Court File No. \_\_\_\_\_

## ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

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

Applicant

## APPLICATION RECORD (For the Initial Application returnable April 21, 2016)

April 21, 2016

#### STIKEMAN ELLIOTT LLP

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

#### **Maria Konyukhova LSUC#: 52880V** Tel: (416) 869-5230

Email: mkonyukhova@stikeman.com

#### Vlad Calina LSUC#: 69072W

Tel: (416) 869-5202 Email: vcalina@stikeman.com Fax: (416) 947-0866

Lawyers for the Applicant

# INDEX

Court File No. \_\_\_\_\_

# ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

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

Applicant

### INDEX

Tab	Document
1.	Notice of Application
2.	Affidavit of Dave Demos, sworn April 20, 2016, with Exhibits "A" to "J"
А.	<b>Exhibit</b> " <b>A</b> ": Financial statements for the two months ended February 29, 2016, and the twelve months ended December 31, 2015
B.	Exhibit "B": The Intercreditor Agreement dated November 25, 2014
C.	Exhibit "C": Wells Fargo default notices dated December 4, 2015, January 18, 2016, February 29, 2016 and March 22, 2016
D.	<b>Exhibit "D"</b> : Business Development Bank of Canada default notices date December 15, 2015 and BDC Capital Inc. default notice dated January 12, 2016
E.	Exhibit "E": The Demand Letter, April 20, 2016
F.	Exhibit "F": The Engagement Letter, dated October 30, 2015
G.	Exhibit "G": The form of the Escrow Agreement to be executed April 21, 2016
H.	Exhibit "H": The DIP Agreement, dated April 20, 2016
I.	Exhibit "I : Form of First KERP letter offered to First KERP Participants.
J.	Exhibit "J": Form of Second KERP letter sent to Second KERP Participants.
3.	Draft Initial Order
4.	Blackline to the Commercial List Model Initial Order

.

# TAB 1

Court File No. \_\_\_\_\_

### 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 FIRSTONSITE G.P. INC.

Applicant

#### NOTICE OF APPLICATION

#### TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on April 21, at 9:30, at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY

# LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date April , 2016

Issued by \_\_\_\_\_

Local registrar

Address of 330 University Avenue, court office Toronto, Ontario

TO: THE SERVICE LIST

#### APPLICATION

1. FirstOnSite G.P. Inc. ("FirstOnSite GP"), the general partner of FirstOnSite Restoration L.P. ("FirstOnSite LP"), a limited partnership formed under the laws of Ontario (collectively, with FirstOnSite LP "FirstOnSite") makes this application for an Order (the "Initial Order") substantially in the form attached at Tab 3 of the Application Record, among other things:

- (a) abridging the time for service of this Notice of Application and dispensing with service on any person other than those served;
- (b) declaring that the Applicant is a party to which the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") applies;
- (c) declaring that FirstOnSite LP shall enjoy the benefits of the protection and authorization provided to the Applicant under the Initial Order;
- (d) appointing FTI Consulting Canada Inc. as an officer of this Court to monitor the assets, businesses and affairs of the Applicants (in such capacity, the "Monitor");
- (e) staying all proceedings taken or that might be taken in respect of the Applicant, the Applicant's directors and officers and the Monitor;
- (f) approving the agreement dated as of October 30, 2015 engaging
   Alvarez & Marsal Canada Securities ULC as financial advisor to
   FirstOnSite LP (in such capacity, the "Financial Advisor") nunc pro tunc;

- (g) authorizing and empowering the FirstOnSite LP to obtain and borrow under a debtor-in-possession ("DIP") loan facility (the "DIP Facility") as set out in the DIP Facility Agreement (the "DIP Agreement") between FirstOnSite LP as borrower, Wells Fargo Capital Finance Corporation Canada as administrative agent and lender (the "DIP Lender") and FirstOnSite GP, FirstOnSite Holdings Limited, and FirstOnSite Restoration, Inc. as guarantors, in a principal amount not exceeding \$40 million;
- (h) approving two key employee retention plans (the "KERPs") offered by FirstOnSite to certain employees deemed critical to a successful restructuring;
- (i) staying the rights of potential claimants ("Lien Claimants") to register any claim for lien ("Lien Claim") against any projects to which FirstOnSite is a counterparty;
- (j) granting the following priority charges over the property of the Applicant's, such charges to rank ahead of all other existing security interests of any persons with notice of this application, but before any person who is a "secured creditor", as defined in the CCAA and who has not received notice of this Application:
  - (i) a charge in the maximum amount of \$1 million to secure payment of fees and disbursements incurred in connection with this proceeding (the "Administration Charge") in favour of Monitor, counsel to the Monitor, counsel to the Applicant and the Financial Advisor (in respect of its monthly fees and expenses, but not in respect of the Success Fee as that terms is defined in the affidavit of Dave Demos, sworn April 20, 2016, the "Demos Affidavit");

- (ii) a charge in the maximum amount of \$15 million in favour of the DIP Lender's to secure the DIP Facility (the "DIP Charge");
- (iii) a charge in the maximum amount of \$2.26 million to secure the Applicant's obligations under the KERPs (the "KERP Charge");
- (iv) a charge in the maximum amount of \$1.1 million to secure payment to the Financial Advisor of the Success Fee (the "Financial Advisor Charge"); and
- (v) a charge over the assets of FirstOnSite equal in the value to that which could otherwise have been secured by way of a lien under applicable provincial lien legislation (the "Lien Charge");
- (k) authorizing FirstOnSite to pay certain amounts (with the consent of the Monitor for amounts in excess of \$10,000 each) 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, if in the opinion of FirstOnSite, the supplier is critical to the ongoing operation of its business;
- (l) sealing the Confidential Supplement (as defined below) pending further Order of the Court; and
- (m) granting such further and other relief as this Court may deem just.

2. The grounds for the application are as follows:

# The Applicant and FirstOnSite LP

- (a) FirstOnSite is a leading national disaster service provider servicing commercial, industrial and residential sectors and providing remediation, restoration and reconstruction services in Canada and, to a far greater extent, the United States;
  - (i) FirstOnSite GP is a private company incorporated under the *Business Corporations Act*, R.S.O. 1990 c. B. 16;
  - (ii) FirstOnSite LP is a limited partnership formed pursuant to the laws of Ontario;
- (b) FirstOnSite employs approximately 935 people in North America;

## FirstOnSite's Financial Difficulties

- (c) FirstOnSite has been and continues to be facing severe financial and liquidity issues due to, *inter alia*,
  - (i) Significant overleverage caused by a series of debt-financed but industry consolidating acquisitions;
  - (ii) A substantial decline in revenue caused by unseasonably moderate weather and the consequential reduction in the insurance claims;

## FirstOnSite is Insolvent

(d) FirstOnSite has liabilities in excess of \$161.36 million, does not have the liquidity to meet its payment obligations as they become

due and is unable to satisfy the financial covenants set out in its secured credit agreements;

- (e) On October 31, 2015, FirstOnSite LP defaulted with respect to its senior secured revolving asset-backed lending facility and, technically, triggered a cascade of cross-defaults with respect to its senior and junior subordinated debt;
- (f) Without protection under the CCAA, a shut-down of operations or the commencement of self-remedy measures by creditors is inevitable, which would be extremely detrimental to FirstOnSite's employees, suppliers, customers, and other stakeholders;

#### **Relief Sought**

- (g) The Applicant requires a stay of proceedings and the other relief sought herein, including to extend CCAA protection to FirstOnSite LP, to maintain its operations while giving it the time necessary to implement its proposed restructuring strategy: the going concern sale of substantially all of its business and assets pursuant to a sale and investor solicitation process commenced in October , 2015;
- (h) The DIP Facility is necessary to allow the Applicants to continue to operate in the normal course and has only been made available on condition that the DIP Charge and other protections be granted;

#### Other Grounds

- the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (j) Rules 2.03, 3.02, 14.05(2), 16 and 38 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and sections 106 and

of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and

(k) such further and other grounds as counsel may advise and this court may permit.

3. The following documentary evidence will be used at the hearing of the application:

- (a) The Demos Affidavit and the Exhibits attached thereto;
- (b) The Pre-Filing Report (as defined in the Demos Affidavit) and the appendices attached thereto; and
- (c) such further and other evidence as counsel may advise and this Court may permit.

April 21, 2016

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

Maria Konyukhova LSUC#: 52880V Tel: (416) 869-5230 Email: mkonyukhova@stikeman.com

**Vlad Calina LSUC# 69072W** Tel: (416) 869-5202 Fax: (416) 947-0866

Lawyers for the Applicant

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

Court File No. \_\_\_\_\_

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 NOTICE OF APPLICATION STIKEMAN ELLIOTT LLP **Barristers & Solicitors** 5300 Commerce Court West 199 Bay Street Toronto, Canada M5L 1B9 Maria Konyukhova LSUC#: 52880V Tel: (416) 869-5230 Email: mkonyukhova@stikeman.com Vlad Calina LSUC#: 69072W Tel: (416) 869-5202

Email: vcalina@stikeman.com Fax: (416) 947-0866

Lawyers for the Applicant

# TAB 2

Court File No.

#### 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 FIRSTONSITE G.P. INC.

Applicant

### AFFIDAVIT OF DAVE DEMOS (Sworn April 20, 2016) (Re CCAA Initial Application)

I, Dave Demos, of the City of Wilbraham, Massachusetts, MAKE OATH AND SAY:

1. I am the Chief Executive Officer of the Applicant, FirstOnSite G.P. Inc. ("FirstOnSite GP"), the general partner of FirstOnSite Restoration L.P. ("FirstOnSite LP"), a limited partnership formed under the laws of Ontario (collectively, with "FirstOnSite GP", "FirstOnSite"). 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 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. Hereinafter, where reference is made to the FirstOnSite enterprise as a whole, which includes all of the entities referenced in Part B of this affidavit, the term FirstOnSite will be used. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

#### A. INTRODUCTION

3. This affidavit is sworn in support of an application by FirstOnSite GP for an order (the "**Initial Order**") pursuant to the *Companies*' *Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), substantially in the form attached at Tab 3 of the Initial Application Motion Record, granting FirstOnSite protection from its creditors and certain ancillary relief as outlined in the draft Initial Order.

4. While FirstOnSite LP is not an applicant in this proceeding, FirstOnSite GP seeks to have a stay of proceeding and other benefits of an Initial Order under the CCAA extended to FirstOnSite LP as it carries on operations integral to FirstOnSite.

5. FirstOnSite carries on business in Canada and, through its subsidiary FirstOnSite Restoration, Inc. ("FOS US"), the United States, providing remediation, restoration and reconstruction services in the commercial, industrial and residential sectors. Residential revenue is primarily generated from insurance companies as part of their property coverage program. Commercial revenue is generated from both insurance companies and property owners, operators and managers. FirstOnSite services, *inter alia*, properties damaged by flood, fire, wind, mold and catastrophic events.

6. As described in greater detail below, FirstOnSite has been and continues to be facing severe financial and liquidity issues due to, among other issues, an overleveraged balance sheet and a substantial decline in revenue caused by unseasonably moderate weather and a related reduction in overall insurance claims in 2015 and thus far in 2016. For a period of time, and up until the fall of 2015, Torquest Partners Fund II, L.P. ("Torquest II Canada") and Torquest Partners Fund (U.S.) II, L.P. ("Torquest II US" and collectively with Torquest II Canada and other related entities, "Torquest") (which hold significant secured, unsecured and equity interests in FirstOnSite) provided substantial liquidity to FirstOnSite by way of, among other things, a series of unsecured promissory notes. In the fall of 2015, Torquest takes that it was no longer prepared to provide additional funding to support FirstOnSite.

7. As a result of its financial difficulties and its ongoing and severe liquidity crisis, FirstOnSite has been unable to meet its various financial and other covenants with its secured lenders. On October 31, 2015, FirstOnSite defaulted with respect to its senior secured revolving credit facility and technically triggered a cascade of cross-defaults with respect to its senior and junior subordinated debt.

8. As part of its restructuring efforts FirstOnSite, with assistance from its professional advisors, conducted a thorough canvass of the market for prospective purchasers of its assets and business. One offer to purchase substantially all of the assets of FirstOnSite LP is considered by the board of directors of FirstOnSite GP (the "**Board**") to be the best offer in the circumstances.

9. It is estimated that the net proceeds of sale from this sale transaction will be sufficient to repay the DIP Facility (as defined below), first ranking ABL Facility (as defined below), and forecast that BDC and Capital (as defined below) will suffer a shortfall in recovering on their indebtedness and all subsequent ranking secured creditors, including Torquest, will not receive any distributions.

10. The foregoing offer and the resulting APA (as defined and described in greater detail below) is conditional upon a CCAA filing and Court approval. FirstOnSite intends to return to the Court to seek approval of the offer and resulting asset purchase agreement, and certain related relief, at a later date on notice to the appropriate parties.

11. At this time, however, FirstOnSite GP is only seeking protection under the CCAA and certain ancillary relief as outlined in the draft Initial Order.

12. Without protection under the CCAA, a shut-down of operations or the commencement of self-remedy measures by creditors is inevitable, which would be extremely detrimental to FirstOnSite's employees, suppliers, customers, and other stakeholders. CCAA protection will allow FirstOnSite to implement the sale of its assets for the benefit of all of its stakeholders.

13. The Board has authorized this application.

#### B. OVERVIEW

14. FirstOnSite is a leading national disaster service provider in Canada servicing commercial, industrial and residential sectors and providing remediation, restoration and reconstruction services nationwide (the "**Remediation Services**").

15. I am advised by Maria Konyukhova of Stikeman Elliott LLP, counsel to FirstOnSite, as to the organizational and ownership structure of FirstOnSite. Attached as Schedule "A" to this affidavit is an organizational chart setting out the ownership structure of FirstOnSite. Reviewed herein are the principal entities through which FirstOnSite does business.

### FirstOnSite GP

16. FirstOnSite GP is the general partner of FirstOnSite LP and a private company incorporated under the *Business Corporations Act*, R.S.O 1990 c. B. 16 (the "**OBCA**") with its registered head office at 60 Admiral Boulevard, Mississauga, Ontario, L5T 2W1. FirstOnSite GP is 50% owned by Torquest II Canada and 50% owned by Torquest II US.

#### FirstOnSite LP

17. Founded in 2007, FirstOnSite LP is a limited partnership formed under the laws of Ontario by way of a limited partnership agreement dated December, 22, 2006 (as amended from time to time, the "Limited Partnership Agreement"). FirstOnSite LP has a principal place of business at 60 Admiral Boulevard, Mississauga, Ontario, L5T 2W1.

18. FirstOnSite LP has one class of general partnership units outstanding ("**the GP Units**"), and fourteen classes of limited partnership units outstanding (Class A Units to Class N Units). FirstOnSite LP has authorized an unlimited number of each class of units except for Class B Units, of which 5,000,000 are authorized. Each of the classes of units are non-voting, except for Class C units.

19. Classes A, B and C units are held by, *inter alia*, Torquest and its affiliates (with respect to Classes A and C), myself (with respect to Classes A and C), as well as certain other individual and corporate founders of FirstOnSite LP. Torquest and its affiliates hold, in the aggregate, 58.49% of the outstanding Class C Units, which are the only class of units entitled to vote.

20. Classes D, E, F, G, H, I, J, K, L, M and N Units are each owned by only one holder. These classes of Units (the "**Deferred Unit Classes**"), were issued by FirstOnSite to specific vendors during 2007 to 2009 in respect of asset acquisitions completed by FirstOnSite LP.

21. FirstOnSite LP owns 100% of FirstOnSite Holdings Limited ("FOS Holdings"). FOS Holdings is a holding company incorporated under the OBCA with a principal place of business at 60 Admiral Boulevard, Mississauga, Ontario, L5T 2W1.

22. FOS Holdings owns 100% of FOS US, which is a company incorporated under the laws of Delaware with its registered head office at 185 Molly Walton Drive in Hendersonville, Tennessee. FOS US is the operating company for FirstOnSite's U.S. business. Established in 2011, FOS US is licensed to operate in almost every state and is still developing the U.S. branch of FirstOnSite's business.

#### FirstOnSite's Business in Canada

23. The Canadian restoration market has annual sales in excess of \$2.0 billion. At the same time, the Canadian restoration services industry is highly fragmented, being made up of a large number of regional and local service providers, each with small market share.

24. FirstOnSite is one of the largest independently owned, non-franchised restoration services companies in Canada. FirstOnSite services properties damaged by flood, fire, wind, mold and catastrophic events in all major population centers across the country and many smaller locales. FirstOnSite holds a significant proportion of the

market share of the restoration services industry in each province where it has operations.

25. Substantial capital investment is required to establish and maintain a national or multi-regional platform. Service providers without a national presence lack the size and scale needed to acquire and service a large national commercial customer base. This is because larger national customers require national service providers with a presence in most markets. Also, the smaller restoration market competitors lack the ability to respond and mobilize to large catastrophes and inclement weather across the country in a quick and efficient way. Accordingly, it is difficult for small and independent restoration service providers to grow outside of their current regions.

26. FirstOnSite LP was established by the merger of two regional entrepreneur run businesses in Ontario and British Columbia. FirstOnSite GP has no source of income independent from FirstOnSite LP and is entirely dependent on the business, assets and performance of FirstOnSite LP for its continued operation

27. Following its founding, FirstOnSite's growth strategy was to consolidate the fragmented restoration industry. Between 2007 and 2009, FirstOnSite expanded across Canada. The consolidation strategy included the initial merger of the Ontario and British Columbia businesses and additional acquisitions in 2007 (six); 2008 (six); and 2009 (two).

28. In Canada, FirstOnSite carries on operations in: Ontario, Quebec, British Columbia, Alberta, Manitoba, Saskatchewan, Nova Scotia, New Brunswick and Prince Edward Island. FirstOnSite does not have operations in Newfoundland or in any of the three territories. FirstOnSite's revenue is broken down by region as follows:

Regional Revenue				
(CAD \$000)	2012	2013	2014	2015

Totals	175,336	214,028	203,706	154,837
North America Large Loss <sup>3</sup>	10,267	13,074	14,686	9,285
British Columbia	33,499	33,959	35,204	29,833
Prairies <sup>2</sup>	38,383	79,221	44,425	29,971
Central <sup>1</sup>	50,626	47,520	59,195	41,727
Quebec	25,558	21,510	21,378	14,934
Atlantic	17,003	18,774	28,818	29,087

### <u>Services</u>

29. FirstOnSite has a diverse customer base across both the residential and commercial sectors. Residential revenue is primarily generated from insurance companies as part of their property coverage program. When a restoration event occurs (e.g. flood, fire, wind and other weather related events), the insured property owner files a claim with the insurer. The business relationship is held with the insurer: FirstOnSite collects the majority of its receivables directly from insurance companies.

30. Commercial revenues are generated from both insurance companies and property owners, operators and managers. FirstOnSite services large office buildings, malls, plazas and university and government campuses. In addition to weather related damage, revenue is generated from maintenance related remediation paid for by the end user. FirstOnSite's revenue mix for the past two years was approximately 44% commercial to 56% residential.

<sup>&</sup>lt;sup>1</sup> Ontario and Manitoba

31. For the fiscal year ended December 31, 2014 ("**FY2014**") FirstOnSite generated 35% of its revenue from emergency response work; 53% from follow-on rebuild and construction work; and the remainder from other specialty services including contents restoration, environmental cleanup and document processing. For the fiscal year ended December 31, 2015 ("**FY2015**") FirstOnSite generated 30% of its revenue from emergency response work and 57% from follow-on rebuild and construction work.

## **Suppliers**

32. FirstOnSite has a number of essential supplier relationships, whose services are integral to the continued operation and viability of the enterprise. Essential suppliers primarily fall into five distinct categories: (i) subcontractors; (ii) equipment suppliers and equipment rental companies; (iii) safety supplies and material vendors; (iv) temporary staffers and labourers; and (v) vehicle and transport suppliers.

33. In providing restoration services, FirstOnSite frequently sub-contracts part of its work to, among others, construction companies, independent contractors and other material or service suppliers who, among other things, perform work on or supply materials to its various restoration projects (which projects include, but are not limited to, rebuilding damaged property).

#### Customers -

34. FirstOnSite has a diverse customer base: its largest customer accounts for less than 15% of revenue and the five largest customers account for approximately 45% of revenue. FirstOnSite's customers include leading insurance companies (providing both residential and commercial restoration services), commercial property owners, operators and managers.

<sup>&</sup>lt;sup>2</sup> Alberta and Saskatchewan.

<sup>&</sup>lt;sup>3</sup> Involving substantial restoration jobs of technical complexity.

### FirstOnSite's Business in the US

35. FirstOnSite's U.S. operations are conducted through its subsidiary, FOS US, headquartered in Hendersonville, Tennessee. FOS US offers commercial Remediation Services, which it provides to its customers through use of subcontractors. In addition, and as described below, FOS US provides large loss and project management expertise in support of FirstOnSite's Canadian operations. For the reasons set out below, FOS US has consistently operated at a loss and relies on direct funding from FirstOnSite LP to continue operations as a going concern.

36. FOS US provides internal project management but not field crews and, therefore, relies on suppliers and subcontractors in a similar way as the Canadian operations (as described in paragraphs 32 and 33), but to an even greater extent.

37. FOS US does not have a diversified customer base, with its construction revenues deriving from a limited number of customers (with the substantial portion of revenues deriving from either two or three large loss events between 2012-2014). FOS US has entered into master agreements with certain national retail chains, which govern the individual contracts for each local renovation.

38. FOS US supports Canadian operations by providing specialized Large Loss Remediation Services and Project Management expertise to Canadian branch locations on a per-project basis. Accordingly, FOS US provides the FirstOnSite enterprise in Canada with leading-edge project management expertise and support with respect to catastrophic and complex losses. In addition to project management support, FOS US also provides expertise in sourcing materials and equipment, most particularly in extreme circumstances when large quantities are required in short periods of time. For events that occur in Canada, the local branch office, not FOS US, is typically credited with the financial results.

### **Employees**

39. FirstOnSite has approximately 1,000 employees, supplemented by a team of independent contractors. There are fourteen individuals employed in connection with the U.S. enterprise, all of whom work in project management roles. Independent contractors and temporary workers are recruited as needed based on project scope and demands. A breakdown of employees by region (including operations and staff in the United States) is as follows:

Employees by Region as at January 31, 2016				
	Hourly	Salary	Total	
Atlantic	128	58	186	
Quebec	28	32	60	
Central	97	75	172	
Prairies	156	58	214	
British Columbia	119	57	176	
North America Large Loss	1	23	24	
Totals	566	369	935	

## **Offices and Facilities**

<u>Canada</u>

40. FirstOnSite LP leases its head office in Mississauga, Ontario. In addition, FirstOnSite has 42 leased properties in the following provinces in Canada: Ontario (19), Quebec (2), British Columbia (6), Alberta (4), Manitoba (2), Saskatchewan (1), Nova

Scotia (2), New Brunswick (4) and Prince Edward Island (2). Generally, these properties house project equipment and/or branch offices. FOS US also leases its head office in Hendersonville, Tennessee.

#### Management Services Agreement

41. On January 31, 2007, FirstOnSite and Torquest Management Services Limited Partnership entered into a management services agreement pursuant to which the latter provides management, financial and strategic support and other services to FirstOnSite on an exclusive basis. The agreement may only be terminated by mutual consent of the parties. In consideration, FirstOnSite agreed to pay a management fee of \$250,000 plus applicable taxes per annum. The management services agreement had approximately \$1.6 million in arrears accrued as at December 31, 2015.

#### **Cash Management System**

42. FirstOnSite maintains a centralized cash management system to deal with cash management, collections, and disbursements which is administered from the registered head office of FirstOnSite GP and FirstOnSite LP in Mississauga (the "Head Office"). This allows FirstOnSite to facilitate cash forecasting and reporting, and monitor collection and disbursement of funds. FirstOnSite reviews and monitors account activity on a daily basis.

43. FirstOnSite needs to be able to continue using the existing cash management system during the CCAA Proceedings.

#### Bank Accounts

44. FirstOnSite's bank accounts are managed and controlled by senior management from the Head Office. FirstOnSite utilizes cash management systems established at Toronto Dominion Bank ("TD") for its Canadian domiciled banking and Wells Fargo Bank N.A. ("Wells Fargo Bank") for its U.S. domiciled banking. 45. FirstOnSite LP holds three deposit accounts with TD: a Canadian account (the "**Main Blocked Account**"), a U.S. account (the "**TD U.S. Blocked Account**") and a Quebec account (the "**Quebec Blocked Account**"). FOS US holds a U.S. blocked deposit account in the United States with Wells Fargo Bank (the "**Wells Fargo U.S. Blocked Account**").

46. As described in greater detail further below, FirstOnSite LP utilizes an asset backed lending facility as its senior credit facility (the ABL Facility, as defined below), which is administered by Wells Fargo Capital Finance Corporation Canada ("Wells Fargo") as agent on behalf of a syndicate of lenders (in this capacity, the "ABL Agent").<sup>4</sup> Pursuant to the provisions of the ABL Agreement (as defined below), FirstOnSite's deposit accounts are subject to cash dominion (the reasons for which are described in greater detail below in connection with the ABL Facility). All cash, credit and debit receipts are deposited into one of the blocked account with TD and Wells Fargo Bank (collectively, the "Blocked Accounts").

47. All cheque, electronic transfer fund ("EFT"), debit and credit card receipts are deposited daily into the Main Blocked Account with TD, except for receipts related to Quebec branches. Receipts for the Quebec region are initially deposited in the Quebec Blocked Account and then automatically transferred to the Main Blocked Account. All U.S. denominated deposits received in the United States are deposited into the Wells Fargo U.S. Blocked Account. Each branch has the ability to make deposits directly to its respective Blocked Account.

48. Each day, TD initiates a transfer of the funds in the Blocked Account to an account designated and controlled by the ABL Agent, which has the effect of reducing the amounts outstanding under the ABL Agreement. Given that the funds are deposited into the Blocked Accounts, FirstOnSite does not have access to funds to make

disbursements. FirstOnSite's current practice is to obtain funding from the ABL Agent by making formal requests for these borrowings on an as-needed basis. Funding provided by the ABL Agent in respect of FirstOnSite's borrowing requests is deposited into accounts at TD or Wells Fargo Bank used by FirstOnSite for its disbursements (the "Disbursement Accounts").

49. FirstOnSite holds four disbursement accounts with TD, including one main disbursement account (the "Main Disbursement Account"), and a Quebec disbursement account (the "Quebec Disbursement Account"), both of which have supporting U.S. dollar disbursement accounts which are seldom used. FOS US also holds one U.S. dollar disbursement account with each of Wells Fargo Bank and Bank of America for any disbursements required to U.S. suppliers.

#### EFT Payment System

50. FirstOnSite's cash management systems provided by TD also include EFT payment services. Through the EFT systems, FirstOnSite provides batch payments to TD regarding payments to be made to specified FirstOnSite vendors, following which TD then makes payments electronically to those vendors. These payments are immediately drawn from the Disbursement Accounts. The Chief Financial Officer and/or the Treasurer authorizes disbursements for all regions. Once authorized, the disbursement of funds for Quebec and Atlantic and the U.S. are processed at the regional levels while the remaining regions are processed at the Corporate head office. FirstOnSite also utilizes cheque payments to vendors and has VISA and MasterCard credit cards with Wells Fargo which are used by project managers and corporate employees for travel and project related expenses.

#### Payroll System

<sup>&</sup>lt;sup>4</sup> While the ABL Agreement (as defined below) provides for the possibility of other lenders, the only lender under the ABL Agreement at the date of this Affidavit is Wells Fargo.

51. FirstOnSite utilizes third-party payroll services providers, ADP Canada Co. and ADP, LLC, to disburse payroll directly to employees and to make necessary statutory remittances. Salaried employees are paid on the 15<sup>th</sup> and 30<sup>th</sup> of each month. Hourly employees are paid bi-weekly. Payroll is funded two business days prior to the payment to employees.

# C. FINANCIAL STATUS

### Assets

52. FirstOnSite's assets, as reflected in the consolidated unaudited balance sheet prepared as at February 29, 2016, had a net book value of approximately \$86,989,000 that consisted of the following (rounded to the nearest thousand):

Current Assets	
Cash	
Accounts Receivable	\$41,336,000
Work-in-process <sup>5</sup>	\$2,959,000
Inventory	\$976,000
Prepaid Expenses (and other assets)	\$1,550,000
Total Current Assets	<u>\$46,821,000</u>
Non-Current Assets	
Property and equipment	\$10,547,000
Goodwill and other intangible assets	\$29,621,000
Total Non-Current Assets	<u>\$40,919,000</u>
Total Assets	\$86,989,000

53. The consolidated and unaudited financial statements of FirstOnSite for the two

<sup>&</sup>lt;sup>5</sup> Work incurred on ongoing projects.

months ended February 29, 2016, and the twelve months ended December 31, 2015 are attached hereto collectively as **Exhibit** "**A**".

#### **Liabilities**

54. As at February 29, 2016, FirstOnSite had liabilities totaling approximately \$161,360,000 consisting of the following:

Current Liabilities	
Bank Indebtedness <sup>6</sup>	\$17,377,000
Accounts Payable	\$22,691,000
Accrued Liabilities <sup>7</sup>	\$7,506,000
Unearned Revenue <sup>8</sup>	\$487,000
Current portion of capital leases obligations	\$1,661,000
Current portion of term debt - BDC	\$1,169,000
Total Current Labilities	<u>\$50,891,000</u>
Non-Current Liabilities	
Capital lease obligations	\$2,763,000
Term debt - BDC (defined below)	\$1,292,000
Term debt - Capital (defined below)	\$4,903,000
Subordinated debt (Torquest)	\$13,048,000
Junior subordinated debt (Torquest)	\$53,405,000
Convertible debentures	\$35,058,000
Total Non-Current Liabilities	\$110,469,000
Total Liabilities	\$161,360,000

<sup>&</sup>lt;sup>6</sup> Consisting of a revolving ABL Facility (including accrued interest) in terms of both its US and Canadian facilities, cash on hand and deferred finance charges (net of amortization).

<sup>&</sup>lt;sup>7</sup> Obligations for goods and services provided for which invoices have not yet been received.

<sup>&</sup>lt;sup>8</sup> The amounts received in advance of providing goods or services.

55. I am advised by Maria Konyukhova of Stikeman Elliott LLP as to the structure of the principal debt facilities of FirstOnSite, the most significant of which are described in greater detail below.

#### **Revolving ABL Facility**

56. FirstOnSite LP (as borrower) and FirstOnSite GP, FOS Holdings and FOS US (as guarantors) entered into a credit agreement dated November 25, 2014 (as amended modified, supplemented, extended, renewed, restated or replaced, the "**ABL Agreement**") with a syndicate of lenders (each an "**ABL Lender**") comprising, at the time and to date, Wells Fargo alone (who acts in the capacity of the sole ABL Lender and the ABL Agent). Up to \$60 million (the "**ABL Facility**") is available pursuant to the ABL Agreement. The ABL Facility matures on the earlier of (a) November 25, 2019, (b) demand for payment under the ABL Agreement and (c) 90 days prior to each maturity date under the BDC Credit Agreement or the Capital Credit Agreement (each as defined below).

57. The ABL Facility is structured as a typical asset-based loan facility governed by a borrowing base calculation comprised of eligible accounts receivable and eligible unbilled accounts (collectively, the "Eligible Collateral"). The ABL Agreement contains various restrictive convents that, *inter alia*, limit FirstOnSite's ability to incur additional indebtedness or encumber its assets.

58. Pursuant to this structure, FirstOnSite submits a written request for an advance and the ABL Lenders make the advance pursuant to such request based on a written borrowing base certificate which sets out the amount of credit available to FirstOnSite LP taking into account the value of the Eligible Collateral and the amount outstanding under the ABL Facility. An advance that is not completely supported by the borrowing base calculation would not be extended by the ABL Lenders.

