

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)

WEDNESDAY, THE 18th

JUSTICE NEWBOULD)

DAY OF MAY, 2016

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

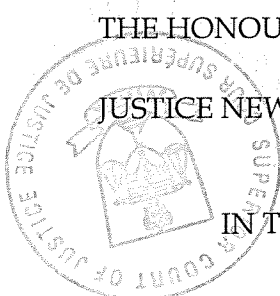
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF FIRSTONSITE G.P. INC.

Applicant

DISTRIBUTION ORDER

THIS MOTION, made by FirstOnSite G.P. Inc. ("**FirstOnSite GP**"), the general partner of FirstOnSite Restoration L.P., a limited partnership formed under the laws of Ontario ("**FirstOnSite LP**" and, collectively with FirstOnSite GP, "**FirstOnSite**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-3 (the "**CCAA**") for an order, among other things, authorizing and directing FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor of FirstOnSite (the "**Monitor**"), to make certain payments, distributions and disbursements as set out in this order, in each case subject to maintaining the Reserve (as defined below), on behalf of FirstOnSite from the proceeds of the transaction approved by the Court (the "**Transaction**") pursuant to the Approval and Vesting Order dated May 9, 2016 (the "**Approval and Vesting Order**") to be delivered to the Monitor pursuant to the Sale Agreement (as defined in the Approval and Vesting Order) and the Approval and Vesting Order on completion of the Transaction (the "**Sale Proceeds**") and any other funds that may be delivered to the Monitor by FirstOnSite pursuant to this Order, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Kevin McElcheran sworn May 12, 2016 and the Exhibits attached thereto and the Supplement to the Second Report of the Monitor, dated



May 16, 2016, and on hearing the submissions of counsel for FirstOnSite, the Monitor, Wells Fargo Capital Finance Corporation Canada ("**Wells Fargo**"), the Business Development Bank of Canada ("**BDC**") and BDC Capital Inc. ("**BDC Capital**"), and 3297167 Nova Scotia Limited (the "**Purchaser**"), and no one appearing for any other person on the service list, although duly served as appears from the affidavits sworn, filed:

SERVICE

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

RESERVE

2. **THIS COURT ORDERS** that the distributions authorized and approved by this Order shall at all times be subject to (i) the completion of the Transaction and the receipt of the Sale Proceeds by the Monitor, and (ii) the Monitor retaining from the Sale Proceeds a reserve of funds (the "**Reserve**") in an amount satisfactory to the Monitor, in consultation with FirstOnSite, or in an amount determined by the Court, sufficient for the payment of the Professional Expenses and Post-Filing Expenses (each as defined below) and to secure the obligations under the Administration Charge, the KERP Charge, the Financial Advisor's Charge (each as defined in the Amended and Restated Initial Order dated April 21, 2016 (the "**Initial Order**")), any other obligations of FirstOnSite that rank in priority to the Charges (as defined in the Initial Order), the ABL Secured Obligations, the BDC Secured Obligations and the BDC Capital Secured Obligations (each as defined below), including any statutory deemed trust claims that may arise under provincial legislation and including, with respect to the BDC Capital Secured Obligations, any outstanding claims secured by the Lien Charge (as defined in the Initial Order), and any other contingent amounts appropriate under the circumstances (the "**Priority Claims**").

DEEMED SALE PROCEEDS

3. **THIS COURT ORDERS** that FirstOnSite is hereby authorized and directed to provide any additional funds it receives, from any party whatsoever, from the Closing Date

(as defined in the Sale Agreement) of the Transaction to the Monitor to be held and distributed as Sale Proceeds in accordance with the terms of this Order unless such funds are proceeds of Purchased Assets in which case FirstOnSite is hereby authorized and directed to remit such funds to the Purchaser.

