

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

BETWEEN:

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, PRUCO LIFE  
INSURANCE COMPANY AND PRUDENTIAL RETIREMENT INSURANCE AND  
ANNUITY COMPANY**

Applicants

- and -

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

Respondents

**APPLICATION** pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3

**APPLICATION RECORD**

**DATE:** 9 September, 2011

**GOWLING LAFLEUR HENDERSON LLP**  
Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

**E. Patrick Shea** LSUC No. 39655K  
Tel: (416) 369-7399  
Fax: (416) 862-7661

Solicitors for the Applicants

**SERVICE LIST**

<b>PARTY</b>	<b>CONTACT</b>
<p><b>PRISZM LP, PRISZM INC., PRISZM CANADIAN OPERATING TRUST, PRISZM INCOME FUND AND KIT FINANCE INC.</b>            101 Exchange Avenue            Vaughan, ON L4K 5R6</p> <p><b>Respondents</b></p>	<p><b>Jim Robertson</b>            Tel: (416) 739-2983            Fax: (416) 650-9751            Email: <a href="mailto:jim.robertson@priszm.com">jim.robertson@priszm.com</a></p>
<p><b>STIKEMAN ELLIOTT LLP</b>            5300 Commerce Court West            199 Bay Street            Toronto, ON M5L 1B9</p> <p><b>Lawyers for the Respondents</b></p>	<p><b>Ashley J. Taylor</b>            Tel: (416) 869-5236            Fax: (416) 947-0866            Email: <a href="mailto:ataylor@stikeman.com">ataylor@stikeman.com</a></p> <p><b>Maria Konyukhova</b>            Tel: (416) 869-5230            Email: <a href="mailto:mkonyukhova@stikeman.com">mkonyukhova@stikeman.com</a></p> <p><b>Kathryn Esaw</b>            Tel: (416) 869-6820            Email: <a href="mailto:kesaw@stikeman.com">kesaw@stikeman.com</a></p>
<p><b>FTI CONSULTING CANADA INC.</b>            TD Waterhouse Tower            79 Wellington Street, Suite 2010            Toronto, ON M5K 1G8</p> <p><b>Monitor</b></p>	<p><b>Nigel D. Meakin</b>            Tel: (416) 649-8065            Fax: (416) 649-8101            Email: <a href="mailto:nigel.meakin@fticonsulting.com">nigel.meakin@fticonsulting.com</a></p> <p><b>Toni Vanderlaan</b>            Tel: (416) 649-8075            Email: <a href="mailto:toni.vanderlaan@fticonsulting.com">toni.vanderlaan@fticonsulting.com</a></p>
<p><b>OSLER, HOSKIN &amp; HARCOURT LLP</b>            First Canadian Place            100 King Street West, Suite 6100            Toronto, ON M5X 1B8</p> <p><b>Lawyers for the Monitor</b></p>	<p><b>Marc Wasserman</b>            Tel: (416) 862-4908            Fax: (416) 862-6666            Email: <a href="mailto:mwasserman@osler.com">mwasserman@osler.com</a></p> <p><b>Jeremy Dacks</b>            Tel: (416) 862-4923            Email: <a href="mailto:jdacks@osler.com">jdacks@osler.com</a></p>
<p><b>YUM! RESTAURANTS INTERNATIONAL (CANADA) COMPANY</b>            101 Exchange Avenue            Vaughan, ON L4K 5R6</p>	<p><b>Sabir Sami</b>            Email: <a href="mailto:sabir.sami@yum.com">sabir.sami@yum.com</a></p>

<p><b>WOOLGAR, VANWIECHEN, KETCHESON &amp; DUCOFFE LLP</b>  Barristers and Solicitors  70 The Esplanade, Suite 401  Toronto, ON M5E 1R2</p> <p><b>Lawyers for Yum! Restaurants International (Canada) Company</b></p>	<p><b>Christopher Cosgriffe</b>  Tel: (416) 867-9036  Fax: (416) 867-1434  Email: <a href="mailto:ccosgriffe@woolvan.com">ccosgriffe@woolvan.com</a></p>
<p><b>PRUDENTIAL INVESTMENT MANAGEMENT INC.</b>  100 Mulberry Street  Newark, NJ 07102</p>	<p><b>Paul Procyk</b>  Tel: (973) 802-8107  Fax: (888) 889-3832  Email: <a href="mailto:paul.procyk@prudential.com">paul.procyk@prudential.com</a></p>
<p><b>GOWLINGS LLP</b>  Barristers and Solicitors  1 First Canadian Place  100 King Street West, Suite 1600  Toronto, ON M5X 1G5</p> <p><b>Lawyers for Prudential Investment Management Inc.</b></p>	<p><b>Patrick Shea</b>  Tel: (416) 369-7399  Fax: (416) 862-7661  Email: <a href="mailto:patrick.shea@gowlings.com">patrick.shea@gowlings.com</a></p>
<p><b>BINGHAM MCCUTCHEN LLP</b>  One State Street  Hartford, CT 06103-3178</p> <p><b>Lawyers for Prudential Investment Management Inc.</b></p>	<p><b>Scott Falk</b>  Tel: (860) 240-2763  Fax: (860) 240-2587  Email: <a href="mailto:scott.falk@bingham.com">scott.falk@bingham.com</a></p>
<p><b>RSM RICHTER</b>  200 King Street West, Suite 1100  Toronto, ON M5H 3T4</p> <p><b>Receiver</b></p>	<p><b>Robert Kofman</b>  Tel: (416) 932-6228  Fax: (416) 932-6200  Email: <a href="mailto:bkofman@rsmrichter.com">bkofman@rsmrichter.com</a></p>

<p><b>BLAKE, CASSELS &amp; GRAYDON LLP</b>  2800 Commerce Court West  199 Bay Street  Toronto, ON M5L 1A9</p> <p><b>Lawyers for the Former Independent Trustees and Directors of the Applicants</b></p>	<p><b>Susan Grundy</b>  Tel: (416) 863-2572  Fax: (416) 863-2653  Email: <a href="mailto:susan.grundy@blakes.com">susan.grundy@blakes.com</a></p> <p><b>Pamela Huff</b>  Tel: (416) 863-2958  Email: <a href="mailto:pamela.huff@blakes.com">pamela.huff@blakes.com</a></p> <p><b>David Toswell</b>  Tel: (416) 863-4246  Email: <a href="mailto:david.toswell@blakes.com">david.toswell@blakes.com</a></p>
<p><b>MINDEN GROSS LLP</b>  145 King Street West, Suite 2200  Toronto, ON M5H 4G2</p> <p><b>Lawyers for Officers</b></p>	<p><b>David T. Ullmann</b>  Tel: (416) 369-4148  Fax: (416) 864-9223  Email: <a href="mailto:dullmann@mindengross.com">dullmann@mindengross.com</a></p>
<p><b>BENNETT JONES LLP</b>  3400 One First Canadian Place  P.O. Box 130  Toronto, ON M5X 1A4</p> <p><b>Conflict Lawyers for Respondents</b></p>	<p><b>Mark Laugesen</b>  Tel: (416) 777-4802  Fax: (416) 863-1716  Email: <a href="mailto:laugesenm@bennettjones.com">laugesenm@bennettjones.com</a></p> <p><b>Gavin Finlayson</b>  Tel: (416) 777-5762  Email: <a href="mailto:finlaysong@bennettjones.com">finlaysong@bennettjones.com</a></p>
<p><b>AIRD &amp; BERLIS LLP</b>  Brookfield Place, 181 Bay Street  Suite 1800, Box 754  Toronto, ON M5J 2T9</p> <p><b>Lawyers for Scott's Real Estate Investment Trust, SR Operating Trust, Scott's Real Estate Limited Partnership, Scott's Trustee Corp. and Scott's GP Trust</b></p>	<p><b>Steven L. Graff</b>  Tel: (416) 865-7726  Fax: (416) 863-1515  Email: <a href="mailto:sgraff@airdberlis.com">sgraff@airdberlis.com</a></p> <p><b>Ian Aversa</b>  Tel: (416) 865-3082  Email: <a href="mailto:iaversa@airdberlis.com">iaversa@airdberlis.com</a></p>

<p><b>DEPARTMENT OF JUSTICE ONTARIO REGIONAL OFFICE</b> The Exchange Tower 130 King Street West Suite 3400, Box 36 Toronto, ON M5X 1K6</p> <p><b>Attorney General of Canada</b></p>	<p><b>Diane Winters</b> Tel: (416) 973-3172 Fax: (416) 973-0809 Email: <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a></p>
<p><b>MCCARTHY TÉTRAULT LLP</b> 1000 De La Gauchetière Street West Bureau 2500 Montréal, QC H3B 0A2</p> <p>Toronto Dominion Bank Tower 66 Wellington Street West, Suite 5300 Toronto, ON M5K 1E6</p> <p><b>Lawyers for Olymel</b></p>	<p><b>Alain Tardif</b> Tel: (514) 397-4274 Fax: (514) 875-6246 Email: <a href="mailto:atardif@mccarthy.ca">atardif@mccarthy.ca</a></p> <p><b>Kevin McElcheran</b> Tel: (416) 601-7730 Fax: (416) 868-0673 Email: <a href="mailto:kmcelcheran@mccarthy.ca">kmcelcheran@mccarthy.ca</a></p>
<p><b>MCCARTHY TÉTRAULT LLP</b> Toronto Dominion Bank Tower 66 Wellington Street West, Suite 5300 Toronto, ON M5K 1E6</p> <p><b>Lawyers for Pepsi-Cola Canada Ltd.</b></p>	<p><b>F. Paul Morrison</b> Tel: (416) 601-7887 Fax: (416) 868-0673 Email: <a href="mailto:pmorriso@mccarthy.ca">pmorriso@mccarthy.ca</a></p> <p><b>Heather L. Meredith</b> Tel: (416) 601-8342 Email: <a href="mailto:hmeredith@mccarthy.ca">hmeredith@mccarthy.ca</a></p>
<p><b>LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP</b> 130 Adelaide Street West, Suite 2600 Toronto, ON M5H 3P5</p> <p><b>Lawyers for Sysco Canada</b></p>	<p><b>Peter Osborne</b> Tel: (416) 865-3094 Fax: (416) 865-9010 Email: <a href="mailto:posborne@litigate.com">posborne@litigate.com</a></p>

<p><b>TORYS LLP</b> 79 Wellington Street West TD Centre, Suite 3000 Toronto, ON M5K 1N2</p> <p><b>Lawyers for The Cadillac Fairview Corporation Limited</b></p>	<p><b>David Bish</b> Tel: (416) 865-7353 Fax: (416) 865-7380 Email: <a href="mailto:dbish@torys.com">dbish@torys.com</a></p>
<p><b>CAW-CANADA</b> 205 Placer Court Toronto, ON M2H 3H9</p> <p><b>Lawyers for National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)</b></p>	<p><b>Barry E. Wadsworth</b> Tel: (416) 495-3776 Fax: (416) 495-3786 Email: <a href="mailto:barry.wadsworth@caw.ca">barry.wadsworth@caw.ca</a></p>
<p><b>GARDINER ROBERTS LLP</b> Scotia Plaza 40 King St. West, Suite 3100 Toronto, ON M5H 3Y2</p> <p><b>Lawyers for Soul Restaurants Canada Inc.</b></p>	<p><b>Jonathan Wigley</b> Tel: (416) 865-6655 Fax: (416) 865-6636 Email: <a href="mailto:jwigley@gardiner-roberts.com">jwigley@gardiner-roberts.com</a></p> <p><b>Arlene O'Neill</b> Tel: (416) 865-6640 Email: <a href="mailto:aoneill@gardiner-roberts.com">aoneill@gardiner-roberts.com</a></p>
<p><b>MILLER THOMSON LLP</b> Scotia Plaza 40 King St. West, Suite 5800 Toronto, ON M5H 3S1</p> <p><b>Lawyers for Metro-Richelieu Inc.</b></p>	<p><b>Arthi Sambasivan</b> Tel: (416) 595-8636 Fax: (416) 595-8695 Email: <a href="mailto:asambasivan@millერთhompson.com">asambasivan@millერთhompson.com</a></p>
<p><b>DAOUST VUKOVICH LLP</b> 20 Queen Street West, Suite 3000 Toronto, ON M5H 3R3</p> <p><b>Lawyers for Canadian Property Holdings Inc.</b></p>	<p><b>Gasper Galati</b> Tel: (416) 598-7050 Fax: (416) 597-8897 Email: <a href="mailto:ggalati@dv-law.com">ggalati@dv-law.com</a></p> <p><b>Ken Pimentel</b> Tel: (416) 597-9306 Email: <a href="mailto:kpimentel@dv-law.com">kpimentel@dv-law.com</a></p>

