

**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 OF SCOTT'S REAL ESTATE INVESTMENT TRUST,  
SR OPERATING TRUST, SCOTT'S REAL ESTATE LIMITED  
PARTNERSHIP, SCOTT'S TRUSTEE CORP. AND SCOTT'S GP TRUST**

**(Part 1 of 2)**

August 9, 2011

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Partnership, Scott's Trustee Corp. and Scott's GP  
Trust*

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PRISZM INC. AND KIT FINANCE INC.**

(the "Applicants")

**SERVICE LIST  
(as at June 15 2011)**

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# INDEX

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**TAB 1**

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**(the "Applicants")**

**NOTICE OF MOTION**

Scott's Real Estate Investment Trust, SR Operating Trust, Scott's Real Estate Limited Partnership, Scott's Trustee Corp. and Scott's GP Trust (collectively, "**Scott's**") will make a motion to a judge presiding over the Commercial List on a date to be agreed to between the relevant parties and fixed by the Commercial List office, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

1. **THE MOTION IS FOR**, among other things:
  - (a) an order abridging the time for service and filing of this Notice of Motion and the Motion Record and dispensing with further service thereof, if necessary;
  - (b) an order declaring that certain of the sale proceeds arising from the sale transaction contemplated by the Amended and Restated Asset Purchase Agreement (the "**APA**") dated May 6, 2011 between Prizm LP and Prizm Inc., as vendor, and Soul Restaurants Canada Inc. ("**Soul**"), as purchaser, constitute Lease Consideration (as defined herein);
  - (c) an order determining the quantum of the sale proceeds arising pursuant to the APA (the "**Sale Proceeds**") that constitute Lease Consideration;

- (d) an order directing the Monitor (as defined herein) to pay the Lease Consideration to Scott's;
- (e) an order compelling Prizm (as defined herein) to execute the draft Assignment Agreements delivered to Prizm on or about March 30, 2011, one of which relates to the Consent Leases and the other of which relates to the Standard Notices Leases forming part of the sale transaction with Soul;
- (f) an order that the sale proceeds arising from any further sale transaction of Prizm locations in respect of which Scott's is the landlord and which constitute Lease Consideration be declared as such and be paid to Scott's;
- (g) an interim order restraining the Monitor (as defined herein) from delivering the Sale Proceeds, or any part thereof, or the sale proceeds arising from any subsequent transaction relating to one or more of the outlets of Prizm in respect of which Scott's is the landlord, to any person, including, but not limited to, Prizm Income Fund, Prizm Canadian Operating Trust, Prizm Inc., KIT Finance Inc. and Prizm Limited Partnership (collectively, "**Prizm**"), Computershare Trust Company of Canada, as collateral agent for Prudential Investment Management, Inc., The Prudential Insurance Company of America, Pruco Life Insurance Company and Prudential Retirement Insurance and Annuity Company (Prizm's senior secured lender) (collectively, "**Prudential**"), or Yum! Restaurants International (Canada) Company, pending a determination of the matters set out in (b) and (c) and (f) above;
- (h) an interim order authorizing and granting Scott's, its representatives, its professional advisors and its duly appointed experts full and unrestricted access, if necessary, to Prizm's books and records and any necessary personnel to allow Scott's to obtain the necessary information to obtain a report on the quantum of the Lease Consideration;

- (i) its costs of this motion payable by Prizm and Prudential, jointly and severally; and
- (j) such further and other relief as counsel may advise and this Honourable Court may permit.

2. **THE GROUNDS FOR THE MOTION ARE:**

- (a) Scott's Real Estate Investment Trust ("**Scott's REIT**"), an unincorporated open-ended real estate investment trust established under the laws of the Province of Ontario, manages a portfolio of 220 retail properties located in 7 provinces across Canada;
- (b) Prizm Limited Partnership, a limited partnership established under the laws of the Province of Manitoba, acting through its general partner, Prizm Inc., a corporation incorporated under the federal laws of Canada, prior to filing under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), operated more than 400 KFC, Taco Bell and Pizza Hut restaurants in 7 provinces across Canada;
- (c) Prizm has been and continues to be a significant tenant of Scott's and, prior to its CCAA filing, operated KFC, Pizza Hut and Taco Bell restaurants at 188 of Scott's properties. Prizm also remains liable on the covenant in respect of 3 other of Scott's properties that operate as KFC restaurants;
- (d) on or around January 31, 2011, Scott's received notice and a request from Prizm to assign 9 master leases (collectively, the "**Leases**"), which affected 79 properties owned by Scott's;
- (e) at or around that time, Scott's became aware that Prizm was seeking to assign the Leases to Soul pursuant to an Asset Purchase Agreement dated December 11, 2010 between Prizm, as vendor, and Soul, as purchaser, which was subsequently amended and restated pursuant to the APA;

- (f) pursuant to an Order of this Honourable Court dated May 30, 2011 (the “**Approval and Vesting Order**”), this Court approved the APA, and provided for the vesting in Soul of all of Prizm’s right, title and interest in and to the assets described in the APA of 204 locations, 63 of which are locations owned by Scott’s;
- (g) 8 of the 9 Leases that exist between Scott’s and Prizm (and which govern 62 of the 63 locations referred to in paragraph 2(f) above) contain a provision which states that, upon any assignment or transfer of the Leases, the tenant is required to pay to the landlord any amount it receives from an assignee or transferee in excess of the minimum rent and the additional rent payable under the Leases plus any consideration the tenant receives other than rent and additional rent for such assignment or transfer (the “**Lease Consideration Clauses**” and, the amount payable to the landlord, the “**Lease Consideration**”);
- (h) pursuant to sections 2 and 11 of the Leasehold Mortgagee Agreements, Prudential expressly acknowledged Scott’s interest and priority to the Lease Consideration pursuant to the Lease Consideration Clause contained in each of the Standard Notice Leases and the Consent Leases;
- (i) despite Scott’s claim to the Lease Consideration, it was prepared to facilitate the transaction and refrain from raising any objection to the Approval and Vesting Order on the understanding that certain of the proceeds arising from the closing of the transaction would be placed into the Monitor’s account pending an adjudication on the issue of Scott’s entitlement to the Lease Consideration and the quantification of same;
- (j) Scott’s requested that \$12.2 million of the Sale Proceeds be held by FTI Consulting Canada Inc., in its capacity as the court-appointed monitor of the Applicants (the “**Monitor**”), pending the adjudication of the Lease Consideration issue;



- (k) the Monitor expressed its willingness to do so and currently holds the sum of \$12.2 million pending adjudication of the Lease Consideration issue or further order of this Court;
- (l) while the Lease Consideration Clauses do not entitle Scott's to the entirety of the Sale Proceeds, it is Scott's position that the Lease Consideration Clauses grant Scott's a proprietary interest in a portion of the Sale Proceeds, which sum could be significant. Scott's claims entitlement and priority to the proceeds that constitute Lease Consideration;
- (m) it is Scott's intention to obtain a professional valuation to quantify the Lease Consideration and Scott's is engaged in efforts to do so. Scott's will require access to Prizm's books and records, certain of its personnel and its restaurants, to the extent that the valuator deems necessary;
- (n) if the Sale Proceeds are allowed to flow from the Monitor to Prizm, Prudential or any other party other than Scott's prior to an adjudication of the Lease Consideration issue, there is a significant risk that Scott's will not receive the funds to which it is entitled pursuant to the Leases and Scott's will be severely prejudiced;
- (o) Prizm and the Monitor have advised of other transactions that are in process that will result in the sale of other locations and assets of Prizm. In order to avoid the re-litigation of the issues raised herein, Scott's requests that this Honourable Court declare that the proceeds arising from any such further transaction to be Lease Consideration to which Scott's is entitled, subject to the quantification of the Lease Consideration;
- (p) in so far as the order requested compelling Prizm and Soul to sign the Assignment Agreements presented by Scott's to Prizm and Soul, the request for them to do so is not only reasonable, but it facilitates go forward business needs for both Soul and Scott's, as they may arise;

- (q) the provisions of the CCAA;
- (r) rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (s) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the affidavit of Kevin Salsberg sworn August 8, 2011; and
- (b) such other material as counsel may submit and this Honourable Court may permit.

Date: August 9, 2011

**AIRD & BERLIS LLP**  
Barristers & Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
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*Lawyers for Scott's Real Estate Investment Trust, SR Operating Trust, Scott's Real Estate Limited Partnership, Scott's Trustee Corp. and Scott's GP Trust*

**TO: ATTACHED SERVICE 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.**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceedings commenced at Toronto**

**NOTICE OF MOTION**

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Operating Trust, Scott's Real Estate Limited Partnership,  
Scott's Trustee Corp. and Scott's GP Trust*

# 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 KEVIN SALSBERG  
(sworn August 8, 2011)**

I, **KEVIN SALSBERG**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Vice President of Scott's Real Estate Investment Trust ("**Scott's REIT**"). As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

**DESCRIPTION OF SCOTT'S REIT AND ITS RELATED PARTIES**

2. Scott's REIT is an unincorporated open-ended real estate investment trust established under the laws of the Province of Ontario pursuant to an amended and restated declaration of trust dated December 31, 2010. Scott's REIT manages a portfolio of 220 retail properties located in 7 provinces across Canada. Scott's REIT trades on the Toronto Stock Exchange under the symbols SRQ.UN, SRQ.DB, SRQ.DB.A. A copy of Scott's REIT's organizational chart is

attached as **Exhibit “A”** to this Affidavit. Scott’s REIT and its subsidiaries and affiliates will be collectively referred to as “**Scott’s**” in this Affidavit.

### **SCOTT’S RELATIONSHIP WITH PRISZM AND PRUDENTIAL**

3. Prizm Income Fund, Prizm Canadian Operating Trust, Prizm Inc., Kit Finance Inc., and Prizm Limited Partnership (“**Prizm LP**”) (collectively, “**Prizm**” or the “**Prizm Entities**”) has been and continues to be a significant tenant of Scott’s and, prior to filing under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), operated KFC, Pizza Hut and Taco Bell restaurants at 188 of Scott’s properties. Prizm also remains liable on the covenant in respect of 3 other of Scott’s properties that operate as KFC restaurants.

4. To the best of my knowledge, Computershare Trust Company of Canada, as collateral agent for Prudential Investment Management, Inc., The Prudential Insurance Company of America, Pruco Life Insurance Company and Prudential Retirement Insurance and Annuity Company (collectively, “**Prudential**”), is Prizm’s senior secured lender, holding general security against all of Prizm’s assets, including, without limitation, a mortgage of the leasehold interests in many or all of the leases to which Prizm is a party.

### **THE SALE OF PRISZM LOCATIONS TO SOUL**

5. On or around January 31, 2011, Scott’s received notice and a request from Prizm to assign 9 master leases (collectively, the “**Leases**”) to Soul Restaurants Canada Inc. (“**Soul**”), a corporation incorporated on December 2, 2010, under the federal laws of Canada (which changed its name from 7716443 Canada Inc.). Prizm sought to assign the Leases to Soul pursuant to an Asset Purchase Agreement dated December 11, 2010 between Prizm, as vendor,

and Soul, as purchaser (the “**APA**”). A copy of the APA is attached as **Exhibit “B”** to this Affidavit.

