

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

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

**FOURTH REPORT OF THE MONITOR**  
September 9, 2011

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

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

**FOURTH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.  
IN ITS CAPACITY AS MONITOR**

**INTRODUCTION**

1. On March 31, 2011, Prizm Income Fund, Prizm Canadian Operating Trust, Prizm Inc. and Kit Finance Inc. (collectively, the “**Applicants**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and an initial order (the “**Initial Order**”) was made by the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granting, *inter alia*, a stay of proceedings against the Applicants until April 29, 2011, (the “**Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor (the “**Monitor**”). The Initial Order also extended the benefits of the protections and authorizations provided by the Initial Order to Prizm LP (together with the Applicants, the “**Prizm Entities**”). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

2. On April 29, 2011, the Honourable Madam Justice Mesbur granted an amended and restated initial order (the “**Amended Initial Order**”) and granted an order extending the Stay Period to June 30, 2011. The Stay Period was subsequently extended by Order of the Honourable Mr. Justice Morawetz granted June 29, 2011 (the “**June 29 Order**”) and currently expires September 30, 2011.
3. On May 30, 2011, the Honourable Mr. Justice Morawetz granted an Order approving a sales process for those stores not subject to the Soul Transaction (the “**Sales Process Order**”).
4. On August 29, 2011, the Honourable Mr. Justice Morawetz granted an Order approving a process for the solicitation of claims against the current and former directors of any of the Prizm Entities, the current and former officers of any of the Prizm Entities, Deborah Papernick and 2279549 Ontario Inc., in its capacity as Chief Restructuring Officer of the Prizm Entities or Jim Robertson and 2289500 Ontario Inc., in its capacity as Chief Restructuring Officer of the Prizm Entities (the “**D&O Claims Solicitation Procedure**”).
5. The purpose of this, the Monitor’s Fourth Report, is to inform the Court on the following:
  - (a) The receipts and disbursements of the Prizm Entities for the period June 20 to September 2, 2011;
  - (b) Turnover of Prizm Entities staff and the status of KERP payments;
  - (c) The closing of a number of transactions for sundry assets in accordance with the provisions of the June 29 Order;
  - (d) The status of post-closing matters in respect of the Soul Transaction;
  - (e) The status of the Sales Process;
  - (f) The status of the D&O Claims Solicitation Procedure;

- (g) The Prizm Entities' request for:
- (i) approval of the sale of 38 store locations to FMI Atlantic Inc. ("**FMI**"), an affiliate of Franchise Management Inc, an existing franchisee of the Franchisor, pursuant to the Asset Purchase Agreement dated July 29, 2011 between FMI, Prizm LP and Prizm Inc. (the "**FMI APA**");
  - (ii) approval of the sale of up to 5 additional store locations to FMI pursuant to the Asset Purchase Agreement dated August 23, 2011 between FMI, Prizm LP and Prizm Inc. (the "**Supplemental FMI APA**"); and
  - (iii) authorization to make certain payments to the Franchisor from the proceeds of the transactions contemplated by the FMI APA and the Supplemental FMI APA (collectively, the "**FMI Transaction**");
- and the Monitor's recommendation on the foregoing;
- (h) The Prizm Entities' request for approval of the FMI Occupation Agreement, as hereinafter defined, and the Monitor's recommendation thereon;
- (i) The Prizm Entities' request for approval of the sale of the assets located at 2032 Kipling Avenue, Etobicoke, Ontario, pursuant to the asset purchase agreement dated September 7, 2011, among Prizm LP, Prizm Inc. and 1844440 Ontario Inc. (the "**184 APA**"); and

- (j) The motion to be filed by Prudential for the appointment of a receiver (the “**Receivership Motion**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act R.S.C. 1985, c. B-3, as amended* (the “**BIA**”) and the Monitor’s recommendations with respect to certain transition issues in the event that the Court grants the Receivership Motion.
6. In preparing this report, the Monitor has relied upon unaudited financial information of the Prizm Entities, the Prizm Entities’ books and records, certain financial information prepared by the Prizm Entities and discussions with the Prizm Entities’ management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management’s assumptions regarding future events; actual results may vary from forecast and such variations may be material.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the affidavit of Ms. Deborah Papernick, (then) Chief Financial Officer of the Prizm Entities, sworn March 30, 2011, and filed in support of the CCAA application (the “**Papernick Affidavit**”), previous reports of the Monitor, the Amended Initial Order or in the affidavit of Mr. Jim Robertson, Chief Restructuring Officer of the Prizm Entities, sworn September 8, 2011 and filed in support of the Prizm Entities’ motion described herein (the “**September 8 Affidavit**”). Copies of Court orders and other materials in respect of the CCAA Proceedings are available on the Monitor’s Website at <http://cfcanada.fticonsulting.com/prizm>.

**RECEIPTS & DISBURSEMENTS FOR JUNE 20 TO SEPTEMBER 2, 2011**

8. The Prizm Entities' actual cash flow on a consolidated basis for the period from June 20 to September 2, 2011, was approximately \$3.2 million better than the June 22 Forecast filed as Appendix A to the Monitor's Third Report, as summarized below:

	<b>Forecast</b>	<b>Actual</b>	<b>Variance</b>
	<b>\$M</b>	<b>\$M</b>	<b>\$M</b>
<b>Receipts:</b>			
Sales	44,008	45,706	1,698
Other	1,996	1,907	(88)
<b>Total Receipts</b>	<b>46,004</b>	<b>47,613</b>	<b>1,610</b>
<b>Disbursements:</b>			
Store costs	27,166	26,583	583
Occupancy costs	6,636	6,839	(203)
IT	466	234	232
Fixed asset vendors	385	226	158
Repairs & maintenance	579	958	(379)
Marketing	350	511	(161)
Other vendors	2,071	2,592	(522)
Royalties	3,764	3,511	253
Co-op marketing	2,652	2,525	127
Legal fees	277	82	195
Bank fees	275	47	228
Interest	0	0	0
Sales taxes	4,520	4,131	389
Legal & professional fees	2,793	2,163	630
Other	228	131	97
<b>Total Disbursements</b>	<b>52,162</b>	<b>50,533</b>	<b>1,629</b>
<b>Excess of Receipts over Disbursements</b>	<b>(6,158)</b>	<b>(2,920)</b>	<b>3,239</b>
Opening Cash	12,889	12,889	0
<b>Closing Cash</b>	<b>6,731</b>	<b>9,969</b>	<b>3,239</b>
Reversal of prior "funds not available"	405	405	0
Commitment Fee		(100)	
Funds not available	(448)	(503)	(55)
	<b>6,688</b>	<b>9,771</b>	<b>3,184</b>

9. Explanations for the key variances in actual receipts and disbursements as compared to the June 22 Forecast are as follows:

- (a) The positive variance in Receipts is attributed to the direct mail marketing campaign run during the period which contributed to higher than forecast sales;
- (b) The positive variance in Store costs arises from lower than forecast costs for chicken and garbage and is believed to be a permanent saving;
- (c) The negative variance in Occupancy costs is due to higher than forecast utility costs and is considered a permanent difference;
- (d) The positive variance in IT costs is considered a permanent difference related to non-recurring IT costs;
- (e) The negative variance in Repairs and Maintenance results from higher than forecast costs during the period and is considered a permanent variance;
- (f) The negative variance in Other Vendors is attributed to invoices being submitted for payment by the stores faster than forecast and is expected to be a timing difference;
- (g) The positive variance in Bank Fees is primarily due to a timing difference related to the end of the month, August;
- (h) The positive variance in Sales Taxes arises from higher input tax credit in the current period; and
- (i) The positive variance in Legal and Professional Fees is a combination of permanent variance and timing differences that will reverse in future periods.

