

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 2123125 ONTARIO INC.

**Applicant**

**MOTION RECORD  
(Motion Returnable January 25, 2017)  
(Re Discharge and Termination)**

January 18, 2017

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

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**Lawyers for the Applicant**

# INDEX

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**INDEX**

<b>Tab</b>	<b>Document</b>
<b>1.</b>	Notice of Motion (Returnable January 25, 2017)
<b>2.</b>	Affidavit of Kevin McElcheran, sworn January 18, 2017
	<b>Exhibit "A"</b> – Amended and Restated Initial Order, dated April 21, 2016
	<b>Exhibit "B"</b> – Affidavit of Kevin McElcheran, sworn October 21, 2016 (without exhibits)
	<b>Exhibit "C"</b> – Purchaser's Potential Trust Claimant Certificate, dated December 21, 2016
<b>3.</b>	Draft Discharge and Termination Order

# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**Applicant**

**NOTICE OF MOTION  
(Returnable January 25, 2017)  
(Re Discharge and Termination)**

2123125 Ontario Inc., previously named FirstOnSite G.P. Inc. ("**212**"), the general partner of Former Restoration L.P., previously named FirstOnSite Restoration L.P. ("**Former LP**", collectively with 212, "**FirstOnSite**"), will make a motion to a Judge presiding over the Commercial List on January 25, 2017 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order, substantially in the form of the draft order located at Tab 3 of the Motion Record:

(a) approving a final distribution of funds held by the Monitor (as defined below) on behalf of FirstOnSite;

(b) providing for the termination of these proceedings (the "**CCAA Proceedings**") and releasing the Charges (as defined below) effective as of the earlier of (a) the filing of a certificate of the Monitor certifying that, to the

knowledge of the Monitor, all matters to be attended to in connection with the CCAA Proceedings have been completed, or (b) the assignment into bankruptcy of the Applicant and Former LP by the CRO (the “**CCAA Termination Date**”);

- (c) providing for the discharge and release of FTI Consulting Canada Inc. (“**FTI**”) as Monitor in the CCAA Proceedings (the “**Monitor**”) effective as of the CCAA Termination Date;
- (d) providing for the discharge and release of Oriole Advisors Ltd. As Chief Restructuring Officer (the “**CRO**”) in the CCAA Proceedings effective as of the CCAA Termination Date or such earlier date as agreed by the CRO, FirstOnSite and the Monitor;
- (e) extending the Stay Period (as defined in the Initial Order, defined below) until the CCAA Termination Date;
- (f) approving the fees and disbursements of the Monitor and its counsel including their estimated fees to complete the CCAA Proceedings;
- (g) approving the Fifth Report of the Monitor, to be filed (the “**Fifth Report**”) and the activities of the Monitor described therein; and
- (h) such further and other relief as counsel may request and this Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

2. FirstOnSite carried on business in Canada and, through its subsidiary FirstOnSite Restoration, Inc., the United States, providing remediation, restoration and reconstruction services in the commercial, industrial and residential sectors;

3. FirstOnSite faced severe financial and liquidity issues, and defaulted on its senior secured revolving credit facility - triggering a cascade of cross-defaults with respect to its senior and junior subordinated debt;

4. FirstOnSite did not have the liquidity needed to meet its obligations. Accordingly, on April 21, 2016, FirstOnSite sought and was granted protection from its creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to the order of Justice Newbould (the "**Initial Order**");
5. Substantially all of FirstOnSite's operating assets have been sold (the "**Sale Transaction**") pursuant to the Asset Purchase Agreement (the "**APA**") between FirstOnSite and 3297167 Nova Scotia Limited (the "**Purchaser**") dated April 20, 2016;
6. On May 9, 2016, FirstOnSite obtained an order (the "**Original AVO**") from this Court approving a sale of substantially all of its assets in Canada and vesting the assets in the Purchaser. The Sale Transaction closed on June 1, 2016;
7. On June 1, 2016 the Purchaser obtained an order (the "**Amended and Restated AVO**"), amending and restating the Original AVO to permit the subsequent vesting of certain contracts which would continue to be held by FirstOnSite until the Purchaser could obtain a licence required to perform the contracts;
8. On November 16, 2016, the contracts were vested in the Purchaser pursuant to the Amended and Restated AVO;
9. A significant portion of the purchase price from the Sale Transaction was distributed to secured creditors of FirstOnSite in order of the priority of their security in full satisfaction of their outstanding claims;
10. All amounts owed in respect of the charges created pursuant to the Initial Order (the "**Charges**"), with the exception of remaining professional fees and disbursements secured by the Administration Charge (as defined in the Initial Order), have been satisfied;
11. FirstOnSite and the Monitor are not aware of any outstanding claims against the estate that rank in priority to BDC Capital Inc.'s ("**Capital**") security interest, with the exception of professional fees and disbursements secured by the Administration Charge;

12. Capital has received a partial repayment of the obligations owing to it. The remaining proceeds from the Sale Transaction will not be sufficient to satisfy FirstOnSite's outstanding indebtedness to Capital;

13. FirstOnSite no longer has any business or operations. The activities remaining with respect to the wind-down of FirstOnSite include (a) the filing of certain tax returns and collecting and distributing any amounts received from Canada Revenue Agency in respect of same, (b) coordination with the Purchaser with respect to employee T4 slips and records of employment, (c) the distribution of any remaining proceeds to Capital after payment of professional fees and (d) the possible assignment of FirstOnSite into bankruptcy;

14. FirstOnSite is seeking an order, among other things, (i) authorizing, but not requiring, the CRO, in consultation with the Monitor and Capital, to make an assignment of 212 and Former LP into bankruptcy if such proceedings are determined appropriate; (ii) approving the distribution of any remaining proceeds to Capital (subject to the payment of remaining amounts secured by the Administration Charge and amounts in connection with the completion of the CCAA Proceedings); (iii) extending the Stay Period pending the completion of the remaining wind-down related activities or the assignment of FirstOnSite into bankruptcy, at which time the CCAA Proceedings will be terminated; (iv) discharging and releasing the Monitor and the CRO; and (v) approving the Fifth Report, the Monitor's activities as set out therein and the fees and disbursements of the Monitor and its legal counsel;

#### **Other Grounds for Relief**

15. The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

16. Rules 1.04, 1.05, 2.03, and 37 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended; and

17. Such further grounds as counsel may advise and this Court may see fit.



**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

18. The Affidavit of Kevin McElcheran, sworn January 18, 2017, and the exhibits attached thereto;
19. The Fifth Report of the Monitor, to be filed; and
20. Such further and other materials as counsel may advise and this Court may permit.

January 18, 2017

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**Lawyers for the Applicants**

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

Proceeding commenced at [Toronto](#)

**NOTICE OF MOTION  
(RETURNABLE JANUARY 25, 2017)**

**STIKEMAN ELLIOTT LLP**  
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**Lawyers for the Applicant**

# TAB 2

**ONTARIO  
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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**Applicant**

**AFFIDAVIT OF KEVIN MCELCHERAN  
(Sworn January 18, 2017)  
(Re Discharge and Termination)**

I, Kevin McElcheran, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am the president of Oriole Advisors Ltd. ("**Oriole**"), the court-appointed Chief Restructuring Officer (in such capacity, the "**CRO**") of the Applicant, 2123125 Ontario Inc., formerly known as "FirstOnSite G.P. Inc." ("**212**"), and Former Restoration L.P., formerly known as "FirstOnSite Restoration L.P." ("**Former LP**" and together with 212, "**FirstOnSite**"), a limited partnership formed under the laws of Ontario. As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records of FirstOnSite and have spoken with certain of the other directors, officers and/or employees of FirstOnSite, as necessary, and where I have relied upon such information do verily believe such information to be true.

2. This affidavit is sworn in support of the motion brought by FirstOnSite seeking an order, among other things:

- (a) approving a final distribution of funds held by the Monitor (as defined below) on behalf of FirstOnSite;

- (b) providing for the termination of these proceedings (the “**CCAA Proceedings**”) and releasing the Charges (as defined below) effective as of the CCAA Termination Date (as defined below);
- (c) providing for the discharge and release of FTI Consulting Canada Inc. (“**FTI**”) as Monitor in the CCAA Proceedings (the “**Monitor**”) effective as of the CCAA Termination Date;
- (d) providing for the discharge and release of Oriole as CRO in the CCAA Proceedings effective as of the CCAA Termination Date or such earlier date as agreed by the CRO, FirstOnSite and the Monitor;
- (e) extending the Stay Period until the CCAA Termination Date;
- (f) approving the fees and disbursements of the Monitor and its counsel including their estimated fees to complete the CCAA Proceedings; and
- (g) approving the Fifth Report of the Monitor, to be filed (the “**Fifth Report**”) and the activities of the Monitor described therein.