6. Based upon the information contained in Priszm’s past press releases, Soul is an affiliate of Soul Foods Group, a U.K. based franchisee of YUM! Restaurants International. A copy of Soul’s corporate profile report is attached as **Exhibit “C”** to this Affidavit.

7. The Leases which Priszm sought to assign pursuant to the APA can be conveniently separated into 3 different groups:

- (a) 4 master leases, copies of which are attached as **Exhibit “D”** to this Affidavit, each of which contains a provision that, provided the tenant remains liable for its covenants under the lease, the tenant shall have the right to assign the lease upon giving prior written notice to the landlord (collectively, the “**Standard Notice Leases**”);
- (b) 1 master lease, a copy of which is attached as **Exhibit “E”** to this Affidavit, which contains a provision stating that, provided the tenant remains liable for its covenants under the lease and its financial performance pursuant to the lease, the tenant shall have the right to assign the lease upon giving prior written notice to the landlord (the “**Additional Notice Lease**”); and
- (c) 4 master leases, copies of which are attached as **Exhibit “F”** to this Affidavit, each of which contains a provision stating that the tenant cannot assign the lease without the prior written consent of the landlord (collectively, the “**Consent Leases**”).

## SCOTT'S ENTITLEMENT FLOWING FROM THE LEASES

8. Each of the Leases contain an operative provision which creates an entitlement of Scott's to any funds paid to Prizm in consideration for the transfer or assignment of the premises which are the subject of those leases.

9. Each of the Leases state, in similar language, that *upon any assignment or transfer of the lease, the tenant is required to pay to the landlord any amount it receives from an assignee or transferee in excess of the minimum rent and the additional rent payable under the lease plus any consideration the tenant receives in respect of the transfer over and above rent and additional rent for such assignment or transfer* (the "**Lease Consideration Clause**").

10. Further, each of the Consent Leases and Standard Notice Leases require that *the tenant and the transferee shall execute any agreement required to give effect to the foregoing term* (together with the Lease Consideration Clause, the "**Lease Consideration Clauses**").

11. The Lease Consideration Clauses are found at section 21.03 of all 4 of the Standard Notice Leases, section 21.03 of 1 of the Consent Leases and section 21.02 of 1 of the Consent Leases. Each of these sections states:

The Landlord's consent to any Transfer shall be subject to the condition that if the minimum rent and additional rent to be paid by the Transferee under such Transfer exceeds the Minimum Rent, Percentage Rent and additional rent payable under this Lease, *the amount of any excess shall be paid by the Tenant to the Landlord*. If the Tenant receives from any Transferee, either directly or indirectly, any consideration other than rent and additional rent for such Transfer, either in the form of cash, goods or services (other than the proceeds of any bona fide financing as a result of a Transfer involving a mortgage, charge or similar security interest in this Lease) *the Tenant shall forthwith pay to the Landlord an amount equivalent to such consideration*. The Tenant and the Transferee shall execute any agreement required to give effect to the foregoing term. [*Emphasis added*]



12. The Lease Consideration Clauses are found at section 21.03 of the other 2 Consent Leases and state:

The Landlord's consent to any Transfer shall be subject to the condition that if the minimum rent, and additional rent to be paid by the Transferee under such Transfer exceeds the Minimum Rent and additional rent payable under this Lease, *the amount of any excess shall be paid by the Tenant to the Landlord*. If the Tenant receives from any Transferee, either directly or indirectly, any consideration other than rent and additional rent for such Transfer, either in the form of cash, goods or services (other than the proceeds of any bona fide financing as a result of a Transfer involving a mortgage, charge or similar security interest in this Lease) *the Tenant shall forthwith pay to the Landlord an amount equivalent to such consideration*. The Tenant and the Transferee shall execute any agreement required to give effect to the foregoing term. [*Emphasis added*]

13. Lastly, section 11.4(a) and 11.4(b) of the Additional Notice Lease contains the following Lease Consideration Clause:

(a) if the Tenant shall receive from any Transferee of this Lease, either directly or indirectly, any consideration for the Transfer of this Lease, either in the form of cash, goods or services, *the Tenant shall forthwith pay an amount equal to such consideration to the Landlord as Additional Rent forthwith upon receipt of same*; [*Emphasis added*]

(b) in the event of any Transfer by virtue of which the Tenant receives a rent in the form of cash, goods or services which is higher than the Rent payable hereunder to the Landlord for the portion of the Leased Premises so Transferred, *the Tenant shall pay any such excess rent to the Landlord as Additional Rent forthwith upon receipt of same*. [*Emphasis added*]

14. It is Scott's view that it has at all times retained the ownership and interest in all rights, value and consideration associated with, derived from or attributable to the premises which are the subject of the Leases and, accordingly, any and all consideration (other than rent or additional rent) payable by Soul in respect of the Leases is the property of Scott's and is properly payable to Scott's (the "**Lease Consideration**").

## LEASEHOLD MORTGAGEE AGREEMENTS

15. Scott's (or its predecessor), Prizm (or its predecessor) and Prudential, among others, are parties to three Leasehold Mortgagee Agreements which relate to each of the Standard Notice Leases and the Consent Leases. Copies of the Leasehold Mortgagee Agreements are attached as **Exhibit "G"** to this Affidavit.

16. The Leasehold Mortgagee Agreements expressly acknowledge that the Charges (as defined in the Leasehold Mortgagee Agreements) are *subject to and subordinate to all conditions and covenants of the Standard Notice Leases and the Consent Leases and to the rights of Scott's thereunder.*

17. Specifically, section 2 of the Leasehold Mortgagee Agreements states:

The Landlord in granting its consent to the Charges does not hereby acknowledge or approve of any of the terms of the Charges as between the Tenant and the Leasehold Mortgagee except for the granting itself of the Charges and except as aforesaid, the Landlord shall not be bound by nor be deemed to have knowledge of any of the terms of the Charges. The Leasehold Mortgagee acknowledges that, subject to the terms hereof, *the Charges are subject to and subordinate to all conditions and covenants of the Leases and to the rights of the Landlord thereunder. [Emphasis added]*

18. Section 11 of the Leasehold Mortgagee Agreements states:

Nothing contained in this Agreement or in any Assignment and Assumption Agreement shall: (i) restrict the ability of the Landlord to transfer, assign or convey the Leased Premises or the Leases or any interest of the Landlord therein; (ii) be deemed or otherwise construed to be a waiver of, or subordination of, any rights of the Landlord against any personal and/or other property on or in the Leased Premises including without limitation any right of distraint that the Landlord has in respect of any such property; or (iii) *be deemed or otherwise construed to be a waiver of, or subordination of, any rights of the Landlord under the Leases or at law*, including, without limitation, under section 38 of the *Commercial Tenancies Act*, R.S.O. 1990, c. L.7. For greater certainty, the

Landlord shall have no obligation on any transfer, assignment or conveyance contemplated in (i) above, to obtain any covenant by any purchaser, transferee or assignee of the Landlord's interest to be bound by the terms of this Agreement.  
[*Emphasis added*]

19. Pursuant to sections 2 and 11 of the Leasehold Mortgage Agreements, Prudential expressly acknowledged Scott's interest and priority to the Lease Consideration pursuant to the Lease Consideration Clause contained in each of the Standard Notice Leases and the Consent Leases.

### **SCOTT'S RESPONSE TO PRISZM'S INITIAL NOTICE AND REQUEST**

20. In response to Prizm's initial notice that it was assigning the Leases, Scott's sent a letter to Prizm dated February 14, 2011, which, among other things, advised Prizm that pursuant to section 21.03 of the Standard Notice Leases the respective tenants would not be released from any of their obligations or covenants contained in the respective Leases. The letter further advised Prizm that Scott's reserved its rights pursuant to section 21.03 of the Standard Notice Leases to require any consideration received from the tenant in respect of any transfer to be paid to Scott's. A copy of the letter from Scott's to Prizm dated February 14, 2011 with respect to the Standard Notice Leases is attached as **Exhibit "H"** to this Affidavit.

21. Scott's further letter to Prizm dated February 14, 2011, among other things and in response to the consent to assignment request, again advised Prizm of Scott's reservation of its rights pursuant to section 21.02 or 21.03 of the Consent Leases, as the case may be, to require any consideration received from the tenant from any transfer to be paid to Scott's. A copy of the letter from Scott's to Prizm dated February 14, 2011 with respect to the Consent Leases is attached as **Exhibit "I"** to this Affidavit.

22. Upon Prizm's request, Scott's also sent a letter dated February 14, 2011 to Nazir Hussein, the consultant to Soul Foods Group, which also reserved Scott's rights in this regard. A copy of the letter from Scott's to Mr. Hussein dated February 14, 2011 is attached as **Exhibit "J"** to this Affidavit.

23. Despite the specific request, Scott's was not, at the time, provided with a breakdown of the purchase price allocation attributable to each of the restaurant operations being acquired by Soul pursuant to the APA to assist in quantifying the Lease Consideration. Copies of the letters from Prizm and Mr. Hussein to Scott's, each dated February 17, 2011, which outline their respective responses to Scott's, are attached as **Exhibit "K"** to this Affidavit. Interestingly, one of the statements made in Prizm's response is noteworthy. On the last page, Ms. Papernick states, "Furthermore, we dispute your unsubstantiated statement that Prizm is currently financially insolvent."

24. Scott's communicated to Prizm by way of a subsequent letter dated February 18, 2011, wherein Scott's advised Prizm that the issue with respect to the purchase price allocation must be addressed in advance of the closing of the sale transaction with Soul contemplated by the APA (the "**Original Transaction**") so that the portion of the purchase price which constitutes Lease Consideration flows to Scott's in accordance with the Lease Consideration Clauses. A copy of the letter from Scott's to Prizm dated February 18, 2011 is attached as **Exhibit "L"** to this Affidavit.

25. Prizm responded to Scott's by way of letter dated February 21, 2011, stating it disagreed with Scott's view that the Lease Consideration Clauses provide Scott's with rights to a certain portion of the proceeds of sale from the Original Transaction. No justification for this position

was provided. A copy of the letter from Prizm to Scott's dated February 21, 2011 is attached as **Exhibit "M"** to this Affidavit.

26. In verbal discussions with Soul and its counsel, Soul requested that the Lease Consideration Clauses be removed from the Leases going forward. This request was also made in writing in a letter from Soul, a copy of which is attached hereto as **Exhibit "N"**. Scott's is not agreeable to this request.

27. However, in an effort to facilitate the Original Transaction, on March 30, 2011, Scott's delivered a letter to Prizm, along with two draft assignment agreements, one relating to the assignment of the Consent Leases, the other relating to the assignment of the Notice Leases. A copy of the letter from Scott's along with the enclosed draft assignment agreements are attached at **Exhibit "O"** hereto.

#### **THE CCAA PROCEEDINGS**

28. On March 31, 2011, Prizm and certain related parties sought and obtained an initial order (the "**Initial Order**") under the CCAA. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as monitor (the "**Monitor**") in these CCAA proceedings.

29. The Original Transaction did not close in advance of Prizm obtaining the Initial Order. The materials filed in connection with Prizm's application for protection from its creditors under the CCAA continued to refer to the Original Transaction and Prizm's intention to pursue it, but no motion to seek approval of the Original Transaction was ever brought.