59. Since amounts advanced pursuant to the ABL Facility are dependent on the

value of the Eligible Collateral and given that cash receipts represent a loss/replacement of the Eligible Collateral, the ABL Facility gives the ABL Lenders dominion over the cash receipts of FirstOnSite LP (the cash dominion and blocked accounts in connection with the cash management system are described in greater detail above). Payments on Eligible Collateral are applied to outstanding obligations under the ABL Facility on a regular basis and the ABL Lenders then re-advance amounts to FirstOnSite LP upon receipt of a written request for an advance based on a current calculation of the borrowing base and the amount of credit availability.

60. As at February 29, 2016, approximately \$17,377,000 was outstanding under the ABL Facility (inclusive of accrued interest on the Canadian Facility as defined further below).

61. The ABL Facility is principally comprised of two credit facilities: a U.S. dollar revolving loan facility (the "**U.S. Facility**") and a Canadian dollar revolving loan facility (the "**Canadian Facility**" and collectively, with the U.S. Facility, the "**Revolving ABL** Facilities"). The Revolving ABL Facilities are available at the following interest rates:

- (a) U.S. Facility: The U.S. Prime Rate at the time the amount is borrowed plus
   0.50% *per annum* or, in the case of a LIBOR Rate Loan, the adjusted LIBOR
   Rate plus 2.90% *per annum*; and
- (b) **Canadian Facility**: The Canadian Prime Rate plus 0.50% *per annum* or, in the case of a BA Equivalent Loan, the BA Equivalent Rate plus 2.10% *per annum*.

62. The ABL Agreement requires that FirstOnSite LP maintain certain financial ratios (the "**Fixed Charge Coverage Ratio**" as defined in the ABL Agreement). The ABL Agreement specifies that the failure to maintain the Fixed Charge Coverage Ratio is an Event of Default (as defined therein).

63. FirstOnSite LP's obligations under the ABL Agreement are secured by way of,

*inter alia*: (i) a general security agreement ("**GSA**") dated November 25, 2014, granting the ABL Agent a continuing security interest in all of the present and after-acquired property of FirstOnSite LP; (ii) a pledge agreement ("**Pledge**") dated November 25, 2014, pledging to the ABL Agent all of the common shares of FOS Holdings owned by FirstOnSite LP; and (iii) a deed of hypothec dated November 18, 2014, pursuant to which FirstOnSite LP hypothecated to the ABL Agent, *inter alia*, all of the present and after-acquired moveable property of FirstOnSite LP.

64. Each of FirstOnSite GP, FOS Holdings and FOS US entered into a guarantee in favour of the ABL Agent dated November 25, 2014, guaranteeing, *inter alia*, the obligations owing by FirstOnSite to the ABL Lenders under the ABL Agreement.

65. The guarantees provided by FirstOnSite GP, FOS Holdings and FOS US are secured by way of, *inter alia*: GSAs dated November 25, 2014 granting the ABL Agent a continuing security interest in all of their present and after-acquired property; and a deed of hypothec, dated November 18, 2014, pursuant to which FirstOnSite GP hypothecated to the ABL Agent, *inter alia*, all of its present and after-acquired moveable property.

66. The security interests granted by FirstOnSite LP and FirstOnSite GP to the ABL Agent are perfected by way of registrations pursuant to the Personal Property and Security Act ("**PPSA**" or applicable provincial equivalent) in Ontario, Quebec, Prince Edward Island, Nova Scotia, New Brunswick, British Columbia, Saskatchewan, Alberta, Manitoba and Newfoundland. The security interests granted by FOS Holdings to the ABL Agent are perfected by way of registrations pursuant to the PPSA in Ontario. The security interests granted by FOS US to the ABL Agent are perfected by a Uniform Commercial Code registration in Delaware.

67. Upon the occurrence of an Event of Default under the ABL Agreement, the ABL Lenders are entitled to, *inter alia*, accelerate the payment of all obligations owing thereunder (with certain limited exceptions) and may exercise any rights and remedies available as a creditor at law. An Event of Default includes the failure to maintain the Fixed Charge Coverage Ratio and a failure to provide the relevant and Compliance Certificate (as defined in the ABL Agreement).

BDC Credit Agreement

68. On November 25, 2014, and at the same time as entering into the ABL Agreement, FirstOnSite LP accepted a letter offer of credit (the "**BDC Credit Agreement**") from the Business Development Bank of Canada ("**BDC**"). The principal amount available pursuant to the BDC Credit Agreement is a \$4.0 million term loan at a floating interest rate. The BDC Credit Agreement matures on November 30, 2017. As at February 29, 2016, approximately \$2,461,000 was outstanding under the term loan.

69. The BDC Credit Agreement requires that FirstOnSite LP maintain the same Fixed Charge Coverage Ratio as under the ABL Agreement. Failure to maintain the Fixed Charge Coverage Ratio will trigger a cross-default under the BDC Credit Agreement. On such default, BDC is entitled to accelerate the repayment of debt owing under the BDC Credit Agreement.

70. Each of FirstOnSite GP, FOS Holdings and FOS US entered into a guarantee in favour of BDC dated November 25, 2014, guaranteeing, *inter alia*, the obligations owing by FirstOnSite to BDC under the BDC Credit Agreement.

71. FirstOnSite LP's obligations under the BDC Credit Agreement are secured by way of: (i) a GSA dated November 25, 2014, granting BDC a continuing security interest in all of its present and after-acquired property; and (ii) a deed of hypothec dated November 18, 2014, pursuant to which FirstOnSite LP hypothecated to BDC, *inter alia*, all of its present and after-acquired moveable property.

72. The guarantee provided by FirstOnSite GP, FOS Holdings and FOS US are secured by way of: (i) GSAs dated November 25, 2014 granting BDC a continuing security interest in all of their respective present and after-acquired property; and (ii) a

deed of hypothec, dated November 18, 2014, pursuant to which FirstOnSite GP hypothecated to BDC, *inter alia*, all of its present and after-acquired moveable property.

73. The security interests granted by FirstOnSite LP, FirstOnSite GP, FOS Holdings and FOS US to BDC are perfected by way of registrations pursuant to the PPSA (or equivalent) in Ontario, Quebec, Prince Edward Island, Nova Scotia, New Brunswick, British Columbia, Saskatchewan, Alberta, Manitoba and Newfoundland and by a UCC registration in Delaware, as applicable.

#### Capital Credit Agreement

74. On November 25, 2014, and at the same time as entering into the ABL Agreement and the BDC Credit Agreement, FirstOnSite LP accepted a letter of offer of financing (the "**Capital Credit Agreement**") from BDC Capital Inc. ("**Capital**") a wholly owned subsidiary of BDC. The principal amount available pursuant to the Capital Credit Agreement is a \$5.0 million term loan with interest fixed at 11.5%. The Capital Credit Agreement matures on November 30, 2019. As at February 29, 2016, \$4,903,000 was outstanding under the term loan.

75. The Capital Credit Agreement requires that FirstOnSite LP maintain the same Fixed Charge Coverage Ratio as under the ABL Agreement. Failure to maintain the Fixed Charge Coverage Ratio will trigger a cross-default under the Capital Credit Agreement. On such default, Capital is entitled to accelerate the repayment of debt owing under the Capital Credit Agreement.

76. Each of FirstOnSite GP, FOS Holdings and FOS US entered into a guarantee in favour of Capital dated November 25, 2014, guaranteeing, *inter alia*, the obligations owing by FirstOnSite to Capital under the Capital Credit Agreement.

77. FirstOnSite LP's obligations under the Capital Credit Agreement are secured by way of: (i) a GSA dated November 25, 2014, granting Capital a continuing security interest in all of its present and after-acquired property; and (ii) a deed of hypothec

dated November 18, 2014, pursuant to which FirstOnSite LP hypothecated to Capital, *inter alia*, all of its present and after-acquired moveable property.

78. The guarantees provided by FirstOnSite GP, FOS Holdings and FOS US are secured by way of: (i) a GSA dated November 25, 2014 granting Capital a continuing security interest in all of their present and after-acquired property; and (ii) a deed of hypothec, dated November 18, 2014, pursuant to which FirstOnSite GP hypothecated to Capital, *inter alia*, all of its present and after-acquired moveable property.

79. The security interests granted by FirstOnSite LP to Capital are perfected by way of registrations pursuant to the PPSA in Ontario, Quebec, Prince Edward Island, Nova Scotia, New Brunswick, British Columbia, Saskatchewan, Alberta, Manitoba and Newfoundland. The security interests granted by FirstOnSite GP to Capital are perfected by way of registrations pursuant to the PPSA in Ontario and Quebec. The security interests granted by FOS Holdings to Capital are perfected by way of registrations pursuant to the PPSA in Ontario and PPSA in Capital are perfected by way of registrations pursuant to the PPSA in Capital are perfected by way of registrations pursuant to the PPSA in Ontario and Quebec. The security interests granted by FOS Holdings to Capital are perfected by way of registrations pursuant to the PPSA in Ontario. The security interests granted by FOS US to Capital are perfected by a Uniform Commercial Code registration in Delaware.

80. By way of landlord agreements dated November 25, 2014 and made in favour of the ABL Agent, BDC and Capital, landlords of certain properties leased by FirstOnSite LP agreed to waive and relinquish their rights of distraint, their landlord liens, and security interest in personal property falling under the ambit of the security interests granted to ABL Agent, BDC or Capital that may become affixed to or located on such properties.

#### Intercreditor Agreement

81. On November 25, 2014, the ABL Agent, BDC and Capital entered into an intercreditor agreement (the "Intercreditor Agreement") to determine the relative priorities of the security interests with respect to the assets of FirstOnSite under their respective credit agreements. Attached hereto as Exhibit "B" is a copy of the

Intercreditor Agreement.

82. Among other things, the Intercreditor Agreement sets out the relative priorities of BDC, Capital, the ABL Agent and the ABL Lenders, with respect to the assets of FirstOnSite LP, FirstOnSite GP, FOS Holdings and FOS US as follows:

- (a) BDC has priority on any and all machinery and equipment, including, without limitation, the fixed assets described in greater detail in Schedule
   "A" to the Intercreditor Agreement (the "BDC Priority Assets");
- (b) ABL Agent has priority with respect to all other personal moveable property, assets and undertakings including, without limitation, inventory and accounts (the "Wells Fargo Priority Assets"); and
- (c) Capital ranks subordinate in priority with respect to both the Wells Fargo Priority Assets and the BDC Priority Assets.<sup>9</sup>

# Secured Convertible Debentures

83. Between December 10, 2010 and July 7, 2014 FirstOnSite issued four tranches of secured convertible debentures to certain of its Limited Partners (collectively, the "Secured Convertible Debentures"), described in greater detail below.<sup>10</sup>

Tranche 1 Debentures

84. On December 21, 2010, FirstOnSite LP issued secured convertible debentures to certain Limited Partners in the aggregate amount of \$5,100,002 at 14% payable in kind

<sup>&</sup>lt;sup>9</sup> The priority granted to BDC applies to the extent of the remaining balance of the BDC Debt owing to BDC under the BDC Credit Agreement at any applicable time. The priority granted to the Wells Fargo applies to the extent of the remaining balance of the amount owing under the ABL Facility at any applicable time.

<sup>&</sup>lt;sup>10</sup> All of the Secured Convertible Debentures have a cross-default to the "Credit Agreement"/"Senior Credit Agreement" as defined in the Limited Partnership Agreement. The "Senior Credit Agreement" as defined in the Limited Partnership Agreement references a predecessor credit agreement with the Bank of Montreal ("BMO") as "replaced from time to time". The "Senior Credit Agreement" definition captures the ABL Agreement which paid out and "replaced" the predecessor BMO facility.

interest, compounded annually (the "**Tranche 1 Debentures**"). The Tranche 1 Debentures mature on December 20, 2017.

85. The obligations owing by FirstOnSite LP under the Tranche 1 Debentures are secured by a security interest over, *inter alia*, all of its present and after-acquired property. The security interest created therein was perfected by way of PPSA (or equivalent) registrations in each province in Canada except for Quebec and Newfoundland. Attached at Schedule "B" of this affidavit is a list of all Tranche 1 Debenture payees (the "**Tranche 1 Debentureholders**") and the sums owing to them.

86. By way of subordination agreement between the Tranche 1 Debentureholders, Torquest II Canada, and FirstOnSite LP, Torquest II Canada agreed to subordinate all current and future unsecured subordinated Series A promissory notes (the "**Torquest Notes**" described in greater detail further below) and agreed not to, *inter alia*, receive (and FirstOnSite agreed not to make) any payment of principal and interest, or exercise any right of set-off, until all obligations owing to the Tranche 1 Debentureholders are paid in full.

## Tranche 2 Debentures

87. On June 9, 2011, FirstOnSite LP further issued secured convertible debentures to, among others, two of its Limited Partners in the aggregate amount of \$150,000 at 14% payable in kind interest, compounded annually and with a maturity date of June 9, 2017 (the "Tranche 2 Debentures").

88. The obligations owing by FirstOnSite LP under the Tranche 2 Debentures are secured by way of a security interest over, *inter alia*, all of its present and after-acquired property. The security interest created therein was perfected by way of PPSA (or equivalent) registrations in each province in Canada expect for Quebec and Newfoundland. Attached at Schedule "B" of this affidavit is a list of all Tranche 2 Debenture payees (the "Tranche 2 Debentureholders") and the sums owing to them.

89. By way of subordination agreement dated June 9, 2011, between the Tranche 2 Debentureholders, Torquest II Canada, and FirstOnSite LP, Torquest II Canada agreed to subordinate all current and future Torquest Notes and, *inter alia*, not to receive (and FirstOnSite agreed not to make) any payment of principal and interest, or exercise any right of set-off, until all obligations owing to the Tranche 2 Debentureholders are paid in full.

## Tranche 3 Debentures

90. On February 8, 2012, FirstOnSite LP issued secured convertible debentures to Torquest II Canada and certain other of the Limited Partners in the aggregate amount of \$5,000,000 at 14% payable in kind interest, compounded annually and with a maturity date of February 7, 2019 (the "Tranche 3 Debentures").

91. The obligations owing by FirstOnSite LP under the Tranche 3 Debentures are secured by way of a security interest over, *inter alia*, all of its present and after-acquired property. The security interest created therein was perfected by way of PPSA (or equivalent) registrations in each province in Canada expect for Quebec and Newfoundland. Attached at Schedule "B" of this affidavit is a list of all Tranche 3 Debenture payees (the "Tranche 3 Debentureholders") and the sums owing to them.

92. By way of subordination agreement dated February 8, 2012, between the Tranche 3 Debentureholders, Torquest II Canada, and FirstOnSite LP, Torquest II Canada agreed to subordinate all current and future Torquest Notes and, *inter alia*, not to receive (and FirstOnSite agreed not to make) any payment of principal and interest, or exercise any right of set-off, until all obligations owing to the Tranche 3 Debentureholders are paid in full.

## Tranche 4 Debentures

93. On March 11, 2013, FirstOnSite LP issued secured convertible debentures to Torquest II Canada and certain other of the Limited Partners in the aggregate amount of

\$11,002,000 at 14% payable in kind interest, compounded annually and with a maturity date of March 10, 2020 (the **"Tranche 4 Debentures"**). Certain further Tranche 4 Debentures were issued on April 1, 2013 and July 7, 2014.

94. The obligations owing by FirstOnSite LP under the Tranche 4 Debentures are secured by way of a security interest over, inter alia, all of its present and after-acquired property. The security interest created therein was perfected by certain noteholders way of PPSA (or equivalent) registrations in each province in Canada expect for Quebec and Newfoundland. Attached at Schedule "B" of this affidavit is a list of all Tranche 4 Debenture payees (the "Tranche 4 Debentureholders", and together with the Tranche 1 Tranche 2 Debentureholders, the Debentureholders and the Tranche 3 Debentureholders, the "Debentureholders") and the sums owing to them.

95. By way of identical subordination agreements between each of BDC and Capital, respectively, and FirstOnSite LP, FirstOnSite GP, FOS Holdings and FOS US, the Tranche 4 debentureholders agreed, *inter alia*, not receive any payments of principal and interest, or exercise any right of set-off, until all obligations owing to BDC and Capital were paid and satisfied in full.

## Subordinated Secured Debentures

96. Between August 1, 2013 and November 25, 2014, FirstOnSite issued two tranches of secured, non-convertible debentures (collectively, the "**Subordinated Secured Debentures**"), as described below.

## Tranche 1 Subordinated Debentures

97. On August 1, 2013 and September 16, 2013, FirstOnSite LP issued secured nonconvertible debentures to Torquest II Canada and certain of the Limited Partners (the "**Tranche 1 Subordinated Debentureholders**") in the aggregate amount of \$2,100,000 at 16% payable in kind interest, compounded annually and with a maturity date of June 30, 2014 (the "**Tranche 1 Subordinated Debentures**"). The September 16, 2013 issue ranks pari passu with the August 1, 2013 issue.

98. The obligations owing by FirstOnSite LP under the Tranche 1 Subordinated Debentures are secured by way of a security interest over, *inter alia*, all of its present and after-acquired property.

99. The Torquest Notes are not expressly subordinated to the Tranche 1 Subordinated Debentures.

## Tranche 2 Subordinated Debentures

100. On November 25, 2014, FirstOnSite LP further issued secured non-convertible debentures to Torquest II Canada and Torquest II US (the "Tranche 2 Subordinated Debentureholders") in the aggregate amount of \$3,000,000 at 16% payable in kind interest, compounded annually, payable on demand (the "Tranche 2 Subordinated Debentures") all of which were expressly subordinated to the ABL Agreement, the BDC Credit Agreement, the Capital Credit Agreement and all four tranches of the Secured Convertible Debentures.

101. The obligations owing by FirstOnSite LP under the Tranche 2 Subordinated Debentures are secured by way of a security interest over, *inter alia*, all of its present and after-acquired property.

102. The Tranche 2 Subordinated Debentures are not expressly subordinated to the Tranche 1 Subordinated Debentures. The Torquest Notes are not expressly subordinated to the Tranche 2 Subordinated Debentures.

## **Promissory Notes**

103. Between February 1, 2007 and July 28, 2015, Torquest (and related entities) (the "**Noteholders**") have provided approximately \$66,453,000 in unsecured loans to FirstOnSite LP by way of the Torquest Notes, which loans were used to fund FirstOnSite's operations.

104. On February 1, 2007 FirstOnSite issued Series 1 subordinated promissory notes ("**Torquest Notes**") to Torquest (and its U.S. affiliate Torquest Partners Fund (U.S.) II, L.P.) (the "**Noteholders**") in the principal amount of \$15,276,706 to provide funding to the partnership for its operations. The outstanding principal amount of the Torquest Notes bears interest at 14% per year. All interest earned on the Torquest Notes, to date, has been reinvested to the partnership by the Noteholders in exchange for the issuance of additional Torquest Notes, which also bear interest at 14% per year. The Torquest Notes are unsecured subordinated promissory notes and are payable on demand by the Noteholders. In addition, the Torquest Notes may be prepaid by FirstOnSite at any time.

## Unitholders and Deferred Earnings

105. The Deferred Unit Classes (Class D to Class N) entitle the holders (the "**Deferred Unitholders**"), subject to certain conditions and adjustments, to fixed payments from FirstOnSite LP in the event a particular operating division of FirstOnSite satisfies a particular contribution margin threshold or EBITDA threshold (in each case, the "**Payment Threshold**") during a particular period of time following the issuance of the units to the applicable holders (typically that period of time was 36 months). To date, a number of those Payment Thresholds have been satisfied. However, FirstOnSite has not had the funding availability needed to satisfy its payment obligations to the holders of any of the Deferred Unitholders.

## Subordination Agreements

106. By way of a series of subordination, postponement and assignment agreements among the ABL Agent, BDC, Capital, FirstOnSite LP, FirstOnSite GP, FOS Holdings and FOS US and each of the Debentureholders, the Subordinated Debentureholders and the Noteholders dated November 25, 2014, (other than as set out in footnote 10 below) each of the Debentureholders, the Subordinated Debentureholders and the Noteholders and the Subordinated Debentureholders and the Noteholders and the Noteholders, the Subordinated Debentureholders and the Noteholders and the Noteholders

Secured Debentures, the Subordinated Secured Debentures or the Torquest Notes, subject to certain exceptions, or exercise any right of set-off, until all obligations owing to the ABL Agent, BDC and Capital were paid and satisfied in full.<sup>11</sup>

## D. FINANCIAL CHALLENGES AND RESPONSES THERETO

107. FirstOnSite has experienced several operational and liquidity challenges over the past few years, stemming from its 2007 to 2009 debt-financed industry consolidating acquisitions (described in greater detail above). As a result of that debt-financed consolidation, FirstOnSite came to be heavily leveraged (thereby hampering it with limited liquidity and limiting, *inter alia*, its ability to make any further acquisitions or to grow unit distributions).

108. After completing the aforementioned acquisitions, and between 2009 to 2012, FirstOnSite focused on assimilating the fragmented regional and local business into a single integrated and national operation. However, FirstOnSite was not able to leverage the synergies from its industry consolidation to meaningfully lower its cost structure and found itself incapable of sustaining growth beyond general market shifts. As a result, FirstOnSite experienced ongoing and serious financial problems, including:

- (a) Marked and substantial net losses in every year from 2010 to 2013 as follows: \$32.4 million in the fiscal-year ended 2010 ("FY2010"); \$6.9 million in the fiscal-year ended 2011 ("FY2011"); \$49.1 million in the fiscalyear ended 2012 ("FY2012"); and \$16.1 million in the fiscal-year ended 2013 ("FY2013"); and as such,
- (b) By December 31, 2013, total debt (interest bearing) totaled approximately
   \$124 million and total liabilities exceeded total assets by \$41 million.

<sup>&</sup>lt;sup>11</sup> 2149530 Ontario Ltd. did not formally subordinate pursuant to a subordination agreement. This debenture was subsequently returned for cancellation.

109. Since 2012, FirstOnSite has pursued improvements to its operational and cost structure following its industry consolidation (including by closing underperforming locations, reducing headcounts, and reducing its fixed overhead costs). In FY2015, and as discussed in greater detail below, FirstOnSite has reduced annual project management costs by \$2.4 million and fixed overhead costs by \$2.6 million.

110. FirstOnSite has pursued a number of other strategies in an attempt to alleviate its financial difficulties, including aggressive expense management strategies, such as:

- (a) Entering into the ABL Agreement with the ABL Agent so as to finance its operations based on the strength of its receivables. In the short term, financing through the ABL Facility resolved a major cash-flow issue, by providing access to cash at the time of billing, as opposed to when receivables are paid, which is notoriously slow in the restoration business;
- (b) Taking steps to improve billings quality and to pursue receivables outside of the ABL Facility (i.e., extremely aged receivables), resulting in faster recovery of new billings and increased recovery of old billings (further alleviating immediate cash-flow issues);
- (c) Revising its payable management efforts to include constant diligence on various subcontractor and/or vendor profiles, paying in a more "ondemand" fashion rather than paying all vendors on the same schedule;
- (d) Reducing its cost base by closing unprofitable branches and restructuring low-profit branches;
- (e) Reducing real-estate costs by moving locations and downsizing branches (focusing less on large storage capacity given reduced industry demand for storage facilities);
- (f) Reducing headcounts in two tranches (between Q4 of FY2014 to Q1 of FY 2015 and subsequently between December 2015 to January 2016) with a multi-million dollar annualized value; and

(g) Reducing fleet costs through an aggressive fleet management program to consolidate vehicle leasing and management, enabling tighter management control on vehicle refreshment, usage, fuel or maintenance.

111. In addition to improvements to its cost structure, FirstOnSite sought to improve revenue by investing in specialized resources to pursue recurring business with insurance and end-user customers. At the same time, FirstOnSite also increased the pursuit of key insurance customers in order to increase the volume of work received for one-off claims and to increase the quality of such claims received as part of the "roster" from whom insurance companies choose their contractors. The result – a stream of recurring revenue – better insulated FirstOnSite from the natural peaks and valleys associated with an insurance-driven and event-based restoration services industry.

112. Nevertheless, starting in the fall of 2014, continuing adverse economic conditions (caused by unseasonably mild weather conditions which substantially reduced insurance claims) dulled the effectiveness of the aforementioned improvements by FirstOnSite to its cost-structure and revenue streams. As a result:

- Revenue continued to steadily (and precipitously) decline: from \$214 million in FY2013, to \$204 million in FY2014 and to \$155 million in FY2015;
- (b) Debt continued to accrue, with significant net losses: \$16 million in FY2013, \$10 million in FY2014, and \$24 million in FY2015;
- Notwithstanding a decline in working capital of \$15 million during
   FY2014 and FY2015, debt over the same period increased by \$6 million;
- (d) As at February 29, 2016, total liabilities exceeded total assets by approximately \$74 million.

113. Accordingly, throughout this period, FirstOnSite has been depended on support by Torquest to finance its ongoing operations, which it did by way of the series of secure and unsecured loans described in greater detail above. 114. In or about October 2015, Torquest advised that it was no longer prepared to fund FirstOnSite's operating losses. The lack of additional outside funding, combined with continued and adverse economic conditions has aggravated an already serious and ongoing financial and liquidity crisis.

115. At the same time, there was a significant erosion in the borrowing base availability of FirstOnSite under the ABL Facility due to: (i) a decline in the collateral value and (ii) a decline in cash receipts (decreasing the rate at which outstanding obligations under the ABL Facility are satisfied). Accordingly, the borrowing availability declined throughout 2015, with a correspondingly negative effect on liquidity at a time when FirstOnSite was already under significant financial strain.

## E. THE CREDIT DEFAULTS

116. As a result of the foregoing financial difficulties (including falling revenues due to the mild weather and reduction in claims) and an increasingly over-leveraged balance sheet, FirstOnSite LP defaulted under the ABL Agreement. The default notices dated December 4, 2015, January 18, 2016, February 29, 2016 and March 22, 2016 are attached hereto as **Exhibit "C"** (the "**ABL Default Notices**").

117. By way of notices dated December 15, 2015 and January 12, 2016, attached hereto as **Exhibit "D"**, BDC and Capital notified FirstOnSite LP of defaults under the BDC Credit Agreement and Capital Credit Agreements, respectively (the "**BDC Default Notice**" and "**Capital Default Notice**" as the case may be). The ABL Default Notices list the following two Events of Default:

- (a) FirstOnSite LP failed to furnish the ABL Agent with an executed Compliance Certificate (as defined in the ABL Agreement) within 30 days after the end of October 2015; and
- (b) FirstOnSite LP failed to maintain the Fixed Charge Coverage as required under the ABL Agreement,

## (collectively, the "ABL Credit Agreement Defaults").

118. The ABL Credit Agreement Defaults resulted in cross-defaults under the BDC Credit Agreement (the "BDC Credit Defaults"), the Capital Credit Agreement (the "Capital Credit Defaults") Secured Convertible Debentures (the "Secured Convertible Debenture Defaults"), under the Tranche 1 Subordinated Debentures (the "Subordinated Secured Debenture Defaults", and collectively with the ABL Credit Defaults, the BDC Credit Defaults, the Capital Credit Defaults and the Secured Convertible Debenture Defaults, the "Credit Defaults"). The Credit Defaults have triggered acceleration of payment clauses (including accrued interest). On April 20, 2016, the ABL Agreement, and the termination of availability under the ABL Facility. The April 20, 2016 demand letter is attached hereto as Exhibit "E".

## F. FIRSTONSITE IS INSOLVENT

119. As indicated by the financial information described above, FirstOnSite is cashflow and balance-sheet insolvent. The Credit Defaults allow the ABL Lenders, BDC, Capital, and the holders of the Secured Convertible Debentures and the Subordinated Secured Debentures to exercise certain remedies, including acceleration of payment of all amounts due under their respective agreements. FirstOnSite does not have sufficient liquidity to satisfy the accelerated payment obligations resulting from the Credit Defaults.

120. Accordingly FirstOnSite does not have the liquidity to meet its payment obligations as they become due nor is it able to satisfy the financial covenants set out in its secured credit agreements.

121. Without the protection of the CCAA, a shut-down of operations is inevitable, which would be extremely detrimental to FirstOnSite's employees, suppliers, and customers. CCAA protection will allow FirstOnSite to maintain operations while giving

it the time necessary to implement their proposed restructuring strategy: the sale of substantially all of their business and assets pursuant to a sale and investor solicitation process discussed in greater detail below.

#### G. SALES AND INVESTOR SOLICITATION PROCESS

122. Following the cessation of funding by Torquest, the Board carefully considered its available options, and following consultations with its legal and financial advisors, concluded that the course of action that would most likely maximize returns for the stakeholders of FirstOnSite would be to pursue a transaction that would result in either a full sale of, or a substantial equity investment in, FirstOnSite LP.

123. As will be described in greater detail in the FirstOnSite materials to be filed in support of a motion (the "Sale Approval Motion") to approve, *inter alia*, a sale of substantially all of FirstOnSite's assets (if this Court grants the Initial Order sought herein), FirstOnSite commenced a sales and investor solicitation process ("SISP") in November 2015 to canvass the market for prospective purchasers or investors. At the time of the commencement of the process, the decision regarding whether the resulting sale transaction would be executed through CCAA proceedings or not had not been made. The decision to finalize the transaction through the CCAA was made based on, *inter alia*, the value of the bids received at the conclusion of the SISP and ongoing negotiations with the prospective purchaser.

124. FirstOnSite elected to pursue and complete the SISP outside of formal insolvency proceedings out of concern that, *inter alia*, the period of CCAA protection necessary to implement and execute any post-filing sales process, including the publicity associated with such a filing, would have serious and detrimental effects on FirstOnSite's business and customers.

125. Alvarez & Marsal Canada Securities ULC ("A&M") was engaged by FirstOnSite LP to act as its financial advisor pursuant to an engagement letter dated October 30,

2015 (the "Engagement Letter") to identify one or more purchasers or investors in FirstOnSite LP. Attached as Exhibit "F" hereto is a copy of the Engagement Letter. A&M had previously provided advisory services to FirstOnSite and therefore had knowledge of its business and operations.

126. The SISP was structured as a two phase process. Phase I of the SISP involved: (i) a thorough market canvass to attract strategic and financial buyers and ascertain their interest in a transaction; (ii) initial due diligence by the potential interested parties following execution of a non-disclosure agreement ("NDA"); and (iii) receipt by FirstOnSite of non-binding letters of intent for the purchase of the whole or part of their business and assets or an investment in the same. Phase II of the SISP involved additional due diligence, data room access and management presentations aimed the completion of binding documentation of the superior offer.

127. After completing Phase II of the SISP (as will be described in greater detail in materials to be filed in support of the Sale Approval Motion), FirstOnSite received two bids. Following a period of extensive and intensive arm's length negotiations with the two bidders and extensive deliberations and consultations with its professional advisors, FirstOnSite concluded, further to and on the basis of its commercial and business judgement, that the bid by 3297167 Nova Scotia Limited (in such capacity, the "**Purchaser**") was the best offer available in the circumstances and that proceeding with such transaction was in the best interest of all stakeholders.

128. The Asset Purchase Agreement ("**APA**") between FirstOnSite LP, by its general partner FirstOnSite GP, and the Purchaser requires FirstOnSite to make an expeditious application to this Court for the Initial Order sought herein.

129. FirstOnSite LP and the Purchaser executed and delivered a definitive version of the APA dated April 20, 2016, subject to Court approval. Further details and a copy of the APA will be served and filed with FirstOnSite's motion materials to approve same.

130. I understand that FTI Consulting Canada Inc. ("FTI"), who was retained as financial advisor and proposed Monitor by FirstOnSite during the latter part of Phase II of the SISP, will be providing a report in connection with the Sale Approval Motion.

131. On April 21, 2016, FirstOnSite LP, by its general partner FirstOnSite GP, will enter into an Escrow Agreement with the Purchaser and FTI (in its capacity as the Escrow Agent), pursuant to which the Purchaser will, at that time, deposit \$2,000,000 toward the satisfaction of the Purchase Price into an escrow account to be released as part of the closing of the sale transaction contemplated in the APA (each capitalized term as defined in the Escrow Agreement), after repayment of all indebtedness under the DIP Facility (as defined below) and all pre-filing indebtedness owing under the ABL Facility. The form of the Escrow Agreement is attached as **Exhibit "G**" hereto.