10. In addition, the Monitor currently holds a total of approximately \$34 million in proceeds from the Soul Transaction, the sale of certain sundry assets and the deposits received in respect of pending transactions as described later in this report. A significant portion of these funds are subject to claims and contingent claims of various parties as described in the Monitor's Second Report. The distribution of such funds is subject to further Court Order.
11. The Prizm Entities, with the assistance of the Monitor, estimate that the accrued liabilities as at September 7, 2011 totalled approximately \$5.6 million, of which approximately \$4.5 million related to critical suppliers.

#### **STAFF TURNOVER AND STATUS OF KERP PAYMENTS**

12. On April 29, 2011, an Order was granted by the Court approving potential KERP payments to 39 members of the head office staff. To date, KERP payments have been made to 34 KERP participants in accordance with their entitlements. 5 KERP participants resigned and forfeited their KERP payments. 93% of the forfeited KERP amounts have been reallocated by the Prizm Entities, with the consent of the Monitor, to remaining KERP participants pursuant to the Order of the Court granted May 30, 2011. 5 KERP participants have KERP payments that become payable on September 30, 2011 and 6 KERP participants have KERP payments that become payable on October 31, 2011. In addition to the resignations noted above, 1 head office staff that were not KERP participants have resigned since the date of the Monitor's Third Report.
13. In addition, Jim Robertson has received the payments due under the Robertson CRO Agreement and the KERP earned as COO.



## **SALE OF CERTAIN SUNDRY ASSETS**

14. Pursuant to the provisions of the June 29 Order, the Prizm Entities, with the consent of the Monitor, have completed the following sales of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$1,000,000, in the aggregate:
- (a) Sale of equipment and signage at a closed store location in British Columbia for \$60,000; and
  - (b) Sale of a non-exclusive license to certain software to Soul for \$50,000 plus certain IT personnel services, whereby certain IT support will be provided by Soul to the Prizm Entities.

## **POST-CLOSING MATTERS RELATED TO THE SOUL TRANSACTION**

15. 49 leases subject to the Soul APA are yet to be assigned, of which 34 are SREIT leases. The Prizm Entities and Soul continue with their efforts to obtain additional consents if possible.
16. The final Current Assets Amount was agreed by the parties on August 23, 2011 as \$2,196,872. Accordingly, the amount of \$603,128 was returned by the Monitor to Soul pursuant to the provisions of the Soul APA and the Sale Approval Order.

## **STATUS OF THE SALES PROCESS**

17. Canaccord Genuity, with input from the Prizm Entities, the Franchisor and the Monitor, identified and contacted 91 parties with respect to the opportunity to acquire the business and operations of the Prizm Entities. These parties included existing Yum! Franchisees, other quick service restaurant operators and financial sponsors.
18. 67 parties requested and received the teaser and the non-disclosure agreement. 29 parties executed non-disclosure agreements and were provided access to the confidential data room.

19. 17 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.
20. The Prizm Entities determined, in consultation with their advisors, Prudential and the Monitor, that the proposal submitted by FMI was the best proposal relating to the stores in the Atlantic Provinces. Accordingly, negotiations with FMI commenced, which negotiations culminated in the execution of the FMI APA and the Supplemental FMI APA which together provide for the sale, subject to the conditions set out in those agreements, including Court approval, of up to 43 of the 49 stores located in the Atlantic Provinces.
21. The Prizm Entities have determined, in consultation with their advisors, Prudential and the Monitor the best proposal relating to the stores in Quebec and there have been extensive negotiations of the form of an asset purchase agreement. The Monitor understands that the parties believe that the negotiations should be finalized in the near future.
22. Parties continue to express interest in the possible acquisition of Alberta and Manitoba although to date the Prizm Entities have been unable to negotiate an acceptable agreement for the sale of the Alberta and Manitoba stores.
23. While no agreements for the sale of the stores located in Quebec, Alberta and Manitoba have yet been executed, it is clear from the proposals received and ongoing discussions with the interested parties that overall realizations from the sale of the Prizm Entities' assets will be insufficient to repay the indebtedness to Prudential. Accordingly, 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.

## **STATUS OF THE D&O CLAIMS PROCEDURE**

- (a) In accordance with the provisions of the D&O Claims Solicitation Procedure, the Monitor: Published the Notice to Creditors of Initial D&O Claims Bar Date in each of *The Globe and Mail* (national edition) and *La Presse* on July 5, 2011; and
- (b) Posted the Notice to Creditors of Initial D&O Claims Bar Date on the Monitor's Website on July 7, 2011.

## **THE INITIAL D&O CLAIMS BAR DATE IS SEPTEMBER 15, 2011. AS AT SEPTEMBER 9, 2011 2 D&O CLAIMS IN THE AGGREGATE AMOUNT OF \$7.845.47 HAVE BEEN FILED WITH THE MONITOR. THE FMI TRANSACTIONS**

- 24. Capitalized terms not otherwise defined in this section of the Report have the meaning ascribed to such terms in the FMI APA or in the Supplemental FMI APA, as applicable.

## **THE FMI APA**

- 25. The key terms of the FMI APA, a copy of which is attached as Exhibit A to the September 8 Affidavit, are summarized as follows:
  - (a) The transaction includes 21 stores in Nova Scotia and 17 stores in New Brunswick, including the Vendor's interest in the owned real estate for the Bridgewater Property, the Leases and Leased Premises, the related Franchise Agreements, equipment, Trade Fixtures, Inventories, Accounts Receivable, Prepaid Expenses and Restaurant Cash Float;

- (b) The Leases shall be assigned to the Purchaser on consent of the Landlord where such consent is required. For any Lease where Landlord Consent is not obtained prior to Closing, commercially reasonable efforts shall be used to obtain either such Consent or an Order of the Court assigning such Lease within three months of Closing. In the period from Closing to the date of assignment, the Vendor shall hold the Lease in trust for the Purchaser and the Purchaser shall occupy the location pursuant to the FMI Occupation Agreement;
- (c) To the extent that less than 100% of the Leases are not assigned within three months of Closing, the Lease is terminated or the Purchaser is evicted prior to an assignment of the Lease becoming effective, the Purchase Price will be reduced by the amount of the Purchase Price allocated to the non-assigned Outlets, less the amount allocated to Equipment at such Outlets, and refunded to the Purchaser;
- (d) The Purchase Price is \$3,226,231, subject to adjustments in respect of Leases not assigned as described above and post-closing adjustment in respect of Current Assets. The Purchase Price is comprised of \$2.5 million plus \$25,000 related to franchise renewal fees previously paid by the Prizm Entities, \$19,000 equal to the price of the UPGC Shares, \$215,000 being the Bridgewater Property Price plus \$467,231 being the Closing Date Current Assets Amount;
- (e) In addition to the Purchase Price, the Purchaser is responsible for the payment to the Franchisor of any fees charged by the Franchisor in respect of the assignment of the Franchise Agreement or the granting of a new franchise agreement;

- (f) A deposit of \$250,000 has been paid by the Purchaser and is held by the Monitor. The Deposit is refundable in the event that Closing does not occur for any reason other than a breach by the Purchaser;
- (g) The Closing Date shall be the first Monday which is not less than three business days after the Sale Approval Order is issued or such other date as may be agreed by the parties. The FMI APA may be terminated by either party if Closing has not occurred by September 30, 2011; and
- (h) Subject to certain rights to remove particular employees from the definition of Designated Employees, the Purchaser shall offer employment effective as of the Closing Date to the Designated Employees and the Purchaser shall recognize the service to the Vendor of the Designated Employees for all purposes.