30. After the CCAA filing of Prizm, Scott's was advised that the Original Transaction was the subject of further negotiation by Prizm and the Monitor.

## **PRISZM'S REFUSAL TO EXECUTE THE TRUST AGREEMENT**

31. On April 19, 2011, in accordance with the Lease Consideration Clauses contained in sections 21.02 and 21.03 of the Standard Notice Leases and the Consent Leases, as the case may be, counsel to Scott's, in an effort to protect Scott's position, delivered to Prizm and its lawyers a Trust Agreement to be executed by Scott's, Prizm and Soul as per the terms of the Leases referred to in paragraphs 12 to 14 above (the "**Trust Agreement**"). A copy of the letter and the enclosed Trust Agreement is attached as **Exhibit "P"** to this Affidavit.

32. In response to Scott's request to execute the Trust Agreement, counsel to Prizm sent a letter to Scott's dated April 21, 2011, which, among other things, stated that the trust mechanism to hold proceeds of the sale is unnecessary on the basis that the sale approval and/or distribution order will deal with the conditions pursuant to which such proceeds will be held and distributed. A copy of the letter from counsel to Prizm to Scott's dated April 21, 2011 is attached as **Exhibit "Q"** to this Affidavit.

33. Counsel to Scott's responded to counsel to Prizm by way of a subsequent letter dated April 28, 2011, wherein Scott's advised Prizm that pending agreement on an acceptable form of sale order, Scott's continued to reserve all of its rights pursuant to the Leases, including, without limitation, the right to insist on the trust mechanism proposed in the letter dated April 19, 2011. A copy of the letter from counsel to Scott's to counsel for Prizm dated April 28, 2011 is attached as **Exhibit "R"** to this Affidavit.

34. Counsel to Scott's reiterated its position by way of a further letter dated May 10, 2011, wherein Scott's advised Prizm that the proceeds arising from a sale that are determined to be attributable to the Leases as part and parcel of the transaction are the property of Scott's. A copy

of the letter from Scott's counsel to Prizm's counsel and others dated May 10, 2011 is attached as **Exhibit "S"** to this Affidavit.

### **THE REVISED TRANSACTION**

35. While Scott's was led to believe that a transaction with Soul was still being finalized, a revised transaction, in the form of an Amended and Restated Asset Purchase Agreement dated May 17, 2011 (the "**Revised APA**"), was not presented to Scott's until a meeting held on or about May 18, 2011 (the "**May 18<sup>th</sup> Meeting**") among the Monitor, its counsel, and counsel to both Prizm and Scott's (the "**Revised Transaction**"). The Revised APA is attached hereto as **Exhibit "T"**.

36. Pursuant to the Revised Transaction, the number of locations which Prizm sought to transfer to Soul under various leases was reduced from 231 to 204. The number of premises governed by Scott's Leases and which Prizm sought to transfer to Soul were reduced from 79 (in the Original Transaction) to 63 (in the Revised Transaction).

37. For the information of the Court, the Leases described in paragraphs 7 to 13 above cover 62 of the 63 Leases that are the subject of the Revised Transaction.

38. Prizm continues to seek to assign, *inter alia*, the Consent Leases which affect 31 premises owned by Scott's. Prizm has assigned the Standard Notice Leases and the Additional Notice Lease which affect 32 properties owned by Scott's. Scott's continues to request that Prizm sign a form of assignment or consent as required under these leases. Scott's continues to pursue such a request in order to have a clear and documented relationship with Soul whereby Soul agrees with Scott's to be bound by the terms and obligations of these leases. As well,

Scott's requires such formal documentation for its own records and for those requirements of its current and future lenders or other parties who may require same. Prizm has simply been unwilling to cooperate, as evidenced by the email from its legal counsel, a copy of which is attached hereto as **Exhibit "U"**.

39. Despite Scott's repeated efforts to deliver its consent to the assignment of these leases, Prizm refused to accept such consent on the terms delivered by Scott's.

### **PRIZM'S REFUSAL TO NEGOTIATE AN ASSIGNMENT AGREEMENT**

40. As stated in paragraph 27 above, Scott's advised Prizm, in a letter dated March 30, 2011, that it was prepared to provide, *inter alia*, its consent to the assignment of the Consent Leases on the understanding that Prizm execute a standard form assignment agreement, a copy of which was executed by Scott's and enclosed with its letter (the "**Assignment Agreement**").

41. At no time between the Initial Order and the May 18<sup>th</sup> Meeting did Prizm respond to Scott's delivery of the Assignment Agreement.

42. Accordingly, on May 23, 2011, counsel for Scott's followed up with Prizm by email. In response, counsel for Prizm emailed counsel for Scott's on May 24, 2011, advising, *inter alia*, that the Assignment Agreement "is not acceptable to Prizm nor, we believe, was it or will it be acceptable to Soul Restaurants". No justification for this position was provided by Prizm.

43. Pursuant to an Order of this Honourable Court dated May 30, 2011 (the "**Approval and Vesting Order**"), the Court approved the Revised APA, and provided for the vesting in Soul of all of Prizm's right, title and interest in and to the assets described in the Revised APA.



44. The Revised APA, as stated, contemplated the sale of 204 operating restaurants in Ontario, British Columbia and Quebec, including the leases related thereto, for an aggregated purchase price of approximately \$42.8 million, before certain purchase price adjustments. A total of 204 leases were to be transferred to Soul, together with other purchased assets pursuant to the terms of the Revised APA.

45. Pursuant to section 4(1) of the Revised APA, Prizm is required to use its commercially reasonable efforts to obtain, prior to the Closing Date (as defined in the Revised APA), the consents of all landlords under the leases which, by their terms, required the consent of the landlord to any assignment.

46. Pursuant to the Revised APA, any lease for which a landlord consent is required and which is not obtained prior to the Closing Date, it was agreed that the parties to the Revised APA would, for a period of six (6) months following the Closing Date, continue to use commercially reasonable efforts to obtain such landlord consent or to obtain an order of the court assigning the leases for which consent has not been obtained.

47. The transaction contemplated by the Revised APA closed, as planned, on June 1, 2011. Scott's received no further communication from Prizm or Soul concerning the assignment of the Leases until July 12, 2011. On that day, Scott's counsel received a blacklined version of the draft Assignment Agreement previously delivered by Scott's (referred to in paragraph 27 above). The mark up is extensively amended from the prior draft and deviates significantly from a standard consent to assignment agreement entered into on several occasions previously between Scott's and Prizm, and is entirely unacceptable to Scott's. A copy of the blackline version of the amended Assignment Agreement received from counsel to Prizm showing the proposed

changes of Prizm and Soul is attached hereto as **Exhibit “V”**. The form of the Assignment remains unresolved. At this point in time, no consent has been satisfactorily negotiated between Prizm, Scott’s and/or Soul with respect to the leased locations owned by Scott’s in respect of which consent to transfer is required.

48. Accordingly, in accordance with the Revised APA, Soul occupies said locations but the lease rights in respect of same have not been transferred.

49. Despite Scott’s claims to the Lease Consideration arising under the Lease Consideration Clauses, it was prepared to facilitate the transaction and refrain from raising any objection thereto on the understanding that certain of the proceeds arising from the closing of the transaction were placed into the Monitor’s account pending an adjudication on the issue of Scott’s entitlement to the Lease Consideration.

50. Attached as **Exhibit “W”** to this Affidavit is a copy of the issued and entered Sale Approval and Vesting Order regarding the Soul transaction which was made by The Honourable Mr. Justice Morawetz on May 30, 2011.

51. Attached as **Exhibit “X”** to this Affidavit is a copy of the Monitor’s Certificate issued by the Court and filed by the Monitor (or on its behalf) confirming that the Monitor received the deposit and the purchase price in connection with the closing of the Revised Transaction and that the conditions to closing set out therein were satisfied or waived. Accordingly, the Revised Transaction appears to have closed on June 1, 2011.

52. Scott’s requested that \$12.2 million be held by the Monitor pending the adjudication of the Lease Consideration issue, which sum was calculated by dividing \$39.5 million of the

purchase price by the number of locations subject to the Revised Transaction and multiplying that number by the number of locations that are the subject of Scott's leases. This sum is the "Purchase Price" net of the franchise renewal fees, the cost of the UPGC shares and the Closing Date Current Assets Amount (which terms are defined in the Revised APA).

53. Accordingly, the Monitor expressed its willingness to and does currently hold the sum of \$12.2 million pending adjudication of the issue that is the subject of this motion or further order of the Court.

54. Insofar as valuation or allocation of the amounts arising from the Revised Transaction which constitute Lease Consideration and to which Scott's asserts entitlement, it is Scott's intention to obtain a professional valuation in respect of said Lease Consideration and Scott's is engaged in efforts to do so. Scott's further understands that the Monitor may be the process of obtaining such a valuation/appraisal. Scott's is not aware of Prizm's or Prudential's intentions insofar as obtaining independent valuations/appraisals of the Lease Consideration associated with the Revised Transaction.

#### **DISCLAIMER OF LEASES**

55. Since the commencement of the CCAA proceedings in respect of Prizm, Prizm, with the support of the Monitor, has disclaimed twenty two (22) leases. Specifically, six (6) leases in respect of which Scott's is landlord were disclaimed pursuant to a letter received from Prizm on May 10, 2011. Thereafter, a further sixteen (16) leases were disclaimed pursuant to a letter from Prizm dated June 20, 2011 after these were dropped from the Revised Transaction.

56. The Approval and Vesting Order also provided that on closing the Revised Transaction, Soul was to pay the proceeds of sale arising under the APA to the Monitor.

57. It is Scott's view that a significant portion of the proceeds of sale from the Revised Transaction are attributable to the Leases as opposed to the other tangible and intangible assets of Prizm.

58. As Prizm and the Monitor have advised, efforts are underway to sell the balance of the locations from which Prizm operates and the assets at those locations. It seems unnecessary that the positions taken by Scott's in this motion would need to be re-litigated to address the proceeds arising from any further transactions. Accordingly, Scott's hereby requests that the determination that is made in the context of this proceeding bind the proceeds arising from any further transaction(s), subject to a quantification of the Lease Consideration forming part of those future proceeds.

59. This Affidavit is made in support of the within motion, and for no other or improper purpose whatsoever.

SWORN before me at the City of Toronto in the Province of Ontario, this 8<sup>th</sup> day of August, 2011.

Commissioner for taking affidavits, etc.

