

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

BETWEEN:

I.F. PROPCO HOLDINGS (ONTARIO) 23 LTD.

Applicant

- and -

AFM HOSPITALITY CORPORATION

Respondent

**Third Report to the Court of Mintz & Partners Limited, as
Interim Receiver and Receiver and Manager of
AFM Hospitality Corporation**

A. Introduction

Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the **"Court"**) dated April 29, 2005 (the **"Appointment Order"**), Mintz & Partners Limited (**"MPL"**) was appointed as Interim Receiver and Receiver and Manager (the **"Receiver"**) of all the assets, undertakings and property of AFM Hospitality Corporation (**"AFM"** or the **"Company"**). A copy of the Appointment Order is attached hereto as **Appendix "A"**.

The Appointment Order provided the Receiver with authority to review the records of those wholly owned subsidiaries of AFM specified by I.F. Propco Holdings (Ontario) 23 Ltd. (**"Propco"**), and specifically AFM Preferred Alliance Group Inc., to determine if the assets of the specified subsidiaries were being used and the operations being conducted in the ordinary course of business. The Appointment Order also provided that nothing therein constituted the Receiver to be the Receiver of any wholly owned subsidiary of AFM.

By letter dated May 4, 2005, Minden Gross Grafstein & Greenstein LLP (**"Minden Gross"**), counsel to Propco, informed the Receiver of the names of the specified subsidiaries (collectively with AFM Preferred Alliance Group Inc. referred to herein as the **"Specified Subsidiaries"**).

Upon its appointment, the Receiver retained Chaitons LLP ("**Chaitons**") as its counsel. On or about June 9, 2005, the Receiver engaged the law firm Hillis Clark Martin & Peterson ("**Hillis Clark**") of Seattle to represent the Receiver on matters pertaining to the receivership for which U.S. counsel was required. In addition, on or about June 21, 2005, the Receiver engaged the law firm Ruder, Ware & Michler, L.L.S.C. ("**Ruder Ware**") to act as the Receiver's counsel in Wisconsin in respect of litigation between AFM and Dennis L. Heyde and Carol J. Heyde ("**Heyde Litigation**"). In addition, White Welter & Schilling ("**White**") was retained as counsel to AFM in respect of the Heyde Litigation.

The Receiver's First Report to the Court dated December 29, 2005 ("First Report") reported on the Receiver's activities from the date of the Receiver's appointment to December 19, 2005.

The Receiver's Second Report dated February 17, 2006 reported solely on the Receiver's application to the Court for a determination as to the priority of the security held by Propco and the security claimed to be held by Kevin K. Loh, Stephen Bonskill, Nevmor LLC, Scott Campbell and Paul Bonskill as trustee.

The purpose of this Third Report to the Court is to:

1. report on the Receiver's activities from December 20, 2005 to May 12, 2006, and to seek approval of the actions of the Receiver as described herein;
2. seek an Order increasing authorized borrowings of the Receiver from \$1,100,000 to \$1,600,000; and
3. seek approval of the interim accounts of the Receiver and its legal counsel.

B. Background

As at the date of the Receiver's appointment, AFM was the direct and/or indirect shareholder of 27 subsidiary companies situated in both Canada and the United States. Certain of the subsidiary companies were involved in hospitality management, held the master licenses in Canada of various hotel brands, operated a membership organization known as Boutique Hotels & Resorts or provided receivership and related services in the United States.

AFM is a public company listed on various stock exchanges including the Toronto Stock Exchange. Trading of AFM's common shares was halted on April 8, 2005 and suspended on May 20, 2005.

The Company's primary secured lender is Propco. According to material filed in support of the motion for the appointment of the Receiver, AFM's indebtedness to Propco as at April 27, 2005 was approximately \$4.2 million, in support of which AFM had provided Propco with various security including a General Security Agreement. The Receiver estimates that AFM's indebtedness to Propco as at April 30, 2006 was approximately \$5.3 million, inclusive of interest and certain costs. This amount does not take into account the aggregate amount of \$1.1 million (plus accrued and unpaid interest thereon) advanced by Propco to the Receiver that is secured by Receiver's Certificates.