26. The FMI APA is subject to a number of conditions, as follows:

- (a) For the exclusive benefit of the Purchaser, to be fulfilled or performed on or before the Closing Date (other than item (i) which shall be fulfilled or performed on or before the Condition Date):
  - (i) on or before the Condition Date, the Purchaser shall have
    - (i) entered into a new franchise arrangement with the Franchisor in respect of the Outlets, or (ii) negotiated the form of the assignment of the Franchise Agreement with the Franchisor, on terms substantially similar in the aggregate to those existing as of the date of the Agreement (other than terms relating to the timing of required capital expenditures), to become effective on the Closing Date, on terms and conditions satisfactory to the Purchaser in its sole discretion;

- (ii) on or before Closing, there shall have been sufficient Landlord Consents received and notices given, with respect to Leases that only require notice for assignment per the terms of the applicable Lease, so that at least 30% percent of the Outlets specified on Schedule D to the FMI APA have been obtained or delivered;
  - (iii) the representations and warranties of the Vendor in Schedule E to the FMI APA shall be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date. However, (i) if a representation and warranty is qualified by materiality or material adverse effect, it must be true and correct in all respects after giving effect to such qualification and (ii) if a representation and warranty speaks only as of a specific date it only needs to be true and correct as of that date;
  - (iv) the Vendor shall have performed and complied with all of the terms and conditions in the FMI Agreement on its part to be performed or complied with at or before Closing and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at Closing all the documents contemplated or required to be so executed and delivered in the FMI Agreement; and
  - (v) the FMI Occupation Agreement shall have been approved by the Court and shall not have been terminated.
- (b) For the exclusive benefit of the Vendor, to be fulfilled or performed on or before the Closing Date (other than item (ii) which shall be fulfilled or performed on or before the Condition Date):

- (i) the representations and warranties of the Purchaser in Schedule F to the FMI APA shall be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date. However, (i) if a representation and warranty is qualified by materiality or material adverse effect, it must be true and correct in all respects after giving effect to such qualification and (ii) if a representation and warranty speaks only as of a specific date it only needs to be true and correct as of that date;
- (ii) either (i) the Vendor shall have received by the Condition Date (A) confirmation from the Purchaser that an assignment of the Franchise Agreement is not required for the transaction contemplated by the FMI Agreement, or (B) a copy of the consent of the Franchisor to the assignment of the Franchise Agreement in form and substance satisfactory to the Vendor, or (ii) the Court shall have issued an order assigning the rights and obligations of the Franchise Agreement to the Purchaser by the Closing Date;
- (iii) the Purchaser shall have performed and complied with all of the terms and conditions in the FMI Agreement on its part to be performed or complied with at or before Closing and shall have executed and delivered or caused to have been executed and delivered to the Vendor at Closing all the documents contemplated required to be so executed and delivered in the FMI Agreement; and
- (iv) the FMI Occupation Agreement shall have been approved by the Court and shall not have been terminated.

- (c) For the mutual benefit of the Vendor and the Purchaser, to be fulfilled or performed, on or before the Closing Date (other than item (i) which shall be fulfilled or performed on or before the Condition Date):
    - (i) the Parties shall have received evidence, satisfactory to the Vendor and the Purchaser, acting reasonably, of the consent of Prudential to the transaction contemplated in the FMI APA; and
    - (ii) the Sale Approval Order, materially in the form attached as Schedule G to the FMI APA, shall have been issued and entered by the Court and shall not be subject to a stay.
27. The Franchisor, the Prizm Entities and FMI have entered into a consent agreement dated August 24, 2011 , effective on Closing (the “**FMI Franchisor Consent Agreement**”), which is attached as Exhibit H to the September 8 Affidavit, without certain Exhibits that are deemed confidential by one or more of the parties. The Monitor has been advised that the execution of the FMI Franchisor Consent Agreement satisfies the condition in the FMI APA relating to the Franchise Agreement, provided that the conditions in the FMI Franchisor Consent Agreement are met. Prizm LP, Prizm Inc. and FMI have entered into assignment agreement, effective on Closing, a copy of which is attached as Exhibit 1 to the FMI Franchisor Consent Agreement. The Monitor notes, however, that the FMI Franchisor Consent Agreement provides that the consent of the Franchisor to the FMI Transactions is conditional on each of the FMI Transactions closing concurrently. Accordingly, if the FMI Supplemental APA does not close, then a condition to the FMI Franchisor Consent Agreement will not have been satisfied and the FMI APA could not close.
28. The Monitor has also been advised that the Parties have received satisfactory evidence of the consent of Prudential to the transaction contemplated in the FMI APA.



29. As at the September 9, 2011, 11 notices have been given in respect of those Leases that only require notice for assignment under the terms of the applicable Lease. In addition, Landlord Consents have been received in respect of 2 other Outlets that only require execution by the Purchaser. The foregoing, together with the Bridgewater Property represent 39% of the Outlets specified in Schedule D to the FMI APA.

#### **THE SUPPLEMENTAL FMI APA**

30. Subsequent to the signing of the FMI APA, FMI agreed that they would acquire up to an additional 5 store locations provided that they could obtain certain concessions in respect of those locations from the Franchisor and the relevant landlords. The Supplemental FMI APA was executed on August 23, 2011.
31. The key terms of the Supplemental FMI APA, a copy of which is attached as Exhibit D to the September 8 Affidavit, are summarized below. The terms of the Supplemental FMI APA are substantially similar to the terms of the FMI APA with few exceptions. The primary difference is that there is no refund mechanic of the Purchase Price in the Supplemental FMI APA, other than with respect to the Current Assets and there is no need for an Occupation Agreement with respect to the stores concerned as a condition of closing is that all relevant leases shall be assigned or replaced on or before closing. The key terms of the Supplemental FMI APA are as follows:
- (a) The transaction includes up to 2 stores in Nova Scotia and 3 stores in New Brunswick, including the Vendor's interest in the Leases and Leased Premises, the related Franchise Agreements, equipment, Trade Fixtures, Inventories, Accounts Receivable, Prepaid Expenses and Restaurant Cash Float;

- (b) The Purchase Price equates to \$25,000 per Outlet plus the UPGC Price being the product of \$500 and the number of Purchased Outlets, plus \$56,581 being the Closing Date Current Assets Amount, subject to post-closing adjustment in respect of Current Assets;
  - (c) In addition to the Purchase Price, the Purchaser is responsible for the payment to the Franchisor of any fees charged by the Franchisor in respect of the assignment of the Franchise Agreement or the granting of a new franchise agreement;
  - (d) A deposit of \$25,000 has been paid by the Purchaser and is being held by the Monitor. The Deposit is refundable in the event that Closing does not occur for any reason other than a breach by the Purchaser;
  - (e) The Closing Date shall be the first Monday which is not less than three business days after the Sale Approval Order is issued or such other date as may be agreed by the parties. The Supplemental FMI APA may be terminated by either party if Closing has not occurred by September 30, 2011; and
  - (f) The Purchaser shall offer employment effective as of the Closing Date to the Designated Employees and the Purchaser shall recognize the service to the Vendor of the Designated Employees for all purposes.
32. The Supplemental FMI APA is subject to a number of conditions, as follows:
- (a) For the exclusive benefit of the Purchaser, to be fulfilled or performed on or before the Closing Date (other than item (i) which shall be fulfilled or performed on or before the Condition Date):
    - (i) on or before the Condition Date (now being September 12, 2011), the Purchaser shall have (i) entered into a new franchise arrangement with the Franchisor in respect of the

Purchased Outlets, or (ii) negotiated the form of the assignment of the Franchise Agreement with the Franchisor, on terms on terms as may be agreed upon between the Purchaser and the Franchisor, to become effective on the Closing Date, on terms and conditions satisfactory to the Purchaser in its sole discretion;

- (ii) on or before the Condition Date, the Purchaser shall have used commercially reasonable efforts to enter into an amendment to the Lease or a replacement lease in form and substance satisfactory to the Purchaser, for each of the Outlets, such amendment or replacement lease to be effective as of the Closing Date;
- (iii) on or before the Closing Date, the Vendor shall have issued a notice to assign the Lease in respect of Outlet #1043 and the Purchaser shall have entered into an assignment agreement substantially in the form attached to the Supplemental FMI APA;
- (iv) the representations and warranties of the Vendor shall be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date. However, (i) if a representation and warranty is qualified by materiality or material adverse effect, it must be true and correct in all respects after giving effect to such qualification and (ii) if a representation and warranty speaks only as of a specific date it only needs to be true and correct as of that date; and

- (v) the Vendor shall have performed and complied with all of the terms and conditions in the Supplemental FMI APA on its part to be performed or complied with at or before Closing and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at Closing all the documents contemplated or required to be so executed and delivered in the Supplemental FMI APA.
  