**A. Status of the CCAA Proceedings**

3. FirstOnSite carried on business in Canada and, through its subsidiary FirstOnSite Restoration, Inc., the United States, offering remediation, restoration and reconstruction services in the commercial, industrial and residential sectors. FirstOnSite serviced, *inter alia*, properties damaged by flood, fire, wind, mold and catastrophic events.

4. As described in greater detail in the affidavit sworn by Dave Demos (the “**Initial Order Affidavit**”) in support of the Initial Order (as defined below), FirstOnSite faced financial and liquidity difficulties due to, among other issues, an overleveraged balance sheet, marked and substantial net losses and an escalating debt burden.

5. On April 20, 2016, Former LP, by its general partner, 212 (in such capacity, the “**Vendor**”), and 3297167 Nova Scotia Limited (the “**Purchaser**”) entered into an Agreement of Purchase and Sale (the “**APA**”) for the sale of substantially all of its assets (the “**Purchased Assets**” as defined more particularly in the APA).

6. On April 21, 2016, pursuant to the order of Justice Newbould (the “**Initial Order**”), FirstOnSite obtained protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The Initial Order imposed a stay of proceedings up to and including May 20, 2016 (the “**Stay Period**”). FTI was appointed as the Monitor of FirstOnSite in the CCAA Proceedings. The commencement of the CCAA Proceedings and the transaction contemplated under the APA (the “**Sale Transaction**”) were publicly announced by FirstOnSite by way of a press release dated April 21, 2016.

7. Further details regarding the background to the CCAA Proceedings are set out in the Initial Order Affidavit and, unless relevant to this motion, are not repeated herein.

8. On May 2, 2016, FirstOnSite sought an order (the “**Amended and Restated Initial Order**”) granting super-priority ranking to the Court-ordered charges provided for in the Initial Order. A copy of the Amended and Restated Initial Order is attached hereto as **Exhibit “A”**. This Order, together with all other filings in the CCAA Proceedings, is available on the Monitor's website at:

<http://cfcanada.fticonsulting.com/firstonsite>.

9. On May 9, 2016, FirstOnSite sought an order (the “**Original AVO**”), among other things, approving the Sale Transaction and vesting the Purchased Assets in the Purchaser upon the delivery of a Monitor’s certificate certifying that the Sale Transaction had closed to the Monitor’s satisfaction (the “**Monitor’s Certificate**”).

10. On May 18, 2016, FirstOnSite sought orders, among other things, (a) extending the Stay Period in this matter to June 27, 2016, (b) assigning certain contracts to the Purchaser, as contemplated by the APA, and (c) authorizing and directing the distribution of the assets of FirstOnSite.

11. The Sale Transaction closed on June 1, 2016 (the "**Closing**"). That same day, the Purchaser sought and obtained an order amending and restating the Original AVO (the "**Amended and Restated AVO**") and providing for certain contracts (the "**Quebec Contracts**") between the Vendor and certain customers relating to work for which a licence from the *Regie du Batiment du Quebec* (the "**RBQ**") is required, to continue to be held by FirstOnSite pursuant to a Transition Agreement (defined below) until the filing of a subsequent Monitor's certificate (the "**Subsequent Monitor's Certificate**").

12. On June 27, 2016, FirstOnSite brought a motion seeking an order (the "**CRO Order**"), among other things, (a) extending the Stay Period in this matter to October 31, 2016, and (b) appointing Oriole as CRO of FirstOnSite.

13. On October 28, 2016, FirstOnSite brought a motion (the "**Claims Bar Motion**") for the approval of a process to call for claims in respect of trust amounts and expenses that arose in the period between April 21, 2016 and June 1, 2016 that were not assumed by the Purchaser under the APA (together the "**Eligible Claims**") and barring any claims not received prior to November 15, 2016 (the "**Claims Bar Date**"). The Claims Bar Motion also extended the Stay Period to January 27, 2017. A copy of my affidavit sworn October 21, 2016, without exhibits, is attached hereto as **Exhibit "B"** (the "**Claims Bar Affidavit**").

## **B. Completed Matters**

14. Since the Claims Bar Motion, the following matters have been completed in the CCAA Proceedings:

- (a) Settlement of the Stub Bonus Motion (as defined below);
- (b) Termination of the Transition Agreement;
- (c) Payment of Lien Claims (as defined below);
- (d) Payment of Potential Trust Claims;
- (e) Review, determination and payment of claims in the Eligible Claims process; and
- (f) Interim distribution to BDC Capital Inc. ("**Capital**").

*a. Settlement of Stub Bonus Motion*

15. As described in further detail in paragraphs 19 to 27 of the Claims Bar Affidavit, two issues arose prior to the Claims Bar Motion with respect to the payment of three former senior members of FirstOnSite's management under a stub bonus program ("**Stub Payments**").

16. First, on June 15, 2016, Capital served a motion (the "**Capital Motion**"), returnable on a day to be set by the Court, seeking an order declaring that Capital was entitled to payment of its secured loan in priority to any Stub Payments.

17. Second, through the process of settling the Working Capital Calculation (as defined in the Claims Bar Affidavit) contemplated in the APA to determine the appropriate purchase price adjustment pursuant to the terms and process under the APA, FirstOnSite and the Purchaser agreed that FirstOnSite would bring a motion before this Court for a determination of whether the Purchaser is entitled to include the Stub Payments made in respect of two former FirstOnSite employees in the Working Capital Calculation (the "**WCC Motion**").

18. The Capital Motion and WCC Motion were scheduled to be heard together on November 16, 2016 (collectively, the "**Stub Bonus Motion**").



19. On November 4, 2016, FirstOnSite, Capital and the Purchaser entered into an agreement settling all of the outstanding matters in the Stub Bonus Motion. As a result of the settlement, the Stub Bonuses were paid in full and the Working Capital Calculation was determined.

*b. Termination of Transition Agreement*

20. As noted above, pursuant to the Original AVO, all of FirstOnSite's right, title and interest in the Purchased Assets vested in the Purchaser free and clear of any claims and encumbrances upon the delivery of the Monitor's Certificate.

21. The Purchased Assets included the Quebec Contracts. The Vendor held a licence issued pursuant to the *Builder's Act* (Quebec) and bearing number 8353-0295-53. The Purchaser required an equivalent replacement licence (the "**New Quebec Licence**") to continue working under the Quebec Contracts.

22. The Purchaser was unable to acquire an equivalent licence by the time the Sale Transaction was scheduled to close. Consequently, the Purchaser requested that the Vendor temporarily hold, and continue to perform the work under, the Quebec Contracts (the "**Transition Services**"). The Vendor agreed to the Purchaser's request and entered into a Transition Agreement with the Purchaser dated June 1, 2016 (the "**Transition Agreement**") which, among other things, provided for the continuation of the Quebec Contracts pending the issuance of the New Quebec Licence.

23. On November 15, 2016, the Purchaser delivered notice that it had obtained a New Quebec Licence and requested that the Monitor deliver the Subsequent Monitor's Certificate.

24. On November 16, 2016, the Monitor delivered the Subsequent Monitor's Certificate and, pursuant to the Amended and Restated AVO, the Quebec Contracts were vested in the Purchaser.

*c. Payment of Lien Claims*

25. Pursuant to the Initial Order, the rights of any person who had supplied services and/or materials to FirstOnSite to preserve and perfect a lien under the *Construction Lien Act* (Ontario) or any applicable provincial equivalent in respect of a project to which FirstOnSite is a contracting party were stayed, and any person wishing to assert a lien claim (a "**Lien Claimant**") was required to serve notice of same (a "**Lien Notice**") on the Monitor, the Monitor's counsel and Stikeman Elliott LLP.

26. Lien Claimants were entitled to a charge over the property of FirstOnSite equivalent to the value that the Lien Claimant would otherwise have been entitled under the applicable provincial lien legislation.

27. Pursuant to the APA, the Purchaser assumed, among other things, the obligation to pay amounts owed in respect of valid lien claims. As of the date of this affidavit, all lien claims entitled to a Lien Charge pursuant to the Initial Order have been satisfied.

*d. Payment of Potential Trust Claims*

28. Pursuant to section 6.9 of the APA, the Purchaser assumed those trust claims described in the Potential Trust Claimants List (as defined in the APA). From time to time following the Closing, the Purchaser delivered certificates stating the amount of Potential Trust Claims it had satisfied and the amount of unsatisfied Potential Trust Claims. On December 21, 2016, the Purchaser delivered a certificate (the "**Purchaser's Potential Trust Claimant Certificate**"), certifying that all of the amounts owing to persons on the Potential Trust Claimants List had been paid or satisfied. Attached hereto as **Exhibit "C"** is a true copy of the Purchaser's Potential Trust Claimant Certificate dated December 21, 2016.

*e. Eligible Claims Process*

29. I understand that a description of the Monitor's activities with respect to the call for and determination of Eligible Claims (the "**Eligible Claims Process**") will be set out in the Fifth Report.

30. The Monitor has consulted with FirstOnSite throughout the Eligible Claims Process including discussing and reviewing (i) the claims submitted pursuant to the process, (ii) the determination of submitted claims, (iii) the responses to claimants and (iv) the resolution of certain claims.

