

**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")**

**MOTION RECORD**

**(Returnable May 30, 2011)**

**(Re (a) Approval of the Soul Agreement, (b) approval of the Sales Process and  
Canaccord Genuity Engagement Letter, (c) Amendment of the KERPs)**

May 24, 2011

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**TO: ATTACHED SERVICE LIST**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
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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 A PLAN OF COMPROMISE OR ARRANGEMENT  
OF PRISZM INCOME FUND, PRISZM CANADIAN OPERATING TRUST,  
PRISZM INC. AND KIT FINANCE INC.

(the "Applicants")

SERVICE LIST  
APPROVAL OF SOUL AGREEMENT, SALES PROCESS AND KERP  
AMENDMENTS

| GENERAL   |   |
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**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")

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# TAB 1

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")**

**NOTICE OF MOTION  
(Returnable May 30, 2011)**

**(Re (a) Approval of the Soul Agreement, (b) approval of the Sales Process and  
Canaccord Genuity Engagement Letter, (c) Amendment of the KERPs)**

Priszm Income Fund ("Priszm Fund"), Priszm Canadian Operating Trust, Priszm Inc., Priszm LP and Kit Finance Inc. (collectively, the "Priszm Entities") will make a motion to a judge presiding over the Commercial List on Monday, May 30, 2011 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order, among other things:
  - (a) abridging the time for service of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof;

- (b) approving the Amended and Restated Asset Purchase Agreement (the "Soul Agreement") between Prizm LP (the "Vendor"), Prizm Inc. and Soul Restaurants Canada Inc. (formerly 7716443 Canada Inc.) (the "Purchaser") for the sale of 204 operating restaurants of the Prizm Entities dated May 17, 2011;
  - (c) approving the Transition Services Agreement (as defined below);
  - (d) approving the Occupation Agreement (as defined below);
  - (e) authorizing the Prizm Entities and FTI Consulting Canada Inc. (the "Monitor") to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transaction contemplated by the Soul Agreement (the "Soul Transaction");
  - (f) vesting all of the Purchased Assets (as defined in the Soul Agreement) in the Purchaser free and clear of any encumbrances other than the Permitted Encumbrances (as defined in the Soul Agreement); and
  - (g) authorizing the payment of certain pre-filing amounts to Yum! Restaurants International (Canada) Company (the "Franchisor");
2. An Order, among other things:
- (a) approving *nunc pro tunc* and authorizing the sales process (the "Sales Process") undertaken by the Prizm Entities with respect to the Remaining Restaurants (as defined below); and
  - (b) approving *nunc pro tunc* the Canaccord Genuity Corp. ("Genuity") engagement letter (the "Genuity Engagement Letter");

3. An Order:

- (a) authorizing the Prizm Entities to reallocate funds forfeited by certain KERP participants (as defined below) to other KERP participants;
  - (b) authorizing the Prizm Entities to reallocate any additional funds that may be forfeited by KERP participants to other KERP participants with the prior consent of the Monitor; and
4. Such further and other relief as this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

1. Prizm LP is a franchisee of the Franchisor and owns and operates approximately 425 KFC, Taco Bell and Pizza Hut restaurants;
2. Prizm LP experienced significant same store sales declines for the Prizm Entities in 2009 and 2010. As a result, the Prizm Entities' financial performance declined in fiscal years 2009 and 2010 and they became unable to meet their obligations as they became due;
3. On March 31, 2011, the Prizm Entities were granted protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") pursuant to the initial order of the Ontario Superior Court dated March 31, 2011, as amended and restated by Honourable Madam Justice Mesbur on April 29, 2011;

*The Soul Agreement*

4. In September 2010, after various other restructuring initiatives, the Prizm Entities commenced a sales process (the "Initial Sales Process") in order to divest of some of their restaurant assets;
5. As a result of the Initial Sales Process, the Vendor entered into an agreement of purchase and sale with respect to the sale of 232 (subsequently reduced to 231 with

no corresponding reduction in the purchase price) operating restaurants in Ontario, British Columbia and Quebec with the Purchaser on December 11, 2010 (the "Original APA");

6. Following extensive negotiations, on May 17, 2011, the Vendor and the Purchaser entered into the Soul Agreement which amends various terms of the Original APA;

7. Under the terms of the Soul Agreement, the Vendor agreed to grant to the Purchaser a licence to occupy the premises for which landlord consents to assignment of leases are not obtained as at the closing of the Soul Agreement pursuant to the terms of an occupation agreement dated May 17, 2011 ("Occupation Agreement");

8. The Vendor also agreed to provide, or cause to be provided, certain information technology and other services to the Purchaser for a certain time following the closing date to allow the Purchaser to obtain alternate providers of such services pursuant to the terms of a transition services agreement dated May 17, 2011 (the "Transition Services Agreement");

9. The Monitor supports proceeding expeditiously with the Soul Transaction and will be providing a report to the Court in respect of this motion;

10. The Initial Sales Process was undertaken with the assistance of the Franchisor and PWC and was run in a competitive manner;

11. The Soul Agreement provides for a going concern outcome for 204 restaurants. It also provides for continued employment for approximately 3,100 of the Prizm Entities' approximately 6,500 employees, and preserves an ongoing customer for many of the Prizm Entities' suppliers and distributors;

12. The Franchisor and the Prizm Entities' senior secured creditor, Prudential Investment Management, Inc. and each Prudential affiliate a party thereto (collectively, "Prudential"), have both consented to the Soul Transaction;

13. The Vendor and Purchaser are not related parties within the meaning of the CCAA;

14. The Prizm Entities can and will comply with section 36(7) of the CCAA;

*The Sales Process*

15. If the Soul Agreement is approved and closes, the Prizm Entities will have 223 restaurant outlets remaining (the "Remaining Restaurants");

16. Following discussions with the Franchisor and Prudential, the Prizm Entities undertook a sales process (the "Sales Process") to divest of the Remaining Restaurants (other than those originally part of the Original APA);

17. On February 10, 2011, the Prizm Entities retained Genuity to act as financial advisor and sales agent in connection with the Sales Process pursuant to an engagement letter dated January 27, 2011;

18. The Sales Process is designed to be a fair and efficient process to maximize the value of the Prizm Entities' assets through a going concern sale;

19. The Prizm Entities believe that the continued involvement of Genuity is essential to the completion of the Sales Process in a timely manner;

20. The fee structure contained in the Genuity Engagement Letter was the subject of significant negotiation with Prizm Fund and Prudential;

21. Prudential and the Monitor support approval of the Sales Process and the retention of Genuity;

*Amendment of the KERPs*

22. Prior to the commencement of the CCAA proceedings and in order to ensure retention of key personnel during the Prizm Entities' restructuring efforts, 41 key personnel were offered retention bonuses (the "KERPs");

23. Under the terms of the KERPs, in order to receive the retention bonuses the KERP participants cannot have resigned, been terminated with cause or have failed to perform their duties and responsibilities diligently, faithfully or honestly;

24. On April 29, 2011, the Prizm Entities obtained an Order reallocating the funds which had been forfeited by three of the KERP participants who resigned since March 31, 2011 to certain of the remaining KERP participants and one other employee as an additional incentive to continue their employment with the Prizm Entities;

25. Since April 29, 2011, two additional KERP participants have resigned from the Prizm Entities notwithstanding the existence of the KERPs. In an attempt to minimize future departures, the Prizm Entities wish to reallocate the funds forfeited by the KERP participants who have resigned to certain of the remaining KERP participants as additional incentives to continue their employment with the Prizm Entities;

26. The Monitor supports the proposed reallocation;

27. Due to the possibility of further resignations by some of the KERP participants before the conclusion of the CCAA proceedings and to avoid the necessity of coming to Court each time funds are forfeited due to resignations, the Prizm Entities seek authority to reallocate any funds that may be forfeited by any future resignations of the KERP participants to the remaining KERP participants with the prior consent of the Monitor;

28. The Monitor supports the granting of the requested authority (to be subject to its consent) to the Prizm Entities;

*General*

29. Section 36 and other provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

30. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;

31. Section 100 of the *Ontario Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

32. Such further grounds as counsel may advise and this Court may see fit.

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

1. The Affidavit of Deborah Papernick sworn May 24, 2011 re: Approval of Soul Transaction and the exhibits thereto;
2. The Affidavit of Deborah Papernick sworn May 24, 2011 re: Approval of Sales Process and the exhibits thereto;
3. The Affidavit of Deborah Papernick sworn May 24, 2011 re: Further KERP Amendments and the exhibits thereto;
4. The Second Report of the Monitor, to be filed;
5. Such further and other materials as counsel may advise and this Honourable Court may permit.



May 24, 2011

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Lawyers for the Applicants

TO: SERVICE LIST

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(RETURNABLE MAY 30, 2011)**

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# TAB 2

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")

AFFIDAVIT OF DEBORAH PAPERICK  
(sworn May 24, 2011 re Approval of Soul Transaction)

I, Deborah Papernick, of the City of Thornhill, Province of Ontario, MAKE  
OATH AND SAY:

1. I am the Chief Financial Officer of the Applicant Prizm Inc. ("Prizm GP") and the Court-appointed Chief Restructuring Officer of the Prizm Entities (as defined below) and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated.
2. This affidavit is sworn in support of a motion brought by Prizm Income Fund, Prizm Canadian Operating Trust, Prizm GP and Kit Finance Inc. (collectively, the "Applicants") and Prizm LP (together with the Applicants, the "Prizm Entities") seeking an order substantially in the form of the draft Order included with the Motion Record:

- a) Approving the Soul Agreement (as defined below) between Prizm LP (the "Vendor"), Prizm GP and Soul Restaurants Canada Inc. (formerly 7716443 Canada Inc.) (the "Purchaser") for the sale of 204 operating restaurants in Ontario, British Columbia and Quebec;
- b) Approving the Transition Services Agreement (as defined below);
- c) Approving the Occupation Agreement (as defined below);
- d) Authorizing the Prizm Entities and the Monitor to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transaction contemplated by the Soul Agreement;
- e) Vesting all of the Purchased Assets (as defined in the Soul Agreement) in the Purchaser free and clear of any claims or encumbrances other than Permitted Encumbrances (as defined in the Soul Agreement); and
- f) Authorizing the payment of certain pre-filing amounts to Yum! Restaurants International (Canada) Company (the "Franchisor").

## BACKGROUND

3. Prizm LP is a franchisee of the Franchisor and is Canada's largest independent quick service restaurant operator. Prizm LP is the largest operator of the KFC concept in Canada, accounting for approximately 60% of all KFC product sales in Canada.

4. The Prizm Entities were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") pursuant to the initial order of the Ontario Superior Court of Justice dated March 31, 2011. FTI Consulting Canada Inc. was appointed as monitor of the Prizm Entities (the "Monitor") in these CCAA proceedings. On April 29, 2011, the Honourable Madam Justice Mesbur issued the Amended and Restated Initial Order (the "Initial Order"). The Initial Order and all other filings in the CCAA proceedings are available on the Monitor's website at: <http://cfcanada.fticonsulting.com/prizm>.

5. Further details regarding the background to this CCAA proceeding are set out in the affidavit sworn by me on March 31, 2011 (the "Initial Order Affidavit") and, unless relevant to the present motion, are not repeated herein. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Initial Order Affidavit.

#### *The Prizm Entities' Financial Difficulties*

6. As described in greater detail in the Initial Order Affidavit, Prizm LP operates approximately 425 KFC, Taco Bell and Pizza Hut restaurants as franchisee. Prizm LP experienced significant same store sales declines for the Prizm Entities in 2009 and 2010. As a result of the same store sale declines, the Prizm Entities' financial performance in FY2009 and FY2010 was well below both prior years' performance and budgeted expectations.