- (b) For the exclusive benefit of the Vendor, to be fulfilled or performed on or before the Closing Date (other than item (ii) which shall be fulfilled or performed on or before the Condition Date):
  - (i) the representations and warranties of the Purchaser shall be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date. However, (i) if a representation and warranty is qualified by materiality or material adverse effect, it must be true and correct in all respects after giving effect to such qualification and (ii) if a representation and warranty speaks only as of a specific date it only needs to be true and correct as of that date;
  
  - (ii) either (i) the Vendor shall have received by the Condition Date (A) confirmation from the Purchaser that an assignment of the Franchise Agreement is not required for the transaction contemplated by this Agreement, or (B) a copy of the consent of the Franchisor to the assignment of the Franchise Agreement in form and substance satisfactory to the Vendor, or (ii) the Court shall have issued an order

assigning the rights and obligations of the Franchise Agreement to the Purchaser by the Closing Date; and

- (iii) the Purchaser shall have performed and complied with all of the terms and conditions in the Supplemental FMI APA on its part to be performed or complied with at or before Closing and shall have executed and delivered or caused to have been executed and delivered to the Vendor at Closing all the documents contemplated or required to be so executed and delivered in the Supplemental FMI APA.
- (c) For the mutual benefit of the Vendor and the Purchaser, to be fulfilled or performed, on or before the Closing Date (other than item (i) which shall be fulfilled or performed on or before the Condition Date):
  - (i) the Parties shall have received evidence, satisfactory to the Vendor and the Purchaser, acting reasonably, of the consent of Prudential to the transaction contemplated by the Supplemental FMI APA; and
  - (ii) the Sale Approval Order, materially in the form attached as Schedule G to the Supplemental FMI APA shall have been issued and entered by the Court and shall not be subject to a stay.

33. The Franchisor, the Prizm Entities and FMI have entered into a consent agreement, effective on Closing (the “**Supplemental FMI Franchisor Consent Agreement**”), which is attached as Exhibit J to the September 8 Affidavit, without certain Exhibits that are deemed confidential by one or more of the parties. Prizm LP, Prizm Inc. and FMI have entered into assignment agreement, effective on Closing, a copy of which is attached as Exhibit 1 to the Supplemental FMI Franchisor Consent Agreement. The Monitor has been advised that the execution of the Supplemental FMI Franchisor Consent Agreement satisfies the condition in the Supplemental FMI APA relating to the Franchise Agreement provided that the conditions in the FMI Franchisor Consent Agreement are met. The Monitor notes, however, that the Supplemental FMI Franchisor Consent Agreement provides that the consent of the Franchisor to the FMI Transactions is conditional on each of the FMI Transactions closing concurrently. Accordingly, if the FMI APA does not close, then a condition to the FMI Franchisor Consent Agreement will not have been satisfied and the FMI Supplemental APA could not close.
34. The Monitor has been advised that the Parties have received satisfactory evidence of the consent of Prudential to the transaction contemplated in the Supplemental FMI APA.
35. The Monitor understands that SREIT and the Franchisor have agreed in principle to provide the necessary lease documentation effective on Closing, for the relevant Outlets which are subject to Supplemental FMI APA. Notice of assignment, effective on Closing, has been issued by the Prizm Entities in respect of store number 1043.

## TREATMENT OF CLOSING PROCEEDS

36. It is proposed that the Purchase Price of \$3,226,231 for the FMI APA and of \$184,081 for the Supplemental FMI APA (together, the “**Aggregate FMI Purchase Price**”), less the deposits held by the Monitor, be paid to the Monitor on closing. There are a number of potential claims to the Purchase Price and a number of payments to be made from the Purchase Price or from operating cash flow on or following Closing, as described below.

### *Potential Refunds to FMI*

37. Pursuant to the FMI APA, a reimbursement of the Purchase Price will be due to FMI to the extent that:
- (a) Less than 100% of the Leases are assigned within three months of Closing or if the Lease is terminated or the Purchaser evicted prior to an assignment becoming effective; and
  - (b) The Current Assets are determined from the Current Assets Statement (prepared within 30 days of the Closing Date) to be less than \$467,231.
38. The Prizm Entities have informed the Monitor that as at September 7, 2011, 11 notices of assignment have been issued in respect of Leases which can on their terms be assigned on notice without consent (the “**Notice Leases**”) and Landlord Consents have been received in respect of 2 other Outlets that only require execution by the Purchaser. The Prizm Entities have also informed the Monitor that a further two Landlord Consents have been agreed and circulated for execution.

39. Based on the provisions of the FMI APA, the Monitor calculates that the maximum potential Purchase Price reduction in respect of failure to assign Leases, assuming that only the Notice Leases, those Leases for which signed consents have already been obtained and those leases for which the consent documents have been obtained but are yet to be fully executed are ultimately assigned, is \$1,012,000.00.
40. It is not possible to calculate at this time what the Current Assets Purchase Price Adjustment may be under the FMI APA. Accordingly, the full amount of the Current Assets Closing Amount, being \$467,231, will be held pending adjustment in accordance with the terms of the FMI APA.
41. Pursuant to the Supplemental FMI APA, a reimbursement of the Purchase Price will be due to FMI to the extent that the Current Assets are determined from the Current Assets Statement (prepared within 30 days of the Closing Date) to be less than \$56,581.
42. It is not possible to calculate at this time what the Current Assets Purchase Price Adjustment may be under the Supplemental FMI APA. Accordingly, the full amount of the Current Assets Closing Amount, being \$56,581, will be held pending adjustment in accordance with the terms of the Supplemental FMI APA.

***Payments to the Franchisor***

43. As a condition of its consent to the assignment of the Franchise Agreements or the granting of a new Franchise Agreement, which is a condition precedent to both the FMI APA and the Supplemental FMI APA, the Franchisor has demanded that the following amounts totalling \$1,623,670.16 that are accrued to May 20, 2011, be paid out of the proceeds of the transaction plus the amounts accruing from August 8, 2011 to the Closing Date, not to exceed \$700,000.00 in respect of the FMI APA and \$100,00.00 in respect of the Supplemental FMI APA:



	<b>Principle Amount</b>	<b>Interest to 31/3</b>	<b>Taxes</b>	<b>Total</b>
<b>Pre-Filing Amounts:</b>				
Royalties <sup>1</sup>	\$800,088.21	\$28,224.83	\$224,024.70	\$1,052,337.74
Other amounts <sup>2</sup>	\$15,080.66	\$1,252.25	\$4,222.58	\$20,555.49
<b>Total Pre-Filing Amounts</b>	<b>\$815,168.87</b>	<b>\$29,477.08</b>	<b>\$228,247.28</b>	<b>\$1,072,893.23</b>
<b>Post-Filing Amounts:</b>				\$0.00
Royalties <sup>1</sup>	\$274,280.21	\$0.00	\$76,798.46	\$351,078.67
Other amounts <sup>2</sup>	\$156,014.27	\$0.00	\$43,683.99	\$199,698.26
<b>Total Post-Filing Amounts</b>	<b>\$430,294.48</b>	<b>\$0.00</b>	<b>\$120,482.45</b>	<b>\$550,776.93</b>
<b>Total</b>	<b>\$1,245,463.34</b>	<b>\$29,477.08</b>	<b>\$348,729.74</b>	<b>\$1,623,670.16</b>

1. Royalty amounts include Royalties owing on all Atlantic stores
2. Includes call center and training costs and co-op advertising

44. The Monitor has been informed that the Prizm Entities and Prudential have agreed to the aforementioned payments to the Franchisor in order to obtain the consent to the assignment of the Franchise Agreements in satisfaction of the conditions precedent to the FMI APA and of the Supplemental FMI APA regarding Franchise Agreements.