31. As of the date of this affidavit, there is one unresolved claim which has been settled in principle, settlement documentation has been executed and is being held in escrow. I anticipate that the settlement will be finalized prior to the hearing of this motion.

32. FirstOnSite and the Monitor are not aware of any outstanding claims against the estate that rank in priority to Capital's security interest, with the exception of Professional Fees and Disbursements (defined below).

*f. Interim Distributions to Capital*

33. The Monitor, in consultation with FirstOnSite, has made the following interim distributions to Capital:

- (a) \$400,000 on September 20, 2016;
- (b) \$3,000,000 on November 21, 2016; and
- (c) \$750,000 on January 10, 2017.

34. As of January 17, 2017, FirstOnSite was indebted to Capital in the amount of \$1.4 million (the "**Capital Indebtedness**").

**C. Outstanding Matters**

35. The following matters remain outstanding in the CCAA Proceedings:

- (a) Collecting any amounts in respect of HST credits from the Canada Revenue Agency (“**CRA**”);
- (b) Coordination with the Purchaser with respect to T4 Statements of Remuneration Paid (“**T4s**”) and records of employment (“**ROEs**”);
- (c) Final Distribution to Capital; and
- (d) Possible assignment of FirstOnSite into bankruptcy (collectively, the “**Outstanding Matters**”).

*a. Collect HST Credits*

36. FirstOnSite has filed HST returns with CRA claiming HST credits in the amount of \$111,813.59 in respect of the period beginning June 1, 2016 and ending November 30, 2016. FirstOnSite intends to file additional returns for HST credits in the approximate amount of \$29,957.61 in respect of December, 2016 and January 2017. The aggregate potential recovery for HST credits is \$141,771.00. FirstOnSite has been advised by CRA that it is in the process of processing the returns but has no indication of when any payment may be received from CRA.

37. FirstOnSite intends to distribute any amounts received from CRA to Capital.

*b. Provide T4s and ROEs*

38. FirstOnSite has discussed the provision of T4s and ROEs to the former employees of FirstOnSite with the Purchaser. The Purchaser has agreed to make reasonable efforts to provide former employees with their T4s and ROEs as is necessary.

39. FirstOnSite will continue to work with the Purchaser to provide information in its control and provide other reasonable assistance.

*c. Payment of Professional Fees*

40. The Monitor intends to pay the outstanding professional fees and disbursements secured by the Administration Charge (as defined in the Initial Order and amended by the CRO Order), namely the fees and disbursements of:

- (a) The Monitor;
- (b) The Monitor's counsel;
- (c) The CRO; and
- (d) The CRO's counsel (collectively, the "**Professional Fees and Disbursements**").

41. I understand that the Monitor and Monitor's counsel will be submitting affidavits for the approval of their fees and disbursements in this matter.

42. The CRO's compensation is on a monthly basis. Provided that the Discharge and Termination Order is made in the form proposed by FirstOnSite in the form proposed in this motion, the CRO will submit a final invoice in February for the balance of its services as CRO under the CRO Order.

43. Once the Professional Fees and Disbursements have been paid, the Administration Charge may be discharged.

*d. Final Distribution to Capital*

44. I understand that a detailed description of the distributions made by the Monitor, to date, will be set out in the Fifth Report.

45. As noted above, with the exception of the Professional Fees and Disbursements, FirstOnSite and the Monitor are not aware of any outstanding claims that rank in priority to Capital's security interest in the proceeds from the Sale Transaction.

46. I understand that the Capital Indebtedness significantly exceeds the total amount of money held by the Monitor on behalf of FirstOnSite.

47. FirstOnSite seeks this Court's approval for a final distribution to Capital of any remaining proceeds from the Sale Transaction after the payment of the outstanding Professional Fees and Disbursements and a hold back amounts in respect of (a) estimated professional fees for the completion of the CCAA Proceeding and (b) estimated costs of potential bankruptcy proceedings.

*e. Possible bankruptcy*

48. FirstOnSite is seeking that this Court authorize, but not require, the CRO, in consultation with the Monitor and Capital, to make an assignment of 212 and Former LP into bankruptcy.

49. At this juncture, it is not clear whether a bankruptcy would be a preferable method of finalizing the FirstOnSite estate.

50. FirstOnSite is seeking to preserve this option (without the cost of an additional court appearance) should it, in consultation with the Monitor and Capital, consider that the assignment of FirstOnSite into bankruptcy is the best course of action.

**D. Stay Extension**

51. FirstOnSite has been diligently working since the commencement of the CCAA Proceedings. Among other things, FirstOnSite, working with the Monitor, has:

- (a) resolved the Stub Bonus Motion;
- (b) completed the Transition Agreement;
- (c) completed the Eligible Claims Process;
- (d) paid the outstanding Eligible Claims; and
- (e) consulted with the Monitor with respect to certain distributions.

52. As noted above, the Stay Period granted under the Initial Order was extended by further orders of this Court to January 27, 2017. A further extension of the Stay Period until the earlier of (a) the filing of a certificate of the Monitor (the “**CCAA Termination Certificate**”) certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with the CCAA Proceedings have been completed, or (b) the assignment into bankruptcy of the Applicant and Former LP by the CRO (the “**CCAA Termination Date**”), is necessary to provide FirstOnSite with enough time to finalize the winding-up of FirstOnSite’s estate in an orderly manner, including but not limited to, completing the Outstanding Matters.

53. FirstOnSite has acted and continues to act in good faith and with due diligence. I do not believe that any creditor will suffer any material prejudice if the Stay Period is extended to the CCAA Termination Date.

54. The stability provided by the stay of proceedings is critical to allow FirstOnSite to complete the Outstanding Matters in the CCAA Proceedings.

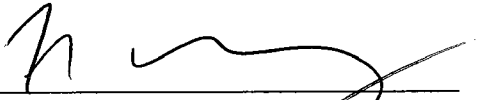
**E. Termination of CCAA Proceedings**

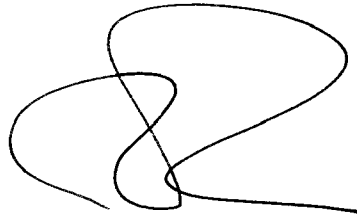
55. Upon the CCAA Termination Date there will be no further need for the CCAA Proceeding and, accordingly, FirstOnSite seeks an order that the CCAA Proceeding be terminated at that time.

56. FirstOnSite has no ongoing business activities and substantially all of its assets were sold in the Sale Transaction.

57. I am advised by Harvey Chaiton, counsel for Capital, that Capital supports the relief requested in this motion and consents to the form of order attached to the motion record of FirstOnSite.

SWORN BEFORE ME at the  
Toronto, Province of Ontario,  
January 18, 2017.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
*C. Haddon Murray*  
LSUC#: 61640P



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Kevin McElcheran

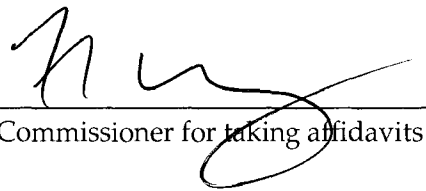


# EXHIBIT "A"

Exhibit "A" to the Affidavit

Of K. McElcheran sworn

January 18, 2017



Commissioner for taking affidavits

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR

)

THURSDAY, THE 21<sup>st</sup>

JUSTICE NEWBOULD

)

DAY OF APRIL, 2016

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF FIRSTONSITE G.P. INC.

**Applicant**

**AMENDED AND RESTATED INITIAL ORDER**

**THIS APPLICATION**, made by FirstOnSite G.P. Inc. ("**FirstOnSite GP**" or "**the Applicant**"), the general partner of FirstOnSite Restoration L.P. ("**FirstOnSite LP**", collectively with FirstOnSite GP, "**FirstOnSite**"), a limited partnership formed under the laws of Ontario, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of David Demos sworn April 20, 2016 and the Exhibits thereto (the "**Demos Affidavit**"), the pre-filing report of FTI Consulting Canada Inc. ("**FTI**"), dated April 20, 2016 (the "**Pre-Filing Report**") and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice of this application, and on hearing the submissions of counsel for FirstOnSite, FTI, 3297167 Nova Scotia Limited (the "**Purchaser**"), Wells Fargo Capital Finance Corporation Canada, the Business Development Bank of Canada ("**BDC**"), BDC Capital Inc. and the DIP Lender (as defined further below) no one appearing for any other party although duly served as appears from the affidavit of



service, filed, and on reading the consent of FTI to act as the Monitor (in such capacity, the “**Monitor**”),

#### **SERVICE**

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

#### **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that FirstOnSite GP is a company to which the CCAA applies. Although not an Applicant, FirstOnSite LP shall enjoy the benefits of the protection and authorizations provided to the Applicant by this Order.