7. As a result of slower than forecast sales during the third quarter of FY2010, on September 5, 2010, Prizm Fund breached a covenant under its senior secured indebtedness (the "Prudential Loan") with Prudential Investment Management, Inc., and each Prudential affiliate a party thereto (collectively, "Prudential") and remains in non-compliance today. As a result of the non-compliance, both tranches of the Prudential Loan became callable by Prudential. The Prizm Entities subsequently failed to make the interest payments since December 2010.

8. Prizm Fund also failed to make an interest payment of \$0.975 million due on December 31, 2010 with respect to its subordinated debentures due June 30, 2012 and remains in default of its interest payment obligation.

9. The Prizm Entities also ceased paying certain obligations to the Franchisor as they became due. Among other things, Prizm LP failed to pay the continuing fees payments pursuant to the Franchise Agreement since December 2010. Prizm LP has also defaulted in its obligation to complete upgrades to a number of restaurants as required under the Franchise Agreement.

10. In response to same store sales declines, the Prizm Entities undertook extensive measures in 2010 to increase their profitability. Among other things, in early 2010, the Prizm Entities engaged investment banker Canaccord Genuity to assist in their efforts to restructure their long term loan facilities and investment obligations. Working in conjunction with the Franchisor, Canaccord Genuity contacted a total of 74 parties with

respect to a potential refinancing. 24 parties conducted preliminary due diligence. Management made presentations to 7 of those 24 parties.

11. Some of the potential lenders expressed an interest in taking part in one or more refinancing alternatives. However, the challenging credit markets and a lack of agreement on certain business issues with the Franchisor resulted in the discontinuation of refinancing efforts.

12. Accordingly, in September 2010, the Prizm Entities also commenced a sales process in an effort to divest some of their restaurants. That sales process, described below, resulted in the execution of the Soul Agreement.

#### SALES PROCESS

13. 2279549 Ontario Inc. was appointed as Chief Financial Officer of the Prizm Entities pursuant to the Initial Order on March 31, 2011. In my capacity as Chief Financial Officer of Prizm GP, I had some general knowledge of the strategic decisions being undertaken by the Prizm Entities prior to March 31, 2011 with respect to the sales process, but I was not personally involved in directing same until my appointment as Chief Restructuring Officer. Accordingly, and without limiting paragraph 1 hereof, the statements in this affidavit with respect to the sale process which refer to events prior to March 31, 2011 are based on my review of the records, press releases, and public filings of the Prizm Entities as necessary, and where I have relied upon such information I verily believe such information to be true.



14. In September 2010, the Prizm Entities commenced a sales process to explore the potential sale of some of their assets in order to allow the Prizm Entities to pay down a portion of their long-term debt and continue to operate the remaining outlets. The Franchisor was asked to provide a list of potential purchasers from their existing franchise network and the Prizm Entities engaged PricewaterhouseCoopers Corporate Finance Inc. ("PWC") to assist in identifying additional potential buyers.

15. On or around September 15, 2010, the Prizm Entities contacted 47 parties. The 47 parties were made up of 12 existing franchisees that had been identified by the Franchisor as "qualifying purchasers" as well as 35 potential purchasers identified by PWC. The 47 parties were delivered a "teaser" document as well as a Non-Disclosure Agreement (the "NDA").

16. Between September 16, 2010 and October 8, 2010, 19 of the contacted parties executed the NDA and received copies of the Prizm Entities' Confidential Information Memorandum (the "CIM"). Interested parties were initially informed that they could only conduct due diligence on a maximum of three regions. However, any party that stated an interest in conducting due diligence on more than three regions was provided with the additional information requested.

17. Interested parties were required to submit non-binding expressions of interest by October 13, 2010. On October 13, 2010, ten parties submitted expressions of interest for different regions of the Prizm Entities' business. Two additional expressions of interest were received after the deadline contained in the CIM.

18. On October 14, 2010, the Prizm Entities received a non-binding indication of interest to discuss a substantial investment in the public units of Prizm Fund, subject to due diligence and the restructuring or refinancing of the Prizm Entities existing senior and subordinated debt. The party did not submit a bid with respect to investing in the public units of Prizm Fund. However it did submit a bid to purchase the Prizm Entities' restaurants in certain region(s) within the sales process.

19. A review and comparison of the received bids resulted in the rejection of eight bids on the basis that they offered inadequate consideration.

20. The Prizm Entities entered into discussions with the remaining five bidders. A second round of bids was solicited for October 25, 2010. On October 25, 2010, the Prizm Entities received second round bids from all five parties. A review and comparison of the received bids resulted in the rejection of two bidders as they did not submit the highest bid with respect to the markets they bid on.

21. The Prizm Entities continued discussions with the remaining three bidders and provided an electronic data room for purposes of due diligence. The bid deadline was originally set as November 26, 2010, but after requests for an extension from the various parties, it was extended to December 2, 2010. This round of bidding included the requirement to submit a formal asset purchase agreement with the bid submission.

22. Following the deadline for the submission of third round bids, the Prizm Entities entered into exclusive negotiations with the Purchaser, who had submitted the

only offer to purchase the majority of the Prizm Entities' restaurants located in Ontario and British Columbia, as well as four restaurants located in Quebec.

23. On December 11, 2010, the Vendor and the Purchaser entered into an agreement of purchase and sale with respect to the sale of 232 (subsequently reduced to 231 with no corresponding reduction in the purchase price) operating restaurants in Ontario, British Columbia and Quebec (the "Original APA").

24. By Extension Agreement dated March 22, 2011, the Vendor and the Purchaser agreed to extend the outside closing date under the Original APA from March 31, 2011 to April 30, 2011 (as described in greater detail below).

25. By letter dated March 30, 2011, the Purchaser raised concerns with the Prizm Entities regarding alleged changes in the operations, affairs and condition of the Purchased Assets and requested that the purchase price under the Original APA be reduced by approximately \$6.5 million. The Prizm Entities strongly disagree with the assertions set out in the March 30, 2011 letter and advised the Purchaser of same in a letter dated March 31, 2011.

26. The Prizm Entities and the Purchaser subsequently engaged in protracted negotiations with respect to the purchase price and certain other provisions of the agreement. The Monitor and Prudential participated in these negotiations. I am advised by Ashley Taylor of Stikeman Elliott LLP, counsel to the Prizm Entities that, among other things, he and counsel for the Purchaser explored the possibility of the

Purchaser converting the Original APA, as amended, into a “stalking horse” offer and commencing another sales process with the Purchaser acting as the “stalking horse” bidder. The Purchaser rejected this option.

27. On May 17, 2011, the Vendor and the Purchaser agreed to amend the Original APA by, among other things:

- a) reducing the purchase price by approximately \$2.3 million;
- b) removing or amending certain conditions precedent in order to reduce the degree of closing risk; and
- c) increasing the amount of the deposit by \$1 million and amending the agreement in order that the deposit is only refundable to the Purchaser in certain limited circumstances.

28. In addition, the parties agreed to reduce the number of outlets involved in the transaction from 231 to 204. Each of the outlets removed from the transaction is considered to be an “under performing” outlet. The Prizm Entities are currently considering their options with respect to the outlets removed from the transaction with the Purchaser.

29. Following extensive and intensive negotiations of the terms of the proposed transaction and related agreements between the parties with significant participation by the Monitor and input from the Purchaser’s lender, on May 17, 2011, the parties

executed the Amended and Restated Asset Purchase Agreement attached hereto as Exhibit "A" (the "Soul Agreement").

## THE SOUL AGREEMENT<sup>1</sup>

### *The Purchase Price*

30. Under the Soul Agreement, the aggregate purchase price (the "Purchase Price") payable by the Purchaser to the Vendor for the Purchased Assets is \$42,824,000 comprised of the following:

- a) \$39,500,000, plus
- b) the amount of \$408,000, equal to franchise renewal fees, plus
- c) the amount of \$116,000 equal to the price of the UPGC Shares, plus
- d) the amount of \$2,800,000 equal to the Closing Date Current Assets Amount,

subject to customary post-closing adjustments in respect of the Current Assets and a potential refund of a portion of the purchase price in certain circumstances where less than 95% of the Leases are assigned to the Purchaser (described in greater detail below).

31. As contemplated in the Original APA, after the Closing, the Vendor will prepare, at the Vendor's expense, a draft statement of the Current Assets<sup>2</sup> (the "Current Assets

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<sup>1</sup> All capitalized terms used and not defined in this section of the Affidavit shall have the meaning ascribed to them in the Soul Agreement.

Statement") as at Closing, which shall be delivered to the Purchaser no later than 30 days following the Closing Date. The Purchase Price will be increased or decreased, as the case may be, dollar-for-dollar, to the extent that the Current Assets as determined from the final Current Assets Statement is more or less than \$2,800,000.

32. If the Current Assets, as determined from the Current Assets Statement, are more than \$2,800,000, the Purchaser will pay to the Vendor the amount of such difference as an increase to the Purchase Price. If the Current Assets as determined from the Current Assets Statement are less than \$2,800,000, the Vendor will pay to the Purchaser the amount of such difference as a decrease to the Purchase Price.

33. If the Closing does not occur because the conditions precedent set forth in Section 15(1)(c)<sup>3</sup> or Section 15(3) of the Soul Agreement (described in greater detail below) are not satisfied or waived by May 31, 2011, the full amount of the Deposit together with all accrued interest received by the Vendor's counsel or the Monitor, if any, will be returned to the Purchaser.

34. If the Closing does not occur for any reason other than the conditions precedent set forth in Section 15(1)(c) or Section 15(3) of the Soul Agreement not being satisfied or

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<sup>2</sup> Defined in the Soul Agreement as "the dollar amount of current assets relating to the Purchased Assets as determined in accordance with this Agreement which shall comprise Inventories, Accounts Receivable, Restaurant Cash Float and any prepayments".

<sup>3</sup> Section 15(1)(c) provides, "the Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before the Closing and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated or required to be so executed and delivered in this Agreement."

waived by May 31, 2011 (including that the Purchaser does not have adequate financing to close the transaction), the full amount of the Deposit together with all accrued interest received by the Vendor, if any, will become the property of, and may be retained by, the Vendor.

*The Purchased Assets*

35. The Purchaser has agreed to purchase all properties, assets, interests, and rights of the Vendor (the "Purchased Assets") which are related to the operation of the 204 operating restaurants in Ontario, British Columbia and Quebec (as listed in Schedule "G" to the Soul Agreement) (the "Outlets") and are necessary to conduct the business as now conducted at the Outlets other than the Excluded Assets (as defined and described in greater detail below). The Purchased Assets (listed in Schedule "B" to the Soul Agreement) include, *inter alia*, the following assets for each of the Outlets:

- a) The Master Franchise Agreement as it relates to the Outlets and the Franchise Agreement for each Outlet;
- b) The Vendor's right, title and interest in and to the leases relating to the Purchased Assets and the related leased premises;
- c) All machinery, equipment, tools, handling equipment, computer equipment, information systems, furniture, furnishings and all other accessories and supplies of all kinds owned by the Vendor and used in connection with the Purchased Assets;

- d) All inventories of the Purchased Assets, including all food, food ingredients, packaging materials, paper products and miscellaneous consumable and non-consumable inventories of the Purchased Assets;
- e) All accounts receivable, notes receivable and other debts due or accruing due to the Vendor in connection with the Purchased Assets and the full benefit of all security for them;
- f) All Prepaid Expenses;
- g) Subject to Section 3 of the Soul Agreement, the full benefit of all Material Contracts;
- h) All Authorizations, owned, held or used by the Vendor in connection with the Purchased Assets to the extent that they are transferable;
- i) The Restaurant Cash Float;
- j) The UPGC Shares owned by the Vendor and directly related to the Purchased Outlets;
- k) The Vendor's right, title and interest in and to the Outlet Software Licenses; and
- l) Any and all right, title and interest of the Vendor in and to the Trade Fixtures.