132. Subject to obtaining the Initial Order being sought herein, FirstOnSite intends to return to this Court to seek approval of the APA and various ancillary relief, including, if necessary, the assignment of certain agreements to the extent that necessary consents to such assignments are not obtained prior to the date of the motion.

## H. FUNDING OF THESE PROCEEDINGS

## **Cash Flows**

133. FirstOnSite has prepared cash flows forecasts for the period from April 21, 2016 to June 10, 2016 that forecast its receipts, disbursements and financing requirements. The cash flow forecast will be attached as an appendix to the Pre-Filing Report (as defined below). The cash flow forecast provides for FirstOnSite continuing to fund the operations of FOS US, which although not an applicant in these proceedings, is an integral part of FirstOnSite's business. In addition, the APA contemplates the purchase of the shares of FOS US by the Purchaser.

134. As a result of its current liquidity challenges, and as demonstrated by the cash flow forecast attached as an exhibit hereto, FirstOnSite requires interim financing to

fund its operations through the duration of the CCAA proceedings. FirstOnSite LP has requested, and the ABL Agent (in such capacity, the "**DIP Lender**") has agreed, subject to certain terms and conditions, to provide interim debtor-in-possession financing to FirstOnSite LP pursuant to a DIP facility (the "**DIP Facility**") on the terms and conditions contained in a DIP facility agreement (the "**DIP Agreement**"). A copy of the DIP Agreement is attached hereto as **Exhibit "H"**.

135. The DIP Facility was the subject of arm's length negotiations between the DIP Lender and FirstOnSite and its professional advisors and FirstOnSite reviewed the key terms of the DIP Facility with FTI. The DIP Facility is expected to provide sufficient liquidity to allow FirstOnSite to complete the sale of its assets and operations to the Purchaser.

136. The Board is of the view that there will be no material prejudice to any of its existing creditors in securing DIP financing on the terms described herein, in part, due to the fact that the proposed DIP Facility is to be provided by Wells Fargo, the senior secured creditor of FirstOnSite LP (with the exception of its limited subordination pursuant to the Intercreditor Agreement).

## Summary of the Proposed DIP Facility

137. The DIP Facility shall operate and be administered by the DIP Lender in the same manner as and shall be subject to the same terms and conditions as the ABL Facility under the ABL Agreement (except as expressly modified by the terms and conditions of the DIP Agreement and subject to the CCAA proceedings and orders of the Court).

138. The availability under the DIP Facility shall not exceed the lower of: (i) the sum (without duplication and as determined in the sole discretion of the DIP Lender, acting reasonably, at any time) of (1) a borrowing base calculation set out in the ABL Agreement, minus (2) the outstanding pre-filing obligations owing under the ABL Facility, minus (3) outstanding advances under the DIP Facility, plus (4) any credit balance of Post-Filing Collections (as defined in the DIP Agreement) remaining in the DIP Lender's bank account after the DIP Lender has applied the Post-Filing Collections (as defined in the DIP Agreement) in the DIP Lender's bank account to repay the outstanding advances under the DIP Facility, and (ii) \$40,000,000.

139. It is a condition precedent to the availability of the DIP Facility that the Initial Order shall, among other things, authorize and direct FirstOnSite to continue to operate the cash management systems, daily cash sweep and blocked account arrangements in place between FirstOnSite LP and the DIP Lender on the same terms and conditions as set out in the ABL Agreement (as modified by the DIP Agreement). The DIP Lender shall apply the Post-Filing Collections (as defined in the DIP Agreement) to repay the outstanding advances under the DIP Facility but the DIP Lender shall not apply any Post-Filing Collections to repay the pre-filing obligations under the ABL Facility.

140. In addition to the foregoing, FirstOnSite has agreed under the DIP Agreement: (i) to take reasonable steps to ensure that the DIP Facility is fully paid out on the closing of the sale transaction, and that the ABL Lender is fully paid out on the closing of the Sale Transaction with respect to all pre-filing obligations owing under the ABL Facility; and (ii) to seek an order from the Court authorizing a disbursement to pay out the DIP Facility and such pre-filing obligations from the proceeds of the sale of the transaction.

## I. PROPOSED INITIAL ORDER

## **Administration Charge**

141. FirstOnSite seeks a charge (the "Administration Charge") on its assets, property and undertakings (the "**Property**") in the maximum amount of \$1 million to secure the fees and disbursements incurred in connection with services rendered to FirstOnSite, both before and after the commencement of the CCAA proceedings by:

(a) The Monitor and its counsel;

- (b) Stikeman Elliott LLP, counsel to FirstOnSite; and
- (c) A&M (for their work fee, as defined in the Engagement Letter).

142. FirstOnSite worked with FTI, in its capacity as proposed Monitor, to estimate the proposed quantum of the Administration Charge and believes it to be reasonable and appropriate in view of the complexities of its CCAA proceedings and the services to be provided by the beneficiaries of the Administration Charge.

143. Subject to section 11.52 of the CCAA, the Administration Charge is proposed to rank ahead in priority to the existing security interests of all creditors who have notice of this application, but behind all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the "Encumbrances") in favour of any persons that have not been served with notice of this application.

144. FirstOnSite intends to return to Court to seek an Order granting a super-priority ranking to the Administration Charge (and other charges) ahead of all Encumbrances on terms described in greater detail below.

## Debtor-in-Possession ("DIP") Lender's Charge

145. The DIP Facility is conditional on the issuance of a Court order approving the DIP Facility and granting a priority charge over the Property (the "**DIP Lender's Charge**") as set out in the draft Initial Order. The Initial Order contemplates that the DIP Lender's Charge will rank in priority to all Encumbrances with notice of this application.

146. All of the credit advanced pursuant to the DIP Facility will be secured, *inter alia*, by the DIP Lender's Charge and the existing security and guarantees issued in favour of the ABL Agent (but for this purpose, the DIP Lender) pursuant to the ABL Agreement (except as modified by the DIP Agreement).

147. The DIP Lender's Charge will not secure obligations incurred prior to the CCAA proceeding. The DIP Lender's Charge is proposed to rank behind the Administration Charge but ahead of the KERP Charge (as defined below) and the Financial Advisor's Charge (as defined below).

## Key Employee Retention Plan ("KERP") and KERP Charge

148. At the outset of the SISP, the Board approved a targeted bonus program for senior management based on their annual bonus for 2016, pro-rated for the period of time closing of a sale transaction, such as the sale transaction that is contemplated by the APA (the "**Stub Bonus Program**"). The purpose of the Stub Bonus Program was to incentivize senior management to stay with the company and work towards a successful SISP during a period of uncertainty for FirstOnSite. The bonus payable under the Stub Bonus Program is payable as soon as practicable after the closing of a restructuring transaction, subject to satisfying three performance-based metrics, directly out of the available cash flow. In the event that the bonuses are fully earned, the aggregate amount payable to Stub Bonus Program Participants is \$78,104 for each month prior to closing of a transaction.

149. In an effort to ensure that certain key employees were retained during the SISP and the Applicant's CCAA proceedings, FirstOnSite developed two KERPs that are described herein.

150. Firstly, FirstOnSite developed and offered KERPs (the "**First KERP**") to certain employees identified as essential to ensuring the success of the SISP during a period of significant upheaval for the business (the "**First KERP Participants**"). The First KERP Participants are the same individuals who participate in the Stub Bonus Program. Without retention of the First KERP Participants, the ability of FirstOnSite to maximize the value realizable through the SISP would have been compromised to the detriment of all of its stakeholders. 151. A copy of the standard form of the First KERP letter offered to the First KERP Participants is attached hereto as **Exhibit "I"**. Payments pursuant to the First KERP were structured as follows: a guaranteed sum subject to certain additional amounts depending on the value of the transaction secured by the SISP, if any (subject to certain terms and conditions described in the First KERP Letter). First KERP Participant will be paid as soon as practicable after the closing by FirstOnSite of the sale transaction that is contemplated by the APA, subject to certain terms and conditions described in greater detail therein. The maximum aggregate amount which may become payable under the First KERP is \$929,000. Approximately \$836,000 of that amount has been allocated. An additional \$93,000 is available for future allocation (should the need arise prior to closing of the transactions contemplated by the APA).

152. Secondly, FirstOnSite has identified six key employees (the "Second KERP Participants" and collectively with the First KERP Participants, the "KERP Participants") who occupy essential management and operational roles and are considered essential to the success of the restructuring efforts and FirstOnSite's continued operations as a going concern (the "Second KERP").

153. A copy of the standard form of the Second KERP letter sent to the Second KERP Participants is attached hereto as **Exhibit "J**". The Second KERP contemplates that, in addition to regular salary and existing benefits, 90% of the annual base salary of a Second KERP Participant will be paid as soon as practicable after the closing by FirstOnSite GP of the sale transaction that is contemplated by the APA, subject to certain terms and conditions described in greater detail therein (included but not limited to a series of specific criteria, all of which constitute a condition precedent to the receipt of the Second KERP). The maximum amount payable under the Second KERP is \$1,323,000. The aggregate maximum amount payable under the First KERP and the Second KERP is \$2,252,000. The maximum amount payable under the Stub Bonus Program is, at most, \$429,573 (if closing on the Outside Date, as defined in the APA).

154. A detailed listing of the KERP Participants with the personal information of each participant, their roles within FirstOnSite and reasons for being included in the KERP (the "KERP Participant Listing") will be attached as Appendix "A" to the Confidential Supplement to the Pre-Filing Report (as defined below). The KERP Participant Listing contains individually identifiable personal and financial information of the KERP Participants. In order to protect the KERP Participants and to minimize disruption during the CCAA proceedings, FirstOnSite seeks an order sealing the KERP Participant Listing the KERP Participant.

155. The KERP Participants are critical to a successful restructuring, and their continued employment is essential for the stability of FirstOnSite during the pendency of the CCAA. The Board believes and has been advised by other members of management that the KERP Participants are likely to consider other employment options if a KERP on the terms described herein is not approved to incentivize them to remain with FirstOnSite throughout the CCAA proceedings. Each KERP Participant has an extensive history with and knowledge of FirstOnSite's business and operations, including long-standing relationships with key customers and suppliers. If these individuals were to depart, it would be necessary to replace them. However, finding qualified replacements would be disruptive and very difficult, and in light of the contemplated CCAA proceedings and FirstOnSite's financial position, expensive. The Second KERP Participants are considered by the Purchaser to form an essential part of the business of FirstOnSite and, consequently, the parties' bargain. Without the Second KERP Participants, the viability of the transaction itself would be in jeopardy.

156. In order to secure the amounts payable under the KERP, FirstOnSite seeks a charge (the "KERP Charge") in the maximum amount of \$2.26 million. The KERP Charge is proposed to rank subsequent to the Administration Charge and the DIP Lender's Charge, but ahead of the Financial Advisor's Charge (defined below).

## Financial Advisor's Charge

157. As described below, A&M is entitled to receive, among other things, a Success Fee upon the achievement of certain milestones (as defined in the Engagement Letter). In addition to the amounts secured by the proposed Administration Charge, the Applicants are seeking a charge (the "**Financial Advisor's Charge**") on the Property in the amount of \$1.1 million to secure payment to A&M of the Success Fee.

## **Critical Suppliers**

158. FirstOnSite has identified a number of suppliers that are critical to the ongoing operation of its business (the "**Critical Suppliers**"). Any interruption of supply or service by the Critical Suppliers could have an immediate material adverse impact on FirstOnSite's business, operations and cash flow, and could materially impact the value of the business and jeopardize its ability to restructure and continue as a going concern.

159. Accordingly, FirstOnSite seeks the authorization of this Court to pay certain amounts (with the consent of the Monitor for amounts in excess of \$10,000 each) 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, if in the opinion of FirstOnSite, the supplier of the goods or services is a Critical Supplier.

160. Both bidders in the SISP recognized the importance of the Critical Suppliers to the viability of the FirstOnSite enterprise. Accordingly, the purchase price proposed in the SISP by both of the prospective bidders reflected that the payments contemplated herein (including payments of pre-filing amounts) would be made, in the ordinary course throughout these CCAA proceedings or assumed by the Purchaser, with the purchase price reduced accordingly.

## Lien Charge

161. FirstOnSite, in the usual course of its business as a restoration services provider,

is party to a myriad of contractual relationships for, *inter alia*, services and materials that are essential to the work necessary to complete their projects. Consequently, the properties that are serviced by FirstOnSite are potentially subject to potential builders', mechanics' or construction liens pursuant to applicable provincial construction builders', mechanics' or construction lien legislation ("**Provincial Lien Legislation**").

162. FirstOnSite has significant concerns that any lien registrations against their clients' properties will substantially compromise the ability of FirstOnSite to operate as a going concern as such registrations may jeopardize FirstOnSite's long-standing relationship with commercial and residential insurers who, as described in greater detail above, form an essential element of the FirstOnSite enterprise. In addition, such registration may lead to such commercial and residential insurers withholding payment on outstanding accounts. Having to deal with and seek discharge of any such liens individually and in multiple different jurisdiction would further strain FirstOnSite's already strained finances and compromise its ability to successfully conclude its CCAA proceedings.

163. Accordingly, FirstOnSite is seeking to stay the rights of potential claimants ("Lien Claimants") to register any claim for lien ("Lien Claim") against any projects to which FirstOnSite is a counterparty.

164. In order to preserve the position of potential lienholders while, at the same time, ensuring that FirstOnSite is able to reorganize in an orderly fashion, the draft Initial Order contemplates a procedure whereby the statutory rights of lienholders against the property serviced are substituted for a charge over the assets of FirstOnSite equal in the value to that which could otherwise have been secured by way of a lien under applicable provincial lien legislation (the "Lien Charge"). The Lien Charge is intended to rank behind the other Court-ordered charges described above and behind FirstOnSite's secured pre-filing obligations owing to the ABL Agent pursuant to the ABL Facility.

165. All interested parties' rights to dispute the validity and quantum of the Lien Claims (except with respect to their registration under the applicable provincial lien legislation) are maintained.

166. The Lien Charge is designed to provide comfort and security to the Lien Claimants that their ultimate position – being able to realize against valuable collateral in the event of a cessation of operations by FirstOnSite – is preserved to the greatest extent possible while, at the same time, providing FirstOnSite with the necessary flexibility to continue to operate as a going concern to the benefit of all its stakeholders.

## Proposed Ranking of Court-Ordered Charges

167. Pursuant to the aforementioned charges, the proposed ranking of the Courtordered Charges is as follows:

- (a) First, the Administration Charge, to a maximum amount of \$1 million;
- (b) Second, the DIP Lender's Charge, to a maximum amount of \$15 million;
- (c) Third, the KERP Charge, to a maximum amount of \$2.26 million;
- (d) Fourth, the Financial Advisor Charge, to a maximum amount of \$1.1 million; and
- (e) Fifth, and after the pre-filing amounts owing by FirstOnSite to the ABL Agent and BDC, the Lien Charge, to the extent necessary to secure such Lien Claims as may arise.

168. In accordance with the CCAA, the Court-ordered charges will rank ahead of all other existing security interests of any persons, except for any person who is a secured creditor (as defined in the CCAA) as of the date of the Initial Order and who has not received notice of this Application, with the exception of the Lien Charge, which is to rank subordinate to the pre-filing amounts owing by FirstOnSite to the ABL Agent. FirstOnSite is not seeking to affect or otherwise alter the priority of any claims in respect of any amounts owing by FirstOnSite in respect of supplied services or materials that are given priority over other Encumbrances by statute.

## **Approval of the Engagement Letter**

169. FirstOnSite seeks an order approving the Engagement Letter *nunc pro tunc*. A&M is a well-known and respected investment banking firm that provides, among other things, corporate advisory and investment banking services.

170. The continued involvement of A&M is essential to the completion of the CCAA proceedings in as expeditious and inexpensive a manner as possible. A&M has worked closely with management throughout the months leading up to the filing of this application, and has gained a thorough and intimate understanding of FirstOnSite's enterprise. A&M's knowledge of and experience with FirstOnSite would be wasted if FirstOnSite were deprived of the benefit of A&M's continued advice and assistance and were required to retain a new financial advisor. The loss of A&M's services would be detrimental to FirstOnSite and its stakeholders and would delay and hinder the advancement of these CCAA proceedings.

171. The fee structure contained in the Engagement Letter was the subject of significant negotiations between FirstOnSite (with the assistance of counsel) and A&M and was approved by the Board prior to the commencement of the CCAA proceedings.

## **Comeback Motion**

172. FirstOnSite intends to return to Court during the week of April 25, 2016 (subject to Court availability) to seek certain relief on notice to parties to be affected (the "**Comeback Motion**"). Among other things, FirstOnSite intends to seek an Order granting super-priority ranking to the Administration Charge, the DIP Lender's Charge, the KERP Charge, the Financial Advisor's Charge and the Lien Charge over all other Encumbrances. FirstOnSite will not seek to affect or otherwise alter the priority of any

claims in respect of any amounts owing by FirstOnSite in respect of supplied services or materials that are given priority over other Encumbrances by statute.

173. Additional information with respect to the relief to be sought on the Comeback Motion will be provided in advance of same.

## Sale Approval Motion

174. FirstOnSite GP intends to seek the following relief during the week of May 2, 2016 (subject to Court availability):

- (a) Approving the APA between FirstOnSite GP and the Purchaser for the sale of the Purchased Assets (as defined in the APA) and the transactions contemplated thereby;
- (b) Vesting all of the Purchased Assets in the Purchaser free and clear of any Encumbrances other than Permitted Encumbrances (as defined in the APA); and
- (c) Assigning the rights and obligations of FirstOnSite under certain agreements to the Purchaser.

175. FirstOn**S**ite GP also intends to seek an order authorizing and directing the Monitor to distribute certain transaction proceeds following the closing of the APA (if approved).

## J. MONITOR

176. FTI has consented to act as the Court-appointed Monitor of FirstOnSite, subject to Court approval.

177. FTI is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended, and is not subject to any of the restrictions on who

may be appointed as monitor set out in section 11.7(2) of the CCAA.

178. I have been informed by the proposed Monitor that it intends to file a report (the "**Pre-Filing Report**") in which it will provide its views on the relief being sought in favour of FirstOnSite and the existence and amounts of the Administration Charge, the DIP Lender's Charge, the KERP Charge, the Financial Advisor's Charge and the Lien Charge.

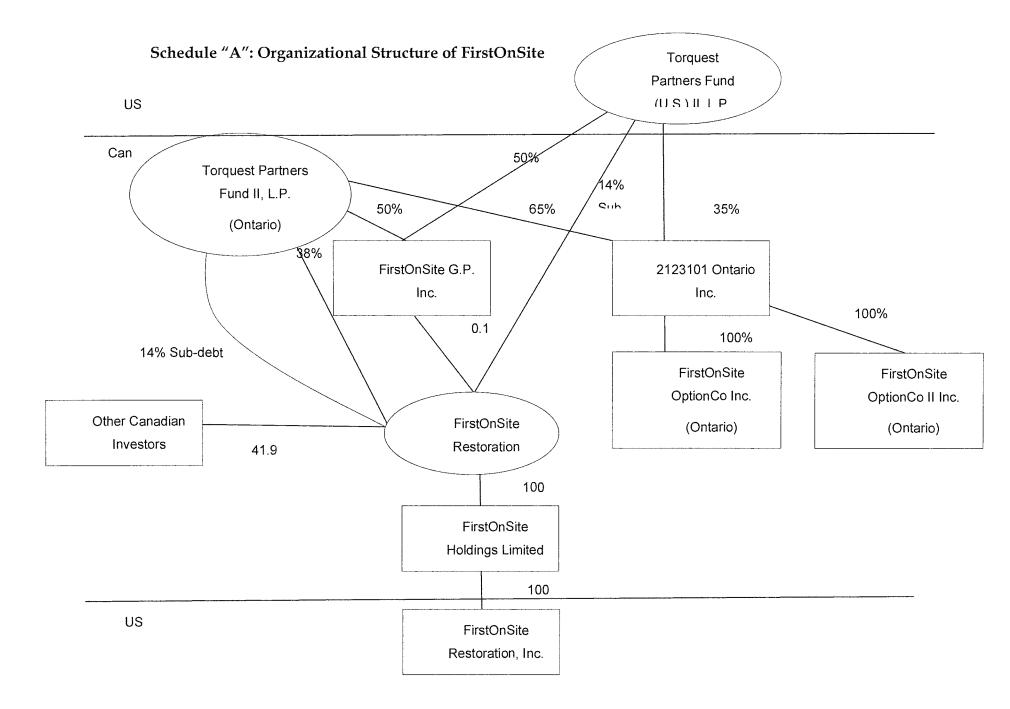
SWORN BEFORE ME at the City of Toronto, Province of Ontario, on April 20, 2016.

Commissioner for Taking Affidavits

Dave Demos

Province of Ontario, while a Saudent et L Expires April 1, 2017.

Tracy Liang Chen, a Commissioner, ato,



Name of Payee	Principal Balance	Description
Tranche 1 – Convertible Debentures	issued by FirstOnSite Resto	pration L.P., December 21, 2010
Torquest Partners Fund II, L.P.	\$1,981,318	• First ranking secured convertible
2123101 Ontario Inc.	\$1,049,231	debentures.
Andrew Boulanger	\$10,304	<ul> <li>Holders of Convertible Debenture subordinated to bank facility.</li> </ul>
Woodhouse Investments Inc. (formerly 1347605 Ontario Ltd.)	\$631,289	Torquest Notes (unsecured)     subordinated to Convertible
Edenvale Restoration Specialists Ltd.	\$525,508	<ul><li>Debentures.</li><li>14% payable in kind interest,</li></ul>
Fournier Brothers Holdings Inc. (formerly 330214 Ontario Inc.)	\$174,419	<ul><li>compounded annually.</li><li>Maturity Date December 20, 2017</li></ul>
2976367 Manitoba Ltd.	\$156,921	
2356723 Nova Scotia Limited	\$107,147	
Barry-Robert Enterprises Ltd.	\$188,844	
1640334 Ontario Inc.	\$42,567	
Spring Fresh Cleaning & Restoration Canada Inc.	\$124,656	
Demos Canada Limited	\$104,581	
2149530 Ontario Ltd.	\$3,217	
Total:	\$5,100,002	
Tranche 2 – Convertible Debentures	issued by FirstOnSite Resto	pration L.P., June 9, 2011
Mark Jackson	\$75,000	Second ranking secured convertib
Noel Walpole	\$75,000	debentures.
Total:	\$150,000	Holders of Convertible Debenture subordinated to bank facility.
		<ul> <li>Torquest Notes (unsecured) subordinated to Convertible Debentures.</li> </ul>
		<ul> <li>14% payable in kind interest, compounded annually.</li> </ul>
		Maturity Date June 9, 2017

## Schedule "B": FirstOnSite LP Secured Convertible Debentures

Torquest Partners Fund II, L.P.	\$2,440,489	Third ranking secured
2123101 Ontario Inc.	\$1,292,391	convertible deb <b>e</b> ntures.
Woodhouse Investments Inc. (formerly 1347605 Ontario Ltd.)	\$777,591	<ul> <li>Holders of Convertible Debentures subordinated to I facility.</li> </ul>
Fournier Brothers Holdings Inc.	\$174,419	Torquest Notes (unsecured)
2356723 Nova Scotia Limited	\$107,147	subordinated to Convertible Debentures.
Barry-Robert Enterprises Ltd.	\$188,844	<ul> <li>Dependices.</li> <li>14% payable in kind interest,</li> </ul>
101109 P.E. I. Inc.	\$14,538	compounded annually.
Demos Canada Limited	\$4,581	Maturity Date February 7, 20
Total:	\$5,000,000	
March 11, 2013 (unless otherwise ind	licated below)	
March 11, 2013 (unless otherwise ind Torquest Partners Fund II, L.P.	licated below) \$6,695,214	Restoration L.P. to various debenturehol           • Fourth ranking secured convertible debentures.
March 11, 2013 (unless otherwise ind	licated below) \$6,695,214 \$3,545,532	Fourth ranking secured convertible debentures.
March 11, 2013 (unless otherwise ind Torquest Partners Fund II, L.P.	licated below) \$6,695,214	Fourth ranking secured convertible debentures.     Holders of Convertible Debentures subordinated to b
March 11, 2013 (unless otherwise ind Torquest Partners Fund II, L.P. 2123101 Ontario Inc.	licated below) \$6,695,214 \$3,545,532	convertible debentures.     Holders of Convertible     Debentures subordinated to b     facility.
March 11, 2013 (unless otherwise ind Torquest Partners Fund II, L.P. 2123101 Ontario Inc. JJAB Holdings Inc.	licated below) \$6,695,214 \$3,545,532 \$149,725	Fourth ranking secured convertible debentures.     Holders of Convertible Debentures subordinated to I facility.     Holders of Convertible Debentures in this round
March 11, 2013 (unless otherwise indTorquest Partners Fund II, L.P.2123101 Ontario Inc.JJAB Holdings Inc.Demos Canada LimitedAmes Family Trust (issued April	licated below) \$6,695,214 \$3,545,532 \$149,725 \$9,528	Fourth ranking secured convertible debentures.     Holders of Convertible Debentures subordinated to b facility.     Holders of Convertible Debentures in this round specifically subordinated to previous rounds of Convertible
March 11, 2013 (unless otherwise indTorquest Partners Fund II, L.P.2123101 Ontario Inc.JJAB Holdings Inc.Demos Canada LimitedAmes Family Trust (issued April1, 2013)Barry Ross (issued July 7, 2014)	licated below) \$6,695,214 \$3,545,532 \$149,725 \$9,528 \$260,000 \$342,000	Fourth ranking secured convertible debentures.     Holders of Convertible Debentures subordinated to h facility.     Holders of Convertible Debentures in this round specifically subordinated to
March 11, 2013 (unless otherwise indTorquest Partners Fund II, L.P.2123101 Ontario Inc.JJAB Holdings Inc.Demos Canada LimitedAmes Family Trust (issued April1, 2013)	licated below) \$6,695,214 \$3,545,532 \$149,725 \$9,528 \$260,000	Fourth ranking secured convertible debentures.     Holders of Convertible Debentures subordinated to I facility.     Holders of Convertible Debentures in this round specifically subordinated to previous rounds of Convertil
March 11, 2013 (unless otherwise indTorquest Partners Fund II, L.P.2123101 Ontario Inc.JJAB Holdings Inc.Demos Canada LimitedAmes Family Trust (issued April1, 2013)Barry Ross (issued July 7, 2014)	licated below) \$6,695,214 \$3,545,532 \$149,725 \$9,528 \$260,000 \$342,000	Fourth ranking secured convertible debentures.     Holders of Convertible Debentures subordinated to I facility.     Holders of Convertible Debentures in this round specifically subordinated to previous rounds of Convertil Debentures (above).     Torquest Notes (unsecured) subordinated to Convertible

Torquest Partners Fund II, L.P.	\$1,353,070.78	• Secured, non-convertible.
2123101 Ontario Inc.	\$716,535.22	Holders of Non-Convertible
JJAB Holdings Inc.	\$30,394	Debentures subordinated to bank facility.
Total:	\$2,100,000	<ul> <li>Holders of Non-Convertible Debentures in this round specifica subordinated to previous rounds Convertible Debentures (above).</li> </ul>
		<ul> <li>Torquest Notes (unsecured) subordinated to Non-Convertible Debentures.</li> </ul>
		<ul> <li>16% payable in kind interest, compounded annually.</li> </ul>
		• Maturity Date June 30, 2020.
Subordinated Debentures issued N	ovember 25, 2014	
Torquest Partners Fund II, L.P.	\$1,961,345.45	Secured, non-convertible.
Torquest Partners Fund (U.S.) II, L.P.	\$1,038,654.55	<ul> <li>Holders of Non-Convertible Debentures subordinated to bank facility.</li> </ul>
Total:	\$3,000,000	<ul> <li>Holders of Non-Convertible Debentures in this round specifica subordinated to previous rounds Convertible Debentures (but were silent as to subordination to the A and Sept 2013 Non-Convertible Debentures).</li> </ul>
		<ul> <li>16% payable in kind interest, compounded annually.</li> </ul>
		• Payable on demand.

# TAB A

This is Exhibit "A" to the affidavit of Dave Demos, sworn before me on the <u>20</u> day of April, 2016 Commissioner for Taking Affidavits

Tracy Liang Chen, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires April 1, 2017.

#### FirstOnSite Restoration L.P. Consolidated Balance Sheet As at February 29, 2016 and December 31, 2015 (Expressed in thousands of Canadian dollars)

	Draft and Unaudited		
	February 29	December 31,	
As at, Assets	2016	2015	
Current assets Cash and cash equivalents Accounts receivable Work-in-process Inventory Prepaid expenses and other assets	41,336 2,959 976 1,550	43 44,613 3,508 963 1,014	
Total current assets	46,821	50,141	
Property and equipment Goodwill and other intangible assets	10,547 29,621	11,091 30,161	
	86,989	91,393	
Liabilities			
Current liabilities Bank indebtedness Accounts payable Accrued liabilities Unearned revenue Current portion of obligations under capital lease Current portion of term debt - BDC	17,377 22,691 7,506 487 1,661 1,169	18,580 22,605 7,442 901 1,912 947	
Total current liabilities	50,891	52,387	
Obligations under capital lease Term debt - BDC Term debt - BDC Capital Subordinated debt (Torquest)	2,763 1,292 4,903 <u>13,048</u> 72,897	2,718 1,505 4,898 <u>12,717</u> 74,225	
Junior subordinated and convertible debt Junior Subordinated debt (TorQuest) Convertible debentures Partnership units classified as debt A and C units Contingent units	53,405 35,058 37,811 <u>16,645</u> 215,816	52,350 34,319 37,811 <u>16,645</u> 215,350	
<b>Deficiency</b> Partnership units Partnership's deficiency	7,838 (136,665) (128,827) 86,989	7,838 (131,795) (123,957) 91,393	

Equity Rollforward		
Opening Partnership's deficiency	(131,795)	(107,607)
Current year's net loss	(4,870)	(24,188)
Closing Partnership's deficiency	(136,665)	(131,795)

## Note 1: Finance Charges have been netted against the revolving facility and term debt

BDC Term Debt	1,333	1,555
BDC Term Debt Current Portion	1,222	1,000
Deferred Finance Charges (net of amortisation)	(95)	<u>(104)</u>
<b>Term debt - BDC</b>	<b>2,460</b>	<b>2,452</b>
Term debt - BDC Capital	5,000	5,000
Deferred Finance Charges (net of amortisation)	(98)	(102)
<b>Term debt - BDC Capital</b>	<b>4,903</b>	<b>4,898</b>
Revolving facility CAD (including accrued interest)	14,378	16,574
Revolving facility US in CAD\$	3,266	2,606
Cash on hand	712	363
Deferred Finance Charges (net of amortisation)	<u>(979)</u>	(962)
<b>Bank indebtedness</b>	<b>17,377</b>	<b>18,580</b>

.

