy Court is not required to "make an independent determination about the propriety of individual acts of a foreign court . . . . The key determination required by [U.S. Bankruptcy Courts] is whether the procedures used in Canada meet our fundamental standards of fairness." *Id.* at 697.

14. The Canadian Court will have the opportunity to scrutinize the APA and the Proposed Sale, which is a result of the collective efforts of the Debtors and their Canadian affiliates to sell the Assets. After extensive marketing and consultation with the Debtors' advisors and the advisors of significant stakeholders in these cases, the Foreign Representative has determined that the Proposed Sale provides the highest and best return to the Debtors, their creditors, and their stakeholders, and the Proposed Canadian Sale Order recognizes as much. Indeed, the Debtors' prepetition secured lenders, a subset of which are the debtor-in-possession financing lenders in these cases, also support the sale to the Proposed Purchaser, a third party.

15. The Proposed Canadian Sale Order authorizes the Proposed Sale to the Proposed Purchaser, in accordance with the APA, and provides the Proposed Purchaser with absolute, clear, and unencumbered title in the Assets free and clear of all Liens and claims, with such Liens and claims attaching to the proceeds generated from the sale of the Assets in the order of their priority, with the same validity, force, and effect which they now have against the Assets.

16. The Foreign Representative seeks recognition and affirmation of the Proposed Canadian Sale Order after it has been entered by the Canadian Court, so that it is

effective under the laws of the United States. Effective coordination and administration of the CCAA Proceeding and the chapter 15 cases can only be achieved through recognition of the Proposed Canadian Sale Order in the United States. Moreover, the extensive nature of the marketing process, carried out by the Debtors with assistance from their advisors, and overseen by the Canadian Court and the Foreign Representative, ensures that a fair result is achieved by the Proposed Sale. Accordingly, the Foreign Representative respectfully submits that the Court should recognize and give full effect and force under the laws of the United States to the findings, authorities, and provisions set forth in the Proposed Canadian Sale Order as entered by the Canadian Court.

*2. Approval of the Proposed Sale is Authorized under Sections 363, 1507, and 1520 of the Bankruptcy Code*

17. Pursuant to section 1520 of the Bankruptcy Code, section 363 of the Bankruptcy Code is applicable "[u]pon recognition of a foreign proceeding that is a foreign main proceeding . . . to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States." 11 U.S.C. § 1520(a)(2).

18. Section 1507 of the Bankruptcy Code further provides that "[s]ubject to the specific limitations stated elsewhere in [chapter 15 of the Bankruptcy Code] the court, if recognition is granted, may provide additional assistance to a foreign representative under [chapter 15] or under other laws of the United States." 11 U.S.C. § 1507(a).

19. Similarly, section 1521 of the Bankruptcy Code provides, in relevant part, that "[u]pon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of [chapter 15 of the Bankruptcy Code] and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative,

grant any appropriate relief, including . . . granting any additional relief that may be available to a trustee" with certain inapplicable exceptions. 11 U.S.C. § 1521(a)(7).

20. Section 363(b)(1) of the Bankruptcy Code, which is incorporated by section 1520 of the Bankruptcy Code, provides, in relevant part, that a debtor "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Courts in this and other jurisdictions have required that the decision to sell assets outside the ordinary course of business be based upon the proponent's sound business judgment. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Dai-Ichi Kangyo Bank Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999); *Off. Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992).

21. Courts consider a variety of factors in determining whether a debtor has justified the sale or lease of property under section 363(b). Among the factors a court considers are whether (a) a "sound business purpose" justifies the sale of assets outside the ordinary course of business; (b) adequate and reasonable notice has been provided to interested persons; (c) the trustee or debtor in possession has obtained a fair and reasonable price; and (d) good faith exists. *See In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991); *Montgomery Ward*, 242 B.R. at 153; *See also Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Sovereign Estates, Ltd.*, 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989).

22. Further, section 105(a) of the Bankruptcy Code provides the court with broad powers in the administration of a chapter 15 case, providing that "[t]he court may issue

any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

23. The Foreign Representative submits that ample business justification exists to sell the Assets to the Proposed Purchaser. As described in the Hootnick Declaration, the Debtors and their Canadian affiliates, in consultation with their advisors and the advisors of significant stakeholders in these cases, ran a lengthy and thorough sale process in good faith prior to the Petition Date. After extensive marketing efforts in connection with the Proposed Sale process, the Foreign Representative believes that the APA represents the highest and best offer for the Assets available to maximize the benefits to the Debtors and their creditors.

24. Entry of the Proposed Order will permit the Foreign Representative to proceed with the Proposed Sale in the CCAA Proceeding without disruption. Absent the relief requested herein, the Debtors will likely suffer irreparable harm from the Foreign Representative's inability to sell the Assets, because entry of the Proposed Order is a condition precedent to the Closing of the APA and is also a condition precedent to the effectiveness of the Proposed Canadian Sale Order. *See* ¶ 5 Proposed Canadian Sale Order.

25. In contrast, granting the relief requested herein fulfills the public policy embodied in chapter 15 of the Bankruptcy Code, which is "to provide effective mechanisms" to promote cooperation in cross-border insolvency cases. 11 U.S.C. § 1501(a). Entry of the Proposed Order will permit the Foreign Representative to sell the Assets in the CCAA Proceeding without disruption, in a timely and efficient manner that will maximize value for the benefit of the Debtors' creditors.

26. Relief similar to that requested in this Motion related to the approval of the Proposed Sale has been entered in other chapter 15 cases in this District. *See, e.g.*, *In re*

*Catalyst Paper Corp.*, Case No. 12-10221 (PJW) (Bankr. D. Del. Apr. 17, 2012) [D.I. 119]; *In re Wellpoint Sys. Inc.*, Case No. 11- 10423 (MFW) (Bankr. D. Del. Feb. 25, 2011) [D.I. 30]; *In re EarthRenew IP Holdings LLC*, Case No. 10-13363 (CSS) (Bankr. D. Del. Feb. 18, 2011) [D.I. 68]; *In re Grant Forest Prods., Inc.* Case No. 10-11132 (PJW) (Bankr. D. Del. Apr. 26, 2010) [D.I. 57]; *In re Fraser Papers Inc.*, Case No. 09-12123 (KJC) (Bankr. D. Del. Jan. 5, 2010) [D.I. 122]; *In re Destinator Techs. Inc.*, Case No. 08-11003 (CSS) (Bankr. D. Del. July 8, 2008) [D.I. 63].

27. For all of the foregoing reasons, the Foreign Representative respectfully submits that there is more than ample justification for the Court to (a) recognize the Proposed Canadian Sale Order, and (b) authorize and approve the Proposed Sale pursuant to section 363 of the Bankruptcy Code.

**B. The Court Should Authorize and Approve the Proposed Sale Free and Clear of Liens, Claims, Encumbrances, and Other Interests Pursuant to Section 363(f) of the Bankruptcy Code**

28. The Foreign Representative respectfully requests the Court, pursuant to section 363(f) of the Bankruptcy Code, to authorize and approve the Proposed Sale free and clear of Liens, Claims, encumbrances, and other interests, except as otherwise provided in the APA.

29. Under Section 363(f) of the Bankruptcy Code a trustee or a debtor in possession may sell all or any part of a debtor's property free and clear of liens, claims, encumbrances, and other interests in such property if (a) the sale is permitted under applicable non-bankruptcy law; (b) the party asserting such a lien, claim, or interest consents; (c) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (d) the interest is the subject of a *bona fide* dispute; or (e) the party asserting the lien, claim, or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f).

30. The Foreign Representative believes, at a minimum, that the second and fifth of these requirements, are satisfied with respect to the Proposed Sale. Therefore, the Court's authorization and approval of the Proposed Sale free and clear of Liens (except as otherwise provided in the APA or the Proposed Canadian Sale Order) is warranted. Several courts have also held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). *See, e.g.*, *In re Trans World Airlines, Inc.*, 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001); *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987).

31. As noted above, relief similar to that requested in this Motion related to the approval of the Proposed Sale has been entered in other chapter 15 cases in this District.

**C. The Court Should Grant the Proposed Purchaser All Protections Available to a Good Faith Purchaser Pursuant to Section 363(m) of the Bankruptcy Code**

32. The Foreign Representative requests that the Court find that the Proposed Purchaser is entitled to the benefits and protections provided by section 363(m) of the Bankruptcy Code in connection with the Proposed Sale. Section 363(m) of the Bankruptcy Code provides, in pertinent part:

> The reversal or modification on appeal of an authorization under subsection (b) . . . of this section of a sale . . . of property does not affect the validity of a sale . . . under such authorization to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code protects a good faith purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal.

33. While the Bankruptcy Code does not define "good faith," the Third Circuit has stated:

> The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

*In re Abbots Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

34. The Foreign Representative submits that, as described in the Hootnick Declaration, the APA was negotiated, proposed, and entered into by Cinram International Inc. and the Proposed Purchaser without collusion, in good faith, and from arm's length. Accordingly, the Foreign Representative requests that the Court find that the Proposed Purchaser has purchased the Assets in good faith within the meaning of section 363(m) of the Bankruptcy Code.

**D. The Court Should Approve the Assumption and Assignment Notice and the Assumption and Assignment Procedures**

35. Section 1521(a)(7) of the Bankruptcy Code states that "[u]pon recognition of a foreign proceeding" the court may grant "any additional relief that may be available to a trustee," with certain inapplicable exceptions. A trustee in a bankruptcy case is authorized to assume or reject any executory contract or unexpired lease of the debtor, subject to the court's approval. *See* 11 U.S.C. § 365(a). Further, a trustee may assume and assign a contract, provided the trustee cures any existing defaults and provides adequate assurance of future performance of the assigned contract. *See* 11 U.S.C. § 365(b)(1).

36. In furtherance of the Canadian Proceedings and the Proposed Sale, the Foreign Representative and the Debtors seek the authority and ability to assume and assign the

Assumed Contracts pursuant to section 365 of the Bankruptcy Code. It is well established that the decision to assume or reject an executory contract is subject to judicial review under the business judgment standard. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *Sharon Steel Corp. v. Nat'l Fuel Gas Distribution. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989); *In re Fed. Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003) ("The business judgment test dictates that a court should approve a debtor's decision to reject a contract unless that decision is the product of bad faith or a gross abuse of discretion."); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993).

