

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

(the "Applicants")

**MOTION RECORD
(Returnable September 14, 2011)
(Re: Approval of the FMI Transactions and the 184 APA)**

September 8, 2011

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TO: **ATTACHED SERVICE LIST**

**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

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PRISZM INC., AND KIT FINANCE INC.

(the "Applicants")

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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INC. AND KIT FINANCE INC.

(the "Applicants")

**NOTICE OF MOTION
(Returnable September 14, 2011)
(Re: Approval of the FMI Transactions and the 184 APA)**

Priszm Income Fund, Priszm Canadian Operating Trust, Priszm Inc. ("**Priszm GP**"), Priszm LP and Kit Finance Inc. (collectively, the "**Priszm Entities**") will make a motion to a judge presiding over the Commercial List on Wednesday, September 14, 2011 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form attached to the Motion Record at Tab 3, among other things:
 - (a) Abridging the time for service of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof;

- (b) Approving the Primary FMI Agreement (as defined below) between Prizm LP (the “**Vendor**”), Prizm GP, FMI Atlantic Inc. (the “**Purchaser**”) and FMI Ontario Inc. for the sale of 38 operating restaurants in New Brunswick and Nova Scotia;
 - (c) Approving the Occupation Agreement (as defined below);
 - (d) Authorizing the Prizm Entities and FTI Consulting Canada Inc., in its capacity as court-appointed monitor of the Prizm Entities (the “**Monitor**”), to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transaction (the “**Primary FMI Transaction**”) contemplated by the Primary FMI Agreement; and
 - (e) Vesting all of the purchased assets as contemplated by the Primary FMI Agreement in the Purchaser free and clear of any claims or encumbrances other than Permitted Encumbrances;
2. An Order, substantially in the form attached to the Motion Record at Tab 4, among other things:
- (a) Approving the Second FMI Agreement (as defined below) between Prizm LP (the “**Vendor**”), Prizm GP, FMI Atlantic Inc. (the “**Purchaser**”) and FMI Ontario Inc. for the sale of five operating restaurants in New Brunswick and Nova Scotia;
 - (b) Authorizing the Monitor to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transaction (together with the Primary FMI Transaction, the “**FMI Transactions**”) contemplated by the Second FMI Agreement (together with the Primary FMI Agreement, the “**FMI Agreements**”); and

- (c) Vesting all of the purchased assets as contemplated by the Second FMI Agreement in the Purchaser free and clear of any claims or encumbrances other than Permitted Encumbrances;
3. An Order, substantially in the form attached to the Motion Record at Tab 5, among other things:
- (a) Approving the 184 APA (as defined below) between the Vendor, Prizm GP and 1844440 Ontario Inc. (the “**184 Purchaser**”) for the sale of the 184 Purchased Assets (as defined below);
 - (b) Authorizing the Prizm Entities and the Monitor to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transactions (the “**184 Transaction**”) contemplated by the 184 APA; and
 - (c) Vesting all of the 184 Purchased Assets in the 184 Purchaser free and clear of any claims or encumbrances; and
4. Such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. Prizm LP is a franchisee of Yum! Restaurants International (Canada) Company (the “**Franchisor**”) and at one time owned and operated approximately 425 KFC, Taco Bell and Pizza Hut restaurants;
2. Significant same store sales declines for the Prizm Entities in 2009 and 2010 resulted in declining financial performance in fiscal years 2009 and 2010 and they became unable to meet their obligations as they became due;
3. On March 31, 2011, the Prizm Entities were granted protection from their creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as

amended (the “**CCAA**”) pursuant to the initial order of the Ontario Superior Court dated March 31, 2011, as amended and restated by Honourable Madam Justice Mesbur on April 29, 2011;

The FMI Agreements

4. Following a court-approved sales process, the Vendor and the Purchaser entered into an asset purchase agreement with respect to the sale of the Prizm Entities’ 38 operating restaurants in Nova Scotia and New Brunswick (the “**Primary FMI Agreement**”);

5. Pursuant to the Primary FMI Agreement, the Vendor has agreed to grant to the Purchaser a licence to occupy the purchased outlets for which landlord consents to assignment of leases are not obtained as at the closing of the Primary FMI Agreement pursuant to the terms of an occupation agreement (the “**Occupation Agreement**”);

6. Following discussions with the Franchisor, the Vendor and the Purchaser entered into a subsequent asset purchase agreement with respect to the sale of five additional operating restaurants in Nova Scotia and New Brunswick (the “**Second FMI Agreement**”);

7. The Monitor supports proceeding with the FMI Transactions;

8. The Franchisor and the Prizm Entities’ senior secured creditor, Prudential Investment Management, Inc. and each Prudential affiliate a party thereto (collectively, “**Prudential**”), have both consented to the FMI Transactions;

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

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

The 184 Agreement

11. Following the sale of the majority of the Ontario and British Columbia outlets and the disclaimer of the remaining 28 Ontario outlets, the Prizm Entities had one remaining operating outlet in Ontario (the “**Kipling Outlet**”);

12. In May 2011, the 184 Purchaser, an existing franchisee of the Franchisor, approached the Prizm Entities with respect to the purchase and sale of all equipment used in the operation of the Kipling Outlet (the “**184 Purchased Assets**”), save and except the lease related thereto;

13. On September 7, 2011, the Vendor and the 184 Purchaser entered into an Agreement of Purchase and Sale for the 184 Purchased Assets (the “**184 APA**”);

14. The 184 Purchaser intends to continue operations of the Kipling Outlet on the premises after closing;

15. The Monitor supports proceeding with the 184 Transaction;

16. The Franchisor and Prudential have both consented to the 184 Transaction;

17. The Vendor and the 184 Purchaser are not related parties within the meaning of the CCAA;

General

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

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

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

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

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

1. The Affidavit of Jim Robertson sworn September 8, 2011 re: Approval of the FMI Transactions and the 184 APA and the exhibits thereto;
2. The 4th Report of the Monitor, to be filed;
3. Such further and other materials as counsel may advise and this Honourable Court may permit.

September 8, 2011

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

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

(the "Applicants")

**SERVICE LIST
APPROVAL OF FMI ATLANTIC INC. TRANSACTIONS AND THE 184 APA**

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RETURNABLE SEPTEMBER 14, 2011)**

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TAB 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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OF PRISZM INCOME FUND, PRISZM CANADIAN OPERATING TRUST,
PRISZM INC. AND KIT FINANCE INC.

(the "Applicants")

AFFIDAVIT OF JIM ROBERTSON

(Sworn September 8, 2011 re Approval of the FMI Transactions and the 184 APA)

I, Jim Robertson, of the City of Newmarket, Province of Ontario, MAKE OATH
AND SAY:

1. I am the Chief Operating Officer of the Applicant Prizm Inc. ("Prizm GP") and the Court-appointed Chief Restructuring Officer of the Prizm Entities (as defined below) and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated.

2. This affidavit is sworn in support of a motion brought by Prizm Income Fund, Prizm Canadian Operating Trust, Prizm GP and Kit Finance Inc. (collectively, the "Applicants") and Prizm LP (together with the Applicants, the "Prizm Entities") seeking orders substantially in the form of the draft Orders included with the Motion Record:

FMI Transactions

- 2 -

- a) Approving the Primary FMI Agreement and the Second FMI Agreement (as these terms are defined below) between Prizm LP (the "Vendor"), Prizm GP, FMI Atlantic Inc. (the "Purchaser") and FMI Ontario Inc. (the "Guarantor") for the sale of 38 and 5 operating restaurants, respectively, in New Brunswick and Nova Scotia;
- b) Approving the Occupation Agreement (as defined below);
- c) Authorizing the Prizm Entities and the Monitor to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transactions (the "FMI Transactions") contemplated by the Primary FMI Agreement and the Second FMI Agreement (collectively, the "FMI Agreements");
- d) Vesting all of the Purchased Assets and the Second FMI Purchased Assets (as defined below) in the Purchaser free and clear of any claims or encumbrances other than Permitted Encumbrances (as defined in the FMI Agreements);
- e) Authorizing the payment of certain pre-filing amounts to Yum! Restaurants International (Canada) Company (the "Franchisor");

184 Transaction

- f) Approving the 184 APA (as defined below) between the Vendor, Prizm

GP and 1844440 Ontario Inc. (the "184 Purchaser") for the sale of all equipment used in the operation of the outlet located at 2032 Kipling Avenue, Toronto, Ontario (the "184 Purchased Assets");

- g) Authorizing the Prizm Entities and the Monitor to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transactions (the "184 Transaction") contemplated by the 184 APA;
- h) Vesting all of the 184 Purchased Assets in the 184 Purchaser free and clear of any claims or encumbrances; and
- i) Such other relief as the Court may deem appropriate.

I - BACKGROUND

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

4. The Prizm Entities were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") pursuant to the initial order of the Ontario Superior Court of Justice dated March 31, 2011. FTI Consulting Canada Inc. was appointed as monitor of the Prizm Entities (the

"Monitor") in these CCAA proceedings. On April 29, 2011, the Honourable Madam Justice Mesbur issued the Amended and Restated Initial Order (the "Initial Order"). A copy of the Initial Order is attached hereto as Exhibit "A" and it and all other filings in the CCAA proceedings are available on the Monitor's website at: <http://cfcanada.fticonsulting.com/priszm>.

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

The Priszm Entities' Financial Difficulties and CCAA Proceedings

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

7. As a result of slower than forecast sales during the third quarter of FY2010, on September 5, 2010, Priszm Fund breached a covenant under its senior secured indebtedness (the "Prudential Loan") with Prudential Investment Management, Inc.,

and each Prudential affiliate a party thereto (collectively, "Prudential") and remains in non-compliance today. As a result of the non-compliance, both tranches of the Prudential Loan became callable by Prudential. The Prizm Entities subsequently failed to make the interest payments starting in December 2010.

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

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

10. In response to same store sales declines, the Prizm Entities undertook extensive measures in 2010 to increase their profitability.

11. In September 2010, the Prizm Entities commenced a sales process to explore the potential sale of some of their assets in order to allow the Prizm Entities to pay down a portion of their long-term debt (the "Initial Sales Process").