IAN AUGERSA

  
\_\_\_\_\_  
KEVIN SALSBERG

**TAB "A"**

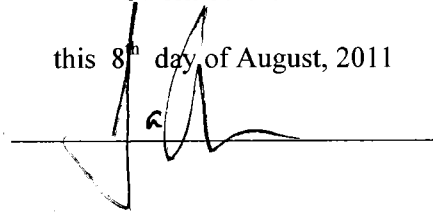
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF KEVIN SALSBERG

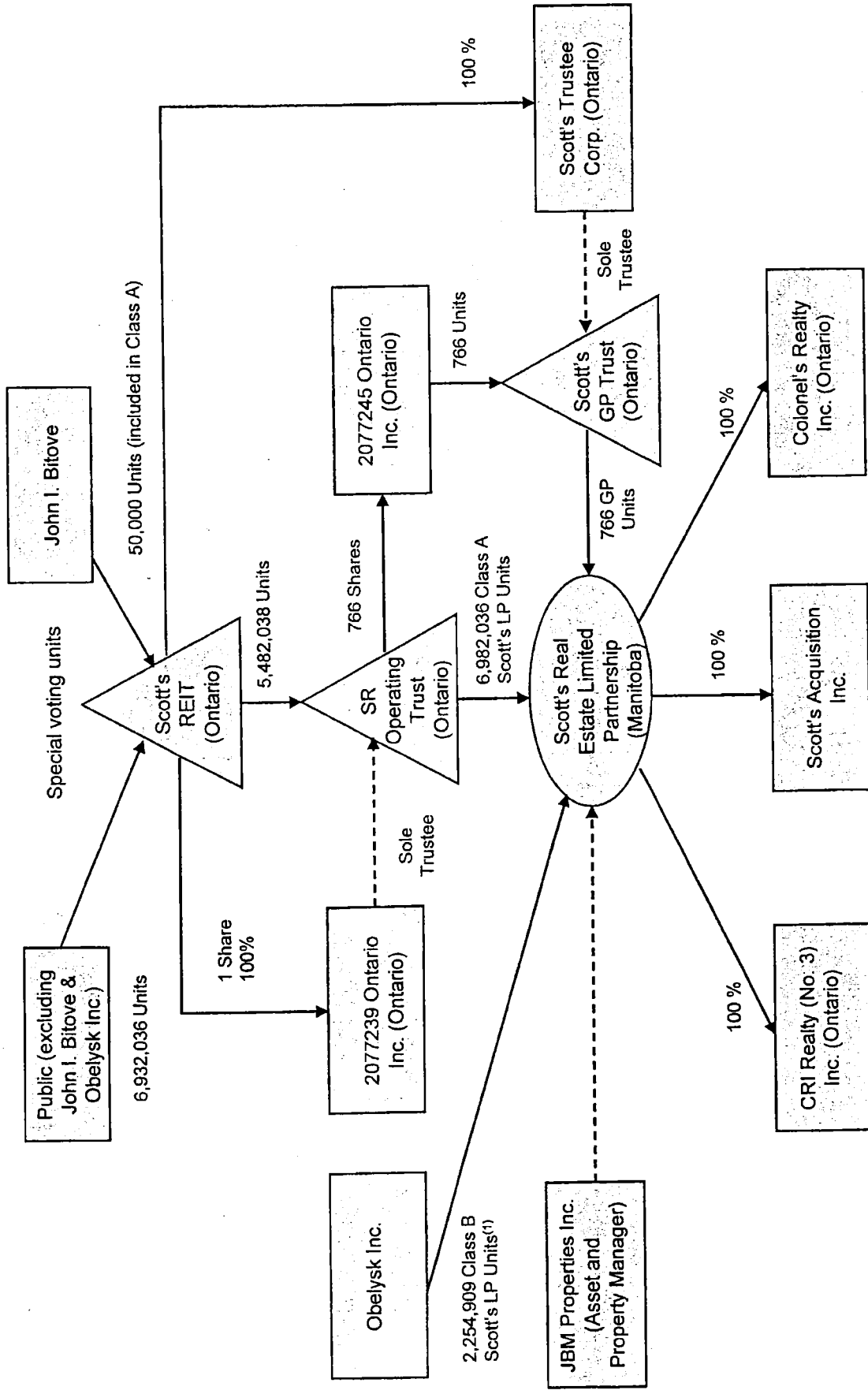
Sworn before me

this 8<sup>th</sup> day of August, 2011

A handwritten signature in black ink is written over a horizontal line. The signature is stylized and appears to be the name of the Commissioner for taking Affidavits, etc.

Commissioner for taking Affidavits, etc

# Corporate Organizational Chart



Note:

(1) Indirectly exchangeable for Units of Scott's REIT on a one-for-one basis and accompanied by Special Voting Units

**TAB "B"**



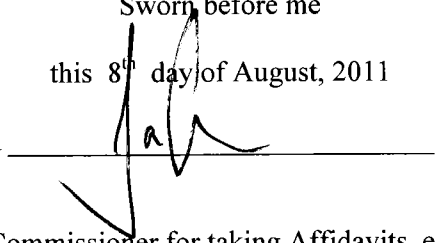
Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF KEVIN SALSBERG

Sworn before me

this 8<sup>th</sup> day of August, 2011

  
Commissioner for taking Affidavits, etc

## ASSET PURCHASE AGREEMENT

Asset Purchase Agreement dated December 11, 2010 between **PRISZM LIMITED PARTNERSHIP** (the "Vendor"), **PRISZM INC.** (the "General Partner") and **7716443 CANADA INC.** (the "Purchaser").

### RECITALS

- (a) The Vendor is the legal and beneficial owner of the Purchased Assets.
- (b) The Vendor wishes to sell and the Purchaser wishes to acquire the Purchased Assets upon the terms and conditions contained in this Agreement.

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 is 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.

- (1) 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. In order that the Purchaser may receive and realize the full benefit of the non-assigned Contracts, after Closing and until all such Contracts are transferred to the Purchaser, 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: (i) 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 (ii) 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. 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 not obtained prior to Closing (each case an "Outstanding Lease"), the Seller and the Purchaser shall each, for a period expiring 6 months following the Closing, continue to use commercially reasonable efforts to obtain same, in each case in accordance with the provisions of Section 4(1) hereof.
- (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. From and after Closing and until the earlier of: (i) the date that the Landlord Consent relating to an applicable Outstanding Lease has been obtained and such Outstanding Lease has been assigned to the Purchaser; or (ii) the expiration or earlier termination of such Outstanding Lease, 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, indemnify and hold the Vendor harmless of and from: (A) any claims that may be made pursuant to the applicable Outstanding Lease as a result of the Vendor holding the Outstanding Lease in trust for the Purchaser; (B) any claims that may be made by the Landlord pursuant to the applicable Outstanding Lease as a result of the completion of 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 the transfer of the applicable Outstanding Lease and obtain such necessary approvals, consents, and waivers and take such actions 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: (i) the date that the Landlord Consent relating to an applicable Outstanding Lease has been obtained and such Outstanding Lease has been assigned to the Purchaser; or (ii) the expiration or earlier termination of such Outstanding Lease, the Vendor hereby covenants to:
  - (a) hold the Outstanding Leases in trust for the Purchaser;
  - (b) to the extent within its control, comply with the terms and provisions of the applicable Outstanding Lease; and
  - (c) 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.

**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: (i) 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 (ii) 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 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 Seller and the Purchaser shall each, for a period expiring 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.
- (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 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 the Vendor have performed its obligations under Section 3 and the value of such contracts and agreements have enured to benefit of the Purchaser.
- (2) All current liabilities relating to the Purchased Assets arising before the Closing Date, including such liabilities described in section 24(5), (the "**Current Liabilities**") shall not form part of the Purchased Asset 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 ("**Purchase Price**") payable by the Purchaser to the Vendor for the Purchased Assets is: (i) **CDN\$41,585,973** (subject to any adjustment contemplated by Section 18(2)), plus (ii) the amount of **CDN\$714,000**, equal to the

franchise renewal fees, plus (iii) the amount of **CDN\$116,000** equal to the price of the UPGC Shares, plus (iv) the amount of **CDN\$3,944,000** equal to the Closing Date Current Assets Amount, subject to Section 10.

- (2) The Purchaser agrees to pay and deliver a deposit in the amount of **CDN\$2,000,000** (the "**Deposit**") on or before January 15, 2011 to the Vendor's counsel. The Deposit shall be delivered and held in accordance with the Escrow Agreement. The Deposit will be applied on Closing in satisfaction of an equivalent amount of the Purchase Price.
- (3) Subject to the terms of the Escrow Agreement:
  - (a) if the Closing does not occur for any reason other than a breach by the Purchaser of its representations, warranties or covenants under this Agreement, the full amount of the Deposit together with all accrued interest received by the Vendor, if any, shall be immediately returned to the Purchaser; or
  - (b) if the Closing does not occur because the Purchaser breached any of its representations, warranties or covenants under this Agreement the full amount of the Deposit 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: (i) as to the amount of the Deposit, by application of such amounts in the manner specified in Section 8(2); and (ii) 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.
- (5) Any adjustment required to be made to the Purchase Price in accordance with Section 10 shall be satisfied by the payment of the Current Assets Purchase Price Adjustment by the party owing such payment to the other party in the manner and at the time contemplated in Section 10.
- (6) The Purchaser shall be liable for and shall pay all applicable federal and provincial sales taxes, property transfer taxes, transfer fees, 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" shall be mutually agreed to and completed on or before January 15, 2011.

**Section 9 Preparation of 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 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**

- (a) 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\$3,944,000 (the "Closing Date Current Assets Amount").
- (b) If the Current Assets, as determined from the Current Assets Statement, is more than CDN\$3,944,000, 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\$3,944,000, 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 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.**

- (1) The consummation of the transaction contemplated by this Agreement is not contingent on the Purchaser's ability to obtain financing.
- (2) The Purchaser shall provide by no later than January 15, 2011 evidence satisfactory to the Vendor's senior lender, that the Purchaser has, and will have at Closing all

funds on hand necessary to pay the Purchase Price referred to in Section 8. The Purchaser hereby acknowledges that the Vendor may provide a copy of such evidence of financing to its senior lender in connection with the consummation of the transaction contemplated hereby. In the event that the Purchaser fails to provide such evidence of financing to the Vendor on or prior to January 15, 2011, the Vendor shall have the right to forthwith terminate this Agreement without any liability.