# **FirstOnSite Restoration L.P.**

Consolidated Statement of Operations For the Two Months Ended February 29, 2016 and February 28, 2015 (Expressed in thousands of Canadian dollars)

	Two months' ended					
Denfé and i (new dife d	February 29, 2016		F	ebruary 28,		
Draft and Unaudited			·····	2015		
Revenues	\$	23,740	\$	21,823		
Cost of revenues	<u></u>	19,496	17,926			
Gross margin	4,245			3,897		
General and administrative expenses	5,377			5,429		
		(1,132)		(1,532)		
Amortization		1,141		924		
		(2,273)		(2,455)		
Interest		2,492		2,154		
Restructuring		63		545		
Management fees		42		42		
(Gain) on cancellation of partnership units		-		-		
Net loss for the year	\$	(4,870)	\$	(5,195)		
Partnership deficiency - Beginning of period	\$	(107,607)	\$	(107,607)		
Partnership deficiency - End of period	\$	(112,477)	\$	(112,802)		

## FirstOnSite Restoration L.P. Consolidated Statement of Cash flows For the Two Months' Ended February 29, 2016 and February 28, 2015 (Expressed in thousands of Canadian dollars)

	For the year to date ended			
Draft and Unaudited	February 29, 2016		February 28, 2015	
Cash provided by (used in)	<b></b>			,
<b>Operating activities</b> Net loss for the period Items not affecting cash	\$	(4,870)	\$	(5,195)
Amortization of capital assets Amortization of intangible assets		602 540		451 472
Amortization of financing fees Amortization of lease inducements		13 (4)		14 (4)
Subordinated debt interest Junior subordinated debt interest Convertible debenture interest		332 1,055 738		141 941 637
(Gain) loss on sale of assets		(19)		(13)
		(1,613)		(2,556)
Changes in working capital Accounts receivable Work-in-process		3,277 549		4,672 (484)
Inventory Prepaid expenses and other		(13) (536)		(74) 207 (1.160)
Accounts payable Accrued liabilities Unearned revenue		86 69 (414)		(1,160) (1,821) <u>84</u>
		1,405	<u></u>	(1,132)
Investing activities Purchase of capital assets Proceeds from the sale of assets		(62) 23		(80) 16
Proceeds nom the sale of assets		(39)	<u></u>	(64)
Financing activities Repayment of senior term debt		-		(222)
Lease principal payments		(206) (206)		(193)
Change in cash during the year	<u></u>	1,160		(1,346)
Bank indebtedness - beginning of year Bank indebtedness, cash and cash equivalents - end of period	\$	(18,537) (17,377)	\$	(25,039) (26,385)
Supplementary Information				005
Cash interest paid Deferred finance fees netted against revolving facility Deferred finance fee amortisation netted against revolving facility		310 1,284 (305)		385 1,077 (54)
Non-cash consideration Issuance of convertible debentures		-		_
Purchase of vehicles under capital lease		-		140

### FirstOnSite Restoration L.P. Consolidated Balance Sheet As at December 31, 2015 and December 31, 2014 (Expressed in thousands of Canadian dollars)

•

As at,	December 31, 2015	December 31, 2014
Assets	Draft, Unaudited	Audited
Current assets Cash and cash equivalents Restricted cash Accounts receivable Work-in-process Inventory	43 - 44,613 3,508 963	- 765 60,514 3,478 1,058
Prepaid expenses and other assets	1,014	1,184
Total current assets	50,141	66,999
Property and equipment Goodwill and other intangible assets	11,091 30,161	12,057 33,399
	91,393	112,455
Liabilities		
Current liabilities Bank indebtedness Accounts payable Accrued liabilities Unearned revenue Current portion of obligations under capital lease Flood facility Current portion of senior debt	18,580 22,605 7,442 901 1,912	25,039 25,389 11,952 1,062 1,484
Current portion of term debt - BDC	947	1,302
Total current liabilities	52,387	66,228
Obligations under capital lease Term debt - BDC Term debt - BDC Capital Subordinated debt (Torquest)	2,718 1,505 4,898 <u>12,717</u> 74,225	2,457 2,430 4,872 5,639 81,626
Junior subordinated and convertible debt Junior Subordinated debt (TorQuest) Convertible debentures Partnership units classified as debt A and C units	52,350 34,319 37,811 16,645	45,921 30,112 37,920
Contingent units	16,645	16,645
<b>Deficiency</b> Partnership units Partnership's deficiency	<u>215,350</u> 7,838 (131,795)	212,224 7,838 (107,607)
	(123,957)	(99,769)
	91,393	112,455

Equity Rollforward		
Opening Partnership's deficiency	(107,607)	(97,399)
Current year's net loss	(24,188)	(10,208)
Closing Partnership's deficiency	(131,795)	(107,607)

### Note 1: Finance Charges have been netted against the revolving facility and term debt

BDC Term Debt	1,555	2,556
BDC Term Debt Current Portion	1,000	1,333
Deferred Finance Charges (net of amortisation)	(104)	(157)
<b>Term</b> debt - BDC	<b>2,452</b>	<b>3,73</b> 2
Term debt - BDC Capital	5,000	5,000
Deferred Finance Charges (net of amortisation)	(102)	(128)
Term debt - BDC Capital	<b>4,898</b>	<b>4,872</b>
Revolving facility CAD (including accrued interest) Revolving facility US in CAD\$ Cash on hand Deferred Finance Charges (net of amortisation) Bank indebtedness	16,574 2,606 363 (962) <b>18,580</b>	26,413 (314) (1,060) <b>25,039</b>

### FirstOnSite Restoration L.P.

Consolidated Statement of Operations For the Year Ended December 31, 2015 and 2014 (Expressed in thousands of Canadian dollars)

		Year	rende	
Draft, Unaudited	De	ecember 31, 2015	De 	cember 31, 2014
Revenues	\$	154,842	\$	203,706
Cost of revenues		122,538		155,823
Gross margin		32,304		47,883
General and administrative expenses		33,936		37,444
		(1,631)		10,439
Amortization		7,123		6,328
		(8,754)		4,111
Interest on senior debt		1,970		3,300
Interest on subordinated debt and convertible debentures		12,035		9,941
Interest on finance lease liabilities and other		396		828
Restructuring		838		-
Management fees		250		250
(Gain) on cancellation of partnership units		(56)		-
Net loss for the year	\$	(24,188)	\$	(10,208)
Partnership deficiency - Beginning of period	\$	(107,607)	\$	(97,399)
Partnership deficiency - End of period	\$	(131,795)	\$	(107,607)

### FirstOnSite Restoration L.P. Consolidated Statement of Cash flows For the Year Ended December 31, 2015 and 2014 (Expressed in thousands of Canadian dollars)

Draft, Unaudited	For the ye December 31, 2015	ear ended December 31, 2014
Cash provided by (used in)		
Operating activities		
Net loss for the period	\$ (24,188)	\$ (10,208)
Items not affecting cash		
Amortization of capital assets	3,885	3,090
Amortization of intangible assets	3,238	3,238
Amortization of financing fees	75	761
Amortization of lease inducements	(22)	(22)
Subordinated debt interest	1,393	399
Junior subordinated debt interest	6,429	5,808
Convertible debenture interest	4,213	3,734
Cancellation of partnership units	(56)	-
Deferred lease inducements	14	-
(Gain) loss on sale of assets	(82)	(48)
Unrealized (gain) on interest rate swaps	•	(25)
	(5,101)	6,727
Changes in working capital		
Accounts receivable	15,901	3,706
Work-in-process	(30)	2,278
Inventory	95	(113)
Prepaid expenses and other	170	376
Accounts payable	(2,783)	5,692
Accrued liabilities	(4,502)	(2,933)
Unearned revenue	(161)	(2,209)
	3,589	13,524
Investing activities		
Purchase of capital assets	(526)	(1,569)
Deposits on vehicles under capital lease	(202)	-
Proceeds from the sale of assets	132	169
	(596)	(1,400)
Financing activities		h
Repayment of senior debt	-	(21,689)
Restricted cash deposits returned (issued)	765	(765)
Repayment of senior term debt	(1,329)	(103)
Advance from new subordinated debt	(1,525)	3,000
Advance from new subclamated debt	-	9,000
Issuance of convertible debentures	-	300
Issuance of subordinated debt	5,685	500
Issuance of unitholder loan		-
	(59)	(6,081)
Flood facility repayments	•	
Flood facility advances	-	500
Financing fees Lease principal payments	(1,553)	(751) (1,324)
	3,509	(17,921)
Change in cash during the year	6,502	(5,797)
Bank indebtedness - beginning of year	(25,039)	(19,242)
Bank indebtedness, cash and cash equivalents - end of year	\$ (18,537)	\$ (25,039)
Supplementary Information		
Supplementary Information	0.007	0017
Cash interest paid	2,007	3,347
Deferred finance fees netted against revolving facility Deferred finance fee amortisation netted against revolving facility	1,223 (240)	1,060 -
Non-cash consideration		
Issuance of convertible debentures	-	300
Purchase of vehicles under capital lease	2,409	1,702
r aronado or verilorea under odpital ledae	2,409	1,102

### TAB B

This is Exhibit "B" to the affidavit of Dave Demos, sworn before me on the  $\frac{2\omega}{100}$  day of April, 2016

Commissioner for Taking Affidavits

**Tracy Liang Chen, a Commissioner, etc., P**rovince of Ontario, while a Student-at-Law. **E**xpires April 1, 2017.

### THIS INTERCREDITOR AGREEMENT dated with effect as of November 25, 2014

AMONG:

. . .

÷.

WELLS FARGO CAPITAL FINANCE CORPORATION CANADA, as agent for the lenders (the "Lenders") and other secured parties (the "Wells Fargo Secured Parties") under the Wells Fargo Credit Agreement (as defined below), having a place of business at 40 King Street West, Suite 2500, Toronto, Ontario, M5H 3Y2, Fax: 416-775-2990, Attention: Vice President, Relationship Manager,

(hereinafter referred to as the "Agent")

- and -

BUSINESS DEVELOPMENT BANK OF CANADA, as senior term lender, having a principal place of business at 121 King Street West, Suite 1200, Toronto, Ontario, M5H 3T9, Fax: 416-973-2014, Attention: Mark MacKenzie,

(hereinafter referred to as "BDC")

- and -

BDC CAPITAL INC., as subordinated lender, having a principal place of business at 121 King Street West, Suite 1200, Toronto, Ontario, M5H 3T9, Fax: <u>416-954-5002</u>, Attention: Angelo Zeni,

(hereinafter referred to as "Capital")

- and -

FIRSTONSITE RESTORATION L.P., having a principal place of business at 60 Admiral Boulevard, Mississauga, Ontario, L5T 2W1, Fax: <u>905-565-7562</u>, Attention: Aaron Ames,

(hereinafter referred to as the "Company")

- and each of -

### FIRSTONSITE G.P. INC., FIRSTONSITE HOLDINGS LIMITED., and FIRSTONSITE RESTORATION, INC.,

having a principal place of business at 60 Admiral Boulevard, Mississauga, Ontario, L5T 2W1, Fax: <u>705-565-7562</u>, Attention: Aaron Ames,

(collectively with the Company hereinafter referred to as the "Credit Parties")

WHEREAS the Credit Parties are indebted or will become indebted to Agent, the Lenders and the Wells Fargo Secured Parties in connection with a credit agreement dated with effect as of the

date hereof (as amended, restated, supplemented, extended or replaced from time to time, collectively the "Wells Fargo Credit Agreement") among Agent, the Lenders and the Credit Parties (all such present and future indebtedness being collectively, the "Wells Fargo Debt") and the Credit Parties have executed, or will execute, *inter alia*, as applicable, certain guarantees, hypothecs and security agreements (as amended, restated, supplemented, extended or replaced from time to time, collectively the "Wells Fargo Security Agreements") in favour of Agent in respect of which financing statements were registered, or will be registered under the *Personal Property Security Act* (Ontario) and any other like applicable statute, including, without limitation, the Register of Personal and Movable Real Rights and *Uniform Commercial Code* (collectively, the "PPSA"), granting Agent a Lien in the Credit Parties' personal moveable property, assets and undertakings;

AND WHEREAS the Wells Fargo Security Agreements and any other security which may be held by Agent now or hereafter with respect to the property, assets and undertakings of the Credit Parties for the Wells Fargo Debt are sometimes hereinafter collectively referred to as the "Wells Fargo Security";

AND WHEREAS the Credit Parties are or will hereafter become indebted to BDC in connection with a letter of offer dated November  $\sum$ , 2014 (as amended, restated, supplemented, extended or replaced from time to time, the "BDC Credit Agreement") among BDC and the Credit Parties (all such present and future indebtedness being collectively, the "BDC Debt") and the Credit Parties have executed, or will execute, *inter alia*, as applicable, certain guarantees, hypothecs and security agreements (as amended, restated, supplemented, extended or replaced from time to time, collectively the "BDC Security Agreements") in favour of BDC in respect of which financing statements were registered, or will be registered under the PPSA granting BDC:

- (a) a Lien on any and all of the machinery and equipment of the Credit Parties, including without limitation, the fixed assets described on <u>Schedule "A"</u> attached hereto together with all insurance policies and Proceeds related thereto or derived therefrom (collectively, the "BDC Priority Assets"); and
- (b) a Lien on all of the other personal moveable property, assets and undertakings of the Credit Parties including, without limitation, the Credit Parties' Inventory and Accounts and all information systems, intellectual property and books and records related thereto together with all insurance policies and Proceeds related thereto or derived therefrom (the "Wells Fargo Priority Assets").

AND WHEREAS the BDC Security Agreements and any other security which may be held by BDC now or hereafter with respect to any of the property, assets and undertakings of the Credit Parties for the BDC Debt are sometimes hereinafter collectively referred to as the "BDC Security";

AND WHEREAS the Credit Parties are or will hereafter become indebted to Capital in connection with a letter of offer dated November 25, 2014 (as amended, restated, supplemented, extended or replaced from time to time, the "Capital Credit Agreement") among Capital and the Credit Parties (all such present and future indebtedness being collectively, the "Capital Debt") and the Credit Parties have executed, or will execute, *inter alia*, as applicable,

certain guarantees, hypothecs and security agreements (as amended, restated, supplemented, extended or replaced from time to time, collectively the "Capital Security Agreements") in favour of Capital in respect of which financing statements were registered, or will be registered under the PPSA granting Capital a Lien on all of personal property, assets and undertakings of the Credit Parties;

AND WHEREAS the Capital Security Agreements and any other security which may be held by Capital now or hereafter with respect to any of the property, assets and undertakings of the Credit Parties for the Capital Debt are sometimes hereinafter collectively referred to as the "Capital Security";

AND WHEREAS the parties hereto have agreed to enter into this Agreement in order to, *inter alia*, set out the respective priorities of the Wells Fargo Security, the BDC Security and the Capital Security;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties hereto hereby covenant, undertake, declare and agree as follows:

#### **ARTICLE 1 - DEFINITIONS**

1.1 In this Agreement the following terms have the following meanings:

"Accounts" has the meaning given to such term in the PPSA (Ontario).

"Business Day" means any day other than a Saturday, Sunday or statutory or civil holiday applicable to any of the parties hereto and on which Canadian chartered banks are open for business in Toronto, Ontario.

"Credit Agreements" means, collectively, the Wells Fargo Credit Agreement, the BDC Credit Agreement and the Capital Credit Agreement.

"Indebtedness" means, collectively, the Wells Fargo Debt, the BDC Debt and the Capital Debt.

"Inventory" has the meaning given to such term in the PPSA (Ontario).

"Lien" means any security interest, mortgage, hypothec, deed of trust, trust or other adverse claim or right (statutory or otherwise), pledge, lien, charge, encumbrance, title retention agreement or analogous instrument or device, including the interest of each lessor under any capitalized lease and the interest of any bondsman under any payment or performance bond, in, of or on any assets or properties of a person, whether now owned or subsequently acquired and whether arising by agreement, statute or operation of law.

"Money" means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada or by a foreign government as part of its currency.

"Proceeds" means, subject to the provisions hereof, identifiable or traceable personal property in any form derived directly or indirectly from any dealing with the property and assets of the Credit Parties or the proceeds therefrom, including but not limited to, any payment representing indemnity or compensation for loss or damage to any property and assets of the Credit Parties or proceeds therefrom, trade-ins, lease or sale proceeds and cash.

"Secured Parties" means, collectively, Agent, BDC and Capital, and "Secured Party" means any one of them.

"Security" means, collectively, the Wells Fargo Security, the BDC Security and the Capital Security.

#### ARTICLE 2 - CONSENT

2.1 Each Secured Party hereby consents to the creation and issue by the Credit Parties to each other Secured Party of their respective Security and to the incurrence of the Indebtedness secured thereby and acknowledges and confirms that the creation, issue, existence and incurring of the same does not constitute a default or event of default under any of their respective Credit Agreements or Security.

### **ARTICLE 3 - PRIORITIES**

- 3.1 The parties agree that:
  - (a) the BDC Security shall rank in priority to the Wells Fargo Security with respect to the BDC Priority Assets;
  - (b) the Wells Fargo Security shall rank in priority to the BDC Security with respect to the Wells Fargo Priority Assets; and
  - (c) the Capital Security shall rank subordinate in priority to the Wells Fargo Security and the BDC Security with respect to the Wells Fargo Priority Assets and the BDC Priority Assets.
- 3.2 The priority granted to BDC shall apply to the extent of the remaining balance of the BDC Debt owing to BDC under the BDC Credit Agreement at such applicable time. The priority granted to the Agent shall apply to the extent of the remaining balance of the Wells Fargo Debt owing under the Wells Fargo Credit Agreement at such applicable time.
- 3.3 The priorities established herein shall apply in all events and circumstances regardless of:
  - (a) the date of execution, attachment, registration or perfection of any Lien held by any Secured Party; or
  - (b) the date of any advance or advances made to any Credit Party by any Secured Party; or

WS1.cgai\048744\00095\10998595v4

- (c) the date of default by any of the Credit Parties under any of the Security or the dates of demand by any Secured Party or the dates of crystallization of any floating charges held by any Secured Party; or
- (d) any priority granted by any principle of law, equity or any statute or any other matter or thing whatsoever.
- 3.4 If any of the Security is claimed by a trustee in bankruptey, or found by a court of competent jurisdiction, to be unenforceable, invalid, unregistered or unperfected, the foregoing provisions of this Article shall continue to apply as among the parties hereto notwithstanding that such Security may be so claimed or found to be unenforceable, invalid, unregistered or unperfected.
- 3.5 Any insurance proceeds received by the Credit Parties or the Secured Parties in respect of any collateral charged by the Security shall be dealt with according to the preceding provisions hereof as though such insurance proceeds were paid or payable as proceeds of realization of the collateral for which they compensate.

### ARTICLE 4 - ACCESS RIGHTS

- 4.1 Subject to the provisions of this Article, BDC, Capital and the Credit Parties hereby grant to Agent, its agents, employees and representatives (including any private or court appointed receiver, receiver manager, consultant, monitor, liquidator or other like applicable person) (a "Receiver") the right and license, without any interference, to use some or all of the BDC Priority Assets for the purposes of collecting the Credit Parties' Accounts, selling and liquidating the Wells Fargo Priority Assets and generally operating the business of the Credit Parties for a period not to exceed ninety (90) days (the "Occupation Period") from the carlier of the date of commencement of enforcement proceedings by Agent, BDC (subject to BDC's receipt of Agent's notice of intention to enforce the Wells Fargo Security) or Capital (subject to Capital's receipt of Agent's notice of intention to enforce the Wells Fargo Security) of the Wells Fargo Security, the BDC Security or the Capital Security, as the case may be.
- 4.2 The rights granted to Agent in <u>Section 4.1</u> above are subject to compliance with each of the following conditions:
  - (a) within fifteen (15) days of the commencement of enforcement of the Wells Fargo Security, the BDC Security, or the Capital Security as the case may be, Agent shall give written notice to BDC and Capital of its intention to exercise its rights in <u>Section 4.1</u> above;
  - (b) Agent shall pay to BDC an amount equal to all regularly scheduled principal, interest and fee payments falling due to BDC under the BDC Credit Agreement in respect of the BDC Debt outstanding and owing at such time during the Occupation Period (but excluding any arrears of principal, interest, fees and any penalties or amounts accelerated as a result of an event of default under the BDC Credit Agreement or BDC Security or that are otherwise referable to the period prior to the commencement of the Occupation Period), which payments shall be

apportioned on a per diem basis; provided that (1) the Credit Parties shall pay (or failing payment by the Credit Parties, Agent shall pay) any required occupation costs of landlords for premises where Agent is using the BDC Priority Assets located there during the Occupation Period on a per diem basis, (2) the Credit Parties shall pay (or failing payment by the Credit Parties, Agent and BDC shall pay) any required occupation costs of landlords for premises where Agent and BDC are using such premises but Agent is not using the BDC Priority Assets located there during the Occupation Period on a per diem basis and allocated as between Agent and BDC on a pro rata basis based on the outstanding amounts of the Wells Fargo Debt and the BDC Debt, respectively, and (3) the Credit Parties shall pay (or failing payment by the Credit Parties, Agent shall pay) any required occupation costs of landlords for premises used by Agent but not BDC because the BDC Priority Assets have been removed from such premises, during the Occupation Period on a per diem basis and allocated to the Agent. Any payment by either Agent or BDC hereunder shall be added to the Wells Fargo Debt and BDC Debt, respectively;

- (c) Agent shall ensure that during the period of time that Agent elects to have access to and use some or all of the BDC Priority Assets, such BDC Priority Assets are dealt with in a manner satisfactory to BDC, acting reasonably, and Agent shall exercise the same degree of care as would a prudent owner of such assets including, without limitation, to protect such assets from any claim, damage or theft, ordinary wear and tear excepted and taking the then current state of such BDC Priority Assets into account. Agent hereby indemnifies BDC from all costs, fees, expenses, losses and damages in respect of the preceding sentence including, without limitation, any enforcement by any landlord or other third party against such BDC Priority Assets and any physical damage to (but not depreciation of value) such BDC Priority Assets during such period of use including, without limitation, reasonably required maintenance costs, normal wear and tear excepted and taking the then current state of such BDC Priority Assets into account; and
- (d) nothing herein shall prevent BDC from issuing demands and/or notices of sale in respect of the BDC Priority Assets and taking steps to inspect and appraise the BDC Priority Assets and otherwise preparing the BDC Priority Assets for sale provided that BDC and its agents do not interfere with the use of the BDC Priority Assets by Agent or any Receiver.
- 4.3 For greater certainty, the rights granted to Agent in <u>Section 4.1</u> above shall not require Agent to pay any scheduled principal, interest and fee payments falling due under the Capital Credit Agreement in respect of the Capital Debt outstanding and owing at such time during the Occupation Period.

### **ARTICLE 5 - PAYMENT AND ENFORCEMENT STANDSTILL**

5.1 If, following the occurrence of any Event of Default (as defined under the Wells Fargo Credit Agreement ) from any (1) default in payment of any principal, interest or other amounts owing by any Credit Party to the Agent, the Lenders or any other Wells Fargo

Secured Party under or in connection with the Wells Fargo Credit Agreement, (2) default in any financial ratio covenant under the Wells Fargo Credit Agreement (including, without limitation, the fixed charge coverage ratio covenant), (3) breach by a Credit Party of the sale of assets, liens, indebtedness, loans and investments and dividends negative covenants under the Wells Fargo Credit Agreement, (4) misrepresentation by any Credit Party to the Agent under or in connection with Wells Fargo Credit Agreement that could reasonably be expected to result in a Material Adverse Effect (as defined under the Wells Fargo Credit Agreement), (5) breach of a margining covenant or over-advance under the Wells Fargo Credit Agreement or breach of credit facility sub-limit under the Wells Fargo Credit Agreement, or (6) bankruptcy or insolvency proceeding involving any Credit Party (each a "Material Default"), which is continuing and has not been waived by Agent, and Capital and the Company have received written notice (a "Wells Fargo Default Notice") from Agent demanding the commencement of a Payment and Enforcement Standstill (as hereinafter defined) and stating that such Material Default has occurred and is continuing and containing a description of such Material Default in reasonable detail, then the Credit Parties shall not, unless the particular Material Default referenced in the Wells Fargo Default Notice has been cured (as confirmed by Agent in writing), be entitled to make to Capital, and Capital shall not be entitled to receive from the Credit Parties, any regularly scheduled payments of principal, interest or any other amount nor shall Capital demand or enforce payment of the Capital Debt or commence enforcement proceedings against the Credit Parties (the "Payment and Enforcement Standstill") until the earlier of any of the following events or dates has occurred:

- (a) the date which is ninety (90) days following the date the Well's Fargo Default Notice was issued;
- (b) the Material Default described in the Wells Fargo Default Notice is cured by the Credit Party or any other person on its behalf or waived in writing by Agent; or
- (c) all Wells Fargo Debt has been repaid;

provided that, for greater certainty, during any such Payment and Enforcement Standstill, the Credit Parties shall be entitled to make to BDC, and BDC shall be entitled to receive from the Credit Parties, all regularly scheduled payments of principal, interest and fees under the BDC Credit Agreement.

- 5.2 Agent shall not issue a subsequent Wells Fargo Default Notice unless the Material Default at the time of the issuance of the prior Wells Fargo Default Notice was subsequently cured or waived in writing by Agent.
- 5.3 Agent hereby agrees with Capital that Agent may not exercise its rights under <u>Section 5.1</u> such that the cumulative period of one or more Payment and Enforcement Standstills exceeds or will exceed one hundred and eighty (180) days in any consecutive twelve month period and provided that at least ninety (90) days elapses between the date of expiration of a Payment and Enforcement Standstill and the commencement of a subsequent Payment and Enforcement Standstill. For purposes of clarification, the

foregoing limitation shall not restrict Agent from issuing letters of default to the Credit Parties on the occurrence of a default or event of default.

- 5.4 Agent agrees to give written notice to Capital and BDC forthwith after any Material Default has been cured or waived by Agent (without any liability in damages to Capital and BDC for failure do so but which failure shall not affect Capital's or BDC's rights hereunder).
- 5.5 Agent hereby agrees with Capital that after the expiration of any Payment and Enforcement Standstill provided for herein Capital shall be entitled to receive and the Credit Parties shall be obligated to pay to Capital all payments of arrears which would have been paid during the Payment and Enforcement Standstill had the Payment and Enforcement Standstill not been invoked by Agent including interest on such outstanding payments. Nothing herein shall obligate Agent to make credit facilities available to any Credit Party including, without limitation, in an amount required to satisfy any of its obligations to Capital.
- 5.6 Each of the Secured Parties shall be entitled to amend, restate, supplement, extend or replace their respective Credit Agreements and Security from time to time without authorization from or notice to the other Secured Parties. However, no Secured Party shall be entitled to increase the principal amount of their respective credit facilities by more than fifteen percent (15%) without the prior written consent of each other Secured Party.
- 5.7 Nothing herein shall prevent Capital or BDC from issuing demands and/or notices of sale in respect of the Capital Security or BDC Security and taking steps to inspect and appraise the Capital Security or BDC Security provided that Capital and BDC and their agents do not interfere with the use of the assets of the Credit Parties by Agent or any receiver in accordance with the provisions hereof.

#### **ARTICLE 6 - COVENANTS**

- 6.1 Each of the Credit Parties hereby confirms to and agrees with each of the Secured Parties that:
  - (a) so long as any of the Indebtedness remains outstanding, it shall stand possessed of its assets so charged for the Secured Parties in accordance with their respective interests and priorities as herein set out;
  - (b) none of the provisions of this Agreement create any rights in favour of the Credit Parties or affects the manner in which any Secured Party or any Receiver exercises its rights under the Security or any court order; and
  - (c) the Credit Parties shall promptly provide to any Secured Party upon request with any information which such Secured Party reasonably requests about such Credit Party's business and affairs.

### ARTICLE 7 - ENFORCEMENT

- 7.1 Each of the Secured Parties agrees that they will use their commercially reasonable efforts to give prompt written notice to the other Secured Parties of any action taken by them to enforce its Security. Notwithstanding the provisions herein, such notice may be given prior to or forthwith after taking such action, but failure to give such notice will not give the other Secured Parties any cause of action or right to damages or other remedy against the other Secured Parties and shall in no way prejudice any Secured Party's rights hereunder, including, without limitation, with respect to the Occupation Period.
- 7.2 Each of BDC and Capital hereby covenants and agrees that it shall not, without the prior written consent of Agent, take any steps whatsoever to enforce the BDC Security or Capital Security, as applicable, against any of the Wells Fargo Priority Assets, including, without limitation, any rights of set-off or claims, commencing any bankruptcy proceedings, foreclosure, sale, power of sale, taking up possession, giving in payment, appointing or making application to a court for an order appointing a Receiver or by any other means of enforcement whatsoever during the Occupation Period.
- 7.3 Nothing contained in this Agreement shall require or obligate Agent, BDC or Capital to enforce or marshal their Security.
- 7.4 None of the Secured Parties shall take any action to defeat the priorities set forth in this Agreement.
- 7.5 Any costs in connection with the appointment of a common receiver or other like applicable person over the business and/or assets of any of the Credit Parties shall be allocated as between the Agent and BDC as follows:
  - (a) during the Occupation Period, as per Section 4.2(b) above, *mutatis mutandis*, to such costs; and
  - (b) at any other time, on a *pro rata* basis based on the outstanding amounts of the Wells Fargo Debt and the BDC Debt.
- 7.6 Agent shall have no obligation to inquire into the source of any funds received by Agent from any of the Credit Parties or any other person nor will Agent be considered a trustee or constructive trustee with respect to any Proceeds of any of the BDC Priority Assets and Agent will be free to apply any such funds Agent receives from them or any other person against the Wells Fargo Debt except where prior to Agent receiving any funds, BDC or the Credit Parties has advised Agent in writing that BDC or the applicable Credit Party will be selling certain of the BDC Priority Assets, or a receiver is selling any of such assets, which will give rise to such funds. After receipt of such notice or if a receiver is selling any of such assets, Agent will hold such funds in trust for BDC and forthwith remit the same to BDC upon Agent's receipt.
- 7.7 Subject to <u>Section 7.6</u>, Agent shall have no obligation with respect to any Money deposited in any account of any of the Credit Parties. In addition, without limiting any of its rights hercunder or at law, BDC, Capital and the Credit Parties acknowledge and agree

WSLeggl\048744\00095\10998595v4

-9-

that Agent is irrevocably and unconditionally authorized (but not obligated) at any time, without notice to, or consent of any of them, to apply any credit balance in any bank account against any of the indebtedness owing to Agent.

### ARTICLE 8 - COVENANTS AND CONSENTS

- 8.1 Without limiting the generality of any of the foregoing, the Credit Parties hereby specifically consent to the giving or exchange of information and notices by Agent, BDC and Capital to each other as contemplated in this Agreement.
- 8.2 Neither the Agent, BDC or Capital shall sell, transfer, assign or otherwise deal with any of their respective interests in the Indebtedness and the Security without first obtaining from the proposed transferee, assignee or chargee an agreement whereby the proposed transferee, assignee or chargee agrees to be bound by the provisions hereof.
- 8.3 Subject to the terms of this Agreement, each Secured Party may grant time, renewals, extensions, releases and discharges to, accept compositions from and otherwise deal with the Credit Parties as it may see fit, the whole without the consent of or notice to the other Secured Party and without prejudice to or in any way limiting or affecting the agreements on the part of the Secured Parties set forth in this Agreement.

#### ARTICLE 9 - GENERAL

- 9.1 Nothing in this Agreement shall be construed so as to:
  - (a) entitle any person that is not a signatory to this Agreement to receive any proceeds of realization of any collateral;
  - (b) confer any rights upon the Credit Parties or any person not a party to this Agreement and the covenants and agreements between Agent, BDC or Capital contained herein shall only be enforceable as between Agent, BDC and Capital and shall not be enforceable by the Credit Parties; or
  - (c) require or obligate Agent, Capital or BDC to: (i) advance any monies or otherwise extend credit at any time, or (ii) enforce or realize upon any collateral.
- 9.2 The parties hereto hereby agree that all covenants, provisions and restrictions contained herein are necessary and fundamental to them, and that a breach by any of the parties hereto of any such covenant, provision or restriction could result in damages that may not adequately be compensated by monetary award. Accordingly, it is expressly agreed by the parties hereto that in addition to all other remedies available to it including, without limitation, any action for damages, Agent, BDC and/or Capital, as applicable in the circumstances, shall be entitled to the immediate remedy of a restraining order, interim injunction, injunction or other form of injunctive or other relief as may be decreed or issued by any court of competent jurisdiction to restrain or enjoin the others from breaching any such covenant, provision or restriction.