12. As more fully described in the affidavit of Deborah Papernick sworn May 24, 2011 in support of the Prizm Entities' request to approve an Amended and Restated Asset Purchase Agreement (the "Soul Agreement"), as a result of the Initial Sales

Process, Prizm LP and Prizm GP entered into the Soul Agreement with Soul Restaurants Canada Inc. (formerly 7716443 Canada Inc.) for the sale of 204 operating restaurants in Ontario, British Columbia and Quebec.

13. The Soul Agreement was approved by this Court by Order dated May 30, 2011 and the transaction contemplated by the Soul Agreement closed on June 1, 2011.

14. Following the closing of the Soul Agreement, the Prizm Entities, with the assistance of Canaccord Genuity, attempted to find a purchaser for the restaurant outlets remaining in Ontario, but were unable to do so. Accordingly, the Prizm Entities delivered notices of disclaimer in respect of 28 restaurant outlets which were not included in that sale. Following disclaimer of the leases with respect to these restaurant outlets, there remained only one outlet operating in Ontario located at 2032 Kipling Avenue, Toronto, Ontario (the "Kipling Outlet") (discussed in greater detail below).

15. Following the closing of the Soul Agreement and cessation of operations of the remaining Ontario and British Columbia restaurants (other than the Kipling Outlet), the Prizm Entities had 192 operating restaurant outlets remaining in Alberta, Manitoba, Quebec, New Brunswick, and Nova Scotia (the "Remaining Restaurants").

II - THE FMI AGREEMENTS

A. The Sales Process Resulting in the FMI Agreements

16. 2289500 Ontario Inc. was appointed as Chief Restructuring Officer of the Prizm Entities pursuant to the Initial Order effective July 1, 2011. In my capacity as Chief Operating Officer of Prizm GP, I had some general knowledge of the strategic decisions being undertaken by the Prizm Entities prior to July 1, 2011 with respect to the sales process, but I was not personally involved in directing same until my appointment as Chief Restructuring Officer. Accordingly, and without limiting paragraph 1 hereof, the statements in this affidavit with respect to the sale process which refer to events prior to July 1, 2011 are based on my review of the records, press releases, and public filings of the Prizm Entities as necessary, and where I have relied upon such information I verily believe such information to be true.

17. As described in greater detail in the affidavit of Deborah Papernick sworn May 24, 2011 in support of the Prizm Entities' request to approve a sales process for the Remaining Restaurants, on February 1, 2011, Prizm LP, Prizm GP, Kit Finance Inc., and Prudential entered into an agreement (the "Sales Process Agreement") pursuant to which the Prizm Entities agreed to conduct a sales process for the outlets not forming part of the Soul Agreement and to use their best commercial efforts to comply with the sale process described in the Sales Process Agreement. On February 10, 2011, Prizm Fund retained Canaccord Genuity to act as financial advisor and sales agent in connection with this sales process.

18. By Order dated May 30, 2011 (a copy of which is attached hereto as **Exhibit "B"**), the Court approved the Sales Process Agreement and the retainer of Canaccord Genuity

to act as financial advisor and sales agent in connection with the sales process *nunc pro tunc*.

19. Starting in February 2011, Canaccord Genuity contacted 91 prospective purchasers that had been identified by the Prizm Entities, the Franchisor, Canaccord Genuity, and the Monitor. 67 of these parties requested and were delivered a "teaser" document as well as a Non-Disclosure Agreement (the "NDA").

20. 29 of the contacted parties executed the NDA and received copies of the Prizm Entities' Confidential Information Memorandum (the "CIM") and received access to an on-line data room. Interested parties were required to submit non-binding expressions of interest by March 22, 2011.

21. A number of expressions of interest were received by the Prizm Entities on or about March 22, 2011. Since the Prizm Entities' CCAA filing on March 31, 2011, Canaccord Genuity has been in contact with 39 additional parties inquiring about the sales process. Following discussions with Canaccord Genuity, 23 parties requested and were sent a copy of the teaser and the NDA and 13 of these parties signed the NDA. A number of other parties that have not submitted expressions of interest continued their due diligence efforts.

22. A number of the interested parties requested additional time in order to complete their due diligence and submit their formal bid. Having considered the requests and given the number of additional parties that had only commenced diligence

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after the start of the CCAA proceedings, the Priszm Entities and Canaccord Genuity were of the view that the deadline for the submission of formal offers should be extended by approximately two weeks. Following discussions with Prudential and the Monitor, the Priszm Entities extended the deadline for submission of formal bids until May 25, 2011.

23. Following the deadline for the submission of formal bids, the Priszm Entities entered into negotiations with the Purchaser who had submitted the only offer for the outlets in Nova Scotia and New Brunswick. On July 29, 2011, the Vendor and the Purchaser entered into an asset purchase agreement with respect to the sale of 38 operating restaurants in Nova Scotia and New Brunswick (the "Primary FMI Agreement"). A copy of the Primary FMI Agreement is attached hereto as Exhibit "C".

24. As described in greater detail below, the Primary FMI Agreement is conditional, among other things, on the Purchaser and the Franchisor having entered into a new franchise agreement or the Purchaser and the Vendor having executed an agreement assigning the Master Franchise Agreement as it relates to the purchased outlets and the Franchise Agreements for each of the outlets and obtaining the consent of the Franchisor to such assignment.

25. Following execution of the Primary FMI Agreement, the Purchaser commenced discussions with the Franchisor regarding the transaction contemplated by the Primary FMI Agreement. In or about August 2011, the Franchisor advised the Purchaser and the Vendor that it would not consent to the transaction unless the Purchaser agreed to

purchase 10 additional outlets operated by the Vendor in Nova Scotia or New Brunswick. The Franchisor subsequently agreed to reduce the number of additional outlets to five.

26. Following discussions between Canaccord Genuity, the Purchaser, the Vendor, the Monitor, and the Franchisor, on August 23, 2011, the Vendor and the Purchaser entered into an asset purchase agreement with respect to the sale of five operating restaurants in Nova Scotia and New Brunswick (the "Second FMI Agreement"). A copy of the Second FMI Agreement is attached hereto as Exhibit "D".

B. The Primary FMI Agreement

27. All capitalized terms used and not defined in this section of the Affidavit shall have the meaning ascribed to them in the Primary FMI Agreement.

i. The Purchase Price

28. Under the Primary FMI Agreement, the aggregate purchase price (the "Purchase Price") payable by the Purchaser to the Vendor for the Purchased Assets is \$3,226,231 comprised of the following:

- a) \$2,500,000, plus
- b) the amount of \$25,000, attributable to franchise renewal fees, plus

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- c) the amount of \$215,000 equal to the price of the Bridgewater Property¹, plus
- d) the amount of \$19,000 equal to the price of the shares of UPGC, Inc., plus
- e) the amount of \$467,231 equal to the Closing Date Current Assets Amount,

subject to customary post-closing adjustments in respect of the Current Assets.

29. In addition, the Purchaser is responsible to pay directly to the Franchisor any fees charged by the Franchisor for entering into a new franchise agreement with the Purchaser or for the assignment of the Franchise Agreement to the Purchaser, provided that the Vendor remains responsible to pay to the Franchisor or discharge any arrears relating to the Outlets owed by the Vendor under the Franchise Agreement for the period up to the Closing Date.

30. As contemplated in the Primary FMI Agreement, after the Closing, the Vendor will prepare, at the Vendor's expense, a draft statement of the Current Assets² (the "Current Assets Statement") as at Closing, which shall be delivered to the Purchaser no later than 30 days following the Closing Date. The Purchase Price will be increased or decreased, as the case may be, dollar-for-dollar, to the extent that the Current Assets as determined from the final Current Assets Statement is more or less than \$467,231.

¹ Defined in the Primary FMI Agreement as the "real property having an address of 27 High Street, Bridgewater, Nova Scotia, B4V 1V8".

² Defined in the Primary FMI Agreement as "the dollar amount of current assets relating to the Purchased Assets as determined in accordance with this Agreement which shall comprise Inventories, Accounts Receivable, Restaurant Cash Float and any Prepaid Expenses".

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31. If the Current Assets, as determined from the Current Assets Statement, are greater than \$467,231, the Purchaser will pay to the Vendor the amount of such difference as an increase to the Purchase Price. If the Current Assets as determined from the Current Assets Statement are less than \$467,231, the Vendor will pay to the Purchaser the amount of such difference as a decrease to the Purchase Price.

32. If the Closing does not occur for any reason other than a breach by the Purchaser of its representations, warranties or covenants under the Primary FMI Agreement, the Deposit in the amount of \$250,000 together with all accrued interest received by the Vendor, if any, will be immediately returned to the Purchaser. If the Closing does not occur because the Purchaser breached any of its representations, warranties or covenants under the Primary FMI Agreement, the full amount of the Deposit together with all accrued interest received by the Vendor, if any, will become the property of, and may be retained by, the Vendor.

ii. The Purchased Assets

33. The Purchaser has agreed to purchase all properties, assets, interests, and rights of the Vendor (the "Purchased Assets") which are related to the operation of the 38 operating restaurants in Nova Scotia and New Brunswick (as listed in Schedule "1" to the Primary FMI Agreement) (the "Outlets") and are necessary to conduct the business as now conducted at the Outlets other than the Excluded Assets (as defined and described in greater detail below). The Purchased Assets (listed in Schedule "B" to the Primary FMI Agreement) include, *inter alia*, the following assets for each of the Outlets:

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- a) Subject to Section 15(1)(a) of the Primary FMI Agreement, the Franchise Agreement for each Outlet;
- b) The Vendor's right, title and interest in and to the leases relating to the Purchased Assets and the related leased premises;
- c) All machinery, equipment, tools, handling equipment, computer equipment, information systems, furniture, furnishings and all other accessories and supplies of all kinds owned by the Vendor and used in connection with the Purchased Assets;
- d) All inventories of the Purchased Assets, including all food, food ingredients, packaging materials, paper products and miscellaneous consumable and non-consumable inventories of the Purchased Assets;
- e) All accounts receivable, notes receivable and other debts due or accruing due to the Vendor in connection with the Purchased Assets and the full benefit of all security for them;
- f) All Prepaid Expenses;
- g) All Authorizations, owned, held or used by the Vendor in connection with the Purchased Assets to the extent that they are transferable;
- h) The Restaurant Cash Float;

- i) The shares in the capital of UPGC, Inc. owned by the Vendor and directly related to the Outlets;
- j) The Vendor's right, title and interest in and to the Outlet Software Licenses;
- k) Any and all right, title and interest of the Vendor in and to the Trade Fixtures;
- l) All of the Vendor's right, title and interest in and to the phone numbers exclusive to the Outlets; and
- m) The Bridgewater Property.

