

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
)
JUSTICE MORAWETZ) WEDNESDAY, THE 14TH
) DAY OF SEPTEMBER, 2011

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 PRISZM INCOME FUND, PRISZM CANADIAN OPERATING TRUST,
PRISZM INC. AND KIT FINANCE INC.

(the "**Applicants**")

**APPROVAL AND VESTING ORDER
(Re Sale to FMI Atlantic Inc.)**

THIS MOTION, made by Priszm Income Fund, Priszm Canadian Operating Trust, Priszm Inc., Priszm LP and Kit Finance Inc. (collectively, the "**Priszm Entities**") for an order approving the sale transaction (the "**FMI Transaction**") contemplated by the Asset Purchase Agreement (the "**FMI Agreement**") between Priszm LP (the "**Vendor**"), Priszm Inc. and FMI Atlantic Inc. (the "**Purchaser**"), and FMI Ontario Inc. (the "**Guarantor**") dated July 29, 2011, as amended, appended to the Affidavit of Jim Robertson sworn September 8, 2011 (the "**Robertson Affidavit**") as Exhibit "C", approving certain related agreements, and vesting in the Purchaser the Vendor's right,

title and interest in and to the Purchased Assets (as defined in the FMI Agreement), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Robertson Affidavit, the Fourth Report (the "**Fourth Report**") of FTI Consulting Canada Inc., in its capacity as the Court-appointed Monitor of the Prizm Entities (the "**Monitor**"), the Supplement to the Fourth Report of the Monitor, and on hearing the submissions of counsel for the Prizm Entities; the Monitor; the Purchaser; Yum! Restaurants International (Canada) Company (the "**Franchisor**"); Prudential Investment Management, Inc.; Scott's Real Estate Investment Trust, SR Operating Trust, Scott's Real Estate Limited Partnership, Scott's Trustee Corp. and Scott's GP Trust; The Cadillac Fairview Corporation Limited; 20 VIC Management Inc., Ivanhoe Cambridge Inc., Morguard Investments Limited, Retrocom Mid-Market REIT, Primaris Retail Real Estate Investment Trust and Oxford Properties Group Inc.; 2279549 Ontario Inc. and 2289500 Ontario Inc.; Olymel; Sysco Canada and Metro-Richelieu Inc., no one appearing for any other person on the Service List, although properly served as appears from the affidavit of service, filed:

1. **THIS COURT ORDERS** that any defined term used but not defined herein shall have the meaning ascribed to such term in the FMI Agreement.

2. **THIS COURT ORDERS AND DECLARES** that the FMI Transaction, the FMI Agreement, and the Occupation Agreement (as defined in and in the form attached to the Robertson Affidavit as Exhibit "C") are hereby approved. The Prizm Entities and the Monitor 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 FMI Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), all of the Vendor's right, title and interest in and to the Purchased Assets shall vest, without further instrument of transfer or assignment, absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, 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: (a) any encumbrances or charges created by the Amended and Restated Initial Order of the Honourable Madam Justice Mesbur dated April 29, 2011 (the "**Initial Order**"), or any subsequent charges that may be granted by the Court; (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Nova Scotia) and the *Personal Property Security Act* (New Brunswick) or any other personal property registry system; and, for greater certainty, this Court orders that all of the encumbrances or charges affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets; provided however that

nothing herein (save and except the approval of the Occupation Agreement pursuant to paragraph 2 herein, as and if applicable) shall affect the rights and remedies of the applicable landlord against the Purchaser that may exist or arise under or in respect of any real property lease that is assigned to the Purchaser in connection with the transaction, except as may otherwise be agreed to by the landlord and the Purchaser.

4. **THIS COURT ORDERS** that: (a) nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of a real property lease; (b) where any real property leases are not, in accordance with their terms, transferable or assignable to the Purchaser without first obtaining the consent of the applicable landlord, none of the real property leases shall be transferred, conveyed, assigned or vested in the Purchaser by operation of this Order, save and except to the extent that respective consents have been, or are in the future, obtained from the respective landlords.