#### **PLAN OF ARRANGEMENT**

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

#### **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that FirstOnSite shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, FirstOnSite shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. FirstOnSite is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

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

6. **THIS COURT ORDERS** that, subject to availability under the DIP Facility (as defined further below) and in accordance with the Budget as defined in the DIP Agreement (as defined further below), FirstOnSite shall be entitled but not required to pay the following expenses whether incurred prior to, on or after this Order:

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

- (c) with the consent of the Monitor for amounts in excess of \$10,000 each, any amounts owing to or in respect of individuals working as independent contractors or temporary workers in connection with the FirstOnSite Business; and
- (d) amounts owing for goods and services actually supplied to FirstOnSite, or to obtain the release of goods contracted for, prior to the date of this Order, by suppliers with the consent of the Monitor for amounts in excess of \$10,000 each, if in the opinion of FirstOnSite, the supplier of the goods or services is critical to the FirstOnSite Business and ongoing operations of the FirstOnSite enterprise.

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

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) payment for goods or services actually supplied to FirstOnSite following the date of this Order; and
- (c) the fees and disbursements of any Assistants retained or employed by FirstOnSite in respect of these proceedings, at their standard rates and charges.

8. **THIS COURT ORDERS** that, with the consent of the Monitor, and subject to availability under the DIP Facility and in accordance with the Budget, FirstOnSite shall be entitled but not required to pay all expenses and capital expenditures of FirstOnSite Restoration, Inc. ("FOS US") reasonably necessary for the preservation of FirstOnSite's Property and Business.

9. **THIS COURT ORDERS** that FirstOnSite shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by FirstOnSite in connection with the sale of goods and services by FirstOnSite, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by FirstOnSite.

10. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, FirstOnSite shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty,

common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between FirstOnSite and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

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

## **RESTRUCTURING**

12. **THIS COURT ORDERS** that FirstOnSite shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Agreement and the Definitive Documents (both as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$150,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) in accordance with paragraphs 13 and 14, and with the prior consent of the Monitor or further Order of the Court, vacate, abandon or quit the whole but



not part of any leased premises and/or disclaim or resiliate any real property lease and any ancillary agreements relating to any leased premise, in accordance with Section 32 of the CCAA;

- (d) with the prior consent of the Monitor or further Order of the Court, disclaim or resiliate any agreement to which the company is a party in accordance with Section 32 of the CCAA; and
- (e) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

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

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

14. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving FirstOnSite and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against FirstOnSite in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST FIRSTONSITE OR THE PROPERTY**

15. **THIS COURT ORDERS** that until and including May 20, 2016, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of FirstOnSite or the Monitor, or affecting the Business or the Property, except with the written consent of FirstOnSite and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of FirstOnSite or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of FirstOnSite or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of FirstOnSite and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower FirstOnSite to carry on any business which FirstOnSite is not lawfully entitled to carry

on, or (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA.

#### **NO INTERFERENCE WITH RIGHTS**

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

#### **CONTINUATION OF SERVICES**

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with FirstOnSite 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 and benefits services, insurance, vehicle and transportation services, temporary labour and staffing services, subcontractors, trade suppliers, equipment vendors and rental companies, utility or other services to the Business or FirstOnSite, 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 FirstOnSite, and that FirstOnSite shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names and building and other permits, 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 FirstOnSite in accordance with normal payment practices of FirstOnSite or such other practices as may be agreed upon by the supplier or service provider and each of FirstOnSite and the Monitor, or as may be ordered by this Court.

## TREATMENT OF LIEN CLAIMS

19. **THIS COURT ORDERS** that, without limiting the generality of paragraphs 15 to 18 hereof, the rights of any person who has supplied services and/or materials to FirstOnSite to preserve and perfect a lien under the *Construction Lien Act* (Ontario) or any applicable provincial equivalent (the "**Provincial Lien Legislation**") in respect of a project to which FirstOnSite is a contracting party (the "**FOS Lien Claims**") be and are hereby stayed and any person seeking to preserve, perfect or otherwise enforce such a claim shall be required to comply with the process and seek the rights and remedies set out in paragraphs 19 to 22 hereof subject to further Order of the Court.

20. **THIS COURT ORDERS** that any person who wishes to assert an FOS Lien Claim (a "**Lien Claimant**") shall serve a notice of such FOS Lien Claim setting out the amount and particulars thereof to the Monitor at [firstonsite@fticonsulting.com](mailto:firstonsite@fticonsulting.com) and copy, Goodmans LLP, counsel to the monitor at: [cdescours@goodmans.ca](mailto:cdescours@goodmans.ca) and Applicant c/o Stikeman Elliott LLP: [hmurray@stikeman.com](mailto:hmurray@stikeman.com) within the timeframes prescribed by the applicable Provincial Lien Legislation (a "**Lien Notice**") or such other time frame as may be ordered by the Court.

21. **THIS COURT ORDERS** that upon serving a Lien Notice, the Lien Claimant shall be entitled to a charge over the Property of FirstOnSite equivalent to the value that the Lien Claimant would otherwise be entitled to as a lien under the applicable Provincial Lien Legislation (the "**Lien Charge**").

22. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and elsewhere in this Order, is hereby authorized and empowered to review the Lien Notices and reduce or disallow the FOS Lien Claims set out therein, or refer such matter for determination by the Court, on notice to the applicable Lien Claimant. Any such Lien Claimant shall have 10 days to give notice to the Monitor and FirstOnSite that it intends seek a review by the Court of the decision of the Monitor on a motion before a judge of this Court.

23. **THIS COURT ORDERS** that nothing in paragraphs 19 to 22 hereof shall be construed as limiting or prejudicing the rights of the Monitor, FirstOnSite or any other interested party from challenging:

- (a) the validity or timeliness of a Lien Notice;
- (b) the validity or quantum of an FOS Lien Claim under the applicable Provincial Lien Legislation, except for failure to preserve a lien by registration;
- (c) a Lien Claimant's entitlement to a Lien Charge under paragraph 21 of this Order; or
- (d) the priority of a Lien Charge under paragraph 49 of this Order.

24. **THIS COURT ORDERS** that in connection with the matters in paragraphs 19 to 22 of this Order, the Monitor (i) shall have all of the protections given to it by the CCAA, this Order and any other orders of the Court in the CCAA Proceedings, (ii) shall incur no liability or obligation as a result of carrying out matters in connection with paragraphs 19 to 23 of this Order, (iii) shall be entitled to rely on the books and records of FirstOnSite and any information provided by FirstOnSite, all without independent investigation, (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, and (v) may seek such assistance as may be required to carry out matters in connection with paragraphs 19 to 23 of this Order from FirstOnSite or any of its subsidiaries.

#### **NON-DEROGATION OF RIGHTS**

25. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to

FirstOnSite. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

#### **ENGAGEMENT OF THE FINANCIAL ADVISOR**

27. **THIS COURT ORDERS** that the agreement dated as of October 31, 2015, engaging Alvarez & Marsal Canada Securities ULC (the "**Financial Advisor**") as financial advisor to FirstOnSite, a copy of which is attached as Exhibit "F" to the Demos Affidavit (the "**A&M Engagement Letter**"), and the retention of the Financial Advisor under the terms thereof are hereby approved, including, without limitation, the Success Fee (as the term is defined in the A&M Engagement Letter). The Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "**Financial Advisor's Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1.1 million, as security for the Success Fee. The Financial Advisor's Charge shall have the priority set out in paragraphs 49 and 51 herein.

#### **APPOINTMENT OF MONITOR**

28. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of

FirstOnSite with the powers and obligations set out in the CCAA or set forth herein and that FirstOnSite and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by FirstOnSite pursuant to this Order, and shall cooperate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

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

- (a) monitor FirstOnSite's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist FirstOnSite, to the extent required by FirstOnSite, in its dissemination, to the DIP Lender and its counsel of financial and other information as agreed to between FirstOnSite and the DIP Lender and as contemplated to be provided to the DIP Lender pursuant to the DIP Agreement and the Definitive Documents;
- (d) advise FirstOnSite in its preparation of FirstOnSite's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (e) advise FirstOnSite in its development of the Plan and any amendments to the Plan;
- (f) assist FirstOnSite, to the extent required by FirstOnSite, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of FirstOnSite, to the extent that is necessary to adequately assess FirstOnSite's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

30. **THIS COURT ORDERS** that the Monitor, in its capacity as Escrow Agent under the Escrow Agreement, in connection with the agreement of purchase and sale (the "APA") entered into as between FirstOnSite LP, by its general partner FirstOnSite GP, and the Purchaser, is authorized and empowered to (a) hold the Deposit in a segregated account in the name of the Monitor, and (b) release the Deposit as contemplated by the Escrow Agreement or subject to further Order of the Court, and the Monitor shall incur no liability with respect to the foregoing. Unless otherwise defined in this Order, each capitalized term in this paragraph shall have the meaning ascribed to it in the APA.