- 9.3 Any notice required or desired to be given hereunder shall be in writing and may be given by personal delivery, by facsimile or by sending the same by registered mail, postage prepaid, to BDC, Agent, Capital or the Credit Parties at their respective addresses set out above and, in the case of facsimile transmission, to the facsimile numbers set out above. Any notice so delivered shall be conclusively deemed given when personally delivered and any notice sent by facsimile shall be deemed to have been delivered on the Business Day following the sending of the notice, and any notice so mailed shall be conclusively deemed to be given on the third (3<sup>rd</sup>) Business Day following the day of mailing, provided that if there is a known disruption of postal service, in which case notice shall only be given by personal delivery. Any address for notice or payments herein referred to may be changed by notice in writing given pursuant hereto.
- 9.4 Each of Agent, BDC, Capital and the Credit Parties, at the Credit Parties' sole cost and expense, shall do and perform all acts, and execute and deliver all deeds and documents, as may be necessary from time to time to give full force and effect to the intent of this Agreement; provided, however, that no consent of the Credit Parties shall be necessary to any amendment of the terms hereof by Agent, BDC and Capital unless the interests of the Credit Parties are directly and negatively affected thereby.
- 9.5 This Agreement may be executed in several counterparts and by facsimile transmission or delivery by PDF, each of which when so executed shall be deemed to be an original and all of such counterparts when taken together, shall constitute one and the same agreement and shall be effective as of the formal date hereof.
- 9.6 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 9.7 Where there is any conflict between the provisions in this Agreement and the provisions of any of the parties' respective loan and security documents, the provisions of this Agreement shall prevail.
- 9.8 This Agreement shall be exclusively (without regard to any rules or principals relating to conflicts of laws) governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 9.9 This Agreement shall terminate upon the indefeasible repayment and satisfaction in full of the BDC Debt, the Wells Fargo Debt and the Capital Debt and the discharge of the BDC Security, the Wells Fargo Security and the Capital Security, as applicable.

[SIGNATURE PAGES FOLLOW]

SIGNED UNDER SEAL by their respective duly authorized signing officers of each of the undersigned with effect as of the date first written above.

By:	Alama
<i></i> j.	Name:
	Title:
By:	
	Name:
	Title:
BUS	INESS DEVELOPMENT BANK OF CANADA
By:	
<i></i>	Name:
	Authorized Signing Officer
By:	
Dy.	Name:
	Authorized Signing Officer
BDC	
BDC	CAPITAL INC.
	CAPITAL INC.
	CAPITAL INC.
	CAPITAL INC.
By:	CAPITAL INC.
By:	CAPITAL INC.
BDC By: By:	CAPITAL INC. Name: Authorized Signing Officer
By:	CAPITAL INC. Name: Authorized Signing Officer Name:
By: By:	CAPITAL INC.          Name:         Authorized Signing Officer         Name:         Authorized Signing Officer
By: By: FIRS	CAPITAL INC.          Name:         Authorized Signing Officer         Name:         Authorized Signing Officer         STONSITE RESTORATION L.P.,
By: By: FIRS	CAPITAL INC.          Name:         Authorized Signing Officer         Name:         Authorized Signing Officer
By: By: FIRS	CAPITAL INC.          Name:         Authorized Signing Officer         Name:         Authorized Signing Officer         STONSITE RESTORATION L.P.,

[Signature Page - Intercreditor Agreement]

۰.

÷.

SIGNED UNDER SEAL by their respective duly authorized signing officers of each of the undersigned with effect as of the date first written above.

> Wells Fargo Credit Agreement By: Name: Title: By: Name: Title: NK OF C BUSINE85 By: norized Signing By2 Name: Name: Rahul Baswan Authorized Signing Officer Director, Specialized Credit Group Corporate Financing Directeur, Groupe financement spécialisé Financement corporatif BDC CAPITAL INC. By: Name: Authorized Signing Officer By: Name: Authorized Signing Officer FIRSTONSITE RESTORATION L.P., by its general partner FOS GP Inc. By: Name: Authorized Signing Officer

Signature page - Intercreditor Agreement

18490460

**SIGNED UNDER SEAL** by their respective duly authorized signing officers of each of the undersigned with effect as of the date first written above.

By:	
	Name:
	Title:
By:	
	Name:
	Title:
BUSI	INESS DEVELOPMENT BANK OF CANADA
By:	
Dy.	Name:
	Authorized Signing Officer
By:	
	Name:
	Authorized Signing Officer
PDC	CAPITAL INC
buc	CATHALING
n	HAM /
ву:	Name:
ву:	
ву:	Authorized Signing Officer
-	Authorized Signing Officer
-	Copital
By: By:	Name: Authorized Signing Officer Authorized Signing Officer Director, Growth & Transition Capital
-	Name: Angelo Zeni
By:	Name: Authorized Signing Officer Authorized Signing Officer Authorized Signing Officer
By: FIRS	Name: Authorized Signing Officer Authorized Signing Officer Director, Growth & Transition Capital

Signature page - Intercreditor Agreement 18490460 4,

. 1.

SIGNED UNDER SEAL by their respective duly authorized signing officers of each of the undersigned with effect as of the date first written above.

> WELLS FARGO CAPITAL FINANCE CORPORATION CANADA, as agent for the Lenders and the Wells Fargo Secured Parties under the Wells Fargo Credit Agreement

By:	
	Name:
	Title:
By:	
	Name:
	Title:
BUSI	NESS DEVELOPMENT BANK OF CANADA
Bv:	

D	У	•	

Name: Authorized Signing Officer

By:

Name:

Authorized Signing Officer

### BDC CAPITAL INC.

By:

Name:

Authorized Signing Officer

By:

Name:

Authorized Signing Officer

### FIRSTONSITE RESTORATION L.P.,

by its general partner FOS G.P. Inc.

3v:			
2	Name:	Aaron Ames	

В

Name: *Aaron Ames* Authorized Signing Officer

[Signature Page - Intercreditor Agreement]

FIRST	FONSITE G.P.INC.
By:	
	Name: Aaron Ames Authorized Signing Officer
FIRST	FONSITE HOLDINGS LIMITED
By:	
	Name: Authorized Signing Officer
FIRS	FONSITE RESTORATION, INC.
By:	
	Name: Aaron Ames Authorized Signing Officer

[Signature Page - Intercreditor Agreement]

# TAB C

This is Exhibit "C" to the affidavit of Dave Demos, sworn before me on the <u>2</u> day of April, 2016

Commissioner for Taking Affidavits

Tracy Liang Chen, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires April 1, 2017.



Wells Fargo Capital Finance 40 King Street West Suite 2500 Toronto, ON M5H 3Y2

Tel: 4167752900

December 4, 2015

### VIA OVERNIGHT COURIER AND EMAIL

FirstOnSite Restoration L.P./ FirstOnSite Holdings Limited/ FirstOnSite Restoration, Inc./ FirstOnSite G.P. Inc. 60 Admiral Boulevard Mississauga, Ontario L5T 2W1 Attention: Dave Demos FirstOnSite Restoration, Inc. 185 Molly Walton Drive Hendersonville, Tennessee United States 37075 Attention: Dave Demos

Dear Sirs/Mesdames:

Re: Credit Agreement dated November 25, 2014 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time, the "Credit Agreement") between FirstOnSite Restoration L.P. (the "Borrower"), FirstOnSite Holdings Limited, FirstOnSite Restoration, Inc. and FirstOnSite G.P. Inc. (collectively, the "Guarantors"), the lenders party thereto and Wells Fargo Capital Finance Corporation Canada as agent (the "Agent"). Capitalized terms not otherwise defined herein shall have the meanings given to them in the Credit Agreement unless stated otherwise.

We hereby notify you that Events of Default exist and have occurred and are continuing under the Credit Agreement as a result of:

- (a) the Borrower's failure to furnish to the Agent within 30 days after the end of October,
   2015 an executed Compliance Certificate for the relevant period ending October 31,
   2015, as required under Section 8.6(a)(i) of the Credit Agreement, resulting in an Event of Default under Section 9.1(b) of the Credit Agreement; and
- (b) the Borrower's failure to maintain a Fixed Charge Coverage Ratio of not less than 1.25:1.00 calculated as at October 31, 2015 on a trailing 12 month basis, as required under Section 8.13 of the Credit Agreement, resulting in an Event of Default under Section 9.1(d) of the Credit Agreement. The Fixed Charge Coverage Ratio of the Borrower during such relevant period was 0.98:1.00, as reported in the most recent financial statements delivered by the Borrower to us.

We reserve the right to take such actions as we consider necessary or desirable to preserve and protect our interests and to exercise all available rights and remedies that we have at law, under this letter, the Credit Agreement and the other Financing Agreements.

Nothing in this letter shall constitute or be deemed to be a waiver by us of any Default, Event of Default or default that has occurred to the date hereof and we specifically reserve all of our rights and remedies at law, under this letter, the Credit Agreement and the other Financing Agreements.

Together we'll go far



WSLegal/048744/00095/12840432v2

No failure on the part of us to exercise, and no delay in exercising, any right or remedy at law, set out in this letter or under the Credit Agreement or the other Financing Agreements as a result of the aforementioned Events of Default shall operate as a waiver thereof. Time will, in all respects, be of the essence with respect to the matters set out in this letter.

We ask that you evidence your acknowledgement of the foregoing by signing the acknowledgement section below and returning it to us via email at the following email addresses: raymond.eghobamien@wellsfargo.com and carmela.massari@wellsfargo.com.

Yours truly,

WELLS FAR	GO CAPITAL FINANCE
CORPORAT	ION CANADA, as Agent and
Lender	

By: Namc: Title:

-88	S.S.S.	Section 23	s and a second	
	ond Eghc President	bamien		

Wells Fargo Capital Finance Corporation Canada

Each of the undersigned hereby acknowledges receipt of the letter of Wells Fargo Capital Finance Corporation Canada dated December 4, 2015 addressed to the undersigned.

### FIRSTONSITE RESTORATION L.P., by its general partner FIRSTONSITE G.P. INC.

### FIRSTONSITE HOLDINGS LIMITED

By:	By:
Name:	Name:
Title:	Title:
FIRSTONSITE RESTORATION, INC.	FIRSTONSITE G.P. INC.

By:	
Name:	
Title:	

By:	
Name:	
Title:	



Wells Fargo Capital Finance 40 King Street West Suite 2500 Toronto, ON M5H 3Y2

Tel: 416 775 2900

January 18, 2016

### VIA OVERNIGHT COURIER AND EMAIL

FirstOnSite Restoration L.P./ FirstOnSite Holdings Limited/ FirstOnSite Restoration, Inc./ FirstOnSite G.P. Inc. 60 Admiral Boulevard Mississauga, Ontario L5T 2W1 Attention: Dave Demos FirstOnSite Restoration, Inc. 185 Molly Walton Drive Hendersonville, Tennessee United States 37075 Attention: Dave Demos

Dear Sirs/Mesdames:

Re: Credit Agreement dated November 25, 2014 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time, the "Credit Agreement") between FirstOnSite Restoration L.P. (the "Borrower"), FirstOnSite Holdings Limited, FirstOnSite Restoration, Inc. and FirstOnSite G.P. Inc. (collectively, the "Guarantors"), the lenders party thereto and Wells Fargo Capital Finance Corporation Canada as agent (the "Agent") and lender (the "Lender"). Capitalized terms not otherwise defined herein shall have the meanings given to them in the Credit Agreement unless stated otherwise.

We hereby notify you that an Event of Default has occurred and is continuing under the Credit Agreement as a result of the Borrower's failure to maintain a Fixed Charge Coverage Ratio of not less than 1.25:1.00 calculated as at November 30, 2015 on a trailing 12 month basis, as required under <u>Section 8.13</u> of the Credit Agreement, resulting in an Event of Default under <u>Section 9.1(d)</u> of the Credit Agreement.

We reserve the right to take such actions as we consider necessary or desirable to preserve and protect our interests and to exercise all available rights and remedies that we have at law, under this letter, the Credit Agreement and the other Financing Agreements.

Nothing in this letter shall constitute or be deemed to be a waiver by us of any Default, Event of Default or default that has occurred to the date hereof and we specifically reserve all of our rights and remedies at law, under this letter, the Credit Agreement and the other Financing Agreements. No failure on the part of us to exercise, and no delay in exercising, any right or remedy at law, set out in this letter or under the Credit Agreement or the other Financing Agreements as a result of the aforementioned Events of Default shall operate as a waiver thereof. Time will, in all respects, be of the essence with respect to the matters set out in this letter.

We ask that you evidence your acknowledgement of the foregoing by signing the acknowledgement section below and returning it to us via email at the following email addresses: <u>raymond.eghobamien@wellsfurgo.com</u> and <u>carmela.massari@wellsfurgo.com</u>.

Together we'll go far



WSLegal-048744\00095\12840432v2

Yours truly,

WELLS FARGO CAPITAL FINANCE CORPORATION CANADA, as Agent and Lender

By: Name: Raymond Eghobamien

Title: Vice President Wells Fargo Capital Finance Corporation Canada

Each of the undersigned hereby acknowledges receipt of the letter from Wells Fargo Capital Finance Corporation Canada dated January 18, 2016 addressed to the undersigned.

FIRSTONSITE RESTORATION L.P., by its general partner FIRSTONSITE G.P. INC.

By: Name: Kern Watson Title: CSED

FIRSTONSITE RESTORATION, INC.

By: Name: Title:

Revie i.) a1500 CFO

### FIRSTONSITE HOLDINGS LIMITED

By: Name: Labortsom Æ

Title: Cre

FIRSTONSITE G.P. INC.

By:

Name: Kerin Wittion Title: CFO . .



Wells Fargo Capital Finance 40 King Street West Suite 2500 Toronto, ON M5H 3Y2

Tel: 416 775 2900

February 29, 2016

### VIA OVERNIGHT COURIER AND EMAIL

FirstOnSite Restoration L.P./ FirstOnSite Holdings Limited/ FirstOnSite Restoration, Inc./ FirstOnSite G.P. Inc. 60 Admiral Boulevard Mississauga, Ontario L5T 2W1 Attention: Dave Demos FirstOnSite Restoration, Inc. 185 Molly Walton Drive Hendersonville, Tennessee United States 37075 Attention: Dave Demos

Dear Sirs/Mesdames:

Re: Credit Agreement dated November 25, 2014 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time, the "Credit Agreement") between FirstOnSite Restoration L.P. (the "Borrower"), FirstOnSite Holdings Limited, FirstOnSite Restoration, Inc. and FirstOnSite G.P. Inc. (collectively, the "Guarantors"), the lenders party thereto and Wells Fargo Capital Finance Corporation Canada as agent (the "Agent") and lender (the "Lender"). Capitalized terms not otherwise defined herein shall have the meanings given to them in the Credit Agreement unless stated otherwise.

We hereby notify you that an Event of Default has occurred and is continuing under the Credit Agreement as a result of the Borrower's failure to maintain a Fixed Charge Coverage Ratio of not less than 1.25:1.00 calculated as at December 31, 2015 on a trailing 12 month basis, as required under Section 8.13 of the Credit Agreement, resulting in an Event of Default under Section 9.1(d) of the Credit Agreement. We understand that the Borrower is contemplating a filing under the *Companies' Creditors Arrangement Act* (Canada). Such a filing would result in an Event of Default under Section 9.1(l) of the Credit Agreement. We have not consented and are not consenting to any such filing, and expect to continue to engage with the Borrower about the basis upon which any such filing would occur and how it would affect us.

We reserve the right to take such actions as we consider necessary or desirable to preserve and protect our interests and to exercise all available rights and remedies that we have at law, under this letter, the Credit Agreement and the other Financing Agreements.

Nothing in this letter shall constitute or be deemed to be a waiver by us of any Default, Event of Default or default that has occurred to the date hereof and we specifically reserve all of our rights and remedies at law, under this letter, the Credit Agreement and the other Financing Agreements. No failure on the part of us to exercise, and no delay in exercising, any right or remedy at law, set out in this letter or under the Credit Agreement or the other Financing Agreements as a result of the aforementioned Events of Default shall operate as a waiver thereof. Time will, in all respects, be of the essence with respect to the matters set out in this letter.

Together we'll go far



WSLegal\048744\00095\12840432v2

We ask that you evidence your acknowledgement of the foregoing by signing the acknowledgement section below and returning it to us via email at the following email addresses: raymond.eghobamien@wellsfargo.com and carmela.massari@wellsfargo.com.

Yours truly,

WELLS FARGO CAPITAL FINANCE CORPORATION CANADA, as Agent and Lender

21 By:

Name: Raymond Eghobamien Title: Vice President Wells Fargo Capital Finance Corporation Canada

Each of the undersigned hereby acknowledges receipt of the letter from Wells Fargo Capital Finance Corporation Canada dated February 29, 2016 addressed to the undersigned.

### FIRSTONSITE RESTORATION L.P., by its general partner FIRSTONSITE G.P. INC.

### FIRSTONSITE HOLDINGS LIMITED

By:	
Name:	
Title:	

### FIRSTONSITE RESTORATION, INC.

By:	
Name:	
Title:	

By:	
Name:	
Title:	

### FIRSTONSITE G.P. INC.

By:	
Name:	
Title:	

### •

•



Wells Fargo Capital Finance 40 King Street West Suite 2500 Toronto, ON M5H 3Y2

Tel: 416 775 2900

March 22, 2016

### VIA OVERNIGHT COURIER AND EMAIL

FirstOnSite Restoration L.P./ FirstOnSite Holdings Limited/ FirstOnSite Restoration, Inc./ FirstOnSite G.P. Inc. 60 Admiral Boulevard Mississauga, Ontario LST 2W1 Attention: Dave Demos FirstOnSite Restoration, Inc. 185 Molly Walton Drive Hendersonville, Tennessee United States 37075 Attention: Dave Demos

Dear Sirs/Mesdames:

Re: Credit Agreement dated November 25, 2014 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time, the "Credit Agreement") between FirstOnSite Restoration L.P. (the "Borrower"), FirstOnSite Holdings Limited, FirstOnSite Restoration, Inc. and FirstOnSite G.P. Inc. (collectively, the "Guarantors"), the lenders party thereto and Wells Fargo Capital Finance Corporation Canada as agent (the "Agent") and lender (the "Lender"). Capitalized terms not otherwise defined herein shall have the meanings given to them in the Credit Agreement unless stated otherwise.

We hereby notify you that an Event of Default has occurred and is continuing under the Credit Agreement as a result of the Borrower's failure to maintain a Fixed Charge Coverage Ratio of not less than 1.25:1.00 calculated as at January 31, 2016 on a trailing 12 month basis, as required under Section 8.13 of the Credit Agreement, resulting in an Event of Default under Section 9.1(d) of the Credit Agreement. We understand that the Borrower is contemplating a filing under the Companies' Creditors Arrangement Act (Canada). Such a filing would result in an Event of Default under Section 9.1(l) of the Credit Agreement. We have not consented and are not consenting to any such filing, and expect to continue to engage with the Borrower about the basis upon which any such filing would occur and how it would affect us.

We reserve the right to take such actions as we consider necessary or desirable to preserve and protect our interests and to exercise all available rights and remedies that we have at law, under this letter, the Credit Agreement and the other Financing Agreements.

Nothing in this letter shall constitute or be deemed to be a waiver by us of any Default, Event of Default or default that has occurred to the date hereof and we specifically reserve all of our rights and remedies at law, under this letter, the Credit Agreement and the other Financing Agreements. No failure on the part of us to exercise, and no delay in exercising, any right or remedy at law, set out in this letter or under the Credit Agreement or the other Financing Agreements as a result of the aforementioned Events of Default shall operate as a waiver thereof. Time will, in all respects, be of the essence with respect to the matters set out in this letter.

Together we'll go far



WS1.egab048744100095412840432v2

We ask that you evidence your acknowledgement of the foregoing by signing the acknowledgement section below and returning it to us via email at the following email addresses: raymond.eghobamien@wellsfargo.com and carmela.massari@wellsfargo.com.

Yours truly,

WELLS FARGO CAPITAL FINANCE CORPORATION CANADA, as Agent and Lender

By: PA

Name: Raymond Eghobamien Title: Vice President

e: Vice President Wells Fargo Capital Finance Corporation Canada

Each of the undersigned hereby acknowledges receipt of the letter from Wells Fargo Capital Finance Corporation Canada dated March 22, 2016 addressed to the undersigned.

FIRSTONSITE RESTORATION L.P., by its general partner FIRSTONSITE G.P. INC.

By: Name:

Title:

FIRSTONSITE RESTORATION, INC.

By: Name: Title:

### FIRSTONSITE HOLDINGS LIMITED

By:

Name: Title:

FIRSTONSITE G.P. INC.

By: Name:

Title:

# TAB D

-

This is Exhibit "D" to the affidavit of Dave Demos, sworn before me on the <u>70</u> day of April, 2016

Commissioner for Taking Affidavits

۰.

Tracy Liang Chen, a Commissioner, etc., Province of Ontario, while a Student-at-Law, Experies will 1, 2017.



December 15, 2015

FirstOnSite Restoration L.P. 60 Admirai Blvd. Mississauga, ON L5T 2W1

#### NOTICE OF DEFAULT

#### Attention: Mr. Kevin Watson, CFO

Re: Business Development Bank of Canada (the "BDC") Financing to FirstOnSite Restoration L.P. (the "Borrower")

Sir,

Please be advised that the Borrower is in default under the Letter of Offer Financing No. 080701-01 dated November 25, 2014 between the Borrower and BDC (the "Letter of Offer") as follows:

#### **Underlying Conditions:**

In addition, so long as any amount owing under or pursuant to this Letter of Offer or any other Financing Document remains unpaid, the financial ratio mentioned below must be met at all times by the Borrower, on a consolidated basis.

Fixed Charge Coverage Ratio:

The Borrower shall maintain a Fixed Charge Coverage Ratio of not less than 1.25:1.00 for the first 12 months after the date of first advance hereunder (the "Closing Date"), and 1.25:1.00 at any and all times thereafter; in each case tested at the end of each fiscal month on a trailing 12 month basis; provided that, for the period including November 2014 through and including October 2015 (the first 12 full months following the Closing Date), the amount of Fixed Charges shall be calculated on an annualized basis starting with the month of November, 2014 (so that, for example, the amount of Fixed Charges for the month of November, 2014 will be multiplied by 12 to obtain an annualized amount, the amount of Fixed Charges for the month so on for each month until the test period ending October 31, 2015 and each month thereafter which test periods will each be the actual amount of Fixed Charges for the previous 12 month period).

The Fixed Charge Coverage Ratio is 0.98:1 as at October 31, 2015.

Furthermore, we would like to bring to your attention the following Legal Fees and Expenses obligation detailed in the Letter of Offer:

#### Legal Fees and Expenses

The Loan Parties shall pay, on demand, all legal and other out-of-pocket costs of BDC incurred in connection with the Loan and the Loan Documents including the enforcement of the Loan and the Loan Documents, whether or not any documentation is entered into or any advance is made to the Borrower. All legal and other out-of-pocket expenses of BDC in connection with any amendment or waiver related to the Loan and the Loan documents shall also be for the account of the Loan Parties.

Business Development Bank of Canada Business Restructuring 70 York Street, Sulte 1202 Toronto, Ontario M5J 159

F 416-973-8283 www.bdc.ca

Canada

While BDC does not intend to take any immediate action by reason of this default at this time, please be advised that BDC does not waive any event of default and reserves the right to pursue any and all remedies which it may consider appropriate in respect of this default or any other events of default at any time.

We further advise that this letter is without prejudice to BDC continuing right to make demand upon the Borrower or any other person at any time.

Yours truly,

**Business Development Bank of Canada** 

Miguel Rodrigues Director, Busihess Restructuring Unit (416) 954-8074

Russell French Assistant Vice President, Business Restructuring Unit (416) 954-5004

• .



January 12, 2016

FirstOnSite Restoration L.P. 60 Admirai Blvd. Mississauga, ON L5T 2W1

#### NOTICE OF DEFAULT

#### Attention: Mr. KevIn Watson, CFO

Re: Business Development Bank of Canada (the "BDC") Financing to FirstOnSite Restoration L.P. (the "Borrower")

Sir,

Please be advised that the Borrower is in default under the Letter of Offer Financing No. 080701-01 dated November 25, 2014 between the Borrower and BDC (the "Letter of Offer") as follows:

#### **Underlying Conditions:**

In addition, so long as any amount owing under or pursuant to this Letter of Offer or any other Financing Document remains unpaid, the financial ratio mentioned below must be met at all times by the Borrower, on a consolidated basis.

Fixed Charge Coverage Ratio:

The Borrower shall maintain a Fixed Charge Coverage Ratio of not less than 1.25:1.00 for the first 12 months after the date of first advance hereunder (the "Closing Date"), and 1.25:1.00 at any and all times thereafter; in each case tested at the end of each fiscal month on a trailing 12 month basis; provided that, for the period including November 2014 through and including October 2015 (the first 12 full months following the Closing Date), the amount of Fixed Charges shall be calculated on an annualized basis starting with the month of November, 2014 (so that, for example, the amount of Fixed Charges for the month of November, 2014 will be multiplied by 12 to obtain an annualized amount, the amount of Fixed Charges for the month so on for each month until the test period ending October 31, 2015 and each month thereafter which test periods will each be the actual amount of Fixed Charges for the previous 12 month thereid).

The Fixed Charge Coverage Ratio is in default as at November 30, 2015.

Furthermore, we would like to bring to your attention the following Legal Fees and Expenses obligation detailed in the Letter of Offer:

Business Development Bank of Canada Business Restructuring 70 York Street, Suite 1202 Toronto, Ontario M5J 159

F 416-973-8283 www.bdc.ca

Canada



#### Legal Fees and Expenses

The Loan Parties shall pay, on demand, all legal and other out-of-pocket costs of BDC incurred in connection with the Loan and the Loan Documents including the enforcement of the Loan and the Loan Documents, whether or not any documentation is entered into or any advance is made to the Borrower. All legal and other out-of-pocket expenses of BDC in connection with any amendment or waiver related to the Loan and the Loan documents shall also be for the account of the Loan Parties.

While BDC does not intend to take any immediate action by reason of this default at this time, please be advised that BDC does not waive any event of default and reserves the right to pursue any and all remedies which it may consider appropriate in respect of this default or any other events of default at any time.

We further advise that this letter is without prejudice to BDC continuing right to make demand upon the Borrower or any other person at any time.

Yours truly,

Business Development Bank of Canada

Miguel Rodrigues Director, Business Restructuring Unit (416) 954-0074

Russell French Assistant Vice President, Business Restructuring Unit (416) 954-5004

# TAB E

This is Exhibit "E" to the affidavit of Dave Demos, sworn before me on the <u>20</u> day of April, 2016 <u>Mcc</u> Commissioner for Taking Affidavits

Tracy Liang Chen, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires April 1, 2017.



Bennett Jones LLP 3400 One First Canadian Place, PO Box 130 Toronto, Ontario, Canada M5X 1A4 Tel: 416.863.1200 Fax: 416.863.1716

Mark S. Laugesen Partner Direct Line: 416.777.4802 e-mail: laugesenm@bennettjones.com

20 April 2016

Via Courier

FirstOnSite Restoration L.P. 60 Admiral Boulevard Mississauga, Ontario L5T 2W1

Dear Sirs:

#### Re: Wells Fargo

We are the solicitors for Wells Fargo Capital Finance Corporation Canada ("Wells Fargo Capital") and Wells Fargo Bank, N.A. ("Wells Fargo Bank").

We reference: (1) a Credit Agreement made as of 25 November 2014 by and between FirstOnSite Restoration L.P. (the "Borrower"), FirstOnSite Holdings Limited ("Holdings"), FirstOnSite Restoration Inc. ("FirstOnSite US"), and FirstOnSite G.P. Inc. (the "GP" and, collectively with Holdings and FirstOnSite US, the "Guarantors"), and Wells Fargo Capital, as lender and agent (as the same has been and may be further amended, modified, supplemented, extended, renewed, restated, or replaced from time to time, the "Credit Agreement"); (2) a Wells Fargo Mastercard Multicard Agreement made as of 23 February 2015 by and between FirstOnSite US and Wells Fargo Bank (as the same has been and may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time, the "US Credit Card Agreement"); (3) a Canadian Affiliate Addendum to Wells Fargo Mastercard Multicard Agreement made as of 23 February 2015 by and between and may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time, the "US Credit Card Agreement"); (3) a Canadian Affiliate Addendum to Wells Fargo Mastercard Multicard Agreement made as of 23 February 2015 by and between the Borrower and Wells Fargo Bank (as the same has been and may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time, the "Canadian Credit Card Agreement"); (3) a Canadian Affiliate Addendum to Wells Fargo Bank (as the same has been and may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time, the "Canadian Credit Card Agreement"); and (4) an Acknowledgment made as of 20 April 2016 by and between Wells Fargo Capital, the Borrower, and the Guarantors (the "Acknowledgement")

As of 20 April 2016, the Borrower is indebted to: (1) Wells Fargo Capital pursuant to the Credit Agreement in the amount of CDN\$10,660,887.74 and US\$2,597,768.56 in respect of the Revolving Loans and CDN\$525,000.00 in respect of the Letter of Credit Accommodations, inclusive of principal, interest, and certain other costs current to that date (the "**Credit Agreement Indebtedness**"), (2) Wells Fargo Bank pursuant to the US Credit Card Agreement in the amount of US\$20,160.49, inclusive

www.bennettjones.com

April 12, 2016 Page 2

of principal, interest, and certain other costs current to that date (the "**US Credit Card Indebtedness**") and (3) Wells Fargo Bank pursuant to the Canadian Credit Card Agreement in the amount of CDN\$316,050.78, inclusive of principal, interest, and certain other costs current to that date (the "**Canadian Credit Card Indebtedness**" and, together with the US Credit Card Indebtedness and the Credit Agreement Indebtedness, collectively, the "**Indebtedness**"), in each case as confirmed by the Borrower and the Guarantors in the Acknowledgment.

The Indebtedness (plus all further indebtedness, principal, accruing interest, further credit card charges, existing and further fees and costs, including professional costs) is secured by certain security, including: (1) a General Security Agreement made as of 25 November 2014 by and between the Borrower and Wells Fargo Capital; (2) a Pledge Agreement made as of 25 November 2014 by and between the Borrower and Wells Fargo Capital; (3) a Quebec Deed of Hypothec, Debenture, and Debenture Pledge Agreement made as of 18 November 2014 by and between the Borrower and Wells Fargo Capital; and (4) an Assignment of Insurance made as of 25 November 2014 by and between the Borrower and Wells Fargo Capital (collectively, the "Security"), in each case as confirmed by the Borrower and the Guarantors in the Acknowledgment.

We have been advised by Wells Fargo Capital that the Borrower is in default pursuant to the terms of the Credit Agreement. The defaults have been confirmed by the Borrower and the Guarantors in the Acknowledgment. Wells Fargo Capital hereby declares the Credit Agreement Indebtedness to have become due and payable.

The US Credit Card Indebtedness and the Canadian Credit Card Indebtedness are payable on demand.

On behalf of Wells Fargo Capital and Wells Fargo Bank, we hereby demand immediate payment of the Indebtedness (plus all further indebtedness, principal, accruing interest, further credit card charges, existing and further fees and costs, including professional costs).

Payment is to be made to Bennett Jones LLP, in trust, Suite 3400, One First Canadian Place, Toronto, Ontario M5X 1A4 to the attention of Mr. Mark S. Laugesen.