**Section 14 Due Diligence.**

- (1) The Purchaser shall not be obligated to complete the purchase of the Purchased Assets pursuant to this Agreement, unless, on or before January 15, 2011 the Purchaser has confirmed in writing to the Vendor during the period commencing on the date hereof and ending on January 15, 2011 (the "Investigation Period") that it has confirmed or substantially completed its investigation to its satisfaction, in its sole discretion, the truth and accuracy of the information provided by the Vendor in respect of the Outlets, Leases, and the Books and Records of the Vendor relating thereto, the Contracts and legal due diligence relating to the Purchased Assets. In addition, the Vendor shall provide to the Purchaser on or prior to January 10, 2011 a debtor profile setting out in reasonable detail to the satisfaction of the Purchaser, acting reasonably, as to the debts of the Vendor, the priority rights of creditors and the use of proceeds from this transaction, sufficient to enable the Purchaser is in a position to evaluate the priority ranking of creditors of the Vendor.
- (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 to the Purchaser certified copies of: (i) the limited partnership declaration filed under Applicable Laws in the Province of Manitoba for the Vendor; (ii) the resolution of the directors of the Vendor's general partner approving the transfer of the Purchased Assets to the Purchaser; and (ii) a list of the directors and officers of the Vendor's general

partner, in each case authorized to sign agreements together with their specimen signatures;

- (b) 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;
- (c) the entering into by the Purchaser of a new franchise agreement with the Franchisor in respect of the Outlets has been obtained;
- (d) the Vendor shall have entered into a non-competition and non-solicitation agreement for a period of 5 years in respect of the provinces of British Columbia and Ontario in form and substance acceptable to the parties, acting reasonably.
- (e) the Vendor shall deliver to the Purchaser a certificate of status, good standing, or like certificate with respect of the general partner of the Vendor issued by the appropriate Governmental Entity;
- (f) the Vendor shall have executed, or shall have caused to be executed, all deeds, conveyances, assurances, transfers and assignments and other instruments, in form and substance satisfactory to the Purchaser, necessary or reasonably required to transfer the Purchased Assets to the Purchaser with a good and marketable title, free and clear of all liens, charges, pledges, security interests and other encumbrances other than Permitted Liens;
- (g) the representations and warranties of the Vendor in Schedule "D" 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;
- (h) 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 required to be so executed and delivered in this Agreement;
- (i) the Vendor has obtained the approval and evidence satisfactory to the Purchaser that the UPGC Shares have been transferred to the Purchaser;
- (j) during the Interim Period, there shall have been no Material Adverse Change;

- (k) in the case where unitholder approval is required by Prizm Income Fund, if required by the Purchaser, the Vendor shall have caused its largest unitholder, Obelysk Inc and its related affiliates which hold units in the Vendor to enter into a support agreement on or before January 15, 2011, in form and substance acceptable to the Purchaser, acting reasonably, which will include a commitment to vote all of its or their units in favour of any vote conducted relating to the approval of the transactions contemplated by this Agreement; and
  - (l) the Purchaser shall have received from legal counsel for the Vendor, a legal opinion which addresses the due approval and authorization by the Vendor and the General Partner for the transactions contemplated hereby other than the approval of any holder of securities.
- (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 items (c) and (d) which shall be fulfilled or performed on or before January 15, 2011), 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 Purchaser shall deliver to the Vendor certified copies of (i) the articles and by-laws of the Purchaser and any other constating documents; (ii) all resolutions of the board of directors of the Purchaser, approving the entering into and completion of the transactions contemplated by this Agreement; and (iii) a list of the directors and officers of the Purchaser, in each case authorized to sign agreements together with their specimen signatures;
  - (b) the Purchaser shall deliver to the Vendor a certificate of status, good standing, or like certificate with respect to the Purchaser issued by the appropriate Governmental Entity;
  - (c) the payment of the Deposit in accordance with Section 8(2) to the Vendor's counsel by the Purchaser;
  - (d) the Vendor shall have received evidence of financing as contemplated in Section 13;
  - (e) 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; and
  - (f) 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 the Closing 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 by the parties to this Agreement:
- (a) the Vendor shall deliver to the Purchaser a certificate of payment issued by the appropriate Governmental Entity under retail sales act legislation in the relevant jurisdiction(s) of the Purchased Assets to the effect that all requisite taxes under such legislation relating to the Purchased Assets (other than relating to the conveyance and transfer of the Purchased Assets to the Purchaser) have been paid by the Vendor;
  - (b) the Vendor shall deliver to the Purchaser a certificate issued by the applicable workplace safety and insurance board or entity in respect of the Purchased Assets confirming that as at the Closing, the relevant boards or entities have no claim against the Vendor for which the Purchaser will be or could be liable in respect of any amounts payable pursuant to the relevant workplace safety and insurance/workers' compensation legislation in respect of the Purchased Assets;
  - (c) the Competition Act Approval has been obtained;
  - (d) the Minimum Outlet Threshold shall have been obtained;
  - (e) evidence of the termination of the franchise agreement between the Vendor and the Franchisor in respect of the Outlets;
  - (f) the Vendor having obtained the consent of the Franchisor to the transaction contemplated hereby;
  - (g) the Vendor having obtained the consent of the Vendor's senior lender to the transaction contemplated hereby; and
  - (h) all regulatory and security holder approval, if necessary, shall have been obtained.
- (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 Closing Date, enter into a new franchise arrangement with the Franchisor in respect of the Outlets.
- (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.
- (2) In the event that the Purchaser fails to obtain a Landlord Consent in respect of an Outstanding Lease within 6 months of the Closing Date (the "Extension Period") and Landlord Consents representing at least ninety-five (95%) of all the Outlets has not yet been obtained, then the Purchaser shall have the unilateral right upon written notice to the Vendor to extend the Extension Period by an additional 6 month period provided however that the Vendor shall be required throughout the Extension Period and any extension thereof to continue to its efforts in Section 4(1) throughout such periods, and the Outstanding Lease is terminated in accordance with its terms during such period by the applicable Landlord such that the Purchaser is evicted or otherwise removed from the Outlet or Outlets, the Purchaser shall promptly notify the Vendor of such eviction or removal and the Vendor shall within five Business days of such eviction or removal pay to the Purchaser the portion of the Purchase Price allocated to such Outlet or Outlets as specified in Schedule "F". This payment by the Vendor shall be the sole remedy to the Purchaser for the failure to obtain the Landlord Consent in respect of such Outstanding Lease and for the Damages suffered by the Purchaser in connection therewith and the eviction and removal related thereto.
- (3) 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.

- (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 Labour MAC**

- (1) In the event of a Labour MAC, the Vendor will promptly notify the Purchaser of the circumstances relating to the Labour MAC, including the particular Outlets which are the subject of the Labour MAC.
- (2) Upon notification of the Labour MAC, as contemplated in section 18(1), the Purchaser shall have the right, but not the obligation, to exclude the Outlets which are subject to the Labour MAC from the Purchased Assets. The Purchaser shall notify the Vendor within the earlier of (i) the Closing Date and (ii) five Business Days of receiving the notification of the Labour MAC, of its intentions regarding the Outlets which are subject to the Labour MAC. In the event the Purchaser determines not to exclude the Outlets subject to the Labour MAC from the Purchased Assets, such Outlets will be included as Purchased Assets and the Purchase Price will be unaffected. In the event the Purchaser determines to exclude the Outlets subject to the Labour MAC from the Purchased Assets, such Outlets will be excluded from the Purchased Assets and the Purchase Price will be reduced by the amount of the Purchase Price allocated to such Outlets.
- (3) For greater certainty, a Labour MAC shall not provide to the Purchaser a right of termination under this Agreement.

#### **Section 19 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 Stikeman Elliott LLP, Suite 5300, Commerce Court West, Toronto, Ontario, on the later of: (i) the date which is five (5) Business Days following the satisfaction of all of the conditions contained in Section 15(3) (or if applicable the waiver of such conditions by the parties); and (ii) February 28, 2011, provided however Vendor and Purchaser may mutually agree to extend such date by an additional 30 days on

not less than five (5) days written notice given in advance of February 28, 2011, or at such other place, on such other date and such other time as may be agreed upon in writing by the parties (the "Closing Date").

**Section 20 Indemnity for Current Assets Purchase Price Adjustment**

Following the Closing, the party obligated to pay the Current Assets Purchase Price Adjustment in accordance with Section 10 will indemnify and save the other party harmless, of and from, and will pay for, any Damages suffered by, imposed upon or asserted against the other party as a result of, in respect of, connected with, or arising out of, under or pursuant to the failure of the applicable party to pay the Current Assets Purchase Price Adjustment as contemplated by Section 10 of this Agreement.

**Section 21 Indemnities**

In addition to the indemnity in Section 20, following the Closing, the Vendor and the Purchaser will indemnify and save the other Party harmless, of and from, and will pay for, any Damages suffered by, imposed upon or asserted against it as set out in Schedule "H" attached to this Agreement.

**Section 22 Access to Books and Records**

- (1) 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 23 Action During Interim Period.**

- (1) During the Interim Period and except as otherwise provided in this Agreement, or the Disclosure Letter, 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 23 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 of any Labour Disputes not disclosed in the Disclosure Letter, including in respect of a Labour MAC as contemplated in Section 18.
  - (d) 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, 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 23(2).

**Section 24 Employees**

- (1) On or before the Closing Date, 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 24(3), 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 Purchaser's offer of employment that has been made in accordance with this Section 24(1).
- (2) The Vendor shall not attempt in any way to discourage Designated Employees from accepting the offer of employment made by the Purchaser.
- (3) 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.
- (4) 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.
- (5) The Vendor shall 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 24(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 25 Filings and Authorizations**

- (1) 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.
- (2) The parties waive compliance with the Bulk Sales Act (Ontario) and any other similar bulk sales laws, and the Vendor agrees to indemnify and save the Purchaser harmless from any Damages incurred by the Purchaser as a direct result of any failure of the parties to comply with the Bulk Sales Act (Ontario) or any applicable bulk sales laws in respect of the transaction of purchase and sale contemplated under this Agreement.

**Section 26 Income Tax Matters**

- (1) The parties shall be entitled to review and approve, on a timely basis and prior to the filing of the same, all elections and all other tax forms and elections to be filed

by the other party in connection with the sale of the Purchased Assets and the transactions contemplated by this Agreement.

- (2) Without limiting the generality of Section 22, following the Closing Date, upon request, each party shall promptly provide the other party with copies of all documents, information or records relating to any income tax or other tax audit of the Purchased Assets or any income tax or other tax dispute involving the Purchased Assets, and the parties agree that the other party shall be entitled to be consulted and involved in respect of any such audit or dispute.
- (3) 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.

#### **Section 27 Survival of Covenants, Representations and Warranties.**

The covenants, representations and warranties set forth in this Agreement shall not merge on Closing but shall survive the execution, delivery and performance of this Agreement, the Closing and the execution and delivery of any transfer documents or other documents of title to the Purchased Assets for a period beginning on the Closing Date and ending on the date which is 15 months from the Closing Date, except with respect to any representations and warranties set forth in this Agreement which relate exclusively to Taxes, in which case such representations and warranties will survive and continue in full force and effect until 3 months after the expiration of the period during which any tax assessment may be issued by a Governmental Entity in respect of any taxation year to which such representations and warranties extend. Such period will be determined without regard to any consent, waiver, agreement or other document, made or filed after the Closing Date that extends the period during which a Governmental Entity may issue a tax assessment. A tax assessment includes any assessment, reassessment or other form of recognized document assessing liability for Taxes under Applicable Laws; provided however if either party provides the other with written notice of a Claim prior to the expiry of the survival period applicable to such representation and warranty, the survival period shall not expire to the extent of that representation and warranty and Claim relating thereto.

Notwithstanding the foregoing, a Claim for any breach of any of the representations and warranties contained in this Agreement or in any contract, agreement, instrument, certificate or other document executed or delivered pursuant hereto involving negligent misrepresentation or fraud may be made at any time following the Closing Date, subject only to applicable limitation periods imposed by Applicable Law.

#### **Section 28 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 Closing Date and the Purchaser has not waived such condition at or prior to completion of the transaction;
- (c) by the Vendor if:
  - (i) any of the conditions in Section 15(2) have not been satisfied as at the Closing Date and the Vendor have not waived such condition at or prior to completion of the transaction;
  - (ii) the Purchaser has failed to provide, by January 15, 2011, the Deposit in accordance with Section 8(2); or
  - (iii) the Purchaser has failed to provide, by January 15, 2011, 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 13; or
- (d) by either party if:
  - (i) any of the condition precedents in Section 15(3) have not been satisfied as at the Closing Date; or
  - (ii) if the Closing has not occurred on or prior to March 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 to be performed at or prior to Closing and the Closing has not occurred because of such failure.