***Potential Landlord Claims***

45. As previously reported, Scott’s REIT (“**SREIT**”) is the Prizm Entities’ major landlord. SREIT has alleged a claim that the wording of their leases is such that in the event that the Prizm Entities undertake a transaction that includes a payment for the assignment of leases, SREIT is entitled to such proceeds and that the proceeds are to be held in trust for the benefit of SREIT. The Prizm Entities and Prudential dispute this claim and the parties are in discussions in respect of a timetable for a hearing to adjudicate the matter. The leases of a number of other landlords have language similar to that contained in the SREIT leases, though, to the Monitor’s knowledge, as at the date of this report none have advanced the same claims as SREIT.

46. On August 9, 2011, SREIT filed a Notice of Motion claiming, *inter alia*, proceeds of the Soul Transaction and all future transactions that included SREIT leases. The amounts of the claim were not quantified. The Notice of Motion claims payment in priority to all other parties including the Franchisor.

#### **THE MONITOR'S COMMENTS**

##### ***The FMI Transactions***

47. The Monitor has been closely monitoring the Sales Process and has been actively involved in discussions with the Prizm Entities and their advisors, potential purchasers and various stakeholders in the estate. The Monitor believes that the Sales Process has been conducted in accordance with the provisions of the Sales Process Order and that the Sales Process has been carried out in a manner that is fair, transparent and reasonable in the circumstances.
48. The Prizm Entities and their advisors have informed the Monitor that they believe that the FMI Transactions represent the highest and best realizations available with respect to the Outlets concerned. Considering both the results of the Sales Process and the evidence available with respect to potential liquidation value, the Monitor concurs.
49. Furthermore, closing of the FMI Transactions would result in the continuation of going concern operations at 43 restaurants. This would preserve approximately 600 jobs, provide the landlords of those locations with a replacement tenant and provide ongoing business opportunities for suppliers.
50. Accordingly, the Monitor supports the Prizm Entities' request for approval of the FMI APA and of the Supplemental FMI APA.

***Proposed Payments to the Franchisor***

51. The Prizm Entities and the Monitor have reviewed the calculation of the amounts claimed by the Franchisor with respect to pre-filing and post-filing continuing fees and other amounts owing under the Master Franchise Agreement and are satisfied as to the method and accuracy of such calculations.
52. The Franchise Agreement provides for interest on overdue amounts at the rate of 18% per annum. The payments demanded by the Franchisor as a condition of their consent to the assignment of the Franchise Agreements include interest on the pre-filing Continuing Fees and other amounts payable up to the date on the Initial Order.
53. As noted earlier in this report, the amount demanded by the Franchisor as a condition of its consent to the assignment of the Franchise Agreement includes pre-filing and post-filing arrears relating to Outlets that are not subject to the FMI Transactions. Furthermore, the “other amounts” shown in the table earlier in this report include the net amount of \$125,799.95 owing to advertising and supply co-operatives. Accordingly, the amounts demanded by the Franchisor as a condition of consent are not limited to amounts required to “cure” monetary defaults under the Franchise Agreement related to the Outlets.

***Potential Landlord Claims***

54. As described in the Monitor’s Second Report, in the Soul Transaction SREIT requested that a pro-rata amount of the Purchase Price, based on the number of SREIT Leases as a proportion of the total number of Leases, be reserved pending adjudication of its claim.

55. If this calculation is used in the case of the FMI APA (there being no assignments of lease with “consideration clauses” in the case of the Supplemental FMI APA as new leases are being entered into by the Purchaser), the pro-rata amount for the 16 SREIT leases would be approximately \$1.2 million. In addition, there are a further 13 other leases with similar provisions which under this calculation would have a pro-rata amount of approximately \$843,000.
56. The Monitor has obtained an independent analysis of the “consideration clause” leases from Cushman & Wakefield Ltd. (the “Lease Report”). Based on the Lease Report, the aggregate estimated value of the 16 SREIT leases that are subject to the FMI APA is negative \$956,519. Excluding those leases with negative value, the estimated aggregate value is \$140,224. 12 of the 13 non-SREIT consideration clause leases have negative value. The other lease has an estimated value of \$73,447.
57. As discussed earlier in this report, the Franchisor has demanded payment of approximately \$2.4 million from the proceeds of sale from the FMI Transactions. Also as discussed earlier in this report, SREIT claims that it is entitled to proceeds of the assignment of leases in priority to all other stakeholders including the Franchisor. The payment of the amount demanded by the Franchisor is necessary to satisfy the conditions precedent to the FMI Transactions. All other funds currently available to the Prizm Entities are subject to Court-ordered charges in favour of various parties, including Critical Suppliers. Accordingly, the only funds available to make the payments demanded by the Franchisor as a condition of its consent would appear to be the proceeds of the FMI Transactions. Therefore unless such amounts are paid from the proceeds of sale, there would be no proceeds that could be subject to a claim by SREIT or other Landlords. Accordingly, the maximum potential proceeds from the FMI Transactions that could be available to satisfy claims of the Landlords, if such claims are ultimately determined by the Court to be valid, is approximately \$1.0.

***Payments Required under Section 36(7) of the CCAA***

58. The Monitor has reviewed the calculation of amounts payable in respect of the employees that would be transferred to FMI or whose employment would be terminated as a result of the FMI Transactions and is satisfied that the payments referred to in section 36(7) of the CCAA can be made to such employees by the Prizm Entities from operating cash flow.

**THE OCCUPATION AGREEMENT**

59. Prizm LP, Prizm Inc. and FMI have entered into an occupation agreement, effective as of the Closing Date, pursuant to which FMI will occupy and operate the Outlets subject to the FMI APA for which Leases are not assigned on Closing (the “**FMI Occupation Agreement**”). A copy of the FMI Occupation Agreement is attached as Exhibit I to the September 8 Affidavit. Capitalized terms used in this section of the report that are not otherwise defined are as defined in the FMI Occupation Agreement.

60. The FMI Occupation Agreement is substantially the same as the Occupation Agreement approved by this Court in connection with the Soul Transaction. A black-line of the FMI Occupation Agreement highlighting the changes from the the Soul Occupation Agreement is attached hereto as Appendix A. The key terms of the FMI Occupation Agreement are summarized as follows:

- (a) FMI is granted a licence to occupy each of the Premises from the Closing Date to the earlier of:
  - (i) the date that is three months from the Closing Date;
  - (ii) the time the relevant Landlord’s consent to the assignment of the applicable Lease is obtained or the assignment has been ordered by the Court and such Lease has been assigned to the Licensee;

- (iii) the time the applicable Lease is lawfully terminated or expires; and
  - (iv) the time the license is terminated in respect of any given Lease in accordance with the terms of the Occupation Agreement;
- (b) FMI is required to pay to Prizm LP any and all rent, expenses, occupation costs and other amounts relating to the Premises which Prizm LP is obligated to pay pursuant to and in accordance with the Leases;
61. The FMI Occupation Agreement does not purport to release Prizm LP or Prizm Inc. from any obligations, liabilities or covenants that it has under the Leases. The Monitor supports the FMI Transactions closing and the Leases being assigned as quickly as possible. To the extent that the Leases are not assigned on Closing because the Prizm Entities do not have acceptable forms of landlord consent and an order is not made by the Court assigning such Leases pursuant to section 11.3 of the CCAA, the Monitor supports the Prizm Entities' request for approval of the FMI Occupation Agreement as a mechanism to ensure that the FMI Transactions can close, the Outlets can continue to be operated and the employees' jobs can be preserved pending the Leases being assigned.