Failing immediate payment, we are instructed to inform you that our client intends to take such steps as it considers necessary or appropriate, including proceedings to enforce the Security, to recover payment of the Indebtedness (plus all further indebtedness, principal, accruing interest, further credit card charges, existing and further fees and costs, including professional costs) in full without further notice. April 12, 2016 Page 3

We enclose a copy of a Notice of Intention to Enforce Security issued pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada).

bu

Yours truly, BENNETT JONES LLP

"original signed by Mark S. Laugesen"

Mark S. Laugesen

MSL:ak

C: Stikeman Elliot LLP

April 12, 2016 Page 2

### NOTICE OF INTENTION TO ENFORCE SECURITY

### **TO:** FirstOnSite Restoration L.P. (the "Borrower"), an insolvent person.

#### TAKE NOTICE THAT:

- 1. Wells Fargo Finance Capital Corporation Canada ("Wells Fargo Capital"), a secured creditor, intends to enforce its security on all present and after-acquired undertaking and property of the Borrower of any nature whatsoever (including, without limitation, equipment, inventory, accounts, intangibles, documents of title, chattel paper, instruments, money, securities, documents, real property, and proceeds), all as more particularly described in the body of and schedules to the Security, as defined below.
- 2. The Security that is to be enforced is in the form of: (1) a General Security Agreement made as of 25 November 2014 by and between the Borrower and Wells Fargo Capital; (2) a Pledge Agreement made as of 25 November 2014 by and between the Borrower and Wells Fargo Capital; (3) a Quebec Deed of Hypothec, Debenture, and Debenture Pledge Agreement made as of 18 November 2014 by and between the Borrower and Wells Fargo Capital; and (4) an Assignment of Insurance made as of 25 November 2014 by and between the Borrower and Wells Fargo Capital; and (4) an Wells Fargo Capital (collectively, the "Security").
- 3. As at 20 April 2016, the total amount of indebtedness secured by the Security is: CDN\$11,501,938.51 and US\$2,617,929.05, inclusive of principal, interest, and certain other costs current to that date.
- 4. Wells Fargo Capital will not have the right to enforce the Security until after the expiry of the ten (10) day period after this notice is sent, unless the Borrower consents to an earlier enforcement.

DATED at Toronto this 20 day of April 2016.

Wells Fargo Capital Finance Corporation Canada (by its lawyers)

"original signed by Mark S. Laugesen"

BENNETT JONES LLP 1 First Canadian Place Suite 3400, P.O. Box 130 Toronto, Ontario M5X 1A4 Attention: Mr. Mark Laugesen

# TAB F

This is Exhibit "F" to the affidavit of Dave Demos, sworn before me on the 20 day of April, 2016

Commissioner for Taking Affidavits

Tracy Liang Chen, a Commissioner, etc., Province of Ontario, while a Student of Len. Expires April 1, 2017.



# PRIVATE & CONFIDENTIAL

October 30, 2015

FirstOnSite Restoration L.P. 60 Admiral Blvd. Mississauga, ON L5T 2W1 Attention: Mr. Dave Demos, CEO

Dear Mr. Demos:

Thank you for requesting the services of Alvarez & Marsal Canada Securities ULC ("A&M"). This letter (the "Agreement") confirms the terms of our engagement to assist FirstOnSite Restoration L.P. and its subsidiaries, or any entity formed by, or at the direction of, the company's board of directors (herein collectively "FOS" or the "Company") in connection with the proposed sale of the Company (the "Sale" or the "Sale Transaction").

A&M will act as the exclusive lead advisor for the Sale Transaction and will lead and manage the sale process from initiation through to completion. We will assist and advise you on all aspects of the proposed engagement while permitting the management of FOS to remain focused on running the business. As your advisors, we will respect your right to make any and all decisions regarding whether a transaction brought forward is to be accepted or rejected.

This letter outlines the services to be provided by us to you and the fees to be paid in respect of the services.

## 1. Description of Services

The following provides an overview of the A&M approach to the sale process (the "Sale Process"). Through discussions, this approach will be customized to the Company's needs and its circumstances; however, as part of our engagement, we will, if appropriate and requested, do the following:

Phase 1: STRATEGY / DUE DILIGENCE	<ul> <li>Kick-off meeting</li> <li>Assist in defining stakeholder objectives &amp; identify issues</li> <li>Formulate &amp; recommend go-to-market strategy</li> <li>Identify preliminary list of potential buyers</li> </ul>
Phase 2: PREPARE CONFIDENTIAL MEMORANDUM & BUYER LIST	<ul> <li>Compile industry &amp; company information</li> <li>Assist the Company in preparing the teaser &amp; confidential memorandum</li> <li>Assist the Company with finalizing the prospective buyer list &amp; contact</li> </ul>

Phase 3: FORMAL MARKETING	<ul> <li>strategy</li> <li>Assist the Company in preparing management presentations</li> <li>Assist in assembly of an electronic due diligence data room</li> <li>Contact prospective buyers</li> <li>Distribute teaser</li> <li>Assess degree of interest</li> <li>Distribute confidentiality agreements to prospective buyers</li> <li>Distribute confidential memoranda</li> </ul>
Phase 4: OBTAIN INITIAL OFFERS	<ul> <li>Obtain preliminary indications of interest</li> <li>Respond to questions &amp; requests for information</li> <li>Assist in evaluation of offers in the context of stakeholder objectives</li> </ul>
Phase 5: BUYER DUE DILIGENCE	<ul> <li>Assist the Company in selecting qualified buyers</li> <li>Coordinate management presentations</li> <li>Arrange due diligence visits &amp; assist in managing the electronic due diligence data room</li> <li>Assist legal counsel to draft purchase &amp; sale agreement (business and deal terms)</li> </ul>
Phase 6: SELECTION OF FINAL OFFER	<ul> <li>Request final proposals</li> <li>Assist the Company in selecting final buyer(s)</li> </ul>
Phase 7: NEGOTIATION / CLOSING	<ul> <li>Assist the Company in negotiations with top buyer(s)</li> <li>Assist in resolving issues &amp; moving the process to a successful closing</li> </ul>

For purposes of this agreement, the term "Sale Transaction" is defined to include any of the following (whether in one or a series of related transactions): (a) a merger of the Company, (b) a sale of at least 50% of the equity securities of the Company (whether from the Company or security holders of the Company), whether by sale, exchange, tender offer or otherwise, (c) any transaction which results in a third party having the right to elect a majority of the members of the Board of Directors of the Company, (d) a sale (including, without limitation, by sale, lease, license, exchange or other acquisition) of all or a substantial amount of the assets (tangible or intangible) of the Company, (e) any recapitalization or restructuring (including spin-off or split-off of assets) of the Company, or (f) any other form of disposition which results in the effective disposition of all or a substantial amount of the Company.

In connection with A&M's engagement, the Company will furnish A&M with all information concerning the Company which A&M reasonably deems appropriate and will provide A&M with access to the Company's officers, directors, employees, accountants, counsel and other representatives (collectively, the "Representatives"), it being understood that A&M will rely solely upon such information supplied by the Company and its Representatives without assuming any responsibility for independent investigation or verification thereof.



.

The Company understands that A&M is not undertaking to provide any legal, audit, regulatory, accounting, insurance, tax or similar professional advice. It is further understood and agreed that A&M's services hereunder will not include the preparation of a due diligence report, presentation or otherwise for the Company, and that A&M's services will not include the rendering of a fairness opinion. If you should request additional services not otherwise contemplated by this letter agreement, the Company and A&M will enter into an additional letter agreement which will set forth the nature and scope of the services, appropriate compensation and other customary matters, as mutually agreed upon by the Company and A&M.

## 2. <u>Compensation</u>

Adam Zalev and Doug McIntosh, both Managing Directors of A&M and certain of its affiliates will be responsible for the overall engagement. They will be assisted by other A&M personnel, as appropriate. A&M personnel providing services to the Company may also work with other A&M clients in conjunction with unrelated matters.

As compensation for our services hereunder, the Company agrees to pay A&M as follows:

- i. a monthly work fee (the "Work Fee") of \$100,000 per month to be paid for the first four (4) months of the Term with the first monthly payment to be made upon the execution of this Agreement, and subsequent monthly payments to be made, upon invoice, each month thereafter. At the completion of the four (4) month period during which the Work Fee is payable, should the engagement contemplated by this Agreement be continuing, the parties will mutually agree upon an appropriate amount of Work Fee for the period subsequent to the first four (4) months. The Work Fee will be non-refundable and will be credited against any Transaction Fee that becomes payable.
- ii. a transaction fee (the "Transaction Fee") payable in cash at closing of a Sale Transaction, calculated as 3.0% of Aggregate Sale Consideration (as defined below). A minimum transaction fee (the "Minimum Transaction Fee") of \$1,000,000 is applicable at closing of a Sale Transaction. For greater certainty, if 3.0% of Aggregate Sale Consideration is less than \$1,000,000, the Transaction Fee will be \$1,000,000.
- iii. reimbursement for the reasonable fees and expenses incurred by A&M as part of this engagement including, without limitation, that of its legal counsel incurred in connection with the enforcement of this Agreement (including the Indemnification Agreement). Such fees and expenses will be capped at \$50,000, unless otherwise mutually agreed upon by the parties.
- iv. all fees will be subject to applicable taxes.

For purposes of this agreement, the term "Aggregate Sale Consideration" shall mean the total fair market value (at the time of closing) of all consideration (including, without duplication, cash, securities and property) paid or payable, or otherwise to be distributed, directly or indirectly, to the Company or the Company's stockholders, including the value of redundant assets, before deducting any dividend or asset strips or any recapitalizations, plus all indebtedness, including interest bearing debt and capital leases assumed by the purchaser of the



Company. If any portion of the Aggregate Sale Consideration is payable in the form of securities, the value of such securities, for purposes of calculating our Transaction Fee, will be determined based on the average closing price for such securities for the five trading days prior to the closing of the Sale Transaction. In the case of securities that do not have an existing public market, Aggregate Sale Consideration will be determined based on the fair market value of such securities as mutually agreed upon in good faith by the Company and A&M prior to the closing of the Sale Transaction. Fees on amounts paid into escrow will be payable upon the establishment of such escrow. Fees relating to contingent payments other than escrowed amounts will be calculated based on the present value of the reasonably expected amount of such contingent payments as determined in good faith by the Company and A&M prior to the closing of the Sale Transaction, utilizing a discount rate equal to the prime rate published in The Wall Street Journal on the last business day preceding the closing of the Sale Transaction. The Transaction Fee shall be earned and payable upon the closing of any Sale Transaction. The Transaction Fee shall be earned if, within 12 months following the end of the term of this engagement, a Sale Transaction is consummated or an agreement is entered into that subsequently results in a Sale Transaction with a purchaser or investor where: (i) the purchaser or investor was introduced to the FOS opportunity by A&M; or (ii) the purchaser or investor contacted the Company or the Company's stockholders expressing interest in the FOS opportunity during the term of A&M's engagement; or (iii) the purchaser or investor was the subject of any advice provided to the Company or the Company's stockholders by A&M during the term of A&M's engagement, including, but not limited to, purchasers or investors that were proposed by A&M, but were not subsequently approved for contact by the Company. In such circumstances, the Transaction Fee shall be payable upon the closing of any such Sale Transaction.

You agree that prior to the closing of the Sale Transaction you will provide your legal counsel with a letter of direction of the Aggregate Sale Consideration to satisfy full payment of A&M's Transaction Fee immediately upon closing of the Sale Transaction.

# 3. <u>Term</u>

The engagement will commence as of the date hereof. The engagement may be terminated by the Company without cause by giving written notice to A&M. In the event of any such termination, any fees and expenses due to A&M shall be remitted to A&M promptly (including fees and expenses that accrued prior to, but were invoiced subsequent to such termination).

A&M shall be entitled to immediately terminate its services hereunder for Good Reason. For purposes of this agreement, termination for "Good Reason" shall mean A&M's resignation caused by the Company's misrepresentation of or failure to disclose material facts, failure to pay fees or expenses when due (or circumstances indicating to A&M that fees or expenses will not be paid when due), circumstances such that it is unethical or unreasonably difficult for A&M to continue performance of the engagement, or a breach by the Company of any of its material obligations under this agreement that is not cured within 15 days after A&M has given written notice of such breach to the Company describing in reasonable detail the nature of the alleged breach.

# 4. <u>Relationship of the Parties</u>

The parties intend that an independent contractor relationship will be created by this Agreement. Neither A&M nor any of its personnel or subcontractors is to be considered an employee, agent or fiduciary of the Company. While the information provided to A&M by the Company will be reviewed for reasonableness, A&M's work will not necessarily identify any errors or irregularities, if such exist, on the part of the Company or its officers or employees. Furthermore, A&M is entitled to rely on the accuracy and validity of the data disclosed to it or supplied to it by the Company or its agents, advisors, employees and representatives of the Company. A&M is under no obligation to update data submitted to it or review any other areas unless specifically requested by the Company to do so. The Company agrees and acknowledges that the services to be rendered by A&M may include the assistance in the preparation and review of projections, forecasts and other forward-looking statements, and numerous factors can affect the actual results of the Company's operations, which may materially and adversely differ from those projections, forecasts and other forward-looking statements. For greater certainty, during the course of this engagement, A&M shall be acting as an advisor to the Company in this matter and A&M shall not be assuming any decision making or other management responsibilities in connection with the affairs of the Company. In addition, A&M shall not do anything or perform any act pursuant to which A&M assumes any possession or control of the property, assets, undertakings, premises or operations of the Company for any purpose whatsoever.

The Company acknowledges that A&M has been retained only by the Company and that the Company's engagement of A&M is not deemed to be on behalf of, and is not intended to confer rights upon, any shareholder, owner or partner of the Company or any other person not a party hereto as against A&M or any of its affiliates, or any of its or their respective officers, directors, controlling persons, employees or agents. The Company acknowledges that all advice (written or oral), statements and information by A&M to the Company in connection with this engagement is intended solely for the benefit and use of the Company in considering the matters to which this engagement. The Company agrees that no such advice, statements or information shall be used for any other purpose or reproduced, disseminated, quoted or referred to at any time in any manner or for any purpose without A&M's prior approval (which shall not be unreasonably withheld), except as required by law or judicial authority.

It is understood and agreed that the Company may, if it considers same necessary or appropriate, appoint A&M and/or any of its affiliates as trustee, receiver, receiver and manager, monitor, or agent for the purposes of realizing upon its security, under any statute or under any court order, and that A&M and/or any of its affiliates may (although it is not obligated), if necessary or desirable, accept any such appointment and that, notwithstanding anything in this Agreement to the contrary, may use the information acquired by it, or its affiliates, under this Agreement.

## 5. <u>Conflicts</u>

A&M is not currently aware of any relationship that would create a conflict of interest with the Company or those parties-in-interest of which you have made us aware. Because A&M and its affiliates comprise a consulting firm (the "Firm") that serves clients on an international basis in numerous assignments, it is possible that A&M may have rendered or will render services to or have business associations with other entities or people which had or have or may have



relationships with the Company, including potential Purchasers. The Firm will not be prevented or restricted by virtue of providing the services under this Agreement from providing services to other entities or individuals, including entities or individuals whose interests may be in competition or conflict with the Company's, provided the Firm makes appropriate arrangements to ensure that the confidentiality of information is maintained.

## 6. Confidentiality/ Non-Solicitation

A&M shall keep as confidential all non-public information received from the Company in conjunction with this engagement, except: (i) as requested by the Company or its legal counsel; (ii) as required by legal proceedings; or (iii) as reasonably required in the performance of this engagement. All non-disclosure obligations as to any part of such information shall cease to the extent that such information is or becomes public other than as a result of a breach of this provision. Termination of the Agreement or this engagement shall not affect the confidentiality provisions and non-disclosure obligations set forth in this Agreement.

The Company, on behalf of itself and its subsidiaries and affiliates and any person which may acquire all or substantially all of its assets agrees that, until two (2) years subsequent to the termination of this engagement, it will not solicit, recruit, hire or otherwise engage any employee of A&M or any of its affiliates who worked on this engagement while employed by A&M or its affiliates and who is identified on Appendix 1 hereto (which appendix may be modified by A&M from time to time, as personnel are added to the engagement, by providing an updated copy (which may be by electronic mail) to the Company) ("Solicited Person"). Should the Company or any of its subsidiaries or affiliates or any person who acquires all or substantially all of its assets extend an offer of employment to or otherwise engage any Solicited Person and should such offer be accepted, A&M shall be entitled to a fee from the party extending such offer equal to the Solicited Person's hourly client billing rate at the time of the offer multiplied by 4,000 hours for a Managing Director, 3,000 hours for a Senior Director and 2,000 hours for any other A&M employee. The Company acknowledges and agrees that this fee fairly represents the loss that A&M will suffer if the Company breaches this provision. The fee shall be payable at the time of the Solicited Person's acceptance of employment or engagement.

# 7. Covenants and Representations

The Company agrees to cause to be furnished to A&M, at the closing of each Sale Transaction, copies of such agreements, opinions, certificates and other documents directly relating to the Sale Transaction as A&M may reasonably request. The Company hereby acknowledges and agrees that A&M shall be entitled to rely upon any representations and warranties made by the Company and, furthermore, that the Company shall be deemed to have made such representations and warranties to, and for the benefit of, A&M.

A&M makes no representation or guarantee that an appropriate Sale Transaction can be formulated, that any Sale Transaction in general or any transaction in particular is the best course of action for the Company or, if formulated, that the execution of any proposed Sale Transaction will, if required, be accepted or approved by the Board of Directors (including any special committee of the Board of Directors) or the Company's stockholders and other constituents. Further A&M assumes no responsibility for the selection and approval of any strategic alternative presented to the Company or the Company's Board of Directors (including any



special committee of the Board of Directors), which determination shall rest with the Company and the Board.

The Company represents and warrants that any financial projections provided to A&M have been, or will be, prepared on a basis that reflects the best currently available estimates and judgments of the future financial results and condition of the Company. The Company will, in writing, promptly notify A&M of any material inaccuracy or misstatement in, or material omission from, any information previously delivered to A&M or any interested party.

The Company will be solely responsible for the contents of any teaser, confidential memorandum and any and all other written or oral communications provided by or on behalf of the Company to any investors and/or purchasers ("Investor Communications"). The Company represents and warrants that the Investor Communications will not contain any untrue statement of material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading. If an event occurs as a result of which the Investor Communication would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading, the Company will promptly notify A&M and A&M will suspend solicitations of prospective investors and /or purchasers until such time as the Company prepares a supplement or amendment to the applicable Investor Communications that corrects such statement(s) and/or omission(s).

The Company agrees that it will be solely responsible for ensuring that any Sale Transaction complies with applicable law. The Company understands that A&M is not undertaking to provide any legal, regulatory, accounting, insurance, or similar professional advice.

The Company agrees to promptly inform A&M of any inquiry it receives regarding a Sale Transaction so that A&M can evaluate such party and its interest in a Sale Transaction.

## 8. Indemnification

The attached Indemnification Agreement is incorporated herein by reference and shall be executed upon the acceptance of this Agreement. Termination of this engagement shall not affect these indemnification provisions, which shall remain in full force and effect.

As to the services the Company has requested and A&M has agreed to provide as set forth in this Agreement, the total aggregate liability of A&M under this Agreement to the Company and its successors and assigns, shall be limited to the actual damages incurred by the Company or its successors or assigns, respectively. In no event will A&M or any of its affiliates be liable to the Company or their successors or assigns for consequential, special or punitive damages, including loss of profit, data, business or goodwill. In no event shall the total aggregate liability of A&M under this Agreement exceed the total amount of fees received and retained by A&M hereunder.

# 9. Data Hosting

From time to time, as an accommodation to the Company, A&M will arrange for a third party data hosting provider (ie, Firmex or IntraLinks) (the "Provider") to host documents and information in a web/data room environment for the client's and/or certain authorized parties



review. For client convenience, the Provider's service is generally provided based upon an agreement between A&M and the Provider to which the Company is not a party. Notwithstanding anything herein, it is understood and agreed that A&M does not warrant and is not responsible for the Provider's conduct and services. Otherwise, should the Company wish to arrange for a direct agreement with a Provider, A&M is happy to assist in that pursuit.

## 10. Miscellaneous

No waiver, amendment or other modification of this Agreement shall be effective unless in writing and signed by each party to be bound thereby. This Agreement (together with the attached indemnity provisions): (a) shall be governed and construed in accordance with the laws of the Province of Ontario applicable therein without giving effect to such province's rules concerning conflicts of laws that might provide for any other choice of law; (b) incorporates the entire understanding of the parties with respect to the subject matter hereof; (c) may not be amended or modified except in writing executed by each of the parties hereto; (d) may be executed by facsimile or other electronic transmission and in counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same agreement; and (e) may not be assigned nor may the obligations of a party hereunder be delegated without the prior written consent of the other party hereto. The obligations of this Agreement shall be binding upon and shall only inure to the benefit of the parties hereto, the Indemnified Parties (as defined in the Indemnification agreement) and any of their successors, permitted assigns, heirs and personal representatives.

The Company acknowledges that A&M may, with the prior written consent of the Company, at its option and expense and after the announcement of the completion of a Sale Transaction place announcements and advertisements or otherwise publicize the transaction and A&M's role in it (which may include the reproduction of the Company's corporate logo), provided that the transaction terms are not disclosed. A&M will provide the Company a draft of any contemplated announcement prior to its publication and make reasonable modifications to such announcement as requested by the Company. Furthermore, if requested by A&M, the Company may include a mutually acceptable reference to A&M in any press release or other public announcement made by the Company regarding the matters described in this Agreement.

The invalidity or unenforceability of any provision in this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect pursuant to the terms hereof.

A&M and the Company have the requisite power and authority to enter into this Agreement and the transactions contemplated hereby. This Agreement has been duly and validly authorized by all necessary action on the part of the Company and has been duly executed and delivered by the Company and constitutes a legal, valid and binding agreement of the Company, enforceable in accordance with its terms.

This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof and supersedes and cancels any prior communications, understandings and agreements between the parties relating to the subject matter hereof.



A&M is delighted to accept this engagement and looks forward to working with you on this assignment. If the foregoing is acceptable to you, kindly sign the enclosed copy to acknowledge your agreement with its terms and return an executed copy of this Agreement, whereupon, after execution by A&M, it shall become a binding agreement between the parties hereto. An email of a signed original of this Agreement shall be sufficient to bind the parties whose signatures appear hereon.

Very truly yours,

ALVAREZ & MARSAL CANADA SECURITIES ULC

By: \_\_

Name: Adam Zalev Title: Managing Director

Name: Doug McIntosh Title: Managing Director

Accepted and agreed to as of the date first written above:

FirstOnSite Restoration L.P., on behalf of itself and its subsidiaries

By: Name: KEVIN WATSON

Name: KEVIN WATSO Title: CFO



# Appendix 1

# Personnel Covered by "Solicited Person" Definition in Section 6 of the Agreement

- Adam Zalev
   Doug McIntosh
   Dean Mullett
   Josh Nevsky
   Cole Kroach



#### INDEMNIFICATION AGREEMENT

This indemnity is made part of an agreement, dated October 30, 2015, (which, together with any renewals, modifications or extensions thereof, is herein referred to as the "Agreement") by and between Alvarez & Marsal Canada Securities ULC ("A&M") and FirstOnSite Restoration L.P. on behalf of itself and its subsidiaries (herein collectively "FOS" or the "Client") for services to be rendered by A&M to the Client.

#### **Indemnity Provisions**

- A. The Client agrees to indemnify and hold harmless each of A&M, its affiliates and their respective shareholders, managers, members, employees, agents, representatives and subcontractors (each, an "Indemnified Party" and collectively, the "Indemnified Parties") against any and all losses, claims, damages, liabilities, penalties, obligations, disbursements and expenses, including the costs (fees and disbursements) for counsel or others (including employees of A&M, based on their then current hourly billing rates) in investigating, preparing or defending any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing the Agreement (including these indemnity provisions), as and when incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Indemnified Parties' acceptance of or the performance or nonperformance of their obligations under the Agreement; provided, however, such indemnity shall not apply to any such loss, claim, damage, llability or expense to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from such indemnified Party's gross negligence or willful misconduct. The Client also agrees that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Client for or in connection with the engagement of A&M, except to the extent for any such liability for losses, claims, damages, liabilities or expenses that are found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from such Indemnified Party's gross negligence or willful misconduct. The Client further agrees that it will not, without the prior consent of an Indemnified Party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which such indemnified Party seeks indemnification hereunder (whether or not such Indemnified Party is an actual party to such claim, action, suit or proceeding) unless such settlement, compromise or consent includes an unconditional release of such Indemnified Party from all liabilities arising out of such claim, action, suit or proceeding.
- B. These indemnification provisions shall be in addition to any liability which the Client may otherwise have to the Indemnified Parties. In the event that, at any time whether before or after termination of the engagement or the Agreement, as a result of or in connection with the Agreement or A&M's and its personnel's role under the Agreement. A&M or any Indemnified Party is required to produce any of its personnel (including former employees) or for examination, discovery, deposition or other written, recorded or oral presentation, or A&M or any of its personnel (including former employees) or any other indemnified Party is required to produce or other written, recorded or oral presentation, or A&M or any of its personnel (including former employees) or any other indemnified Party is required to produce or otherwise review, compile, submit, duplicate, search for, organize or report on any material within such Indemnified Party's possession or control pursuant to a subpoena or other legal (including administrative) process, the Client will reimburse the Indemnified Party for its out of pocket expenses, including the reasonable fees and expenses of its counsel, and will compensate the Indemnified Party for the time expended by its personnel based on such personnel's then current hourly rate.
- C. If any action, proceeding or investigation is commenced to which any Indemnified Party proposes to demand indemnification hereunder, such Indemnified Party will notify the Client with reasonable promptness; provided, however, that any failure by such Indemnified Party to notify the Client will not relieve the Client from its obligations hereunder, except to the extent that such failure shall have actually prejudiced the defense of such action. The Company shall promptiy pay expenses reasonably incurred by any Indemnified Party in defending, participating in, or



settling any action, proceeding or investigation in which such Indemnified Party is a party or is threatened to be made a party or otherwise is participating in by reason of the engagement under the Agreement, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Indemnified Party hereby undertakes, and the Client hereby accepts its undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefor. If any such action, proceeding or investigation in which an Indemnified Party is a party is also against the Client, the Client may, in lieu of advancing the expenses of separate counsel for such Indemnified Party, provide such Indemnified Party with legal representation by the same counsel who represents the Client, provided such counsel is reasonably satisfactory to such Indemnified Party, at no cost to such Indemnified Party, provided, however, that if such counsel or counsel to the indemnified Party shall determine that due to the existence of actual or potential conflicts of interest between such Indemnified Party and the Client such counsel is unable to represent both the Indemnified Party and the Client, then the Indemnified Party shall be entitled to use separate counsel of its own choice, and the Client shall promptly advance its reasonable expenses of such separate counsel upon submission of invoices therefor. Nothing herein shall prevent an Indemnified Party from using separate counsel of its own choice at its own expense. The Client will be liable for any settlement of any claim against an Indemnified Party made with the Client's written consent, which consent shall not be unreasonably withheld.

- D. In order to provide for just and equitable contribution if a claim for indemnification pursuant to these indemnification provisions is made but it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that such indemnification may not be enforced in such case, even though the express provisions hereof provide for indemnification, then the relative fault of the Company, on the one hand, and the Indemnified Parties, on the other hand, in connection with the statements, acts or omissions which resulted in the losses, claims, damages, liabilities and costs giving rise to the indemnification claim and other relevant equitable considerations shall be considered; and further provided that in no event will the Indemnified Parties' aggregate contribution for all losses, claims, damages, liabilities and expenses with respect to which contribution is available hereunder exceed the amount of fees actually received by the Indemnified Parties pursuant to the Agreement. No person found liable for a fraudulent misrepresentation shall be entitled to contribution hereunder from any person who is not also found liable for such fraudulent misrepresentation.
- E. In the event the Client and A&M seek judicial approval for the assumption of the Agreement or authorization to enter into a new engagement agreement pursuant to either of which A&M would continue to be engaged by the Client, the Client shall promptly pay expenses reasonably incurred by the Indemnified Parties, including attorneys' fees and expenses, in connection with any motion, action or claim made either in support of or in opposition to any such retention or authorization, whether in advance of or following any judicial disposition of such motion, action or claim, promptly upon submission of invoices therefor and regardless of whether such retention or authorization is approved by any court. The Client will also promptly pay the Indemnified Parties for any expenses reasonably incurred by them, including attorneys' fees and expenses, in seeking payment of all amounts owed to it under the Agreement (or any new engagement agreement) whether through submission of a fee application or in any other manner, without offset, recoupment or counterclaim, whether as a secured claim, an administrative expense claim, an unsecured claim, a prepetition claim or a post-petition claim.
- F. Neither termination of the Agreement nor termination of A&M's engagement nor the filing of a petition or application under the Companies' Creditors Arrangement Act or Bankruptcy and Insolvency Act (Canada) (nor the conversion of an existing case to a different form of proceeding, including a receivership) shall affect these indemnification provisions, which shall hereafter remain operative and in full force and effect.



G. The rights provided herein shall not be deemed exclusive of any other rights to which the Indemnified Parties may be entitled under the certificate of incorporation or by-laws of the Company, any policy of insurance, any other agreements, any vote of shareholders or disinterested directors of the Company, any applicable law or otherwise.

#### ALVAREZ & MARSAL CANADA SECURITIES ULC

By: Name: Adam Zalev Title: Managing Director

By: Name: Doug McIntosh

Title: Managing Director

AGREED TO:

FirstOnSite Restoration L.P., on behalf of itself and its subsidiaries

By: Name: KEVIN WATSON

Name: KEVIN WAT Title: CFO



# TAB G

This is Exhibit "G" to the affidavit of Dave Demos, sworn before me on the <u>70</u> day of April, 2016

Commissioner for Taking Affidavits

Tracy Liang Chen, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires April 1, 2017.

### ESCROW AGREEMENT

Escrow Agreement dated April 21, 2016 between FirstOnSite Restoration L.P., a limited partnership formed under the laws of Ontario, by its general partner FirstOnSite G.P. Inc., a corporation incorporated under the laws of Ontario (collectively the "Vendor"), 3297167 Nova Scotia Limited, a corporation incorporated under the laws of Nova Scotia (the "Purchaser") and FTI Consulting Canada Inc., solely in its capacity as escrow agent for the Vendor and the Purchaser (the "Escrow Agent").

## **RECITALS:**

- (a) The Purchaser and the Vendor have entered into an asset purchase agreement (the "**Purchase Agreement**") dated the date hereof, pursuant to which, the Purchaser will purchase, and the Vendor will sell, substantially all the assets and operations of the Vendor;
- (b) Pursuant to the terms of the Purchase Agreement, the Purchaser has deposited with the Escrow Agent, on the date hereof, a deposit in the amount of CAD\$2,000,000 towards the satisfaction of the Purchase Price (being the "Deposit" as that term is defined in the Purchase Agreement);
- (c) Pursuant to the terms of the Purchase Agreement, the Purchaser and the Vendor have agreed that either (i) one or more letters of credit in the aggregate amount of CAD\$5,000,000 (being the "**Potential Trust Claimant L/C**" as that term is defined in the Purchase Agreement); or (ii) CAD\$5,000,000 (the "**Potential Trust Claimant Cash**", and each of the Potential Trust Claimant L/C and the Potential Trust Claimant Cash, the "**Potential Trust Claimant Reserve**") will be deposited with the Escrow Agent, to be held in escrow by the Escrow Agent and released on the terms provided in the Purchase Agreement and this Escrow Agreement; and
- (d) The Escrow Agent is willing to act as escrow agent for the sole purpose of accepting, holding and disbursing the Deposit and the Potential Trust Claimant Reserve in accordance with this Escrow Agreement.

In consideration of the above and for other good and valuable consideration, the parties agree as follows:

## Section 1 Defined Terms

The parties to this Escrow Agreement are collectively called the "parties" and individually a "party". The term "including" means "including without limitation" and the term "includes" means "includes without limitation." Capitalized terms

used and not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement. As used herein, "Escrow Amount" refers to the Deposit or the Potential Trust Claimant Reserve, as applicable in the circumstances, and "Escrow Amounts" refers to the Deposit and the Potential Trust Claimant Reserve in all cases, including any interest earned thereon.

# Section 2 Appointment of Escrow Agent

The Vendor and the Purchaser hereby appoint the Escrow Agent to act as escrow agent in accordance with this Escrow Agreement and the Escrow Agent accepts such appointment.