34. Under the terms of the Primary FMI Agreement, the transfer of the Bridgewater Property will take effect upon delivery by the Vendor to the Purchaser of a deed or conveyance in a form which complies with the *Land Registration Act* (Nova Scotia) conveying to the Purchaser the Bridgewater Property, an executed form of which will be delivered by the Vendor to be held in escrow to be released from escrow when the Monitor delivers the Monitor's Certificate. The Vendor shall also take all commercially reasonable actions to deliver in escrow executed forms of discharges of the only encumbrances registered on title to the Bridgewater Property, namely a mortgage in favour of Computershare Trust Company of Canada and a lease in favour of Yum! Brands Canada Management LP. A copy of the land title certificate with respect to the Bridgewater Property dated September 7, 2011 is attached hereto as Exhibit "E".

iii. The Excluded Assets

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

- a) Any cash, cash equivalents, securities or other short-term investments of the Vendor (other than, for greater certainty, the Restaurant Cash Float);
- b) The Master Franchise Agreement other than as it relates to the Outlets;
- c) The original Books and Records;
- d) The Intellectual Property;
- e) 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);
- f) The Vendor's right, title and interest in and to the information and technology support and maintenance agreement between the Vendor and IBM;
- g) 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;

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- h) 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;
- i) Any freehold interest in real property related to the Purchased Assets other than the Bridgewater Property;
- j) All insurance policies of the Vendor;
- k) All Employee Plans; and
- l) Any and all assets not located at an Outlet or any asset not used directly and exclusively at the Outlets.

iv. Assumed Liabilities

36. Pursuant to Section 7 of the Primary FMI Agreement, the Purchaser will, as and from the Closing Date, discharge, perform and fulfill all the obligations and liabilities on the part of the Vendor with respect to the Purchased Assets arising on or after the Closing Date and not related to any default existing prior to or as a consequence of the closing of the transaction contemplated by the Primary FMI Agreement (the "Assumed Liabilities"). The Purchaser will not assume any liabilities or other obligations other than the Assumed Liabilities and will have no obligation to discharge any liability or obligation under any contract or agreement which is not assignable in whole or in part without the consent of the other party or parties to such contract or agreement, unless such consent has been given, or unless such assignment has been ordered by the Court.

v. Landlord Consents

37. Under the terms of 10 of the 37 Leases for the Outlets, landlord consents of the applicable Landlords for the assignment of the applicable Leases by the Vendor to the Purchaser (the "Landlord Consents") are not required and the Leases can be assigned on notice to the respective Landlords. On August 8, 2011, Prizm issued 10 such notices.

38. Under the terms of the remaining 27 the Leases, Landlord Consents are required for the assignment of the applicable Lease by the Vendor to the Purchaser. Under the Primary FMI Agreement, the Vendor is obligated to use its commercially reasonable efforts to obtain, prior to the Closing Date, all of the Landlord Consents. The Landlord Consents must be on terms which are acceptable to each of the Vendor and the Purchaser, acting reasonably, provided however that there shall not be any material change to the terms of any Leases to which such Landlord Consent relates without the prior written consent of the Purchaser.

39. As to any Lease for which a Landlord Consent is required and is not obtained prior to Closing (in each case an "Outstanding Lease"), the Vendor and the Purchaser shall each, for a period expiring three (3) months following the Closing, continue to use commercially reasonable efforts to obtain such Landlord Consent (in each case in accordance with the provisions of Section 5(1) of the Primary FMI Agreement), or an order of the Court assigning the Outstanding Leases.

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40. From and after Closing and until the earlier of: (a) three (3) months after the Closing Date; (b) the date that the Landlord Consent relating to an applicable Outstanding Lease has been obtained or the assignment has been ordered by the Court and such Outstanding Lease has been assigned to the Purchaser; or (c) the expiration or earlier termination of such Outstanding Lease, the Vendor will be obligated to, among other things, hold the Outstanding Leases in trust for the Purchaser.

41. As at the date of this affidavit, Landlord Consents with respect to 27 Leases relating to the Outlets remain outstanding.

42. Pursuant to an Amendment Agreement dated August 24, 2011 (a copy of which is attached hereto as Exhibit "F"), the parties agreed, among other things, that the Purchaser's obligation to purchase an Outlet with an Outstanding Lease is unconditional and deleted section 8(7) of the Primary FMI Agreement which entitled the Purchaser to a refund of the Purchase Price in the event of a failure to assign the Outstanding Leases to the Purchaser.

vi. Employees

43. Not less than ten (10) business days prior to the anticipated Closing Date, the Purchaser will offer, or cause any of its affiliates to offer, employment effective as of the Closing Date to the Designated Employees³ on terms substantially similar in the

³ Which includes all of the non-unionized employees currently employed at the Outlets, including the local store managers employed by Prizm GP with respect to the Outlets, and those Regional Directors of Operations and Area Managers employed by Prizm GP with respect to the geographic area in which the Outlets are situated.

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aggregate to those existing as of the Closing Date. As at the date of this Affidavit and after the Purchaser exercised its right under section 18(3) of the Primary FMI Agreement on or about August 5, 2011 and removed two employees from the definition of Designated Employees, there were approximately 540 Designated Employees under the Primary FMI Agreement.

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

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

46. The Purchaser will be responsible for, among other things:

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- a) 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;
- b) 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;
- c) all liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment of the Transferred Employees in the Purchased Assets on and after the Closing Date; and
- d) 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.

vii. Closing Date

47. The Closing Date under the Primary FMI Agreement will be the first Monday which is not less than three (3) business days following the issuance of the Sale Approval Order, effective as of 12:01 am on the Sunday immediately preceding the Closing Date, or such other later date as may be agreed between the parties.

viii. Conditions to Closing

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

- a) on or before the Condition Date⁴, the Purchaser shall have (i) entered into a new franchise arrangement with the Franchisor in respect of the Outlets, or (ii) negotiated the form of the assignment of the Franchise Agreement with the Franchisor, on terms substantially similar in the aggregate to those existing as of the date of the Primary FMI Agreement (other than terms relating to the timing of required capital expenditures), to become effective on the Closing Date, on terms and conditions satisfactory to the Purchaser in its sole discretion. As described in greater detail below, this condition has been satisfied;

- b) on or before Closing, there shall have been sufficient Landlord Consents received and notices given, with respect to Leases that only require notice for assignment per the terms of the applicable Lease, so that at least 30% percent of the Outlets specified on Schedule "D" of the Primary FMI Agreement have been obtained or delivered. As at the date of this

⁴ Defined in the Primary FMI Agreement as August 12, 2011 and extended by Extension Agreements dated August 12, 2011, August 19, 2011, and August 23, 2011 to August 19, 2011, August 23, 2011, and August 24, 2011, respectively.

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Affidavit, more than 30% of the Outlets specified on Schedule "D" of the Primary FMI Agreement have been obtained or delivered;

- c) the representations and warranties of the Vendor in Schedule "E" of the Primary FMI Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date. However, (i) if a representation and warranty is qualified by materiality or material adverse effect, it must be true and correct in all respects after giving effect to such qualification and (ii) if a representation and warranty speaks only as of a specific date it only needs to be true and correct as of that date;
- d) the Vendor shall have performed and complied with all of the terms and conditions in the Primary FMI Agreement on its part to be performed or complied with at or before Closing and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at Closing all the documents contemplated or required to be so executed and delivered in the Primary FMI Agreement; and
- e) the Occupation Agreement shall have been approved by the Court and shall not have been terminated.

49. The Primary FMI Agreement contains a number of conditions in favour of the Vendor that are required to be satisfied or waived prior to the Closing Date including, among others, either (i) the Vendor having received by the Condition Date (A) confirmation from the Purchaser that an assignment of the Franchise Agreement is not required for the transaction contemplated by this Agreement, or (B) a copy of the consent of the Franchisor to the assignment of the Franchise Agreement in form and substance satisfactory to the Vendor, or (ii) the Court having issued an order assigning the rights and obligations of the Franchise Agreement to the Purchaser by the Closing Date.

50. The Purchaser and the Vendor have executed an Assignment Agreement. The Franchisor, the Vendor and the Purchaser have executed a Consent Agreement pursuant to which the Franchisor has consented to the sale of the Purchased Assets, including the Vendor's rights under the Master Franchise Agreement as it relates to the Outlets and the individual franchise agreement for each Outlet pursuant to the Assignment Agreement, subject to certain conditions, including, among others, the following:

a) The payment of:

- (i) \$1,072,893.23 payable on Closing in respect of all pre-filing monetary obligations owed under the Franchise Agreement in respect of the Purchased Assets;

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- (ii) \$125,799.95 payable on Closing in respect of certain pre-filing advertising contributions required to be paid under the Franchise Agreement, net of certain amounts owed to the Prizm Entities by the Unified Purchasing Group of Canada (the "Rebates")⁵;
 - (iii) \$424,976.98 payable on Closing in respect of all unpaid post-filing continuing fees and other monetary accruals (exclusive of interest) accrued for the period up to and including May 20, 2011; and
 - (iv) an amount, not to exceed \$700,000.00, in respect of all unpaid post-filing continuing fees and other monetary accruals (exclusive of interest) accrued with respect to the Outlets for the period from August 8, 2011 to Closing within three business days of such amount being calculated by the Vendor and agreed upon by the Franchisor and the Monitor;
- b) The parties to the Primary FMI Agreement having entered into an additional asset purchase agreement for the purchase by the Vendor of not less than 5 additional outlets of the Prizm Entities to close concurrently with the Closing; and

⁵ Upon payment of this amount, the Prizm Entities will acknowledge receipt, by way of set-off, of Rebates in the amount of \$182,593.65.