APPROVAL OF INTERIM AND FUTURE DISTRIBUTIONS

4. **THIS COURT ORDERS** that, subject to the Reserve, the Monitor is hereby authorized and directed to, in consultation with FirstOnSite, disburse from the Sale Proceeds on the day of filing the Monitor's Certificate (as defined in the Approval and Vesting Order), or as soon thereafter as practicable, on behalf of FirstOnSite:

- (a) to Wells Fargo as agent and lender (in such capacity, the "**DIP Lender**") under the DIP Facility Agreement dated April 20, 2016 (the "**DIP Agreement**"), an amount not exceeding the maximum amount of FirstOnSite's obligations owing to the DIP Lender under the DIP Agreement (the "**DIP Obligations**");
- (b) to Wells Fargo as administrative agent (in such capacity, the "**ABL Agent**") for lenders under the credit agreement dated November 25, 2014 among, *inter alia*, FirstOnSite and the ABL Agent (the "**ABL Credit Agreement**"), an amount not exceeding the maximum amount of secured obligations owing by FirstOnSite to the ABL Agent under the ABL Credit Agreement dated November 25, 2014 (as amended from time to time) ("**ABL Secured Obligations**");
- (c) to BDC, an amount not exceeding the maximum amount of the secured obligations owing by FirstOnSite to BDC under the letter of offer dated November 25, 2014 among, *inter alia*, FirstOnSite and BDC (as may be amended from time to time) ("**BDC Secured Obligations**");
- (d) to BDC Capital, an amount not exceeding the maximum amount of the obligations owing by FirstOnSite under the letter of offer dated November 25, 2014 among, *inter alia*, FirstOnSite and BDC Capital (as may be amended from time to time) ("**BDC Capital Secured Obligations**");

subject in each case to the relative priority of the security granted by FirstOnSite (or pursuant to the Initial Order, as applicable) in favour of the DIP Lender, the ABL Agent, BDC and BDC Capital, respectively.

5. **THIS COURT ORDERS** that, subject to the Reserve, the Monitor is hereby authorized, without further Order of the Court, to, in consultation with FirstOnSite, make further distributions on behalf of FirstOnSite to the DIP Lender, the ABL Agent, BDC and BDC Capital, if needed, from time to time, from the Sale Proceeds up to a maximum amount of the DIP Obligations, the ABL Secured Obligations, BDC Secured Obligations and BDC Capital Secured Obligations, respectively, subject in each case to the relative priority of the security granted by FirstOnSite (or pursuant to the Initial Order, as applicable) in favour of the DIP Lender, the ABL Agent, BDC and BDC Capital, respectively.

6. **THIS COURT ORDERS** that, subject to the Reserve, the Monitor is hereby authorized to, in consultation with FirstOnSite, disburse from the Sale Proceeds on behalf of FirstOnSite to the KERP Participants (as the term is defined in the Initial Order) the amounts, as confirmed by FirstOnSite, owing to the KERP Participants pursuant to the KERP (as the term is defined in the Initial Order) and secured by the KERP Charge.

7. **THIS COURT ORDERS** that, subject to the Reserve, the Monitor is hereby authorized to, in consultation with FirstOnSite, disburse on behalf of FirstOnSite, from time to time, from the Sale Proceeds amounts owing by FirstOnSite to Alvarez & Marsal Canada Securities ULC (the "**Financial Advisor**") under the engagement letter dated October 30, 2015 (the "**Engagement Letter**") up to the maximum amount owing to the Financial Advisor under the Engagement Letter.

8. **THIS COURT ORDERS** that the Monitor is hereby authorized and empowered, to, in consultation with FirstOnSite, disburse on behalf of FirstOnSite, from time to time, from the Sale Proceeds amounts owing by FirstOnSite in respect of fees and expenses of the Monitor and the Monitor's legal counsel and of legal counsel to FirstOnSite (collectively, the "**Professional Expenses**").

9. **THIS COURT ORDERS** that the Monitor is hereby authorized and empowered, to, in consultation with FirstOnSite, disburse on behalf of FirstOnSite, from time to time, from the Sale Proceeds amounts owing by FirstOnSite in respect obligations incurred by FirstOnSite since the commencement of these CCAA proceedings (collectively, the “**Post-Filing Expenses**”).