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

32. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a



spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

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

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to FirstOnSite shall be paid their reasonable fees and disbursements, in each case at their

standard rates and charges, by FirstOnSite as part of the costs of these proceedings. FirstOnSite is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for FirstOnSite on a weekly basis and, in addition, FirstOnSite is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to FirstOnSite, retainers in the amount of \$100,000 each to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and FirstOnSite's counsel and the Financial Advisor (in respect of their monthly fees and expenses as set out in the A&M Engagement Letter) shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1 million, as security for the professional fees and disbursements, incurred at standard rates and charges, of the Monitor, counsel to the Monitor and counsel to FirstOnSite, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 49 and 51 hereof.

#### **DIP FINANCING**

38. **THIS COURT ORDERS** that FirstOnSite is hereby authorized and empowered to obtain and borrow under a credit facility (the "**DIP Facility**") from Wells Fargo Capital Finance Corporation Canada (the "**DIP Lender**"), in order to finance FirstOnSite's working capital requirements and other general corporate purposes, expenses relating to these CCAA proceedings, and capital expenditures, provided that

borrowings under such DIP Facility shall not exceed the availability under the DIP Facility and, in any event, shall not exceed \$15 million, subject to the further Order of this Court.

39. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Agreement attached to the Demos Affidavit as **Exhibit "H"** (the "**DIP Agreement**"), and the Definitive Documents.

40. **THIS COURT ORDERS** that the DIP Facility and the DIP Agreement are hereby approved.

41. **THIS COURT ORDERS** that FirstOnSite is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and FirstOnSite is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

42. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure any obligation to the ABL Lender (as defined in the Demos Affidavit) that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 49 and 51 hereof.

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Agreement, the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon five (5) days' notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against FirstOnSite or the Property under or pursuant to the DIP Agreement, the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to FirstOnSite and set off and/or consolidate any amounts owing by the DIP Lender to FirstOnSite against the obligations of FirstOnSite to the DIP Lender under the DIP Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against FirstOnSite and for the appointment of a trustee in bankruptcy of FirstOnSite; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of FirstOnSite or the Property.

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

**KEY EMPLOYEE RETENTION PLAN ("KERP")**

45. **THIS COURT ORDERS** that the KERP, as described in the Demos Affidavit, the details of which are included in the Confidential Supplement to the Pre-Filing Report, is

hereby approved and FirstOnSite is authorized and directed to make payments in accordance with the terms thereof.

46. **THIS COURT ORDERS** that the KERP Participants (as such term is defined in the Demos Affidavit) shall be entitled to the benefit of and are hereby granted a charge (the “KERP Charge”) on the Property, which charge shall not exceed an aggregate amount of \$2.26 million, to secure the amounts payable to the KERP Participants pursuant the KERP.

47. **THIS COURT ORDERS** that the KERP Charge shall have the priority set out in paragraphs 49 and 51 herein.

48. **THIS COURT ORDERS** that the summary of the KERP included in the Confidential Supplement to the Pre-Filing Report be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court File, in a sealed envelope attached to a notice that sets out the title of these proceedings a statement that the contents are subject to a sealing order and shall only be opened upon further Order of this Court.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

49. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Lender’s Charge, the KERP Charge, the Financial Advisor’s Charge, the Lien Charge, as among them, shall be as follows:

- First - the Administration Charge, to a maximum amount of \$1 million;
- Second - the DIP Lender’s Charge, to a maximum amount of \$15 million;
- Third - the KERP Charge, to a maximum amount of \$2.26 million;
- Fourth - the Financial Advisor’s Charge, to a maximum amount of \$1.1 million; and

Fifth - the Lien Charge, to the extent necessary to secure such Lien Claims as may arise (provided that the Lien Charge shall rank subordinate to the security interests granted in favour of Wells Fargo Capital Finance Corporation Canada, as agent and lender thereto, securing the performance of the obligations under the credit agreement dated November 25, 2014 (as amended) ("**Wells Pre-filing Security**") and the security interests granted in favour of BDC securing the performance of the obligations under the credit agreement dated November 25, 2014 ("**BDC Pre-filing Security**").

50. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the DIP Lender's Charge, the KERP Charge, the Financial Advisor's Charge, and the Lien Charge, (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

51. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, notwithstanding the order of perfection or attachment, except any claims of any person against FirstOnSite for amounts owing for services and/or materials supplied that have priority over Encumbrances by statute (other than the Lien Charge, which shall rank subordinate to the Wells Pre-filing Security and the BDC Pre-filing Security, but otherwise enjoys the same priority as the other Charges, subject to paragraph 49, above.)

52. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, nothing in this Order shall affect or otherwise alter the priority of any claims of any Person in respect of amounts owing to any such Person by FirstOnSite in respect of

supplied services or materials that are given priority over other Encumbrances by statute.

53. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, FirstOnSite shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless FirstOnSite also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

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

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by FirstOnSite of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from FirstOnSite entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (c) the payments made by FirstOnSite pursuant to this Order, the DIP Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

55. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in FirstOnSite's interest in such real property leases.

### **SERVICE AND NOTICE**

56. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against FirstOnSite of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner (provided that the list shall not include the names, addresses or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual), all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

57. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil



Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://cfcanada.fticonsulting.com/firstonsite>.

58. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, FirstOnSite and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to FirstOnSite's creditors or other interested parties at their respective addresses as last shown on the records of FirstOnSite and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

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

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

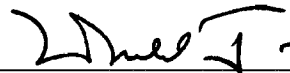
61. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist FirstOnSite, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to FirstOnSite and to the Monitor, as an officer of

this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist FirstOnSite and the Monitor and their respective agents in carrying out the terms of this Order.

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

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

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



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

MAY 02 2016

PER / PAR: RW

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

Court File No: CV-16-11358-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
FIRSTONSITE G.P. INC.

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

Proceeding commenced at Toronto

**AMENDED AND RESTATED  
INITIAL ORDER**

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

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Fax: (416) 948-0866


**Lawyers for the Applicant**

# EXHIBIT “B”

Exhibit "B" to the Affidavit

Of K. McElcheran sworn

January 18, 2017



---

Commissioner for taking affidavits

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 2123125 ONTARIO INC.

**Applicant**

**AFFIDAVIT OF KEVIN MCELCHERAN**  
**(Sworn October 21, 2016)**  
**(Re Claims Bar and Stay Extension)**

I, Kevin McElcheran, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am the principal to Oriole Advisors Ltd. ("**Oriole**"), the court-appointed Chief Restructuring Officer (in such capacity, the "**CRO**") of the Applicant, 2123125 Ontario Inc., formerly known as "FirstOnSite G.P. Inc." ("**212**"), and Former Restoration L.P., formerly known as "FirstOnSite Restoration L.P." ("**Former LP**" and together with 212, "**FirstOnSite**"), a limited partnership formed under the laws of Ontario. As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records of FirstOnSite and have spoken with certain of the other directors, officers and/or employees of FirstOnSite, as necessary, and where I have relied upon such information do verily believe such information to be true.

2. This affidavit is sworn in support of the motion brought by FirstOnSite seeking an order, among other things, (a) setting a bar date for claims for the submission of any Eligible Claims (as defined below), (b) extending the Stay Period (as defined below) to January 27, 2017, (c) approving the Fourth Report of the Monitor (as defined below) and the activities set out therein.

**A. Status of the CCAA Proceedings**

3. FirstOnSite carried on business in Canada and, through its subsidiary FirstOnSite Restoration, Inc., the United States, offering remediation, restoration and reconstruction services in the commercial, industrial and residential sectors. FirstOnSite serviced, *inter alia*, properties damaged by flood, fire, wind, mold and catastrophic events.

4. As described in greater detail in the affidavit sworn by Dave Demos in support of the Initial Order (the “**Initial Order Affidavit**”), FirstOnSite faced financial and liquidity difficulties due to, among other issues, an overleveraged balance sheet, marked and substantial net losses and an escalating debt burden.

5. On April 20, 2016, Former LP, by its general partner, 212 (in such capacity, the “**Vendor**”), and 3297167 Nova Scotia Limited (the “**Purchaser**”) entered into an Agreement of Purchase and Sale (the “**APA**”) for the sale of substantially all of its assets (the “**Purchased Assets**” as defined more particularly in the APA).

6. On April 21, 2016, pursuant to the order of Justice Newbould (the “**Initial Order**”), FirstOnSite obtained protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The Initial Order imposed a stay of proceedings up to and including May 20, 2016 (the “**Stay Period**”). FTI Consulting Canada Inc. (“**FTI**”) was appointed as the monitor of FirstOnSite (the “**Monitor**”) in these CCAA proceedings (the “**CCAA Proceedings**”). The commencement of the CCAA Proceedings and the transaction contemplated under the APA (the “**Sale Transaction**”) were publicly announced by FirstOnSite by way of a press release dated April 21, 2016.

7. Further details regarding the background to the CCAA Proceedings are set out in the Initial Order Affidavit and, unless relevant to this motion, are not repeated herein.