- c) The Closing (as well as the closing of the transaction described in (b) above) occurring on or before October 1, 2011.

Copies of the Franchise Agreement (with selected Schedules) and the Consent Agreement are attached hereto as Exhibits "G" and "H", respectively.

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

- a) The Vendor and the Purchaser shall have received evidence of the consent of Prudential to the transaction contemplated by the Primary FMI Agreement, such consent to expire on September 19, 2011. Such evidence has been received; and
- b) The issuance of the Sale Approval Order materially in the form attached to the Primary FMI Agreement.

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

ix. Performance Guarantee

53. Pursuant to section 25 of the Primary FMI Agreement, the Guarantor irrevocably and unconditionally guaranteed the timely and complete performance of, and

compliance with, all of the terms, covenants, conditions and provisions that are to be performed and complied with by the Purchaser under the Primary FMI Agreement, including without limitation the indemnities, and guarantees the truth of all representations and warranties provided by the Purchaser under the Primary FMI Agreement.

54. If for any reason the Purchaser fails to perform or comply with any term, covenant, condition or provision that is to be performed or complied with by the Purchaser under the Primary FMI Agreement, then the Guarantor shall perform or comply with such term, covenant, condition or provision in accordance with and subject to the provisions of the Primary FMI Agreement.

C. Occupation Agreement

55. As described above, it is a term of the Primary FMI Agreement that where the Purchaser has not been able to obtain a Landlord Consent or an order assigning the Lease for any of the Outlets at the time of the Closing, the Vendor will be obligated to, among other things, hold the Outstanding Lease in trust for the Purchaser for up to three months. During that three month period the Vendor is required to continue to use commercially reasonable efforts to obtain the outstanding consents or to apply to Court for an Order assigning the leases.

56. Accordingly, the Prizm Entities are seeking the Court's approval of the Occupation Agreement pursuant to which the Vendor will grant to the Purchaser a

license to occupy each of the Outlets for which a Landlord consent or an order has not been obtained for a period (the "License Period") commencing, in respect of each of the Outlets, on the Closing Date and ending, in respect of each of the Outlets, on the earlier of: (a) 3 months after the Closing Date; (b) the time the relevant landlord's consent to the assignment of the applicable lease is obtained or the assignment has been ordered by the Court and such lease has been assigned to the Purchaser; (c) the time the applicable lease is lawfully terminated or expires; and (d) the time the license is terminated in respect of any given lease in accordance with Section 10 of the Occupation Agreement. A copy of the Occupation Agreement is attached as Exhibit "I".

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

58. The Purchaser must maintain the Outlets in the condition that they were at the commencement of the License Period, ordinary wear and tear excepted. The Purchaser will be responsible for all repair costs in respect of the Outlets during the License Period. The Purchaser must also arrange insurance to comply with the insurance provisions of the leases and shall show the Vendor as additional insured in such policies. Notwithstanding anything contained in the Leases, the Purchaser shall maintain all risk insurance and public liability insurance underwritten by a nationally recognized insurance company in respect of the premises and the property of the

Vendor and the Purchaser located at the premises in such amounts and with such deductibles as a prudent tenant of similar premises would maintain.

59. Under the terms of the Occupation Agreement, the Purchaser also agrees to indemnify and save harmless the Vendor from and against (a) any and all claims and costs resulting from, *inter alia*, the Purchaser's operation, occupation and/or use of the Outlets and (b) any and all claims made against the Vendor for amounts which constitute Occupation Costs and the reasonable legal costs on a full indemnity basis suffered or incurred by the Vendor in connection with the defence of such claims (but only to the extent that such claimed amounts have been paid to the Vendor by the Purchaser as part of the Occupation Costs in accordance with Section 2 of the Occupation Agreement). The indemnity does not apply to (i) any claims by any landlord for any pre-Closing liabilities of the Vendor; and (ii) any claims by any landlord for any payment of proceeds from the transactions contemplated by the Primary FMI Agreement.

60. The Occupation Agreement is subject to, *inter alia*, the Purchaser having paid the estimated Occupation Costs for the Initial Stub Period of the License Period in respect of each of the Leases (other than amounts which are Current Assets) to the Vendor and the Court having issued an order approving the Primary FMI Agreement, the transaction contemplated thereby and the Occupation Agreement.

61. The Occupation Agreement is substantially similar to the occupation agreement approved by this Court in respect of the Soul Agreement.

D. Second FMI Agreement

62. All capitalized terms used and not defined in this section of the Affidavit shall have the meaning ascribed to them in the Second FMI Agreement.

i. The Purchase Price

63. Under the Second FMI Agreement, the aggregate purchase price (the "Second FMI Purchase Price") payable by the Purchaser to the Vendor for the Purchased Assets is:

a) \$25,000.00 per Outlet for:

- (i) each Outlet (other than Outlet #1043) for which an amendment to the Lease or a replacement lease is obtained pursuant to Section 13(1)(b) of the Second FMI Agreement, and
- (ii) Outlet #1043 if the Lease relating to Outlet #1043 is assigned pursuant to Section 13(1)(c), plus

b) the amount of the UPGC Price (equal to the product of \$500 and the number of purchased outlets), plus

c) the amount of \$56,581 equal to the Closing Date Current Assets Amount, subject to Section 8 of the Second FMI Agreement,

subject to customary post-closing adjustments in respect of the Current Assets.

64. In addition, the Purchaser is responsible to pay directly to the Franchisor any fees charged by the Franchisor for entering into a new franchise agreement with the Purchaser or for the assignment of the Franchise Agreement to the Purchaser, provided that the Vendor remains responsible to pay to the Franchisor or discharge any arrears relating to the Outlets owed by the Vendor under the Franchise Agreement for the period up to the Closing Date.

65. Similar to the Primary FMI Agreement, under the terms of the Second FMI Agreement, after the Closing, the Vendor will prepare, at the Vendor's expense, a draft Current Assets⁶ Statement as at Closing, which shall be delivered to the Purchaser no later than 30 days following the Closing Date. The Second FMI 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, with Inventory valued at 90% of the book value as shown on the Vendor's books and records, is more or less than \$56,581.

66. If the Current Assets, as determined from the Current Assets Statement, are greater than \$56,581, the Purchaser will pay to the Vendor the amount of such difference as an increase to the Second FMI Purchase Price. If the Current Assets as

⁶ Which has the same definition as in the Primary FMI Agreement.

determined from the Current Assets Statement are less than \$56,581, the Vendor will pay to the Purchaser the amount of such difference as a decrease to the Second FMI Purchase Price.

67. If the Closing does not occur for any reason other than a breach by the Purchaser of its representations, warranties or covenants under the Second FMI Agreement, the Deposit in the amount of \$25,000 together with all accrued interest received by the Vendor, if any, will be immediately returned to the Purchaser. If the Closing does not occur because the Purchaser breached any of its representations, warranties or covenants under the Second FMI Agreement, the full amount of the Deposit together with all accrued interest received by the Vendor, if any, will become the property of, and may be retained by, the Vendor.

ii. The Purchased Assets

68. The Purchaser has agreed to purchase all properties, assets, interests, and rights of the Vendor (the "Second FMI Purchased Assets") which are related to the operation of 5 operating restaurants in Nova Scotia and New Brunswick (as listed in Schedule "H" to the Second FMI Agreement) and are necessary to conduct the business as now conducted at the purchased outlets other than the Excluded Assets (as defined in the Second FMI Agreement and described in greater detail below). The Second FMI Purchased Assets (listed in Schedule "B" to the Second FMI Agreement) include, *inter alia*, the following assets for each of the purchased outlets:

- 32 -

- a) Subject to Section 13(1)(a) of the Second FMI Agreement, the Franchise Agreement for each outlet;
- b) 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 Second FMI Purchased Assets;
- c) All inventories of the Second FMI Purchased Assets, including all food, food ingredients, packaging materials, paper products and miscellaneous consumable and non-consumable inventories of the Second FMI Purchased Assets;
- d) All accounts receivable, notes receivable and other debts due or accruing due to the Vendor in connection with the Second FMI Purchased Assets and the full benefit of all security for them;
- e) All Prepaid Expenses;
- f) All Authorizations, owned, held or used by the Vendor in connection with the Second FMI Purchased Assets to the extent that they are transferable;
- g) The Restaurant Cash Float;
- h) The shares in the capital of UPGC, Inc. owned by the Vendor and directly related to the Outlets;

- i) The Vendor's right, title and interest in and to the Outlet Software Licenses;
- j) Any and all right, title and interest of the Vendor in and to the Trade Fixtures; and
- k) All of the Vendor's right, title and interest in and to the phone numbers exclusive to the Outlets.

iii. The Excluded Assets

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

- a) Any cash, cash equivalents, securities or other short-term investments of the Vendor (other than, for greater certainty, the Restaurant Cash Float);
- b) The Master Franchise Agreement, except as it relates to the Outlets;
- c) The original Books and Records;
- d) The Intellectual Property;
- e) The Vendor's right, title and interest in and to all software and related software licenses and computer hardware not used directly and

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exclusively at the Outlets (which for greater certainty does not include the Outlet Software Licenses);

- f) The Vendor's right, title and interest in and to the information and technology support and maintenance agreement between the Vendor and IBM;
- g) 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;
- h) 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;
- i) All insurance policies of the Vendor;
- j) All Employee Plans; and
- k) Any and all assets not located at an Outlet or any asset not used directly and exclusively at the Outlets.

iv. Assumed Liabilities

70. Pursuant to Section 5 of the Second FMI Agreement, the Purchaser will, as and from the Closing Date, discharge, perform and fulfill all the obligations and liabilities on the part of the Vendor with respect to the Second FMI Purchased Assets arising on or after the Closing Date and not related to any default existing prior to or as a

consequence of the closing of the transaction contemplated by the Second FMI Agreement. The Purchaser will not assume any liabilities or other obligations other than the Assumed Liabilities and will have no obligation to discharge any liability or obligation under any contract or agreement which is not assignable in whole or in part without the consent of the other party or parties to such contract or agreement, unless such consent has been given, or unless such assignment has been ordered by the Court.

v. Employees

71. Not less than ten (10) business days prior to the anticipated Closing Date, the Purchaser will offer, or cause any of its affiliates to offer, employment effective as of the Closing Date to the Designated Employees⁷ on terms substantially similar in the aggregate to those existing as of the Closing Date, subject to a right to remove particular employees from the definition of Designated Employees. As at the date of this Affidavit, there were approximately 50 Designated Employees under the Second FMI Agreement.