C. Receiver's Activities

i. Leased Premises

The Company has continued to occupy AFM's leased premises pursuant to an Offer to Lease which came into effect on October 1, 2004 (the "Offer to Lease") as well as an Offer to Lease Amending Agreement dated September 23, 2005. As set out in the First Report, while AFM's landlord had provided AFM with a form of lease, the Receiver has not signed it and does not intend to do so. The Receiver continues to attend at the leased premises a minimum of two times per week.

ii. Employees

a) Situated in Canada

The Receiver continues to pay, on behalf of AFM, AFM employees and consultants situated in Canada who are effectively overseeing the operations of AFM's operating subsidiaries. The Receiver has been reimbursed by certain of AFM's active subsidiaries for a portion of these expenses paid by it from the date of its appointment on behalf of AFM.

In the First Report, the Receiver noted that it appeared that Canada Revenue Agency ("CRA") made an error on the Notice of Assessment for the receivership payroll account. After numerous discussions and

correspondence between the Receiver and CRA, CRA has verbally advised the Receiver that it will be correcting its accounts. To date, however, the Receiver has not received a Notice of Assessment reflecting such correction. The Receiver continues to follow up with CRA in this regard.

b) Situated in the United States

In the First Report, the Receiver discussed that on May 10, 2005, Mr. Lawrence Horwitz, the Chairman and CEO of AFM as at the date of the Receiver's appointment, filed a "Demand Arbitration" in respect of his claim for "\$1 million plus amounts to be determined related to indemnification" with the American Arbitration Association ("AAA") office in Seattle. Chaitons subsequently provided the AAA and the International Centre for Dispute Resolution (the "ICDR") with a copy of the Appointment Order and set out the Receiver's position that Mr. Horwitz's request for arbitration should not proceed without the written consent of the Receiver or leave of the Ontario Superior Court of Justice. On March 14, 2006, the Receiver received a copy of a letter from the ICDR to Mr. Horwitz advising that as the filing had not been completed, the ICDR had closed its file.

The Receiver has not received any further correspondence from Ms. Susan McIntosh or Mr. Tracey Kunday in respect of their respective claims against AFM.

iii. Stock Exchanges/Provincial Registrations

The Company's listings on the various stock exchanges as they may exist have not been maintained. As well, AFM's inter-provincial registrations have not been renewed as there are no confirmed directors of the Company.

iv. National Post

The Receiver's dealings with National Post were set out in the First Report.

The Receiver engaged in discussions with National Post with a view to reaching an agreement to extend or renew the existing agreement between AFM and the National Post which provided *inter alia*, for newspapers to be delivered to individual franchisees of Canadian subsidiary companies of AFM that paid fees to those subsidiary companies. National Post informed the Receiver that it was not prepared to extend

the agreement. Therefore, the agreement with National Post ended on its scheduled termination date of January 21, 2006.

v. U.S. Chapter 11 Proceedings of Dennis L. Heyde and Carol J. Heyde (the "Heydes")

The First Report set out that in August 2005, the United States Bankruptcy Court granted default judgment dismissing AFM's US \$4,000,000 claim against the Heydes. An answer to the Heyde complaint was filed by AFM's Wisconsin counsel. A confirmation hearing on the Heyde bankruptcy and status hearing on the Heyde Objection were both continued to February 6, 2006.

AFM's Wisconsin counsel attended the hearing where the Heydes' counsel indicated that he was not in favour of pursuing the matter if there was no chance of recovery. The matter was subsequently adjourned and since then, the Heydes have offered to dismiss the claim against AFM on a "without prejudice basis".

Counsel has been instructed to try and settle on a "with prejudice" basis.