8. On May 2, 2016, FirstOnSite sought an order (the “**Amended and Restated Initial Order**”) granting super-priority ranking to the Court-ordered charges provided for in the Initial Order. A copy of the Amended and Restated Initial Order is attached hereto as **Exhibit “A”**. This Order, together with all other filings in the CCAA Proceedings, is available on the Monitor's website at:

<http://cfcanada.fticonsulting.com/firstonsite>.

9. On May 9, 2016, FirstOnSite sought an order (the “**Original AVO**”), among other things, approving the Sale Transaction and vesting the Purchased Assets in the Purchaser upon the delivery of a Monitor’s certificate certifying that the Sale Transaction had closed to the Monitor’s satisfaction.

10. On May 18, 2016, FirstOnSite sought orders, among other things, (a) extending the Stay Period in this matter to June 27, 2016, (b) assigning certain contracts to the Purchaser, as contemplated by the APA, and (c) authorizing and directing the distribution of the assets of FirstOnSite (the “**Distribution Order**”).

11. The Sale Transaction closed on June 1, 2016 (“**Closing**”).

12. On June 27, 2016, FirstOnSite brought a motion (the “**June 27 Motion**”) seeking an order, among other things, (a) extending the Stay Period in this matter to October 31, 2016, and (b) appointing Oriole as CRO of FirstOnSite (the “**Stay Extension Order**”). A copy of my affidavit sworn June 22, 2016, without exhibits, is attached hereto as **Exhibit “B” (the “June Affidavit”)**.

*i. Transition Agreement*

13. As noted above, pursuant to the Original AVO, all of FirstOnSite’s right, title and interest in the Purchased Assets vested in the Purchaser free and clear of any claims and encumbrances upon the delivery of the Monitor's Certificate.



14. The Purchased Assets include certain contracts (the “**Quebec Contracts**”) between the Vendor and certain customers relating to work for which a licence from the *Regie du Batiment du Quebec* (“**RBQ**”) is required. The Vendor holds an existing licence issued pursuant to the *Builder’s Act* (Quebec) and bearing number 8353-0295-53. The Purchaser requires an equivalent replacement licence to continue working under the Quebec Contracts.

15. The Purchaser was unable to acquire an equivalent licence by the time the Sale Transaction was scheduled to close. Consequently, the Purchaser requested that the Vendor temporarily hold, and continue to perform the work under, the Quebec Contracts (the “**Transition Services**”). The Vendor has agreed to the Purchaser’s request and entered into a Transition Agreement with the Purchaser dated June 1, 2016 (the “**Transition Agreement**”).

16. The Transition Agreement has been amended twice to, among other things, extend the term. The current term of the Transition Agreement, provided that the Purchaser does not breach the agreement or obtain an equivalent licence beforehand, is November 15, 2016. Attached as **Exhibits “C”** and “**D**” are the Amendment to the Transition Agreement dated August 31, 2016 and the Second Amendment to the Transition Agreement dated October September 30, 2016 (the “**Second Amendment**”), respectively.

17. In consideration for the extension of the term in the Second Amendment, the Purchaser has agreed to:

- (a) provide FirstOnSite and the Monitor with information on its progress in obtaining an equivalent replacement licence; and
- (b) pay or otherwise satisfy any remaining outstanding amounts on the Potential Trust Claimants List that are owing to Potential Trust

Claimants (as such terms are defined in the APA) prior to November 15, 2016.

18. I am advised by Matthew Bernardo of Norton Rose Fulbright LLP, counsel to the Purchaser, that the Purchaser has provided all of the information requested by the RBQ with respect to the license proper and are awaiting a response. In parallel, Purchaser is in the process of obtaining its accreditation with the *Garantie du Construction Residentielle* of Quebec ("**GCR**") which, together with obtaining the RBQ licence, is a requirement in order to undertake new residential construction in Quebec. The Purchaser is well advanced in this process, but has been asked by GCR to provide them with a review engagement opening balance sheet for the Purchaser. The Purchaser anticipates that it will be in a position to provide the requested statements to GCR within two weeks.

*ii. Motion of BDC Capital Inc.*

19. On June 2, 2016, the day after Closing, counsel for BDC Capital Inc. ("**Capital**") advised counsel for FirstOnSite that Capital objects to the payments to three former senior members of FirstOnSite's management under a stub bonus program (the "**Stub Payments**").<sup>1</sup> On June 15, 2016, Capital served a motion (the "**Capital Motion**"), returnable on a day to be set by the Court, seeking an order declaring that Capital is entitled to payment of its secured loan in priority to any Stub Payments.

20. All of the parties to the Capital Motion agreed to postpone the scheduling of the Capital Motion and are currently in discussion with respect to same. The Capital Motion is scheduled for November 16, 2016. The parties to the Capital Motion are in discussions with the aim of consensually resolving the matter.

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<sup>1</sup> The Stub Payments are described in greater detail in the Initial Order Affidavit at paragraph 148.

*iii. Working Capital Cost Adjustment*

21. Section 3.5 of the APA contemplates an adjustment to the Purchase Price (the “**Purchase Price Adjustment**”) based on the difference between the Final Working Capital and the Estimated Closing Working Capital (each as defined in the APA) (the “**Working Capital Calculation**”).

22. Pursuant to article 3.5(c) of the APA, the Purchaser delivered its calculation of the Purchase Price Adjustment to FirstOnSite on August 30, 2016 (the “**Purchaser’s WCC**”).

23. On September 27, 2016, FirstOnSite delivered a list of objections to the Purchaser’s WCC pursuant to section 3.5(c) of the APA. Since that time FirstOnSite and the Purchaser, in consultation with the Monitor, have worked diligently and in good faith to resolve the objections.

24. On October 17, 2016, FirstOnSite and the Purchaser executed a settlement agreement with respect to the Purchase Price Adjustment (the “**WCC Settlement**”). The WCC Settlement resolves all of the issues with respect to the Working Capital Calculation except for the inclusion of Stub Payments made by the Purchaser to two former employees of FirstOnSite.

25. The key terms of the WCC Settlement include:

- (a) FirstOnSite will bring a motion before this Court for a determination of whether the Purchaser is entitled to include the Stub Payments made in respect of two former FirstOnSite Employees in the Working Capital Calculation (the “**WCC Motion**”);
- (b) The Vendor will direct the Monitor to pay \$87,278.29 to the Purchaser in full satisfaction of FirstOnSite’s obligations in respect of the Final Working Capital (the “**Purchase Price Payment**”);

- (c) the Purchaser confirms the release of its charge (the "**Purchaser's Charge**") over the trust claim reserve created pursuant to paragraph 12 of the order of Justice Newbould dated May 18, 2016 (the "**Distribution Order**"). Attached as **Exhibit "E"** is the Distribution Order; and
- (d) Upon the determination of the Stub Bonus Motion, the Purchaser will pay any amounts payable in respect of the Final Working Capital to FirstOnSite within five (5) business days.

26. The Capital Motion and WCC Motion are currently scheduled to be heard together on November 16, 2016 (collectively, the "**Stub Bonus Motion**").

27. I am advised by Michael Basso that, October 20, 2016, the Monitor, at the direction of the Vendor, made the Purchase Price Payment.

*iv. Reports from Purchaser*

28. Pursuant to the APA, on June 15, 2016, and every 14 days thereafter, the Purchaser must deliver a report (the "**Trust Claimant Report**") to FirstOnSite and the Monitor detailing which of the amounts owing to persons on the Potential Trust Claimant List have not been paid or satisfied.

29. I am informed by Matthew Bernardo that, since the May 31, 2016 report, the Purchaser has paid approximately \$13.7 million dollars in amounts owing to persons listed on the Potential Trust Claimants List. As of October 5, 2016, approximately \$480,000 of potential trust claims remains outstanding from the Potential Trust Claims List.

30. As noted above, the Purchaser has agreed to pay all outstanding amounts owing to persons on the Potential Trust Claimant List by November 15, 2016.

*v. Distributions*

31. The Distribution Order, among other things, provided for the distribution of certain of the sale proceeds from the Sale Transaction and any other proceeds that may be delivered to or on behalf of FirstOnSite by the Monitor in consultation with FirstOnSite.

32. Among other things, FirstOnSite is to consult with the Monitor with respect to:

- (a) the retention of a reserve of funds pursuant to paragraph 2(ii) of the Distribution Order; and
- (b) the disbursement of funds from the proceeds of the Sale Transaction pursuant to paragraphs 4-10 of the Distribution Order.

33. Prior to the CRO Motion, The Monitor, in consultation with FirstOnSite, made distributions in full and final satisfaction of the claims of Wells Fargo Capital Finance Corporation, Business Development Bank of Canada, the KERP Participants (as defined in the Initial Order, and Alvarez & Marsal Canada Securities ULC. Further information with respect to prior distributions may be found in my June Affidavit at paragraphs 30 to 31.

