

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

THE HONOURABLE MR.)
JUSTICE MORAWETZ)
WEDNESDAY, THE 14TH DAY
OF SEPTEMBER, 2011

BETWEEN:

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

Applicants

- and -

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

Respondents

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

APPOINTMENT ORDER

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

ON READING the affidavit of Paul Procyk sworn September 9, 2011 (the “**Procyk Affidavit**”) and the exhibits thereto, the Fourth Report of FTI Consulting Canada Inc., in its capacity as Court-appointed monitor of the Prizm Income Fund, Prizm Canadian Operating Trust, Prizm Inc. and Kit Finance Inc. dated September 9, 2011, the Supplement to the Fourth Report dated September 13, 2011 and the affidavit of Jim Roberston sworn September 8, 2011 and the exhibits thereto, and on hearing the submissions of counsel for the Applicants, the Respondents, the Receiver, Yum! Restaurants International (Canada) Company, Scott’s Real Estate Investment Trust, SR Operating Trust, Scott’s Real Estate Limited Partnership, Scott’s Trustee Corp. and Scott’s GP Trust, Metro Richelieu, the CRO, and 20 VIC Management Inc.; Ivanhoe Cambridge Inc.; Morguard Investments Limited; Retrocom Mid-Market REIT; Primaris Retail Real Estate Investment Trust; Oxford Properties Group Inc., and on reading the consent of RSM Richter to act,

SERVICE

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

APPOINTMENT

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

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

FMI Atlantic, "FMI"), dated July 29, 2011 and August 23, 2011 (the "FMI Agreements"), respectively, have been filed with the Court.

RECEIVER'S POWERS

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

5. **THIS COURT ORDERS** that, subject to paragraphs [42] to [47] of this Order, the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

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

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

and in each case: (i) notice under subsection 63(4) of the Ontario *Personal Property Security Act*, section 31 of the Ontario *Mortgages Act*, or any similar legislation in other provinces, shall not be required; and (ii) the *Bulk Sales Act* shall not apply.

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, provided that this Order shall not be registered on title to real property premises leased by the Debtor without the consent of the owner or further order of the Court;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to negotiate and enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

8. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data

storage media containing any such information (the foregoing, collectively, the “Records”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph [8] or in paragraph [9] of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

11. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or

with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

13. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that all Persons having statutory or regulatory mandates for the supply of goods and/or services or oral or written agreements with the Debtor including without limitation, the Soul Agreement and the FMI Agreements, as well as all ancillary documents relating to such agreements including all agreements to occupy premises entered into in conjunction with the Soul Agreement or the FMI Agreements, all computer software, communication and other data services, centralized banking services, the Cash Management System (as defined in the Amended and Restated Initial Order dated April 29, 2011 made in the CCAA Proceeding (the "**Amended and Restated Initial Order**")), payroll services, insurance, transportation services, utility or other services to the Debtor shall comply with their obligations and make all payments to the Debtor or the Receiver as and when required, and are hereby restrained, until further order of this Court, from discontinuing, altering, interfering with or

terminating the supply of such goods or services as may be required by the Receiver or the Debtor, and that the Receiver or the Debtor shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses, domain names and Cash Management System, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver or the Debtor in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

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

RECEIVER TO HOLD FUNDS

16. **THIS COURT ORDERS** that, subject to paragraphs [14] and [31], all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

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

respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

18. **THIS COURT ORDERS** that: (a) all wages, salaries, vacation pay and expenses (which shall not include termination and/or severance pay) that are properly due or accruing to any employee or former employee of the Debtor up to the date that the appointment of the Receiver becomes effective; and (b) any pension-related obligations required to be paid by the Debtor pursuant to s. 36(7) of the CCAA, shall be paid, unless such wages, salaries, vacation pay, expenses or pension-related obligations are otherwise assumed by a purchaser of any of the Property on terms satisfactory to the Receiver.

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER’S LIABILITY

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

RECEIVER’S ACCOUNTS

23. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s

Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (“**Encumbrances**”), and shall have the priority set forth in paragraph [40].

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

CHIEF RESTRUCTURING OFFICER

25. **THIS COURT ORDERS** that from and after the effective date of the appointment of the Receiver: (a) 2289500 Ontario Inc. (“**228 Ontario**”) shall continue as the Chief Restructuring Officer (the “**CRO**”) of the Prizm Entities pursuant to the terms of the agreement entered into between the Prizm Entities and 228 Ontario dated as of September 14, 2011 (the “**CRO Agreement**”); (b) the CRO Agreement be and is hereby approved and the Receiver is authorized to execute the CRO Agreement on behalf of the Prizm Entities; and (c) the CRO shall, subject to this Order, have the powers and obligations set out in the CRO Agreement.

