



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE MESBUR

)
)
)

FRIDAY, THE 29TH
DAY OF APRIL, 2011

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

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

(the "Applicants")

AMENDED AND RESTATED INITIAL ORDER

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

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

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

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

RESTRUCTURING

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

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

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

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

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

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

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

NO PROCEEDINGS AGAINST THE PRIZM ENTITIES OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

NON-DEROGATION OF RIGHTS

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

CRITICAL SUPPLIERS

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

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

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

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

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

APPOINTMENT OF CHIEF RESTRUCTURING OFFICER

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

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

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

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

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

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

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

APPOINTMENT OF MONITOR

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

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

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

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

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

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

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

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

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

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

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

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

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

THE FRANCHISOR CHARGE

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

DIP FINANCING

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

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

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

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

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

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

Second – Critical Supplier Charge;

Third – Franchisor Charge;

Fourth – DIP Lender’s Charge; and

Fifth – Directors’ Charge.

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

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

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

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

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

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

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

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

SERVICE AND NOTICE

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

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

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

GENERAL

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

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

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

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

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

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

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



A handwritten signature in cursive script, appearing to read 'M. J.', is written above a horizontal line.

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

APR 29 2011

PER/PAR:

NB

SCHEDULE "A"

A) Suppliers of Food and Restaurant Consumables

Proposed Payment Terms

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

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

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

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

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES

B) Chicken Suppliers

Proposed Payment Terms

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

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

Exceldor Cooperative Avicole

Dunn-Rite Food Product

Maple Lodge Farms Ltd.

Sunrise Poultry Processors Ltd

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

Nadeau Poultry Farm Ltd

Mountain View Poultry Farms

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

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES

C) Utility Service Providers

Proposed Payment Terms

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

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

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

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES

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

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES

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

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES

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

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES

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

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES

D) Suppliers of Waste Disposal and Pest Control Services

Proposed Payment Terms

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

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

Organic Resource Mgmt. Inc.	Wasteco
Owen Sound Septic Service	BFI Canada-Penticton
Wasteless Environmental Serv	Abell
Sanimax San Inc.	

CRITICAL SUPPLIERS TO THE PRISZM ENTITIES

E) Providers of Appliance Repair and Information Technology Services

Proposed Payment Terms

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

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

Radiant Systems

Global Payments

NCR Canada Ltd (34379)

DSL (Dairy Supplies Limited)

NCR Canada Ltd (49264)

Bazinet Taylor Ltee

Sitel

TFI Food Equipment Solutions

Menulink

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

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

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

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

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL
ORDER**

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

Ashley John Taylor LSUC#: 39932E

Tel: (416) 869-5236

Maria Konyukhova LSUC#: 52880V

Tel: (416) 869-5230

Kathryn Esaw LSUC#: 58264F

Tel: (416) 869-6820

Fax: (416) 947-0866

Lawyers for the Applicants