10. **THIS COURT ORDERS** that the Monitor is hereby authorized and empowered, to, in consultation with FirstOnSite, disburse on behalf of FirstOnSite, from time to time, from the Sale Proceeds amounts owing by FirstOnSite in respect of Priority Claims (and any other amounts owing by FirstOnSite with the consent of the Monitor), if any.

11. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any assignment in bankruptcy or any petition for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”) and any order issued pursuant to any such petition;
- (c) any application for a receivership order; or
- (d) any provisions of any federal or provincial legislation;

the Reserve, payments, distributions and disbursements contemplated in this Order shall be made free and clear of any Encumbrances (as defined in the Approval and Vesting Order), shall be binding on any trustee in bankruptcy or receiver that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against FirstOnSite, the Monitor, the Financial Advisor, the ABL Agent, BDC, BDC Capital, or any other party receiving distributions pursuant to this Order, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

PURCHASER'S CHARGE

12. **THIS COURT ORDERS** that a portion of the Reserve in an amount satisfactory to the Monitor, in consultation with FirstOnSite, or in an amount determined by the Court, but in any event in an amount not less than \$3 million, shall be deemed to be the Trust Claim Reserve (as defined in the Sale Agreement) pursuant to the Sale Agreement and the Purchaser shall be entitled to the benefit of and is hereby granted a charge on the Trust Claim Reserve (the "**Purchaser's Charge**"), which Purchaser's Charge shall not exceed an aggregate amount of \$2 million. Notwithstanding anything else contained in this Order, or any other Order in these proceedings, the Purchaser's Charge shall have a first priority ranking as against the Trusts Claim Reserve, subject only to (i) the repayment of all ABL Secured Obligations owing by FirstOnSite to the ABL Agent; and (ii) the Monitor's ability to pay or settle trust claims made against FirstOnSite pursuant to Applicable Lien Legislation (as defined in the Sale Agreement) as set out in the Sale Agreement and the Escrow Agreement (as defined in the Sale Agreement), including the Monitor's recourse to the Potential Trust Claimant Reserve (as defined in the Sale Agreement) (to the extent available for such trust claim). The Purchaser's Charge shall be automatically released upon the Purchaser's receipt of any amount it may be entitled to receive pursuant to Section 3.5(d)(ii) of the Sale Agreement, without any further Order of the Court or any other further action.

MONITOR PROTECTIONS

13. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the Initial Order, the Monitor shall not be liable for any act or omission on the part of the Monitor pertaining to the discharge of its duties under this Order, save and except for any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Monitor. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA, any other federal or provincial applicable law or the Initial Order.

14. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order and without in any way limiting the protections for the Monitor set forth in this Order, the Initial Order and the CCAA, the Monitor shall have no obligation to make any payment unless the

Monitor is in receipt of funds adequate to effect any such payment, subject at all times to paragraph 2 of this Order.

15. **THIS COURT ORDERS AND DECLARES** that any payments, distributions and disbursements under this Order shall not constitute a "distribution" for the purposes of section 159 of the Income Tax Act (Canada), section 270 of the Excise Tax Act (Canada), section 107 of the Corporations Tax Act (Ontario), section 22 of the Retail Sales Tax (Ontario), section 117 of the Taxation Act, 2007 (Ontario) or any other similar federal, provincial or territorial tax legislation (collectively, the "**Tax Statutes**"), and that the Monitor in making any such payments, distributions or disbursements is not "distributing", nor shall be considered to "distribute" nor to have "distributed", such funds for the purpose of the Tax Statutes, and the Monitor shall not incur any liability under the Tax Statutes in respect of its making any payments ordered or permitted under this Order, and is hereby forever released and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of payments made under this Order and any claims of this nature are hereby forever barred.

GENERAL

16. **THIS COURT ORDERS** that the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to the payments, distributions and disbursements proposed herein.

17. **THIS COURT DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.

18. **THIS COURT DECLARES** that the Monitor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order. All courts and jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

19. **THIS COURT REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of this Order.



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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAY 18 2016

PER / PAR: 

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.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

DISTRIBUTION ORDER

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