# Section 3 Delivery of Escrow Amounts and Receipt

- (1) The Escrow Agent acknowledges receipt from the Purchaser of the Deposit.
- (2) At the Closing, the Escrow Agent will send a written acknowledgement of receipt of the Potential Trust Claimant Reserve, upon receipt thereof, from the Purchaser at the wire instructions and/or delivery instructions provided by the Escrow Agent to the Purchaser no later than 2 Business Days in advance of Closing.
- (3) The Escrow Agent shall hold and deal with the Escrow Amounts in accordance with this Escrow Agreement.

# Section 4 Holding of Escrow Amounts

- (1) Until the Escrow Amounts are disbursed in accordance with Section 5 or Section 9, the Escrow Agent shall hold the Escrow Amounts, upon receipt, (i) in the case of the Potential Trust Claim L/C, in safekeeping; and (ii) in the case of all other applicable Escrow Amounts, in a segregated non-investment, interest-bearing bank account or accounts at a Schedule I Canadian bank and is not required to otherwise invest such funds.
- (2) The Escrow Amounts held by the Escrow Agent are at the sole risk of the Purchaser and the Vendor and, without limiting the generality of the foregoing, the Escrow Agent shall have no responsibility or liability for any diminution of the Escrow Amounts which may result from any deposit made with a Schedule I Canadian bank or otherwise absent its own bad faith or fraud.
- (3) Interest earned and paid on the Escrow Amounts (if any) will be added to and form part of the Escrow Amounts. Interest earned net of any bank charges or fees incurred on or related to the Escrow Amounts will be for the benefit of the party to whom such Escrow Amount is released and the Escrow Agent may disclose such information (including the identity of the party receiving the Escrow Amount) as may be required for tax reporting and

other purposes. The Escrow Agent shall have no responsibility for the preparation and/or filing of any tax or information return with respect to any transactions, whether or not related to the Escrow Agreement.

## Section 5 Distribution and Release of Escrow Amounts

- (1) *Deposit*: Immediately following the Closing Time, the Escrow Agent shall be irrevocably authorized and directed to, and shall within three Business Days, remit and initiate the transfer of the Deposit from escrow to a general account to hold the Deposit in trust in its capacity as court-appointed Monitor.
- (2) *Termination or Outside Date*: Subject to Section 5(5), if Closing has not occurred by the Outside Date, or in the event of a termination of the Purchase Agreement if Closing has not occurred, then upon receipt by the Escrow Agent of a written direction, the form of which is attached as Schedule "A" hereto (a "**Distribution Direction**"), duly executed by each of the Vendor and the Purchaser in accordance with Section 3.3 of the Purchase Agreement, the Escrow Agent shall be irrevocably authorized and directed to remit the Deposit in the manner set forth therein and such disbursement shall be initiated by the Escrow Agent on or before the fifth Business Day after the receipt by the Escrow Agent of such Distribution Direction.
- Potential Trust Claimant Reserve: Subject to Section 5(5), upon receipt by the (3) Escrow Agent of a Distribution Direction, duly executed by each of the Vendor and the Purchaser in accordance with Section 6.9 of the Purchase Agreement, the Escrow Agent shall be irrevocably authorized and directed to: (i) in the event that the Potential Trust Claimant Reserve is a Potential Trust Claimant L/C, to either (A) draw upon the Potential Trust Claimant L/C in the amount specified in the Distribution Direction and to remit such amount in the manner set forth therein; or (B) to return the Potential Trust Claimant L/C to the Purchaser in accordance with the delivery directions contained in the Distribution Direction; or (ii) in the event that the Potential Trust Claimant Reserve is Potential Trust Claimant Cash, to remit the amount specified in the Distribution Direction in the manner set forth therein. In each case the disbursement of any funds or the return of the Potential Trust Claimant L/C (as applicable) shall be initiated by the Escrow Agent on or before the fifth Business Day after the receipt by the Escrow Agent of such Distribution Direction. The Vendor and the Purchaser may, by joint instruction to the Escrow Agent, authorise the replacement of the Potential Trust Claimant L/C with one or more letters of credit in a lesser amount (subject to the prior consent of the Monitor), and such letters of credit shall become the new "Potential Trust Claimant L/C" for the purposes of this Escrow Agreement upon return to the Purchaser of the previously held Potential Trust Claimant L/C.

- (4) The Escrow Agent is not required to, and may not make, any determination, decision or investigation with respect to the validity of any claim or denial thereof made by the Vendor or the Purchaser and may rely solely on the terms of this Escrow Agreement and any Distribution Direction delivered to the Escrow Agent in accordance with the terms and conditions contained herein.
- (5) In the following circumstances, the Escrow Agent may (i) refrain from taking any action under this Escrow Agreement until it is authorized or directed otherwise in writing by the Vendor and the Purchaser by way of documentation that complies with the terms of this Escrow Agreement and does not require the exercise of any discretion or independent judgment on the part of the Escrow Agent, or by an order of the Court or (ii) deposit the Escrow Amounts with the Court, if:
  - (a) the Escrow Agent is uncertain as to its duties or rights under this Escrow Agreement;
  - (b) the Escrow Agent receives instructions, claims or demands from any party to this Escrow Agreement or from a third person with respect to any matter under this Escrow Agreement which, in its opinion, are in conflict or otherwise inconsistent with this Escrow Agreement or the Purchase Agreement;
  - (c) any of the parties to this Escrow Agreement, including the Escrow Agent, disagree about the interpretation of this Escrow Agreement, the Purchase Agreement (in particular with respect to the release from escrow of the Deposit or the Potential Trust Claimant Reserve) or about the rights and obligations of the Escrow Agent, or the appropriateness of an action contemplated by the Escrow Agent under this Escrow Agreement; or
  - (d) any party hereto commences a motion or other proceeding before a court of competent jurisdiction for determination of any party's rights, remedies or entitlements with respect to the Escrow Amounts.

# Section 6 Duties and Liabilities of the Escrow Agent.

(1) The Escrow Agent, as escrow agent hereunder, has no duties, obligations or responsibilities whatsoever, including any inferred or implied duties or obligations, other than those duties, obligations or responsibilities expressly set forth in this Escrow Agreement, which the parties acknowledge and agree are purely administrative in nature. For greater certainty, the Escrow Agent, is not bound by any agreement, arrangement or understanding relating to or arising out of the matters provided for in this Escrow Agreement, except as expressly set forth in this Escrow Agreement and shall be obligated to perform only such duties as are specifically set forth herein. The Vendor and the Purchaser both acknowledge that in addition to acting as escrow agent hereunder, the Escrow Agent is, or will be proposed to be, the courtappointed monitor of the Vendor, pursuant to the CCAA Proceedings.

- (2) The Escrow Agent shall not be liable for any expense, loss or damage for any action taken or omitted to be taken by the Escrow Agent, any mistake of fact or law, any error of judgment, or in the event of any loss or mis-delivery of or to any portion of the Escrow Amounts howsoever caused, except for acts of its own bad faith or fraud in each case as determined by a final nonappealable order of an court of competent jurisdiction in the province of Ontario. In addition, the Escrow Agent shall have no liability for any expense, loss or damage whatsoever arising from any cause beyond the Escrow Agent's control, including the following: (i) any delay, error, omission or default of any mail, courier or electronic transmission; (ii) the acts of any government, governmental agency or regulatory body (including any act or provision of any present or future law or regulation or governmental authority), (iii) any act of God or war; (iv) the unavailability of any wire or electronic communication facility; or (v) any act, omission or disruption of banking services or payment settlement system which affects the ability of the Escrow Agent's bank to process a wire transfer payment, electronic funds transfer payment or any other transfer of some or all of the Escrow Amounts pursuant to a Distribution Direction. Notwithstanding anything in this Escrow Agreement to the contrary: (i) in no event shall the Escrow Agent be liable for special, indirect or consequential losses or damages of any kind whatsoever (including lost profits) and (ii) the maximum liability of the Escrow Agent with respect to this Escrow Agreement and its obligations hereunder shall not, under any circumstances, exceed the total Escrow Amounts actually received by the Escrow Agent, together with interest, if any, accrued thereon in accordance with the terms of this Escrow Agreement.
- (3) The Escrow Agent may rely on, and is protected in acting upon, any Distribution Direction delivered to the Escrow Agent in accordance with Section 5 or Section 9, and may accept a Distribution Direction as sufficient evidence of the facts stated in it. The Escrow Agent is in no way bound to enquire as to the veracity, accuracy or adequacy thereof or call for further evidence (whether as to due execution, validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and is not responsible for any loss that may be occasioned by its failing to do so.
- (4) The Escrow Agent shall not be required to use, advance or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or the exercise of its rights under this Escrow Agreement.

- (5) If the Escrow Agent becomes involved in any arbitration or litigation relating to this Escrow Agreement, the Escrow Agent may comply with any decision reached through such arbitration or litigation.
- (6) Upon the Escrow Agent disbursing the Escrow Amounts or depositing the Escrow Amounts with the Court in accordance with this Escrow Agreement, the Escrow Agent will be released from its duties and obligations under this Escrow Agreement. Section 7 and Section 8 and all other provisions of this Escrow Agreement relating to the protection of the Escrow Agent survive such release of the Escrow Agent.

## Section 7 Escrow Agent's Fees, Costs and Expenses

The Vendor shall pay the Escrow Agent's reasonable fees (including legal fees), expenses and disbursements in connection with this Escrow Agreement and/or the performance of the Escrow Agent's obligations under this Escrow Agreement within 5 Business Days of such a request by the Escrow Agent.

# Section 8 Indemnification of Escrow Agent

The Vendor, on the one hand, and the Purchaser, on the other hand, shall jointly and severally indemnify and save harmless the Escrow Agent and each of its shareholders, partners, directors, officers, employees, agents, advisors (including legal counsel), representatives and affiliates (collectively, the "Indemnitees"), of and from, and shall pay for, all actions, proceedings, losses, liabilities, costs, claims, damages, fees, expenses (including legal fees and expenses on a full indemnity basis without reduction for tariff rates or similar reductions) and demands that may be imposed on, incurred by, made, asserted or brought against any of the Indemnitees or which any of them may suffer or incur as a result of, in respect of, or arising out of or in connection with this Escrow Agreement, the performance or non-performance by the Escrow Agent under this Escrow Agreement or any transactions contemplated by this Escrow Agreement, except such as shall result solely and directly from the Escrow Agent's own bad faith or fraud.

## Section 9 Resignation, Removal of Escrow Agent

- (1) The Escrow Agent may resign and be discharged from all further duties, obligations and liabilities under this Escrow Agreement at any time on 20 days' written notice to the Vendor and the Purchaser or such shorter notice as the Vendor and the Purchaser may accept as sufficient. The Vendor and the Purchaser may collectively remove the Escrow Agent from its office at any time on 30 days' written notice from all of them to the Escrow Agent.
- (2) If the Escrow Agent resigns or is removed, the Vendor and the Purchaser have 10 Business Days to collectively appoint a successor and the Escrow Agent shall deliver the Escrow Amounts as the Vendor and the Purchaser direct in writing.

- (3) If a successor is not appointed in accordance with Section 9(2), then the Escrow Agent shall cease its function at the expiration of the notice period and deposit the Escrow Amounts with the Court.
- (4) This Escrow Agreement terminates and ceases to be of any further force and effect with respect to the Escrow Agent on the date on which the Escrow Agent delivers the Escrow Amounts to a successor or disburses it in accordance with this Section 9, except that Section 7 and Section 8 and all other provisions of this Escrow Agreement relating to the protection of the Escrow Agent survive the resignation or removal of the Escrow Agent.
- (5) Upon the appointment of any successor escrow agent, the successor escrow agent will be vested with the same powers, rights, duties and responsibilities as if the successor escrow agent had been originally named as Escrow Agent under this Escrow Agreement and will be subject to removal under this Section 9. The Vendor, the Purchaser and the successor escrow agent shall execute and deliver all documents and take all such actions as may, in the reasonable opinion of the Escrow Agent, be necessary or desirable for the purpose of effectively transferring the Escrow Amounts to the successor escrow agent.

# Section 10 Termination of Escrow Agreement

This Escrow Agreement terminates and ceases to be of any further force and effect on the date on which the Escrow Agent disburses all of the Escrow Amounts in accordance with Section 5, deposits them accordance with Section 5 or Section 9, or ceases to be an Escrow Agent in accordance with Section 9, except that Section 7 and Section 8 and all other provisions of this Escrow Agreement relating to the protection of the Escrow Agent survive the termination of this Escrow Agreement.

## Section 11 Notices

- (1) Any notice, direction or other communication given regarding the matters contemplated by this Escrow Agreement, including, any Distribution Direction (each, a "Notice") must be in writing, sent by personal delivery, courier or email and addressed to the addresses set forth below:
  - (i) in the case of the Purchaser, as indicated in the Purchase Agreement.
  - (ii) in the case of the Vendor, as indicated in the Purchase Agreement.
  - (iii) in the case of the Escrow Agent, as follows:

FTI Consulting Canada Inc. TD South Tower 79 Wellington Street West Toronto Dominion Centre, Suite 2010 Toronto, ON M5K 1G8

Attention:Paul BishopEmail:paul.bishop@fticonsulting.comwith a copy to:

Goodmans LLP Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7

Attention:Robert J. Chadwick / Caroline DescoursEmail:rchadwick@goodmans.ca / cdescours@goodmans.ca

- (2) Any Notice, if given by personal delivery or by courier, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.
- (3) Sending a copy of a Notice to a party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a party.

#### Section 12 Amendments

This Escrow Agreement may only be amended, supplemented or otherwise modified by written agreement signed by all of the parties.

#### Section 13 Entire Escrow Agreement

This Escrow Agreement, and the Purchase Agreement (with respect to the Vendor and Purchaser), constitute the entire agreement between the parties with respect to the transactions contemplated in this Escrow Agreement and the Purchase Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to such transactions. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Escrow Agreement, except as specifically set forth in this Escrow Agreement and the Purchase Agreement (with respect to the Vendor and Purchaser). The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Escrow Agreement. Nothing herein shall be

deemed to limit, restrict, negate or otherwise amend the rights and obligations of the Parties as applicable, under the Purchase Agreement. For certainty, the Escrow Agent is not a party to the Purchase Agreement and shall have no obligations or liabilities thereunder. In the event of any conflict between the terms of this Escrow Agreement and the terms of the Purchase Agreement, the terms of this Escrow Agreement shall govern.

### Section 14 Enurement and Assignment

This Escrow Agreement becomes effective when executed by all of the parties. After that time, it will be binding upon and enure to the benefit of the parties and their respective successors, legal representatives and permitted assigns. Neither this Escrow Agreement nor any of the rights or obligations under this Escrow Agreement, including any right to payment, may be assigned or transferred, in whole or in part, by any party without the prior written consent of the other parties, provided however, that the Purchaser shall be permitted to assign, without the prior written consent of the Vendor or the Escrow Agreement, in circumstances assigned the benefit of all or a portion of the Purchaser to whom the Purchaser has assigned the benefit of all or a portion of the Purchase Agreement, in circumstances where (i) prior notice of such assignment is provided to the Vendor and the Escrow Agent, (ii) such assignee agrees to be bound by the terms of this Escrow Agreement to the assignment, and (iii) such assignment shall not release the Purchaser from any obligation or liability hereunder.

### Section 15 Severability

If any provision of this Escrow Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision will be severed from this Escrow Agreement and the remaining provisions will remain in full force and effect.

#### Section 16 Waiver

No waiver of any of the provisions of this Escrow Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the party to be bound by the waiver. A party's failure or delay in exercising any right under this Escrow Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right it may have.

#### Section 17 Further Assurances

On or after the date of this Escrow Agreement, the Vendor and the Purchaser shall execute and deliver such documents and take all such action as the other or the Escrow Agent may request from time to time in order to carry out the intent and

purpose of this Escrow Agreement and to establish and protect the rights, interests and remedies intended to be created in favour of the Escrow Agent.

# Section 18 Time

Time is of the essence in this Escrow Agreement.

# Section 19 Governing Law

This Escrow Agreement is governed by, and will be interpreted and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each party irrevocably attorns and submits to the non-exclusive jurisdiction of the Court, and waives objection to the venue of any proceeding in the Court or that the Court provides an inconvenient forum.

# Section 20 Counterparts

This Escrow Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Escrow Agreement.

[Signature Page Follows]

The parties have executed this Escrow Agreement.

#### **PURCHASER:**

### 3297167 NOVA SCOTIA LIMITED

By:

Name: Title:

VENDOR:

# FIRSTONSITE RESTORATION L.P. by its general partner FIRSTONSITE G.P. INC.

\_\_\_\_\_

By:

Name: Title:

**ESCROW AGENT:** 

# FTI CONSULTING CANADA INC.,

solely in its capacity as Escrow Agent, and not in its personal or corporate capacity

By:

Authorized Signatory, without individual or personal liability

# SCHEDULE A ESCROW RELEASE INSTRUCTIONS

TO: FTI CONSULTING CANADA INC., solely in its capacity as escrow agent (the "Escrow Agent")

**RE:** Escrow Agreement dated April 21, 2016 (the "Escrow Agreement") among FirstOnSite Restoration L.P., a limited partnership formed under the laws of Ontario, by its general partner FirstOnSite G.P. Inc., a corporation incorporated under the laws of Ontario , 3297167 Nova Scotia Limited and the Escrow Agent.

Capitalized terms in this Distribution Direction have the meaning ascribed to such terms in the Escrow Agreement or the Purchase Agreement, as applicable.

This Distribution Direction is being delivered pursuant to [Section 5(2) / /Section 5(3)] of the Escrow Agreement. [The Outside Date has occurred / The Purchase Agreement has been terminated and Closing has not occurred/A trust claim has been made by a Potential Trust Claimant and remains unsettled in accordance with Section 6.9 of the Purchase Agreement/ [a portion of] the Potential Trust Claimant Reserve may now be released]. The Escrow Agent is therefore hereby irrevocably authorized and directed to deliver the [Deposit and any interest thereon to / [a portion of] the Potential Trust Claimant Reserve as follows]:

<u>Purchaser</u>

[Note: Insert name/address of Purchaser, as appropriate.]

[To deliver the Potential Trust Claimant L/C to the above address.][Note: For use in connection with the return of the Potential Trust Claimant L/C only]]

[In the amount of: ●]/[Note: For use with the return to the Purchaser of Potential Trust Claimant Cash]

by wire transfer to the following:

[Account holder] c/o [Name of financial institution] [Address] Transit #: ●, Swift Code: ● Bank Code: • Account #: •

<u>Vendor</u>

[Note: Insert name/address of Vendor, as appropriate.]

[To present the Potential Trust Claimant L/C to the issuing financial institution for a draw in the amount of  $\bullet$  and to pay the proceeds][Note: for use in connection with a Potential Trust Claimant L/C draw]

[In the amount of ●][Note: for use with distributions under the Potential Trust Claimant Cash]

by wire transfer to the following:

[Account holder] c/o [Name of financial institution] [Address] Transit #: ●, Swift Code: ● Bank Code: ● Account #: ●

and to inform the financial institution that the above named person is the beneficiary of such amount and this is your good and sufficient authority for doing so.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

#### 3297167 NOVA SCOTIA LIMITED

By:

Name:

Title:

FIRSTONSITE RESTORATION L.P. by its general partner FIRSTONSITE G.P. INC.

By:

Name: Title:

# TAB H

This is Exhibit "H" to the affidavit of Dave Demos, sworn before me on the <u>70</u> day of April, 2016

Commissioner for Taking Affidavits

Tracy Liang Chen, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires April 1, 2017.

#### **DIP FACILITY AGREEMENT**

#### THIS AGREEMENT is made this 20th day of April, 2016.

#### A M O N G:

#### WELLS FARGO CAPITAL FINANCE CORPORATION CANADA, as Agent and Lender (the "Lender")

-and-

# FIRSTONSITE RESTORATION L.P. ("Borrower")

-and-

# FIRSTONSITE HOLDINGS LIMITED ("Holdings");

-and-

# FIRSTONSITE RESTORATION, INC. ("Firstonsite US");

-and-

#### FIRSTONSITE G.P. INC.

(the "GP" and, together with Holdings and Firstonsite US, the "Guarantors"; and the Borrower and the Guarantors, collectively, the "Credit Parties")

#### **RECITALS:**

WHEREAS the Lender and the Credit Parties are parties to a Credit Agreement made as of November 25, 2014 (as amended, modified, supplemented, extended, renewed, restated, or replaced, the "Credit Agreement");

AND WHEREAS, to secure the Obligations of the Credit Parties to the Lender under the Credit Agreement, the Credit Parties granted security and guarantees in favour of the Lender;

AND WHEREAS, as at the date hereof, the Borrower is in breach of certain of its obligations under the Credit Agreement and, as a result, one or more Events of Default under the Credit Agreement have occurred and are continuing;

AND WHEREAS, based on the breaches by the Borrower under the Credit Agreement, the Lender issued notices of default to the Borrower on each of December 4, 2015, January 18, 2016, February 29, 2016 and March 22, 2016 (collectively, the "Existing Defaults");

AND WHEREAS the Borrower has advised the Lender that the GP, as general partner of the Borrower, intends to commence proceedings (the "CCAA Proceedings") under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") to seek, among other things, the granting of an initial order (the "Initial Order") and the appointment of a monitor (the "Monitor");

**AND WHEREAS** commencement of the CCAA Proceedings by the GP, as general partner of the Borrower, will constitute a further Event of Default (as defined the Credit Agreement) (the "CCAA Event of Default") under the Credit Agreement;

AND WHEREAS the Borrower has advised the Lender that it intends to implement a transaction to sell substantially all of its assets, property, and undertaking in the context of the CCAA Proceedings in a sale transaction ("Sale Transaction") on the terms and conditions to be set forth in an asset purchase agreement (the "Sale APA");

AND WHEREAS the Borrower has requested, and the Lender has agreed, to provide certain debtor-in-possession ("DIP") financing to the Borrower pursuant to a DIP facility (the "DIP Facility") during the CCAA Proceedings on the terms and conditions contained herein;

AND WHEREAS the Lender issued a letter of demand for payment (the "Demand Letter") and a Notice of Intention To Enforce Security to the Borrower on April 20, 2016; and

AND WHEREAS the Lender and the Credit Parties entered into an Acknowledgement dated April 20, 2016 (as amended, modified, supplemented, extended, renewed, restated, or replaced, the "Acknowledgement") whereby, among other things, the Credit Parties acknowledged and agreed that (a) the Obligations (including Revolving Loans and Letter of Credit Accommodations) under the Credit Agreement were capped at the amount set out in the Demand Letter and in the Acknowledgement (collectively, the "Pre-Filing Obligations"), (b) no further advances shall be made by the Lender to the Borrower under the Credit Agreement, (c) the Lender shall not make available to the Borrower any further Letter of Credit Accommodations and (d) the Obligations and Post-Filing Obligations (as defined below) shall continue to be secured and guaranteed by the existing security and guarantees in favour of the Lender under the Financing Agreements.

**NOW THEREFORE** in consideration of the respective covenants of the parties hereto herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto agree as follows:

#### ARTICLE 1 INTERPRETATION

#### 1.1 <u>Definitions</u>

In this Agreement, unless the context otherwise requires, all terms defined in the Credit Agreement and not otherwise defined herein shall have the respective meanings ascribed to them in the Credit Agreement. Any reference to "Events of Default" in the Credit Agreement or in this Agreement, shall be a reference to "Events of Default" as defined in this Agreement.

# 1.2 Gender and Number

Words importing the singular include the plural and vice versa and importing gender include all genders.

# 1.3 Severability

Each of the provisions contained in this Agreement is distinct and severable, and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Agreement.

# 1.4 <u>Headings</u>

The division of this Agreement into sections and the insertion of headings, articles, sections and elauses, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

# 1.5 Entire Agreement

Except for the Financing Agreements and the additional documents provided for herein, this Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, relating to the subject matter hereof. This Agreement may not be amended or modified except by written consent executed by all the parties. No provision of this Agreement will be deemed waived by any course of conduct unless such waiver is in writing and signed by all the parties, specifically stating that it is intended to modify this Agreement.

# 1.6 <u>Governing Law</u>

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and federal the laws of Canada applicable therein.

# 1.7 <u>Currency</u>

Unless otherwise stated, all dollar amounts referenced are in Canadian dollars.

# 1.8 <u>Attornment</u>

The parties hereto irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario for all matters arising out of or in connection with this Agreement.

# 1.9 <u>Conflicts</u>

If there is any inconsistency or conflict between the terms of this Agreement and the terms of the Financing Agreements, the provisions of this Agreement shall prevail to the extent of the inconsistency, but the foregoing shall not apply to limit or restrict, in any way, the rights and

remedies of the Lender under this Agreement, the Financing Agreements, the BIA, the PPSA, other applicable law, or otherwise, other than as may be specifically contemplated herein.

#### ARTICLE 2 REPRESENTATIONS AND WARRANTIES

Each of the Credit Parties hereby represents and warrants to the Lender as follows:

- 2.1 The facts set out in the recitals to this Agreement are true and accurate in substance and in fact.
- 2.2 This Agreement has been duly authorized, executed, and delivered to the Lender by each Credit Party, is in full force and effect, and constitutes the legal, valid, and binding obligations of the Credit Parties, enforceable against them in accordance with the terms hereof.
- 2.3 Other than the Existing Defaults and the CCAA Event of Default, there is no matter, fact or event which is known to any of the Credit Parties which has not been disclosed to the Lender in writing which is likely to have a Material Adverse Effect (as defined below) on the performance of the respective obligations of each Credit Party under this Agreement, and each Credit Party has conducted such investigations as it considers reasonably necessary to make this representation and warranty.
- 2.4 The authorization, execution, and delivery and performance of this Agreement by the Credit Parties will not violate any applicable law or any order, declaration, or judgment binding on the Credit Parties, or any consent, license, permit, or approval of the Credit Parties, or any agreement to which the Credit Parties are a party, and will not result in, or require, the creation or imposition of any prohibited Lien on any assets or property of the Credit Parties except where such violation or creation or imposition would not have a material adverse effect on (i) the assets, properties, business, operations or the financial condition of the Credit Parties taken as a whole, (ii) a Credit Party's ability to pay any of the Post-Filing Obligations in accordance with the terms of this Agreement or (iii) the Lender's rights or remedies under this Agreement (a "Material Adverse Effect").

#### ARTICLE 3 THE DIP FACILITY

In reliance upon the Acknowledgement and the acknowledgements, representations, warranties, confirmations, covenants and agreements of the Credit Parties contained in this Agreement and subject to the terms and conditions of this Agreement and any documents executed in connection herewith, the Lender agrees to make the DIP Facility available to the Borrower during the CCAA Proceedings on the following terms and conditions. The DIP Facility shall in all respects operate and be administered by the Lender in the same manner as (and shall be subject to the same terms and conditions as) the Revolving Loans under the Credit Agreement, except as expressly modified by the terms and conditions of this Agreement and subject to the CCAA Proceedings and orders of the court.

WSLEGAL\048744\00095\13388934v5

### 3.1 Effective Date

The terms and conditions of this Agreement and the obligation to advance any amounts under the DIP Facility shall not become effective until the date and time at which all conditions precedent to this Agreement have been satisfied as determined by the Lender in its Permitted Discretion (the "Effective Date").

# 3.2 <u>Budget</u>

The Borrower shall provide the Lender with an eight (8) week eash flow (the "CCAA Budget") reviewed by the Monitor, which shall be filed with the court in connection with the CCAA Proceedings. The Borrower shall also provide the Lender with an eight (8) week eash flow (the "Initial Budget") reviewed by the Monitor. The Initial Budget shall reflect on a line item basis, among other things, anticipated eash flow, eash receipts and disbursements, sales, net excess availability and receivables levels. The Initial Budget and the proposed use of funds provided for therein shall be in substance satisfactory to the Lender in its Permitted Discretion. The Initial Budget and any subsequent Budget (as defined below) may only be amended and modified with the prior written consent of the Lender in its Permitted Discretion (the Initial Budget, as so amended and modified from time to time with the prior written consent of the Lender in its Permitted Discretion, is referred to herein as the "Budget"). The Initial Budget to June 10, 2016 is attached hereto as <u>Schedule "A"</u>.

# 3.3 <u>DIP Charge</u>

- (a) All advances made by the Lender to the Borrower under the DIP Facility, and all obligations, indebtedness, fees (including professional fees), costs, and expenses of the Borrower under this Agreement and the DIP Facility (collectively, the "Post-Filing Obligations") shall constitute Obligations and shall be secured by both:
  - (i) a super-priority DIP charge (the "DIP Charge") on all of the existing and after-acquired real and personal property of the Borrower (collectively, the "DIP Collateral") as provided for herein and in the Initial Order; and
  - (ii) the existing security and guarantees in favour of the Lender under the Financing Agreements.
- (b) For certainty, the DIP Charge <u>shall not</u> secure any Pre-Filing Obligations.

# 3.4 <u>Existing Cash Management System/Blocked Account Arrangements/All Cash</u> <u>Receipts to the Lender</u>

The Initial Order shall, among other things, authorize and direct the Borrower to continue to use the cash management systems, daily cash sweep and blocked account arrangements in place between the Lender and the Borrower provided for under the Credit Agreement, as modified by this Agreement, and the Borrower agrees to continue to direct all its account debtors to make all payments to the Borrower's blocked accounts with the Lender and transfer on a daily basis, at the Borrower's cost and expense, all amounts in such blocked accounts solely to the Lender's bank account (collectively, "**Post-Filing Collections**"). The Lender shall apply the Post-Filing Collections to repay the outstanding advances under the DIP Facility but the Lender shall not apply any Post-Filing Collections to repay the Pre-Filing Obligations.

#### 3.5 Maximum Availability under the DIP Facility

- (a) Notwithstanding any other term or condition of the Credit Agreement, as modified by this Agreement, the availability under the DIP Facility shall not at any time exceed the lower of:
  - (i) the sum of (without duplication and as determined by the Lender, acting reasonably, at any time):
    - (1) the Borrowing Base, <u>minus</u>:
    - (2) the Pre-Filing Obligations, <u>minus</u>:
    - (3) the outstanding advances under the DIP Facility (after the Lender has applied the Post-Filing Collections in the Lender's bank account to repay the outstanding advances under the DIP Facility), plus:
    - (4) any credit balance of Post-Filing Collections remaining in the Lender's bank account after the Lender has applied the Post-Filing Collections in the Lender's bank account to repay the outstanding advances under the DIP Facility, and
  - (ii) \$40,000,000.
- (b) Further, and notwithstanding <u>clause (a)</u> above, the aggregate maximum amount of all amounts advanced under the DIP Facility shall not exceed the operating cash flow requirements of the Borrower as set forth in the Budget.

#### 3.6 <u>Amendment Fee</u>

The Borrower shall pay to Lender a non-refundable fee to compensate the Lender for the additional time incurred and costs borne in connection with this Agreement and the provision of the DIP Facility, such fee to be in the amount of \$25,000 (the "Amendment Fee"). The Amendment Fee shall be fully earned as at the date hereof and shall be paid by the Borrower to the Lender (or, in the sole discretion of the Lender, may be debited immediately by the Lender to the account of the Borrower) upon the Termination Date (as defined below).

#### 3.7 Weekly Monitoring Fee

The Borrower shall pay to Lender a non-refundable weekly monitoring fee to compensate the Lender for the additional time to be incurred and costs to be borne in connection with the ongoing monitoring required under this Agreement, such fee to be in the amount of \$10,000 per week (the "Monitoring Fee") during cach week of the CCAA Proceedings. The Monitoring

Fee shall be fully earned as at the date hereof and shall be paid by the Borrower to the Lender (or, in the sole discretion of the Lender, may be debited immediately by the Lender to the account of the Borrower) each Friday during the currency of the CCAA Proceedings.

#### 3.8 Increase In Interest Rate

The applicable Interest Rate on all amounts advanced under the DIP Facility shall be the U.S. Prime Rate <u>plus</u> 2.50% *per annum* for U.S. Dollar advances and the Canadian Prime Rate <u>plus</u> 2.50% *per annum* for Canadian Dollar advances and the Borrower shall not be entitled to elect LIBOR Rate Loans or BA Equivalent Rate Loans under the DIP Facility.