*The Excluded Assets*

36. The Soul Agreement provides that certain assets related to the Outlets (as listed in Schedule "C" to the Soul Agreement) will not be acquired by the Purchaser (the "Excluded Assets"). The Excluded Assets include, among other things:

- a) Any cash, cash equivalents, securities or other short-term investments of the Vendor (other than, for greater certainty, the Restaurant Cash Float);
- b) The Master Franchise Agreement, except as it relates to the Outlets;
- c) Any real property related to the Purchased Assets;
- d) All Employee Plans; and
- e) Any and all assets not located at an Outlet or comprising a Purchased Asset.

*Assumed Liabilities*

37. Consistent with the Original APA, the Purchaser will, as and from the Closing Date, discharge, perform and fulfill all the obligations and liabilities on the part of the Vendor with respect to the Purchased Assets arising on or after the Closing Date and not related to any default existing prior to or as a consequence of the closing of the transaction contemplated by the Soul Agreement (the "Assumed Liabilities"). The Purchaser will not assume any liabilities or other obligations other than the Assumed Liabilities and will have no obligation to discharge any liability or obligation under any

contract or agreement which is not assignable in whole or in part without the consent of the other party or parties to such contract or agreement, unless such consent has been given, or unless such assignment has been ordered by the Court, or unless the Vendor has performed its obligations under Section 3 of the Soul Agreement and the value of such contracts and agreements under Section 3 have enured to the benefit of the Purchaser.

*Landlord Consents*

38. Under the terms of 94 of the Leases for the Outlets, landlord consents of the applicable Landlords for the assignment of the applicable Leases by the Vendor to the Purchaser (the "Landlord Consents") are not required.

39. Under the terms of the remaining 110 of the Leases, Landlord Consents are required for the assignment of the applicable Lease by the Vendor to the Purchaser. Under the Soul Agreement, the Vendor is obligated to use its commercially reasonable efforts to obtain, prior to the Closing Date, all of the Landlord Consents. The Landlord Consents must be on terms which are acceptable to each of the Vendor and the Purchaser, acting reasonably, provided however that there shall not be any material change to the terms of any Leases to which such Landlord Consent relates without the prior written consent of the Purchaser.

40. As to any Lease for which a Landlord Consent is required and is not obtained prior to Closing (in each case an "Outstanding Lease"), the Vendor and the Purchaser

shall each, for a period expiring six (6) months following the Closing, continue to use commercially reasonable efforts to obtain such Landlord Consent (in each case in accordance with the provisions of Section 4(1) of the Soul Agreement), or an order of the Court assigning the Outstanding Leases.

41. From and after Closing and until the earlier of: (a) six (6) months after the Closing Date; (b) the date that the Landlord Consent relating to an applicable Outstanding Lease has been obtained or the assignment has been ordered by the Court and such Outstanding Lease has been assigned to the Purchaser; or (c) the expiration or earlier termination of such Outstanding Lease, the Vendor will be obligated to, among other things, hold the Outstanding Leases in trust for the Purchaser.

42. As at the date of this affidavit, the Vendor has obtained Landlord Consents to the assignment of 38 Leases relating to the Outlets and made other arrangements satisfactory to the Purchaser to the assignment of 11 Leases relating to the Outlets. Landlord Consents with respect to 61 Leases relating to the Outlets remain outstanding. In accordance with its obligations under the Soul Agreement, the Vendor is continuing to use commercially reasonable efforts to obtain such Landlord Consents and intends to seek an order of the Court assigning any Outstanding Leases.

43. In the event that at the end of the six (6) month period commencing on the Closing Date (the "Extension Period"), (a) Landlord Consents, and (b) notices, with respect to Leases that only require notice for assignment per the terms of the applicable Lease, and (c) Lease assignments ordered by the Court, together representing at least

ninety-five (95%) of the Outlets specified on Schedule "F" have not been obtained or delivered, as applicable, then the Vendor shall within five (5) Business Days pay to the Purchaser that portion of the Purchase Price allocated in Schedule "F" for those Outlets (i) for which a Landlord Consent, notice or final assignment order have not been obtained or delivered, or (ii) where the Lease is terminated or the Purchaser is evicted from the Premises prior to the delivery of notice, the obtaining of the Landlord Consent, or the obtaining of final assignment order, and the end of the Extension Period (provided that at the time the Lease was terminated or the Purchaser was evicted, the Purchaser was not acting in material breach of the Lease (this proviso being limited to breaches which were not existing as at Closing and not applying to breaches based upon the Vendor holding the Outstanding Lease in trust for the Purchaser as contemplated by the Soul Agreement) and was not in material breach of the Occupation Agreement). Notwithstanding the potential obligation of the Vendor to return a portion of the Purchase Price with respect to any Outlet in accordance with the Soul Agreement, in such circumstances the Vendor will not receive a reassignment of the separate and individual franchise agreement for such Outlet and the Master Franchise Agreement as it relates to such Outlet.

*Employees*

44. On or before May 24, 2011, the Purchaser will offer, or cause any of its affiliates to offer, employment effective as of the Closing Date to the Designated Employees (which includes all of the employees currently employed at the Outlets) on terms

substantially similar in the aggregate to those existing as of the Closing Date. As at the date of this Affidavit, there were approximately 3,100 Designated Employees.

45. Subject to Section 21 of the Soul Agreement, the Purchaser will recognize, to the extent previously recognized by the Vendor, the service of the Designated Employees for all purposes. The Purchaser shall have no liability or obligation in respect of any Designated Employees who reject the Purchaser's offer of employment that has been made in accordance with the Soul Agreement.

46. The Purchaser shall not assume any of the Employee Plans or liability for accrued benefits or any other liability under or in respect of any of the Employee Plans. The Purchaser will permit the Transferred Employees to participate in Replacement Plans and shall cause each Replacement Plan to recognize the prior service of the Transferred Employee rendered to the Vendor for purposes of eligibility to participate, vesting and entitlement to benefits under such Replacement Plans but not for the purpose of benefit accrual.

47. The Purchaser will not be responsible for, among other things:

- a) All liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation relating to the employment of all Designated Employees arising prior to the Closing Date and all liabilities accrued under or in respect of Employee Plans prior to the Closing Date; and

- b) All severance payments, damages for wrongful dismissal and all related costs in respect of the termination of any Designated Employees who reject the Purchaser's offer of employment that has been made in accordance with the Soul Agreement.

*Closing Date*

48. The Closing Date under the Soul Agreement will be the first Monday after the Sale Approval Order is issued or such other later date prior to May 31, 2011 that may be agreed between the parties.

*Conditions to Closing*

49. The Soul Agreement contains the following conditions for the benefit of the Purchaser to be fulfilled or performed, on or before the Closing Date, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion:

- a) the Vendor will deliver or cause to be delivered to the Purchaser all keys, entry devices and pass codes with respect to the Purchased Assets including combinations to any locks or vaults;
- b) the representations and warranties of the Vendor in Schedule "D" of the Soul Agreement must be, to the best of the Vendor's knowledge, information and belief, true and correct in all material respects, subject to

the CCAA process, as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date<sup>4</sup>; and

- c) the Vendor must perform and comply with all of the terms and conditions in the Soul Agreement on its part to be performed or complied with at or before the Closing and will execute and deliver or cause to have been executed and delivered to the Purchaser at the Closing all the documents contemplated or required to be so executed and delivered in the Soul Agreement.

50. The Soul Agreement contains a number of conditions in favour of the Vendor that are required to be satisfied or waived prior to the Closing Date including, among others, the following:

- a) On or before January 15, 2011, the Purchaser shall have paid the initial deposit in the amount of \$2 million to the Vendor's counsel. This initial deposit has been received and in accordance with the Soul Agreement has been transferred to the Monitor. The Purchaser was also required to deliver a further deposit in the amount of \$1 million to the Monitor by

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<sup>4</sup> However, (i) if a representation and warranty is qualified by materiality or Material Adverse Effect, it must be true and correct in all respects after giving effect to such qualification and (ii) if a representation and warranty speaks only as of a specific date it only needs to be true and correct as of that date.

May 18, 2011. I am advised by the Monitor that the additional deposit has been received;

- b) On May 18, 2011, the Vendor shall have received evidence satisfactory to the Vendor that the Purchaser has, and will have at Closing, all funds necessary to pay the Purchase Price. The Vendor received evidence of the Purchaser's financing and waived this condition.

51. The Soul Agreement is also conditional on a number of conditions in favour of the Vendor and the Purchaser set out in Section 15(3) of the Soul Agreement that are required to be satisfied or waived prior to the Closing Date including, among others, the following:

- a) The Vendor and the Purchaser shall have received evidence of the consent of Prudential to the Soul Transaction; and
- b) The Purchaser and the Franchisor shall have entered into a new franchise agreement or the Purchaser and the Vendor shall have executed an agreement assigning the Master Franchise Agreement as it relates to the Outlets and the Franchise Agreements for each of the Outlets to the Purchaser each in form and substance satisfactory to the Vendor and the Purchaser acting reasonably and the Franchisor shall have provided its consent to such assignment conditional upon completion of the transaction contemplated by the Soul Agreement and any payments to the



Franchisor contemplated by the Sale Approval Order in form and substance satisfactory to the parties acting reasonably. The Purchaser and the Vendor have executed an Assignment Agreement.

A copy of the Franchise Agreement (with selected Schedules) is attached hereto as Exhibit "B"; and

- c) The issuance of the Sale Approval Order in the form attached to the Soul Agreement or in a form not more adverse to the Purchaser, acting reasonably.

52. The Soul Agreement is not contingent on the Purchaser's ability to obtain financing or on the Purchaser's due diligence.

#### **TRANSITION SERVICES AGREEMENT**

53. The Purchaser requested that the Vendor provide, or cause to be provided, certain information technology to the Purchaser for a certain time following the Closing Date to allow the Purchaser to obtain alternate providers of such services.

54. The parties agreed that the Vendor will provide such services, as more particularly described in Schedule "A" to the Transition Services Agreement (the "Services") following the Closing Date until July 22, 2011. The parties may agree to extend the term of the Transition Services Agreement on a weekly basis after July 22, 2011. The Vendor anticipates that it will be continuing operations (and performing the

tasks related to such services) with respect to the outlets not forming part of the Soul Agreement following the Closing Date at least until July 22, 2011 in any event.

55. The Prizm Entities entered into and are seeking approval of the Transition Services Agreement pursuant to which the Vendor will provide the Services, or cause the Services to be provided commencing on the Closing Date. A copy of the Transition Services Agreement is attached hereto as Exhibit "C".

56. The provision of Services to the Purchaser by the Vendor is to be on a no costs basis to the Vendor. Therefore, in consideration of the Services to be provided by the Vendor, each week the Purchaser will pay the Vendor the amount of \$18,250. If the Vendor incurs or will incur an increase in the cost of the Services, the Vendor will provide the Purchaser with notice of such increase. The Purchaser must advise the Vendor that it no longer requires the applicable Services or pay such increased rate from the effective date of the Vendor's notice.

57. The Transition Services Agreement is subject to the condition that the Court shall have issued an order approving the Soul Agreement, the Soul Transaction and the Transition Services Agreement.

#### **OCCUPATION AGREEMENT**

58. It is also a term of the Soul Agreement that where the Purchaser has not been able to obtain a Landlord Consent or an order assigning the Lease for any of the Outlets at the time of the Closing, the Vendor will be obligated to, among other things, hold the

Outstanding Lease in trust for the Purchaser for up to six months. During that six month period the Vendor is required to continue to use commercially reasonable efforts to obtain the outstanding consents or to apply to Court for an Order assigning the leases.