72. The Purchaser will recognize, to the extent previously recognized by the Vendor, the service of the Designated Employees for all purposes. The Purchaser shall have no liability or obligation in respect of any Designated Employees who reject the

⁷ Which includes all of the non-unionized employees currently employed at the Outlets, including the local store managers employed by Prizm GP with respect to the Outlets.

Purchaser's offer of employment that has been made in accordance with the Second FMI Agreement.

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

74. The Purchaser will be responsible for, among other things:

- a) all liabilities for salary, wages, bonuses, commissions, vacation pay, and other compensation relating to the employment of all Transferred Employees on and after the Closing Date and all liabilities under or in respect of the Replacement Plans;
- b) 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;
- c) all liabilities for claims for injury, disability, death or workers' compensation arising from or related to employment of the Transferred

Employees in the Second FMI Purchased Assets on and after the Closing Date; and

- d) 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.

vii. Closing Date

75. The Closing Date under the Second FMI Agreement will be the first Monday which is not less than three (3) business days following the issuance of the Sale Approval Order, effective as of 12:01 am on the Sunday immediately preceding the Closing Date, or such other later date as may be agreed between the parties.

viii. Conditions to Closing

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

- a) on or before the Condition Date⁸, the Purchaser shall have (i) entered into a new franchise arrangement with the Franchisor in respect of the

⁸ Defined in the Second FMI Agreement as September 2, 2011 and extended by Extension Agreement dated September 7, 2011 to September 9, 2011 at 4:00 p.m. (Toronto time).

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purchased outlets, or (ii) negotiated the form of the assignment of the Franchise Agreement with the Franchisor, on terms as may be agreed upon between the Purchaser and the Franchisor, to become effective on the Closing Date, on terms and conditions satisfactory to the Purchaser in its sole discretion. As described in greater detail below, this condition has been satisfied;

- b) on or before the Condition Date, the Purchaser shall have used commercially reasonable efforts to enter into an amendment to the lease or a replacement lease in form and substance satisfactory to the Purchaser, for each of the outlets (other than outlet #1043), such amendment or replacement lease to be effective as of the Closing Date;
- c) the Vendor shall have issued a notice to assign pursuant to the terms of the Lease in respect of outlet #1043 to the landlord and the Vendor and the Purchaser shall have entered into an assignment agreement, materially in the form attached hereto as Schedule "I" to the Second FMI Agreement which the parties acknowledge is satisfactory for the assignment of the lease in respect of outlet #1043 to be effective on Closing;
- d) the representations and warranties of the Vendor in Schedule "E" of the Second FMI Agreement 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

- e) the Vendor shall have performed and complied with all of the terms and conditions in the Second FMI Agreement on its part to be performed or complied with at or before Closing and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at Closing all the documents contemplated or required to be so executed and delivered in the Second FMI Agreement.

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

- a) Either:
 - (i) the Vendor having received by the Condition Date (A) confirmation from the Purchaser that an assignment of the Franchise Agreement is not required for the transaction contemplated by this Agreement, or (B) a copy of the consent of the

Franchisor to the assignment of the Franchise Agreement in form and substance satisfactory to the Vendor, or

(ii) the Court having issued an order assigning the rights and obligations of the Franchise Agreement to the Purchaser by the Closing Date; and

b) The Vendor and the Purchaser having entered into an assignment agreement, materially in the form attached as Schedule "I" to the Second FMI Agreement which the Parties acknowledge is satisfactory for the assignment of the lease in respect of outlet #1043 to be effective on Closing.

78. The Purchaser and the Vendor have executed an Assignment Agreement. The Franchisor, the Vendor and the Purchaser have executed a Consent Agreement dated August 25, 2011 pursuant to which the Franchisor has consented to the sale of the Second FMI Purchased Assets, including the Vendor's rights under the Master Franchise Agreement as it relates to the Outlets and the individual franchise agreement for each outlet pursuant to the Assignment Agreement, subject to certain conditions, including, among others, the payment of an amount, not to exceed \$100,000.00, in respect of all unpaid post-filing continuing fees and other monetary accruals (exclusive of interest) accrued with respect to the purchased outlets for the period from August 8, 2011 to Closing within three business days of such amount being calculated by the Vendor and agreed upon by the Franchisor and the Monitor. A copy of the Consent Agreement with respect to the Second FMI Agreement is attached hereto as Exhibit "J".

79. As at the date of this affidavit, the Purchaser is in discussions with Scott's REIT regarding amendments to the leases or replacement leases for each of the outlets (other than outlet #1043) and the parties are in discussions regarding the entering into of an assignment agreement for the assignment of the lease in respect of outlet #1043 to be effective on Closing. As stated above, the Condition Date has been extended to September 9, 2011. If the conditions precedent have not been satisfied by the Condition Date, counsel for the Prizm Entities will contact the Court regarding the appropriate return date for the hearing of the Prizm Entities' motion.

80. The Second FMI Agreement is also conditional on a number of conditions in favour of the Vendor and the Purchaser set out in Section 13(3) of the Second FMI Agreement that are required to be satisfied or waived prior to the Closing Date including, among others, the following:

- a) The Vendor and the Purchaser shall have received evidence of the consent of Prudential to the transaction contemplated by the Second FMI Agreement. Such evidence has been received; and
- b) The issuance of the Sale Approval Order materially in the form attached to the Second FMI Agreement.

81. The Second FMI Agreement is not contingent on the Purchaser's ability to obtain financing or on the Purchaser's due diligence.

ix. Performance Guarantee

82. Pursuant to section 23 of the Second FMI Agreement, the Guarantor irrevocably and unconditionally guaranteed the timely and complete performance of, and compliance with, all of the terms, covenants, conditions and provisions that are to be performed and complied with by the Purchaser under the Second FMI Agreement, including without limitation the indemnities, and guarantees the truth of all representations and warranties provided by the Purchaser under the Second FMI Agreement.

83. If for any reason the Purchaser fails to perform or comply with any term, covenant, condition or provision that is to be performed or complied with by the Purchaser under the Second FMI Agreement, then the Guarantor shall perform or comply with such term, covenant, condition or provision in accordance with and subject to the provisions of the Second FMI Agreement.

E. Approval of the FMI Transactions

84. As described in greater detail above, the sale process undertaken by the Prizm Entities which culminated in the FMI Agreements was commenced outside of the CCAA proceedings, however, was approved by this Court *nunc pro tunc* and received the benefit of the additional exposure that comes from a Court-supervised process. The sales process was conducted with the assistance of Canaccord Genuity and under the supervision of the Court-appointed Monitor.

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85. The FMI Agreements provide for a going concern outcome for 43 of 192 Prizm Entities' restaurants. They also provide for continued employment for approximately 600 of the Prizm Entities' approximately 3,100 remaining employees, and preserve an ongoing customer for the Prizm Entities' suppliers and distributors. The Prizm Entities expect to cease operations at and shut down the restaurant outlets in Nova Scotia and New Brunswick that are not transferred to the Purchaser.

86. In my view, the purchase prices contemplated to be paid pursuant to the FMI Agreements represent the highest price realizable through the sales process or in liquidation and the FMI Agreements represent the best possible transactions in the circumstances for the benefit of the Prizm Entities and their stakeholders.

87. The Franchisor and Prudential have both consented to the FMI Transactions. It is also my understanding that the Monitor is supportive of the FMI Transactions and will be providing the Court with a report in that regard.

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

89. In accordance with section 36(7) of the CCAA, the Vendor can and will make the payments (or satisfactory arrangements therefor) that would have been required under sections 6(5)(a) or 6(6)(a) of the CCAA⁹.

90. The Prizm Entities have been and intend to continue paying the wages, salaries, commissions or compensation to their employees contemplated by section 6(5)(a) in the regular course. With the assistance of the Monitor, the Prizm Entities have estimated the wages, salaries, commissions or compensation that will be outstanding with respect to all of the Prizm Entities' employees pre-FMI Transactions under section 6(5)(a) as at the Closing Date to be approximately \$2.8 million.

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

⁹ Section 36(7) of the CCAA states that, "The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement." As there is no section 6(4)(a) in the CCAA, it appears that the current s. 36(7) of the CCAA contains a typographical error and the intended reference is to sections 6(5)(a) and 6(6)(a) of the CCAA. A copy of these sections is attached hereto as Exhibit "K".

payments that are required to be made by the Prizm Entities under section 6(6)(a)(ii) or 6(6)(a)(iii)(A) of the CCAA.

92. The Prizm Entities intend to continue making the payments required under sections 6(5)(a) and 6(6)(a) of the CCAA in the ordinary course. In addition, I am informed by Maria Konyukhova of Stikeman Elliott LLP, counsel to the Prizm Entities, that Prudential will be applying to the Court to appoint a receiver over the Prizm Entities on a motion returnable at the same time as the Prizm Entities' motion. The Prizm Entities are in discussions with Prudential and the proposed receiver regarding payment of any payments required under sections 6(5)(a) and 6(6)(a) of the CCAA that do not get paid by the Prizm Entities in the ordinary course.

III- THE 184 APA

93. As described above, following the closing of the Soul Agreement and disclaimer in respect of 28 Ontario restaurant outlets which were not included in that sale, the Kipling Outlet was the only remaining outlet operating in Ontario.

94. In or about May, 2011, the 184 Purchaser, an existing franchisee of the Franchisor, approached the Prizm Entities with respect to the purchase and sale of all of the assets related to the Kipling Outlet (the "184 Purchased Assets"), save and except the lease related thereto (the "184 Lease").