<p><b>MCLEAN &amp; KERR LLP</b>  130 Adelaide Street West, Suite 2800  Toronto, ON M5H 3P5</p> <p><b>Lawyers for 20 VIC Management Inc.; Ivanhoe Cambridge Inc.; Morguard Investments Limited; Retrocom Mid-Market REIT; Primaris Retail Real Estate Investment Trust; Oxford Properties Group Inc.</b></p>	<p><b>Walter Stevenson</b>  Tel: (416) 369-6602  Fax: (416) 366-8571  Email: <a href="mailto:wstevenson@mcleankerr.com">wstevenson@mcleankerr.com</a></p> <p><b>Linda Galessiere</b>  Tel: (416) 369-6609  Email: <a href="mailto:lgalesiere@mcleankerr.com">lgalesiere@mcleankerr.com</a></p>
<p><b>SUNRISE POULTRY PROCESSORS LTD.</b>  13542 73-A Avenue  Surrey, B.C. V3W 1C9</p>	<p><b>Scott Cummings</b>  Tel: (604) 596-9505  Fax: (604) 596-6966  Email: <a href="mailto:scummings@sunrisepoultry.bc.ca">scummings@sunrisepoultry.bc.ca</a></p> <p><b>Doreen Kerr</b>  Tel: (604) 596-9505 ext. 3314  Email: <a href="mailto:dkerr@sunrisepoultry.bc.ca">dkerr@sunrisepoultry.bc.ca</a></p>
<p><b>CALLOWAY REIT</b>  700 Applewood Crescent  Vaughan, ON L4K 5X3</p>	<p><b>Tia Squeo</b>  Tel: (905) 326-6400 ext. 7750  Fax: (905) 760-6206  Email: <a href="mailto:tsqueo@callowayreit.com">tsqueo@callowayreit.com</a></p>
<p><b>SMARTCENTRES MANAGEMENT INC.</b>  700 Applewood Crescent  Vaughan, ON L4K 5X3</p> <p><b>Agent for Calloway REIT</b></p>	<p><b>Jeffrey A. Winick</b>  Tel: (905) 760-6200 ext. 7665  Fax: (905) 760-6220  Email: <a href="mailto:jwinick@smartcentres.com">jwinick@smartcentres.com</a></p>
<p><b>FRASER MILNER CASGRAIN LLP</b></p> <p>Toronto-Dominion Centre  77 King St. West, Suite 400  Toronto, ON  M5K 0A1</p> <p><b>Counsel for the Bank of Montreal</b></p>	<p><b>Laurence Geringer</b>  Tel: (416) 863-4684  Fax: (416) 863-4592  Email: <a href="mailto:laurence.geringer@fmc-law.com">laurence.geringer@fmc-law.com</a></p> <p><b>Ross Walker</b>  Tel: (416) 863-4742  Email: <a href="mailto:ross.walker@fmc-law.com">ross.walker@fmc-law.com</a></p>

## INDEX TAB



**INDEX**

	TAB
Notice of Application.....	1
Affidavit of Paul Procyk.....	2
Exhibit "A" - Prizm Security in Favour of Noteholders chart.....	A
Draft Order.....	3
Blackline against Model Order.....	4

TAB 1

ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)

BETWEEN:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, PRUCO LIFE  
INSURANCE COMPANY AND PRUDENTIAL RETIREMENT INSURANCE AND  
ANNUITY COMPANY

Applicants

- and -

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

Respondents

APPLICATION pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3

**NOTICE OF APPLICATION**

**TO THE RESPONDENT**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the applicants. The claim made by the applicants is set out on the following pages.

**THIS APPLICATION** will come on for scheduling at 10:00 A.M. on 14 September 2011 at 330 University Avenue, Toronto.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the *Rules of Civil Procedure*, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: 8 September 2011

Issued by  \_\_\_\_\_  
Local Registrar

Address of Court Office:  
330 University Avenue 7<sup>th</sup>.  
Toronto ON M5G 1R7

**Giuseppe Di Pietro**  
Registrar

**TO: SERVICE LIST**

**SERVICE LIST**  
(as at 7 September 2011)

PARTY	CONTACT
<p><b>PRISZM LP, PRISZM INC., PRISZM CANADIAN OPERATING TRUST, PRISZM INCOME FUND AND KIT FINANCE INC.</b> 101 Exchange Avenue Vaughan, ON L4K 5R6</p> <p><b>Respondents</b></p>	<p><b>Jim Robertson</b> Tel: (416) 739-2983 Fax: (416) 650-9751 Email: <a href="mailto:jim.robertson@priszm.com">jim.robertson@priszm.com</a></p>
<p><b>STIKEMAN ELLIOTT LLP</b> 5300 Commerce Court West 199 Bay Street Toronto, ON M5L 1B9</p> <p><b>Lawyers for the Respondents</b></p>	<p><b>Ashley J. Taylor</b> Tel: (416) 869-5236 Fax: (416) 947-0866 Email: <a href="mailto:ataylor@stikeman.com">ataylor@stikeman.com</a></p> <p><b>Maria Konyukhova</b> Tel: (416) 869-5230 Email: <a href="mailto:mkonyukhova@stikeman.com">mkonyukhova@stikeman.com</a></p> <p><b>Kathryn Esaw</b> Tel: (416) 869-6820 Email: <a href="mailto:kesaw@stikeman.com">kesaw@stikeman.com</a></p>
<p><b>FTI CONSULTING CANADA INC.</b> TD Waterhouse Tower 79 Wellington Street, Suite 2010 Toronto, ON M5K 1G8</p> <p><b>Monitor</b></p>	<p><b>Nigel D. Meakin</b> Tel: (416) 649-8065 Fax: (416) 649-8101 Email: <a href="mailto:nigel.meakin@fticonsulting.com">nigel.meakin@fticonsulting.com</a></p> <p><b>Toni Vanderlaan</b> Tel: (416) 649-8075 Email: <a href="mailto:toni.vanderlaan@fticonsulting.com">toni.vanderlaan@fticonsulting.com</a></p>
<p><b>OSLER, HOSKIN &amp; HARCOURT LLP</b> First Canadian Place 100 King Street West, Suite 6100 Toronto, ON M5X 1B8</p> <p><b>Lawyers for the Monitor</b></p>	<p><b>Marc Wasserman</b> Tel: (416) 862-4908 Fax: (416) 862-6666 Email: <a href="mailto:mwasserman@osler.com">mwasserman@osler.com</a></p> <p><b>Jeremy Dacks</b> Tel: (416) 862-4923 Email: <a href="mailto:jdacks@osler.com">jdacks@osler.com</a></p>
<p><b>YUM! RESTAURANTS INTERNATIONAL (CANADA) COMPANY</b> 101 Exchange Avenue Vaughan, ON L4K 5R6</p>	<p><b>Sabir Sami</b> Email: <a href="mailto:sabir.sami@yum.com">sabir.sami@yum.com</a></p>

<p><b>WOOLGAR, VANWIECHEN, KETCHESON &amp; DUCOFFE LLP</b>  Barristers and Solicitors  70 The Esplanade, Suite 401  Toronto, ON M5E 1R2</p> <p><b>Lawyers for Yum! Restaurants International (Canada) Company</b></p>	<p><b>Christopher Cosgriffe</b>  Tel: (416) 867-9036  Fax: (416) 867-1434  Email: <a href="mailto:ccosgriffe@woolvan.com">ccosgriffe@woolvan.com</a></p>
<p><b>PRUDENTIAL INVESTMENT MANAGEMENT INC.</b>  100 Mulberry Street  Newark, NJ 07102</p>	<p><b>Paul Procyk</b>  Tel: (973) 802-8107  Fax: (888) 889-3832  Email: <a href="mailto:paul.procyk@prudential.com">paul.procyk@prudential.com</a></p>
<p><b>BINGHAM MCCUTCHEN LLP</b>  One State Street  Hartford, CT 06103-3178</p> <p><b>Lawyers for Prudential Investment Management Inc.</b></p>	<p><b>Scott Falk</b>  Tel: (860) 240-2763  Fax: (860) 240-2587  Email: <a href="mailto:scott.falk@bingham.com">scott.falk@bingham.com</a></p>
<p><b>RSM RICHTER</b>  200 King Street West, Suite 1100  Toronto, ON M5H 3T4</p> <p><b>Receiver</b></p>	<p><b>Robert Kofman</b>  Tel: (416) 932-6228  Fax: (416) 932-6200  Email: <a href="mailto:bkofman@rsmrichter.com">bkofman@rsmrichter.com</a></p>

<p><b>BLAKE, CASSELS &amp; GRAYDON LLP</b>  2800 Commerce Court West  199 Bay Street  Toronto, ON M5L 1A9</p> <p><b>Lawyers for the Former Independent Trustees  and Directors of the Applicants</b></p>	<p><b>Susan Grundy</b>  Tel: (416) 863-2572  Fax: (416) 863-2653  Email: <a href="mailto:susan.grundy@blakes.com">susan.grundy@blakes.com</a></p> <p><b>Pamela Huff</b>  Tel: (416) 863-2958  Email: <a href="mailto:pamela.huff@blakes.com">pamela.huff@blakes.com</a></p> <p><b>David Toswell</b>  Tel: (416) 863-4246  Email: <a href="mailto:david.toswell@blakes.com">david.toswell@blakes.com</a></p>
<p><b>MINDEN GROSS LLP</b>  145 King Street West, Suite 2200  Toronto, ON M5H 4G2</p> <p><b>Lawyers for Officers</b></p>	<p><b>David T. Ullmann</b>  Tel: (416) 369-4148  Fax: (416) 864-9223  Email: <a href="mailto:dullmann@mindengross.com">dullmann@mindengross.com</a></p>
<p><b>BENNETT JONES LLP</b>  3400 One First Canadian Place  P.O. Box 130  Toronto, ON M5X 1A4</p> <p><b>Conflict Lawyers for Respondents</b></p>	<p><b>Mark Laugesen</b>  Tel: (416) 777-4802  Fax: (416) 863-1716  Email: <a href="mailto:laugesenm@bennettjones.com">laugesenm@bennettjones.com</a></p> <p><b>Gavin Finlayson</b>  Tel: (416) 777-5762  Email: <a href="mailto:finlaysong@bennettjones.com">finlaysong@bennettjones.com</a></p>
<p><b>AIRD &amp; BERLIS LLP</b>  Brookfield Place, 181 Bay Street  Suite 1800, Box 754  Toronto, ON M5J 2T9</p> <p><b>Lawyers for Scott's Real Estate Investment Trust,  SR Operating Trust, Scott's Real Estate Limited  Partnership, Scott's Trustee Corp. and Scott's GP  Trust</b></p>	<p><b>Steven L. Graff</b>  Tel: (416) 865-7726  Fax: (416) 863-1515  Email: <a href="mailto:sgraff@airdberlis.com">sgraff@airdberlis.com</a></p> <p><b>Ian Aversa</b>  Tel: (416) 865-3082  Email: <a href="mailto:iaversa@airdberlis.com">iaversa@airdberlis.com</a></p>

<p><b>DEPARTMENT OF JUSTICE</b>  <b>ONTARIO REGIONAL OFFICE</b>  The Exchange Tower  130 King Street West  Suite 3400, Box 36  Toronto, ON M5X 1K6</p> <p><b>Attorney General of Canada</b></p>	<p><b>Diane Winters</b>  Tel: (416) 973-3172  Fax: (416) 973-0809  Email: <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a></p>
<p><b>MCCARTHY TÉTRAULT LLP</b>  1000 De La Gauchetière Street West  Bureau 2500  Montréal, QC H3B 0A2</p> <p>Toronto Dominion Bank Tower  66 Wellington Street West, Suite 5300  Toronto, ON M5K 1E6</p> <p><b>Lawyers for Olymel</b></p>	<p><b>Alain Tardif</b>  Tel: (514) 397-4274  Fax: (514) 875-6246  Email: <a href="mailto:atardif@mccarthy.ca">atardif@mccarthy.ca</a></p> <p><b>Kevin McElcheran</b>  Tel: (416) 601-7730  Fax: (416) 868-0673  Email: <a href="mailto:kmcelcheran@mccarthy.ca">kmcelcheran@mccarthy.ca</a></p>
<p><b>MCCARTHY TÉTRAULT LLP</b>  Toronto Dominion Bank Tower  66 Wellington Street West, Suite 5300  Toronto, ON M5K 1E6</p> <p><b>Lawyers for Pepsi-Cola Canada Ltd.</b></p>	<p><b>F. Paul Morrison</b>  Tel: (416) 601-7887  Fax: (416) 868-0673  Email: <a href="mailto:pmorriso@mccarthy.ca">pmorriso@mccarthy.ca</a></p> <p><b>Heather L. Meredith</b>  Tel: (416) 601-8342  Email: <a href="mailto:hmeredith@mccarthy.ca">hmeredith@mccarthy.ca</a></p>
<p><b>LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP</b>  130 Adelaide Street West, Suite 2600  Toronto, ON M5H 3P5</p> <p><b>Lawyers for Sysco Canada</b></p>	<p><b>Peter Osborne</b>  Tel: (416) 865-3094  Fax: (416) 865-9010  Email: <a href="mailto:posborne@litigate.com">posborne@litigate.com</a></p>