On February 16, 2006, the United States Bankruptcy Court issued an Order confirming the Heydes' Second Modified Chapter 11 Plan dated February 6, 2006.

vi. Deloitte

In the Order made by the Court on January 6, 2006, Deloitte & Touche LLP ("Deloitte") was ordered by the Court to provide to the Receiver the information that the Receiver had requested. On January 27, 2006, Morris Brown Sosnovitch LLP (counsel to Deloitte) provided various financial information to the Receiver.

D. Receiver's Certificates

Pursuant to the Appointment Order, the Receiver was authorized to borrow up to \$750,000 by way of Receiver's Certificates. By Order of the Court dated January 6, 2006 the authorized borrowings were increased to \$1,100,000.

To date, the Receiver has borrowed from Propco the following amounts pursuant to Receiver Certificates:

Receiver Certificate #	Date Advanced	Amount Advance
1	April 29, 2005	\$ 250,000
2	May 18, 2005	150,000
3	June 29, 2005	150,000
4	August 4, 2005	100,000
5	September 29, 2005	100,000
6	January 23, 2006	200,000
7	March 15, 2006	150,000
TOTAL		1,100,000

Due to the uncertainty as to the timing and quantum of the realizations from AFM's assets and the Receiver's need for cash to pay ongoing expenses and professional fees, the Receiver respectfully requests that Paragraph 22 of the Appointment Order be amended to increase borrowings to \$1,600,000 from \$1,100,000.

E. Interim Statement of Receipts and Disbursements ("Interim R&D")

Attached hereto as **Appendix "B"** is the Receiver's Interim R&D for the period April 29, 2005 to May 12, 2006 which sets out that the balance in the Receiver's bank account is \$1,987.71. A list of the Receiver's accrued liabilities to on or about May 31, 2006 is also included on the Interim R&D.

As set out on the Interim R&D, substantially all of the receipts are from funds advanced by Propco or funds the Receiver has received from certain AFM subsidiaries. The funds received from those subsidiaries are

not sufficient to cover all of the operating expenses (i.e., expenses other than the Receiver's fees and legal fees) paid by the Receiver.

F. Professional Accounts

Attached hereto are summaries of the statements of account submitted by the following professionals which have not to date been submitted for the Court's approval:

- i) **Appendix "C"** - summary of the Receiver's statements for the period ending April 9, 2006, totaling \$90,795.93;
- ii) **Appendix "D"** - summary of statements from Chaitons for the period ending February 28, 2006, totaling \$36,150.69;
- iii) **Appendix "E"** - summary of statements from Hillis Clark for the period ending March 31, 2006, totaling US \$1,295.02; and
- iv) **Appendix "F"** - summary of statements from White Welter & Schilling LLP ("**White Welter**") for the period ending April 30, 2006, totaling US \$390.00.

Copies of the accounts referred to in all of the aforesaid summaries will be made available for review by the Court.

G. Receiver's Request to the Court

The Receiver respectfully requests an Order:

- i) approving the actions and activities of the Receiver, as set out in this Report;
- ii) increasing to \$1,600,000 the amount that the Receiver is authorized to borrow; and

- iii) approving the professional accounts of MPL, Chaitons, Hillis Clark and White Welter, as described in this Report.



All of which is respectfully submitted to this Honourable Court.

DATED this 15th day of May, 2006.

MINTZ & PARTNERS LIMITED
Interim Receiver and Receiver and Manager of
AFM Hospitality Corporation

Daniel R. Weisz, CA, CIRP / Shirley Sehrbrock

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Appendix “A”

Court File No. 05-CL-5878

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

THE HONOURABLE) **FRIDAY**
) ~~FRIDAY~~, THE 29TH DAY
MR. JUSTICE CAMPBELL) OF APRIL, 2005

B E T W E E N :