37. The assumption and assignment of the Assumed Contracts as part of the Proposed Sale is based on the Foreign Representative's sound business judgment and is in the best interests of the Debtors and their creditors. The Debtors intend to sell a substantial amount of their assets and upon the Closing (as defined in the APA) will have no further use for the Assumed Contracts. If the Foreign Representative elected or was forced to reject the Assumed Contracts it likely would jeopardize the Proposed Sale, cause a disruption to the Debtors' business operations, and increase the magnitude of unsecured claims against the Debtors, to the detriment of all of their creditors. The cure amounts owing to counterparties of Assumed Contracts will be paid in accordance with the APA in connection with assumption thereby decreasing the body of claims against the Debtors.

38. The Foreign Representative believes that it and the Debtors can and will demonstrate that all requirements for assumption and assignment of the Assumed Contracts will be satisfied. The Foreign Representative will provide all counterparties to the Assumed Contracts an opportunity to be heard on the proposed treatment of their Contracts, and all

counterparties will receive notice of, and have the opportunity to object to, this Motion and the proposed Assumption and Assignment Procedures described below.

**1. Assumption and Assignment of Closing Assumed Contracts**

39. On July 6, 2012, the Foreign Representative will file with the Court and serve upon counterparties to all unexpired leases and executory contracts related to the Purchased Assets (without regard to whether the Purchaser has designated such leases and executory contracts for assumption and assignment) a notice substantially in the form of Exhibit C hereto that such unexpired leases and executory contracts may be designated for assumption and assignment to the Purchaser in connection with the Closing, including cure amounts proposed to be paid to the applicable counterparty in the event that such contracts are assumed and assigned to the Purchaser in connection with the Closing. Counterparties will be provided ten Business Days to object to the assumption and assignment of their unexpired leases and executory contracts. If any such objection is filed and remains unresolved at the time of the hearing on this Motion, the Foreign Representative will seek to have such objection heard at such hearing. If the objection deadline set forth in such notice has not passed at the time of the hearing on this Motion, the Foreign Representative will seek to have any objections filed after the hearing that can not be resolved by agreement of the parties heard by the Court as soon as reasonably practicable, and in any event prior to the Closing. Any executory contract or unexpired lease set forth on such notice that is not assumed and assigned to the Purchaser in connection with the Closing will be treated in accordance with the procedures set forth below for Open Contracts.

40. The Purchaser will have the right, consistent with section 9.2 of the APA, to determine which of the executory contracts and unexpired leases listed in such notice will be assumed and assigned to it at any time before or at the Closing. Within one Business Day after

the Closing, the Foreign Representative will file with the Court a list of all Assumed Contracts that were actually assumed and assigned to the Purchaser at the Closing (the "**Closing Assumed Contracts**"), and will serve notice of the same to all counterparties to such Closing Assumed Contracts.

**2. Assumption and Assignment of Open Contracts**

41. From and after the Closing Date the Purchaser will have the right, exercisable without limitation at any time and from time to time, to notify the Seller that it is designating any Assumed Contracts, Real Property Leases Personal Property Leases, or Assumed Employee Plans not assigned to the Purchaser on the Closing Date (each, an "**Open Contract**") for assumption and assignment to the Purchaser. Within three Business Days of their receipt of such a notice, the Debtors will file with the Court notice of such designation and serve a notice (a "**Designation Notice**") substantially in the form of Exhibit C hereto upon the applicable counterparty to such Open Contract of the assumption and assignment of its contract, including an updated cure amount to be paid in connection with such assumption and assignment. Such counterparties will have seven Business Days from receipt of such Designation Notice to file an objection to such assumption and assignment with the Court. If no such objection is filed, the Debtors will be authorized to assume and assign such Open Contract to the Purchaser and pay such cure amount in full satisfaction of all defaults under the Open Contract without any further order of the Court. The applicable date of assumption will be the date of service of the Designation Notice. If such an objection is filed, a hearing will be scheduled before the Court as soon as reasonably practicable thereafter. The Purchaser will endeavor in good faith to complete the assumption and assignment or rejection process for all Open Contracts by September 15, 2012.

42. In addition, after the Closing Date the Debtors may, on not fewer than ten Business Days' prior written notice to the Purchaser (each such notice, a "**Rejection Notice**"), cause to be rejected any Open Contract set forth in the Rejection Notice, subject to the right of the Purchaser, upon receipt of the Rejection Notice and prior to the rejection of the applicable Open Contract, to either (a) designate such Open Contract for assumption and assignment in accordance with the procedures set forth in Section 9.2(j) of the APA and described herein, as applicable, or (b) agree in writing to reimburse the applicable Debtors for the out-of-pocket expenses incurred under such Open Contract from and after the date of the Rejection Notice until the date on which the Purchaser provides the Debtors with notice of the Purchaser's decision as to whether to assume such Open Contract or permit its rejection, in which case the Debtors will refrain from rejecting such Open Contract until the date they receive notification of such decision by the Purchaser. The Debtors will act reasonably and in good faith in providing any Rejection Notices, including with respect to the quantity of Open Contracts set forth therein, and will cooperate with the Purchaser in determining whether or not to assume any Open Contract.

**3. Assumption and Assignment of Olyphant Contracts**

43. From and after the Closing Date the Purchaser will have the right, exercisable without limitation at any time and from time to time, to notify the Seller that it is designating any Olyphant Contract for assumption and assignment to the Purchaser. Within three Business Days of their receipt of such a notice, the Debtors will file with the Court notice of such designation and serve a Designation Notice upon the applicable counterparty to such Olyphant Contract, including the proposed cure amount to be paid in connection with such assumption and assignment. Such counterparties will have seven Business Days from receipt of such Designation Notice to file an objection to such assumption and assignment with the Court. If no such objection is filed, the Debtors will be authorized to assume and assign such Olyphant

Contract to the Purchaser and pay such cure amount in full satisfaction of all defaults under the Olyphant Contract without any further order of the Court. The applicable date of assumption will be the date of service of the Designation Notice. If such an objection is filed, a hearing will be scheduled before the Court as soon as reasonably practicable thereafter.

44. Finally, the Foreign Representative will produce evidence, if requested by a counterparty to an Assumed Contract or any Open Contract or Olyphant Contract listed on a Designation Notice, of the Proposed Purchaser's financial ability and willingness to perform under the Assumed Contracts. Therefore, interested parties will have an opportunity to evaluate, and if necessary, challenge the ability of the Proposed Purchaser to provide adequate assurance of future performance under the Assumed Contracts, as required under section 365(b)(1)(C) of the Bankruptcy Code.

45. The Foreign Representative submits that assumption and assignment of the Assumed Contracts is authorized under the Bankruptcy Code and is in the best interests of the Debtors and their creditors. Further, similar relief regarding the assumption and assignment of contracts in a chapter 15 case has been granted previously by the Court. *In re Wellpoint Sys. Inc.*, Case No. 11- 10423 (MFW) (Bankr. D. Del. Apr. 28, 2011) [D.I. 53].

**Waiver of Bankruptcy Rule 6004(h)**

46. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Foreign Representative requests that the Proposed Order, once entered, be effective immediately by providing that the 14-day stay under Bankruptcy Rule 6004(h) is waived.

47. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Fed. R. Bankr. P. 6004(h). Advisory Committee's Note. Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the 14-day stay period, *Collier on Bankruptcy* ("**Collier's**") suggests that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to the procedure." 10 Collier ON BANKRUPTCY, ¶ 6004.11 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2010). Furthermore, Collier's provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay imposed by Bankruptcy Rule 6004(h) may be reduced to the amount of time actually necessary to file such appeal. *Id.*

48. Time is of the essence with respect to the relief embodied in the Proposed Order and consummating the Proposed Sale. To achieve the highest and best value for the Assets, the Foreign Representative must be afforded the opportunity to promptly sell the Assets in accordance with the Proposed Canadian Sale Order and the APA without undue disruption or delay. Therefore, the Foreign Representative requests that the Court waive the 14-day stay period under Bankruptcy Rule 6004(h) to the extent applicable to the Proposed Order.

**Notice**

49. Notice of this Motion has been provided to: (a) all persons or bodies authorized to administer foreign proceedings of the Debtors; (b) counsel to JPMorgan Chase Bank, N.A., as administrative agent under the Debtors' proposed debtor in possession financing facility; (c) counsel to JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the "**Prepetition Agent**") under that certain Amended and Restated Credit

Agreement, dated April 11, 2011, among the Debtors, their affiliates party thereto, and the lenders party thereto, as amended from time to time (the "**First Lien Credit Agreement**") and under that Second Lien Credit Agreement, dated April 11, 2011, among the Debtors, their affiliates party thereto, and the lenders party thereto, as amended from time to time (the "**Second Lien Credit Agreement**"; the lenders party to the First Lien Credit Agreement and the Second Lien Credit Agreement collectively, the "**Prepetition Secured Lenders**"); (d) the Office of the United States Trustee for the District of Delaware; (e) the Proposed Purchaser; (f) all parties known or reasonably believed to have asserted any lien, claim, interest, or encumbrance on any of the Assets; and (g) all parties contained in the consolidated list filed with the Court pursuant to Bankruptcy Rule 1007(a)(4). In light of the relief requested herein, the Foreign Representative respectfully submits that no other or further notice of this Motion is necessary under the circumstances.