<p><b>TORYS LLP</b> 79 Wellington Street West TD Centre, Suite 3000 Toronto, ON M5K 1N2</p> <p><b>Lawyers for The Cadillac Fairview Corporation Limited</b></p>	<p><b>David Bish</b> Tel: (416) 865-7353 Fax: (416) 865-7380 Email: <a href="mailto:dbish@torys.com">dbish@torys.com</a></p>
<p><b>CAW-CANADA</b> 205 Placer Court Toronto, ON M2H 3H9</p> <p><b>Lawyers for National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)</b></p>	<p><b>Barry E. Wadsworth</b> Tel: (416) 495-3776 Fax: (416) 495-3786 Email: <a href="mailto:barry.wadsworth@caw.ca">barry.wadsworth@caw.ca</a></p>
<p><b>GARDINER ROBERTS LLP</b> Scotia Plaza 40 King St. West, Suite 3100 Toronto, ON M5H 3Y2</p> <p><b>Lawyers for Soul Restaurants Canada Inc.</b></p>	<p><b>Jonathan Wigley</b> Tel: (416) 865-6655 Fax: (416) 865-6636 Email: <a href="mailto:jwigley@gardiner-roberts.com">jwigley@gardiner-roberts.com</a></p> <p><b>Arlene O'Neill</b> Tel: (416) 865-6640 Email: <a href="mailto:aoneill@gardiner-roberts.com">aoneill@gardiner-roberts.com</a></p>
<p><b>MILLER THOMSON LLP</b> Scotia Plaza 40 King St. West, Suite 5800 Toronto, ON M5H 3S1</p> <p><b>Lawyers for Metro-Richelieu Inc.</b></p>	<p><b>Arthi Sambasivan</b> Tel: (416) 595-8636 Fax: (416) 595-8695 Email: <a href="mailto:asambasivan@millerthomson.com">asambasivan@millerthomson.com</a></p>
<p><b>DAOUST VUKOVICH LLP</b> 20 Queen Street West, Suite 3000 Toronto, ON M5H 3R3</p> <p><b>Lawyers for Canadian Property Holdings Inc.</b></p>	<p><b>Gasper Galati</b> Tel: (416) 598-7050 Fax: (416) 597-8897 Email: <a href="mailto:ggalati@dv-law.com">ggalati@dv-law.com</a></p> <p><b>Ken Pimentel</b> Tel: (416) 597-9306 Email: <a href="mailto:kpimentel@dv-law.com">kpimentel@dv-law.com</a></p>

<p><b>MCLEAN &amp; KERR LLP</b>  130 Adelaide Street West, Suite 2800  Toronto, ON M5H 3P5</p> <p><b>Lawyers for 20 VIC Management Inc.; Ivanhoe Cambridge Inc.; Morguard Investments Limited; Retrocom Mid-Market REIT; Primaris Retail Real Estate Investment Trust; Oxford Properties Group Inc.</b></p>	<p><b>Walter Stevenson</b>  Tel: (416) 369-6602  Fax: (416) 366-8571  Email: <a href="mailto:wstevenson@mcleankerr.com">wstevenson@mcleankerr.com</a></p> <p><b>Linda Galessiere</b>  Tel: (416) 369-6609  Email: <a href="mailto:lgalessiere@mcleankerr.com">lgalessiere@mcleankerr.com</a></p>
<p><b>SUNRISE POULTRY PROCESSORS LTD.</b>  13542 73-A Avenue  Surrey, B.C. V3W 1C9</p>	<p><b>Scott Cummings</b>  Tel: (604) 596-9505  Fax: (604) 596-6966  Email: <a href="mailto:scummings@sunrisepoultry.bc.ca">scummings@sunrisepoultry.bc.ca</a></p> <p><b>Doreen Kerr</b>  Tel: (604) 596-9505 ext. 3314  Email: <a href="mailto:dkerr@sunrisepoultry.bc.ca">dkerr@sunrisepoultry.bc.ca</a></p>
<p><b>CALLOWAY REIT</b>  700 Applewood Crescent  Vaughan, ON L4K 5X3</p>	<p><b>Tia Squeo</b>  Tel: (905) 326-6400 ext. 7750  Fax: (905) 760-6206  Email: <a href="mailto:tsqueo@callowayreit.com">tsqueo@callowayreit.com</a></p>
<p><b>SMARTCENTRES MANAGEMENT INC.</b>  700 Applewood Crescent  Vaughan, ON L4K 5X3</p> <p><b>Agent for Calloway REIT</b></p>	<p><b>Jeffrey A. Winick</b>  Tel: (905) 760-6200 ext. 7665  Fax: (905) 760-6220  Email: <a href="mailto:jwinick@smartcentres.com">jwinick@smartcentres.com</a></p>
<p><b>FRASER MILNER CASGRAIN LLP</b></p> <p>Toronto-Dominion Centre  77 King St. West, Suite 400  Toronto, ON  M5K 0A1</p> <p><b>Counsel for the Bank of Montreal</b></p>	<p><b>Laurence Geringer</b>  Tel: (416) 863-4684  Fax: (416) 863-4592  Email: <a href="mailto:laurence.geringer@fmc-law.com">laurence.geringer@fmc-law.com</a></p> <p><b>Ross Walker</b>  Tel: (416) 863-4742  Email: <a href="mailto:ross.walker@fmc-law.com">ross.walker@fmc-law.com</a></p>

### APPLICATION

1. The Applicants make an application for:
  - (a) Leave to bring this application, if necessary;
  - (b) An Order appointing RSM Richter Inc. (the “Receiver”) of the assets and property of the Respondents; and
  - (c) Such further relief as may be required in the circumstances and this Honourable Court deems just and equitable.
  
2. The grounds for the Application are:
  - (a) The Applicants are secured creditors of the Respondents.
  - (b) It is just and convenient that a receiver be appointed over the assets and property of the Respondents.
  - (c) The Receiver has consented to be appointed as receiver of the assets and property of the Respondents.
  - (d) The Respondents do not oppose the appointment of the Receiver.
  - (e) Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and the *General Rules under the Bankruptcy and Insolvency Act*, C.R.C. 1978, c. 368.
  
3. The following documentary evidence will be used at the hearing of the application:
  - (a) Affidavit of Paul Procyk; and
  - (b) Such material as counsel may advise and this Honourable Court permit.

Date: 8 September 2010

**GOWLING LAFLEUR HENDERSON LLP**

Barristers and Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

Toronto ON M5X 1G5

**E. Patrick Shea** (LSUC No.: 39655K)

Tel: (416) 369-7399

Fax: (416) 862-7661

Solicitors for the Applicants

Court File No.: CV-11-9375-00CL.

BETWEEN:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA ET AL  
Applicants

and

PRISZM INCOME FUND ET AL  
Respondents

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**  
(Commercial List)

(PROCEEDING COMMENCED AT TORONTO)

**NOTICE OF APPLICATION**

**GOWLING LAFLEUR HENDERSON LLP**  
Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

**E. Patrick Shea**  
LSUC No.: 39655K  
Telephone: (416) 369-7399  
Facsimile: (416) 862-7661

SOLICITORS FOR THE APPLICANTS

TAB 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

BETWEEN:

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, PRUCO LIFE  
INSURANCE COMPANY AND PRUDENTIAL RETIREMENT INSURANCE AND  
ANNUITY COMPANY**

Applicants

- and -

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

Respondents

**APPLICATION** pursuant to s. 243(1) of the *Bankruptcy and Insolvency  
Act*, R.S.C. 1985, c. B-3

**AFFIDAVIT OF PAUL PROCYK  
(sworn 9 September 2011)**

I, **PAUL PROCYK**, with an office in the City of Newark, in the State of New Jersey,  
one of the United States of America, **MAKE OATH AND SAY:**

**I. Introduction**

1. I am Vice-President of Prudential Investment Management, Inc. and am the primary individual responsible for the management of the Applicants' secured loan to the Respondents. I have personal knowledge of the matters deposed in this affidavit except where I refer to matters based on information provided to me by others. Where I refer to matters based on information provided by others, I identify the source of the information and verily believe it to be true.

2. Produced and shown to me are: (a) a volume entitled "Brief of Orders and Endorsements", which includes all of the Orders and Endorsements made in the CCAA proceedings up to 6 September 2011; and (b) a volume entitled "Brief of Affidavits and Reports", which includes all of the reports filed by the Monitor, as defined below, and affidavits delivered by Prizm in the CCAA proceedings up to 8 September 2011.

3. This affidavit is sworn in support of an application by seeking an Order appointing RSM Richter Inc. (the "Receiver") as receiver of the assets and property of the Respondents (the "Prizm Entities") pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA").

4. The role of the Receiver will be to oversee the business and affairs of the Prizm Entities, and locate and complete one or more transactions to sell the Prizm Entities' remaining assets and business. The day-to-day business of the Prizm Entities will continue to be managed by the Chief Restructuring Officer retained by the Prizm Entities (the "CRO") and appointed pursuant to the Order dated 29 June 2011, which is described further below, but the CRO will report to and take direction from the Receiver.

5. On 31 March 2011, an Initial Order was made under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") in respect of the Respondents and an Initial Order was made on 29 April 2011 (together, the "Initial Order").

6. FTI Consulting Canada Inc. (the "Monitor") was appointed as monitor. The materials with respect to the CCAA proceedings are located at <http://cfcanada.fticonsulting.com/prizm>.

7. The proceedings under the CCAA were initiated in order to permit the Prizm Entities to engage in a process to find and complete going-concern transactions to sell their assets and business. While the CCAA proceedings have resulted in transactions being completed to sell a significant portion of the Prizm Entities' assets and business, the process engaged by the Prizm Entities has not resulted in sales transactions for all of the Prizm Entities' assets and business.

8. As described further below, it has become apparent that it is unlikely that there will be



sufficient proceeds from the sale of the Prizm Entities' assets and business to satisfy the obligations owing to secured creditors.

9. The Applicants feel that it is appropriate, in the circumstances, that the CCAA proceedings be terminated and that a receiver be appointed to oversee the management of the Prizm Entities' remaining business. The primary role of the Receiver, aside from overseeing the day-to-day management of the Prizm Entities, will be to negotiate and complete sale transactions for the Prizm Entities' remaining assets and business. As mentioned above, it is not intended that the Receiver will take possession of the Prizm Entities assets or operate the Prizm Entities' business (other than controlling cash), but will supervise and provide direction to the CRO, who will continue to be responsible for directing the day-to-day operations of the Prizm Entities.

**II. Secured Notes**

10. As set forth in the affidavit of Deborah Papernick sworn 30 March 2011:

- (a) pursuant to a Note Purchase and Private Shelf Agreement dated 12 January 2006 (the "**Note Purchase Agreement**"), KIT Finance Inc. issued and sold (a) US\$73,596,400 in aggregate principal amount of its 6.795% Series A Senior Secured Guaranteed Notes, and (b) US\$2,036,700 of its Shelf Notes (together, the "**Secured Notes**") to The Prudential Insurance Company of America, Pruco Life Insurance Company and Prudential Retirement Insurance and Annuity Company (together, the "**Secured Note-holders**");
- (b) the Note Purchase Agreement has been amended by a number of amending agreements;
- (c) the obligations owing under the Secured Notes are guaranteed by and secured by substantially all of the assets of Prizm Fund, Prizm Trust and Prizm LP; and

(d) there have been payment defaults under the Secured Notes.

11. A chart showing the security given to secure the obligations owing under the Secured Notes is attached as **Exhibit "A"**.

12. The Secured Note-holders are the only holders of the Secured Notes. The security for the Secured Notes is held by Computershare Trust Company of Canada as trustee for the Secured Note-holders.

13. On or around 19 January 2011, Priszm LP, Priszm GP and Kit Finance, the Secured Note-holders and Prudential Investment Management Inc. entered into a forbearance agreement whereby the Secured Note-holders agreed to temporarily suspend any action on account of the existing defaults under the Secured Notes and forbear from exercising their remedies until 31 January 2011. Subsequently: (a) on or around 1 February 2011, a second forbearance agreement was concluded that extended the Secured Note-holders obligation to forbear; (b) on or around 31 March 2011 the February Forbearance was amended and restated and extended to 20 May 2011; and (c) on or around 28 June 2011, the forbearance was extended to 30 September 2011 (foregoing is referred to as the "**Forbearance**").

14. As described in the Monitor's Third Report dated 24 June 2011 (the "**Third Report**"), the Monitor obtained an opinion from Osler, Hoskin & Harcourt LLP with respect to the security granted to secure the Secured Notes.

15. As described in the Papernick 30 March Affidavit, the Priszm entities are also in default of, among other things, interest payment obligations in respect to its subordinated debentures and under its franchise agreement with Yum!.

**III. Priszm Entities**

16. Priszm LP is a franchisee of Yum! Restaurants International (Canada) LP ("**Yum!**"). At the time of the Initial Order, Priszm LP was the largest operator of the KFC concept in Canada.