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

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

28. **THIS COURT ORDERS** that neither the CRO nor any employee of the CRO shall incur any liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its or their part; provided that any liability of the CRO hereunder shall in no event exceed the quantum of the fees paid to the CRO.

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

30. **THIS COURT ORDERS** that the CRO shall be entitled to and is hereby granted a charge (the “**CRO’s Charge**”) on the Property to secure amounts owing to the CRO under the CRO Agreement, and that the CRO’s Charge shall have the priority set forth in paragraph [40].

TRANSFER OF FUNDS TO THE RECEIVER

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

- (a) with respect to the proceeds from the sale of certain assets by the Prizm Entities to Soul pursuant to the Soul Agreement and approved by the Soul Approval and Vesting Order (the “**Soul Transaction Proceeds**”), (i) in accordance with the Soul Approval and Vesting Order, with the Receiver being substituted for the Monitor in such paragraphs in all respects without any change to the character of the funds being held or the purpose for which they are being held, and (ii) subject to the reserves in favour of certain landlords of the Prizm Entities, described in the Second Report of the Monitor dated May 26, 2011 and issued in the CCAA Proceeding;
- (b) with respect to the proceeds from the sale of certain assets by the Prizm Entities to FMI pursuant to the FMI Agreements and approved by the FMI Approval and Vesting Orders (the “**FMI Transaction Proceeds**”), in accordance with the FMI Approval and Vesting Orders, with the Receiver being substituted for the Monitor in such paragraphs in all respects without any change to the character of the funds being held or the purpose for which they are being held; and
- (c) with respect to any deposits relating to the sale of assets by the Prizm Entities, in accordance with the terms of the agreements that relate to such deposits.

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

CCAA CHARGES

33. **THIS COURT ORDERS** that the Charges (as defined in the Amended and Restated Initial Order), except for the Administration Charge (as defined in the Amended and Restated Initial Order) set out in the Amended and Restated Initial Order shall remain in full force and effect and shall continue to attach to the Property from and after the effective date of the appointment of the Receiver, and the Charges shall have the priority set forth in paragraph [40].

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

SUPPLIER CHARGE

35. **THIS COURT ORDERS** that each supplier of goods or services to the Prizm Entities who supplies goods or services to the Prizm Entities from and after the effective date of the appointment of the Receiver shall be entitled to the benefit of and is hereby granted a charge (together, the "**Supplier Charge**") on the Property in an amount equal to the value of the goods and services actually supplied by such supplier and received by the Prizm Entities from and after the effective date of the appointment of the Receiver less all amounts paid to such supplier by the Prizm Entities or the Receiver in respect of such goods and services, and the Supplier Charge shall have the priority set forth in paragraph [40].

FUNDING OF THE RECEIVERSHIP

36. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$3 million (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, and shall have the priority set out in paragraph [40].

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

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

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

PRIORITY OF CHARGES

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

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

Second – Critical Supplier Charge and Supplier Charge, which charges shall rank *pari passu*;

Third – Franchisor Charge;

Fourth – Receiver’s Borrowings Charge; and

Fifth – Directors’ Charge,

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

D&O CLAIMS PROCEDURE

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

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

LEASES

42. **THIS COURT ORDERS** that the Receiver shall, subject to and from the effective date of this Order and the appointment of the Receiver, have the right to vacate, abandon or quit or cause the Debtor to vacate, abandon or quit the whole but not any part of any leased premises and/or repudiate any lease and any ancillary agreements relating to any leased premises on not

less than ten (10) calendar days notice in writing to the relevant landlord or as may otherwise be agreed between the Receiver and the relevant landlord (the "**Landlord Notice**").

43. **THIS COURT ORDERS** that until the Receiver has delivered to the relevant landlord a Landlord Notice, the required notice period has expired and the Receiver has ceased to occupy the leased premises, the Receiver or the Debtor shall pay all amounts constituting rent under the leases or as otherwise may be negotiated between the Receiver and the relevant landlord from time to time ("**Rent**"), twice monthly in equal payments on the first and the fifteenth day of each month, in advance, provided that if the Landlord Notice has been issued or the Receiver intends to issue a Landlord Notice and the relevant notice period ends prior to the end of the month or is expected to end prior to the end of the month, then Rent for the portion of the notice period (or expected notice period) that is less than a month may be calculated on a *per diem* basis and paid in advance. In the event that Rent has been paid for a period of time that exceeds the notice period stipulated in a Landlord Notice and the actual occupation of the leased premises by the Receiver or the Debtor, then the relevant landlord shall refund the excess payment to the Receiver or the Debtor within five (5) business days of the expiry of the notice period set forth in the Landlord Notice or the date the leased premises is vacated, whichever is later.