**No Prior Request**

50. No previous request for the relief requested herein has been made to this or any other court.

## Conclusion

WHEREFORE, the Foreign Representative respectfully requests that the Court (a) enter the Proposed Order, substantially in the form attached hereto as Exhibit A and (b) grant such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
June 25, 2012

Respectfully submitted,

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-and-

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*Co-Counsel to the Foreign Representative*

# EXHIBIT A

## Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| **In re** | : | **Chapter 15** |
| **CINRAM INTERNATIONAL INC., *et al.*,[1]** | : | **Case No. 12-11882 (__)** |
| **Debtors in a Foreign Proceeding.** | : | **(Jointly Administered)** |
| | : | **Re: Docket No. _____** |

**ORDER (I) RECOGNIZING THE CANADIAN SALE ORDER, (II) AUTHORIZING AND APPROVING THE SALE FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the *Foreign Representative's Motion for Entry of an Order (I) Recognizing the Canadian Sale Order, (II) Authorizing and Approving the Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Certain Related Relief* dated June 25, 2012 (the "**Motion**") filed by Cinram International ULC (the "**Foreign Representative**"), in its capacity as the court-appointed and duly authorized foreign representative for the above-captioned debtors (collectively, the "**Debtors**") in a proceeding commenced under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA Proceeding**") pending before the Ontario Superior Court of Justice (the "**Canadian Court**"), for entry of an order (this "**Order**"), pursuant to sections 363, 365, 1501, 1507, 1520, 1521, 1525, 1527, and 105(a) of title 11 of the United States Code, as

[1] The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, of each of the Debtors follow in parentheses: (a) Cinram International Inc. (4583); (b) Cinram (U.S.) Holding's Inc. (4792); (c) Cinram, Inc. (7621); (d) Cinram Distribution LLC (3854); (e) Cinram Manufacturing LLC (2945); (f) Cinram Retail Services LLC (1741); (g) Cinram Wireless LLC (5915); (h) IHC Corporation (4225); and (i) One K Studios, LLC (2132). The Debtors' executive headquarters is located at 2255 Markham Road, Toronto, Ontario, M1B 2W3, Canada.

amended from time to time (the "**Bankruptcy Code**"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 6004-1(b) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), (a) recognizing the Approval and Vesting Order entered by the Canadian Court on June ____ , 2012 (the "**Canadian Sale Order**"), (b) authorizing and approving the sale (the "**Sale**") of substantially all of the property and assets used in connection with the business carried on by the Debtors in North America (the "**Assets**"), excluding, without limitation, the Olyphant Facility, the Excluded Assets, and such other assets identified in the APA, pursuant to the terms and conditions of that certain Asset Purchase Agreement (the "**APA**")[2] between Cinram International Inc. and Cinram Acquisition, Inc. (the "**Purchaser**"), a copy of which is attached to the Motion as Exhibit B, free and clear of liens, claims, encumbrances, and other interests, (c) authorizing the assumption and assignment of the Assumed Contracts (as defined in the APA), Real Property Leases, Personal Property Leases for property located in the United States, and Assumed Employee Plans (collectively, the "**Assumed Contracts**") to the Purchaser, and (d) granting certain relief related thereto; and upon sufficient and adequate notice of the Motion; and no other or further notice of the Motion needing to be provided; and it appearing that this Court has jurisdiction over this matter pursuant to sections 157 and 1334 of title 28 of the United States Code, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Foreign Representative, the Debtors, their creditors,

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the APA.

and other parties in interest; and this Court having reviewed and considered the (a) *Declaration of John Bell in Support of (I) Verified Chapter 15 Petitions, (II) Foreign Representative's Motion for Order Granting Provisional and Final Relief in Aid of Foreign CCAA Proceeding and (III) Certain Related Relief*, and (b) *Declaration of Mark Hootnick in Support of the Foreign Representative's Motion for Entry of an Order (I) Recognizing the Canadian Sale Order, (II) Authorizing and Approving the Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief*; and upon the record of the hearings on the Motion and all other pleadings and proceedings in these chapter 15 cases; and after due deliberation thereon and good and sufficient cause appearing therefor,

**THE COURT HEREBY FINDS AND DETERMINES THAT:**[3]

**Jurisdiction, Final Order, and Statutory Predicates**

A. This Court has jurisdiction over the Motion, the transactions contemplated by the APA and any other ancillary documents and agreements related thereto pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a), and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these chapter 15 cases and the Motion in this Court and this District is proper under 28 U.S.C. § 1410.

B. This Order constitutes a final and appealable order as set forth in 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h), 6006(d), or 6006(g), this Court

[3] The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. All findings of fact and conclusions of law announced by this Court at the Sale Hearing and any other proceeding related to the Motion are incorporated herein to the extent not inconsistent herewith. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

finds that there is no reason for delay in the implementation of this Order, and directs entry of judgment as set forth herein.

C. The bases for the relief sought in the Motion are sections 363(b), (f) and (m), 365, 1501, 1507, 1520, 1521, 1525, 1527, and 105(a) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Local Rule 6004-1.

D. The relief granted herein is necessary and appropriate, serves the public interest and the interests of international comity, is consistent with the public policy of the United States, is warranted pursuant to sections 1520 and 1521 of the Bankruptcy Code, and will not cause any hardship to any parties in interest that is not outweighed by the benefits of the relief granted.

E. The relief requested in the Motion, including recognition of the Canadian Sale Order and approval of the APA, consummation of the Sale to the Purchaser, and assumption and assignment of the Assumed Contracts to the Purchaser is in the best interests of the Foreign Representative, the Debtors, their creditors, and other parties in interest in these chapter 15 cases.

F. On June ____ , 2012, the Canadian Court entered the Canadian Sale Order, wherein the Canadian Court, among other things, (a) approved the APA and certain ancillary agreements thereto, (b) authorized and directed the Debtors and their Canadian affiliates to take all steps necessary to consummate the transactions contemplated by the APA, (c) vested in the Purchaser absolute, clear, and unencumbered title in and to the Assets free and clear of all liens and encumbrances relating to, accruing or arising any time prior to the Closing Date (collectively, the "**Liens**"), claims and other interests, with such Liens, claims, and interests attaching to the proceeds generated from the sale of the Assets, and (d) found that the APA is commercially reasonable and is in the best interests of the Debtors, their Canadian affiliates, and all of their stakeholders.

**The Purchaser**

G. The APA, each of its terms, and each of the transactions contemplated therein were negotiated, proposed and entered into by Cinram International Inc. and the Purchaser in good faith, without collusion, and from arm's-length bargaining positions. The Purchaser is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code, is purchasing the Assets in good faith, and, accordingly, is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

H. The Purchaser is not an "insider" or "affiliate" of the Foreign Representative or the Debtors as those terms are defined in the Bankruptcy Code. None of the Foreign Representative, the Debtors, nor the Purchaser has engaged in any conduct that would cause or permit the APA or the Sale to be avoided or permit any award of attorney's fees, costs, or damages under section 363(n) of the Bankruptcy Code. The Purchaser has not acted in a collusive manner with any person and the aggregate price paid by Purchaser for the Assets was not controlled by any agreement among bidders or potential bidders.

**No Fraudulent Transfer**

I. The consideration provided by the Purchaser pursuant to the APA: (a) is fair and reasonable; (b) is the highest and best offer for the Assets; (c) will provide a greater recovery to the Debtors' creditors than would be provided by any other available alternative; and (d) constitutes reasonably equivalent value (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and section 548 of the Bankruptcy Code). The consideration provided by the Purchaser pursuant to the APA also constitutes fair consideration under the Bankruptcy Code and the laws of the United States, any state, territory, possession, or the District of Columbia. No other person, entity, or group of entities has offered to purchase the Assets for greater economic value to the Debtors than the

Purchaser. The Debtors' determinations that the APA constitutes the highest and best offer for the Assets were a valid, sound, and reasonable exercise of the Debtors' business judgment.

J. The Purchaser is not a mere continuation of the Debtors, and there is no continuity of enterprise between the Debtors and the Purchaser. The Purchaser is not holding itself out to the public as a continuation of the Debtors. The Purchaser is not a successor to the Debtors and the Sale does not amount to a consolidation, merger, or *de facto* merger of Purchaser and the Debtors.

**Validity of Transfer**

K. The Foreign Representative and Debtors, where applicable, (a) have full corporate power and authority to execute and deliver the APA and all other documents contemplated thereby, (b) have all corporate authority necessary to consummate the transactions contemplated by the APA, and (c) are authorized to take all corporate action necessary to authorize and approve the APA and the consummation of the transactions contemplated thereby. No consents or approvals, other than those expressly provided for in the APA, are required for the Debtors to consummate the Sale, the APA, or the transactions contemplated thereby.

L. The APA was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, or possession, or the District of Columbia. Neither the Debtors nor the Purchaser are fraudulently entering into the transactions contemplated by the APA.

M. The Debtors have good and marketable title to the Assets and are the lawful owners of the Assets. Subject to section 363(f) of the Bankruptcy Code, the transfer of the Assets to the Purchaser will be, as of the closing of the transactions contemplated by the APA (the "**Closing Date**"), a legal, valid, and effective transfer of the Assets, which transfer vests or will vest the Purchaser with all right, title, and interest in the Assets free and clear of (a) all

Liens, and (b) all debts arising under, relating to, or in connection with any act of the Debtors or claims (as that term is defined in section 101(5) of the Bankruptcy Code and herein), liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests, matters, or any similar rights of any kind or nature, whether (i) arising prior to or subsequent to the commencement of this case, (ii) imposed by agreement, understanding, law, equity, or otherwise, (iii) known or unknown, (iv) secured or unsecured, or in the nature of setoff or recoupment, (v) choate or inchoate, (vi) filed or unfiled, (vii) scheduled or unscheduled, (viii) noticed or unnoticed, (ix) recorded or unrecorded, (x) perfected or unperfected, (xi) allowed or disallowed, (xii) contingent or non-contingent, (xiii) liquidated or unliquidated, (xiv) matured or unmatured, (xv) material or nonmaterial, (xvi) disputed or undisputed, (xvii) arising prior to or subsequent to the commencement of the CCAA Proceeding or these chapter 15 cases, or (xviii) imposed by agreement, understanding, law, equity, or otherwise, including claims otherwise arising under the doctrines of successor liability, in each case to the fullest extent permitted by law (collectively as described in this subclause (b), (the "**Claims**"), relating to, accruing, or arising any time prior to the Closing Date, except to the extent expressly set forth in the APA.

N. On the Closing Date, this Order shall be construed, and shall constitute for any and all purposes, a full and complete general assignment, conveyance, and transfer of the Debtors' interests in the Assets. This Order is and shall be effective as a determination that, on the Closing Date and except to the extent expressly set forth in the APA, all Liens, Claims, and other interests of any kind or nature whatsoever existing as to the Assets prior to the Closing Date shall have been unconditionally released, discharged, and terminated, in each case to the fullest extent permitted by law, and that the conveyances described herein have been effected;

provided, that such Liens, Claims, and other interests shall attach to the proceeds of the Sale in the order of their priority, with the same validity, force, and effect which they now have against the Assets.

O. This Order is and shall be binding upon and govern the acts of all persons and entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

P. To the greatest extent available under applicable law, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the Assets, and upon entry of this Order, all such licenses, permits, registrations, and governmental authorizations and approvals shall be deemed to be transferred to the Purchaser as of the Closing Date.

Q. To the extent permitted by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these chapter 15 cases or the consummation of the transactions contemplated by the APA.