59. Accordingly, the Prizm Entities are seeking the Court's approval of the Occupation Agreement pursuant to which the Vendor will grant to the Purchaser a license to occupy each of the Outlets for which a Landlord consent or an order has not been obtained for a period (the "License Period") commencing, in respect of each of the Outlets, on the Closing Date and ending, in respect of each of the Outlets, on the earlier of: (a) 6 months after the Closing Date; (b) the time the relevant landlord's consent to the assignment of the applicable lease is obtained or the assignment has been ordered by the Court and such lease has been assigned to the Purchaser; (c) the time the applicable lease is lawfully terminated or expires; and (d) the time the license is terminated in respect of any given lease in accordance with Section 9 of the Occupation Agreement. A copy of the Occupation Agreement is attached as **Exhibit "D"**.

60. The Purchaser will be required to pay any and all rent, expenses, occupation costs and other amounts relating to the Outlets which the Vendor is obligated to pay pursuant to and in accordance with the Leases with the intent that the Occupation Agreement shall be wholly net to the Vendor.

61. The Purchaser must maintain the Outlets in the condition that they were at the commencement of the License Period, ordinary wear and tear excepted. The Purchaser

will be responsible for all repair costs in respect of the Outlets during the License Period. The Purchaser must also arrange insurance to comply with the insurance provisions of the leases and shall show the Vendor as additional insured in such policies. Notwithstanding anything contained in the Leases, the Purchaser shall maintain all risk insurance and public liability insurance underwritten by a nationally recognized insurance company in respect of the premises and the property of the Vendor and the Purchaser located at the premises in such amounts and with such deductibles as a prudent tenant of similar premises would maintain.

62. Under the terms of the Occupation Agreement, the Purchaser also agrees to indemnify and save harmless the Vendor from and against (a) any and all claims and costs resulting from, *inter alia*, the Purchaser's operation, occupation and/or use of the Outlets and (b) any and all claims made against the Vendor for amounts which constitute Occupation Costs and the reasonable legal costs on a full indemnity basis suffered or incurred by the Vendor in connection with the defence of such claims (but only to the extent that such claimed amounts have been paid to the Vendor by the Purchaser as part of the Occupation Costs in accordance with Section 2 of the Occupation Agreement).

63. The Occupation Agreement is subject to, *inter alia*, the Purchaser having paid the estimated Occupation Costs for the Initial Stub Period of the License Period in respect of each of the Leases (other than amounts which are Current Assets) to the Vendor and the

Court having issued an order approving the Soul Agreement, the Soul Transaction and the Occupation Agreement.

#### **APPROVAL OF THE SOUL TRANSACTION**

64. The sale process undertaken by the Prizm Entities which culminated in the Original APA and now the Soul Agreement was conducted outside of the CCAA proceedings. As a result, it did not benefit from the additional exposure that comes from a Court-supervised process. However, the Prizm Entities publicly disclosed as early as October 2010 that they were exploring the potential sale of some of their assets. Further, the sales process was undertaken with assistance from PWC and the Franchisor in putting together the list of potentially interested parties and it was run in a competitive manner, including the use of a teaser, the NDA, the CIM and three rounds of bids before the Original APA was negotiated with the Purchaser.

65. In addition, and as stated above, at the time the sales process was commenced, the Prizm Entities' intention was to sell only some of their restaurants in those regions where the value of the remaining restaurants would allow them to restructure and continue operating and, therefore, interested parties were initially informed that they could only conduct due diligence on a maximum of three regions. However, any party that stated an interest in more than three regions was provided with the additional information requested.

66. The Soul Agreement provides for a going concern outcome for 204 restaurants, the vast majority of the Prizm Entities' restaurants in British Columbia and Ontario. It also provides for continued employment for approximately 3,100 of the Prizm Entities' approximately 6,500 employees, and preserves an ongoing customer for many of the Prizm Entities' suppliers and distributors.

67. There is no certainty that submitting the Outlets to a further sales process will result in a higher or better offer. However, another sales process will result in additional expenses and uncertainty.

68. The Franchisor and Prudential have both consented to the Soul Transaction.

69. The Prizm Entities have discussed the advantages and disadvantages of the Soul Transaction with the Monitor. It is my understanding that the Monitor is supportive of the Soul Transaction and will be providing the Court with a report in that regard.

70. I am informed by Maria Konyukhova of Stikeman Elliott LLP, counsel to the Prizm Entities, and do verily believe that the Vendor and the Purchaser are not related persons within the meaning of the CCAA.

71. In accordance with section 36(7) of the CCAA, the Vendor can and will make the payments that would have been required under sections 6(5)(a) or 6(6)(a) of the CCAA<sup>5</sup>.

72. The Prizm Entities have been and intend to continue paying the wages, salaries, commissions or compensation to their employees contemplated by section 6(5)(a) in the regular course. With the assistance of the Monitor, the Prizm Entities have estimated the payments that will be required with respect to all of the Prizm Entities' employees pre-Soul Transaction under section 6(5)(a) as at the Closing Date to be approximately \$6.6 million.

73. As described in the Initial Order Affidavit, Prizm GP sponsors a provincially regulated defined contribution pension plan for certain former employees (the "Pension Plan"). As of the date of this affidavit, all contributions due and owing to the Pension Plan in respect of both employer and employee contributions (as contemplated by subsections 6(6)(a)(i) and (iii)(B) of the CCAA) have been remitted to the Pension Plan fund. The Prizm Entities do not maintain any defined benefit pension plans or federally regulated pension plans for their employees and therefore there are no payments that are required to be made by the Prizm Entities under section 6(6)(a)(ii) or 6(6)(a)(iii)(A) of the CCAA.

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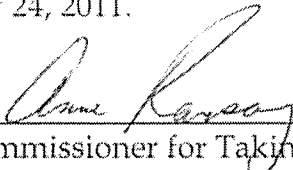
<sup>5</sup> Section 36(7) of the CCAA states that, "The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement." As there is no section 6(4)(a) in the CCAA, it appears that the current s. 36(7) of the CCAA contains a typographical error and the intended reference is to sections 6(5)(a) and 6(6)(a) of the CCAA. A copy of these sections is attached hereto as Exhibit "E".

74. The Prizm Entities intend to make the payments required under sections 6(5)(a) and 6(6)(a) of the CCAA in the ordinary course. In addition, under the proposed Approval and Vesting Order, the Purchase Price will be paid by the Purchaser to the Monitor to be held pending further order of this Court (subject to the payment of certain amounts to the Franchisor, in respect of the transfer of the franchise agreements and unpaid post-filing royalties accrued with respect to the Outlets). Accordingly, there will be funds available to make the payments required to be made under sections 6(5)(a) and 6(6)(a) of the CCAA should the Prizm Entities fail to make such payments in the ordinary course.

**CONCLUSION**


75. This affidavit is sworn in support of the Prizm Entities' motion for an Order, *inter alia*, approving the Soul Agreement and vesting the Purchased Assets in the Purchaser, and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on May 24, 2011.



Commissioner for Taking Affidavits

Anne Forrester Ramsay, a  
Commissioner etc., Province of Ontario,  
while a student-at-law.  
Expires June 17, 2013.



Deborah Papernick



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF DEBORAH PAPERICK  
(SWORN MAY 24, 2011)**

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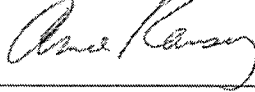
Lawyers for the Applicants

# TAB A

This is Exhibit "A"  
to the affidavit of Deborah Papernick,  
sworn before me on the 24<sup>th</sup> day  
of May, 2011

Anne Forrester Ramsay, a  
Commissioner etc., Province of Ontario,  
while a student-at-law.

Expires June 17, 2013.  
Commissioner for Taking Affidavits



## AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

Amended and Restated Asset Purchase Agreement dated May 17, 2011 between PRISZM LP (the "Vendor"), PRISZM INC. (the "General Partner") and SOUL RESTAURANTS CANADA INC. (formerly 7716443 Canada Inc.) (the "Purchaser").

### RECITALS

- (a) The Vendor is the legal and beneficial owner of the Purchased Assets.
- (b) The Vendor entered into an asset purchase agreement, dated December 11, 2010, (the "Original Agreement") with the Purchaser to sell the Purchased Assets on the terms and conditions set out in the Original Agreement.
- (c) The Vendor and the Purchaser have entered into an extension agreement, dated March 22, 2011, (the "Extension Agreement") extending the Closing Date, as defined in the Original Agreement.
- (d) The Vendor has voluntarily commenced proceedings under the CCAA.
- (e) The Vendor and Purchaser wish to amend the terms and conditions of the Original Agreement, as amended by the Extension Agreement, as set forth herein.

In consideration of the mutual agreements contained in this Agreement and for other good and valuable consideration (the receipt and adequacy of which are acknowledged), the parties agree as follows.

### Section 1 Defined Terms.

All capitalized words not defined herein shall have the meaning ascribed thereto in Schedule "A".

### Section 2 Purchase and Sale.

- (1) Subject to the terms and conditions of this Agreement, the Vendor agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor on the Closing Date all properties, assets, interests and rights of the Vendor which are related to the operation of Outlets and are necessary to conduct the business as now conducted at the Outlets, other than the Excluded Assets (as herein defined) (collectively, the "Purchased Assets"), and for greater certainty, the Purchased Assets will include the assets in Schedule "B" hereto, for each Outlet.
- (2) The Purchased Assets will not include any of the assets (in each case, as of the Closing Date) (collectively, the "Excluded Assets") described in Schedule "C" hereto.

### Section 3 Contracts.

Nothing in this Agreement shall be construed as an attempt to assign to the Purchaser any Contract or agreement which, as a matter of law or by its terms, is not assignable in whole or in part without the consent of the other party or parties to such Contract, unless such consent has been given or the assignment has been ordered by the Court. In order that the Purchaser may receive and realize the full benefit of the non-assigned Contracts, after Closing, subject to the CCAA process, and until all such Contracts are transferred to the Purchaser or six (6) months after the Closing Date, the Vendor shall: (a) maintain its existence; (b) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Contracts to the Purchaser, including holding any such Contracts in trust for the Purchaser and all benefits derived from such Contracts shall be for the account of the Purchaser provided that the requirement of the Vendor to do so does not void the Contract and (c) upon the written direction of the Purchaser, enforce, at the direction, request and expense of the Purchaser and for the account of the Purchaser, any rights of the Vendor under or arising from such Contract against any third person, including the right to elect to terminate any such rights in accordance with the terms of such Contract. The Vendor shall take such action and do or cause to be done such things as are necessary or proper or requested by the Purchaser to ensure that the obligations of the Vendor under the non-assigned Contracts are performed and that the value of all of such Contracts are preserved and enure to the benefit of the Purchaser and that the collection of moneys due and payable to the Purchaser are received by the Purchaser and the Vendor shall promptly pay over to the Purchaser all moneys collected by or paid to the Vendor in respect hereof.

### Section 4 Landlord Consents.

- (1) The Vendor shall use its commercially reasonable efforts to obtain, prior to the Closing Date, all of the Landlord Consents. Notwithstanding the foregoing, in no event shall the Vendor be required to bear any expense or pay any fee or grant any concession in connection with obtaining any Landlord Consents other than: (a) a Landlord's reasonable consent administration fee and reasonable legal fees incurred by the Landlord in connection with the issuance of its Landlord Consent, and (b) to bring any Lease into good standing.
- (2) The Landlord Consents must be on terms which are acceptable to each of the Vendor and the Purchaser, acting reasonably, provided however there shall not be any material change to the terms of any Leases to which such Landlord Consent relates without the prior written consent of the Purchaser. The Purchaser, acting reasonably, shall be entitled to approve the form of Landlord consent prior to its distribution to any Landlord.
- (3) As to any Lease for which a Landlord Consent is required and is not obtained prior to Closing (in each case an "Outstanding Lease"), the Vendor and the Purchaser shall each, for a period expiring six (6) months following the Closing, continue to use commercially reasonable efforts to obtain such Landlord Consent, in each case in accordance with the provisions of Section 4(1) hereof, or an order of the Court assigning the Outstanding Leases. The Purchaser hereby acknowledges that an application to the Court and its due prosecution (for greater certainty there is no

obligation on the Vendor to pursue or respond to any appeal resulting from the application) for an order for the assignment of such leases shall constitute commercially reasonable efforts on the part of the Vendor and satisfy any obligations under this subsection. The Vendor will consent to the Purchaser having standing on any such motion, if it so desires.