44. **THIS COURT ORDERS** that the Receiver or the Debtor shall provide each of the relevant landlords with notice of its intention to remove any fixtures from any leased premises at least three (3) 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 Receiver's or the Debtor's entitlement to remove any such fixtures under the provisions of the applicable lease, such fixtures shall remain on the premises and shall be dealt with as agreed between such landlord and the Receiver or the Debtor, or by further order of this Court upon a motion by the Receiver on at least three (3) days notice to such landlord. If the Receiver has delivered a Landlord Notice and has ceased or caused the Debtor to have ceased to occupy the leased premises, the Receiver and the Debtor shall not be required to pay Rent after the expiry of the relevant notice period pending resolution of any such dispute.

45. **THIS COURT ORDERS** that at the expiry of the notice period in a Landlord Notice, the relevant landlord shall be entitled to take possession of any such leased premises without wavier

or prejudice to any claims such landlord may have in respect of such lease or leased premises (such claims not to be in any way limited regardless of whether the leased premises is vacated, abandoned or quit or the lease is repudiated), and such landlord shall be entitled to notify the Debtor and the Receiver of the basis upon 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 obligations, if any, to mitigate any damages claimed in connection therewith.

46. **THIS COURT ORDERS** that, subject to the terms of this Order and the rights of any trustee in bankruptcy that may be appointed in respect of the Debtor, to disclaim, retain or assign leases:

- (a) except as expressly permitted by the terms of the leases, none of the leases shall be amended or varied, or deemed to be amended or varied, in any way without obtaining the prior written consent of the applicable landlord and without further Order of this Court; and
- (b) any landlord who has received a Landlord Notice with respect to a leased premise may show such leased premise to prospective tenants during normal business hours, upon giving the Receiver twenty-four (24) hours prior written notice.

47. **THIS COURT ORDERS** that notwithstanding the terms of this Order, but subject to the rights of any trustee in bankruptcy that may be appointed in respect of the Debtor, to disclaim, retain or assign leases:

- (a) where leases are not, in accordance with their terms, transferrable or assignable to a third party without first obtaining the consent of the applicable landlord, none of the leases shall, absent further order of this Court, be transferred, conveyed, assigned or vested in a third party by operation of this Order, save and except to the extent that respective consents have been, or are in the future in these receivership proceedings, obtained from the respective landlords; and
- (b) in the event that Rent is not calculated and paid by the Debtor or the Receiver as required by paragraph [43], then upon five (5) business days prior written notice

to the Receiver, a landlord may immediately terminate the relevant leases without further Order of this Court, provided that (i) Rent remains unpaid at the end of such notice period; and (ii) the Receiver has not advised the relevant landlord, in writing, that it disputes the landlord's entitlement to Rent and will be seeking an Order from this Court preventing the relevant landlord from terminating the applicable leases (subject to the availability of the Court, the Receiver's motion shall be brought within fourteen (14) business days of the Receiver's notice to the landlord disputing the landlord's entitlement to terminate the lease). If a lease is terminated under this provision, the relevant landlord shall provide the Debtor and the Receiver with reasonable access to the leased premises to remove any Property that remains in such leased premises.

48. **THIS COURT ORDERS** that nothing in the above paragraphs [42] to [47] affects any action taken by the Debtor prior to the effective date of this Order and the appointment of the Receiver, save that any notice disclaiming a lease delivered by the Debtor prior to such effective date of the appointment of the Receiver shall be deemed to have been a Landlord Notice delivered in compliance with paragraph [42] and the relevant landlords may rely on the provisions of paragraph [45] of this Order.

GENERAL

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

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

51. **THIS COURT ORDERS** that any charges created by this Order over leases shall only be a charge in the Debtor's interest in such Leases

52. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully


requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

53. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

Patrick McKenzie
Registrar, Superior Court of Justice



SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that RSM Richter Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties Prizm Income Fund, Prizm Canadian Operating Trust, Prizm Inc., Kit Finance Inc. and Prizm LP (collectively, the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 14, 2011 (the "**Order**") made in an action having Court File Number [Number], has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$[Amount], being part of the total principal sum of \$[Amount] which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [or] [monthly not in advance on the [Day] day of each month] after the date hereof at a notional rate per annum equal to the rate of [Rate] per cent above the prime commercial lending rate of Bank of [Bank] from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

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

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

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

DATED the ____ day of _____, 2011.

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

Per: _____

Name:

Title:

SCHEDULE "B"

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

TO: CREDITORS AND TO ANY OTHER PERSON OR PARTIES

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

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

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

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

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

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

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, et. al v. **PRISZM INCOME FUND, et al.**
- Applicants -

PRISZM INCOME FUND, et al.
- Respondents -

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY

(PROCEEDING COMMENCED AT TORONTO)

ORDER

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SOLICITORS FOR THE APPLICANTS