I. F. PROPCO HOLDINGS (ONTARIO) 23 LTD.

Applicant

- and -

AFM HOSPITALITY CORPORATION

Respondent

ORDER

THIS MOTION, made by the Plaintiff for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the "CJA") appointing Mintz & Partners Limited as Interim Receiver and Receiver and Manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of AFM Hospitality Corporation (the "Debtor") was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the affidavit of Cliff Evans sworn April 28, 2005 and the Exhibits thereto and on hearing submissions of counsel for I. F. Propco Holdings (Ontario) 23 Ltd. ("Propco"), no one appearing for the Debtor although duly

served as appears from the affidavit of service of - sworn April , 2005 and on reading the consent of Mintz & Partners Limited to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 47(1) of the BIA and section 101 of the CJA, Mintz & Partners Limited is hereby appointed Receiver, without security, of all of the Debtor's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"), with authority to review the records of those wholly owned subsidiaries of the Debtor, specified by Propco and specifically AFM Preferred Alliance Group Inc. (collectively, "Specified Subsidiaries"), to determine if the assets of those Specified Subsidiaries are being used and the operations are being conducted in the ordinary course of business. Notwithstanding the foregoing, nothing contained or provided for in this Order shall constitute the Receiver to be the Receiver of any wholly owned subsidiary of the Debtor.

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, the authority granted to it in paragraph 2 of this Order 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 and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control 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 pay 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 powers and duties conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in

collecting such monies, including, without limitation, to enforce any security held by the Debtor;

- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k)
 - (i) 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;
 - (ii) to market any or all of the assets, including Master Licence Agreements and Franchise Agreements entered into by any of the Specified Subsidiary.

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business and to sell, assign, surrender and cancel or cause to be sold assigned, surrendered or cancelled any or all Licence Agreements and Franchise Agreement to which the Debtor or a wholly owned subsidiary is a party or a person entitled to the benefit thereof:

(i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

(m) to sell, convey, transfer, lease or assign any assets of a Specified Subsidiary or any part or parts thereof out of the ordinary course of business and to sell, assign, surrender and cancel or cause to be sold assigned, surrendered or cancelled any or all Licence Agreements and Franchise Agreement to which the Debtor or a wholly owned subsidiary is a party or a person entitled to the benefit thereof with the approval of this Court, and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall

not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (n) to apply for any vesting order or other orders necessary to convey the Property or any assets or operations of a Specified Subsidiary or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) 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;
- (p) to register a copy of this Order and any other Orders in respect of the Property against title to the Property;
- (q) 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;
- (r) to 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;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (t) to take any steps reasonably incidental to the exercise of these powers; and

(u) to execute documents to cause the Debtor to make an assignment for the general benefit of its creditors;

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.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor and wholly owned subsidiaries of the Debtor, (ii) all of their 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.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, including a Specified Subsidiary 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 to grant to the Receiver unfettered access to and use of accounting, computer,

software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 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.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provided 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 later, 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

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property or against a wholly owned subsidiary of the Debtor or its 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

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor and a wholly owned subsidiary of the Debtor, the Receiver, or affecting the Property or any property of a wholly owned subsidiary of the Debtor are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

10. **THIS COURT ORDERS** that all companies which have entered into Master Licence Agreements, Settlement Agreements or Franchise Agreements with the Debtor or a wholly owned subsidiary of the Debtor are hereby restrained from terminating, suspending, amending or canceling such agreements notwithstanding any provisions or terms contained in those agreements, without the express written consent of the Receiver or an Order of this Court made on at least ten (10) days' written notice to the Plaintiff and the Receiver.

NO INTERFERENCE WITH THE RECEIVER

11. **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 or a wholly owned subsidiary of the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or a wholly owned subsidiary of the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor 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, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver 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.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that 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 or property of a wholly owned subsidiary of the Debtor and the collection of any accounts receivable of the Debtor 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

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as 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 wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

15. **THIS COURT ORDERS** that the Receiver is hereby authorized, but not obligated, to make such payments to the employees of the Debtor, including the payments of arrears for wages which may be owing to any such employee, as it considers necessary in order to perform its duties hereunder and or to protect the property, assets and undertaking of the Debtor.