- (4) The Purchaser acknowledges that: (a) it is not entitled to request any amendments to the terms of any Lease in connection with any Landlord Consent; (b) nothing herein shall prohibit the Vendor from seeking a reasonable release from the Landlords in respect of its obligations under the Leases following the Closing provided however that the Vendor's efforts to obtain any such release shall not impede, interfere with or delay obtaining a Landlord Consent; (c) it shall cooperate with and assist the Vendor in pursuing the Landlord Consents (including providing directly to the other party any reasonable information requested by a Landlord, including reasonable financial information, financing structure and proposed management team for the business, which, for greater certainty, shall not be provided to the Vendor without the Purchaser's prior consent, provided however that the Vendor shall not be liable to the Purchaser hereunder for any breach of the Landlord to disclose such information to the Vendor and the Purchaser's sole recourse for any breach relating to this subsection shall be towards such Landlord); and (d) it shall provide certificates of insurance and execute and deliver any necessary acknowledgements and assumption agreements required by any Landlord as a condition to the issuance of its Landlord Consent that are commercially reasonable or otherwise contemplated by the Leases.
- (5) Nothing in this Agreement shall be construed as an attempt to assign to the Purchaser any Lease which, as a matter of law or by its terms, is not assignable in whole or in part without the consent of the Landlord, if required, unless such consent has been given or the assignment has been ordered by the Court. From and after Closing and until the earlier of: (a) the date that the Landlord Consent relating to an applicable Outstanding Lease has been obtained or the assignment has been ordered by the Court and such Outstanding Lease has been assigned to the Purchaser; (b) the expiration or earlier termination of such Outstanding Lease; or (c) if a Landlord Consent or assignment order referred to in Section 4(5)(a) has not been obtained within the six (6) months after the Closing Date, the day which is six (6) months after the Closing Date, the Purchaser hereby covenants to:
  - (a) pay the corresponding obligations for the periods from and after the Closing Date associated with the applicable Outstanding Lease to the Vendor or as it directs under the Occupation Agreement, and indemnify and hold the Vendor harmless of and from any claims that may be made pursuant to the applicable Outstanding Lease for any period from and after the Closing as a result of the Purchaser failing to comply with its obligations under this Agreement and the Occupation Agreement; provided that the indemnity provided in this Section shall not be limited to six (6) months or apply to any claims by the Landlord for any pre-Closing liabilities of the Vendor or from any payment of proceeds from the transaction contemplated by this Agreement;

- (b) to the extent within its control, comply with the terms and provisions of the applicable Outstanding Lease; and
  - (c) cooperate in (i) the transfer of the applicable Outstanding Lease, and (ii) the obtaining of such necessary approvals, consents, waivers, and orders, and (iii) such commercially reasonable actions taken by the Vendor, and provide such information and assurances as may be reasonably requested or required pursuant to the applicable Outstanding Lease.
- (6) From and after Closing and until the earlier of: (a) six (6) months after the Closing Date; (b) the date that the Landlord Consent relating to an applicable Outstanding Lease has been obtained or the assignment has been ordered by the Court and such Outstanding Lease has been assigned to the Purchaser; or (c) the expiration or earlier termination of such Outstanding Lease, the Vendor hereby covenants to:
- (i) hold the Outstanding Leases in trust for the Purchaser;
  - (ii) to the extent within its control, comply with the terms and provisions of the applicable Outstanding Lease; and
  - (iii) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of the rights under the Outstanding Leases to the Purchaser.
- (7) The Purchaser hereby acknowledges that, subject to the limited right to a refund set forth in Section 8(8), the obligation to purchase an Outlet with an Outstanding Lease is unconditional. For greater certainty, subject to Section 8(8), the Purchaser shall not be entitled to a refund, in whole or in part, in the Purchase Price for an Outlet, including an Outlet with an Outstanding Lease, as a result of any damage incurred by or in relation to such Outlet.

**Section 5 Material Contract Consents.**

- (1) The Vendor shall use its commercially reasonable efforts to obtain, prior to the Closing Date, all of the Material Contract Consents. Notwithstanding the foregoing, in no event shall the Vendor be required to bear any expense or pay any fee or grant any concession in connection with obtaining any Material Contract Consents other than: (a) such contracting counterparty's reasonable consent administration fee and reasonable legal fees incurred by such contracting counterparty, to the extent applicable, in connection with the issuance of its Material Contract Consent, and (b) to bring any contract into good standing, provided however that the Vendor shall under no circumstances be obliged to pay any amount which individually exceeds \$2,500, or in the aggregate exceeds \$25,000, so long as such Material Contract is not necessary to the Purchaser receiving the full benefit of the Purchased Assets and the Vendor is not in breach of this Agreement.
- (2) The Material Contract Consents obtained pursuant to this Section must be on terms which are acceptable to each of the Vendor and the Purchaser, acting reasonably,

provided however there shall not be any material change to the terms of any Material Contract to which such Material Contract Consent relates without the prior written consent of the Purchaser.

- (3) As to any Material Contract for which a Material Contract Consent is not obtained prior to Closing (each case an "Outstanding Contract"), the Vendor and the Purchaser shall each, for a period expiring six (6) months following the Closing continue to use commercially reasonable efforts to obtain same, in each case in accordance with the provisions of Section 5(1) hereof unless the assignment of such Outstanding Contract is ordered by the Court or the Purchaser has provided the Vendor with notice that assignment of such Outstanding Contract is no longer required.
- (4) The Purchaser acknowledges that: (a) it is not entitled to request any amendments to the terms of any Material Contract in connection with any Material Contract Consent; (b) nothing herein shall prohibit the Vendor, in connection with a Material Contract from seeking a reasonable release from the contracting counterparty in respect of its obligations under the Material Contract following the Closing provided however that the Vendor's efforts to obtain any such release shall not impede, interfere with or delay obtaining a Material Contract Consent; (c) it shall cooperate with and assist the Vendor in pursuing the Material Contract Consents (including providing directly to the other party any reasonable information requested by a contract counterparty, including reasonable financial information, financing structure and proposed management team for the business, which, for greater certainty, shall not be provided to the Vendor without the Purchaser's prior consent, provided however that the Vendor shall not be liable to the Purchaser hereunder for any breach of the Material Contract counterparty to disclose such information to the Vendor and the Purchaser's sole recourse for any breach relating to this subsection shall be towards such Material Contract counterparty); and (d) it shall provide certificates of insurance and execute and deliver any necessary acknowledgements and assumption agreements required by any Material Contract counterparty as a condition to the issuance of its Material Contract Consent that are commercially reasonable or otherwise contemplated by the Material Contracts.

#### **Section 6 Representations and Warranties.**

The Purchaser acknowledges that there are no representations, warranties, terms, conditions, understandings or collateral agreements, express or implied, statutory or otherwise, with respect to the Purchased Assets or in respect of any other matter or thing whatsoever except as otherwise expressly stated in this Agreement or any schedule hereto. The Purchaser further acknowledges that all written and oral information (including, without limitation, analyses, financial information and projections, compilations and studies) obtained by the Purchaser from the Vendor or its affiliates, or any such entity's directors, officers, employees, professional consultants or advisors with respect to the Purchased Assets or otherwise relating to the transactions contemplated in this Agreement has been obtained for the convenience of the Purchaser only and is not warranted to be accurate or complete save and except such information is disclosed pursuant to a representation, warranty, covenant or condition contained herein.



**Section 7 Liabilities, Costs and Expenses.**

- (1) The Purchaser covenants with the Vendor that it shall, as and from the Closing Date, discharge, perform and fulfill all the obligations and liabilities on the part of the Vendor with respect to the Purchased Assets arising on or after the Closing Date and not related to any default existing prior to or as a consequence of the closing of the transaction contemplated by this Agreement (the "Assumed Liabilities"). The Purchaser shall not assume any liabilities or other obligations other than the Assumed Liabilities and shall have no obligation to discharge any liability or obligation under any contract or agreement which is not assignable in whole or in part without the consent of the other party or parties to such contract or agreement, unless such consent has been given, or unless such assignment has been ordered by the Court, or unless the Vendor has performed its obligations under Section 3 and the value of such contracts and agreements under Section 3 have enured to the benefit of the Purchaser. For greater certainty, the Assumed Liabilities will not include (a) any fees, costs or expenses relating to obtaining the Landlord Consents, any Material Contracts, or court orders relating to the assignment of Outstanding Leases incurred in accordance to Section 4(3) hereof, or (b) Current Liabilities, as defined below.
- (2) All current liabilities relating to the Purchased Assets arising before the Closing Date, including such liabilities described in Section 21(5), (the "Current Liabilities") shall not form part of the Purchased Assets or Assumed Liabilities but shall be on the account of the Vendor.
- (3) From and after the Closing, all costs and expenses related to the Purchased Assets shall be borne by the Purchaser at its sole cost and expense, including without limitation, title insurance, surveys, Phase I environmental reports and Phase II environmental reports, escrow and recording or registration fees, the transfer fees, ongoing license fees, and any other costs associated with the Purchased Assets.
- (4) For the period from and after the Closing, all costs and expenses related to the Outlet Software Licenses shall be borne by the Purchaser at its sole cost and expense, including, without limitation, escrow and recording or registration fees, transfer fees, ongoing license fees, and any other costs associated with the Outlet Software Licenses or the transfer thereof (including costs in connection with using the Outlet Software Licenses independently of the Vendor or costs to be paid in connection with the transfer of the Outlet Software Licenses to the Purchaser). The Purchaser hereby covenants to comply with all provisions or obligations and perform all such actions as are reasonably necessary or desirable in order to transfer the Outlet Software Licenses.

**Section 8 Purchase Price and Deposit.**

- (1) The aggregate purchase price (the "Purchase Price") payable by the Purchaser to the Vendor for the Purchased Assets is: (a) CDN\$39,500,000, plus (c) the amount of CDN\$408,000, equal to the franchise renewal fees, plus (d) the amount of CDN\$116,000 equal to the price of the UPGC Shares, plus (e) the amount of

CDN\$2,800,000 equal to the Closing Date Current Assets Amount, subject to Section 10.

- (2) The Purchaser delivered a deposit in the amount of CDN\$2,000,000 on or before January 15, 2011 to the Vendor's counsel pursuant to the Escrow Agreement. The Parties agree to take such steps and execute all required documents in order to transfer this initial deposit plus all accrued interest less any bank transfer fees to the Monitor by the Condition Date. The Purchaser agrees to deliver a further deposit in the amount of CDN\$1,000,000 to the Monitor by the Condition Date (together with the prior deposit, the "Deposit"). The Deposit will be applied on Closing in satisfaction of an equivalent amount of the Purchase Price.
- (3) If the Closing does not occur:
  - (a) because the condition precedent set forth in Section 15(1)(c) or any of the conditions precedent set forth in Section 15(3) of this Agreement are not satisfied or waived by May 31, 2011, the full amount of the Deposit together with all accrued interest received by the Vendor's counsel or the Monitor, if any, shall be immediately returned to the Purchaser.
  - (b) for any reason other than the condition precedent set forth in Section 15(1)(c) or one or more of the conditions precedent set forth in Section 15(3) of this Agreement are not satisfied or waived by May 31, 2011, including that the Purchaser does not have adequate financing to close the transaction contemplated by this Agreement for any reason including that the Purchaser's lender refuses to advance adequate monies to the Purchaser, the full amount of the Deposit together with all accrued interest received by the Vendor, if any, shall become the property of, and may be retained by, the Vendor as liquidated damages (and not as a penalty) to compensate it for the expenses incurred and opportunities foregone as a result of the failure of the transaction to close. In such event, the Vendor may exercise any other rights or remedies that it may have against the Purchaser in respect of any default by the Purchaser.
- (4) The Purchase Price shall be satisfied by the Purchaser paying to the Vendor as follows: (a) as to the amount of the Deposit, by application of such amounts in the manner specified in Section 8(2); and (b) as to the balance, by the Purchaser paying to or to the order of the Vendor such amount by wire transfer to a Canadian schedule of Banks (or such other method as mutually agreed to by the Vendor and Purchaser) of immediately available funds payable to or to the order of the Vendor or as it may otherwise direct in writing or as may be directed by the Court.
- (5) Any adjustment required to be made to the Purchase Price in accordance with subsection 8(8) or Section 10 shall be satisfied by the payment of the appropriate amount by the party owing such payment to the other party in the manner and at the time contemplated in subsection 8(8) or Section 10, as applicable.