#### **THE 184 APA**

62. The 184 APA provides for the sale of the equipment and signage of the store located at 2032 Kipling Avenue, Etobicoke (the "**Kipling Store**"), for the price of \$50,000 plus HST and the Current Assets (as defined in the 184 APA) for \$15,000, subject to customary post-closing adjustments.

63. Although the sale is below the limits within which the Prizm Entities are authorized to sell assets without Court approval, the purchaser is requiring an order approving the 184 APA, the transactions contemplated by the 184 APA and conveying to the Purchaser all of the Vendor's right, title and interest in and to the Purchased Assets (as each of the foregoing capitalized terms are defined in the 184 APA) free and clear of all liens, charges, pledges, security interest and other encumbrances (the "**184 Sale Approval Order**").
64. The Kipling Store is the only store that the Prizm Entities continue to operate in Ontario. The offer that resulted in the 184 APA was the only offer that has arisen from the marketing efforts. The Prizm Entities and their advisors have informed the Monitor that they believe that the 184 APA represents the highest and best realizations available with respect to the assets in question. Considering both the results of the marketing efforts and the evidence available with respect to potential liquidation value, the Monitor concurs.
65. Prudential is the only economic stakeholder with respect to the assets that are subject to the 184 APA and Prudential has informed the Prizm Entities that it supports the sale pursuant to the 184 APA.
66. Accordingly, the Monitor supports the Prizm Entities' request for the granting of the 184 Sale Approval Order.

#### **THE RECEIVERSHIP MOTION**

67. The Monitor has been advised by Prudential that it intends to serve the Receivership Motion returnable on September 14, 2011, the return date for the Prizm Entities' motion for, inter alia, the approval of the FMI Transactions. The Receivership Motion would seek the appointment of RSM Richter Inc. as receiver (the "Receiver").

68. The Monitor understands that it is proposed that the Receivership Order, if granted, will become effective at 12:01 am on the day after the Closing of the FMI Transactions (which Closing Date is expected to be September 19, 2011 if the Prizm Entities' motion for approval is granted) and that the CCAA Proceedings would terminate, save and except for the payment of amounts subject to the Administration Charge as discussed later in this report, at that time.
69. There are a number of issues arising from the transition from the CCAA Proceedings to the receivership that the Monitor is of the view must be addressed in order to minimize the impact on stakeholders and to protect the integrity of the CCAA Proceedings specifically and of the restructuring process generally as follows:
- (a) Parties that have dealt with the Prizm Entities in good faith during the CCAA Proceedings and that have supplied goods or services on credit should be assured of payment for such supply;
  - (b) The amounts due to employees for wages and salaries and under the KERP arrangements should be paid;
  - (c) The D&O Claims Solicitation Procedure should be preserved to avoid the need for claimants to refile claims;
  - (d) The "reserves" as set out in the Monitor's Second Report in respect of potential claims to the proceeds of the Soul Transaction should be maintained by the Receiver pending further of the Court in order to maintain the status Quo;
  - (e) The post closing calculation of the Current Assets Statement for the FMI APA and the Supplemental FMI APA; and
  - (f) The Court-ordered Charges should survive in the receivership until such time as claims payable under the Charges have been paid.



70. The Monitor has been informed by counsel to Prudential the intent is that post-filing amounts owing from the CCAA Proceedings will be paid as and when falling due notwithstanding an intervening receivership, that requirement to make such payments will be included as a provision in the proposed Receivership Order and that the Receivership Motion will seek to expand the Critical Suppliers Charge to include all unpaid post-filing amounts to provide security to suppliers until such time as the amounts are paid.
71. The Monitor has been informed by counsel to Prudential that the proposed Receivership Order will provide for payment of any outstanding wages and salaries and of the remaining KERP payments as and when they fall due.
72. The Monitor understands that Prudential has agreed that the D&O Claims Solicitation Procedure should be unaffected by the receivership. In that regard, the Monitor will provide the Receiver with copies of any D&O Claims filed by the Initial D&O Claims Bar Date.
73. The Monitor has also been informed by counsel to Prudential that the proposed Receivership Order will preserve the rank and priority of the Charges granted in the CCAA Proceedings:
  - (a) the Critical Supplier Charge;
  - (b) the Franchisor Charge;
  - (c) a receiver's borrowing charge which would replace the DIP Lender's Charge; and
  - (d) the Directors' Charge.

74. The Monitor is currently holding approximately \$34 from the proceeds of various transactions completed as part of the CCAA Proceedings, including the Soul Transaction, in addition to the Deposits in respect of the FMI Transactions. As part of the transition process, it is proposed that the Monitor will receive specific court authorization to transfer the funds in its possession to the Receiver, subject to the reserve for professional fees discussed below. It is the Monitor's understanding that the proposed Receivership Order will provide that such funds will not be distributed by the Receiver or used for any other purpose without further Order of the Court.
75. With respect to the Administration Charge, it is contemplated that \$1.5 million (being the amount of the Administration Charge) will continue to be held as a reserve by the Monitor. The reserve will be used to satisfy the final accounts of the beneficiaries of the Administration Charge, other than the CRO which will receive a charge in the Receivership Order. Once the Monitor has received confirmation from each of the beneficiaries that such accounts have been satisfied in full, the remaining balance will be remitted to the Receiver and the Monitor will file a certificate evidencing its final discharge.

In connection with the termination of the CCAA Proceedings, a release and discharge of the Monitor and its obligations under the Orders made in the CCAA Proceedings is being sought. To the best of the Monitor's knowledge, it has complied with its duties and obligations under the Amended Initial Order, all other Orders made in the CCAA Proceedings and the CCAA.

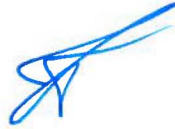
The Monitor respectfully submits to the Court this, its Fourth Report.

Dated this 9<sup>th</sup> day of September, 2011.

FTI Consulting Canada Inc.  
In its capacity as Monitor of  
Priszm Income Fund, Priszm Canadian Operating Trust,  
Priszm Inc. and Kit Finance Inc.



Nigel D. Meakin  
Senior Managing Director



Toni Vanderlaan  
Managing Director

---

# Appendix A

---

## FMI Occupation Agreement compared to the Soul Occupation Agreement

## OCCUPATION AGREEMENT

THIS AGREEMENT is made as of ~~May 17,~~July 29, 2011,

### BETWEEN:

PRISZM LP, a limited partnership formed under the laws of Manitoba (the “**Licensor**”)

- and -

PRISZM INC., a corporation established under the *Canada Business Corporations Act* (the “**General Partner**”)

- and -

~~SOUL RESTAURANTS CANADA~~FMI ATLANTIC INC., a corporation incorporated under the laws of ~~Canada~~New Brunswick (the “**Licensee**”)

### RECITALS:

- A. Pursuant to the leases for those outlets for which a consent,~~notice~~ or assignment order is required but have not been obtained or delivered, as contemplated by the ~~Amended and Restated~~ Asset Purchase Agreement of even date herewith (the “~~Soul Agreement~~APA”), (individually, a “**Lease**” and, collectively, the “**Leases**”), the Licensor, as lessee, leased the premises to which such Leases relate (collectively or individually, as the context requires, the “**Premises**”) for the term and in accordance with the provisions of the Leases.
- B. On March 31, 2011, Prizm Income Fund, Prizm Canadian Operating Trust, Prizm Inc. and Kit Finance Inc. (collectively, the “**Applicants**”) applied for and were granted protection from their creditors under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) pursuant to the Initial Order (the “**Initial Order**”) of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The protections and authorizations of the Initial Order were extended to the Licensor (together with the Applicants, the “**Prizm Entities**”). FTI Consulting Canada Inc. (the “**Monitor**”) was appointed as Monitor of the Prizm Entities in the CCAA proceedings.