In addition, Prizm LP operates a number of multi-branded restaurants that combine a KFC restaurant with either a Taco Bell or a Pizza Hut restaurant.

17. The Prizm Entities' corporate structure and business is described in the affidavit of Deborah Papernick sworn 31 March 2011 and the Monitor's Pre-Filing Report dated 31 March 2011, both of which were filed in support of the Prizm Entities' initial application under the CCAA.

18. It is my understanding that all of the directors (and trustees) of the Prizm Entities resigned immediately prior to or immediately after the CCAA proceedings were commenced and to provide appropriate corporate governance, the Prizm Entities sought the appointment of a Chief Restructuring Officer (the "CRO") to manage their day-to-day business and operations and the Initial Order provided for the appointment of a CRO. Since the CCAA proceedings were commenced on 31 March 2011, a CRO has been responsible for management of the Prizm Entities' day-to-day business. As noted below, the CRO changed in June of 2011.

#### IV. Cash Management System

19. As described in Ms Papernick's affidavit sworn 31 March 2011:
- (a) the Prizm Entities use a centralized cash management system (the "**Cash Management System**") to, among other things, collect funds and pay expenses associated with their operations;
  - (b) cash and credit card receipts from the retail stores are collected in local deposit accounts maintained at the Royal Bank of Canada ("**RBC**"), Canadian Imperial Bank of Commerce ("**CIBC**"), Toronto-Dominion Bank ("**TD**"), Bank of Nova Scotia ("**BNS**"), Bank of Montreal, and National Bank of Canada;
-

- (c) approximately 1-2 times (or as required) each week, funds from the local deposit accounts are swept into a collection account denominated in Canadian dollars (the “**Canadian Dollar Collection Account**”) maintained at RBC in the name of Prizm LP; and
  - (d) disbursements are made from the Canadian Dollar Collection Account as needed.
20. The Initial Order permitted the Prizm Entities to continue to utilize the Cash Management System.
21. The appointment of the Receiver is not intended to interrupt or interfere with the Cash Management System. The Receiver will supervise and direct the CRO, including approving all expenditures and monitoring the Prizm Entities’ cash flow, but the Cash Management System will continue to operate in the ordinary course.

#### **V. Sales of Assets and Business**

22. From the Secured Note-holders’ perspective, the CCAA proceeding in respect to the Prizm Entities was commenced on the premise that the Prizm Entities would: (a) complete a transaction to sell most of their restaurants in Ontario and British Columbia that had been substantially negotiated prior to the CCAA proceeding; and (b) engage in a sales process with a view to completing going-concern sales of their remaining assets and business with a view to maximizing the value for the benefit of all stakeholders. The Secured Note-holders were prepared to forbear on enforcing the Secured Note to permit the Prizm Entities with an opportunity to attempt to locate going concern purchasers for their assets and business

**VI. Soul Transaction**

23. Pursuant to an Order dated 30 May 2011 (the “**Soul Approval and Vesting Order**”), the Court approved an Amended and Restated Asset Purchase Agreement (the “**Soul Agreement**”) between the Prizm Entities and Soul Restaurants Canada Inc. (“**Soul**”) pursuant to which Soul would acquire substantially all of the Prizm Entities’ restaurants in Ontario and British Columbia (the “**Soul Transaction**”) and vested the Purchased Assets (as defined in the Soul Agreement) in Soul.

24. The background leading up to the Soul Transactions and the details of the Soul Transaction are described in the affidavit of Deborah Papernick sworn 24 May 2011 and the Monitor’s Second Report dated 26 May 2011.

25. As set forth in the Monitor’s Third Report dated 24 June 2011, the Soul Transaction closed on 1 June 2011.

26. One of the issues that had to be addressed in the Soul Transaction was the assignment of the leases for the restaurants being purchased by Soul.

27. It was a term of the Soul Transaction that where the assignment of any lease for a restaurant included in the transaction was not obtained at the time of closing, the Prizm Entities would be obligated to, among other things, hold the lease in trust for Soul for up to six months. During that six month period the Prizm Entities are required to continue to use commercially reasonable efforts to obtain the assignment of the lease. The Soul Transaction provides for an adjustment of the purchase price in the event that the Prizm Entities are unable to secure the assignment of leases for restaurants.

28. The Court, as part of the Soul Approval and Vesting Order, approved the Occupation Agreement (the “**Occupation Agreement**”) pursuant to which the Prizm Entities granted to Soul a license to occupy each of the restaurants for which a landlord consent or an order assigning the lease has not been obtained. The Occupation Agreement is described more fully in Ms. Papernick’s affidavit sworn 24 May 2011.

29. As described in the Monitor's Second Report dated 26 May 2011, there is a dispute between Scott's Real Estate Investment Trust ("**SREIT**"), the landlord of 63 restaurants included in the Soul Transaction, and the Secured Note-holders with respect to: (a) whether any portion of the purchase price payable by Soul was for the transfer of assignment of leases; and, if so, (b) the relative priority of the landlords' claim and the security granted in respect of the Secured Notes.
30. SREIT, SR Operating Trust, Scott's Real Estate Limited Partnership, Scott's Trustee Corp. and Scott's GP Trust (together, "**Scott**") have brought a motion (the "**Scott Lease Motion**") in the CCAA proceedings seeking, *inter alia*:
- (a) a determination as to whether any (and if so), what portion of the consideration payable pursuant to the Soul Transaction constitutes consideration for the assignment or transfer of leases;
  - (b) an order that any consideration payable for the assignment or transfer of leases where Scott is the landlord be paid to Scott; and
  - (c) an order compelling the Prizm Entities to execute a specific form of lease assignment.
31. The assignment of the leases for the restaurants leased by SREIT and included in the Soul Transaction that require consent is being delayed while the issue with respect to the proceeds between SREIT and the Secured Note-Holders is resolved.
32. The Prizm Entities have brought a motion (the "**Prizm 11.3 Motion**") pursuant to s. 11.3 of the CCAA seeking to compel the assignment of leases, including leases with Scott. The motion was adjourned to a date to be fixed by the Prizm Entities on not less than 7 days' notice further to an Endorsement made on 30 May 2011.
33. The hearing of the Scott Lease Motion and the Prizm 11.3 Motion have not been scheduled.

34. The issues as to: (a) whether any (and if so, what portion) of the consideration payable pursuant to the Soul Transaction constitutes consideration for the assignment or transfer of leases; and (b) the relative priority of any claim that Scott has to consideration for the assignment or transfer of leases *vis-à-vis* the Secured Notes will likely have to be determined in the receivership proceedings.

35. Pursuant to the Soul Approval and Vesting Order, the proceeds from the Soul Transaction were paid to the Monitor. The Monitor was directed to pay certain of the proceeds to Yum! and to hold the remainder subject to further Order of the Court.

36. It is contemplated that the proceeds from the Soul Transaction being held by the Monitor will be transferred to the Receiver to be held by the Receiver on the same terms as they were being held by the Monitor. This will ensure that the funds can be applied to any required adjustments should the Prizm Entities not secure the assignment of the required leases or should SREIT establish an entitlement to the proceeds.

## VII. Sales Process for Remaining Assets and Business

37. The Forbearance included an agreement pursuant to which the Prizm Entities agreed to conduct a sales process for the restaurants remaining after the completion of the Soul Transaction (the "**Sales Process**").

38. As described in the affidavit of Deborah Papernick sworn 24 May 2011:

(a) on 10 February 2011, Prizm Fund retained Canaccord Genuity Corp. ("**Canaccord Genuity**") to act as financial advisor and sales agent in connection with this sales process.

(b) Pursuant to an Order dated 30 May 2011 the Court approved the Sales Process and the retainer of Canaccord Genuity to act as financial advisor and sales agent in connection with the sales process *nunc pro tunc*.

39. As described in the Monitor's Fourth Report dated 9 September 2011:
- (a) Canaccord Genuity, with input from the Prizm Entities, Yum! and the Monitor, identified and contacted 130 parties with respect to the opportunity to acquire the business and operations of the Prizm Entities.
  - (b) 90 parties requested and received the teaser and the non-disclosure agreement. 44 parties executed non-disclosure agreements and were provided access to the confidential data room.
  - (c) Initial expressions of interest were received for various groups of stores. Subsequently, 8 final proposals were received. All of these proposals were for various groups of stores based on geographic location. Proposals were received for all geographic markets in which the Prizm Entities continue to operate, though no single proposal covered all markets.
  - (d) There have been negotiations conducted with respect to the sale of the restaurants in Quebec, but no agreement has been reached.
  - (e) Parties continue to express interest in the possible acquisition of the Alberta and Manitoba restaurants.
40. The Sales Process resulted in sale transactions, which are described immediately below, to sell the Prizm Entities restaurants in Nova Scotia and New Brunswick.

### **VIII. FMI Transactions**

41. As described in the Monitor's Fourth Report dated 9 September 2011, the Prizm Entities have entered into agreements to sell 44 restaurants in Nova Scotia and New Brunswick (the "FMI Transactions") to FMI Atlantic Inc. ("FMI"). The details of the FMI Transactions are described in the Monitor's Fourth Report dated 9 September 2011.



42. As described in the Monitor’s Fourth Report 9 September 2011, the Prizm Entities will enter into an occupation agreement with FMI pursuant to which FMI will occupy and operate the restaurants for which leases are not assigned on closing.

43. The Prizm Entities will be seeking approval for the FMI Transactions on 14 September 2011, the same date as the return of the motion seeking to have the Receiver appointed.

44. It is contemplated that the proceeds from the FMI Transactions will be held by the Receiver pending further Order of the Court<sup>1</sup>.

**IX. Kipling Transaction**

45. As described in the Monitor’s Fourth Report dated 9 September 2011, the Prizm Entities have entered into a sale transaction (the “**Kipling Transaction**”) for the sale of the, equipment and signage of the restaurant located at 2032 Kipling Avenue, Etobicoke (the “**Kipling Store**”) – I understand that this is the Prism Entities’ only remaining restaurant in Ontario. The details of the Kipling Transaction are described in the Monitor’s Fourth Report dated 9 September 2011.

46. The Prizm Entities will be seeking approval for the Kipling Transaction on 14 September 2011, the same date as the return of the motion seeking to have the Receiver appointed.

**X. Sale of Redundant Assets**

---

<sup>1</sup> It is expected that the same issue with respect to the proceeds and whether any portion is payable in respect to the assignment or transfer of leases as arose in the Soul Transaction will arise in the FMI Transactions.

47. Pursuant to an Order dated 29 June 2011, the Court authorized the Priszm Entities, with the consent of the Monitor, to dispose of redundant or non-materials assets up to a value of \$100,000 to an aggregate of \$1 million.

48. Dispositions by the Priszm Entities of redundant and non-material assets pursuant to the Order dated 29 June 2011 are described in the Monitor's Fourth Report dated 9 September 2011.

**XI. Remaining Assets and Business**

49. Assuming that the FMI Transactions and the Kipling Transaction are completed, the Priszm Entities will be left with 44 restaurants in Alberta, 18 restaurants in Manitoba, 86 restaurants in Quebec, and miscellaneous redundant assets, including the Pelham Property.

50. The restaurants in Alberta and Manitoba have been marketed for sale as a package. While there have been expressions of interest in the Alberta and Manitoba restaurants, the Priszm Entities have been unable to negotiate an agreement to sell those restaurants.

51. There has also been some interest in the Quebec restaurants. One party has submitted an offer to purchase the restaurants in Quebec, but an agreement of purchase and sale has not yet been negotiated.

52. There have been a number of transactions negotiated by the Priszm Entities to sell surplus or redundant assets in accordance with the authority provided by the Order dated 29 June 2011. A number of these transactions have not been completed. The appointment of the Receiver will not interfere with the ability of the Priszm Entities to complete these transactions.

**XII. Appointment of Receiver**

53. As set forth in the Monitor's Fourth Report dated 9 September 2011: (a) it is clear from the proposals received and ongoing discussions with the interested parties with respect to the sale of the Prizm Entities remaining assets that overall realizations from the sale of the Prizm Entities' assets will be insufficient to repay the indebtedness to the Secured Note-holders; and (b) it is not expected that there will be any distribution to unsecured creditors other than as may be required to be made in order to obtain consents necessary for the completion of sale transactions.

54. Given that there will not be sufficient proceeds realized to discharge the Secured Notes, there does not appear to be any reason to continue the CCAA proceedings. The remaining objectives that were sought to be achieved by the Prizm Entities in the CCAA proceedings can be achieved through a receivership.

55. The Secured Note-holders engaged in discussions with the Prizm Entities and the Monitor with respect to the appointment of the Receiver. The Secured Note-holders believe that the appointment of the Receiver to negotiate and complete transactions for the Prizm Entities' remaining assets and administer a distribution process is just and convenient in the circumstances.