- (6) The Purchaser shall be liable for and shall pay all applicable federal and provincial sales taxes, property transfer taxes, and all other taxes, duties, registration charges or other like charges payable in connection with the sale of the Purchased Assets by the Vendor to the Purchaser.
- (7) The Vendor and the Purchaser will mutually agree on or before the Closing Date a reasonable allocation of the Purchase Price, provided however that the Purchase Price allocated to each Outlet shall be the amount specified in Schedule "F", which Schedule "F" has been agreed to.
- (8) In the event that at the end of the six (6) month period commencing on the Closing Date (the "Extension Period"), (a) Landlord Consents, and (b) notices, with respect to Leases that only require notice for assignment per the terms of the applicable Lease, and (c) Lease assignments ordered by the Court, together representing at least ninety-five (95%) of the Outlets specified on Schedule "F" have not been obtained or delivered, as applicable, then the Vendor shall within five (5) Business Days pay to the Purchaser that portion of the Purchase Price allocated in Schedule "F" for those Outlets (i) for which a Landlord Consent, notice or final assignment order have not been obtained or delivered, or (ii) where the Lease is terminated or the Purchaser is evicted from the Premises prior to the delivery of notice, the obtaining of the Landlord Consent, or the obtaining of a final assignment order, and the end of the Extension Period (provided that at the time the Lease was terminated or the Purchaser was evicted, the Purchaser was not acting in material breach of the Lease (this proviso being limited to breaches which were not existing as at Closing and not applying to breaches based upon the Vendor holding the Outstanding Lease in trust for the Purchaser as contemplated by this Agreement) and was not in material breach of the Occupation Agreement entered into between the parties of even date herewith). This payment by the Vendor shall be the sole remedy of the Purchaser for the failure to obtain the Landlord Consent, give the notice or obtain a final order assigning the Lease, in respect of such Outstanding Lease and for any Damages suffered by the Purchaser in connection therewith.

#### **Section 9 Preparation of Financial Statements.**

During the Interim Period, the Vendor shall provide to the Purchaser and shall have the right, in its sole discretion, to provide to any lender that is providing financing to the Purchaser in connection with the transaction contemplated in this Agreement updated financial statements.

- (1) After the Closing, the Vendor will prepare, at the Vendor's expense, a draft statement of the Current Assets ("Current Assets Statement") as at Closing, which shall be delivered to the Purchaser no later than the 30th day following the Closing Date. The Purchaser will: (i) provide access to the Vendor upon every reasonable request to its accounts and books and records relating to the Purchased Assets; and (ii) cooperate with the Vendor for purposes of preparing the Current Assets Statement. The 30 day period for the Vendor to prepare and deliver the Current Assets Statement will be extended for a reasonable period of time in the event that

the preparation or delivery of the draft Current Assets Statement is delayed as a result of circumstances beyond the reasonable control of the Vendor.

- (2) If the Purchaser does not give a notice of objection in accordance with this Section 9, the Purchaser shall be deemed to have accepted the draft Current Assets Statement prepared by the Vendor which shall be final and binding on the parties and such draft Current Assets Statement shall constitute the Current Assets Statement for purposes of this Agreement.
- (3) If the Purchaser objects to any matter in the draft Current Assets Statement prepared pursuant to Section 9(1), then the Purchaser shall give notice to the Vendor and to the Monitor no later than 15 days after delivery of the draft Current Assets Statement. Any notice given by the Purchaser shall set forth in detail the particulars of such objection. The parties shall then use reasonable efforts to resolve such objection for a period of 30 days following the giving of such notice. If the matter is not resolved by the end of such 30 day period, then the dispute with respect to such objection shall be submitted by the parties to a chartered accountant associated with an accounting firm of recognized national standing in Canada, which is independent of the parties, and, failing such agreement between the Purchaser and the Vendor within a further period of five Business Days, such independent firm of chartered accountants shall be KPMG LLP, or if such firm is unable to act, Deloitte LLP (the "Independent Accountant"). The Independent Accountant shall, as promptly as practicable (but in any event, within 45 days following its appointment), make a determination of the Current Assets Statement, based solely on written submissions of the parties given by them to the Independent Accountant. The submissions of each party shall be disclosed to the other party and each other party shall be afforded a reasonable opportunity to respond thereto. The Current Assets Statement as determined by the Independent Accountant shall be final and binding upon the parties and shall constitute the Current Assets Statement for purposes of this Agreement.
- (4) The Purchaser and the Vendor will each bear their own fees and expenses, including the fees and expenses of their respective auditors, in preparing or reviewing, as the case may be, the draft Current Assets Statement. In the case of a dispute and the retention of the Independent Accountant to determine such dispute, the costs and expenses of such firm of chartered accountants shall be borne equally by the Purchaser and the Vendor. However, the Purchaser and the Vendor will each bear their own costs in presenting their respective cases to such firm of chartered accountants.
- (5) The parties agree that the procedure set forth in this Section 9 for resolving disputes with respect to the draft Current Assets Statement is the sole and exclusive method of resolving such disputes.
- (6) After the Closing, the Vendor will prepare, at the Vendor's expense, a draft Profit and Loss Statement as at Closing, which shall be delivered to the Purchaser no later than the 30th day following the Closing Date.

**Section 10 Current Assets Purchase Price Adjustment**

- (1) The Purchase Price will be increased or decreased, as the case may be, dollar-for-dollar, to the extent that the Current Assets as determined from the final Current Assets Statement is more or less than CDN\$2,800,000 (the "Closing Date Current Assets Amount").
- (2) If the Current Assets, as determined from the Current Assets Statement, is more than CDN\$2,800,000, the Purchaser will pay to the Vendor the amount of such difference as an increase to the Purchase Price. If the Current Assets as determined from the Current Assets Statement is less than CDN\$2,800,000, the Vendor will pay to the Purchaser the amount of such difference as a decrease to the Purchase Price. Any amounts to be paid under this Section 10 (the "Current Assets Purchase Price Adjustment") will be paid by bank draft or wire transfer of immediately available funds within two Business Days after the draft Current Assets Statement becomes the Current Assets Statement for purposes of this Agreement in accordance with Section 9(2) or Section 9(3), as the case may be.

**Section 11 Vendor Representations and Warranties.**

The Vendor, to the best of its knowledge, information and belief, represents and warrants as to those matters set forth in Schedule "D" to this Agreement and acknowledges and confirms that the Purchaser is relying upon such representations and warranties in connection with the entering into of this Agreement by the Purchaser.

**Section 12 Purchaser's Representations and Warranties.**

The Purchaser represents and warrants as to those matters set forth in Schedule "E" and acknowledges and confirms that the Vendor is relying on such representations and warranties in connection with the entering into of this Agreement by the Vendor.

**Section 13 Financing.**

The consummation of the transaction contemplated by this Agreement is not contingent on the Purchaser's ability to obtain financing.

**Section 14 Due Diligence.**

- (1) The consummation of the transaction contemplated by this Agreement is not contingent on the Purchaser's due diligence.
- (2) The Vendor will (i) permit the Purchaser and its employees, counsel, agents, accountants or other representatives, during the Interim Period, to have reasonable access during normal business hours and upon reasonable notice to (A) the premises of the Outlets, (B) the Purchased Assets and, in particular to any information, including all Books and Records, copies of Employee Plans, and all insurance policies held by the Vendor with respect to the Purchased Assets, (C) all Contracts and Leases, and (D) the senior personnel of the Vendor, and (ii) furnish to the Purchaser or its employees, counsel, agents, accountants or other representatives such financial and operating data and other information with respect to the Purchased Assets as the Purchaser may from time to time request.

**Section 15 Conditions of Closing.**

- (1) **Conditions for the Benefit of the Purchaser.** The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed, on or before the Closing Date, which conditions are for the exclusive benefit of the Purchaser and may be waived, in whole or in part, by the Purchaser in its sole discretion:
  - (a) the Vendor shall deliver or cause to be delivered to the Purchaser all keys, entry devices and pass codes with respect to the Purchased Assets including combinations to any locks or vaults; provided that all keys, entry devices and pass codes in the possession of Transferred Employees shall be deemed to have been delivered to the Purchaser;
  - (b) the representations and warranties of the Vendor in Schedule "D" shall be, to the best of the Vendor's knowledge, information and belief, true and correct in all material respects, subject to the CCAA process, as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date. However, (i) if a representation and warranty is qualified by materiality or Material Adverse Effect, it must be true and correct in all respects after giving effect to such qualification and (ii) if a representation and warranty speaks only as of a specific date it only needs to be true and correct as of that date; and
  - (c) the Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before the Closing and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated or required to be so executed and delivered in this Agreement.
- (2) **Conditions for the Benefit of the Vendor.** The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed, on or before the Closing Date (other than item (a) which shall be fulfilled or performed on or before January 15, 2011 and item (b) which shall be fulfilled or performed on or before the Condition Date), which conditions are for the exclusive benefit of the Vendor and may be waived, in whole or in part, by the Vendor in its sole discretion:
  - (a) the payment of the Deposit in accordance with Section 8(2) to the Vendor's counsel by the Purchaser;
  - (b) the Vendor shall have received evidence satisfactory to the Vendor that the Purchaser has and will have at Closing all funds on hand necessary to pay the Purchase Price referred to in Section 8;
  - (c) the representations and warranties of the Purchaser in Schedule "E" shall be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date. However, (i) if a representation and warranty is qualified by

materiality or Material Adverse Effect, it must be true and correct in all respects after giving effect to such qualification and (ii) if a representation and warranty speaks only as of a specific date it only needs to be true and correct as of that date;

- (d) the Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before the Closing and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing all the documents contemplated required to be so executed and delivered in this Agreement;
- (3) **Conditions Precedent.** The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed, on or before Closing Date (other than item (b) and (c) which shall be fulfilled or performed on or before the Condition Date), which conditions are for the mutual benefit of each of the parties and may only be waived, in whole or in part, by agreement of the parties to this Agreement:
- (a) the Sale Approval Order shall have been issued and entered by the Court either (i) in the form attached hereto as Schedule "H", which the Parties acknowledge is satisfactory, or (ii) in a form which is not more adverse to the Purchaser, acting reasonably, and shall not be subject to a stay. For greater certainty, in the case of a form of order which is more adverse to the Purchaser than the form of order attached hereto as Schedule "H", the Parties agree that they will confirm their satisfaction or dissatisfaction with the form of the order at the hearing of the motion prior to the judge signing the order;
  - (b) the Parties shall have received evidence, satisfactory to the Vendor and the Purchaser, acting reasonably, of the consent of Prudential to the transaction contemplated hereby; and
  - (c) the Purchaser and the Franchisor shall have entered into a new franchise agreement or the Purchaser and the Vendor shall have executed an agreement assigning the Master Franchise Agreement as it relates to the Outlets and the Franchise Agreements for each of the Outlets to the Purchaser each in form and substance satisfactory to the Parties acting reasonably and the Franchisor shall have provided its consent to such assignment conditional upon completion of the transaction contemplated hereby and any payments to the Franchisor contemplated by the Sale Approval Order in form and substance satisfactory to the Parties acting reasonably.