**Section 363(f)**

R. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full and, upon entry of this Order the Debtors may sell the Assets free and clear of all Liens,

Claims, encumbrances, and interests, in each case to the fullest extent permitted by law and except as otherwise provided in the APA or the Canadian Sale Order. The Purchaser would not have entered into the APA and would not consummate the transactions contemplated thereby if the Sale and the assumption of liabilities and obligations as set forth in the APA by the Purchaser were not free and clear of Liens and Claims as provided herein.

S. Except to the extent expressly set forth in the APA, the Purchaser shall not be responsible for any Liens or Claims, including, without limitation, in respect of (a) any labor or employment agreements, (b) any mortgages, deeds of trust and security interests, (c) intercompany loans and receivables between the Debtors and any non-debtor subsidiary, (d) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of any Debtors, (e) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and the Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) state discrimination laws, (xi) state unemployment compensation laws or any other similar state laws, or (xii) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors, (f) Claims or Liens arising under any environmental laws with respect to any assets owned or operated by Debtors or any of their predecessors at any time prior to the Closing

Date and any of the Debtors' liabilities other than those assumed under the APA, (g) any bulk sales or similar law, (h) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (i) any other theories of successor liability, except as expressly set forth in the APA.

T. Except to the extent expressly stated in the APA, the Purchaser shall have no liability, obligation, or responsibility under the WARN Act (29 U.S.C. §§ 210 et seq.), the Comprehensive Environmental Response Compensation and Liability Act, or any foreign, federal, state, or local labor, employment, or environmental law by virtue of the Purchaser's purchase of the Assets or assumption of any liabilities identified in the APA.

U. Upon entry of this Order, the Debtors may sell the Assets free and clear of all Liens and Claims against the Debtors or any of the Assets to the extent provided in the APA and this Order because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Liens or Claims against the Debtors or any of the Assets who did not object or who withdrew their objections to the Sale or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

V. A certified copy of this Order may be filed with the appropriate clerk and/or recorded with the recorder to act to cancel any Liens and other encumbrances of record.

W. If any person or entity which has filed statements or other documents or agreements evidencing Liens on, or interests in, all or any portion of the Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Liens, and any other documents necessary for the purpose of documenting the release of all Liens or interests which the person or entity has or may assert with respect to all or any portion of the Assets, the

Foreign Representative is hereby authorized and directed, and the Purchaser is hereby authorized, on behalf of the Debtors and each of the Debtors' creditors, to execute and file such statements, instruments, releases, and other documents on behalf of such person or entity with respect to the Assets.

**Compelling Circumstances for an Immediate Sale**

X. Good and sufficient reasons for approval of the APA and the Sale have been articulated. The relief requested in the Motion is in the best interests of the Foreign Representative, the Debtors, their creditors, and other parties in interest. The Debtors have demonstrated (a) good, sufficient, and sound business purposes and justifications for approving the APA, and (b) compelling circumstances for the Sale outside of (i) the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code, and (ii) a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Purchaser is necessary and appropriate to maximize the value of the Debtors' Assets and distributions to their creditors.

Y. To maximize the value of the Assets and preserve the viability of the business to which the Assets relate, it is essential that the Sale occur within the time constraints set forth in the APA. Time is of the essence in consummating the Sale.

Z. Given all of the circumstances of these chapter 15 cases and the adequacy and fair value of the consideration provided under the APA, the Sale constitutes a reasonable and sound exercise of the Debtors' business judgment and should be approved.

**General Authorization of Assumption and Assignment**

AA. The consummation of the Sale and the assumption and assignment of the Closing Assumed Contracts (as hereinafter defined) designated by Purchaser for assumption and assignment at Closing and the Open Contracts and the Olyphant Contracts designated by Purchaser after Closing for assumption and assignment, are legal, valid, and properly authorized

under all applicable provisions of the Bankruptcy Code, including sections 363(b), 363(f), 363(m), 365, and 105(a) thereof. Good and sufficient notice of the assumption and assignment of the Closing Assumed Contracts at Closing and the procedures for the assumption and assignment of the Open Contracts and Olyphant Contracts after Closing was provided to contract counterparties by service of (a) the Motion and (b) the notice of potential assumption and assignment of Closing Assumed Contracts. The Assumption and Assignment Procedures (as defined in the Motion) are good and sufficient under the circumstances, including in light of the CCAA Proceeding and the Canadian Sale Order.

BB. Pursuant to sections 365 and 105(a) of the Bankruptcy Code, and subject to and conditioned upon the closing of the Sale, and subject to the designation rights and procedures contained in this Order and section 9.2 of the APA, the Debtors and Foreign Representatives' assumption and assignment to the Purchaser, and the Purchaser's assumption of the Closing Assumed Contracts, the Open Contracts and the Olyphant Contracts is hereby approved.

CC. Except as otherwise set forth herein and subject to the procedures set forth herein, the Debtors are hereby authorized and directed in accordance with sections 363, 365, and 105(a) of the Bankruptcy Code to assume and assign to the Purchaser the Closing Assumed Contracts free and clear of all Claims, Liens, or other interests of any kind or nature whatsoever, without the need for any further documentation. The Debtors and the Purchaser have cured, or have provided adequate assurance that they will cure on or prior to the Closing Date as to each Closing Assumed Contract (or for each Open Contract and Olyphant Contract that becomes an Assumed Contract after the Closing Date as a result of designation by the Purchaser, have provided adequate assurance that they will promptly cure as to each Open Contract and Olyphant Contract being designated by the Purchaser for assumption and assignment and becoming an

Assumed Contract, subject to the applicable counterparty's right to object in accordance with the procedures set forth herein) all defaults existing as of or prior to assumption and assignment to the Purchaser.

**Assumption and Assignment of Closing Assumed Contracts**

DD. On July 6, 2012, the Debtors and the Foreign Representative, in compliance with section 9.2 of the APA, filed with this Court and served upon counterparties to all unexpired leases and executory contracts related to the Purchased Assets (without regard to whether the Purchaser had then designated such leases and executory contracts for assumption and assignment) a notice that such unexpired leases and executory contracts may be designated for assumption and assignment to the Purchaser in connection with the Closing, including cure amounts proposed to be paid to the applicable counterparty in the event that such contracts are assumed and assigned to the Purchaser in connection with the Closing. Pursuant to the terms of such notice, counterparties were provided ten Business Days to object to the assumption and assignment of their unexpired leases and executory contracts. Such notice is good, sufficient, and appropriate under the circumstances. If an objection to assumption and assignment of any executory contract or unexpired lease set forth on such notice is timely filed, a hearing on such objection shall be held before this Court as soon as reasonably practicable thereafter and, in any case, prior to the Closing Date. Any executory contract or unexpired lease set forth on such notice that is not assumed and assigned to the Purchaser in connection with the Closing shall be treated in accordance with the procedures set forth below for Open Contracts.

EE. The Purchaser shall have the right, consistent with section 9.2 of the APA, to determine which of the executory contracts and unexpired leases will be assumed and assigned to it at any time before or at Closing. Within one Business Day after the Closing, the Foreign

Representative shall file with this Court a list of all Assumed Contracts that were actually assumed and assigned to the Purchaser at the Closing (the "Closing Assumed Contracts"), and shall serve notice of such assumption and assignment upon all counterparties to such Closing Assumed Contracts.

**Assumption and Assignment of Open Contracts**

FF. Notwithstanding anything to the contrary herein, from and after the Closing Date the Purchaser shall have the right, exercisable without limitation at any time and from time to time, to notify the Seller that it is designating any Assumed Contracts, Real Property Leases Personal Property Leases, or Assumed Employee Plans not assigned to the Purchaser on the Closing Date (each, an "**Open Contract**") for assumption and assignment to the Purchaser. Within three Business Days of their receipt of such a notice, the Debtors shall file with this Court notice of such designation and serve a notice (a "**Designation Notice**") upon the applicable counterparty to such Open Contract of the assumption and assignment of its contract, including an updated cure amount to be paid in connection with such assumption and assignment. Such counterparties shall have seven Business Days from receipt of such Designation Notice to file an objection to such assumption and assignment with this Court. If no such objection is filed, the Debtors shall be authorized to assume and assign such Open Contract to the Purchaser and pay such cure amount in full satisfaction of all defaults under the Open Contract without any further order of this Court. The applicable date of assumption shall be the date of service of the Designation Notice. If such an objection is filed, a hearing shall be scheduled before this Court as soon as reasonably practicable thereafter. The Purchaser shall endeavor in good faith to complete the assumption and assignment or rejection process for all Open Contracts by September 15, 2012.

GG. Notwithstanding anything herein, the Debtors may, on not fewer than ten Business Days' prior written notice to the Purchaser (each such notice, a "**Rejection Notice**"), cause to be rejected any Open Contract set forth in the Rejection Notice, subject to the right of the Purchaser, upon receipt of the Rejection Notice and prior to the rejection of the applicable Open Contract, to either (a) designate such Open Contract for assumption and assignment in accordance with the procedures set forth in Section 9.2(j) of the APA and herein, as applicable, or (b) agree in writing to reimburse the applicable Debtors for the out-of-pocket expenses incurred under such Open Contract from and after the date of the Rejection Notice until the date on which the Purchaser provides the Debtors with notice of the Purchaser's decision as to whether to assume such Open Contract or permit its rejection, in which case the Debtors shall refrain from rejecting such Open Contract until the date they receive notification of such decision by the Purchaser. The Debtors shall act reasonably and in good faith in providing any Rejection Notices, including with respect to the quantity of Open Contracts set forth therein, and shall cooperate with the Purchaser in determining whether or not to assume any Open Contract.

**Assumption and Assignment of Olyphant Contracts**

HH. Notwithstanding anything to the contrary herein, from and after the Closing Date the Purchaser shall have the right, exercisable without limitation at any time and from time to time, to notify the Seller that it is designating any Olyphant Contract for assumption and assignment to the Purchaser. Within three Business Days of their receipt of such a notice, the Debtors shall file with this Court notice of such designation and serve a Designation Notice upon the applicable counterparty to such Olyphant Contract, including the proposed cure amount to be paid in connection with such assumption and assignment. Such counterparties shall have seven Business Days from receipt of such Designation Notice to file an objection to such assumption and assignment with this Court. If no such objection is filed, the Debtors shall be authorized to

assume and assign such Olyphant Contract to the Purchaser and pay such cure amount in full satisfaction of all defaults under the Olyphant Contract without any further order of this Court. The applicable date of assumption shall be the date of service of the Designation Notice. If such an objection is filed, a hearing shall be scheduled before this Court as soon as reasonably practicable thereafter.