56. The Secured Note-holders believe that the appointment of the Receiver will result in certain efficiencies and that the Receiver will have a better chance of completing a transaction to sell the Prizm Entities remaining assets and businesses. I engaged in discussions with Yum! and the potential purchaser for the restaurants in Quebec and, based on those discussions, I believe that the Receiver will, with the assistance of the Secured Note-holders and Yum!, be able to advance the restaurants in Quebec as well as the restaurants in Alberta and Manitoba.

57. It is anticipated that the retainer of Canaccord Genuity will be continued and that Canaccord Genuity will be paid any fees or other amounts payable under its current arrangements with the Prizm Entities.

58. When the CCAA proceedings were commenced, the Secured Note-holders believed that there was some prospect that the proceeds from the sale of the Prizm Entities assets and business would be sufficient to discharge the Secured Notes. Based on the proceeds received by

the Prizm Entities in the transactions negotiated to date and the anticipated value of the Prizm Entities' remaining assets, it does not appear that there will be sufficient proceeds to discharge the Secured Notes.

### **XIII. Chief Restructuring Officer**

59. Ms. Papernick was appointed as CRO pursuant to the Initial Order, but, as described in Ms. Papernick's affidavit sworn 23 June 2011 and in Monitor's Third Report dated 24 June 2011, she delivered a notice of resignation as CRO effective 30 June 2011.

60. Pursuant to an Order dated 29 June 2011 the Court approved an agreement between 2289500 Ontario Inc. ("**228 Ontario**") and the Prizm Entities dated June 22, 2011 (the "**Robertson CRO Agreement**") pursuant to which Jim Robertson assumed the role of CRO of the Prizm Entities.

61. It is contemplated that Mr. Robertson will continue as CRO of the Prizm Entities and that the Robertson CRO Agreement will be amended to, among other things, extend the term of the agreement. The Order appointing the Receiver will, if granted in the form requested, affirm the appointment of the CRO and provide for necessary amendments to the Robertson CRO Agreement.

62. As described below, it is contemplated that there will be a charge granted to secure obligations owing to the CRO.

### **XIV. D&O Indemnity, Charge and Claims Process**

63. The Initial Order included a requirement that the Prizm Entities indemnify: (a) their directors and officers; and (b) the CRO against obligations and liabilities incurred by those persons in their capacities as officers and directors after 31 March 2011 (the "**D&O**

**Indemnity**"). The D&O Indemnity does not include obligations or liabilities incurred as a result of gross negligence and wilful misconduct.

64. The Initial Order provides for the D&O Indemnity to be secured by a charge over the property of the Prizm Entities (the "**D&O Charge**"). The D&O Charge ranks fourth in priority behind the Administration Charge, the Critical Supplier Charge and the DIP Charge.

65. Pursuant to an Order dated 29 June 2011 the Prizm Entities sought and obtained approval of a claims procedure (the "**D&O Claims Process**") to solicit claims against: (a) current and former directors and officers; and (b) the CRO's (the "**Directors & Officers**").

66. The D&O Claims Process, which was to be administered by the Monitor, contemplates the solicitation of two categories of claims:

- (a) claims against one or more of the Directors and Officers which arose on or before 30 June 2011 (the "**Initial D&O Claims**"); and
- (b) claims against one or more of the Directors and Officers which arose on or after June 30, 2011 (the "**Subsequent D&O Claims**").

67. With respect to the Initial D&O Claims, the D&O Claims Process provides that the Monitor publish notice requiring that persons asserting Initial D&O Claims submit their claims and Initial D&O Claims must be submitted, in accordance with the D&O Claims Process, by 15 September 2011 (the "**Initial Bar Date**").

68. With respect to the Subsequent D&O Claims, the D&O Claims Process contemplates that the Prizm Entities, in consultation with the Monitor, will establish a bar date applicable to those claims and will publish notice of that bar date and a request for claims in *The Globe & Mail* (National Edition) and *La Presse*.

69. As described in the Monitor's Third Report dated 24 June 2011, the D&O Claims Process contemplates that claims will be submitted electronically through a website maintained by the Monitor.

70. The D&O Claims process does not yet provide a procedure for the determination of the validity of claims against the Directors and Officers.

71. It is intended that the Receiver will take up and complete the D&O Claims Process.

72. With respect to Initial D&O Claims, the order being proposed would require that the Monitor provide the Receiver with hard copies of any Initial D&O Claims made by the Initial Bar Date.

73. With respect to the Subsequent D&O Claims, the Order appointing the Receiver will provide that the Receiver will: (a) establish the bar date for such claims (the "**Subsequent Bar Date**"); (b) provide for notice of the Subsequent Bar Date to be published in *The Globe & Mail* (National Edition) and *La Presse* at least 3 weeks in advance of the Subsequent Bar Date; and (c) provide for persons wishing to assert a Subsequent D&O Claims to contact the Receiver to obtain a claim form, which form must be submitted by the Subsequent Bar Date.

74. I believe that subsequent to the Subsequent Bar Date, the Receiver will report to the Court with respect to the claims being asserted Against the Directors and Officers and the Receiver's proposal with respect to a procedure to determine the validity of those claims.

## **XV. Employees**

75. The Order being requested will provide that the Prizm Entities' employees will continue to be employed by the Prizm Entities subsequent to the appointment of the Receiver until such time as their employment is terminated by the Prizm Entities.

76. The order being requested contemplates that the Prizm Entities will make all required payments of wages to their employees. The Prizm Entities' payroll is funded through the Canadian Dollar Collection Account and Ceridian Canada Ltd. is responsible for disbursing funds directly to the Prizm Entities' employees and making necessary statutory remittances. As described above, it is not contemplated that the appointment of the Receiver will impact the Cash

management System and the Order appointing the Receiver will, if granted, provide for the payment of all accrued, but unpaid, wages and vacation pay.

77. For the purpose of ensuring the retention of key personnel while the Prizm Entities attempted to refinance, restructure and sell the business, the Prizm Entities offered 41 key personnel retention bonuses (the "KERPs").

78. I believe that, with a limited number of exceptions, the amounts payable to the KERP participants who are members of senior management were to be paid upon the earlier of (a) the closing of one or more transactions pursuant to which all of the Prizm Entities' restaurants are sold, restructured and/or closed, and (b) August 31, 2011. The amounts payable to the KERP participants who are not members of senior management were to be paid upon the earlier of (a) the date on which they are informed in writing that their employment is no longer required by Prizm, and (b) 31 July 2011.

79. As security for their obligations under the KERPs, the Prizm Entities established trusts in favour of the KERP participants. The form of Order being requested provides for the payment of the KERP's and provides that the KERP's shall remain in full force and effect.

80. As noted in Ms. Papernick affidavit sworn 30 March 2011, 9 restaurants in Quebec employ approximately 140 employees who are covered by a collective bargaining agreement with Metallos Local 9400, which agreement expired on November 10, 2010<sup>2</sup>.

**XVI. Pension and Benefit Plans**

81. Based on the affidavit of Ms. Papernick sworn 31 March 2011, I understand that the Prizm Entities have pension and benefits plans for their employees.

---

<sup>2</sup> There was also a union representing the employees in British Columbia, but, as set forth above, the restaurants in British Columbia were sold to Soul.

## **XVII. Suppliers and Supply Chain**

82. As described in Ms. Papernick's affidavit sworn 30 March 2011:

- (a) UPGC, Inc. ("**UPGC**"), a not-for-profit cooperative owned by all KFC, Taco Bell and Pizza Hut franchisees in Canada operates as a central procurement service and manage all of the purchasing for the Canadian franchisees of the KFC, Taco Bell and Pizza Hut concepts in Canada, including Priszm LP. UPGC handles all negotiations with suppliers and distributors, but does not take title to goods, and the franchisee is financially obligated to pay for the ordered product.
- (b) The Priszm Entities' restaurants receive direct restaurant delivery from processors of fresh chicken. There are seven suppliers that provide chicken to the restaurants, with orders and deliveries occurring up to three times per week.
- (c) Other food and restaurant consumables (such as salads, beverages, bread products and branded packaging) are supplied by a total of thirteen suppliers. Orders and deliveries occur up to three times per week.
- (d) The Priszm Entities utilize the services of eight suppliers of waste disposal services and related cleaning services.
- (e) The Priszm Entities utilize the services of one primary pest control service for both regular maintenance as well as addressing specific pest issues as they arise.
- (f) Priszm Entities utilize various information technology services in the operation of their stores, processing customer payments and for accounting and reporting purposes.

83. The Initial Order provides for certain of the Priszm Entities' suppliers to be designated as "critical" (the "**Critical Suppliers**"). Critical Suppliers were required to supply goods and

---



services to the Prizm Entities on terms. The Initial Order granted a charge (the “**Critical Supplier Charge**”) to the Critical Suppliers equal to the value of the goods and services supplied after the 31 March 2011. The Critical Supplier Charge ranked second behind the Administration Charge and in priority to the Franchisor Charge, the DIP Charge and the D&O Charge.

84. It is my understanding that a number of suppliers who were not designated as Critical Suppliers supplied goods and services to the Prizm Entities subsequent to 31 March 2011 on credit. While these suppliers are not currently beneficiaries of the Critical Suppliers Charge, it is anticipated that obligations owing to these suppliers will be paid by the Prizm Entities in the ordinary course subsequent to the appointment of the Receiver.

85. It is intended that the Critical Supplier Charge will continue to attach to the assets and property of the Prizm Entities and will be expanded to include any amounts owing to suppliers to the Prizm Entities or the Receiver for goods and services supplied subsequent to 31 March 2011. The order being requested also contemplates that suppliers who supplied to the Prizm Entities during the pendency of the CCAA proceedings will be paid as and when required.

#### **XVIII. DIP Facility and funding of the Receiver**

86. The Initial Order approved financing (the “**DIP Facility**”) to be provided to the Prizm Entities by the Secured Note-holders and granted a charge (the “**DIP Charge**”) in favour of the Secured Note-holders to secure any amounts advanced to the Prizm Entities under the DIP Facility. There have been no draws on the DIP Facility and the DIP Facility will be terminated. The DIP Facility is described in the affidavits of Ms Papernick sworn 31 March 2011 and 23 June 2011, and the Monitor’s Pre-Filing Report dated 31 March 2011, Second Report dated 26 May 2011 and Third Report dated 24 June 2011.

87. To ensure that the Prizm Entities and the Receiver have, if necessary, access to any required financing, the Order appointing the Receiver will permit the Receiver to borrow up to \$3 million and issue certificates (the “**Receiver Certificates**”) in respect of any amounts borrowed. The Receiver Certificates will be secured by a charge on the Prizm Entities assets

and property (the “**Receiver’s Borrowing Charge**”) and the Certificate Charge will have the same priority previously provided to the DIP Charge.

**IX. Court-Ordered Charges**

88. The Initial Order created the following charges (the “**CCAA Charges**”) with the following priority:

- First – Administration Charge (to a maximum of \$1.5 million);
- Second – Critical Supplier Charge;
- Third – Franchisor Charge;
- Fourth – DIP Charge; and
- Fifth – Directors’ Charge.

89. The CCAA Charges are described in the Ms. Papernick’s affidavit sworn 30 March 2011, the Monitor’s Pre-Filing Report dated 31 March 2011, Ms Papernick’s affidavit sworn 21 April 2011 and the Monitor’s Second Report dated 26 April 2011. It is contemplated that all of the CCAA Charges, with the exception of the Administration Charge and the DIP Charge, will continue to attach to the Prizm Entities property subsequent to the appointment of the Receiver.

90. The Order appointing the Receiver will provide for a charge in favour of the Receiver to secure the Receiver’s professional fees and expenses, including the fees and disbursements of any counsel retained by the receiver, (the “**Receiver’s Charge**”).

91. The Order appointing the Receiver will also provide for a charge (the “**CRO’s Charge**”) in favour of the CRO to secure the amounts payable to the CRO. The CRO’s Charge will rank *pari pasu* with the Receiver’s Charge.

92. The Receiver’s Charge and the CRO’s Charge will, effectively, take the place of the Administration Charge.

93. As set forth above, the Order appointing the Receiver will permit the Receiver to issue the Receiver Certificates and the Receiver Certificates will be secured by the Receiver's Borrowing Charge, which charge will have the same priority previously provided to the DIP Charge.

94. The priority of the charges that attach to the Prizm Entities' assets and property subsequent to the appointment of the Receiver will be:

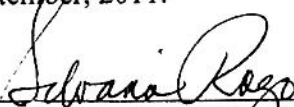
- First – Receiver's Charge/CRO's Charge;
- Second – Critical Supplier Charge;
- Third – Franchisor Charge;
- Fourth – Receiver's Borrowing Charge; and
- Fifth – Directors' Charge.

**X. Termination of CCAA Proceedings, Discharge of Monitor, etc.**

95. The CCAA proceedings in respect of the Prizm Entities will be terminated and the Monitor will be applying to be discharged.

96. An Order is being sought with respect to certain matter relating to the transition from the CCAA proceedings to the receivership.