- (4) The Vendor and the Purchaser agree to take all such actions as are within their respective powers to control, and to use their commercially reasonable efforts to cause other actions to be taken which are not within their respective powers to control, so as to ensure compliance with all of the conditions set forth in this Section 15.

**Section 16 Purchaser Covenants.**

- (1) The Purchaser shall, on or prior to the Condition Date, either enter into a new franchise agreement with the Franchisor in respect of the Outlets or execute an assignment of the Master Franchise Agreement as it relates to the Outlets and the Franchise Agreement in respect of the Outlets with the Vendor.
- (2) For each Outlet located in an area where Bell Canada provides high speed internet coverage, the Purchaser shall, on or prior to the Closing Date, enter into a contract with Bell Canada for the provision of high speed internet service at such Outlet.
- (3) The Purchaser shall use its best efforts to obtain the Competition Act Approval as promptly as is reasonably practicable upon the execution of the this Agreement and in doing so the Vendor will cooperate with the Purchaser, and without limiting the generality of the foregoing, the Purchaser shall, within 10 days of the execution of this Agreement prepare and provide to the Commissioner of Competition such submissions as are necessary or desirable in order to receive Competition Act Approval as promptly as is reasonably practicable, including without limitation, an application for an Advance Ruling Certificate and a request in the alternative for a no-action letter and a waiver from notification under paragraph 113(c) of the Competition Act, and in connection with the foregoing, the Purchaser shall promptly furnish all information requested under the Competition Act, provided however, that any filing fees or similar amounts specifically required to be submitted to the Commissioner of Competition in connection with the foregoing shall be borne equally by each party.

**Section 17 Vendor Covenants.**

- (1) During the Interim Period, the Vendor will conduct the business carried on with the Purchased Assets only in the Ordinary Course, subject to the CCAA process.
- (2) During the Interim Period, the Vendor shall provide access to the managers, the Regional Directors of Operations, Area Managers, and Field Training Leaders employed by the General Partner who are responsible for the geographic area in which the Outlets are situated for the purpose of offering employment effective as of the Closing Date to such persons.
- (3) On or before the Closing Date, the Vendor shall deliver or cause to be delivered to the Purchaser all keys, entry devices and pass codes with respect to the Purchased Assets including combinations to any locks or vaults; provided that all keys, entry devices and pass codes in the possession of Transferred Employees shall be deemed to have been delivered to the Purchaser.



- (4) After Closing, the Purchaser will have the right to access any customer on-line software system that is currently used at the Outlets and administered by the Vendor for the entire KFC system in Canada on such terms and conditions that are generally provided to other KFC franchisees that also access such software system. This right shall terminate on the date the Vendor no longer administers such software system.

#### **Section 18 Closing.**

- (1) Subject to satisfaction or waiver by the relevant party or parties, as applicable, of the conditions of closing contained in Section 15, at the Closing, the Vendor will deliver actual possession of the Purchased Assets and all necessary deeds, conveyances, assurances, transfers and assignments and any other instruments necessary or reasonably required to transfer the Purchased Assets to the Purchaser and upon such delivery the Purchaser will pay or satisfy the Purchase Price in accordance with Section 8. The transfer of the Purchased Assets will take effect on the Closing Date.
- (2) The completion of the transaction of purchase and sale contemplated by this Agreement (the "Closing") shall take place at 8:00 a.m. (Toronto time) at the offices of Gardner Roberts LLP, Suite 3100, Scotia Plaza, Toronto, Ontario, on the first Monday after the Sale Approval Order is issued, provided however that the Vendor and the Purchaser may mutually agree to extend such date to such other date not later than May 31, 2011, as may be agreed upon in writing by the parties (the "Closing Date").

#### **Section 19 Access to Books and Records**

During the Interim Period and for a period of 6 years from the Closing Date, or for such longer period as may be required by Law, the Vendor will retain all original accounting Books and Records relating to the Purchased Assets for the period prior to the Closing Date, but the Vendor shall not be responsible or liable to the Purchaser for any accidental loss or destruction of or damage to any such Books and Records. So long as such Books and Records are retained by the Vendor pursuant to this Agreement, the Purchaser will have the reasonable right to inspect and make copies (at its own expense) of them upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Vendor for purposes of tax returns. The Vendor will have the right to have its representatives present during any such inspection.

#### **Section 20 Action During Interim Period.**

- (1) During the Interim Period and except as otherwise provided in this Agreement, or as required or permitted under the CCAA process, or the Disclosure Letter delivered contemporaneously with the execution of this Agreement, or as otherwise agreed in writing by the Purchaser, the Vendor shall from the date of this Agreement up to the Closing deal with the Purchased Assets in the Ordinary Course including:

- (a) Carry on and conduct its business in the Ordinary Course consistent with past practice (including, without limitation, but subject to the provisions of this Section 20 entering into contracts, agreements and commitments for the purchase and sale of inventory items) and in particular:
    - (i) use all commercially reasonable efforts to keep available the services of the present employees of the Vendor for the Purchaser and to maintain relations and goodwill with customers having business relations with the Vendor;
    - (ii) make all necessary tax, governmental and other filings in a timely fashion;
    - (iii) pay to all its employees all wages (including overtime claims), salaries, bonuses and commissions, and all earned but unpaid vacation pay and sick leave pay and other entitlements under Employee Plans up to and including the Closing Date; and
    - (iv) comply in all material respects with and not violate any of its contractual, common law or statutory duties and obligations to the Vendor's employees relating to the Purchase Assets, a Trade Union and relevant government authorities.
  - (b) Disclose to the Purchaser all notices relating to environmental matters, regulatory matters, employment matters, leasing matters, collective bargaining proposals and the status of ongoing negotiations, in each case, relating to the operation of the Purchased Assets.
  - (c) Advise and disclose to the Purchaser any agreement to amend or vary any Leases or of any Material Contracts, and to disclose to the Purchaser the terms of any such agreement.
- (2) During the Interim Period, except as required or permitted under the CCAA process, the Vendor shall not:
- (a) mortgage, pledge, grant a security interest in or otherwise create a Lien on any of the Purchased Assets, except in the Ordinary Course and in amounts which, individually and in the aggregate, are not material to the financial condition or the operation of the Purchased Assets;
  - (b) enter into any lease or other contract or any other transaction relating to the Purchased Assets that is not in the Ordinary Course;
  - (c) dispose of or revalue any of the Purchased Assets, except for sales of Inventory in the Ordinary Course;
  - (d) terminate, cancel, modify or amend in any material respect or take or fail to take any action which would entitle any party to any Material Contract to terminate, cancel, modify or amend any Material Contract;

- (e) unless required by Applicable Laws, make any change in its accounting principles, policies, practices or methods; or
- (f) agree, commit or enter into any understanding to take any actions enumerated in paragraphs of this Section 20(2).

## Section 21 Employees

- (1) On or before May 24, 2011, the Purchaser shall offer, or cause any of its affiliates to offer, employment effective as of the Closing Date to the Designated Employees on terms substantially similar in the aggregate to those existing as of the Closing Date. In such offer, and subject to Section 21(3), the Purchaser will recognize, to the extent previously recognized by the Vendor, the service of the Designated Employees for all purposes. The Vendor agrees to assist the Purchaser in delivering the offers of employment to the Designated Employees on condition that (a) the Purchaser has prepared, packaged and organized the offers of employment in a manner that is acceptable to the Vendor in its sole discretion, (b) has delivered the packages to the Vendor's head office by no later than 12:00pm on May 20, 2011, and (c) the Vendor shall not be required to expend any funds or incur any costs in respect of such assistance. The Purchaser shall have no liability or obligation in respect of any Designated Employees who reject Purchaser's offer of employment that has been made in accordance with this Section 21(1).
- (2) The Vendor shall not attempt in any way to discourage Designated Employees from accepting the offer of employment made by the Purchaser. Provided that the Purchaser has complied with its obligations set forth under Section 21(1), then the Vendor will use commercially reasonable efforts to deliver its notice of termination concurrent with the Purchaser's delivery of offers of employment to Designated Employees.

The Purchaser shall not assume any of the Employee Plans or liability for accrued benefits or any other liability under or in respect of any of the Employee Plans. The Transferred Employees will, as of the Closing Date in respect of their employment by the Vendor, cease to accrue further benefits under the Employee Plans. The Purchaser agrees that it will permit the Transferred Employees to participate in benefit plans sponsored by the Purchaser (such plans to be called the "Replacement Plans"). The Purchaser shall cause each Replacement Plan to recognize the prior service of the Transferred Employee rendered to the Vendor for purposes of eligibility to participate, vesting and entitlement to benefits under such Replacement Plans but not for the purpose of benefit accrual. The Purchaser shall waive all limitations as to pre-existing conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the Transferred Employees under any Replacement Plans except and only to the extent that any Transferred Employees were subject to such pre-existing conditions, exclusions and waiting periods under the Employee Plans, and will provide each Transferred Employee with credit for any co-payments and deductibles paid prior to the Closing Date (in the calendar year of such start date) in satisfying any applicable deductible or out of pocket requirements under any Replacement Plans.

- (3) The Purchaser shall be responsible for:
- (i) all liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation relating to the employment of all Transferred Employees on and after the Closing Date and all liabilities under or in respect of the Replacement Plans;
  - (ii) all severance payments, damages for wrongful dismissal and all related costs in respect of the termination by the Purchaser of the employment of any Transferred Employee;
  - (iii) all liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment of the Transferred Employees at the Outlets on and after the Closing Date; and
  - (iv) all employment-related claims, penalties and assessments in respect of the Purchased Assets arising out of matters which occur on or subsequent to the Closing Date.
- (4) The Purchaser shall not be responsible for:
- (i) all liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation relating to the employment of all Designated Employees arising prior to the Closing Date and all liabilities accrued under or in respect of Employee Plans prior to the Closing Date;
  - (ii) all severance payments, damages for wrongful dismissal and all related costs in respect of the termination of any Designated Employees who reject Purchaser's offer of employment that has been made in accordance with Section 21(1);
  - (iii) all liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment of the Designated Employees in the Purchased Assets prior to the Closing Date; and
  - (iv) all employment-related claims, penalties and assessments in respect of the Purchased Assets arising out of matters which occur prior to the Closing Date.

## Section 22 Filings and Authorizations

Each of the Vendor and the Purchaser, as promptly as practicable after the execution of this Agreement, will (i) make, or cause to be made, all such filings and submissions under all Applicable Laws, including as may be required for it to consummate the purchase and sale of the Purchased Assets in accordance with the terms of this Agreement. The Vendor and the Purchaser shall coordinate and cooperate with one another in exchanging such information and supplying such assistance as may be reasonably requested by each in connection with the foregoing including, without limitation, providing each other with all notices and information supplied to or filed with any Governmental Entity (except for

notices and information which the Vendor or the Purchaser, in each case acting reasonably, considers highly confidential and sensitive which may be filed on a confidential basis), and all notices and correspondence received from any Governmental Entity.

**Section 23 Tax Matters**

The parties covenant to use their commercially reasonable efforts to minimize the taxes payable by each of the parties to this Agreement in connection with the completion of the transaction contemplated hereby, including the filing of such elections as would be necessary in order to do so, provided however that such structuring or elections do not adversely effect any party.

The Vendor and the Purchaser agree to use commercially reasonable efforts to execute and deliver or cause to have executed and delivered at Closing a joint election under Section 167(1) of the *Excise Tax Act* (Canada) (and any provincial and/or territorial equivalents) and an election under Section 22 of the *Income Tax Act* (Canada). The parties covenant to cooperate in the filing of such tax elections.