**Assumption and Assignment Generally**

II. The Assumed Contracts, including all Open Contracts and Olyphant Contracts that subsequently are assumed and assigned to the Purchaser in accordance with the procedures set forth in this Order, shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer. In addition, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Assumed Contracts for any breach of such Assumed Contract occurring after such assignment to, and assumption by, the Purchaser, except as provided in the APA.

JJ. No sections or provisions of any Assumed Contract, including all Open Contracts and Olyphant Contracts that subsequently are assumed and assigned to the Purchaser in accordance with the procedures set forth in this Order, that purport to provide for additional payments, penalties, charges, or other financial accommodations in favor of the non-debtor counterparty to the Assumed Contracts shall have any force or effect with respect to the Sale and assignments authorized by this Order. Such provisions constitute unenforceable anti-assignment provisions under section 365(f) of the Bankruptcy Code and are otherwise unenforceable under section 365(e) of the Bankruptcy Code. No assignment of any such Assumed Contract to the

Purchaser shall in any respect constitute a default under any such Assumed Contract. The non-debtor party to each Assumed Contract to be assumed and assigned at the Closing received notice as set forth in the Motion and shall be deemed to have consented to such assignment under section 365(c)(1)(B) of the Bankruptcy Code and the Purchaser shall enjoy all of the Debtors' rights and benefits under each such Assumed Contract, including all Open Contracts and Olyphant Contracts that subsequently are assumed and assigned to the Purchaser in accordance with the procedures set forth in this Order, as of the applicable date of assumption without the necessity of obtaining such non-debtor party's written consent to the assumption or assignment thereof.

KK. The failure of the Foreign Representative, Debtors, or Purchaser to enforce at any time one or more terms or conditions of any Assumed Contract, Open Contract, or Olyphant Contract shall not be a waiver of such terms or conditions or of the Foreign Representative's, Debtors', or Purchaser's rights to enforce every term and condition of such contract.

LL. Subject to the procedures set forth herein, all parties to the Assumed Contracts, including all Open Contracts and Olyphant Contracts that subsequently are assumed and assigned to the Purchaser in accordance with the procedures set forth in this Order, are forever barred and enjoined from raising or asserting against the Purchaser any assignment fee, default, breach, Claim, pecuniary loss, or condition to assignment arising under or related to such contract existing as of the Closing Date or arising by reason of the Sale, these chapter 15 cases, or the CCAA Proceeding.

MM. Subject to the rights of contract counterparties to file objections as set forth herein, the Purchaser has demonstrated adequate assurance of future performance with respect to

the Assumed Contracts pursuant to sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

NN. In the event that the Purchaser shall determine to reject or refuse assignment of any Assumed Contracts in accordance with the procedures set forth in this Order, the Purchaser shall have no obligations with respect thereto, including any obligation to cure defaults thereunder.

**Prohibition of Actions Against the Purchaser**

OO. Except as otherwise specifically provided herein or in the APA and to the fullest extent permitted by law, the Purchaser shall not be liable for any Claims against the Foreign Representative or the Debtors, or any of their predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character, including pursuant to any theory of antitrust, environmental, successor, or transferee liability, labor law, de facto merger, mere continuation, or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether asserted or unasserted, whether legal or equitable, whether liquidated or unliquidated, including liabilities on account of warranties, intercompany loans and receivables between the Debtors and any non-debtor subsidiary, liabilities relating to or arising from any environmental laws, and any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of any of the Assets prior to the Closing Date.

PP. Upon entry of this Order, all persons and entities are forever barred, estopped, and permanently enjoined from asserting against the Purchaser, any of its successors or assigns, their property, or the Assets, such persons' or entities' Liens, Claims, or interests in and to the Assets that arose prior to the Closing Date, including the following actions: (a) commencing or continuing in any manner any action or other proceeding against the Purchaser, any of its

affiliates, its successors, assets, or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser, any of its affiliates, its successors, assets, or properties; (c) creating, perfecting, or enforcing any Lien or other Claim against the Purchaser, any of its affiliates, its successors, assets, or properties; (d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due the Purchaser, any of its affiliates, or successors; (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order, other orders of this Court or the Canadian Court, the APA, or actions contemplated or taken in respect thereof; or (f) revoking, terminating, failing, or refusing to transfer or renew any license, permit, or authorization to operate any of the Assets or conduct any of the businesses operated with the Assets.

QQ. On the Closing Date, or as soon as possible thereafter, each creditor is authorized and directed, and the Purchaser is hereby authorized, on behalf of each of the Debtors' creditors, to execute such documents and take all other actions as may be necessary to release Liens, Claims, and other interests in or on the Assets, if any, as provided for herein, as such Liens may have been recorded or may otherwise exist.

RR. Upon entry of this Order, all persons and entities shall be forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Assets to the Purchaser in accordance with the terms of the APA and this Order.

SS. The Purchaser has given substantial consideration under the APA for the benefit of the Debtors and their creditors. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential Claims and Liens pursuant to

this Order, which releases shall be deemed to have been given in favor of the Purchaser by all holders of Liens against or interests in, or Claims against the Debtors, or any of the Assets.

TT. Effective as of the Closing Date, the Purchaser and its successors and assigns shall be designated and appointed the Debtors' true and lawful attorney and attorney-in-fact, with full power of substitution, in the Debtors' name and stead, on behalf of and for the benefit of the Purchaser, its successors and assigns, for the limited purposes of demanding and receiving from any third party any and all of the Assets and to give receipts and releases for and in respect of the Assets, or any part thereof, and from time to time to institute and prosecute against third parties for the benefit of the Purchaser and its successors and assigns any and all proceedings at law, in equity, or otherwise, which the Purchaser and its successors and assigns may deem proper for the collection or reduction to possession of any of the Assets.

**Notice of the Motions, Sale, and Sale Hearing**

UU. As evidenced by the certificates of service filed with this Court: (a) proper, timely, adequate, and sufficient notice of the Motions and the Sale Hearing has been provided by the Foreign Representative; (b) such notice was good, sufficient, and appropriate under the circumstances; and (c) no other or further notice of the Motion, the proposed Sale, or the Sale Hearing is or shall be required.

VV. A reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein, including the assumption and assignment of the Assumed Contracts and any cure costs related thereto under section 365 of the Bankruptcy Code, has been afforded to all interested persons and entities.

WW. The disclosures made by the Foreign Representative concerning the Motion, the Sale Hearing, and the assumption and assignment of the Assumed Contracts were good, complete, and adequate.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted.

2. All objections, if any, to the Motion, the relief requested therein, or (to the extent filed prior to the date hereof) the assumption and assignment of a Closing Assumed Contract that have not been withdrawn, waived or settled as announced to this Court at the Sale Hearing, or by stipulation filed with this Court, and all reservations of rights included therein, are hereby overruled on the merits, except as expressly provided herein.

3. The Canadian Sale Order is hereby recognized and affirmed in all respects, and shall be fully enforceable pursuant to its terms.

4. The APA, all transactions contemplated therein, and all of the terms and conditions thereof are hereby approved.

5. Pursuant to sections 363 and 105 of the Bankruptcy Code, the Foreign Representative and the Debtors are authorized to enter into and perform all of their obligations under and comply with the terms of the APA and consummate the Sale, pursuant to and in accordance with the terms and conditions of the APA and this Order, and to take any and all actions necessary and appropriate to implement the Canadian Sale Order, the APA, and this Order.

6. The Debtors are authorized in accordance with sections 365 and 105(a) of the Bankruptcy Code to assume and assign the Assumed Contracts, Open Contracts, and Olyphant Contracts to the Purchaser free and clear of all Claims in accordance with the procedures set forth in this Order and section 9.2 of the APA, all of which such procedures are approved.

7. The Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of the Purchaser in accordance with their respective terms, notwithstanding any

provision in any such Assumed Contract (including those of the type described in sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer. There shall be no rent accelerations, assignment fees, increases, or any other fees charged to the Purchaser or the Debtors as a result of the assumption or assignment of Assumed Contracts, the commencement of these chapter 15 cases, or the commencement of the CCAA Proceeding. No Assumed Contract, including all Open Contracts and Olyphant Contracts that subsequently are assumed and assigned to the Purchaser in accordance with the procedures set forth in this Order, may be terminated, or the rights of any party modified in any respect, including pursuant to any "change of control" clause, by any other party thereto, as a result of the transactions contemplated by the APA.

8. The sale of the Assets to the Purchaser shall constitute a legal, valid, and effective transfer of the Foreign Representative's and the Debtors' right, title, and interest in the Assets notwithstanding any requirement for approval or consent by any person or entity and shall vest the Purchaser with any and all right, title, and interest of the Foreign Representative and the Debtors in and to the Assets free and clear of all Liens, Claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code except as otherwise provided in the APA, with such Liens and Claims attaching to the proceeds generated from the sale of the Assets in the order of their priority, with the same validity, force, and effect which they now have against the Assets.

9. This Order and the APA shall be binding in all respects upon the Foreign Representative, the Debtors, all creditors and equity-holders of the Debtors, all counterparties to the Assumed Contracts, all successors and assigns of the Debtors and their affiliates and subsidiaries, and any trustees, examiners, "responsible persons," or other fiduciaries that are or

may be appointed in these chapter 15 cases under the Bankruptcy Code. The APA shall not be subject to rejection or avoidance under any circumstances.

10. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Foreign Representative to transfer the Assets to the Purchaser in accordance with the APA and this Order.

11. The transactions contemplated by the APA are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale shall not affect the validity of the Sale to the Purchaser, unless such authorization is duly stayed pending such appeal.

12. The terms and provisions of this Order shall be binding upon and govern the acts of any and all filing agents, filing officers, administrative agencies and units, governmental departments and units, secretaries of state, federal, state, and local officials, and other persons or entities which may be required by operation of law, the duties of their office, or contract to accept, file, register, or otherwise record or insure any title or state of title in or to the Assets.

13. The failure specifically to include any particular provision of the APA in this Order or any related agreements in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court, the Foreign Representative, and the Purchaser that the APA and any related agreements are authorized and approved in their entirety, and in the case of the APA and any related agreements, with such amendments thereto as may be made by the parties in accordance with the terms and conditions of the APA and this Order.