95. Pursuant to the Asset Purchase Agreement dated September 7, 2011 (the "184 APA"), the aggregate purchase price (the "184 Purchase Price") payable by the 184

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Purchaser to the Vendor for the 184 Purchased Assets is (a) \$50,000 plus \$6,500 in HST, plus (b) \$15,000, equal to the Closing Date Current Assets Amount (as defined in the 184 APA), subject to Section 4 of the 184 APA. A copy of the 184 APA is attached hereto as Exhibit "L".

96. The 184 Purchase Price will be increased or decreased, as the case may be, dollar-for-dollar, to the extent that: (i) the inventory and the restaurant float cash, as determined from the inventory count to be conducted on August 28, 2011, plus (ii) the invoices supporting the prepaid expenses to be provided by the Vendor within 30 days of closing is more or less than \$15,000.

97. The 184 Purchased Assets include all equipment used in the operation of the Kipling Outlet, including the equipment listed in Schedule "A" to the 184 APA.

98. The closing date under the 184 APA will be the first Monday following the issuance of an Order approving the 184 APA and the 184 Transaction or such other later date as may be agreed between the parties.

99. The 184 Purchaser intends to continue operations of the Kipling Outlet on the premises after closing. The parties have held discussions with Scotts Real Estate Limited Partnership, the landlord with respect to the 184 Lease, and have agreed that the 184 Lease will be disclaimed and a new lease will be entered into between the 184 Purchaser and the landlord.

100. Pursuant to the Order of Justice Morawetz dated June 29, 2011 (a copy of which is attached hereto as Exhibit "M"), the Prizm Entities, subject to the prior consent of the Monitor, have the right to dispose of redundant or non-material assets, and to sell assets or operations not exceeding \$100,000 in any one transaction or \$1,000,000, in the aggregate. The 184 Purchaser requested that the Prizm Entities obtain an Order approving the 184 APA and the 184 Transaction and vesting the 184 Purchased Assets in the 184 Purchaser.

101. As stated above, the Prizm Entities, with the assistance of Canaccord Genuity, attempted to find a purchaser for the remaining Ontario restaurant outlets, but were unable to do so.

102. In my view, the 184 Purchase Price represents the highest price available for the 184 Purchased Assets and the 184 APA represents the best possible transaction in the circumstances for the benefit of the Prizm Entities and their stakeholders.

103. The Franchisor and Prudential have both consented to the 184 APA. It is also my understanding that the Monitor is supportive of proceeding with the 184 Transaction and will be providing the Court with a report in that regard.

104. I am informed by Maria Konyukhova of Stikeman Elliott LLP, counsel to the Prizm Entities, and do verily believe that the Vendor and the 184 Purchaser are not related persons within the meaning of the CCAA.

V - CONCLUSION

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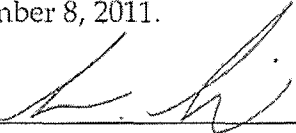
105. As stated above, I understand that Prudential will applying to the Court for appointment of a receiver over the Prizm Entities. The Prizm Entities are in discussions with Prudential and the proposed receiver regarding fulfilling the Prizm Entities' obligations under the Soul Agreement, the FMI Agreements, the occupation agreements related to the Soul Agreement and the FMI Agreements, the 184 APA, and the Court Orders approving same.

106. This affidavit is sworn in support of the Prizm Entities' motion for Orders, *inter alia*:

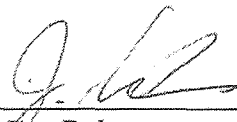
- a) approving the FMI Agreements and vesting the Purchased Assets and the Second FMI Purchased Assets in the Purchaser; and
- b) approving the 184 APA and vesting the 184 Purchased Assets in the 184 Purchaser,

and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on September 8, 2011.




 Commissioner for Taking Affidavits



 Jim Robertson

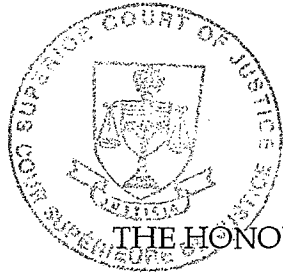
Sean Edward Gibson, a
 Commissioner etc., Province of Ontario,
 while a student-at-law.
 Expires April 12, 2013.

This is Exhibit "A"
to the affidavit of Jim Robertson,
sworn before me on the 8th day
of September, 2011



Commissioner for Taking Affidavits

Sean Edward Gibson, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires April 12, 2013.



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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
JUSTICE MESBUR

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FRIDAY, THE 29TH
DAY OF APRIL, 2011

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

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

(the "Applicants")

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by Prizm Income Fund, Prizm Canadian Operating Trust, Prizm Inc. and Kit Finance Inc. (collectively, the "Applicants"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Deborah Papernick sworn March 30, 2011 and the Exhibits attached thereto (the "Papernick Affidavit"), and the pre-filing report of the proposed monitor, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and Prizm LP, the independent Trustees, Prudential Investment Management, Inc., FTI Consulting Canada Inc., the CRO (as hereinafter defined) and Deborah Papernick, and Yum! Restaurants International

(Canada) LP (the “**Franchisor**”), and on reading the consent of FTI Consulting Canada Inc. to act as the Monitor (the “**Monitor**”),

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not an Applicant, Priszm LP (together with the Applicants, the “**Priszm Entities**”) shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that one or more of the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Priszm Entities shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Priszm Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Priszm Entities shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, the “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem

reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Prizm Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Papernick Affidavit or replace it with another substantially similar central cash management system (the “Cash Management System”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Prizm Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Prizm Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Prizm Entities shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses, and similar amounts owed to independent contractors, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Prizm Entities in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Prizm Entities shall be entitled but not required to pay all reasonable expenses incurred by the Prizm Entities in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Prizm Entities following the date of this Order.

8. **THIS COURT ORDERS** that the Prizm Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Prizm Entities in connection with the sale of goods and services by the Prizm Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in

respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Prizm Entities.

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

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

RESTRUCTURING

11. **THIS COURT ORDERS** that the Prizm Entities shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Amendment (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations;

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- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Prizm Entities to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that the Prizm Entities shall provide each of the relevant landlords with notice of the Prizm Entities' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Prizm Entities' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Prizm Entities, or by further Order of this Court upon application by the Prizm Entities on at least two (2) days notice to such landlord and any such secured creditors. If the Prizm Entities disclaim or resiliate the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Prizm Entities' claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Prizm Entities and the Monitor 24 hours' prior written notice, and (b) at the effective time of

the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Prizm Entities in respect of such lease or leased premises and such landlord shall be entitled to notify the Prizm Entities of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE PRIZM ENTITIES OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including April 29, 2011, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Prizm Entities or the Monitor, or affecting the Business or the Property, except with the written consent of the Prizm Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Prizm Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Prizm Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Prizm Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Prizm Entities to carry on any business which the Prizm Entities are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c)

prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Prizm Entities, except with the written consent of the Prizm Entities and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Prizm Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation suppliers of chicken and other food and restaurant consumables, waste disposal service providers, all computer software, information technology services, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Prizm Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Prizm Entities, and that the Prizm Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Prizm Entities in accordance with normal payment practices of the Prizm Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Prizm Entities and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, but subject to sections 19 to 21 below, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Prizm Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

CRITICAL SUPPLIERS

19. **THIS COURT ORDERS AND DECLARES** that each of the entities listed in Schedule "A" hereto is a critical supplier to the Prizm Entities as contemplated by Section 11.4 of the CCAA (each, a "Critical Supplier").

20. **THIS COURT ORDERS** that each Critical Supplier shall continue to supply the Prizm Entities with goods and/or services on terms and conditions that are consistent with existing arrangements and past practices, as may be amended by the payment terms set forth in Schedule "A". No Critical Supplier may require the payment of a deposit or the posting of any security in connection with the supply of goods and/or services to the Prizm Entities after the date of this Order.

21. **THIS COURT ORDERS** that each Critical Supplier shall be entitled to the benefit of and is hereby granted a charge (together, the "Critical Supplier Charge") on the Property in an amount equal to the value of the goods and services supplied by such Critical Supplier and received by the Prizm Entities after the date of this Order less all amounts paid to such Critical Supplier in respect of such goods and services. The Critical Supplier Charge shall have the priority set out in paragraphs 46 and 48 hereof.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future trustees, directors or officers of the Prizm Entities with respect to any claim against the trustees, directors or officers that arose before the date hereof and that relates to any obligations of the Prizm Entities whereby the trustees, directors or officers are alleged under any law to be liable in their capacity as trustees, directors or officers for the payment or performance of such obligations, or against any employee of the Prizm Entities that is a party to an action involving the Prizm Entities, until a compromise or arrangement in respect of the Prizm Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Prizm Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

23. **THIS COURT ORDERS** that the Prizm Entities shall indemnify (a) their directors and officers against obligations and liabilities that they may incur as directors or officers of the Prizm Entities, and (b) the CRO and Deborah Papernick against any obligations and liabilities that they may incur as CRO of the Prizm Entities, after the commencement of the within proceedings, except to the extent that, with respect to any individual, the obligation or liability was incurred as a result of the individual's gross negligence or wilful misconduct.

24. **THIS COURT ORDERS** that the directors and officers of the Prizm Entities and the CRO and Deborah Papernick shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$9.8 million, as security for the indemnity provided in paragraph 23 of this Order. The Directors' Charge shall have the priority set out in paragraphs 46 and 48 herein.

25. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Prizm Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 23 of this Order.

APPOINTMENT OF CHIEF RESTRUCTURING OFFICER

26. **THIS COURT ORDERS** that 2279549 Ontario Inc. is hereby appointed Chief Restructuring Officer, an officer of this Court, and shall have the powers and obligations set out in the agreement entered into between the Prizm Entities and 2279549 Ontario Inc. (the "CRO") dated March 30, 2011 (the "CRO Agreement").

27. **THIS COURT ORDERS** that the CRO Agreement is approved and the Prizm Entities are authorized to perform all of their obligations pursuant to the CRO Agreement.

28. **THIS COURT ORDERS** that the CRO shall consult with the Monitor regarding all material issues relating to the Business and all issues relating to these proceedings and shall not authorize any payment greater than \$500,000 on behalf of the Prizm Entities without the prior concurrence of the Monitor to such payment.