5. **THIS COURT ORDERS** that Prizm Inc. is authorized and directed to execute a deed or conveyance in a form which complies with the *Land Registration Act* (Nova Scotia) conveying to the Purchaser the real property identified in **Schedule "B"** hereto (the "**Real Property**") which deed or conveyance shall have the effect of conveying all the interest and equity of redemption of Prizm Inc. in the Real Property and of all persons claiming through Prizm Inc. in the Real Property including the claims listed in **Schedule "C"** hereto and without limiting the generality of any other provision of this order the claims of all such persons are forever barred and foreclosed upon the execution and registration of such deed or conveyance.

6. **THIS COURT ORDERS** that on Closing the Purchaser shall pay to the Monitor: the Purchase Price (less the Deposit). After receipt of the Purchase Price, the Monitor shall:

- (a) pay from the Purchase Price to the Franchisor \$1,072,893.23, in respect of all pre-filing monetary obligations owed under the Franchise Agreement;
- (b) pay from the Purchase Price to the Franchisor \$125,799.95 in respect of all pre-filing advertising contributions required to be paid under the Franchise Agreement, net of certain amounts owed to the Prizm Entities by the Unified Purchasing Group of Canada;
- (c) pay from the Purchase Price to the Franchisor \$424,976.98 in respect of all unpaid post-filing continuing fees and other monetary accruals (exclusive of interest) accrued for the period up to and including May 20, 2011; and
- (d) pay from the Purchase Price to the Franchisor the amount, not to exceed \$700,000.00, in respect of the unpaid continuing fees and other monetary accruals (exclusive of interest) accrued with respect to the Outlets during the period from August 8, 2011 to Closing within three business days of such amount being calculated by the Vendor and agreed upon with the Franchisor and the Monitor;
- (e) pay from the Purchase Price to the Purchaser when due any amounts referred to in paragraph 7; and

- (f) hold the remainder of the Purchase Price subject to this Order and further Order of this Court.

7. **THIS COURT ORDERS** that any Current Assets Purchase Price Adjustment in favour of the Purchaser, and any reimbursement of Occupation Costs pursuant to Section 2 of the Occupation Agreement, shall be paid by the Monitor to the Purchaser from the Purchase Price being held by the Monitor pursuant to Section 6 hereof in priority to any other payment from such funds or any Claim (including any Claim by a Chargee (as defined in the Amended and Restated Initial Order of the Honourable Madam Justice Mesbur dated Friday, April 29, 2011)).

8. **THIS COURT ORDERS** that notwithstanding the holding of the Purchase Price by the Monitor the Purchase Price is not being and shall not be deemed to be held in trust for any specific party or specific parties and for purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets held by the Monitor, after payment in full of any payments to the Purchaser from the Purchase Price described in paragraph 7 hereof, shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate, all Claims, charges and encumbrances shall attach to the net proceeds from the sale of the Purchased Assets, subject to paragraph 7 hereof, 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 AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

10. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Vendor and the Purchaser regarding fulfillment of conditions to closing under the FMI Agreement and shall have no liability with respect to delivery of the Monitor's Certificate or with respect to any payments made by the Monitor pursuant to paragraph 6 hereof.

11. **THIS COURT ORDERS** that the Prizm Entities, Jim Robertson, and 2289500 Ontario Inc. in its capacity as the Chief Restructuring Officer of the Prizm Entities are hereby released and discharged from any and all actions, causes of action, liabilities, claims and demands whatsoever which the Franchisor and its affiliates ever had, now have or may hereafter have by reason of any cause, matter or thing whatsoever existing up to the date of Closing and arising out of, related to, or in connection with the Franchise Agreement for each Outlet and the Master Franchise Agreement as it relates to the Outlets, any collateral franchise documentation relating to the Franchise Agreements for each Outlet and the Master Franchise Agreement as it relates to the Outlets, or the Business (as such term is defined in the Franchise Agreements for each Outlet) carried on at the Outlets, save and except for the obligation to pay any of the amounts referred to in paragraph 6 hereof.

12. **THIS COURT ORDERS** that the Franchisor and its affiliates are hereby released and discharged from any and all actions, causes of action, liabilities, claims and

demands whatsoever which the Prizm Entities ever had, now have or may hereafter have by reason of any cause, matter or thing whatsoever existing up to the date of Closing and arising out of, related to, or in connection with the Franchise Agreement for each Outlet and the Master Franchise Agreement as it relates to the Outlets, any collateral franchise documentation relating to the Franchise Agreements for each Outlet and the Master Franchise Agreement as it relates to the Outlets, or the Business (as such term is defined in the Franchise Agreements for each Outlet) carried on at the Outlets.

13. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Vendor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Vendor's records pertaining to the Vendor's past and current employees in Nova Scotia and New Brunswick. 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 Vendor.

14. **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 Vendor and any bankruptcy order issued pursuant to any such applications; and

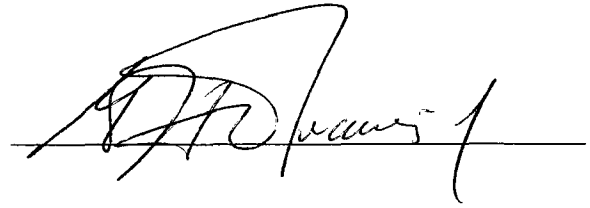
(c) any assignment in bankruptcy made in respect of the Vendor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order and the obligations of the Vendor under the FMI Agreement, the Occupation Agreement (including the potential obligation to refund any portion of the Purchase Price to the Purchaser pursuant to Section 8(7) of the FMI Agreement, the potential obligation to make the Current Asset Purchase Price Adjustment pursuant to Section 10(2) of the FMI Agreement, and the potential obligation to reimburse excess Occupation Costs pursuant to Section 2 of the Occupation Agreement), shall be binding on any trustee in bankruptcy that may be appointed in respect of the Vendor and shall not be void or voidable by creditors of the Vendor, nor shall any of them 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 any of them constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

15. **THIS COURT ORDERS AND DECLARES** that the FMI Transaction is exempt from any requirement under any applicable federal or provincial law to obtain unitholder or shareholder approval.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Vendor and its agents in

carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read "J.A. Powers", is written over a horizontal line.

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

SEP 15 2011

PER/PAR: 

Schedule "A"
Form of Monitor's Certificate

Court File No. CV-11-9159-00CL

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 PRISZM INCOME FUND, PRISZM CANADIAN OPERATING TRUST,
PRISZM INC. AND KIT FINANCE INC.

(the "Applicants")

MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the "**Court**") dated March 31, 2011, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of, *inter alia*, Priszm LP (the "**Vendor**").

B. Pursuant to an Order of the Court dated September ●, 2011, the Court approved the Asset Purchase Agreement (the "**FMI Agreement**") between the Vendor, Priszm Inc., FMI Atlantic Inc. (the "**Purchaser**"), and FMI Ontario Inc. (the "**Guarantor**") dated July 29, 2011 and provided for the vesting in the Purchaser of the Vendor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate certifying (a) receipt of the Deposit and the balance of the Purchase Price by

the Monitor; and (b) receipt of confirmation from the Vendor and the Purchaser that the conditions to Closing as set out in section 15 of the FMI Agreement have been satisfied or waived by the Vendor and the Purchaser, as applicable.

C. Unless otherwise indicated herein, defined terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the FMI Agreement.

THE MONITOR CERTIFIES the following:

1. The Monitor has received the Deposit and the balance of the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the FMI Agreement;
2. The Monitor has received confirmation from the Vendor and the Purchaser that the conditions to Closing as set out in section 15 of the FMI Agreement have been satisfied or waived by the Vendor and the Purchaser, as applicable; and
3. This Certificate was delivered by the Monitor to the Purchaser at _____ [TIME] on _____ [DATE].

**FTI Consulting Canada Inc., in its capacity
as the Court-appointed Monitor of the
Priszm Entities and not in its personal
capacity**

Per: _____
Name:
Title:

Schedule "B"

Description of Real Property

Real property having a municipal address of 27 High Street, Bridgewater, Nova Scotia, B4V 1V8

Schedule "C"

Claims to be Expunged

1. Mortgage in favour of Computershare Trust Company of Canada
2. Lease between Yum! Brands Canada Management LP and KIT Limited Partnership

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

Court File No: CV-11-9159-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PRISZM INCOME FUND, PRISZM CANADIAN OPERATING TRUST, PRISZM INC. AND KIT FINANCE INC.

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

Proceeding commenced at Toronto

**ORDER
(Re Sale Approval)**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Ashley John Taylor LSUC#: 39932E
Tel: (416) 869-5236

Maria Konyukhova LSUC#: 52880V
Tel: (416) 869-5230

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-5230
Fax: (416) 947-0866
Lawyers for the Applicants