34. On September 20, 2016, the Monitor, in consultation with FirstOnSite, issued a \$400,000 interim distribution to Capital. The Applicants expect that additional amounts from the proceeds from the Sale Transaction will be distributed to Capital, subject to, among other things, the determination and payment of any claims (a) in respect of statutory deemed trusts, (b) with respect to expenses incurred by FirstOnSite after the commencement of these CCAA Proceedings and before the Closing (collectively, "**Eligible Claims**").

**B. Claims Bar**

35. The Monitor and FirstOnSite are working towards a final distribution of the proceeds from the Sale Transaction. To facilitate a final distribution, the Applicants are seeking to determine whether there may be any Eligible Claims that must be paid.

36. In order to ascertain whether there are any outstanding Eligible Claims, FirstOnSite, in consultation with the Monitor, proposes that a notice to creditors in the form attached as **Exhibit "F"** hereto (the "**Claims Notice**") be sent by the Monitor to all known creditors of FirstOnSite, based on its books and records, that have outstanding amounts owing to them by FirstOnSite that were not assumed by the Purchaser pursuant to the APA.

37. For clarity, pursuant to section 6.9 of the APA, the Purchaser has assumed those trust claims described in the Potential Trust Claimants List (as defined in the APA). As noted in paragraph 29, the Purchaser has paid approximately \$13.7 million in respect of such potential trust claims and has agreed to pay the remaining approximately \$480,000 by November 15, 2016 pursuant to the Second Amendment to the Transition Agreement.

38. I am advised by Michael Basso, of the Monitor, that the Monitor is currently aware of approximately \$110,000 of potential Eligible Claims. No final determination has been made as to the validity of these potential Eligible Claims at this point.

39. The Claims Letter is to be sent by October 31, 2016, or as soon thereafter as possible, and requests that any party with an Eligible Claim submit their claim along with any supporting documentation to the Monitor by November 15, 2016 (the "**Claims Bar Date**"). The Claims Letter further states that all claims not received by the Monitor by the Claims Bar Date will be barred.

40. It is my opinion that the proposed Claims Bar Date provides parties with a reasonable time period to submit any Eligible Claims, as well as providing finality and certainty so that distributions may be made in a timely manner.

**C. Stay Extension to January 27, 2017, 2016**

41. FirstOnSite has been diligently working since the commencement of the CCAA Proceedings. Among other things, FirstOnSite has:

- (a) resolved the Working Capital Calculation, subject to the determination of the Stub Payments;
- (b) amended and extended the Transition Agreement;
- (c) consulted with the Monitor with respect to certain distributions; and
- (d) scheduled the Stub Bonus Motion.

42. As noted above, the Stay Period granted under the Initial Order was extended by further orders of this Court to October 31, 2016. A further extension of the Stay Period to January 27, 2017 is necessary to provide FirstOnSite with sufficient time to:

- (a) file materials in respect of the Stub Bonus Motion;
- (b) attempt to resolve the Stub Bonus Motion with the interested parties;
- (c) if necessary, appear on the Stub Bonus Motion;
- (d) if applicable, collect any amounts owing from the Purchaser in respect of Stub Payment and make any payable Stub Payments in accordance with this Court's determination in respect of the Stub Bonus Motion;
- (e) review and consult with the Monitor with respect to any Eligible Claims submitted in response to the Claims Letter;

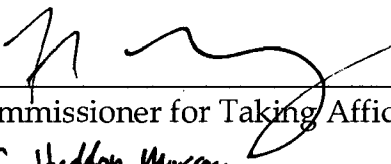
- (f) pay any valid Eligible Claims; and
  - (g) consult with the Monitor with respect to a final distribution of the proceed from the Sale Transaction to Capital
- (collectively, the "Outstanding Matters").

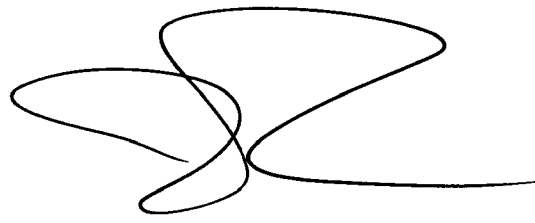
43. I am advised by Harvey Chaiton, counsel for Capital, that Capital supports the stay extension to January 27, 2017.

44. FirstOnSite has acted and continues to act in good faith and with due diligence. I do not believe that any creditor will suffer any material prejudice if the Stay Period is extended to January 27, 2017.

45. The stability provided by the stay of proceedings is critical to allow FirstOnSite to complete the Outstanding Matters in the CCAA Proceedings.

SWORN BEFORE ME at the  
Toronto, Province of Ontario,  
October 21, 2016.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
*C. Haddon Murray*  
LSUC #: 61840P

  
\_\_\_\_\_  
Kevin McElcheran

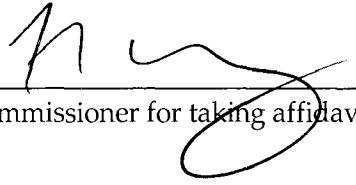


# EXHIBIT "C"

Exhibit "C" to the Affidavit

Of K. McElcheran sworn

January 18, 2017

A handwritten signature in black ink, appearing to be 'K. McElcheran', written over a horizontal line.

Commissioner for taking affidavits

**FIRSTONSITE RESTORATION LIMITED  
(the Corporation)**

**CERTIFICATE OF OFFICER**

**TO: FTI CONSULTING CANADA INC.**

**AND TO: FIRSTONSITE RESTORATION L.P. (the Seller)**

**RE: Acquisition of Purchased Assets by the Corporation from the Seller**

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Reference is made to the asset purchase agreement dated April 20, 2016 (the **Purchase Agreement**) between 3297167 Nova Scotia Limited (as predecessor to the Corporation) and the Seller. Capitalized terms used in this certificate without definition have the meanings specified in the Purchase Agreement.

I, Kevin Watson, the duly appointed Chief Financial Officer of the Corporation certify, for and on behalf of the Corporation, and without personal liability, intending that the same may be relied upon by you without further enquiry, that:

1. This certificate is being delivered pursuant to Section 6.9(3) of the Purchase Agreement.
2. All of the amounts owing to the Persons on the Potential Trust Claimant List have been paid or satisfied as of the date hereof.

***[The remainder of this page is intentionally left blank]***

DATED this 21 day of December, 2016.

  
\_\_\_\_\_  
Name: Kevin Watson  
Title: Chief Financial Officer

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

Proceeding commenced at Toronto

**AFFIDAVIT OF KEVIN MCELCHERAN  
(SWORN JANUARY 18, 2017)**

**STIKEMAN ELLIOTT LLP**  
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Email: vcalina@stikeman.com  
Fax: (416) 947-0866

**Lawyers for the Applicant**

# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR ) WEDNESDAY, THE 25<sup>th</sup>  
 )  
JUSTICE NEWBOULD ) DAY OF JANUARY, 2017

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 2123125 ONTARIO INC.

**Applicant**

**DISCHARGE AND TERMINATION ORDER**

**THIS MOTION**, made by 2123125 Ontario Inc., previously named FirstOnSite G.P. Inc. ("**212**"), the general partner of Former Restoration L.P., previously named FirstOnSite Restoration L.P. ("**Former LP**", collectively with 212, "**FirstOnSite**"), a limited partnership formed under the laws of Ontario, for an order, *inter alia*:

- (a) approving a final distribution of funds held by the Monitor (as defined below) on behalf of FirstOnSite;
- (b) terminating these proceedings (the "**CCAA Proceedings**") and releasing the Charges (as defined below) effective as of the CCAA Termination Date (as defined below);
- (c) discharging FTI Consulting Canada Inc. ("**FTI**") as Monitor in the CCAA Proceedings (the "**Monitor**") effective as of the CCAA Termination Date;

- (d) discharging Oriole Advisors Ltd. ("**Oriole**") as Chief Restructuring Officer ("**CRO**") in the CCAA Proceedings effective as of the CCAA Termination Date or such earlier date as agreed by the CRO, FirstOnSite and the Monitor;
- (e) extending the Stay Period (as defined in the Initial Order, defined below) until the CCAA Termination Date;
- (f) approving the fees and disbursements of the Monitor and its counsel including their estimated fees to complete the CCAA Proceedings; and
- (g) approving the Fifth Report of the Monitor dated January □, 2017 (the "**Fifth Report**") and the activities of the Monitor described therein,

was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Kevin McElcheran, sworn January 18, 2017 (the "**McElcheran Affidavit**") and the Fifth Report and the affidavits of Paul Bishop and Robert J. Chadwick each sworn on January □, 2017 (together, the "**Fee Affidavits**"), and on hearing the submissions of counsel for FirstOnSite, counsel for the Monitor and those other parties present, no one appearing for any other person, although duly served as appears from the affidavit of service of [**Name**], sworn [**Date**], filed:

#### **SERVICE**

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



## **RELEASE OF FUNDS**

2. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in the Distribution Order of Justice Newbould dated May 18, 2016 (the “**Distribution Order**”) or any other Order of this Court, after payment of the amounts secured by the Administration Charge (as defined in the Initial Order) and other amounts in connection with the completion of the CCAA Proceedings approved by the Monitor in consultation with FirstOnSite, the Monitor is hereby authorized and directed to, on or prior to the CCAA Termination Date, disburse the remaining Sale Proceeds (as defined in the Distribution Order) and any other funds held by the Monitor on behalf of FirstOnSite (including, without limitation, any tax refunds that may be received by or on behalf of FirstOnSite) to BDC Capital Inc. (“**BDC Capital**”), provided that, for certainty, the aggregate amount of all distributions made to BDC Capital on behalf of FirstOnSite (whether before or after the date of this Order) shall not exceed the amount of the obligations owing by FirstOnSite under the letter of offer dated November 25, 2014 among, *inter alia*, FirstOnSite and BDC Capital.