14. The APA, and any related agreements, documents, or other instruments, may be waived, modified, amended, or supplemented by agreement of Cinram International Inc. and the

Purchaser, and in accordance with the terms thereof, without further order of the Court; *provided*, *however*, that any such waiver, modification, amendment, or supplement does not materially change the terms of the APA and does not have a material adverse effect on the Debtors.

15. In the event that there is a direct conflict between the terms of this Order and the APA, the terms of this Order shall govern and control.

16. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

17. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), and 6006(g), this Order shall not be stayed after the entry of this Order and shall be effective immediately upon entry, and the Foreign Representative and the Purchaser are authorized to close the Sale immediately upon entry of this Order.

18. This Court shall retain jurisdiction with respect to any and all matters, claims, rights, or disputes arising from or related to the Motions or the implementation or interpretation of this Order.

Dated: ____, 2012

UNITED STATES BANKRUPTCY JUDGE

# EXHIBIT B

## Asset Purchase Agreement

**On file with the Bankruptcy Court**

**and available at**

http://www.kccllc.net/cinram

# EXHIBIT C

## Assignment and Assumption Notice

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| **In re** | : | **Chapter 15** |
| **CINRAM INTERNATIONAL INC., *et al.*,[1]** | : | **Case No. 12-11882 (__)** |
| **Debtors in a Foreign Proceeding.** | : | **(Jointly Administered)** |

**NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE OF SUBSTANTIAL ASSETS OF THE DEBTORS**

**PLEASE TAKE NOTICE THAT** on June 25, 2012, Cinram International ULC, in its capacity as the authorized foreign representative (the "**Foreign Representative**") for the above-captioned debtors (collectively, the "**Debtors**"), filed the *Foreign Representative's Motion for Entry of an Order (I) Recognizing the Canadian Sale Order, (II) Authorizing and Approving the Sale Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (the "**Motion**").

**PLEASE TAKE FURTHER NOTICE THAT** on June ___, 2012, the Ontario Superior Court of Justice (the "**Canadian Court**") entered an order (the "**Canadian Sale Order**") approving the sale of substantially all of the property and assets used in connection with the business carried on by the Debtors in North America.

**[PLEASE TAKE FURTHER NOTICE THAT** the Motion contemplates that in addition to the sale of assets approved by the Canadian Court in the Canadian Sale Order, upon approval of the Motion by the United States Bankruptcy Court for the District of Delaware (the "**Court**"), the Debtors will be authorized to sell substantially all of their assets located within the territorial jurisdiction of the United States (the "**Sale**") pursuant to the terms and conditions set forth in that certain Asset Purchase Agreement (the "**APA**") between Cinram International Inc. and Cinram Acquisition, Inc. (the "**Purchaser**").

**PLEASE TAKE FURTHER NOTICE THAT** upon the closing of the Sale, the Debtors may assume and assign to the Purchaser any of the executory contracts and unexpired leases

[1] The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, of each of the Debtors follow in parentheses: (a) Cinram International Inc. (4583); (b) Cinram (U.S.) Holding's Inc. (4792); (c) Cinram, Inc. (7621); (d) Cinram Distribution LLC (3854); (e) Cinram Manufacturing LLC (2945); (f) Cinram Retail Services LLC (1741); (g) Cinram Wireless LLC (5915); (h) IHC Corporation (4225); and (i) One K Studios, LLC (2132). The Debtors' executive headquarters is located at 2255 Markham Road, Toronto, Ontario, M1B 2W3, Canada.

(collectively, the "**Assigned Contracts**") identified on Schedule 1 hereto (the "**Assumption Schedule**"). The determination to assume and assign the Assigned Contracts identified on the Assumption Schedule is subject to change by the Purchaser as set forth more fully in the Motion. Specifically, among other things, the Purchaser has reserved all rights with respect to removing any executory contract or unexpired lease from the Assumption Schedule.][2]

**[PLEASE TAKE FURTHER NOTICE THAT** on July ____ , 2012, the United States Bankruptcy Court for the District of Delaware (the "**Court**") entered an order (the "**Chapter 15 Sale Order**") recognizing the Canadian Sale Order and authorizing the Debtors to sell substantially all of the property and assets used in connection with the business carried on by the Debtors in North America (the "**Sale**") pursuant to the terms and conditions set forth in that certain Asset Purchase Agreement (the "**APA**") between Cinram International Inc. and Cinram Acquisition, Inc. (the "**Purchaser**").

**PLEASE TAKE FURTHER NOTICE THAT** in accordance with the terms of the Chapter 15 Sale Order and the APA, the Debtors intend to assume and assign to the Purchaser the executory contracts and unexpired leases (collectively, the "**Assigned Contracts**") identified on Schedule 1 hereto (the "**Assumption Schedule**").][3]

**PLEASE TAKE FURTHER NOTICE THAT you are receiving this notice (this "Notice") because the Debtors' records reflect that you are a party to an Assumed Contract listed on the Assumption Schedule. Therefore, you are advised to review carefully the information contained in this Notice.**

**PLEASE TAKE FURTHER NOTICE that the Debtors are currently proposing to potentially assume an executory contract(s) or unexpired lease(s) listed on the Assumption Schedule to which you may be a party.**[4]

**PLEASE TAKE FURTHER NOTICE THAT** section 365(b)(1) of the Bankruptcy Code requires the Debtors to cure, or provide adequate assurance that they will promptly cure, any defaults under executory contracts and unexpired leases at the time of their assumption. Accordingly, the Debtors have conducted a thorough review of their books and records and have determined the amounts required to cure defaults, if any, under the executory contract(s) or unexpired lease(s), which amounts are listed on the Assumption Schedule. **Please note that if**

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2 **To be used in connection with Closing Date Contracts.**

3 **To be used for Open Contracts and Olyphant Contracts.**

4 Neither the exclusion nor inclusion of any executory contract or unexpired lease on the Assumption Schedule shall constitute an admission by the Debtors that any such contract or lease is in fact an executory contract or unexpired lease capable of assumption, that any Debtor(s) has any liability thereunder, or that such executory contract or unexpired lease is necessarily a binding and enforceable agreement. Further, the Debtors expressly reserve the right to (a) remove any executory contract or unexpired lease from the Assumption Schedule, in coordination with the Purchaser as stated above, and reject such executory contract or unexpired lease and (b) contest any claim (or cure amount) asserted in connection with the assumption of any executory contract or unexpired lease.

**no amount is stated for a particular executory contract or unexpired lease, the Debtors believe that there is no cure amount outstanding for such contract or lease.**

**PLEASE TAKE FURTHER NOTICE THAT** absent any pending dispute, the monetary amounts required to cure any existing defaults arising under the executory contract(s) or unexpired lease(s) identified on the Assumption Schedule will be satisfied by the Purchaser in cash upon the closing of the Sale. In the event of a dispute, however, payment of the cure amount would be made following the entry of a final order resolving the dispute and approving the assumption. If an objection to the proposed assumption or related cure amount is sustained by the Court, the Debtors may elect to reject such executory contract or unexpired lease, in coordination with the Purchaser, instead of assuming it.

**PLEASE TAKE FURTHER NOTICE THAT** if you would like to obtain a copy of the Motion, the Canadian Sale Order, the APA, or any related documents, you should contact Kurtzman Carson Consultants LLC, the claims and noticing agent retained by the Debtors in these chapter 15 cases, by: (a) visiting the Debtor's restructuring website at: www.kccllc.net/cinram; (b) e-mailing the Debtors at CinramInfo@kcclc.com, and/or (c) writing to Cinram Claims Processing c/o Kurtzman Carson Consultants LLC, 2335 Alaska Ave., El Segundo, CA 90245. You may also obtain copies of any pleadings filed in these chapter 15 cases for a fee via PACER at: http://www.deb.uscourts.gov.

**PLEASE TAKE FURTHER NOTICE THAT** the deadline for filing objections to the assumption and assignment of the Assigned Contracts and the associated cure amount listed in the Assumption Schedule is _____ , 2012 at ___ :00 p.m. prevailing Eastern Time. Any objections must: (a) be made in writing; (b) conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state with particularity the legal and factual basis for the objection and if practicable, a proposed modification to the cure amount listed in this Notice that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the following parties so as to be **actually received** by _____ , **2012 at ___ :00 p.m. prevailing Eastern Time**:

SHEARMAN & STERLING LLP
**Attn: Douglas P. Bartner, Esq.**
**Attn: Jill Frizzley, Esq.**
**599 Lexington Avenue**
**New York, New York 10022**
*Co-Counsel to the Foreign Representative*

YOUNG CONWAY STARGATT & TAYLOR, LLP
**Attn: Pauline K. Morgan, Esq.**
**Attn: Kenneth J. Enos, Esq.**
**Rodney Square**
**1000 North King Street**
**Wilmington, Delaware 19801**
*Co-Counsel to the Foreign Representative*

THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE
**Attn: David Klauder**
**844 King Street, Suite 2207**
**Wilmington, Delaware 19801**

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
**Attn: Derek C. Abbott**
**1201 North Market Street, 18th Floor**
**Wilmington, Delaware 19899**
*Co-Counsel to the Debtors' Prepetition Secured Lenders and DIP Lenders*

WACHTELL, LIPTON, ROSEN & KATZ LLP
**Attn: Richard G. Mason, Esq.**
**Attn: Joshua A. Feltman, Esq.**
**51 West 52nd Street**
**New York, NY 10019**
*Co-Counsel to the Debtors' Prepetition Secured Lenders and DIP Lenders*

BALLARD SPAHR LLP
**Attn: Matthew G. Summers, Esq.**
**919 N. Market Street, 11th Floor**
**Wilmington, Delaware 19801**
*Counsel to the Proposed Purchaser*

**PLEASE TAKE FURTHER NOTICE THAT any counterparty to an Assumed Contract that fails to object timely to the proposed assumption or cure amount set forth on Schedule 1 will be deemed to have agreed to such assumption and cure amount without any further order of or action by the Court.**

**PLEASE TAKE FURTHER NOTICE THAT ASSUMPTION OF ANY EXECUTORY CONTRACT OR UNEXPIRED LEASE IN CONNECTION WITH THE SALE OR OTHERWISE SHALL RESULT IN THE FULL RELEASE AND SATISFACTION OF ANY CLAIMS OR DEFAULTS, WHETHER MONETARY OR NONMONETARY (INCLUDING DEFAULTS OF PROVISIONS RESTRICTING THE CHANGE IN CONTROL OR OWNERSHIP INTEREST COMPOSITION, OR OTHER BANKRUPTCY-RELATED DEFAULTS) ARISING UNDER ANY ASSUMED EXECUTORY CONTRACT OR UNEXPIRED LEASE AT ANY TIME BEFORE THE DATE THAT THE DEBTORS ASSUME SUCH EXECUTORY CONTRACT OR UNEXPIRED LEASE.**