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the CRO as an officer of this Court, neither the CRO nor any employee of the CRO shall be deemed to be a director or trustee of any of the Prizm Entities.

30. **THIS COURT ORDERS** that neither the CRO nor any employee of the CRO shall incur any liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful

misconduct on its or their part; provided that any liability of the CRO hereunder shall in no event exceed the quantum of the fees paid to the CRO.

31. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against or in respect of the CRO or any employee of the CRO, except with the written consent of the CRO or with leave of this Court on notice to the CRO, the Monitor, and the Prizm Entities.

APPOINTMENT OF MONITOR

32. **THIS COURT ORDERS** that FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Prizm Entities with the powers and obligations set out in the CCAA or set forth herein and that the Prizm Entities and their unitholders, shareholders, officers, directors, trustees, and Assistants and the CRO shall advise the Monitor of all material steps taken by the Prizm Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

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

- (a) monitor the Prizm Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Prizm Entities, to the extent required by the Prizm Entities, in their dissemination, to the DIP Lender and its counsel of financial and other

information which may be used in these proceedings in accordance with the DIP Amendment (as hereinafter defined) or on reasonable request;

- (d) advise the Prizm Entities in their preparation of the Prizm Entities' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel in accordance with the DIP Amendment or on reasonable request;
- (e) advise the Prizm Entities in their development of the Plan and any amendments to the Plan;
- (f) assist the Prizm Entities, to the extent required by the Prizm Entities, with the holding and administering of creditors' or unitholders' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Prizm Entities, to the extent that is necessary to adequately assess the Prizm Entities' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) assist the CRO in the performance of its duties set out in the CRO Agreement;
- (j) advise and assist the Prizm Entities, as requested, in their negotiations with suppliers, customers, creditors and other stakeholders;

- (k) hold and administer funds in connection with arrangements made among the Prizm Entities, any counter-parties, and the Monitor, or by Order of this Court; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

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

35. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

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

38. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Prizm Entities shall be paid their reasonable fees and disbursements incurred both before and after the making of this Order, in each case at their standard rates and charges, by the Prizm Entities as part of the costs of these proceedings. The Prizm Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Prizm Entities on a weekly basis, or such other period as may be agreed with the Prizm Entities, and, in addition, the Prizm Entities are hereby authorized and directed to pay to the Monitor, counsel to the Monitor, and counsel to the Prizm Entities, retainers in the amounts of \$200,000, \$100,000, and \$200,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

39. **THIS COURT ORDERS** that, at the request of the Prizm Entities, the DIP Lender, any other party in interest, or this Court, the Monitor and its legal counsel shall pass their accounts, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

40. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, the Prizm Entities' counsel, and the CRO shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1.5 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor, such counsel, and the CRO, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 46 and 48 hereof.

THE FRANCHISOR CHARGE

40A. **THIS COURT ORDERS** that the Franchisor shall be entitled to the benefit of and is hereby granted a charge (the "**Franchisor Charge**") on the Property as security for the continuing fees payable pursuant to the Franchise Agreement (as defined in the Papernick Affidavit) and accruing after the date hereof, which, for greater certainty, shall not include interest. The Franchisor Charge shall have the priority set out in paragraphs 46 and 48 hereof.

DIP FINANCING

41. **THIS COURT ORDERS** that the Prizm Entities are hereby authorized and empowered to obtain and borrow under a credit facility from Prudential Investment Management, Inc. and certain of its affiliates (the "**DIP Lender**") in order to finance the Prizm Entities' working capital requirements, provided that borrowings under such

credit facility shall not exceed \$3 million unless permitted by further Order of this Court.

42. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in Amendment No. 11 to the Note Purchase and Private Shelf Agreement dated as of March 30, 2011 (the "**DIP Amendment**"), filed and the Prizm Entities are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Amendment as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

43. **THIS COURT ORDERS** that, in addition to the existing security held by or on behalf of the DIP Lender securing the Prudential Loan, as amended by the Prudential Loan Amendments (as those terms are defined in the Papernick Affidavit (the "**Prudential Security**"), the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall only secure advances under the DIP Amendment and shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 46 and 48 hereof.

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge;
- (b) upon the occurrence of an event of default under the DIP Amendment or the Amended and Restated Noteholder Forbearance Agreement dated as of March 31, 2011 among Prizm LP, Prizm GP, Kit Finance, Prudential, and each Prudential affiliate a party thereto the DIP Lender, upon four (4) days

notice to the Priszm Entities and the Monitor, may apply to this Court for leave to exercise any and all of its rights and remedies against the Priszm Entities or the Property under or pursuant to the DIP Amendment, the Note Purchase and Private Shelf Agreement dated January 12, 2006, among Priszm GP, Kit Finance, Prudential Investment Management, Inc., and each Prudential affiliate a party thereto, as amended, the Prudential Security and the DIP Lender's Charge, including without limitation, to cease making advances to the Priszm Entities and set off and/or consolidate any amounts owing by the DIP Lender to the Priszm Entities against the obligations of the Priszm Entities to the DIP Lender under the DIP Amendment, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Priszm Entities and for the appointment of a trustee in bankruptcy of the Priszm Entities; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Priszm Entities or the Property.

45. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Priszm Entities under the CCAA, or any proposal filed by the Priszm Entities under the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"), with respect to any advances made under the DIP Amendment.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

46. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Critical Supplier Charge, the DIP Lender's Charge and the Directors' Charge, as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$1.5 million);

Second - Critical Supplier Charge;

Third - Franchisor Charge;

Fourth - DIP Lender's Charge; and

Fifth - Directors' Charge.

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

48. **THIS COURT ORDERS** that each of the Administration Charge, the Critical Supplier Charge, the Franchisor Charge, the DIP Lender's Charge and the Directors' Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") in favour of any Person, notwithstanding the order of perfection or attachment, except for any Person who is a "secured creditor", as defined in the CCAA, as of the date of this Order and who has not received notice of this Application.

49. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Prizm Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge, the Critical Supplier Charge, the Franchisor Charge, the DIP

Lender's Charge or the Directors' Charge, unless the Prizm Entities also obtain the prior written consent of the Monitor, the Franchisor, the DIP Lender and the beneficiaries of the Administration Charge, or further Order of this Court.

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

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Amendment shall create or be deemed to constitute a breach by the Prizm Entities of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Prizm Entities entering into the DIP Amendment or the creation of the Charges; and
- (c) the payments made by the Prizm Entities pursuant to this Order, the DIP Amendment, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive

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

51. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Prizm Entities' interest in such real property leases.

SERVICE AND NOTICE

52. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in *The Globe and Mail*, National Edition, and *La Presse*, in French, a notice containing the information prescribed under the CCAA, and (b) within five days after the date of this Order (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Prizm Entities of more than \$1,000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the names and addresses of individuals who are creditors publicly available.

53. **THIS COURT ORDERS** that the Prizm Entities and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Prizm Entities' creditors or other interested parties at their respective addresses as last shown on the records of the Prizm Entities and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

54. **THIS COURT ORDERS** that the Prizm Entities, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at <http://cfcanda.fticonsulting.com/prizm>.

GENERAL

55. **THIS COURT ORDERS** that the Prizm Entities, the Monitor or the CRO may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

57. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Prizm Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Prizm Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Prizm Entities and the Monitor and their respective agents in carrying out the terms of this Order.

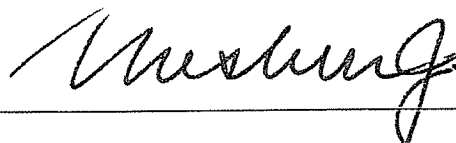
58. **THIS COURT ORDERS** that each of the Prizm Entities and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order

- 23 -

and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

59. **THIS COURT ORDERS** that any interested party (including the Prizm Entities, the CRO and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

A handwritten signature in black ink, appearing to read "M. Sturges", is written above a horizontal line.

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

APR 29 2011

PER/PAR:

NB

SCHEDULE "A"**A) Suppliers of Food and Restaurant Consumables****Proposed Payment Terms**

- The later of 21¹ days from receipt of invoice or the Monday following the day which is 21 days from the receipt of invoice.
- To the extent that there are any annual fees, such fees to be prorated and paid them bi-monthly.

Listing of suppliers of food and restaurant consumables to be declared Critical Suppliers and subject to the above payment terms

Pepsi-Cola Bev. Canada (Nss)	Canada Bread Company Ltd. (321228)
Praxair Products Inc	Multi-Marques Inc.
Canada Bread Co.Ltd. #V4065	Distagro (52285)
Baxter Foods Limited	Canada Bread Company, Limited (52383)
Canada Bread – Atlantic	Linde Canada Ltd.
Distagro (34002)	
Serca Foodservice Inc	
Konings Wholesale	
Sysco Food Services of Canada, Inc.	
Sysco Food Services of Vancouver, Inc.	

¹ Where Monday is a holiday the payment date will be shifted to Tuesday.

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES

B) Chicken Suppliers

Proposed Payment Terms

- The later of 7² days from receipt of invoice or the Monday following the day which is 7 days from the receipt of invoice.
- To the extent that there are any annual fees, such fees to be prorated and paid them bi-monthly.

Listing of chicken suppliers to be declared Critical Suppliers and subject to the above payment terms

Exceldor Cooperative Avicole

Dunn-Rite Food Product

Maple Lodge Farms Ltd.

Sunrise Poultry Processors Ltd

Olymel S.E.C./L.P.

Nadeau Poultry Farm Ltd

Mountain View Poultry Farms

² Where Monday is a holiday the payment date will be shifted to Tuesday.

C) Utility Service Providers

Proposed Payment Terms

- Payment on the Thursday following the receipt of invoice.
- To the extent that there are any annual fees, such fees to be prorated and paid them bi-monthly.