16. **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 or property of a Specified Subsidiary 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 or the property of a wholly owned subsidiary of the Debtor (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 or property of a Specified Subsidiary 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

17. **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

18. **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 willful misconduct on its part. 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

19. **THIS COURT ORDERS** that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and 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 (the "Receiver's Charge").

20. **THIS COURT ORDERS** the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its

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counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. **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 does not exceed \$ 750,000 (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 powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

23. **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.

24. **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.

25. **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.

GENERAL

26. **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.

27. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor or a wholly owned subsidiary of the Debtor.

28. **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 and to assist the Receiver and its agents in carrying out the terms of this Order.

29. **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.

30. **THIS COURT ORDERS** that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff'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.

31. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) day's 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.

Chambers J.

#951947

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

APR 29 2005

PER/PAR 

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Mintz & Partners Limited, the interim receiver and receiver and manager (the "Receiver") of all of the assets, undertakings and properties of AFM Hospitality Corporation appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the ____ day of _____, 2005 (the "Order") made in an action having Court File Number 05-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ 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][monthly not in advance on the ____ day of each month] after the date hereof at a notional rate per annum equal to the rate of ____ per cent above the prime commercial lending rate of Bank of _____ 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 (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, 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 defined in the Order) 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 _____, 2005.

MINTZ & PARTNERS LIMITED, solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity.

Per: _____
Name:
Title:

#951947

5
BETWEEN:

I.F. PROPCO HOLDINGS (ONTARIO) 23 LTD.
PLAINTIFF

- and -

AFM HOSPITALITY CORPORATION
DEFENDANT

Court File No. 05 - CL - 5978

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

**MINDEN GROSS GRAFSTEIN &
GREENSTEIN**

#700 - 111 Richmond Street West
Toronto, Ontario M5H 2H5

RAYMOND M. SLATTERY

LSUC#: 20479L

Tel: (416) 369-4149

Fax: (416) 864-9223

Solicitors for the Plaintiff

Appendix “B”

Mintz & Partners Limited
Interim Receiver and Receiver and Manager of
AFM Hospitality Corporation

Interim Statement of Receipts and Disbursements
for the period from April 29, 2005 to May 12, 2006

Receipts

1. Advances pursuant to Receiver Certificates	\$ 1,100,000.00
2. Cash on hand	328.26
3. Reimbursement of amounts paid	394,748.23
4. Miscellaneous refunds	4,747.14
5. Sale of assets	2,900.00
6. Provincial Sales Tax collected	232.00
7. Goods and Services Tax collected	203.00
8. Interest earned	<u>2,081.97</u>
9. Total Receipts	<u>\$ 1,505,240.60</u>

Disbursements

10. Filing fees	\$ 70.00
11. Change of locks	306.54
12. Insurance	18,470.16
13. Payroll, benefits and source deductions (Notes 1 and 2)	602,122.64
14. Consulting fees (Note 2)	244,474.95
15. Rent	70,926.11
16. Lease payments	15,265.04
17. Telephone and internet	25,258.34
18. Repairs and maintenance	324.43
19. Records storage	3,273.28
20. Travel and parking	3,760.54
21. Courier and postage	1,046.27

Mintz & Partners Limited
Interim Receiver and Receiver and Manager of
AFM Hospitality Corporation

Interim Statement of Receipts and Disbursements
for the period from April 29, 2005 to May 12, 2006

22. Photocopies	100.00
23. Search fees	423.20
24. Payroll administration	1,271.29
25. Bank charges	2,340.00
26. Subscriptions (Note 2)	3,499.98
27. Appraisal fees	750.00
28. Purchase of computer equipment	23,760.00
29. Legal fees and disbursements	112,851.00
30. Receiver and Manager fees paid (to November 27, 2005)	326,005.00
31. GST Paid	<u>46,954.12</u>
32. Total disbursements	<u>\$ 1,503,252.89</u>
33. Excess of Receipts over Disbursements (Note 3)	<u><u>\$ 1,987.71</u></u>