Dated: Wilmington, Delaware
June 25, 2012

SHEARMAN & STERLING LLP
Douglas P. Bartner
Jill Frizzley
Robert Britton
599 Lexington Avenue
New York, New York 10022
Telephone: (212) 848-4000
Facsimile: (646) 848-8174

-and-

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Pauline K. Morgan (No. 3650)
Kenneth J. Enos (No. 4544)
Rodney Square
1000 North King Street
Wilmington, DE 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

*Co-Counsel to the Foreign Representative*

## SCHEDULE 1 TO THE CONTRACT ASSUMPTION NOTICE

### Assumption Schedule

| Counterparty Name and Address | Description of Contract | Cure Amount |
|---|---|---|
| | | **$** |
| | | **$** |
| | | **$** |

# EXHIBIT D

## Proposed Canadian Sale Order

Court File No. ●

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

| | | |
|---|---|---|
| THE HONOURABLE ● | ) | ●, THE ● |
| | ) | |
| JUSTICE ● | ) | DAY OF ●, 20● |

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CINRAM INTERNATIONAL INC., CINRAM INTERNATIONAL INCOME FUND, CII TRUST AND COMPANIES LISTED IN SCHEDULE "A"**

Applicants

**APPROVAL AND VESTING ORDER**

THIS MOTION, made by Cinram International Inc. ("**CII**"), Cinram International Income Fund ("**Cinram Fund**"), CII Trust and the companies listed in Schedule "A" hereto (collectively, the "**Applicants**") for an order:

(i) approving the sale of substantially all of the property and assets used in connection with the business carried on by Cinram Fund and its direct and indirect subsidiaries (collectively, "**Cinram**") in North America contemplated by an asset purchase agreement (the "**Asset Purchase Agreement**") between CII and Cinram Acquisition, Inc. (the "**Purchaser**") dated June ●, 2012, and appended to the affidavit of Mark Hootnick sworn June ●, 2012 (the "**Hootnick Affidavit**") as Exhibit "●";

(ii) approving the sale of the shares of Cooperatie Cinram Netherlands UA (the "**Purchased Shares**") pursuant to the binding purchase offer dated June ●, 2012 (the "**Purchase Offer**") provided by the Purchaser to CII and 1362806 Ontario Limited (together with CII, the "**Share Sellers**") appended to the Hootnick Affidavit as Exhibit "●";

(iii) authorizing CII to enter into the Asset Purchase Agreement and the Share Sellers to enter into the Purchase Offer;

(iv) authorizing CII, Cinram Inc., Cinram Retail Services LLC, One K Studios LLC, Cinram Distribution LLC and Cinram Manufacturing LLC (collectively, the "**Asset Sellers**", together with the Share Sellers, the "**Sellers**") to complete the transactions contemplated by the Asset Purchase Agreement (the "**Asset Sale Transaction**");

(v) authorizing the Share Sellers to complete the transactions contemplated by the Purchase Offer (the "**Share Sale Transaction**", together with the Asset Sale Transaction, the "**Sale Transaction**"), including, without limitation, entering into a share purchase agreement in the form attached as Exhibit A to the Purchase Offer (the "**Share Purchase Agreement**") upon due exercise of the Purchase Offer; and

(vi) upon delivery of Monitor's Certificates (as defined below) by the Monitor (as defined below) to the Purchaser, vesting all of the Asset Sellers' right, title and interest in and to the Purchased Assets (as defined in the Asset Purchase Agreement) and the Share Sellers' right, title and interest in and to the Purchased Shares in the Purchaser or its nominees, free and clear of all interests, liens, charges and encumbrances, other than permitted encumbrances, as set out in the Approval and Vesting Order,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of John Bell sworn June ●, 2012, (the "**Bell Affidavit**"), the Hootnick Affidavit, the Report of FTI Consulting Canada Inc., as Court-appointed Monitor of the Applicants (the "**Monitor**") dated June ●, 2012 (the "**Monitor's Report**"), and on hearing the submissions of counsel for the Applicants, the Monitor, the Purchaser, the Administrative Agent under the Credit Agreements (as defined in the Bell Affidavit) and the DIP Agent under the DIP Credit Agreement (each as defined in the Bell Affidavit), **[NAMES OF OTHER PARTIES APPEARING]**, no one appearing for any other person on the service list, although properly served as appears from the affidavit of **[NAME]** sworn [**DATE]**, filed:

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.

2. THIS COURT ORDERS AND DECLARES that the Asset Sale Transaction is hereby approved, and the execution of the Asset Purchase Agreement by CII is hereby authorized and approved, with such minor amendments as CII may deem necessary with the approval of the

Monitor. The Asset Sellers are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Asset Sale Transaction and for the conveyance of (i) the Canadian Purchased Assets (as defined in the Asset Purchase Agreement) to ●, a Canadian entity nominated by the Purchaser to take title to the Canadian Purchased Assets in accordance with the Asset Purchase Agreement (the "**Canadian Nominee**") and (ii) the United States Purchased Assets (as defined in the Asset Purchase Agreement) to ●, a United States entity nominated by the Purchaser to take title to the United States Purchased Assets in accordance with the Asset Purchase Agreement (the "**U.S. Nominee**", together with the Canadian Nominee, the "**Nominees**").

3. THIS COURT ORDERS AND DECLARES that the Share Sale Transaction is hereby approved, and the Share Sellers are hereby authorized to execute the Purchase Offer, with such minor amendments as the Share Sellers may deem necessary with the approval of the Monitor. The Share Sellers are hereby authorized and directed to take such additional steps and execute such additional documents, including, without limitation, the Share Purchase Agreement, as may be necessary or desirable for the completion of the Share Sale Transaction and for the conveyance of the Purchased Shares to the Purchaser **[or the Canadian Nominee]**.

4. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "B" hereto (the "**Monitor's Asset Sale Transaction Certificate**"), (i) all of the Asset Sellers' right, title and interest in and to the Canadian Purchased Assets shall vest absolutely in the Canadian Nominee, and (ii) all of the Asset Sellers' right, title and interest in and to the United States Purchased Assets shall vest absolutely in the U.S. Nominee, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice **[NAME]** dated **[DATE]**; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**") or any other personal property registry system; and (iii) those Claims listed on Schedule "D" hereto (all of which are collectively referred to as the "**Encumbrances**", which

Claims and Encumbrances shall not include the Permitted Encumbrances (as defined in the Asset Purchase Agreement **[and the Share Purchase Agreement]**), which Permitted Encumbrances include the encumbrances, easements and restrictive covenants listed on Schedule "E") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. THIS COURT ORDERS that with respect to the U.S. Applicants (as defined in the Bell Affidavit) only, this Order is subject to the issuance of an order by the United States Bankruptcy Court for the District of Delaware authorizing the sale and transfer of the Purchased Assets that are located within the territorial jurisdiction of the United States, free and clear of and from any Claims and Encumbrances.

6. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "F" hereto (the "**Monitor's Share Sale Transaction Certificate**", together with the Monitor's Asset Sale Transaction Certificate, the "**Monitor's Certificates**"), all of the Share Sellers' right, title and interest in and to the Purchased Shares shall vest absolutely in the Purchaser **[or the Canadian Nominee]**, free and clear of and from any and all Claims and Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Shares are hereby expunged and discharged as against the Purchased Shares.

7. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Toronto of the Approval and Vesting Order and the Monitor's Asset Sale Transaction Certificate, the Land Registrar is hereby directed to enter the Purchaser **[or the Canadian Nominee]** as the owner of the real property identified in Schedule "C" hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule "D" hereto.

8. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall be paid to the Monitor and shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Asset Sale Transaction Certificate all Claims and Encumbrances relating to the Purchased Assets shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if

the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

9. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Shares shall be paid to the Monitor and shall stand in the place and stead of the Purchased Shares, and that from and after the delivery of the Monitor's Share Sale Transaction Certificate all Claims and Encumbrances relating to the Purchased Shares shall attach to the net proceeds from the sale of the Purchased Shares with the same priority as they had with respect to the Purchased Shares immediately prior to the sale, as if the Purchased Shares had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

10. THIS COURT ORDERS that the Monitor may rely on written notice from the Sellers and the Purchaser regarding fulfillment of conditions to closing under the Asset Purchase Agreement, the Purchase Offer and the Share Purchase Agreement and shall incur no liability with respect to delivery of the Monitor's Asset Sale Transaction Certificate and the Monitor's Share Sale Transaction Certificate.

11. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Asset Sale Transaction Certificate and a copy of the Monitor's Share Sale Transaction Certificate, forthwith after delivery thereof.

12. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act,* the Sellers are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Sellers' records pertaining to the Sellers' past and current employees, including personal information of those employees listed on Schedule 8.7(a) to the Asset Purchase Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Sellers.

13. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicants or Cinram International Limited Partnership (together with the Applicants, the "**CCAA Parties**") and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the CCAA Parties;

the vesting of the Purchased Assets and the Purchased Shares in the Nominees pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the CCAA Parties and shall not be void or voidable by creditors of the CCAA Parties, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

14. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

15. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or in any other foreign jurisdiction to give effect to this Order and to assist the CCAA Parties and their 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 CCAA Parties as may be necessary or desirable to give effect to this Order or to assist the CCAA Parties and their agents in carrying out the terms of this Order.

## SCHEDULE "A"

## Additional Applicants

Cinram International General Partner Inc.
Cinram International ULC
1362806 Ontario Limited
Cinram (U.S.) Holding's Inc.
Cinram, Inc.
IHC Corporation
Cinram Manufacturing LLC
Cinram Distribution LLC
Cinram Wireless LLC
Cinram Retail Services, LLC
One K Studios, LLC

**Schedule "B" – Form of Monitor's Asset Sale Transaction Certificate**

Court File No. ●

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CINRAM INTERNATIONAL INC., CINRAM INTERNATIONAL INCOME FUND, CII TRUST AND COMPANIES LISTED IN SCHEDULE "A"**

Applicants

**MONITOR'S ASSET SALE TRANSACTION CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable **[NAME OF JUDGE]** of the Ontario Superior Court of Justice (the "**Court**") dated **[DATE OF ORDER]**, FTI Consulting Canada Inc. was appointed as the Monitor (the "**Monitor**") of the Applicants and Cinram International Limited Partnership (together with the Applicants, the "**CCAA Parties**").