- C. Pursuant to the ~~Soul Agreement~~ [APA](#) the Licensee has agreed to purchase from the Licensors and the Licensors have agreed to sell to the Licensee (the "~~Soul Transaction~~") all of the Licensors' right, title and interest, if any, in and to the Purchased Assets (as defined in the ~~Soul Agreement~~ [APA](#)). The ~~Soul Transaction~~ is conditional on obtaining an order of the Court approving the ~~Soul Transaction~~.
- D. It is a term of the ~~Soul Agreement~~ [APA](#) that where the Licensee is not able to obtain the consents of such landlords to the assignment of the Leases or an order of the Court assigning such Leases (to the extent required) the Licensors shall hold the applicable Lease in trust for the Licensee, to the extent within its control, comply with the terms and provisions of the applicable lease, and cooperate with the Licensee in any reasonable and lawful arrangements designed to provide the benefits of the rights under the applicable Leases to the Licensee.

**NOW THEREFORE, IN CONSIDERATION** of the premises and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto represent, warrant, covenant and agree as follows:

1. **Occupation**

In order to permit the Licensee to use the Purchased Assets and to carry on business at the Premises, the Licensors grant to the Licensee a license to occupy each of the Premises for a period (for each of the Premises, the applicable "**License Period**") commencing, in respect of each of the Premises, on the Closing Date (as defined in the ~~Soul Agreement~~ [APA](#)) and ending, in respect of each of the Premises, on the earlier of: (a) the date that is ~~six~~ [three](#) (~~63~~) months from the Closing Date; (b) the time the relevant Landlord's consent to the assignment of the applicable Lease is obtained or the assignment has been ordered by the Court and such Lease has been assigned to the Licensee; (c) the time the applicable Lease is lawfully terminated or expires; and (d) the time the license is terminated in respect of any given Lease in accordance with Section 10 hereof.

2. **Responsibilities of the Licensee**

The Licensee shall be required to pay any and all rent, expenses, occupation costs and other amounts relating to the Premises which the Licensors are obligated to pay pursuant to and in accordance with the Leases, including, without limitation, per diem basic and additional rent and all costs, expenses, utilities, realty taxes and common expenses, that accrue during or that relate to the License Period and that are otherwise payable by the Licensors in connection with the occupation of the Premises by the Licensee (the "**Occupation Costs**") with the intent that this License shall be wholly net to the Licensors. Notwithstanding the foregoing, the Occupation Costs shall not include any transfer fees which the Licensors are required to pay to the landlords in connection with the assignment of the Leases to the Licensee, or costs of the Licensors to effect that

transfer or assignment to the Licensee, or other payment which may be owed by Licensor to the landlords pursuant to the Leases arising prior to the Closing Date or in connection with the transactions contemplated by the ~~Soul Agreement~~APA.

No later than five (5) days prior to the projected Closing Date, the Licensor shall issue to the Licensee a statement of the estimated Occupation Costs in respect of each Lease for the period from the projected Closing Date to the end of that calendar month (such period being the “**Initial Stub Period**”), other than amounts which are Current Assets (as defined in the ~~Soul Agreement~~APA). The Licensee shall pay to the Licensor by banker’s draft payable to the Vendor (as defined in the APA) and delivered to the Vendor’s office or by wire transfer directly to the Vendor’s banking institution the amount set out in such statement ~~within three (3) days after receipt thereof such that the Licensor is in receipt of the amount of the Occupation Costs for each Lease prior to~~on the Closing Date.

The Licensor shall issue to the Licensee a statement of the estimated Occupation Costs in respect of each Lease for the next calendar month at least seven (7) days before the first day of each calendar month. The Licensee shall pay to the Licensor by banker’s draft payable to the Vendor and delivered to the Vendor’s office or by wire transfer directly to the Vendor’s banking institution the amount set out in such statement within three (3) days after receipt thereof such that the Licensor is in receipt of the amount of the Occupation Costs for each Lease prior to the first day of each calendar month. Estimated Occupation Costs shall be reconciled against the actual Occupation Costs within thirty (30) days after the end of the applicable License Period for each Lease. In the event that the actual Occupation Costs payable under the Leases are greater than the amount paid by the Licensee in accordance with this Agreement and the Leases, the Licensee shall pay the difference to the Licensor within five (5) business days of the reconciliation being completed by banker’s draft payable to the Vendor and delivered to the Vendor’s office or by wire transfer directly to the Vendor’s banking institution. In the event that the actual Occupation Costs payable under the Leases are less than the amount paid by the Licensee in accordance with this Agreement and the Leases, the Licensor shall reimburse the difference to the Licensee within five (5) business days of the reconciliation being completed. For purposes of the reconciliation, the amount of property taxes and other additional rents that are or may be payable with respect to the Leases shall be based on the parties’ actual knowledge at the time of performing the reconciliation. To the extent that additional amounts may be owing or refundable in the future, those amounts shall be the sole responsibility or benefit of and shall be paid or received by the Licensee without recourse to or any obligation to refund the Licensor. For greater certainty, the Licensee shall not be responsible for any transfer fees which the Licensor is required to pay to the landlords in connection with the assignment of the Leases to the Licensee.

The Licensee shall deliver to the Licensor forthwith upon receipt copies of any and all invoices, bills, accounts and other communications received at the Premises in respect of costs and expenses relating to carrying on business from the Premises (including, without limitation, relating to Occupation Costs).

For greater certainty, the Licensee will be wholly responsible for all of the costs and expenses relating to carrying on business from the Premises, in accordance with and subject to the terms of the Leases.

### 3. Use of Premises

During the License Period the Licensee shall maintain the Premises in the condition that they were at the commencement of the License Period, ordinary wear and tear excepted. The Licensee shall be responsible for all repair costs in respect of the Premises during the License Period, in accordance with and subject to the terms of the Leases.

During the License Period, the Licensee shall: (a) perform all of the Licensor's obligations with respect to the Premises during the License Period, including those arising under the Leases; (b) comply with each of the provisions of the Leases and the requirements of all laws, by-laws, regulations, ordinances and orders that affect the occupation, condition, maintenance or use of the Premises; (c) comply with the requirements applicable to any insurance covering the Premises; and (d) not assign, sublet or otherwise permit any other person to occupy or use the Premises.

### 4. Indemnity

The Licensee hereby indemnifies and saves harmless the Licensor together with its employees, agents, directors, officers, servants and invitees from and against any and all claims, actions, causes of action, losses, liabilities, debts, demands, costs (including reasonable legal costs on a full indemnity basis) and expenses suffered or incurred by the Licensor, its employees, agents, directors, officers, servants and invitees or any other occupant(s) of the Premises, in connection with, or arising from: (a) the Licensee's failure to comply with this Agreement, or any one or more of the Leases during the License Period; (b) the carrying on of business by the Licensee from the Premises during the License Period; (c) the Licensee's operation, occupation and/or use of the Premises during the License Period; (d) any removal of the Purchased Assets from the Premises during the License Period by or on behalf of the Licensee, including, without limitation, all of the acts and omissions ~~of~~ relating to such removal of the Purchased Assets from the Premises during the License Period by the Licensee, its employees, servants, agents and invitees; and (e) all claims, demands, actions, suits, causes of action, expenses, costs, damages and losses of the Licensor relating to injury or property damage suffered by



third parties and/or the Licensor arising from the use or occupation of the Premises by the Licensee and those for whom it is responsible at law. For greater certainty, this indemnity shall not apply to (i) any claims by any landlord for any pre-Closing liabilities of the Licensor; and (ii) any claims by any landlord for any payment of proceeds from the transactions contemplated by the APA.