SWORN BEFORE ME at the City of Newark the State of New Jersey, on of the United States of America, on 9 September, 2011.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

**SILVANA RAGO**  
**NOTARY PUBLIC NEW JERSEY**  
**Commission Expires 4/26/2015**

  
\_\_\_\_\_  
**PAUL PROCYK**

This is **Exhibit "A"** to the affidavit of **Paul Procyk** sworn on  
this 9<sup>th</sup> day of September, 2011.

*Silvana Rago*

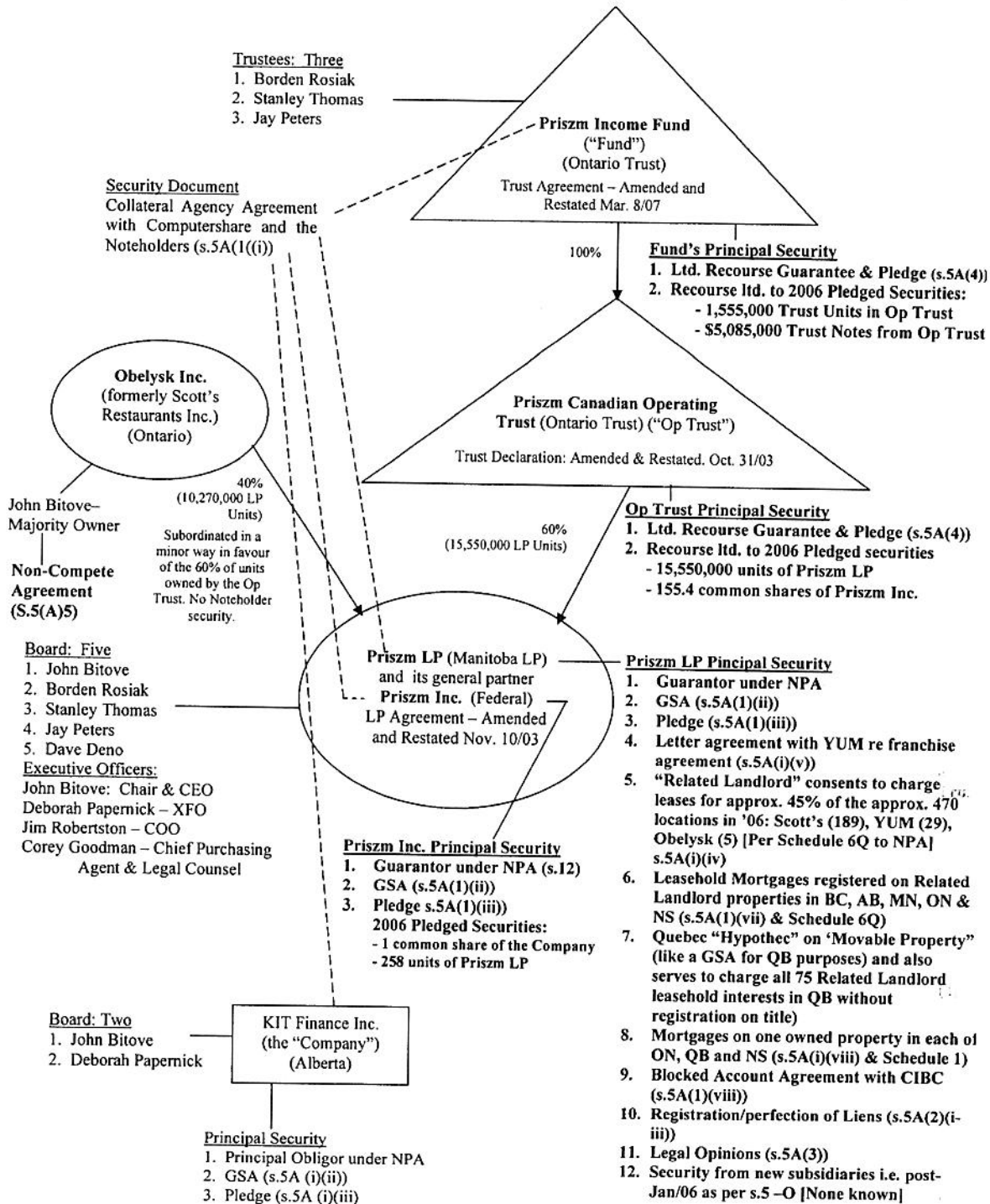
A commissioner for taking affidavits, etc.

**SILVANA RAGO**  
**NOTARY PUBLIC NEW JERSEY**  
**Commission Expires 4/26/2015**

**PRISZM SECURITY IN FAVOUR OF NOTEHOLDERS**

**OVERVIEW ILLUSTRATION OF: (1) PRINCIPAL SECURITY FOR PRUDENTIAL NOTEHOLDERS (HELD THROUGH THEIR COLLATERAL AGENT COMPUTERSHARE) FROM THE PRISZM ENTITIES, COMBINED WITH (2) CORP. INFORMATION FROM PRISZM INCOME FUND'S ANNUAL INFORMATION FORM FILED MARCH 2009, WITH (3) INFORMATION ON DIRECTORS/TRUSTEES FROM RECENT PUBLIC SEARCHES**

[Note: Overview only. Some additional details in Schedule "A" attached. See documents for full details: Note: References to Sections ("s.") are to the January 12/06 Note Purchase Agreement, unless otherwise specified]



SCHEDULE "A"		
BRIEF OUTLINE OF PRINCIPAL ASPECTS OF CERTAIN KEY SECURITY DOCUMENTS		
AGREEMENT	PARTIES	PRINCIPAL ASPECTS
YUM Agreement Letter	- YUM! Brands	The Franchisor agrees not to terminate the Franchise Agreement without giving the Collateral Agent notice and a chance to remedy: - 15 days for a payment default, and - 45 days (or potentially less) for a non-payment default (s. 3 & 4)). Under s. 5.1, if an insolvency proceeding occurs or the Noteholders Collateral Agent enforces security, the Franchisor agrees not to terminate the Franchise Agreement for 6 months. However, this is conditional on the payment to the Franchisor of "all Continuing Fees, Advertising Contributions etc. owing" under the Franchise Agreement. (s. 5.1). "Sale Events" initiated by the Collateral Agent (s. 5.2 to 5.4), are subject to the terms of the Franchise Agreement, including the Franchisor's right of first refusal, approval right re the purchaser and the right to collect Transfer Fees under the Franchise Agreement.
Guarantees	- Prizm LP - Prizm Inc.	Full and absolute guarantees. Prizm LP as sole operating entity has the sole assets with "market value" of which we are aware.
GSA's – General Security Agreements & Quebec Hypothec on "Movable" Property	- KIT Finance Inc. - Prizm LP - Prizm Inc.	Charges all personal property of each party in a customary way. Prizm LP as operating entity is the only one with any significant assets with "market value" of which we are aware.
Pledges	- KIT Finance Inc. - Prizm LP - Prizm Inc.	Pledges all equity and ownership interests and proceeds thereof: 1. Prizm ownership of sole common share in KIT Finance Inc. 2. Prizm Inc. nominal "general partner interest" in Prizm LP 3. KIT Finance Inc.: Not aware of any interests owned by it.
Ltd. Recourse Guarantees & Pledge	- Prizm Income Trust (the "Fund") - Prizm Canadian Operating Trust ("Op Trust")	Recourse is limited to ownership and debt securities held between the Prizm entities (which are the principal assets for these holding entities), these being: 1. The Fund's holdings in the Op Trust, as listed in the schematic 2. the Op Trust's holdings in the Prizm LP and Prizm Inc., as listed in the schematic
Leasehold Mortgages re Approx. 220 locations of "Related Landlords" (Scott's (189), YUM (29) Obelysk(5), including charges of their Quebec leases via the Quebec Hypothec)		Gives Collateral Agent the right to go into possession of premises and to operate premises, subject to honouring lease obligations.
Bitove Non-Competition Agreement	- John Bitove	John Bitove's agreement not to compete as a direct or indirect owner, manager or otherwise, of any other fast-food restaurant business, in Canada, while any of the Noteholders' Notes are outstanding.

TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

BETWEEN:

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, PRUCO LIFE  
INSURANCE COMPANY AND PRUDENTIAL RETIREMENT INSURANCE AND  
ANNUITY COMPANY**

Applicants

- and -

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

Respondents

**APPLICATION** pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3

**ORDER**

**THIS APPLICATION** made by the Applicants for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) appointing RSM Richter Inc. (“**RSM Richter**”) as receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondents (together, the “**Priszm Entities**” or the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Paul Procyk sworn September 9, 2011 (the “**Procyk Affidavit**”) and the exhibits thereto and the Fourth Report of FTI Consulting Canada Inc., in its capacity as Court-appointed monitor of the Priszm Income Fund, Priszm Canadian Operating



Trust, Prizm Inc. and Kit Finance Inc. dated September 9, 2011, and on hearing the submissions of counsel for [Parties] and on reading the consent of RSM Richter to act,

## **SERVICE**

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

## **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA, RSM Richter is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

3. **THIS COURT ORDERS** that this Order and the appointment of the Receiver set out herein shall become effective at 12:01 a.m. on the business day after the filing of a certificate by RSM Richter certifying that the certificates contemplated by and appended to the Approval and Vesting Orders granted by the Court on September 14, 2011 (the "**FMI Approval and Vesting Orders**"), in respect of the two asset purchase agreements with FMI Atlantic Inc., as purchaser ("**FMI Atlantic**"), and FMI Ontario Inc., as guarantor ("**FMI Ontario**"), and collectively with FMI Atlantic, "**FMI**"), dated July 29, 2011 and August 23, 2011 (the "**FMI Agreements**"), respectively, have been filed with the Court.

## **RECEIVER'S POWERS**

4. **THIS COURT ORDERS** that the Receiver shall not, without further order of the Court, be required to take possession of any of the Property.

5. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each case: (i) notice under subsection 63(4) of the Ontario *Personal Property Security Act*, section 31 of the Ontario *Mortgages Act*, or any

D similar legislation in other provinces, shall not be required; and (ii) the *Bulk Sales Act* shall not apply.

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to negotiate and enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

6. **THIS COURT ORDERS** that the Receiver (whether in the name of the Receiver or in the name of and on behalf of the Debtor) and the Debtor shall take all steps that are necessary to complete, comply with or satisfy the obligations of the Debtor in connection with:

- (a) the amended and restated asset purchase agreement dated May 6, 2011 (the “**Soul Agreement**”) with Soul Restaurants Canada Inc. (“**Soul**”), as approved by the Court by Order dated May 30, 2011 (the “**Soul Approval and Vesting Order**”) in the proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) with a Court File No. CV-11-9159-00CL (the “**CCAA Proceeding**”), and all ancillary documents related thereto; and
- (b) the FMI Agreements, as approved by the FMI Approval and Vesting Orders, and all ancillary documents related thereto;

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

7. **THIS COURT ORDERS** that, subject to the Termination and Discharge Order made on September 14, 2011 in the CCAA Proceeding (the “**Termination and Discharge Order**”), (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

8. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to

make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph [8] or in paragraph [9] of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

10. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

T

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

11. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

12. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (a) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (b) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (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 THE RECEIVER**

13. **THIS COURT ORDERS** that 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 Debtor, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

14. **THIS COURT ORDERS** that all Persons having statutory or regulatory mandates for the supply of goods and/or services or oral or written agreements with the Debtor including without limitation, the Soul Agreement and the FMI Agreements, as well as all ancillary

documents relating to such agreements including all agreements to occupy premises entered into in conjunction with the Soul Agreement or the FMI Agreements, all computer software, communication and other data services, centralized banking services, the Cash Management System (as defined in the Amended and Restated Initial Order dated April 29, 2011 made in the CCAA Proceeding (the “**Amended and Restated Initial Order**”)), payroll services, insurance, transportation services, utility or other services to the Debtor shall comply with their obligations and make all payments to the Debtor or the Receiver as and when required, and 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 Receiver or the Debtor, and that the Receiver or the Debtor shall be entitled to the continued use of the Debtor’s current telephone numbers, facsimile numbers, internet addresses, domain names and Cash Management System, 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 Receiver or the Debtor in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

15. **THIS COURT ORDERS** that the all suppliers of goods and services to the Debtor shall be paid for goods and services actually supplied to the Debtor for the period beginning on March 31, 2011 and ending on the date the appointment of the Receiver becomes effective as such amounts fall due, unless such amounts are otherwise assumed by a purchaser of any Property on terms acceptable to the Receiver.

**RECEIVER TO HOLD FUNDS**

16. **THIS COURT ORDERS** that, subject to paragraph [31], all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”)



and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

## **EMPLOYEES**

17. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Debtor or the Receiver on the Debtor's behalf may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

18. **THIS COURT ORDERS** that all wages, salaries, vacation pay and expenses (which shall not include termination and/or severance pay) that are properly due or accruing to any employee or former employee of the Debtor up to the date that the appointment of the Receiver becomes effective shall be paid, unless such wages, salaries, vacation pay and expenses are otherwise assumed by a purchaser of any of the Property on terms satisfactory to the Receiver.

19. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "KERP") referred to in the Procyk Affidavit shall continue in full force and effect and that the Receiver is hereby authorized and directed to take all steps required to ensure the continuation of the KERP and the payment of amounts earned in accordance with the KERP where such amounts are due and payable to the KERP participants.

## **PIPEDA**

20. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete

one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

T

**LIMITATION ON THE RECEIVER'S LIABILITY**

22. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

**RECEIVER'S ACCOUNTS**

23. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person ("**Encumbrances**"), and shall have the priority set forth in paragraph [39].

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

**CHIEF RESTRUCTURING OFFICER**

25. **THIS COURT ORDERS** that 2289500 Ontario Inc. ("**228 Ontario**") shall continue as the Chief Restructuring Officer (the "**CRO**") of the Prizm Entities pursuant to the terms of the

agreement entered into between the Prizm Entities and 228 Ontario dated June 29, 2011 as amended by the letter agreement dated September [Date], 2011 (the “**Robertson CRO Agreement**”) and approved by the Court pursuant to an Order dated June 29, 2011 made in the CCAA Proceeding and the CRO shall, subject to this Order, continue to have the powers and obligations set out in the Robertson CRO Agreement.

26. **THIS COURT ORDERS** that the CRO be subject to the supervision and direction of the Receiver and shall report to the Receiver regarding all material issues relating to the Debtor’s business and affairs, including its receipts and disbursements, and the CRO and the Debtor shall not authorize or make any payments for good or services without the prior consent of the Receiver.

27. **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.

28. **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.

29. **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 Receiver and the Prizm Entities.

30. **THIS COURT ORDERS** that the CRO shall be entitled to and is hereby granted a charge (the “**CRO’s Charge**”) on the Property to secure amounts owing to the CRO under the Robertson CRO Agreement and that the CRO’s Charge shall form a charge on the Property ranking *pari passu* with the Receiver’s Charge, but in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, and shall have the priority set forth in paragraph [39].

**TRANSFER OF FUNDS TO THE RECEIVER**

31. **THIS COURT ORDERS** that all funds transferred by the Monitor to the Receiver pursuant to the Termination and Discharge Order shall be held by the Receiver as follows:

- (a) with respect to the proceeds from the sale of certain assets by the Prizm Entities to Soul pursuant to the Soul Agreement and approved by the Soul Approval and Vesting Order (the “**Soul Transaction Proceeds**”), (i) in accordance with the Soul Approval and Vesting Order, with the Receiver being substituted for the Monitor in such paragraphs in all respects, and (ii) subject to the reserves in favour of certain landlords of the Prizm Entities, described in the Second Report of the Monitor dated May 26, 2011 and issued in the CCAA Proceeding;
- (b) with respect to the proceeds from the sale of certain assets by the Prizm Entities to FMI pursuant to the FMI Agreements and approved by the FMI Approval and Vesting Orders (the “**FMI Transaction Proceeds**”), in accordance with the FMI Approval and Vesting Orders, with the Receiver being substituted for the Monitor in such paragraphs in all respects; and
- (c) with respect to any deposits relating to the sale of assets by the Prizm Entities, in accordance with the terms of the agreements that relate to such deposits.

32. **THIS COURT ORDERS** that the Receiver shall not pay, disburse, distribute or otherwise use any of the Soul Transaction Proceeds or the FMI Transaction Proceeds without further order of the Court.

**CCAA CHARGES**

33. **THIS COURT ORDERS** that, with the exception of the Administration Charge (as defined in the Amended and Restated Initial Order), the Charges (as defined in the Amended and Restated Initial Order) set out in the Amended and Restated Initial Order made in the CCAA

Proceeding shall remain in full force and effect, continue to attach to the Property, and shall have the priority set forth in paragraph [39].

34. **THIS COURT ORDERS** that notwithstanding anything to the contrary in the Amended and Restated Initial Order, the Critical Supplier Charge (as defined in the Amended and Restated Initial Order) shall secure an amount equal to the value of goods and services actually supplied to the Prizm Entities or the Receiver from and after March 31, 2011 by any supplier and the beneficiaries of the Critical Supplier Charge shall include all such suppliers, to the extent that the supplier is not paid by the Prizm Entities or the Receiver for such goods and services.

**FUNDING OF THE RECEIVERSHIP**

35. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$3 million (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, and shall have the priority set out in paragraph [39].

36. **THIS COURT ORDERS** that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

37. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule “A”** hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

38. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### **PRIORITY OF CHARGES**

39. **THIS COURT ORDERS** that the priorities of the Receiver's Charge, the CRO's Charge the Critical Supplier Charge, the Franchisor Charge (as defined in the Amended and Restated Initial Order), the Receiver's Borrowings Charge and the Directors' Charge (as defined in the Amended and Restated Initial Order) (together, the "**Receivership Charges**"), as among them, shall be as follows:

First – Receiver's Charge and CRO Charge, which charges shall rank *pari passu*;

Second – Critical Supplier Charge;

Third – Franchisor Charge;

Fourth – Receiver's Borrowings Charge; and

Fifth – Directors' Charge,

and all of the Receivership Charges shall rank in priority to any other Encumbrances in favour of any Person, but subject to sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

### **D&O CLAIMS PROCEDURE**

40. **THIS COURT ORDERS** that the Receiver will take up and complete the D&O Claims Solicitation Procedure (as defined and set forth in the Order dated June 29, 2011 made in the CCAA Proceeding (the "**D&O Claims Order**")) and will discharge and perform any remaining obligations of the Monitor in connection therewith, provided that, notwithstanding anything in the D&O Claims Order:

- D**
- (a) the Receiver shall establish the Subsequent D&O Claims Bar Date (as defined in the D&O Claims Order);
  - (b) the Receiver shall publishing a notice to creditors of the Subsequent D&O Claims Bar Date in *The Globe and Mail* (National Edition) and *La Presse* substantially in the form attached as **Schedule “B”** to the this Order (the **“Subsequent Claims Notice”**); and
  - (c) Subsequent D&O Claims (as defined in the D&O Claims Order) shall be filed with the Receiver in accordance with the Subsequent Claims Notice.
- R**

#### GENERAL

41. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

42. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

44. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver 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.



45. **THIS COURT ORDERS** that the Applicants shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

R

A

F

T

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

**CERTIFICATE NO.** \_\_\_\_\_

**AMOUNT \$** \_\_\_\_\_

1. **THIS IS TO CERTIFY** that RSM Richter Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties Prizm Income Fund, Prizm Canadian Operating Trust, Prizm Inc., Kit Finance Inc. and Prizm LP (collectively, the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 14, 2011 (the "**Order**") made in an action having Court File Number [Number], has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$[Amount], being part of the total principal sum of \$[Amount] which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [or] [monthly not in advance on the [Day] day of each month] after the date hereof at a notional rate per annum equal to the rate of [Rate] per cent above the prime commercial lending rate of Bank of [Bank] from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**RSM RICHTER INC.**, solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

A

F

T

**SCHEDULE "B"**

**NOTICE IN RESPECT OF CLAIMS AGAINST THE CURRENT AND FORMER DIRECTORS AND OFFICERS OF PRISZM INCOME FUND, PRISZM CANADIAN OPERATING TRUST, PRISZM INC., PRISZM LP AND KIT FINANCE INC. AND/OR DEBORAH PAPERICK AND/OR 2279549 ONTARIO INC. AND/OR JIM ROBERTSON AND 2289500 ONTARIO INC. (collectively, the "Directors and Officers")**

**TO: CREDITORS AND TO ANY OTHER PERSON OR PARTIES**

***PLEASE TAKE NOTICE*** that this notice is being published pursuant to Orders of the Ontario Superior Court of Justice (Commercial List) dated June 29, 2011 and September 14, 2011.

Any person who believes that it has a claim against one of more Directors and Officers **which arose after June 30, 2011** (a "**Subsequent D&O Claim**") should contact RSM Richter Inc. (the "**Receiver**") to obtain a Claim Form (a "**D&O Claim Form**"), which must be filed with the Receiver. The Receiver can be contacted at:

RSM Richter Inc.  
200 King Street West, Suite 1100  
Toronto ON M5H 3T4

**Attention: Lana Bezner**  
Telephone: 416-932-6009  
Fax: 416-932-6200  
Email: [lbezner@rsmrichter.com](mailto:lbezner@rsmrichter.com)

A D&O Claim Form is required to be submitted to the Receiver at the above address by **no later than 5:00 p.m. (Eastern Standard Time) on [Date] 2011** (the "**Subsequent D&O Claims Bar Date**").

**SUBSEQUENT D&O CLAIMS WHICH ARE NOT RECEIVED BY THE SUBSEQUENT D&O CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.**

TAB 4

January 15, 2010  
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No. \_\_\_\_\_

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**  
**(COMMERCIAL LIST)**

THE HONOURABLE \_\_\_\_\_ ) \_\_\_\_\_ DAY, THE \_\_\_\_\_ DAY  
 )  
JUSTICE \_\_\_\_\_ ) \_\_\_\_\_ OF \_\_\_\_\_, 20\_\_\_\_

PLAINTIFF<sup>†</sup>

Plaintiff

BETWEEN:

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, PRUCO LIFE**  
**INSURANCE COMPANY AND PRUDENTIAL RETIREMENT INSURANCE AND**  
**ANNUITY COMPANY**

Applicants

- and -  
DEFENDANT

Defendant

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

Respondents

**APPLICATION pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*,**  
**R.S.C. 1985, c. B-3**

<sup>†</sup>The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

## ORDER

~~THIS MOTION~~APPLICATION made by the Plaintiff<sup>2</sup>Applicants for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~ appointing RSM Richter Inc. ("RSM Richter") as receiver (in such ~~capacities~~capacity, the "Receiver"), without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~ (the "Debtor"the Respondents (together, the "Prizm Entities" or the "Debtor")) acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of ~~[NAME]~~Paul Procyk sworn ~~[DATE]~~ and the Exhibits thereto~~September 9, 2011 (the "Procyk Affidavit")~~ and the exhibits thereto and the Fourth Report of FTI Consulting Canada Inc., in its capacity as Court-appointed monitor of the Prizm Income Fund, Prizm Canadian Operating Trust, Prizm Inc. and Kit Finance Inc. dated September 9, 2011, and on hearing the submissions of counsel for ~~[NAMES], no one appearing for [NAME] although duly served as appears from the affidavit of service of [NAME] sworn [DATE]~~Parties] and on reading the consent of ~~[RECEIVER'S NAME]~~RSM Richter to act as the Receiver,

### SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the ~~Motion~~Application is hereby abridged and validated<sup>3</sup> so that this ~~motion~~application is properly returnable today and hereby dispenses with further service thereof.

<sup>2</sup> Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

<sup>3</sup> If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

## APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~, RSM Richter is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

3. **THIS COURT ORDERS** that this Order and the appointment of the Receiver set out herein shall become effective at 12:01 a.m. on the business day after the filing of a certificate by RSM Richter certifying that the certificates contemplated by and appended to the Approval and Vesting Orders granted by the Court on September 14, 2011 (the "FMI Approval and Vesting Orders"), in respect of the two asset purchase agreements with FMI Atlantic Inc., as purchaser ("FMI Atlantic"), and FMI Ontario Inc., as guarantor ("FMI Ontario", and collectively with FMI Atlantic, "FMI"), dated July 29, 2011 and August 23, 2011 (the "FMI Agreements"), respectively, have been filed with the Court.

## RECEIVER'S POWERS

4. **THIS COURT ORDERS** that the Receiver shall not, without further order of the Court, be required to take possession of any of the Property.

5. ~~3.~~ **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security



- codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
  - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
  - (g) to settle, extend or compromise any indebtedness owing to the Debtor;
  - (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor; for any purpose pursuant to this Order;
  - (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;

- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
  - (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
  - (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
    - (i) without the approval of this Court in respect of any transaction not exceeding \$          ,100,000, provided that the aggregate consideration for all such transactions does not exceed \$          1,000,000; and
    - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each ~~such case~~; (i) notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~or~~ section 31 of the Ontario *Mortgages Act*, ~~as the case may be,~~ for any similar legislation in other provinces, shall not be required; ~~and in each case~~ (ii) the Ontario *Bulk Sales Act* shall not apply.
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other ~~Orders~~orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to negotiate and enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

6. THIS COURT ORDERS that the Receiver (whether in the name of the Receiver or in the name of and on behalf of the Debtor) and the Debtor shall take all steps that are necessary to complete, comply with or satisfy the obligations of the Debtor in connection with:

- (a) the amended and restated asset purchase agreement dated May 6, 2011 (the "Soul Agreement") with Soul Restaurants Canada Inc. ("Soul"), as approved by the Court by Order dated May 30, 2011 (the "Soul Approval and Vesting Order") in the proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") with a Court File No. CV-11-9159-00CL (the "CCAA Proceeding"), and all ancillary documents related thereto; and
- (b) the FMI Agreements, as approved by the FMI Approval and Vesting Orders, and all ancillary documents related thereto;

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

7. ~~4.~~ **THIS COURT ORDERS** that, subject to the Termination and Discharge Order made on September 14, 2011 in the CCAA Proceeding (the "Termination and Discharge Order"), (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

8. ~~5.~~ **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph ~~5~~**[8]** or in paragraph ~~6~~**[9]** of this Order shall require the delivery of

Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. ~~6.~~ **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE RECEIVER**

10. ~~7.~~ **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"); shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

11. ~~8.~~ **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further ~~Order~~order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

12. ~~9.~~ **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (~~i~~a) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (~~ii~~b) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (~~iii~~c) prevent the filing of any registration to preserve or perfect a security interest, or (~~iv~~d) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

13. ~~10.~~ **THIS COURT ORDERS** that 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 Debtor, without written consent of the Receiver or leave of this Court.