**Section 29 Time of the Essence.**

Time shall be of the essence of this Agreement.

**Section 30 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.

**Section 31 Public Announcements.**

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 32 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, 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 33 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 34 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 35 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 36 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 37 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 38 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 39 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 40 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 41 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 42 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 43 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 44 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 45 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 46 Accounting Principles.**

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

**Section 47 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 Limited Partnership  
101 Exchange Avenue  
Vaughan, Ontario  
L4K 5R6  
Canada

Attention: Deborah Papernick  
Facsimile: (416) 977-4860  
Email: deborah.papernick@prizm.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

(b) To Prizm Inc.:

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

Attention: Deborah Papernick  
Facsimile: (416) 977-4860  
Email: deborah.papernick@prizm.com

(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

(c) To the Purchaser:



(i) 7716443 Canada Inc.

Attention: Aly Janmohamed  
Facsimile: (416) 865-6636

(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.

*[Remainder of Page Intentionally Left Blank]*

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

**PRISZM LIMITED PARTNERSHIP,  
by its general partner, PRISZM INC.**

By: (signed) "Deborah Papernick"  
Name: Deborah Papernick  
Title: Chief Financial Officer

By: \_\_\_\_\_  
Name:  
Title:

**PRISZM INC.**

By: (signed) "Deborah Papernick"  
Name: Deborah Papernick  
Title: Chief Financial Officer

By: \_\_\_\_\_  
Name:  
Title:

**7716443 CANADA INC.**

By: (signed) "Aly Janmohamed"  
Name: Aly Janmohamed  
Title: President

By: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE "A"

### DEFINED TERMS

**"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.

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

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

**"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.

**"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.

**"Closing"** has the meaning specified in Section 19.

**"Closing Date"** has the meaning specified in Section 19.

**"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 113 (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).

**"Contracts"** has the meaning specified in Schedule "B".

**"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 prepayments.

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

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

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

**"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.

**"Designated Employees"** means the employees currently employed by the Vendor at the Outlets, the managers employed by the General Partner with respect to the Outlets, and the Regional Directors of Operations, Area Managers, and Field Training Leaders employed by the General Partner with respect to the geographic area in which the Outlets are situated.

**"Disclosure Letter"** means the letter delivered to the Purchaser by the Vendor on or before January 10, 2011.

**"Employee Plans"** means all employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, severance, change of control, pension, retirement, stock option, stock purchase, stock appreciation, health, welfare, medical, dental, disability, life insurance and similar plans, programmes, arrangements or practices relating to the current or former employees, officers or directors of the Vendor maintained, sponsored or funded by the Vendor, whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered.

**"Environmental Law"** means Applicable Law in respect of the natural environment, public or occupational health or safety, and the manufacture, importation, handling, transportation, storage, disposal and treatment of Hazardous Substances.

**"Escrow Agreement"** means the escrow agreement to be entered into on or before January 15, 2011 between the parties and Stikeman Elliott LLP, as escrow agent, in form and substance satisfactory to each of the parties and Stikeman Elliott LLP, acting reasonably.

**"Excluded Assets"** has the meaning specified in Section 2(2).

**"Franchisor"** means Yum! Restaurants International (Canada) LP, a limited partnership formed under the laws of the Province of Ontario.

**"Governmental Entity"** means (i) any multinational, federal, provincial, state, municipal, local or other governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign (ii) any subdivision or authority of any of the foregoing, or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

**"Hazardous Substance"** means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of them that may impair the natural environment, injure or damage property or plant or animal life or harm or impair the health of any individual and includes any contaminant, waste, substance or material defined by Environmental Law as hazardous, toxic or dangerous or any other substance or material prohibited, regulated or reportable pursuant to any Environmental Law.

**"Intellectual Property"** means all right, title and interest of the Vendor in and to the "prizm" name, mark, logo and domain name and the right, title and interest of the Vendor in all intellectual property related to the operation of the Vendor's call centre or online ordering system.

**"Interim Period"** means the period between the close of business on the date of this Agreement and the Closing.

**"Inventories"** has the meaning specified in Schedule "B"

**"Labour Dispute"** means a strike, lock-out (including a lock-out declared or recommended by an employer's association or where the Vendor has been served with written notice by

the Trade Union that the employees are going on strike), a work-to-rule, a slow-down, a withdrawal of labour, a refusal or failure to perform or provide any labour or service, picketing, a work-stoppage caused in whole or in part by picketing, or any labour-related disruption, whether or not lawful, by or involving one or more employees of the Vendor, whether in concert or not, or involving a trade union representing one or more employees of the Vendor;

**"Labour MAC"** means a Labour Dispute occurring in the Interim Period involving the Outlets which are the subject of a Trade Union, which effect is, or could reasonably be expected to be, material and adverse to the operations, affairs, or condition (financial or otherwise) of such Outlets.

**"Landlords"** means the landlords under the Leases.

**"Landlord Consents"** means the consents, to the extent required by the terms of the applicable Leases, of the applicable Landlords under said Leases for the assignment thereof by the Vendor to the Purchaser as contemplated by the terms of this Agreement.

**"Leased Properties"** means the lands and premises which are the subject of the Leases relating to the Outlets by reference to their municipal address.

**"Leases"** means the leases relating to the Outlets.

**"Legal Proceedings"** means any litigation, action, application, suit, hearing, claim, grievance, civil, administrative, regulatory proceeding before or by any court or other tribunal thereof and includes any appeal thereof and any application for leave for appeal or review.

**"Lien"** means any mortgage, charge, pledge, hypothecation, security interest, assignment, encumbrance, lien (statutory or otherwise), charge, title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature or any other arrangement or condition that in substance secures payment or performance of an obligation.

**"Master Franchise Agreement"** means the master franchise agreement between the Vendor and the Franchisor dated as of November 9, 2003.

**"Material Adverse Change"** means a change in the Purchased Assets or in the operations, affairs, or condition (financial or otherwise) of the Purchased Assets during the Interim Period, taken as a whole which alone or in the aggregate has an adverse effect on the Purchased Assets in excess of CDN\$2,500,000.

**"Material Adverse Effect"** means any effect that is, or could reasonably be expected to be, material and adverse to the operations, affairs, or condition (financial or otherwise) of the Purchased Assets during the Interim period, taken as a whole which alone or in the aggregate has an adverse effect on the Purchased Assets in excess of CDN\$2,500,000.

**"Material Contract"** means a Contract which involves or may reasonably be expected to involve the payment to or by the Vendor of more than CDN\$100,000 over the term of that

Contract and such Contract has an unexpired term of more than one year, a Contract containing a non-competition or non-solicitation covenant or other provision that restricts the business of the Vendor.

**"Material Contract Consents"** means the consent of the contracting parties to the assignment of any Material Contracts if: (ii) required by the terms of such Material Contract, and (ii) the failure to obtain which would individually have a Material Adverse Effect on the Purchased Assets.

**"Minimum Outlet Threshold"** means: Landlord Consent(s) representing at least seventy-five (75%) percent of all of the Outlets. For certainty, if a Lease does not require the consent of the Landlord for the assignment thereof by the Vendor to the Purchaser, the Outlet relating to such Lease shall be treated as an Outlet which may be assigned to the Purchaser in accordance with the terms of such Lease and such Outlet shall be included in the calculation for determining whether the Minimum Outlet Threshold has been satisfied.

**"no-action letter"** has the meaning specified in the definition of "Competition Act Approval.

**"Permitted Liens"** means (i) Liens for taxes not yet due and delinquent, and (ii) easements, encroachments, restrictions and other imperfections and matters of title which do not, individually or in the aggregate, materially impair the use of any real property.

**"Person"** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Entity, and the executors, administrators or other legal representatives of an individual in such capacity.

**"Profit / Loss Statements"** means the statements prepared by the Vendor in connection with the Outlets for the three year period ending on September 5, 2010, which statements documented the profits and losses of each Outlet.

**"Purchase Price"** has the meaning specified in section 8(1).

**"Purchased Assets"** has the meaning specified in Section 2(1).

**"Prepaid Expenses"** means all prepaid expenses including prepaid taxes and rent, relating exclusively or primarily to the Purchased Assets.

**"Ordinary Course"** means, with respect to an action taken by a Person, that such action is consistent with the past practices of the Person and is taken in the ordinary course of the day-to-day operations of the Person.

**"Outlet"** means the outlets of the Vendor listed in Schedule "G".

**"Outlet Software Licenses"** means the licenses for software used exclusively at the Outlets.

**"Outstanding Contract"** has the meaning specified in Section 5.

**"Outstanding Leases"** has the meaning specified in Section 4.

**"Restaurant Cash Float"** means the standard opening cash float and restaurant level petty cash float at each of the Outlets.

**"Taxes"** means all taxes including all income, sales, use, goods and services, harmonized sales, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, levies, imposts and other assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan contributions, employment insurance and unemployment insurance payments and workers' compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties, in all cases imposed by any Governmental Entity in respect thereof and whether disputed or not.

**"Trade Fixtures"** means the fixtures, shelves, counters, display units, refrigeration equipment, deep fryers, cooking equipment, video cameras and other fixtures used in connection with the operation of the Purchased Assets and which are owned or leased by the Vendor.

**"Trade Union"** means a national, international, provincial or local organization or association of employees, or a local or provincial branch of a national or international organization or association of employees in British Columbia, that has as one of its purposes a regulation of relations between employers and employees through collective bargaining, and any member or representative of the same, and includes a council of trade unions or a member or representative of a council of trade unions;

**"Transferred Employees"** means those Designated Employees who accept the Purchaser's offer of employment.

**"UPGC Shares"** has the meaning specified in Schedule "B".



**SCHEDULE "B"**

**PURCHASED ASSETS**

1. The Vendor's right, title and interest in and to the Leases and the Leased Premises;
2. 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;
3. All inventories of the Purchased Assets (the "**Inventories**"), including all food, food ingredients, packaging materials, paper products and miscellaneous consumable and non-consumable inventories of the Purchased Assets;
4. All accounts receivable, notes receivable and other debts due or accruing due to the Vendor in connection with the Purchased Assets (the "**Accounts Receivable**") and the full benefit of all security for the Accounts Receivable;
5. All Prepaid Expenses;
6. Subject to Section 3 of the Agreement, the full benefit of all 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 entitled in connection with the Purchased Assets (the "**Contracts**");
7. All Authorizations, owned, held or used by the Vendor in connection with the Purchased Assets to the extent that they are transferable;
8. The Restaurant Cash Float;
9. The shares in the capital of UPGC, Inc. ("**UPGC Shares**") owned by the Vendor and directly related to the Outlets;
10. The Vendor's right, title and interest in and to the Outlet Software Licenses; and
11. Any and all right, title and interest of the Vendor in and to the Trade Fixtures.