The Licensor hereby indemnifies and saves harmless the Licensee from and against any and all claims made against the Licensee for amounts which constitute Occupation Costs and the reasonable legal costs on a full indemnity basis suffered or incurred by the Licensee in connection with the defence of such claims, to the extent and only to the extent that such claimed amounts have been paid to the Licensor by the Licensee as part of the Occupation Costs in accordance with Section 2 of this Agreement.

5. **Insurance**

The Licensee shall arrange insurance to comply with the insurance provisions of the Leases and shall show the Licensor as additional insured in such policies during the License Period. Notwithstanding anything to the contrary contained in the Leases, the Licensee shall maintain all risks insurance and public liability insurance underwritten by a nationally recognized insurance company in respect of the Premises and the property of the Licensor and Licensee located at the Premises, in such amounts and with such deductibles as a prudent tenant of similar premises would maintain.

6. **Access**

The Licensee agrees that during normal business hours, and upon 24 hours notice, the Licensor and the Monitor and their respective employees, servants and agents shall have access to the Premises during the License Period, including for the purpose of allowing the Monitor to fulfill its statutory duties or Court-ordered duties as Monitor, provided that it does not interfere with the business of the Licensee.

7. **Representation and Warranties of the Licensee**

The Licensee represents and warrants to the Licensor as follows and acknowledges that the Licensor is relying on such representations and warranties in connection with the matters contemplated by this Agreement:

- (a) This Agreement has been duly authorized, executed and delivered by the Licensee and is a valid and binding obligation of the Licensee enforceable against it in accordance with the terms hereof; and
- (b) The Licensee has the necessary expertise and financial wherewithal in order to fulfill its obligations under this Agreement.

8. **Representation and Warranties of the Licensor**

The Licensor represents and warrants to the Licensee that, subject to the approval of the Court, this Agreement has been duly authorized, executed and delivered by the Licensor and is a valid and binding obligation of the Licensor enforceable against it in accordance with the terms hereof, and acknowledges that the Licensee is relying on such representations and warranties in connection with the matters contemplated by this Agreement.

9. **Conditions Precedent**

- (a) This Agreement is subject to the condition that the Court shall have issued an order approving the ~~Soul Agreement~~[APA](#), the ~~Soul~~ Transaction and this Agreement, which condition is for the mutual benefit of each of the parties and may only be waived, in whole or in part, by agreement of the parties to this Agreement;
- (b) This Agreement is subject to the condition that the ~~Licensor~~[Licensee](#) shall have paid the estimated Occupation Costs for the Initial Stub Period of the License Period in respect of each of the Leases, other than amounts which are Current Assets (as defined in the ~~Soul Agreement~~[APA](#)), to the ~~Licensee~~[Licensor](#), which condition is for the exclusive benefit of the Licensor and may only be waived, in whole or in part, by the Licensor in its sole discretion.

10. **Termination**

The license to occupy and/or use any of the Premises under this Agreement may be terminated by the Licensor at any time without recourse by the Licensee in the event that the Licensee, in any material respect, defaults under, or fails to comply in any material respect with, this Agreement in respect of such Premises and such default or failure to comply remains unremedied for five (5) business days following notice of such default or failure by the Licensor to the Licensee. In the event of termination, the Licensee shall immediately vacate the applicable Premises. Such termination shall be without prejudice to and shall not affect: (a) any rights and remedies of the Licensor as against the Licensee arising from or relating to such default; and (b) any obligations of the Licensor relating to such default or in respect of the period prior to any such termination. Notwithstanding any temporal limits in the indemnity provided in Section 4 and the obligation to maintain insurance in Section 5, in the event of termination pursuant to this Section 10, the indemnity provided in Section 4 and the obligation to maintain insurance under Section 5 will extent from the date of such termination to the date the Licensee vacates the applicable Premises. For greater certainty, the Licensor and Licensee acknowledge and agree that the failure by the

Licensee to pay Occupation Costs, or any part thereof, in accordance with Section 2 hereof shall be deemed to be a material default for the purposes of this Section 10.

11. **No Assignment**

This Agreement and the license provided for herein is personal to the Licensee and cannot be assigned.

12. **No Registration**

The Licensee agrees that this Agreement and any notice of it cannot be registered against title to the Premises.

13. **Entire Agreement**

No modification of this Agreement is binding unless it is in writing and signed by each of the Licensor and Licensee.

14. **Notices**

Any notice, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if: (a) delivered personally; (b) sent by prepaid courier service; or (c) sent prepaid by fax or other similar means of electronic communication, in each case to the applicable address set out below.

(a) To the Licensor:

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

Attention: ~~Deborah Papernick~~ [Jim Robertson](#)  
Facsimile: (416) ~~977-4860~~ [739-3621](#)  
Email: ~~deborah.papernick~~ [jim.robertson@prizm.com](mailto:jim.robertson@prizm.com)

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

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

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

(iii) with a copy to the Monitor:

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

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

(iv) with a copy to the Monitor's solicitors:

Osler, Hoskin & Harcourt LLP  
1 First Canadian Place  
PO Box 50, Stn. 1st Can. Pl.  
Toronto, ON M5X 1B8

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

(b) To the Licensee:

(i) 417 Connell Street  
Unit 7  
Woodstock, NB  
E7M 5G5

~~(i) — Soul Restaurants Canada Inc.~~

~~Attention: Aly Janmohamed~~  
~~Email: aly@soulfoodsgroup.com~~  
Attention: Dwight Fraser  
Facsimile: (506) 328-9408  
Email: dwightfraser@fmigroup.ca

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

~~Gardiner Roberts~~Minden Gross LLP  
~~Suite 3100 Scotia Plaza~~  
~~40145~~ King Street West  
~~Toronto, ON M5H 3Y2~~

~~Attention: Arlene O'Neill~~  
~~Facsimile: (416) 865-6636~~  
Suite 2200  
Toronto, ON M5H 4G2

Attention: Geoffrey D. Brown  
Facsimile: (416) 864-9223  
Email: ~~aoneill@gardiner-roberts~~gbrown@mindengross.com

Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery, if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a ~~business day~~Business Day (as defined in the APA) and the communication is so delivered, faxed or sent prior to 4:30 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following ~~business day~~Business Day. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.

15. **Counterparts**

This Agreement may be executed and delivered by the Licensor and Licensee in one or more counterparts, each of which will be an original and each of which may be delivered by facsimile or functionally equivalent electronic means, and those counterparts will together constitute one and the same instrument.

16. **Governing Law**

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein which apply to contracts made and to be performed entirely in Ontario.

[signature pages follow]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

**PRISZM LP,  
by its general partner, PRISZM INC., by  
~~2279549~~2289500 ONTARIO INC., solely in  
its capacity as Chief Restructuring Officer,  
and without personal or corporate liability**

By:



\_\_\_\_\_  
Name:

Title:

**PRISZM INC.,  
by ~~2279549~~2289500 ONTARIO INC., solely  
in its capacity as Chief Restructuring  
Officer, and without personal or corporate  
liability**

By:



\_\_\_\_\_  
Name:

Title:

**~~SOUL RESTAURANTS CANADA~~FMI  
ATLANTIC INC.**

By: \_\_\_\_\_

Name:

Title:



Document comparison by Workshare Professional on Thursday, September 08, 2011  
4:53:33 PM

<b>Input:</b>	
Document 1 ID	PowerDocs://SETOR1/5816555/7
Description	SETOR1-#5816555-v7-Priszm.Agreement.Occupation_Agreement
Document 2 ID	PowerDocs://SETOR1/5852309/2
Description	SETOR1-#5852309-v2-FM_-_Occupation_Agreement
Rendering set	standard

<b>Legend:</b>	
<a href="#">Insertion</a>	
<del>Deletion</del>	
Moved from	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	53
Deletions	41
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	94