B. Pursuant to an Order of the Court dated **[DATE]** (the "**Approval and Vesting Order**"), the Court approved the asset purchase agreement made as of **[DATE OF AGREEMENT]** (the "**Asset Purchase Agreement**") between Cinram International Inc. ("**CII**") and Cinram Acquisition, Inc. (the "**Purchaser**") and provided for the vesting in (i) the Canadian Nominee of the Asset Sellers' right, title and interest in and to the Canadian Purchased Assets; and (ii) the U.S. Nominee of the Asset Sellers' right, title and interest in and to the United States Purchased Assets, which vesting is to be effective with respect to the Canadian Purchased Assets and the United States Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 7 of the Asset Purchase Agreement have been satisfied or waived by CII and the Purchaser; and (iii) the Asset Sale Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement or the Approval and Vesting Order.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and CII has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;

2. The conditions to Closing as set out in Article 7 of the Asset Purchase Agreement have been satisfied or waived by CII and the Purchaser; and

3. The Asset Sale Transaction has been completed to the satisfaction of the Monitor.

4. This Certificate was delivered by the Monitor at **[TIME]** on **[DATE]**.

**FTI Consulting Canada Inc., in its capacity as Monitor of the CCAA Parties, and not in its personal capacity**

Per: _____

Name:

Title

## Schedule "C" – Real Property

**2255 Markham Road, Toronto, Ontario**

Firstly:

PIN 06079-0067 (LT)

Part of Lot 18, Concession 3 Scarborough, designated as Parts 2 and 3 on Plan 64R6927 and Part 1 on Plan 64R7116, confirmed by 64B1990, subject to SC574898, Toronto, City of Toronto

Secondly:

PIN 06079-0280 (LT)

Part of Lot 18, Concession 3 Scarborough, designated as Parts 2 and 3 on Plan 66R23795, subject to an easement over Part 3 on Plan 66R23795 as in SC574898, City of Toronto

**Schedule "D" – Claims to be deleted and expunged from title to Real Property**

1. **Charge in favour of JPMorgan Chase Bank, N.A. registered on May 8, 2006 as Instrument No. AT1131509;**

2. **Charge in favour of JPMorgan Chase Bank, N.A. registered on December 7, 2010 as Instrument No. AT2570745;**

3. **Charge in favour of JPMorgan Chase Bank, N.A. registered on April 11, 2011 as Instrument No. AT2663576;**

4. **Notice in favour of JPMorgan Chase Bank, N.A. registered on April 11, 2011 as Instrument No. AT2663577;**

5. **Charge in favour of JPMorgan Chase Bank, N.A. registered on January 16, 2012 as Instrument No. AT2920218; and**

6. **Charge in favour of JPMorgan Chase Bank, N.A. registered on January 16, 2012 as Instrument No. AT2920219.**

**Schedule "E" – Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property (unaffected by the Vesting Order)**

1. **Those matters referred to in Subsection 44(1) of the Land Titles Act, except paragraph 11 and 14, provincial succession duties and escheats or forfeiture to the Crown;**

2. **The rights of any person who would, but for the Land Titles Act, be entitled to the land or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention;**

3. **Any lease to which subsection 70(2) of the Registry Act applies;**

4. **Transfer Easement registered on September 13, 1978 as Instrument No. SC574898;**

5. **Boundaries Act Plan registered on August 27, 1982 as Instrument No. 64BA1990;**

6. **Agreement registered on May 2, 1986 as Instrument No. TB318366;**

7. **Agreement registered on October 15, 1987 as Instrument No. TB454937;**

8. **Agreement registered on June 15, 1989 as Instrument No. TB611216;**

9. **Application (General) registered on September 19, 2003 as Instrument No. AT281551;**

10. **Notice registered on November 3, 2005 as Instrument No. AT970042; and**

11. Notice registered on July 24, 2006 as Instrument No. AT1205222.

**Schedule "F" – Form of Monitor's Share Sale Transaction Certificate**

Court File No. ●

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CINRAM INTERNATIONAL INC., CINRAM INTERNATIONAL INCOME FUND, CII TRUST AND COMPANIES LISTED IN SCHEDULE "A"**

Applicants

**MONITOR'S SHARE SALE TRANSACTION CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable **[NAME OF JUDGE]** of the Ontario Superior Court of Justice (the "**Court**") dated **[DATE OF ORDER]**, FTI Consulting Canada Inc. was appointed as the Monitor (the "**Monitor**") of the Applicants and Cinram International Limited Partnership (together with the Applicants, the "**CCAA Parties**").

B. Pursuant to an Order of the Court dated **[DATE]** (the "**Approval and Vesting Order**"), the Court approved the purchase offer made as of **[DATE OF AGREEMENT]** (the "**Purchase Offer**") by Cinram Acquisition, Inc. (the "**Purchaser**") to Cinram International Inc. ("**CII**"), 1362806 Ontario Limited (together with CII, the "**Share Sellers**") and provided for the vesting in the Purchaser **[or the Canadian Nominee]** the Share Sellers' right, title and interest in and to the Purchased Shares, which vesting is to be effective with respect to the Purchased Shares upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Shares; (ii) that the conditions to Closing as set out in Section 6 of the Purchase Offer and Article 6 of the Share Purchase Agreement have been satisfied or waived by the Share Sellers and the Purchaser; and (iii) the Share Sale Transaction has been completed to the satisfaction of the Monitor.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Offer or the Approval and Vesting Order.

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Share Sellers have received the Purchase Price for the Purchased Shares payable on the Closing Date pursuant to the Purchase Offer;

2. The conditions to Closing as set out in Section 6 of the Purchase Offer and Article 6 of the Share Purchase Agreement have been satisfied or waived by the Share Sellers and the Purchaser; and

3. The Share Sale Transaction has been completed to the satisfaction of the Monitor.

4. This Certificate was delivered by the Monitor at **[TIME]** on **[DATE]**.

**FTI Consulting Canada Inc., in its capacity as Monitor of the CCAA Parties, and not in its personal capacity**

Per: _____

Name:

Title

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT* ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CINRAM INTERNATIONAL INC., CINRAM INTERNATIONAL INCOME FUND, CII TRUST AND THE COMPANIES LISTED IN SCHEDULE "A"**

Applicants

Court File No: _____

***ONTARIO***
**SUPERIOR COURT OF JUSTICE-COMMERCIAL LIST**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**

**GOODMANS LLP**
Barristers & Solicitors
333 Bay Street, Suite 3400
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Lawyers for the Applicants

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT* ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CINRAM INTERNATIONAL INC., CINRAM INTERNATIONAL INCOME FUND, CII TRUST AND THE COMPANIES LISTED IN SCHEDULE "A"**

Applicants

Court File No: _____

***ONTARIO***
**SUPERIOR COURT OF JUSTICE-COMMERCIAL LIST**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER**

**GOODMANS LLP**
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT* ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF CINRAM INTERNATIONAL INC., CINRAM INTERNATIONAL INCOME FUND, CII TRUST AND THE COMPANIES LISTED IN SCHEDULE "A"**

Court File No. CV12-9767-00CL

Applicants

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD**
**(Returnable July 12, 2012)**

**GOODMANS LLP**
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June 26, 2012

To: Whom It May Concern

**Re: Cinram International Inc. ("CII"), Cinram International Income Fund ("Cinram Fund"), and the Cinram entities listed in Schedule "A" (collectively, the " CCAA Parties")**

On June 25, 2012, the CCAA Parties obtained an initial order (the "Initial Order") under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA"). The Initial Order provides, among other things, a stay of proceedings until July 25, 2012 (the "Stay Period") and may be extended by the Court from time to time. FTI Consulting Canada Inc. was appointed as monitor (the "Monitor") of the CCAA Parties. A copy of the Initial Order and copies of the materials filed in the CCAA proceedings may be obtained at http://cfcanada.fticonsulting.com/cinram or on request from the Monitor by calling (416) 649-8096 or 1 855 718-5255 or emailing cinram@fticonsulting.com. Cinram is continuing operations pursuant to the terms of the Initial Order.

Pursuant to the Initial Order, all persons having oral or written agreements with the CCAA Parties or statutory or regulatory mandates for the supply of goods and/or services are restrained until further Order of the Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the CCAA Parties, provided that the normal prices or charges for all such goods or services received after the date of the Initial Order are paid by the CCAA Parties in accordance with normal payment practices of the CCAA Parties or such other practices as may be agreed upon by the supplier or service provider and the CCAA Parties and the Monitor, or as may be ordered by this Court. The Initial Order prohibits the CCAA Parties from making payment of amounts relating to the supply of goods or services prior to June 25, 2012, other than certain payments specified in the Initial Order.

During the Stay Period, all parties are prohibited from commencing or continuing legal action against the CCAA Parties and their subsidiaries who are party to contracts and agreements to which the CCAA Parties are also parties (the "Subsidiary Counterparties"), and all rights and remedies of any party against or in respect of the CCAA Parties, the Subsidiary Counterparties or their assets are stayed and suspended except with the written consent of the CCAA Parties and the Monitor, or leave of the Court.

To date, no claims procedure has been approved by the Court and creditors are therefore not required to file a proof of claim at this time.

On June 25, 2012, Cinram Fund announced that it had reached agreements with Najafi Companies for the sale of substantially all of Cinram's assets and businesses in the United States, Canada, the United

Kingdom, France and Germany. A Sale Approval Hearing is scheduled to be held on July 12, 2012, at the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario. Related Court materials will be made available on the Monitor's website.

If you have any questions regarding the foregoing or require further information, please consult the Monitor's website at http://cfcanada.fticonsulting.com/cinram or by contacting the Monitor at (416) 649-8096 or 1 855 718-5255 or by emailing the Monitor at cinram@fticonsulting.com.

**SCHEDULE A**

CII Trust

Cinram International General Partner Inc.

Cinram International Limited Partnership

Cinram International ULC

1362806 Ontario Limited

Cinram (U.S.) Holding's Inc.

Cinram, Inc.

IHC Corporation

Cinram Manufacturing LLC

Cinram Distribution LLC

Cinram Wireless LLC

Cinram Retail Services, LLC

One K Studios, LLC