**SCHEDULE "C"**

**EXCLUDED ASSETS**

1. Any cash, cash equivalents, securities or other short-term investments of the Vendor (other than, for greater certainty, the Restaurant Cash Float);
2. The original Books and Records;
3. The Intellectual Property;
4. The Master Franchise Agreement;
5. The Vendor's right, title and interest in and to all software and related software licenses and computer hardware not used directly and exclusively at the Outlets (which for greater certainty does not include the Outlet Software Licenses);
6. The Vendor's right, title and interest in and to the information and technology support and maintenance agreement between the Vendor and IBM;
7. The Vendor's right, title and interest in and to its proportionate share of the sales rebate to which it is entitled to from UPGC, Inc. for the period up to and prior to Closing;
8. The Vendor's right, title and interest in and to the agreement between the Vendor and Global Payments in respect of debit and credit card services;
9. Any real property related to the Purchased Assets;
10. All insurance policies of the Vendor;
11. All Employee Plans; and
12. Any and all assets not located at an Outlet or comprising a Purchased Asset.

## SCHEDULE "D"

### VENDOR'S REPRESENTATIONS AND WARRANTIES

1. The Vendor is validly existing as a limited partnership under the laws of the Province of Manitoba. The Vendor has full power and authority to own its property, to carry on its business and enter into and perform its obligations under this Agreement. The Vendor is duly qualified, licensed or registered to carry on business in all jurisdictions where the nature of the property owned by it or the business carried on by it makes such qualification necessary, and has full legal right under the laws of all such jurisdictions to own its property and to carry on the business carried on by it, in each case, in all material respects.
2. The execution, delivery and performance by the Vendor of this Agreement:
  - (d) has been duly authorized by all necessary corporate and other action on the part of the Vendor;
  - (e) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws; and
  - (f) will not result in the violation of any Law.
3. This Agreement has been duly executed and delivered by the Vendor and constitutes a legal, valid and binding obligations of the Vendor, enforceable against it in accordance with its terms subject only to any limitation under Applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement and other similar laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
4. The Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada).
5. The Closing Date Current Assets Amount represents the approximate gross Current Assets for all of the Outlets, as determined by the Vendor acting reasonably.
6. Since September 5, 2010, the business carried on at the Outlets has been carried on in the Ordinary Course.
7. The Vendor is conducting and has always conducted the business carried on with the Purchased Assets in compliance with all Applicable Laws of each jurisdiction in which the Outlets are located in all material respects.
8. Except for the Excluded Assets, the property and assets included in the Purchased Assets constitute all of the assets used by the Vendor in carrying on the business conducted with the Purchased Assets.

9. The Vendor has legal and beneficial ownership of the Purchased Assets, free and clear of all Liens except for Permitted Liens.
10. The Profit / Loss Statements fairly present the financial position of the Outlets as at the date it is given.
11. The inventory included in the Purchased Assets, subject to a reasonable allowance for obsolete inventory, is good and usable and is capable of being processed and sold in the Ordinary Course at normal profit margins. The inventory levels of the Purchased Assets have been maintained at levels sufficient for the continuation of the business conducted with the Purchased Assets in the Ordinary Course.
12. Except for the Purchaser under this Agreement, no Person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming such for the purchase from the Vendor of any of the Purchased Assets, other than inventory sold in the Ordinary Course.
13. Except as disclosed in the Disclosure Letter, the Vendor does not own or purport to own any real property related to the Outlets.
14. The Vendor is not a party to, or under any agreement to become a party to, any leases with respect to real property that is used or to be used in connection with the Purchased Assets other than the Leases.
15. The Vendor has provided to the Purchaser a summary of the Leases.
16. With respect to each Lease (i) all rents and additional rents have been paid, (ii) no waiver, indulgence or postponement of the lessee's obligations has been granted by the lessor, and (iii) there exists no event of default or event, occurrence, condition or act which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a default under the Lease.
17. The Vendor has made available to the Purchaser the Books and Records related to the Outlets.
18. The Contracts represent all of the contracts used in connection with the Purchased Assets, and each Contract is in full-force and effect and is unamended and there are no outstanding material defaults or breaches under any of the Contracts.
19. To the knowledge of the Vendor, no material regulatory approval or filing with, notice to, or waiver from any Governmental Entity is required to be obtained or made by the Vendor: (a) in connection with the execution and delivery of, and performance by the Vendor of its obligations under, this Agreement or the consummation of the transactions contemplated hereby; (b) to transfer any and all rights and benefits thereunder to the Purchaser; or (c) to permit the Purchaser to carry on the business carried on by the Vendor using the Purchased Assets after the Closing as such business is currently carried on by the Vendor.

20. Except as disclosed in the Disclosure Letter, (i) the Vendor is in compliance with all applicable Environmental Laws related to the Outlets in all material respects and (ii) to the actual knowledge of the Vendor there are no material breaches of Environmental Laws with respect to any of the properties on which an Outlet is situated. Except as disclosed in the Disclosure Letter, to the actual knowledge of the Vendor, there are no contaminants located in the ground or in groundwater under any of the Outlets except for contaminants in concentrations which would not exceed applicable cleanup or response thresholds.
21. Except as disclosed in the Disclosure Letter, and except with respect to the required Material Contract Consents and Landlord Consents contemplated by this Agreement and the giving of any required notices thereunder, the execution, delivery and performance of this Agreement by the Vendor and the completion the transactions contemplated by this Agreement do not and will not result in or constitute any of the following: (a) a default, breach or violation or an event that, with notice or lapse of time or both, would be a default, breach or violation of any of the terms, conditions or provisions of the articles or by-laws of the Vendor or of any Material Contract; (b) an event which, pursuant to the terms of any Material Contract, would cause any right or interest of the Vendor to come to an end or be amended in any way that is detrimental to the Purchased Assets or entitle any other Person to terminate or amend any such right or interest or relieve any other Person of its obligations thereunder; (c) the creation or imposition of any Lien on any of the Purchased Assets; or (d) the violation of any Applicable Law, in each case, in all materials respects.
22. Except as disclosed in the Disclosure Letter, there is no unfair labour practice complaint, grievance or arbitration proceeding, Employment Standards complaints under applicable legislation, court actions or human rights complaints whatsoever, by or involving any of the Designated Employees or former employee (where the former employee wishes to be reinstated) in progress or, to the knowledge of the Vendor, threatened against it.
23. The Vendor has provided to the Purchaser a complete and accurate list of the Designated Employees relating to the Purchased Assets as at the date it is given, which list contains the material terms related to so such employment and agrees to update such list as at the Closing Date.
24. The Vendor has provided to the Purchaser a complete and accurate list and description of all Designated Employees as at the date it is given who are on long term disability, on an extended leave of absence or in receipt of workers' compensation benefits and agrees to update such list as at the Closing Date.
25. The Vendor has provided to the Purchaser a complete and accurate list and description of all collective agreements or other agreements with any Trade Union or employee association currently in force with Vendor or any associated or related company (within the meaning thereof under the Labour Relations Code (British Columbia) (whether or not the expiry date of any such agreement has passed) with respect to the Designated Employees.

26. The Vendor has provided to the Purchaser a complete list and description of the Employee Plans applicable to the Designated Employees, together with all amendments, which have been made to such plans since their inception and all of the employee benefit booklets relating thereto.
27. Except as disclosed in the Disclosure Letter, the Vendor is in compliance with all Applicable Laws respecting employment, employment practices and standards, terms and conditions of employment, wages and hours, occupational health and safety, human rights, labour relations, pay equity and workers' compensation, in each case, in all material respects.
28. To the knowledge of the Vendor, none of the Employees is in material violation of any noncompetition, non-solicitation, non-disclosure or any similar agreement with any third party.
29. No agent, broker, investment banker, financial advisor or other firm or Person is or will be entitled to any brokers' or finder's fee or any other commission or similar fee in connection with this Agreement or any of the transactions contemplated hereby except for such fees and commissions as will be paid by the Vendor at Closing without liability whatsoever to the Purchaser.
30. All federal, provincial, local and foreign income, profits, franchise, sales, use, occupancy, excise and other taxes and assessments (including interest and penalties) that are or may become payable by or due from the Vendor in respect of the Purchased Assets have been fully paid or fully disclosed and fully provided for in the Books and Records. There are no outstanding agreements or waivers extending the statutory period providing for an extension of time with respect to the assessment or reassessment of tax or the filing of any tax return by, or any payment of any tax by the Vendor, no notice of assessment or reassessment has been received and, to the knowledge of the Vendor, no examination of any tax return of the Vendor in respect of the Purchased Assets is currently in progress. There are no claims, actions, suits or proceedings (or, to the knowledge of the Vendor, any investigation) pending, or, to the knowledge of the Vendor, threatened against the Vendor relating to taxes of the Purchased Assets and the Vendor knows of no valid basis for any such claim, action, suit, proceeding, investigation or discussion. The Vendor is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act* (Canada).

**SCHEDULE "E"**

**PURCHASER'S REPRESENTATIONS AND WARRANTIES**

1. The Purchaser has been duly incorporated and is validly subsisting under the laws of the jurisdiction of its incorporation, and has all requisite corporate capacity, power and authority to carry on its business as now conducted by it and to own its properties and assets and is qualified to carry on business under the laws of the jurisdictions where it carries on a material portion of its business.
2. The execution, delivery and performance by the Purchaser of this Agreement:
  - (g) has been duly authorized by all necessary corporate action on the part of the Purchaser;
  - (h) does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected; and
  - (i) will not result in the violation of any Law.
3. This Agreement has been duly executed and delivered by the Purchaser and constitute legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with their respective terms subject only to any limitation under Applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement and other similar laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
4. The Purchaser is a registrant for the purposes of the tax imposed under Part IX of the *Excise Tax Act* (Canada).
5. The Purchaser has provided evidence to the Vendor, which evidence is attached as Schedule "F", that the Purchaser has, and will have at Closing all funds on hand necessary to pay the Purchase Price referred to in Section 8.
6. The Purchaser is a WTO Investor for the purposes of the *Investment Canada Act*.

**SCHEDULE "F"**

**PURCHASE PRICE ALLOCATION PER OUTLET**

[To be completed on or before January 15, 2011]



**SCHEDULE "G"**

**OUTLETS**

## SCHEDULE "H"

### INDEMNITIES

**1.1 Indemnity by the Vendor.** The Vendor shall indemnify the Purchaser and its officers directors, shareholders and employees (the "Purchaser Indemnified Parties") and save them fully harmless against, and will reimburse or compensate them for, any Damages arising from, in connection with or related in any manner whatever to:

- (a) any incorrectness in or breach of any representation or warranty or non-fulfillment of any covenant of the Vendor contained in this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;
- (b) any Liability arising from the ownership or operation of the business, the employees or the Purchased Assets prior to the Closing Date, other than a Liability that is an Assumed Liability; and
- (c) the Current Liabilities;

and, for greater certainty and without limiting the generality of the provisions of Sections 1.1(a) and (b), the indemnity provided for in this Section 1.1 shall extend to any Damages arising from any act, omission or state of facts that occurred or existed prior to the Closing Time, and whether or not disclosed in any Schedule to this Agreement. The rights to indemnification of the Purchaser's Indemnified Parties under this Section 1.1 shall apply notwithstanding any inspection or inquiries made by or on behalf of any of the Purchaser's Indemnified Parties, or any knowledge acquired or capable of being acquired by any of the Purchaser's Indemnified Parties or facts actually known to any of the Purchaser's Indemnified Parties (whether before or after the execution and delivery of this Agreement and whether before or after Closing). The waiver of any condition based upon the accuracy of any representation and warranty or the performance of any covenant shall not affect the right to indemnification, reimbursement or other remedy based upon such representation, warranty or covenant.