Notes:

1. Net payroll includes amounts paid for the period March 24, 2005 to April 28, 2005 representing payment in full of payroll arrears for Canadian employees as at the date of the Receiver's appointment. This amount also includes certain termination payments.
2. Includes amounts paid on behalf of Canadian subsidiaries for which the Receiver has been, and is to be, reimbursed.
3. This amount does not include the following potential obligations to May 31, 2006:

- Net payroll	\$ 19,200.00
- Source deductions	12,800.00
- Rent	5,000.00
- Telephone and internet	1,900.00
- Records storage	215.00
- Legal fees – Canadian counsel – to February 28, 2006	23,300.00

Mintz & Partners Limited
Interim Receiver and Receiver and Manager of
AFM Hospitality Corporation

Interim Statement of Receipts and Disbursements
for the period from April 29, 2005 to May 12, 2006

- Legal fees – Canadian counsel (estimate for March, April and May 2006, assuming current activities)	35,000.00
- Legal fees - U.S. counsel (estimate to April 30, 2006)	2,000.00
- Receiver and Manager fees and disbursements (billed)	91,000.00
- Receiver and Manager fees and disbursements (estimate for April and May 2006, assuming current activities)	20,000.00
- Miscellaneous	<u>10,000.00</u>

Total (excluding interest on Receiver Certificates)

\$ 220,415.00

Appendix “C”

**AFM Hospitality Corporation
Outstanding Professional Fees & Disbursements
as at May 12, 2006**

Mintz & Partners Limited

Invoice #	Ending	Fees & Disbursements		GST		Total
31	12/04/05	\$	6,733.00	\$	471.31	\$ 7,204.31
32	12/11/05		5,190.50		363.34	5,553.84
33	12/18/05		5,760.00		403.20	6,163.20
34	12/25/05		10,287.50		720.12	11,007.62
35	01/01/06		3,640.00		254.80	3,894.80
36	01/08/06		5,924.50		414.72	6,339.22
37	01/15/06		4,504.00		315.28	4,819.28
38	01/22/06		3,415.00		239.05	3,654.05
39	01/29/06		2,944.00		206.08	3,150.08
40	02/05/06		6,032.50		422.28	6,454.78
41	02/12/06		2,783.50		194.84	2,978.34
42	02/19/06		4,561.50		319.30	4,880.80
43	02/26/06		2,970.50		207.94	3,178.44
44	03/05/06		2,577.00		180.39	2,757.39
45	03/12/06		3,854.50		269.82	4,124.32
46	03/19/06		1,293.00		90.51	1,383.51
47	03/26/06		2,199.00		153.93	2,352.93
48	04/02/06		4,330.00		303.10	4,633.10
49	04/09/06		5,856.00		409.92	6,265.92
Totals		\$	84,856.00	\$	5,939.93	\$ 90,795.93

Appendix “D”

AFM Hospitality Corporation
Outstanding Professional Fees & Disbursements
as at May 12, 2006

Chaitons LLP

Invoice #	Ending	Fees & Disbursements		GST	Total		
207377	01/31/06	\$	23,874.30	\$	1,659.93	\$	25,534.23
207725	02/28/06		9,922.45		694.01		10,616.46
Totals		\$	33,796.75	\$	2,353.94	\$	36,150.69

Appendix “E”

**AFM Hospitality Corporation
Outstanding Professional Fees & Disbursements
as at May 12, 2006**

Hillis Clark Martin & Peterson

Invoice #	Ending	Total - USD	
62415	01/31/06	\$	220.00
63862	02/28/06		314.00
64669	03/31/06		761.02
Totals		\$	1,295.02

Appendix “F”

**AFM Hospitality Corporation
Outstanding Professional Fees & Disbursements
as at May 12, 2006**

White Welter & Schilling LLP

Invoice #	Ending	Total - USD
	02/28/06	\$ 195.00
	03/31/06	45.00
	04/30/06	150.00
Totals		\$ 390.00