### CONTINUATION OF SERVICES

14. ~~11.~~ **THIS COURT ORDERS** that all Persons having ~~oral or written agreements with the Debtor or~~ statutory or regulatory mandates for the supply of goods and/or services; or oral or written agreements with the Debtor including without limitation, the Soul Agreement and the FMI Agreements, as well as all ancillary documents relating to such agreements including all agreements to occupy premises entered into in conjunction with the Soul Agreement or the FMI Agreements, all computer software, communication and other data services, centralized banking services, the Cash Management System (as defined in the Amended and Restated Initial Order dated April 29, 2011 made in the CCAA Proceeding (the "Amended and Restated Initial Order")), payroll services, insurance, transportation services, utility or other services to the Debtor shall comply with their obligations and make all payments to the Debtor or the Receiver as and when required, and are hereby restrained, until further ~~Order~~ order of this Court, from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver or the Debtor, and that the Receiver or the Debtor shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses ~~and~~ domain names and Cash Management System, 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 Receiver or the Debtor in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

15. **THIS COURT ORDERS** that the all suppliers of goods and services to the Debtor shall be paid for goods and services actually supplied to the Debtor for the period beginning on March 31, 2011 and ending on the date the appointment of the Receiver becomes effective as such amounts fall due, unless such amounts are otherwise assumed by a purchaser of any Property on terms acceptable to the Receiver.

### RECEIVER TO HOLD FUNDS

16. ~~12.~~ **THIS COURT ORDERS** that, subject to paragraph [31], all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further ~~Order~~ order of this Court.

### EMPLOYEES

17. ~~13.~~ **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Debtor or the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

18. **THIS COURT ORDERS** that all wages, salaries, vacation pay and expenses (which shall not include termination and/or severance pay) that are properly due or accruing to any employee or former employee of the Debtor up to the date that the appointment of the Receiver becomes effective shall be paid, unless such wages, salaries, vacation pay and expenses are otherwise assumed by a purchaser of any of the Property on terms satisfactory to the Receiver.

19. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "KERP") referred to in the Procyk Affidavit shall continue in full force and effect and that the Receiver is hereby authorized and directed to take all steps required to ensure the continuation of the KERP and the



payment of amounts earned in accordance with the KERP where such amounts are due and payable to the KERP participants.

## **PIPEDA**

20. ~~14.~~ **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

21. ~~15.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Receiver 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

Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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.

### LIMITATION ON THE RECEIVER'S LIABILITY

22. ~~16.~~ **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### RECEIVER'S ACCOUNTS

23. ~~17.~~ **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, ~~but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.~~ **(“Encumbrances”)**, and shall have the priority set forth in paragraph [39].

<sup>4</sup>Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".

24. ~~18.~~ **THIS COURT ORDERS** that, at the request of any party in interest or this Court, the Receiver and its legal counsel shall pass ~~its~~their accounts ~~from time to time~~, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

~~19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.~~

### **CHIEF RESTRUCTURING OFFICER**

25. **THIS COURT ORDERS** that 2289500 Ontario Inc. (“228 Ontario”) shall continue as the Chief Restructuring Officer (the “CRO”) of the Prizm Entities pursuant to the terms of the agreement entered into between the Prizm Entities and 228 Ontario dated June 29, 2011 as amended by the letter agreement dated September [Date], 2011 (the “Robertson CRO Agreement”) and approved by the Court pursuant to an Order dated June 29, 2011 made in the CCAA Proceeding and the CRO shall, subject to this Order, continue to have the powers and obligations set out in the Robertson CRO Agreement.

26. **THIS COURT ORDERS** that the CRO be subject to the supervision and direction of the Receiver and shall report to the Receiver regarding all material issues relating to the Debtor’s business and affairs, including its receipts and disbursements, and the CRO and the Debtor shall not authorize or make any payments for good or services without the prior consent of the Receiver.

27. **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.

28. **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.

29. **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 Receiver and the Prizm Entities.

30. **THIS COURT ORDERS** that the CRO shall be entitled to and is hereby granted a charge (the "CRO's Charge") on the Property to secure amounts owing to the CRO under the Robertson CRO Agreement and that the CRO's Charge shall form a charge on the Property ranking *pari passu* with the Receiver's Charge, but in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, and shall have the priority set forth in paragraph [39].

#### **TRANSFER OF FUNDS TO THE RECEIVER**

31. **THIS COURT ORDERS** that all funds transferred by the Monitor to the Receiver pursuant to the Termination and Discharge Order shall be held by the Receiver as follows:

- (a) with respect to the proceeds from the sale of certain assets by the Prizm Entities to Soul pursuant to the Soul Agreement and approved by the Soul Approval and Vesting Order (the "Soul Transaction Proceeds"), (i) in accordance with the Soul Approval and Vesting Order, with the Receiver being substituted for the Monitor in such paragraphs in all respects, and (ii) subject to the reserves in favour of certain landlords of the Prizm Entities, described in the Second Report of the Monitor dated May 26, 2011 and issued in the CCAA Proceeding;

- (b) with respect to the proceeds from the sale of certain assets by the Prizm Entities to FMI pursuant to the FMI Agreements and approved by the FMI Approval and Vesting Orders (the “FMI Transaction Proceeds”), in accordance with the FMI Approval and Vesting Orders, with the Receiver being substituted for the Monitor in such paragraphs in all respects; and
- (c) with respect to any deposits relating to the sale of assets by the Prizm Entities, in accordance with the terms of the agreements that relate to such deposits.

32. **THIS COURT ORDERS** that the Receiver shall not pay, disburse, distribute or otherwise use any of the Soul Transaction Proceeds or the FMI Transaction Proceeds without further order of the Court.

#### CCAA CHARGES

33. **THIS COURT ORDERS** that, with the exception of the Administration Charge (as defined in the Amended and Restated Initial Order), the Charges (as defined in the Amended and Restated Initial Order) set out in the Amended and Restated Initial Order made in the CCAA Proceeding shall remain in full force and effect, continue to attach to the Property, and shall have the priority set forth in paragraph [39].

34. **THIS COURT ORDERS** that notwithstanding anything to the contrary in the Amended and Restated Initial Order, the Critical Supplier Charge (as defined in the Amended and Restated Initial Order) shall secure an amount equal to the value of goods and services actually supplied to the Prizm Entities or the Receiver from and after March 31, 2011 by any supplier and the beneficiaries of the Critical Supplier Charge shall include all such suppliers, to the extent that the supplier is not paid by the Prizm Entities or the Receiver for such goods and services.

## FUNDING OF THE RECEIVERSHIP

35. ~~20.~~ **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~\_\_\_\_\_~~ 3 million (or such greater amount as this Court may by further ~~Order~~ order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the **"Receiver's Borrowings Charge"**) as security for the payment of the monies borrowed, together with interest and charges thereon, ~~in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as and shall have the priority set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA paragraph [39].~~

36. ~~21.~~ **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

37. ~~22.~~ **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the **"Receiver's Certificates"**) for any amount borrowed by it pursuant to this Order.

38. ~~23.~~ **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## PRIORITY OF CHARGES

39. **THIS COURT ORDERS** that the priorities of the Receiver's Charge, the CRO's Charge, the Critical Supplier Charge, the Franchisor Charge (as defined in the Amended and Restated Initial Order), the Receiver's Borrowings Charge and the Directors' Charge (as defined in the Amended and Restated Initial Order) (together, the "Receivership Charges"), as among them, shall be as follows:

First – Receiver's Charge and CRO Charge, which charges shall rank *pari passu*;

Second – Critical Supplier Charge;

Third – Franchisor Charge;

Fourth – Receiver's Borrowings Charge; and

Fifth – Directors' Charge.

and all of the Receivership Charges shall rank in priority to any other Encumbrances in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA,<sup>+</sup> and 81.6(2) of the BIA.

#### **D&O CLAIMS PROCEDURE**

40. **THIS COURT ORDERS** that the Receiver will take up and complete the D&O Claims Solicitation Procedure (as defined and set forth in the Order dated June 29, 2011 made in the CCAA Proceeding (the "D&O Claims Order")) and will discharge and perform any remaining obligations of the Monitor in connection therewith, provided that, notwithstanding anything in the D&O Claims Order:

- (a) the Receiver shall establish the Subsequent D&O Claims Bar Date (as defined in the D&O Claims Order);
- (b) the Receiver shall publishing a notice to creditors of the Subsequent D&O Claims Bar Date in *The Globe and Mail* (National Edition) and *La Presse*

substantially in the form attached as Schedule "B" to the this Order (the "Subsequent Claims Notice"); and

- (c) Subsequent D&O Claims (as defined in the D&O Claims Order) shall be filed with the Receiver in accordance with the Subsequent Claims Notice.

## GENERAL

41. ~~24.~~ **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

42. ~~25.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

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

44. ~~27.~~ **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver 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.

45. ~~28.~~ **THIS COURT ORDERS** that the ~~Plaintiff~~Applicants shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the ~~Plaintiff~~Applicant's security or, if not so provided by the ~~Plaintiff~~Applicant's security, then on a



substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

46. ~~29.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

---

SCHEDULE "A"  
RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that ~~{RECEIVER'S NAME}~~ RSM Richter Inc., the receiver (the "Receiver") of the assets, undertakings and properties ~~{DEBTOR'S NAME}~~ Priszm Income Fund, Priszm Canadian Operating Trust, Priszm Inc., Kit Finance Inc. and Priszm LP (collectively, the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_\_ day of \_\_\_\_\_, 20September 14, 2011 (the "Order") made in an action having Court file number CL \_\_\_\_\_ File Number [Number], has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_ [Amount], being part of the total principal sum of \$ \_\_\_\_\_ [Amount] which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [or] [monthly not in advance on the \_\_\_\_\_ [Day] day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ [Rate] per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ [Bank] from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2011.

~~{RECEIVER'S NAME}~~ **RSM RICHTER INC.**,  
solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE "B"**

**NOTICE IN RESPECT OF CLAIMS AGAINST THE CURRENT AND FORMER DIRECTORS AND OFFICERS OF PRISZM INCOME FUND, PRISZM CANADIAN OPERATING TRUST, PRISZM INC., PRISZM LP AND KIT FINANCE INC. AND/OR DEBORAH PAPERICK AND/OR 2279549 ONTARIO INC. AND/OR JIM ROBERTSON AND 2289500 ONTARIO INC. (collectively, the "Directors and Officers")**

**TO: CREDITORS AND TO ANY OTHER PERSON OR PARTIES**

**PLEASE TAKE NOTICE** that this notice is being published pursuant to Orders of the Ontario Superior Court of Justice (Commercial List) dated June 29, 2011 and September 14, 2011.

Any person who believes that it has a claim against one of more Directors and Officers **which arose after June 30, 2011** (a "**Subsequent D&O Claim**") should contact RSM Richter Inc. (the "**Receiver**") to obtain a Claim Form (a "**D&O Claim Form**"), which must be filed with the Receiver. The Receiver can be contacted at:

RSM Richter Inc.  
200 King Street West, Suite 1100  
Toronto ON M5H 3T4

**Attention: Lana Bezner**  
**Telephone: 416-932-6009**  
**Fax: 416-932-6200**  
**Email: lbezner@rsmrichter.com**

A D&O Claim Form is required to be submitted to the Receiver at the above address by **no later than 5:00 p.m. (Eastern Standard Time) on [Date] 2011** (the "**Subsequent D&O Claims Bar Date**").

**SUBSEQUENT D&O CLAIMS WHICH ARE NOT RECEIVED BY THE SUBSEQUENT D&O CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.**

TOR LAW 7735073v1

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, et. al**  
- Applicants -

**v. PRISZM INCOME FUND, et al.**  
- Respondents -

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(PROCEEDING COMMENCED AT TORONTO)

**APPLICATION RECORD**

**GOWLING LAFLEUR HENDERSON LLP**

Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
TORONTO, Ontario  
M5X 1G5

E. Patrick Shea  
LSUC No.: 39655K

Telephone: (416) 369-7399  
Facsimile: (416) 862-7661

SOLICITORS FOR THE APPLICANTS