**1.2 Indemnity by the Purchaser.** The Purchaser shall indemnify the Vendor and its officers directors, shareholders and employees (the "Vendor's Indemnified Parties") and save them fully harmless against, and will reimburse or compensate them for, any Damages arising from, in connection with or related in any manner whatever to:

- (a) any incorrectness in or breach of any representation or warranty or non-fulfillment of any covenant of the Purchaser contained in this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;

- (b) any Liability arising from the ownership or operation of the business, the employees or the Purchased Assets by the Purchaser on or after the Closing Date, other than a Liability that is a Current Liability; and
- (c) the Assumed Liabilities.

**1.3 Notice of Claim.** If an Indemnified Party becomes aware of any act, omission or state of facts that may give rise to Damages in respect of which a right of indemnification is provided for under this Section 1.3 the Indemnified Party shall promptly give written notice thereof (a "**Notice of Claim**") to the Indemnifying Party. Such notice shall specify whether the potential Damages arise as a result of a claim by a Person against the Indemnified Party (a "**Third Party Claim**") or whether the potential Damages do not so arise (a "**Direct Claim**"), and shall also specify with reasonable particularity (to the extent that the information is available):

- (a) the factual basis for the Direct Claim or Third Party Claim, as the case may be; and
- (b) the amount of the potential Damages arising therefrom, if known.

If, through the fault of the Indemnified Party, the Indemnifying Party does not receive notice of a particular claim in time effectively to contest the determination of any liability susceptible of being contested or to assert a right to recover an amount under applicable insurance coverage, then the liability of the Indemnifying Party to the Indemnified Party under this Schedule "H" shall be reduced to the extent that Damages are incurred by the Indemnifying Party resulting from the Indemnified Party's failure to give such notice on a timely basis. Nothing in this Section 1.3 shall be construed to affect the time within which a Notice of Claim must be delivered pursuant to Sections 1.4(1) and 1.4(2) in order to permit recovery pursuant to Section 1.1(a) or 1.2(a) as the case may be.

**1.4 Time Limits for Delivery of Notice of Claim for Breach of Representations and Warranties.**

No Damages may be recovered from either party the Vendor pursuant to this Section 1.1 or 1.2, as applicable, unless a Notice of Claim is delivered by the party making the Claim on or before the expiry of the period applicable thereto set out in Section 27 in this agreement.

**1.5 Monetary Limits on Damages for Breach of Representations and Warranties.**

- (a) No Damages may be recovered from the Vendor pursuant to paragraph 1.1(a) unless and until the accumulated aggregate amount of Damages of the Purchaser's Indemnified Parties arising pursuant to Section 1.1(a) exceeds \$500,000, in which event the accumulated aggregate amount of all such Damages exceeding \$500,000 may be recovered. Such limitation shall have no application to any claim to recover Damages based on any incorrectness in or breach of any representation or warranty made in any document executed or delivered pursuant hereto involving negligent misrepresentation or fraud.
- (b) No Damages may be recovered from the Purchaser pursuant to Section 1.2(a) unless and until the accumulated aggregate amount of Damages of the Vendor's Indemnified Parties arising pursuant to Section 1.2(a) exceeds \$500,000 in which event the accumulated aggregate amount of all such Damages exceeding \$500,000 may be recovered. Such limitation shall have no application to any claim to recover Damages based on any incorrectness in or breach of any representation or warranty made in any document executed or delivered pursuant hereto involving negligent misrepresentation or fraud.

**1.6 Limitation Periods.**

(1) *Limitation Periods for Representations and Warranties.* Notwithstanding the provisions of the *Limitations Act, 2002* (Ontario) or any other statute, an Indemnified Party may commence a proceeding in respect of Damages arising from any incorrectness in or breach of any representation and warranty of the Indemnifying Party as referred to in a Notice of Claim delivered within the time periods stipulated in Section 1.4 at any time on or before the later of:

- (a) the second anniversary of the last date upon which such Notice of Claim is permitted to be delivered under Section 1.4; and
- (b) the expiry of the limitation period otherwise applicable to such claim,

and any applicable limitation period is hereby so extended to the full extent permitted by law.

(2) *Limitation Periods for Covenants and Other Matters.* The limitation period applicable to any proceeding relating to a claim in respect of any matter in Sections 1.1(a) to (c) and 1.2(a) to (c) shall be solely as prescribed in sections 15-17 of the *Limitations Act, 2002* and any other limitation period in respect of such claim (including that provided for in section 4 of the *Limitations Act, 2002*) is extended accordingly.

**1.7 Direct Claims.** In the case of a Direct Claim, the Indemnifying Party shall have 60 days from receipt of notice thereof within which to make such investigation as the Indemnifying Party considers necessary or desirable. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnifying Party the information relied upon by the Indemnified Party to substantiate its right to be indemnified under this Schedule "H", together with all such other information as the Indemnifying Party may

reasonably request. If the Parties fail to agree at or before the expiration of such 60 day period (or any mutually agreed upon extension thereof), the Indemnified Party shall be free to pursue such remedies as may be available to it.

**1.8 Third Party Claims.** In the case of a Third Party Claim, the provisions in the following paragraphs of this Section 1.8 apply.

- (a) The Indemnifying Party shall have the right, at its expense, to participate in but not control the negotiation, settlement or defence of the Third Party Claim, which control shall rest at all times with the Indemnified Party, unless the Indemnifying Party:
  - (i) irrevocably acknowledges in writing complete responsibility for, and agrees to indemnify the Indemnified Party in respect of, the Third Party Claim; and
  - (ii) furnishes evidence to the Indemnified Party which is satisfactory to the Indemnified Party of its financial ability to indemnify the Indemnified Party;

in which case the Indemnifying Party may assume such control at its expense through counsel of its choice.

- (b) If the Indemnifying Party elects to assume control as contemplated in Section 1.8(a), the Indemnifying Party shall reimburse the Indemnified Party for all of the Indemnified Party's out-of-pocket expenses incurred as a result of such participation or assumption. The Indemnified Party shall continue to have the right to participate in the negotiation, settlement or defence of such Third Party Claim and to retain counsel to act on its behalf, provided that the fees and disbursements of such counsel shall be paid by the Indemnified Party unless the Indemnifying Party consents to the retention of such counsel at its expense or unless the named parties to any action or proceeding include both the Indemnifying Party and the Indemnified Party and a representation of both the Indemnifying Party and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), in which case the fees and disbursements of such counsel shall be paid by the Indemnifying Party. The Indemnified Party shall co-operate with the Indemnifying Party so as to permit the Indemnifying Party to conduct such negotiation, settlement and defence and for this purpose shall preserve all relevant documents in relation to the Third Party Claim, allow the Indemnifying Party access on reasonable notice to inspect and take copies of all such documents and require its personnel to provide such statements as the Indemnifying Party may reasonably require and to attend and give evidence at any trial or hearing in respect of the Third Party Claim.
- (c) If, having elected to assume control of the negotiation, settlement or defence of the Third Party Claim, the Indemnifying Party thereafter fails to conduct

such negotiation, settlement or defence with reasonable diligence, then the Indemnified Party shall be entitled to assume such control and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim.

- (d) If any Third Party Claim is of a nature such that (i) the Indemnified Party is required by Applicable Law or any Order, or (ii) it is necessary in the reasonable view of the Indemnified Party acting in good faith and in a manner consistent with reasonable commercial practices, in respect of (A) a Third Party Claim by a customer relating to products or services supplied by the Business or (B) a Third Party Claim relating to any Contract which is necessary to the ongoing operations of the Business or any material part thereof in order to avoid material damage to the relationship between the Indemnified Party and any of its major customers or to preserve the rights of the Indemnified Party under such an essential Contract, to make a payment to any Person (a "Third Party") with respect to the Third Party Claim before the completion of settlement negotiations or related legal proceedings, as the case may be, then the Indemnified Party may make such payment and the Indemnifying Party shall, promptly after demand by the Indemnified Party, reimburse the Indemnified Party for such payment. If the amount of any liability of the Indemnified Party under the Third Party Claim in respect of which such a payment was made, as finally determined, is less than the amount which was paid by the Indemnifying Party to the Indemnified Party, the Indemnified Party shall, promptly after receipt of the difference from the Third Party, pay the amount of such difference to the Indemnifying Party.
- (e) If the Indemnifying Party fails to assume control of the defence of any Third Party Claim, the Indemnified Party shall have the exclusive right to contest, settle or pay the amount claimed and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim. Whether or not the Indemnifying Party assumes control of the negotiation, settlement or defence of any Third Party Claim, the Indemnifying Party shall not settle any Third Party Claim without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed.

**TAB “C”**

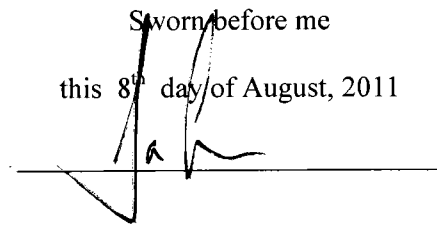
Attached is Exhibit "C"

Referred to in the

AFFIDAVIT OF KEVIN SALSBERG

Sworn before me

this 8<sup>th</sup> day of August, 2011

A handwritten signature in black ink is written over a horizontal line. The signature is stylized and appears to be the name of the Commissioner for taking Affidavits, etc.

Commissioner for taking Affidavits, etc





Canada

Industry Canada > Business Tools and Resources > Corporations Canada > Online Filing Centre

Corporations Canada

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## Federal Corporation Information

[Glossary of Terms used on this page](#)

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<b>Corporation Number</b> 7716443	<b>Business Number (BN)</b> 840671515RC0001	<b>Governing Legislation</b> <i>Canada Business Corporations Act -</i> 2010-12-02
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### Corporate Name

Soul Restaurants Canada Inc.

### Status

Active

### Registered Office Address

40 King Street West  
Suite 3100  
Toronto ON M5H 3Y2  
Canada

Active CBCA corporations are required to update [this information](#) within 15 days of any change.

### Directors

Minimum	Maximum
1	10

### Directors

Paul Stoyan  
Aly Janmohamed  
Shehzad Janmohamed

Email or fax [Corporations Canada](#) to obtain addresses of directors.

Active CBCA corporations are required to update [this information](#) within 15 days of any change.

### Annual Filings

**Anniversary Date (MM-DD)**  
12-02

**Date of Last Annual Meeting**  
Not Available

**Annual Filing Period (MM-DD)**  
12-02 to 01-31

**Type of Corporation**  
Not Available

### Status of Annual Filings

2011 - Not due

### Corporate History

#### Corporate Name History

2010-12-02 to 2011-02-02

2011-02-02 to Present

7716443 CANADA INC.

Soul Restaurants Canada Inc.

**Certificates Issued**

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**Certificate of Incorporation**

2010-12-02

**Certificate of Amendment \***

2011-02-02      Amendment details: Other

\* Amendment details are only available for amendments effected after 2010-03-20. Some certificates issued prior to 2000 may not be listed. [Contact Corporations Canada](#) for more information.

Date Modified: 2011-02-03