Notwithstanding the above, in the event it is determined by the Canada Revenue Agency or any other competent provincial or territorial Governmental Entity, that there is a liability of the Purchaser to pay, or of the Vendor to collect and remit, any amounts on account of taxes on all or part of the Purchase Price paid for the Purchased Assets, such taxes shall be forthwith paid by the Purchaser to the Canada Revenue Agency, the competent provincial tax authority, or to the Vendor, as the case may be, and the Purchaser shall indemnify and save the Vendor harmless with respect to any such taxes as well as any interest and penalties relating thereto or imposed thereon and any costs or expenses of the Vendor.

**Section 24 Survival of Covenants, Representations and Warranties.**

The covenants (except as expressly provided in this Agreement or except to the extent necessary to give effect to such covenant) and the representations and warranties set forth in this Agreement will merge on Closing and not survive.

**Section 25 Termination.**

This Agreement may, by notice in writing given at or prior to the completion of the transaction, be terminated:

- (a) by mutual consent of the Vendor and the Purchaser;
- (b) by the Purchaser if any of the conditions in Section 15(1) have not been satisfied as at the time specified for the satisfaction of such condition and the Purchaser has not waived such condition;
- (c) by the Vendor if any of the conditions in Section 15(2) have not been satisfied as at the date referred to in Section 15(2) and the Vendor has not waived such condition; or
- (d) by either party if:

- (i) any of the conditions precedent in Section 15(3) have not been satisfied as at the time specified for the satisfaction of such condition and the parties have not waived such condition; or
- (ii) if the Closing has not occurred on or prior to May 31, 2011, or on or before such later date as the parties agree to in writing, provided that a party may not terminate this Agreement under this Section if it has failed to perform any one or more of its obligations or covenants under this Agreement and the Closing has not occurred because of such failure.

**Section 26 Time of the Essence.**

Time shall be of the essence of this Agreement.

**Section 27 Enurement.**

This Agreement shall become effective when executed by the Vendor and the Purchaser together with complete schedules thereto and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, personal legal representatives, successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either party without the consent of the other party; provided the Purchaser may assign this Agreement to the Bank of Montreal without the consent of the Vendor effective on or after Closing.

**Section 28 Public Announcements.**

Other than any disclosure in the CCAA proceedings deemed necessary by the Vendor or the Monitor, no Party shall make any public statement or issue any press release concerning the transactions contemplated by this Agreement except as agreed by the Parties acting reasonably or as may be necessary, in the opinion of counsel to the Party making that disclosure, to comply with the requirements of all Applicable Law. If any public statement or release is so required, the Party making the disclosure shall consult with the other Party before making that statement or release.

**Section 29 Entire Agreement.**

This Agreement together with all schedules attached hereto constitutes the entire agreement between the parties with respect to the transactions contemplated in this Agreement and supersedes all prior agreements, including the Original Agreement and the Extension Agreement, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

**Section 30 Waiver.**

- (1) No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by the party to be bound by the waiver.
- (2) No failure on the part of the Vendor or the Purchaser to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

**Section 31 Further Assurances.**

Each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to effectively transfer the Purchased Assets to the Purchaser and carry out the terms and conditions of this Agreement in accordance with their true intent.

**Section 32 Severability.**

If any provision of this Agreement shall be determined to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

**Section 33 Governing Law.**

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**Section 34 Counterparts.**

This Agreement may be executed in any number of counterparts (including counterparts by facsimile) and all such counterparts taken together shall be deemed to constitute one and the same instrument.

**Section 35 French Language.**

The parties hereto have requested that this Agreement be drafted in English only.  
*Les parties aux présentes ont demandé à ce que la présente convention soit rédigée en anglais seulement.*

**Section 36 Statute References.**

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

**Section 37 Headings.**

The division of this Agreement into Sections, the insertion of headings is for convenience of reference only and are not to be considered in, and shall not affect, the construction or interpretation of any provision of this Agreement.

**Section 38 References.**

Where in this Agreement reference is made to an article or section, the reference is to an article or section in this Agreement unless the context indicates the reference is to some other agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto.

**Section 39 Number and Gender.**

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

**Section 40 Use of the word "including" and "or" etc.**

The word "includes" or "including" shall mean "includes without limitation" or "including without limitation", respectively. The word "or" is not exclusive.

**Section 41 Business Days.**

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day. All actions to be made or taken by a particular Business Day must be made or taken by no later than 4:30 p.m. (Toronto time) on a Business Day and any action made or taken thereafter shall be deemed to have been made and received on the next Business Day.

**Section 42 Currency and Payment Obligations.**

Except as otherwise expressly provided in this Agreement all dollar amounts referred to in this Agreement are stated in Canadian Dollars.

**Section 43 Accounting Principles.**

All calculations made or referred to herein shall be made in accordance with Canadian GAAP.

**Section 44 Notice.**

Any notice, direction or other communication given pursuant to this Agreement (each a "Notice") must be in writing, sent by personal delivery, courier, facsimile or email and addressed:

(a) To the Vendor:

(i) Prizm LP  
101 Exchange Avenue  
Vaughan, Ontario  
L4K 5R6  
Canada

Attention: Deborah Papernick  
Facsimile: (416) 977-4860



Email: deborah.papernick@priszm.com

- (ii) with a copy to the Vendor's solicitors:

Stikeman Elliott LLP  
5300 commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

Attention: Dee Rajpal  
Facsimile: (416) 947-0866  
Email: drajpal@stikeman.com

- (iii) with a copy to the Monitor:

FTI Consulting Canada, Inc.  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P. O. Box 104  
Toronto, ON M5K 1G8

Attention: Nigel Meakin  
Facsimile: 416-649-8101  
Email: nigel.meakin@fticonsulting.com

and its counsel:

Osler, Hoskin & Harcourt LLP  
1 First Canadian Place  
Toronto, Ontario M5X 1B8

Attention: Marc Wasserman  
Facsimile: 416-862-6666  
Email: mwasserman@osler.com

- (b) To Priszm Inc.:

- (i) Priszm Inc.  
101 Exchange Avenue  
Vaughan, Ontario  
L4K 5R6  
Canada

Attention:  
Facsimile:  
Email:

- (ii) with a copy to Prizm Inc.'s solicitors:

Stikeman Elliott LLP  
5300 commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

Attention: Dee Rajpal  
Facsimile: (416) 947-0866  
Email: drajpal@stikeman.com

- (iii) with a copy to the Monitor:

FTI Consulting Canada, Inc.  
TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010, P. O. Box 104  
Toronto, ON M5K 1G8

Attention: Nigel Meakin  
Facsimile: 416-649-8101  
Email: nigel.meakin@fticonsulting.com

- (c) To the Purchaser:

- (i) Soul Restaurants Canada Inc.

Attention: Aly Janmohamed  
Email: aly@soulfoodsgroup.com

- (ii) with a copy to the Purchaser's solicitors:

Gardiner Roberts LLP  
Suite 3100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3Y2

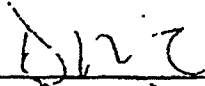
Attention: Arlene O'Neill  
Facsimile: (416) 865-6636  
Email: aoneill@gardiner-roberts.com

A Notice is deemed to be given and received (i) if sent by personal delivery or same day courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in the place of receipt) and otherwise on the next Business Day, (ii) if sent by overnight courier, on the next Business Day, or (iii) if transmitted by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile, or (iv) if sent by email, when the sender receives an email from the recipient

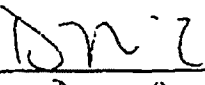
acknowledging receipt, provided that an automatic "read receipt" does not constitute acknowledgment of an email for purposes of this Section. Any party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the party at its changed address. Any element of a party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a party.

IN WITNESS WHEREOF the parties have executed this Asset Purchase Agreement,

PRISZM LP,  
by its general partner, PRISZM INC.  
by 2279549 ONTARIO INC., solely in its  
capacity as Chief Restructuring Officer,  
and without personal or corporate  
liability

By:   
Name: Deborah Proulx  
Title: C.R.O.

PRISZM INC.  
by 2279549 ONTARIO INC., solely in its  
capacity as Chief Restructuring Officer,  
and without personal or corporate  
liability

By:   
Name: Deborah Proulx  
Title: C.R.O.

SOUL RESTAURANTS CANADA INC.

By: Aly Jan Mohamed  
Name: ALY JANMOHAMED  
Title: PRESIDENT

## SCHEDULE "A"

## DEFINED TERMS

"Accounts Receivable" has the meaning specified in Schedule "B"

"Advance Ruling Certificate" means an advance ruling certificate issued by the Commissioner of Competition pursuant to section 102 of the Competition Act with respect to the transaction contemplated hereby.

"Agreement" means this asset purchase agreement and all schedules and instruments in amendment or confirmation of it and the expression "Section" followed by a number means and refers to the specified Section of this Agreement.

"Applicable Law" " means any and all applicable (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations, by-laws (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any Governmental Entity and (iii) policies, guidelines, notices and protocols, to the extent that they have the force of law.

"Assumed Liabilities" has the meaning specified in Section 7.

"Authorization" means, with respect to any Person, any order, permit, approval, waiver, licence or similar authorization of any Governmental Entity having jurisdiction over the Person.

"Books and Records" means all books of account, financial statements, tax records, audit working papers, general ledgers, personnel records, sales and purchase records, customer and supplier lists, lists of potential customers, referral sources, research and development reports and records, production reports and records, equipment logs, operating guides and manuals, business reports, plans and projections and all other documents, files, correspondence, minute books and corporate records and other information (whether in written, printed, electronic or computer printout form) relating to the Purchased Assets.

"Business Day" means any day of the year, other than a Saturday, Sunday or any day on which major banks are closed for business in Toronto, Ontario.

"CCAA" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

"Closing" has the meaning specified in Section 18.

"Closing Date" has the meaning specified in Section 18.

"Closing Date Current Assets Amount" has the meaning specified in Section 10.

"Commissioner of Competition" means the Commissioner of Competition appointed pursuant to the Competition Act.

"Competition Act" means the *Competition Act* (Canada);

**"Competition Act Approval"** means:

(i) the issuance of an Advance Ruling Certificate and such Advance Ruling Certificate has not been rescinded prior to Closing; or

(ii) the parties have given the notice required under section 114 of the Competition Act with respect to the transaction contemplated hereby and the applicable waiting period under section 123 of the Competition Act has expired or been terminated in accordance with the Competition Act; or

(iii) the obligation to give the requisite notice has been waived pursuant to paragraph 1 13 (c) of the Competition Act,

and, in the case of (ii) or (iii), the parties has been advised in writing by the Commissioner of Competition or a person authorized by the Commissioner of Competition that, in effect, such person does not, at that time, have sufficient grounds on which to apply to the Competition Tribunal under section 92 of the Competition Act and, therefore, does not, at that time, intend to make such an application in respect of the Transaction ("no-action letter").

**"Competition Tribunal"** means the Competition Tribunal established under the Competition Tribunal Act (Canada).

**"Condition Date"** means May 18, 2011 at 12:00 p.m. (Toronto time).

**"Contracts"** means any contracts (except for the Master Franchise Agreement), licences, software licenses, undertakings, engagements or commitments of any nature, written or oral, to which the Vendor is a party.

**"Court"** means the Ontario Superior Court of Justice.

**"Current Assets"** means the dollar amount of current assets relating to the Purchased Assets as determined in accordance with this Agreement which shall comprise Inventories, Accounts Receivable, Restaurant Cash Float and any Prepaid Expenses.

**"Current Assets Purchase Price Adjustment"** has the meaning specified in Section 10.

**"Current Assets Statement"** has the meaning specified in Section 9.

**"Current Liabilities"** has the meaning specified in Section 7.

**"Damages"** means any losses, liabilities, damages or out-of-pocket expenses (including reasonable legal fees and expenses) whether resulting from an action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party, including a Governmental Entity, or a cause, matter, thing, act, omission or state of facts not involving a third party.

**"Deposit"** has the meaning specified in Section 8.