Listing of utility service providers to be declared Critical Suppliers and subject to the above payment terms

Eastlink	Energie Nb Power
Town Of Arnprior	Town Of Antigonish
Haldimand H E C	Edmundston La Ville
Bell Canada (638)	Nova Scotia Power Corporation
City of Belleville	City Of Bathurst
Hydro One Brampton	Pictou, Town Of
Brantford Power Inc	Yarmouth, Town Of
Barrie Public Utilities Comm.	New Glasgow, Town Of (Water)
Rogers AT&T (Don Mills)	Windsor, Town Of
Lakefront Utility Services Inc	Digby, Town Of
Cornwall Electric	Kings, Municipality County Of
Enbridge Consumers Gas Systems	Halifax Water Commission
Cambridge & North Dumfries	Bridgewater, Town Of
City Of Cornwall	Oromocto, Town Of
Town Of Carleton Place	Kamloops, City Of
City Of St Catherines	Delta, Corp Of
Reg Munic Durham	Corp. Of The New Westminster

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES

The Corp. Of The Town Of	Penticton, City Of
E L K Energy Inc	City Of Terrace
Hawkesbury Hydro	Terasen Gas
Town Of Kingsville	City Of Victoria
Essex Powerlines Corporation	White Rock Utilities Ltd
London Public Utilities	Campbell River, District Of
Enersource Hydro Mississauga	Vernon, Corp Of The City Of
Newmarket Hydro Elect. Comm.	Kelowna, City Of - Utility
Toronto Finance Department	Town Of Amherst
Natural Resource Gas Ltd.	City Of Portage La Prairie
Niagara Falls Hydro	Capital Regional District
Oshawa Public Utilities Comm.	Maple Ridge Corp City Of
Ottawa Hydro	Cranbrook Corp Of The City Of
Ottawa-Carleton	Chilliwack, District Of
Brant County Power	Nanaimo, City Of
Ottawa River Power Corporation	Williams Lake, City Of
Peterborough Utilities Comm.	Sidney, Town Of
Veridian Connections	Salmon Arm, District Of
Pembroke Waterworks	Squamish, District Of
Renfrew Hydro Electric Comm.	Port Alberni, City Of
St Thomas Public Utilities	City Of White Rock
Norfolk Power Distribution Inc	Regional District Of Central Okanagan
GSU	Coquitlam, City Of
Town Of Smiths Falls	Sussex, Town Of
Sault Ste. Marie, P U C	New Glasgow, Town Of

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES

Thunder Bay Telephone	Niagara Regional Police
Thunder Bay Hydro	Camrose, City Of
Toronto Hydro	BC Hydro
Union Gas Ltd	City Of Surrey
Hydro One Networks Inc	Township Of Langley
Enwin Utilities	Epcor
Whitby Hydro Electric Comm.	Burnaby, City Of
Ville D'alma	Shaw Cable
Bell Canada (2310)	Reliance Home Comfort
Ville De Coaticook	Edmonton, The City Of
Gaz Metropolitan	City Of Miramichi
Gazifere Inc	Halton Hills Hydro Inc
Hydro-Quebec	Telus Quebec
Ville De Joliette	Chatham-Kent Utility Services
Ville De Magog	Pacific Northern Gas Ltd.
Telebec Ltee.	City Of Winkler
Ville De Sherbrooke	Region Of Peel (53359)
City Of Airdrie	Superior Propane Inc.- Calgary
Town Of High River	Culligan
Town Of Stettler	Greater Napanee Utilities
Town Of Strathmore	Town Of Drayton Valley
Town Of Brooks	Bell Expressvu
Town Of Cochrane	Telus Mobility
Bell Canada (7736)	City Of Richmond, BC
Bell Cellular	The City Of Greater Sudbury

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES

Imperial Oil	M3 & W Inc.
Rogers Payment Centre	MTS Communications Inc.
Bell Canada (13065)	Collus Power Corp
Propane M & M Inc	FortisBC Inc
Bell Mobilite Pagette	Town Of Lakeshore
Bell Canada (21360)	Cablevision
Prince Edward Public Works	Keep In Touch
Guelph Hydro	Powerstream
Erie Thames Power Corp	Direct Energy
Telus Communications Inc	Village Of New Minas
Strathcona County	Horizon Utilities Corporation
Westbank Irrigation District	Bell Canada (46557)
Black Mountain Irrigation Dist	Town Of Richmond Hill
City Of Abbotsford	Rogers Telecom - Business
Clearbrook Waterworks District	Bluewave Energy
Rogers Cablesystems	Orangeville Hydro Limited
Cape Breton Regional Municipal	Enmax
District Of Langford	Enbridge Gas New Brunswick
Bell Mobility Paging	Allstream
Queens Municipality, Region Of	Bell Conferencing Inc.
Brandon, City Of	Wireless Personal
Steinbech, Town Of	Terago Networks Inc.
Central Okanagan, Regional	Voicemailtel Inc.
City Of Selkirk	Irving Energy Distribution
Winnipeg, City Of (Water)	Midland Power Utility

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES

Manitoba Hydro/Centra Gas	On Telecom Management
St. Albert, City Of	Ari Financial Services Inc.
Campbellton, City Of	Cogeco Cable Inc.
City Of Fredericton	Internet Lightspeed
Moncton, City Of	Direct Energy
Saint John, City Of	Consumers' Waterheater
Aliant (34791)	Societe De L'assurance
Aliant (34786)	Ville De Montreal
St Stephen Utility Dept	Halifax Regional Municipality
Riverview, Town Of	Veridian Energy Inc.
Port Hawkesbury, Town Of	Region Of Peel (37018)
Saint John Energy	

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES**D) Suppliers of Waste Disposal and Pest Control Services****Proposed Payment Terms**

- The later of 30 days from receipt of invoice or the Thursday following the day which is 30 days from the receipt of invoice.
- To the extent that there are any annual fees, such fees to be prorated and paid them bi-monthly.

Listing of suppliers of waste disposal and pest control services to be declared Critical Suppliers and subject to the above payment terms

Organic Resource Mgmt. Inc.

Wasteco

Owen Sound Septic Service

BFI Canada-Penticton

Wasteless Environmental Serv

Abell

Sanimax San Inc.

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES

E) Providers of Appliance Repair and Information Technology Services

Proposed Payment Terms

- The later of 30 days from receipt of invoice or the Thursday following the day which is 30 days from the receipt of invoice.
- To the extent that there are any annual fees, such fees to be prorated and paid them bi-monthly.

Listing of providers of appliance repair and information technology services to be declared Critical Suppliers and subject to the above payment terms

Radiant Systems

Global Payments

NCR Canada Ltd (34379)

DSL (Dairy Supplies Limited)

NCR Canada Ltd (49264)

Bazinet Taylor Ltee

Sitel

TFI Food Equipment Solutions

Menulink

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.

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

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL
ORDER**

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

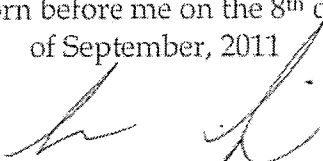
Ashley John Taylor LSUC#: 39932E
Tel: (416) 869-5236

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

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-6820
Fax: (416) 947-0866

Lawyers for the Applicants

This is Exhibit "B"
to the affidavit of Jim Robertson,
sworn before me on the 8th day
of September, 2011



Commissioner for Taking Affidavits

Sean Edward Gibson, a
Commissioner etc., Province of Ontario,
while a student-at-law.
Expires April 12, 2013.



Court File No. CV-11-915900-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	MONDAY, THE 30TH
)	
JUSTICE MORAWETZ)	DAY OF MAY, 2011

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

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

(the "Applicants")

ORDER

(Approval of Sales Process and Engagement of Canaccord Genuity Corp.)

THIS MOTION, made by Priszm Income Fund, Priszm Canadian Operating Trust, Priszm LP, Priszm Inc. and Kit Finance Inc. (collectively, the "**Priszm Entities**") for an order authorizing and approving the Sales Process (as defined below) *nunc pro tunc*, and approving the Genuity Engagement Letter (as defined below) *nunc pro tunc*, and certain ancillary relief was heard this day at 330 University Avenue, Toronto, Ontario.

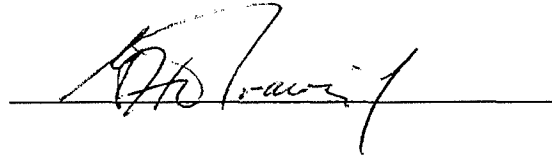
ON READING the Affidavit of Deborah Papernick sworn May 24, 2011 (the "**Sales Process Affidavit**") and the Second Report of FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor of the Priszm Entities (the "**Monitor**"), and on hearing the submissions of counsel for the Priszm Entities, the Monitor, Prudential

Investment Management, Inc. ("Prudential"), Yum! Restaurants International (Canada) Company; Scott's Real Estate Investment Trust, SR Operating Trust, Scott's Real Estate Limited Partnership, Scott's Trustee Corp. and Scott's GP Trust; The Cadillac Fairview Corporation Limited; 20 VIC Management Inc., Ivanhoe Cambridge Inc., Morguard Investments Limited, Retrocom Mid-Market REIT, Primaris Retail Real Estate Investment Trust and Oxford Properties Group Inc.; 2279549 Ontario Inc. and Deborah Papernick; ~~Clayco~~ ^{CAW-Canada;}; Sysco Canada and Metro-Richelieu Inc., no one appearing for any other person on the Service List, although properly served as appears from the affidavit of service, filed:

1. **THIS COURT ORDERS** that, if necessary, the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the sales process as described in the Sales Process Affidavit (the "Sales Process") is approved *nunc pro tunc*.
3. **THIS COURT ORDERS** that the Prizm Entities are authorized and directed to perform their obligations under and take such steps as they consider necessary or desirable in carrying out the Sales Process, and any step taken prior to the date hereof is hereby approved and ratified.
4. **THIS COURT ORDERS** that the letter agreement dated January 27, 2011 between the Prizm Entities and Canaccord Genuity Corp. (the "Engagement Letter") is

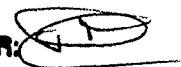
hereby approved *nunc pro tunc*, and the Prizm Entities are authorized and directed to perform their obligations under and make the payments contemplated by the Engagement Letter.

5. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance as may be necessary or desirable to give effect to this Order.

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

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

MAY 30 2011

PER/PAR: 

A handwritten signature in black ink is written over a horizontal line, following the text "PER/PAR:".

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

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

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

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

Proceeding commenced at Toronto

**ORDER
(Re Sales Process and Genuity Engagement Letter)**

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

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

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

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