3. **THIS COURT ORDERS** that, notwithstanding paragraph 2 of this Order, if the CRO provides notice of the CRO’s intention to file assignments into bankruptcy for the Applicant and Former LP pursuant to this Order, an amount acceptable to the Monitor, in consultation with FirstOnSite, shall be reserved by the Monitor from the distribution set out in paragraph 2 of this Order in respect of costs in connection with such bankruptcy proceedings.

## **EXTENSION OF STAY PERIOD**

4. **THIS COURT ORDERS** that the Stay Period referred to in the Claims Bar and Stay Extension Order granted on October 28, 2016 in the CCAA Proceedings is extended until the CCAA Termination Date.

## **BANKRUPTCY PROCEEDINGS**

5. **THIS COURT ORDERS** that the CRO is authorized, but not required, to, in consultation with the Monitor and BDC Capital, file assignments into bankruptcy for the Applicant and Former LP.

6. **THIS COURT ORDERS** that the CRO shall provide at least seven (7) days' notice to the E-Service List of the CRO's intention to file assignments into bankruptcy for the Applicant and Former LP.

## **TERMINATION OF CCAA PROCEEDINGS**

7. **THIS COURT ORDERS** that upon the earlier of (a) the filing of a certificate of the Monitor substantially in the form attached hereto as **Schedule "A"** (the "**CCAA Termination Certificate**") certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with the CCAA Proceedings have been completed, or (b) the assignment into bankruptcy of the Applicant and Former LP pursuant to paragraph 5 of this Order (the "**CCAA Termination Date**"), the CCAA Proceedings shall be terminated without any other act or formality.

8. **THIS COURT ORDERS** that the Monitor shall provide at least seven (7) days' notice to the E-Service List of the Monitor's intention to file the CCAA Termination Certificate.

9. **THIS COURT ORDERS** that the Charges, as defined in the Amended and Restated Initial Order of Justice Newbould dated April 21, 2016 (the "**Initial Order**"), shall be and are hereby terminated, released and discharged effective at the CCAA Termination Date.

## **DISCHARGE OF THE MONITOR**

10. **THIS COURT ORDERS AND DECLARES** that effective at the CCAA Termination Date, FTI shall be discharged as Monitor and shall be relieved from any further obligations, responsibilities or duties in its capacity as Monitor pursuant to the Initial Order and any other Orders of this Court in the CCAA Proceedings.

## **DISCHARGE OF THE CRO**

11. **THIS COURT ORDERS AND DECLARES** that effective at the CCAA Termination Date, or such earlier date as agreed to by the CRO, FirstOnSite and the Monitor, the CRO shall be discharged and relieved from any further obligations, responsibilities or duties in its capacity as CRO pursuant to the Order of this Court granted on June 27, 2016 and any other Orders of this Court in the CCAA Proceedings.

## **RELEASES**

12. **THIS COURT ORDERS** that effective as of the date of this Order, in addition to the protections in favour of the Monitor and the CRO, respectively, in any Order of this Court in the CCAA Proceedings or the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), the Monitor, the Monitor's legal counsel and the CRO, and each of their respective affiliates and officers, directors, partners, employees and agents (collectively, the "**Released Parties**") are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of or in respect of the CCAA Proceedings or with respect to their respective conduct in the CCAA Proceedings (collectively,

the “**Released Claims**”), and any such Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or willful misconduct on the part of the Released Parties.

13. **THIS COURT ORDERS** that, subject to paragraph 14 hereof, effective as of the CCAA Termination Date, in addition to the protections in favour of the Monitor and the CRO, respectively, in any Order of this Court in the CCAA Proceedings or the CCAA, the Released Parties are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place following the date of this Order in any way relating to, arising out of or in respect of the CCAA Proceedings or with respect to their respective conduct in the CCAA Proceedings (collectively, the “**Subsequent Released Claims**”), and any such Subsequent Released Claims are hereby released, stayed, extinguished and forever barred and the Released Parties shall have no liability in respect thereof, provided that the Subsequent Released Claims shall not include any claim or liability arising out of any gross negligence or willful misconduct on the part of the Released Parties.

14. **THIS COURT ORDERS** that in the event that any person objects to the release and discharge of the Subsequent Released Claims, that person must send a written notice of objection and the grounds therefor to the Monitor and the CRO at the applicable address set out on the E-Service List such that the objection is received by the Monitor and CRO prior to the proposed CCAA Termination Date. If no objection is received by the Monitor or CRO prior to the proposed CCAA Termination Date, the release and discharge of Subsequent Released Claims

pursuant to paragraph 13 hereof shall be automatically deemed effective upon the CCAA Termination Date, without further Order of the Court.

15. **THIS COURT ORDERS** that if an objection to the release of the Subsequent Released Claims pursuant to paragraph 14 hereof is received by the Monitor or the CRO, the release and discharge of the Subsequent Released Claims pursuant to paragraph 13 hereof shall only become effective if the objection is resolved or upon further Order of the Court. For greater certainty, no objection received in accordance with paragraph 14 hereof shall affect the release and discharge of the Released Claims pursuant to paragraph 12 hereof, which shall be effective as of the date of this Order.

16. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against any of the Released Parties in any way arising from or related to the CCAA Proceedings, except with prior leave of this Court on at least seven days' prior written notice to the applicable Released Party, and provided that any such Order granting leave includes a term granting the applicable Released Party security for its costs and the costs of its counsel in connection with any proposed action or proceeding, such security to be on terms this Court deems just and appropriate.

17. **THIS COURT ORDERS** that, notwithstanding any provision of this Order and the termination of the CCAA Proceedings, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor and CRO shall each continue to have the benefit of, any of the protections in favour of the Monitor and of the CRO, respectively, at law or pursuant to the CCAA or any Order of this Court in the CCAA Proceedings or otherwise.

18. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the Monitor and CRO shall each have the authority from and after the date of this Order to complete the matters set out in the Fifth Report and any other matters

necessary or appropriate in connection with completing the CCAA Proceedings as requested by FirstOnSite and agreed to by the Monitor.

**APPROVAL OF THE MONITOR'S REPORT, ACTIVITIES AND FEES**

19. **THIS COURT ORDERS** that the Fifth Report and the activities of the Monitor set out therein are hereby approved.

20. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, including the Completion Estimates (as defined in the Fifth Report), as set out in the Fifth Report and the Fee Affidavits, are hereby approved.

**GENERAL**

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

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**Schedule A – Form of CCAA Termination Certificate**

Court File No. CV-16-11358-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 2123125 ONTARIO INC.

**Applicant**

**CCAA TERMINATION CERTIFICATE**

**RECITALS**

- A. Pursuant to an Order of the Honourable Mr. Justice Newbould of the Ontario Superior Court of Justice (the "**Court**"), on April 21, 2016, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of FirstOnSite G.P. Inc. ("**212**"), and Former Restoration L.P., previously named FirstOnSite Restoration L.P. ("**Former LP**", collectively with 212, "**FirstOnSite**"). The proceedings commenced by FirstOnSite under the CCAA will be referred to herein as the "**CCAA Proceedings**".
- B. The CCAA Proceedings have been completed in accordance with the Orders of this Court and under the supervision of the Monitor.
- C. Pursuant to the Order of this Court dated January 25, 2017 (the "**Discharge and Termination Order**"), the Monitor and CRO shall each be discharged and the CCAA Proceedings shall be terminated upon the filing of this CCAA Termination Certificate with the Court.

D. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge and Termination Order.

**THE MONITOR CERTIFIES** the following:

1. To the Monitor's knowledge, all matters to be attended to in connection with the CCAA Proceedings have been completed.

**ACCORDINGLY**, the CCAA Termination Date has occurred.

**DATED** at Toronto, Ontario this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**FTI Consulting Canada Inc., in its capacity  
as Monitor of FirstOnSite, and not in its  
personal capacity**

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

Name:

Title:



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

Proceeding commenced at Toronto

**DISCHARGE AND TERMINATION ORDER**

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**Lawyers for the Applicant**

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

Proceeding commenced at Toronto

**MOTION RECORD  
(RETURNABLE JANUARY 25, 2017)**

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