# 3.9 <u>Unused Line Fee</u>

The Borrower shall pay to the Lender (or, in the sole discretion of the Lender, may be debited immediately by the Lender to the account of the Borrower) each Friday during the currency of the CCAA Proceedings, an unused line fee in respect of all amounts advanced under the DIP Facility at a rate equal to 0.25% *per annum* calculated upon the amount by which \$40,000,000, less the Pre-Filing Obligations, exceeds the average daily principal balance of the amounts advanced under the DIP Facility during the immediately preceding week (or part thereof).

#### 3.10 Additional Reporting

In addition to all other existing reporting requirements set out in the Credit Agreement (as modified by this Agreement), the Borrower shall provide to the Lender:

- (a) on a weekly basis within 3 Business Days after the end of each week during the CCAA Proceedings:
  - (i) a report setting out the daily roll of Accounts, plus all backup information requested by the Lender in its Permitted Discretion;
  - (ii) a duly completed and executed Borrowing Base Certificate for the Borrower;
  - (iii) a report setting out Eligible (and ineligible) Accounts, plus all backup information requested by the Lender in its Permitted Discretion;
  - (iv) a report comparing the Borrower's actual performance to that projected in the Budget for the given week, specifically identifying any negative variances in excess of ten percent (10%) in respect of each of the actual cumulative net cash flow, cash receipts and disbursements, net sales and net excess availability (noting that net excess availability is not a cumulative calculation) against each of the forecasted cumulative net cash flow, cash receipts and disbursements, net sales and net excess availability (noting that net excess availability is not a cumulative calculation) in the Budget and providing a detailed explanation for same;

- (v) updating the Budget to account for actual performance by the Borrower for the previous week; and
- (vi) such other information as the Lender may reasonably request.

# 3.11 Weekly Calls

On a weekly basis within 4 Business Days after the end of each week during the CCAA Proceedings, the Borrower shall arrange and participate in a conference call with the Lender to discuss the Borrower's previous week's performance, any negative variances in the Borrower's actual performance compared to that projected in the Budget for the previous week, updates for future weeks, and any other matters the Lender may reasonably raise.

#### 3.12 CCAA Proceedings and Other Materials to be provided to Lender

The Borrower shall deliver to the Lender copies of all court materials and documents in connection with the CCAA Proceedings, including the Sale APA and all related documents, and shall provide the Lender with a reasonable opportunity to comment thereon and ensure the same are acceptable to the Lender.

# 3.13 <u>Terms of Initial Order</u>

The Initial Order shall be in form and substance satisfactory to the Lender in its Permitted Discretion, including provisions addressing (among other things) the following:

- (a) approval of the financing provided for in this Agreement (including the DIP Facility);
- (b) the continuation of the existing cash management arrangements, daily cash sweep and blocked account arrangements in place between the Lender and Borrower, excluding the application by the Lender of any Post-Filing Collections to repay the Pre-Filing Obligations;
- (c) authorization and direction for the Borrower to make all payments of principal, interest, fees, and expenses under this Agreement to the Lender;
- (d) the DIP Charge;
- (e) an administration charge in an amount not to exceed \$1,000,000 which ranks prior to the DIP Charge and the Lender's security pursuant to the Financing Agreements; and
- (f) that the Lender shall be treated as unaffected in any plan of arrangement or compromise filed by or in respect of the Borrower under the CCAA, or under any proposal filed by or in respect of the Borrower under the BIA, with respect to any Post-Filing Obligations.

# 3.14 Compliance with Financing Agreements

Each of the Credit Parties shall strictly adhere to all of the terms, conditions and covenants of this Agreement and the Financing Agreements (as modified by this Agreement), including, without limitation, terms requiring prompt payment of principal, interest, fees, and other amounts when due.

# 3.15 <u>Cooperation</u>

Each of the Credit Parties shall cooperate fully with the Lender and its respective agents and employees by providing all information requested by the Lender in its Permitted Discretion, and by providing access to its books, records, property, assets, and personnel in the Lender's Permitted Discretion wherever they may be situated in whatever medium they may be recorded, except for confidential information, at the request of and at times convenient to the Lender, acting reasonably, which right of access shall include the right to inspect and appraise such property and assets, in the Lender's Permitted Discretion.

# 3.16 Professional Expenses

Each of the Credit Parties hereby covenants and agrees with the Lender to reimburse the Lender for all reasonable expenses incurred in connection with this Agreement and the CCAA Proceedings, including, without limitation, legal fees and other professional expenses that the Lender has incurred or will incur arising out of its dealings with the Borrower in the CCAA Proceedings, including, without limitation, the reasonable fees and expenses of Bennett Jones LLP (collectively, the "**Professional Expenses**"). The Borrower shall ensure that the Professional Expenses are provided for in the Budget. Nothing in this Agreement, shall derogate from the Credit Parties' obligation to pay for all of the Professional Expenses or shall constitute a cap on Professional Expenses. Notwithstanding the foregoing, the Lender shall add all of the Professional Expenses to the Post-Filing Obligations if the same are not paid when due. Each of the Credit Parties hereby acknowledges, confirms and agrees that the Professional Expenses which are added to the Post-Filing Obligations shall be secured and covered by the Financing Agreements and the DIP Charge.

#### 3.17 Repayment on Closing of Sale Transaction

Following the date of the Initial Order, the Borrower shall:

- (a) take reasonable steps to repay the DIP Facility and the Pre-Filing Obligations simultaneously with the closing of the Sale Transaction; and
- (b) seek a distribution order from the court prior to the closing of the Sale Transaction with respect to the repayment of the DIP Facility and the Pre-Filing Obligations, such distribution order to be in form and substance satisfactory to the Monitor and the Lender, in its Permitted Discretion.

# 3.18 Lender's Right to Appoint Financial Advisor

During the CCAA Proceedings, the Borrower agrees that the Lender may, in its sole and absolute discretion, engage an independent financial advisor (the "Lender FA") who shall be permitted to communicate fully and freely and without restriction with the Borrower and its employees, agents, and professional advisors concerning the business and affairs of the Borrower and the CCAA Proceedings. The Borrower covenants and agrees that the Lender FA shall have access to any and all such documentation and information as may be relevant to or necessary in its review in the Lender's and the Lender FA's Permitted Discretion, except for confidential information. The parties acknowledge that all costs and expenses of the Lender FA, including, without limitation, to the extent incurred in connection with any communications with the Lender, its employees, agents and professional advisors, as aforesaid, shall be for the sole account of the Borrower, shall form part of the Post-Filing Obligations, and shall be secured and guaranteed by the Financing Agreements and the DIP Charge.

# 3.19 Events of Default

In addition to the "Events of Default" provided for in Section 9.1 of the Credit Agreement (other than (1) Section 9.1(a), provided, however, that the Borrower shall pay all Obligations as set out in this Agreement; (2) Section 9.1(b) with respect to Section 5.6, provided, however, that the use of proceeds under the DIP Facility shall be in accordance with this Agreement; (3) Section 9.1(b) with respect to Section 8.7(b), provided, however, that any sales, assignments, leases, transfers, abandonment, or other dispositions to other Persons shall be in accordance with this Agreement, the Sale APA, and orders of the court; (4) Section 9.1(b) with respect to Section 8.8, but only to the extent of Liens as set out in this Agreement or orders of the court; (5) Section 9.1(b) with respect to Section 8.9, but only to the extent of Debts as set out in this Agreement or orders of the court; (6) Section 9.1(b) with respect to Section 8.18, provided, however, that the Borrower shall be obliged to pay all costs and expenses as set under this Agreement; (7) Section 9.1(d); (8) Section 9.1(f), with respect to Section 7.4, but only to the extent that Liens as set out in this Agreement or orders of the court rank prior to the Lender's Liens on the Collateral; (9) Section 9.1(1), but only with respect to the CCAA Proceedings; (10) Section 9.1(m); (11) Section 9.1(q); and (12) Section 9.1(s), but only to the extent that Liens as set out in this Agreement or orders of the court rank prior to the Lender's Liens on the Collateral), the following shall constitute Events of Default under the Credit Agreement and this Agreement (collectively, the "Events of Default"):

- (a) the occurrence of any negative variances in excess of ten percent (10%) in respect of the actual cumulative net cash flow against the forecasted cumulative net cash flow in the Budget (excluding any negative variance in respect of Professional Expenses of the lawyers for the Lender, Bennett Jones LLP);
- (b) the occurrence of any negative variances in excess of fifteen percent (15%) in respect of the net excess availability against the forecasted net excess availability in the Budget (noting, in both cases, that net excess availability is not a cumulative calculation);

- (c) the Sale APA that is approved by the Court is not in form and substance satisfactory to the Lender;
- (d) the Sale Transaction has not closed and the DIP Facility has not been paid in full to the Lender in each case by the date which is six (6) weeks following the date of the Initial Order, as may be extended with the consent of the Lender in its sole discretion;
- (e) entry of an order which stays, modifies (other than extensions of the Initial Order), or reverses the Initial Order or which otherwise materially adversely affects the effectiveness of the Initial Order without the express written consent of the Lender;
- (f) the entry of any order without the prior written consent of the Lender which provides relief from the automatic stay made under the Initial Order or the CCAA which permits any creditor to realize upon, or to exercise any right or remedy with respect to, any asset of the Borrower or to terminate any license, franchise, or similar agreement, where the exercise of such right or remedy or such realization or termination would reasonably be likely to have a Material Adverse Effect as determined by the Lender in its Permitted Discretion;
- (g) the filing of any application by the Borrower without the express prior written consent of the Lender for the approval of any super-priority claim or debtor in possession financing in the CCAA Proceedings which is *pari passu* with or senior to the priority of the DIP Charge, or there shall arise any such super-priority claim under the CCAA;
- (h) the payment or other discharge by the Borrower of any pre-petition indebtedness, except as expressly permitted hereunder, or generally permitted within the category and range in the Budget or by order in the CCAA Proceedings, to which payment or discharge the Lender has not provided its written prior consent;
- (i) the failure of the Borrower (i) to comply with each and all of the terms and conditions of the Initial Order, or (ii) to materially comply with any other order entered in the CCAA Proceeding, if such failure would reasonably likely result in a Material Adverse Effect as determined by the Lender in its Permitted Discretion;
- (i) the filing of any motion by the Borrower or the entry of any order in the CCAA Proceeding: (A) permitting any financing (other than ordinary course trade credit or unsecured debt) for the Borrower from any Person other than the Lender, (B) granting a Lien on, or security interest in any of the Collateral of the Borrower equal or superior status to that of the DIP Charge, other than with respect to this Agreement or as otherwise permitted herein, or (C) dismissing the CCAA Proceedings, or (ii) the filing of any motion by any Person (other than the Borrower) regarding matters specified in the foregoing <u>clause (i)</u> that is not

immediately stayed and dismissed or denied within forty-five (45) days of the date of the filing of such motion;

- (k) the breach of any term, covenant or agreement by any Credit Party in this Agreement; and
- (1) any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower, any other Credit Party herein, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made.

#### 3.20 <u>Termination</u>

Notwithstanding any other term or condition of the Credit Agreement, the DIP Facility shall terminate the earlier of: (a) the closing of the transaction contemplated in the Sale APA and (b) the date which is six (6) weeks following the date of the Initial Order, as may be extended with the consent of the Lender in its sole discretion (the earlier date being the "Termination Date").

#### 3.21 Remedies Upon Event of Default and on Termination Date

If any Event of Default occurs and is continuing, or upon the Termination Date, the Lender may take any or all of the following actions, subject to the Initial Order:

- (a) declare the DIP Facility to be terminated, whereupon the DIP Facility shall be terminated;
- (b) declare the Post-Filing Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Credit Parties; and
- (c) exercise any or all of its rights and remedies available to it under this Agreement, the other Financing Agreements, the BIA, the PPSA, other applicable law, or otherwise.

#### ARTICLE 4 CONDITIONS PRECEDENT

This Agreement shall be (and, without limitation, the obligation of the Lender to make any advances to the Borrower under the DIP Facility is) subject to the satisfaction of each of the following conditions precedent:

- 4.1 The Lender shall have received a copy of this Agreement executed by each of the Credit Parties.
- 4.2 The Lender shall have received and be satisfied, in its Permitted Discretion, with the Budget, and all such other information (financial or otherwise) reasonably requested by the Lender.

- **4.3** No Event of Default shall exist, and no event or circumstance which could reasonably be expected to result in a Material Adverse Effect shall have occurred.
- 4.4 There shall not be pending any litigation or other proceeding, other than the CCAA Proceedings, the result of which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or form the basis for an appeal of the Initial Order.
- 4.5 All application materials and documents, including any service list, in connection with the CCAA Proceedings shall be in form and substance satisfactory to the Lender, in its Permitted Discretion.
- 4.6 The Initial Order shall be in form and substance satisfactory to the Lender, in its Permitted Discretion.
- 4.7 The Initial Order shall have been entered and be in full force and effect and shall not have been reversed, vacated, or stayed, subject to appeal or modified or superseded or negatively impacted in any way in the Lender's Permitted Discretion without the Lender's prior written consent, and all necessary consents and approvals to the transaction contemplated in this Agreement and in the Initial Order shall have been obtained to the satisfaction of the Lender in its Permitted Discretion.
- **4.8** Prior to each advance under the DIP Facility, the Borrower shall provide the Lender with a drawdown certificate certifying, among other things, that the advance requested is within the category and range in the Budget for the applicable time period.

#### ARTICLE 5 GENERAL PROVISIONS

#### 5.1 Effect of this Agreement

Except as expressly modified pursuant hereto, no other changes or modifications to the terms of the Financing Agreements are intended or implied.

#### 5.2 Financing Agreement

This Agreement is a Financing Agreement.

#### 5.3 <u>Further Assurances</u>

The parties hereto shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable by the Lender to give effect to the provisions and purposes of this Agreement and the DIP Charge all at the sole expense of the Borrower.

# 5.4 Binding Effect

This Agreement shall be binding upon and enure to the benefit of each of the parties hereto and their respective successors, heirs, executors, administrators, permitted assigns and legal representatives.

# 5.5 Survival of Representations and Warranties

All representations and warranties made in this Agreement or any other document furnished in connection herewith shall survive the execution and delivery of this Agreement and such other document delivered in connection herewith, and no investigation by the Lender or any closing shall affect the representations and warranties or the rights of the Lender to rely upon such representations and warranties.

# 5.6 <u>No Novation</u>

This Agreement will not discharge or constitute novation of any debt, obligation, covenant or agreement contained in the Financing Agreements but the same shall remain in full force and effect save to the extent amended by this Agreement.

# 5.7 Execution in Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which taken together will be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or portable document format ("PDF") form and the parties adopt any signatures received by a receiving fax machine or by emailed PDF as original signatures of the parties; provided, however, that any party providing its signature in such manner will promptly forward to the other party an original of the signed copy of the Agreement which was so faxed or emailed.

[REMINDER OF PAGE DELIBERATELY LEFT BLANK]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above mentioned.

#### WELLS FARGO CAPITAL FINANCE CORPORATION CANADA, as Agent and Lender

By: Name: Title:

FIRSTONSITE RESTORATION L.P., by its general partner FIRSTONSITE G.P. INC.

By: Name: Kern Watson Title: CFO

#### FIRSTONSITE RESTORATION, INC.

By: Name: Title: CF0

#### FIRSTONSITE HOLDINGS LIMITED

By: Name: Kevin Watson

Title: CFO

FIRSTONSITE G.P. INC.

By: Kevin Name: U ation

Title: CFO

WSLEGAL\048744\00095\13388934v5

# SCHEDULE "A"

# Initial Budget

See attached.

WSLEGAL\048744\00095\13388934v5

# TAB I

This is Exhibit "I" to the affidavit of Dave Demos, sworn before me on the 20 day of April, 2016 er( Commissioner for Taking Affidavits

Tracy Liang Chen, a Commission and Market Province of Ontario, while a Studemt-at-Law. Expires April 1, 2017.

November 17, 2015

# PERSONAL AND CONFIDENTIAL DELIVERED BY HAND

Mr. 🛛

Dear •,

#### **Re:** Incentive Bonus Arrangement

FirstOnSite Restoration L.P. (the "**Company**") is commencing a sale and investment solicitation process. It is understood that certain key executives will be essential in assisting the Company and its financial advisor during the sales process. As the Company enters this challenging period for its operations, the Company would like to assure you that your contributions to the Company continue to be valued.

As an inducement for certain select employees of the Company (including yourself) to remain in the Company's employ between the date hereof and a Change of Control (as defined on Schedule "A" herein), the Company will establish a retention bonus pool based on the Enterprise Value of Sale (as defined on Schedule "A" herein) of the Company as at the date of the closing of the Change of Control. The terms that govern your participation in the retention bonus pool are set out below:

- 1. **Defined Terms**. Capitalized terms not defined elsewhere in this letter shall have the meanings ascribed to them on Schedule "A" attached hereto.
- 2. Term of Agreement. The term of this Agreement shall commence November 17, 2015 and shall expire on June 30, 2016 provided, however, if an exclusivity arrangement has been entered into with third party prior to June 30, 2016, as a result of which arrangement, a transaction constituting a Change of Control is later consummated then the Term shall be extended to the closing date of the Change of Control but no later than [December 31, 2016] (the "Permitted Extended Term").
- 3. **Payment of Retention Bonus**. Subject to the terms and conditions of this letter agreement ("**Agreement**"), in the event of a Change of Control prior to the expiration of the Term or the Permitted Extended Term, the Company agrees to pay to you a retention bonus (the

"**Retention Bonus**") in an amount equal to 25% of the retention bonus pool (as calculated in accordance with Section 5 herein).

- 4. **Guaranteed Amount of Retention Bonus Pool**. Regardless of the Enterprise Value of Sale at the closing of the Change of Control, the retention bonus pool will be guaranteed to be \$600,000.00 (the "**Guaranteed Amount**") subject to increases in accordance with Section 5 below.
- 5. **Calculation of Retention Bonus Pool**. Subject to the Guaranteed Amount, the amount of the retention bonus pool shall be based on the Enterprise Value of Sale. There is no cap to the retention bonus pool. The retention bonus pool shall be calculated and adjusted as follows:
  - (a) if the Enterprise Value of Sale is equal to or less than
     \$30 million it shall be deemed to be \$30 million and the
     Guaranteed Amount will be the retention bonus pool;
  - (b) if the Enterprise Value of Sale is greater than \$30 million but less than \$40 million then the retention bonus pool (which for certainty has a baseline equal to the Guaranteed Amount) shall be increased by an amount equal to 3.5% of the aggregate amount of the Enterprise Value of Sale in excess of \$30 million; and
  - (c) if the Enterprise Value of Sale is greater than \$40 million then the retention bonus pool shall be further increased by an additional amount equal to 5% of the aggregate amount of the Enterprise Value of Sale in excess of \$40 million.

For certainty and notwithstanding any adjustment to the retention bonus pool amount, your percentage entitlement to payment from the retention bonus pool shall not be adjusted and shall at all times remain at the percentage set forth in Section 3. For illustrative purposes only, an example calculation is attached as Schedule "B".

6. **Conditions for Payment of Retention Bonus.** In order to receive a Retention Bonus, you must abide by the following terms and conditions:

- (a) In addition to the obligations you owe to the Company regarding confidential information, you shall not disclose to anyone other than as required to support the Company in consummating the Change of Control the fact that investigations or negotiations concerning a sale transaction are taking place or the terms, conditions or other facts relating to such transaction, including the existence or terms of this Agreement (other than any disclosure required by law);
- (b) At the closing date of the Change of Control you cannot have (i) resigned or notified the Company of the resignation of your employment with the Company, or (ii) been terminated for Cause; and
- (c) You will perform the duties of your position diligently, faithfully and honestly and use best efforts to perform any additional duties as may be required from time to time to fully assist and support the Company in consummating the Change of Control.
- 7. **Timing of Payment**. Any Retention Bonus due to you under this Agreement shall be made on the closing of the transaction constituting the Change of Control.
- 8. General.
  - (a) **Currency.** All references in this Agreement to dollars are expressed in Canadian currency.
  - (b) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations and understandings, both written and oral, between the parties with respect to the subject matter hereof.
  - (c) **Withholding.** The Company shall be entitled to make such deductions and withholdings from any payments hereunder as may be required by applicable law.

- (d) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (e) **Counterparts.** This Agreement may be executed in any number of counterparts (including counterparts by facsimile) and both counterparts taken together shall be deemed to constitute one and the same instrument. Any party executing and delivering a copy of this Agreement by facsimile shall promptly deliver an original to the other party promptly following such facsimile delivery.

For certainty, the decision to enter into a transaction that constitutes a Change of Control shall be made by the Board taking into account all relevant factors including the purchase price offered by any such potential bidder. The Board may, but is under no obligation to complete the transaction constituting a Change of Control. The Board's decision with respect to a Change of Control shall be final and binding and you shall have no claim against the Board or the Company in respect of such decision.

Please review these terms carefully and if you have any questions please let me know. We look forward to your contribution to this process.

Yours truly,

FirstOnSite Restoration L.P. by its general partner FirstOnSite GP Inc.

By signing and accepting this Agreement, you acknowledge that the Company has afforded you the opportunity to obtain independent legal advice in respect of this Agreement.

Agreed and accepted this

day of

, 2015.

Witness

# SCHEDULE "A"

# **DEFINITIONS:**

"Board" means the Board of Directors of the Company;

"Cause" has the meaning ascribed thereto in your written employment agreement or, in the absence of such written employment agreement (of if there is no such definition therein), shall mean any act or omission that permits the termination of the your employment without notice or of termination or payment in lieu thereof in accordance with common law;

"**Change of Control**" is defined to include any of the following transactions (whether in one or **a** series of related tr**a**nsactions):

- (f) a merger of the Company,
- (g) a sale of at least 50% of the equity securities of the Company (whether from the Company or security holders of the Company), whether by sale, exchange, tender offer or otherwise,
- (h) any transaction which results in a third party having the right to elect a majority of the members of the Board of Directors of the Company,
- a sale (including, without limitation, by sale, lease, license, exchange or other acquisition) of all or a substantial amount of the assets (tangible or intangible) of the Company,
- (j) any recapitalization or restructuring (including spin-off or split-off of assets) of the Company, or
- (k) any other form of disposition which results in the effective disposition of all or a substantial amount of the business and operations of the Company.

"Enterprise Value of Sale" shall mean, based on the consideration paid by a third party in the transaction constituting a Change of Control, the amount that such third party valued 100% of the business of the Company on a cash-free, debt-free basis, and assuming a normalized level of working capital.

# TAB J

This is Exhibit "J" to the affidavit of Dave Demos, sworn before me on the  $2^{\circ}$  day of April, 2016 A. Commissioner for Taking Affidavits

Trage Long Chen, a Commissioner, etc., Province of Ontario, while a Student of Lew. Expires April 1, 2017.

# [FOS Letterhead]

# [Name of Employee] [Address of Employee]

#### April •, 2016

As FirstOnSite G.P. Inc. ("FirstOnSite GP"), the general partner of FirstOnSite Restoration L.P. (the "Limited Partnership"), is in a process that may lead to a sale of its business, FirstOnSite GP would like to assure you that your contributions to the business and sales process continue to be valued. We truly appreciate your continued hard work and importance to the business of the Limited Partnership, particularly at this time.

In consideration of your ongoing employment with the Limited Partnership, FirstOnSite GP is offering you  $[\bullet]$ , being 90% of your annual base salary, which is in addition to your regular salary and existing benefits, which payment will be made to you as soon as practicable after the closing by FirstOnSite GP of a transaction to sell all or substantially all of the assets of the Limited Partnership (the "Sale Transaction").

The proposal outlined above was approved by the Board of Directors of FirstOnSite GP (the "**Board**") on behalf of the Limited Partnership on March 29, 2016.

In order to receive the amount described above: (a) you must not have disclosed these arrangements to <u>any</u> person other than your personal representatives and legal advisors (other than any disclosure required by law); (b) at the time of closing of the Sale Transaction, you must not have (i) resigned or notified FirstOnSite GP (or the Limited Partnership) of your resignation; (ii) been terminated or notified of termination, for any reason, with cause; or (iii) at any times between now and closing of the Sale Transaction, failed to perform your duties and responsibilities diligently, faithfully and honestly; and (c) you must have, at all times between now and the closing of the Sale Transaction, performed your duties as an employee of the Limited Partnership in a manner (to the extent under your reasonable control) that facilitates the closing of the Sale Transaction and maximizes the proceeds to the Limited Partnership of that transaction, including by:

- continuing to faithfully lead the region for which you are responsible in the ordinary course and consistent with normal business practices and carrying out those responsibilities necessary to perform the functions associated with your position;
- overseeing billings, sales and collections in a manner that promotes the liquidity and working capital of the business;
- identifying and pursuing sales and marketing opportunities in a manner that promotes billings and sales;
- empowering the teams and branches in your region to assume ownership and accountability for customer satisfaction and targeted financial results;
- refraining from engaging in any pattern of conduct that involves the making or publishing of written or oral statements or remarks (including, without limitation,

the repetition or distribution of derogatory rumours, allegations, negative reports or comments) which are disparaging, deleterious or damaging to the integrity, reputation or goodwill of the Limited Partnership, its affiliates and partners or its and their management; and

• complying with the obligations in your employment agreement.

For greater certainty, the decision to enter into a Sale Transaction shall be made by the Board taking into account all relevant factors, including the purchase price offered by any such potential purchaser. The Board may but is under no obligation to complete a Sale Transaction. The Board's decision with respect to a Sale Transaction shall be final and binding and you shall have no claim against the Board or the Limited Partnership in respect of such decision.

We want to thank you for your dedication and support and look forward your continued contributions as we work our way through this transition period.

Sincerely,

FirstOnSite Restoration L.P. by is general partner, FirstOnSite G.P. Inc.

Accepted by:

[Name of Employee]

[Title of Employee]

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

Court File No: \_\_\_\_\_

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

# ONTARIO SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

# AFFIDAVIT OF DAVE DEMOS (SWORN APRIL 20, 2016)

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

**Maria Konyukhova LSUC#: 52880V** Tel: (416) 869-5230 Email: mkonyukhova@stikeman.com

**Vlad Calina LSUC#: 69072W** Tel: (416) 869-5202 Email: vcalina@stikeman.com Fax: (416) 947-0866

Lawyers for the Applicant

# TAB 3

,

Court File No.

#### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

) )

THE HONOURABLE MR	
JUSTICE NEWBOULD	

THURSDAY, THE 21st

DAY OF APRIL, 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

#### 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 Torquest Partners Fund II, L.P. (and related entities) 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 \$1,000,0000 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 theMonitor 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 <u>firstonsite@fticonsulting.com</u> and copy, Goodmans LLP, counsel to the monitor at: <u>cdescours@goodmans.ca</u> and Applicant c/o Stikeman Elliott LLP: <u>hmurray@stikeman.com</u> 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 ProvincialLien 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'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
- (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, under the credit agreement dated November 25, 2014 (as amended) ("Wells Pre-filing Security") and the security interests granted in favour of BDC 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, with notice of this Application, provided that the Lien Charge shall rank subordinate to the Wells Pre-filing Security and BDC Pre-filing Security. The Applicants and the chargees entitled to the benefit of the Charges (the "Chargees") shall be entitled to seek priority of the Charges ahead of all or certain additional Encumbrances on a subsequent motion on notice to those parties likely to be affected thereby.

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 (collectively, an "Agreement") which binds FirstOnSite, agreement 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 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 <u>http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/</u>) 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 <a href="http://cfcanada.fticonsulting.com/firstonsite">http://cfcanada.fticonsulting.com/firstonsite</a>.

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.

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

Court File No: \_\_\_\_\_

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

ONTARIO SUPERIOR COURT OF JUSTICE - COMMER( LIST

Proceeding commenced at Toronto

# **INITIAL ORDER**

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

**Maria Konyukhova LSUC#: 52880V** Tel: (416) 869-5230 Email: mkonyukhova@stikeman.com

**Vlad Calina LSUC#: 69072W** Tel: (416) 869-5202 Email: vcalina@stikeman.com Fax: (416) 948-0866

Lawyers for the Applicant

# TAB 4

Court File No. ——

# ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

)

THE HONOURABLE — <u>MR</u>

WEEKDAYTHURSDAY, THE #21st

DAY OF MONTHAPRIL, 20YR 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 [APPLICANT'S NAME] (the "FIRSTONSITE G.P. INC.]

Applicant")

# INITIAL ORDER

THIS APPLICATION, made by the Applicant<u>FirstOnSite G.P. Inc. ("FirstOnSite GP" or "the Applicant")</u>, 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 "<u>CCAA</u>") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of [NAME]David\_Demos sworn [DATE]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 [NAMES], no one appearing for [NAME]<sup>+</sup>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 Torquest Partners Fund II, L.P. (and related entities) 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-of [NAME] sworn [DATE], filed, and on reading the consent of [MONITOR'S NAME]FTI to act as the Monitor<sub>5</sub> (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<sup>2</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

# APPLICATION

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

## PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant<u>FirstOnSite GP</u> 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 <u>""Plan""</u>).

<sup>&</sup>lt;sup>1</sup>-Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).

<sup>&</sup>lt;sup>2</sup> If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an ordervalidating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be grantedin appropriate circumstances.

#### POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant<u>FirstOnSite</u> 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, the <u>ApplicantFirstOnSite</u> shall continue to carry on business in a manner consistent with the preservation of its business (the ""Business"") and Property. <u>The ApplicantFirstOnSite</u> 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 the ApplicantFirstOnSite shall be entitled to continue to utilize the central cash management system<sup>3</sup> currently in place as described in the <u>Demos</u> Affidavit of [NAME] sworn [DATE] or<u>or</u>, with the consent of the Monitor and the <u>DIP Lender</u>, replace it with another substantially similar central cash management system (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 the ApplicantFirstOnSite 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 <u>FirstOnSite and</u> the <u>ApplicantDIP Lender</u>, 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

<sup>&</sup>lt;sup>3</sup> This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.

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 the Applicant, 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-and, 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 the <u>ApplicantFirstOnSite</u> 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, the Applicantand 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 the ApplicantFirstOnSite 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; and
- (b) payment for goods or services actually supplied to the <u>ApplicantFirstOnSite</u> 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. 8. THIS COURT ORDERS that the Applicant<u>FirstOnSite</u> 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 the <u>ApplicantFirstOnSite</u> in connection with the sale of goods and services by the <u>ApplicantFirstOnSite</u>, 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 the Applicant<u>FirstOnSite</u>.

10. 9.—THIS COURT ORDERS that until a real property lease is disclaimed for resiliated<sup>†4</sup> in accordance with the CCAA, the Applicant<u>FirstOnSite</u> 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 the <u>ApplicantFirstOnSite</u> and the landlord from time to time (<u>""Rent""</u>), 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 be paid.

11. 10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicantbut 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 the ApplicantFirstOnSite

<sup>&</sup>lt;sup>4</sup>-The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise beremoved.

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. <u>11.</u>-**THIS COURT ORDERS** that the <u>ApplicantFirstOnSite</u> shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the <u>DIP Agreement and the Definitive Documents (both</u> as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, fand to dispose of redundant or non-material assets not exceeding \$•150,000 in any one transaction or \$•1,000,0000 in the aggregate]<sup>5</sup>;
- (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) (c) 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,

<sup>&</sup>lt;sup>5</sup> Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection-36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not-have occurred or be available at the initial CCAA hearing.

all of the foregoing to permit the <u>ApplicantFirstOnSite</u> to proceed with an orderly restructuring of the Business (the <u>"</u>Restructuring").

13. 12. THIS COURT ORDERS that the Applicant <u>FirstOnSite</u> shall provide each of the relevant landlords with notice of the Applicant First On Site'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 the Applicant First On Site'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 the Applicant <u>FirstOnSite</u>, or by further Order of this Court upon application by the Applicant<u>FirstOnSite</u> on at least two (2) days notice to such landlord and any such secured creditors. If the ApplicantFirstOnSite disclaims for 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 for resiliation of the lease shall be without prejudice to the Applicant'EirstOnSite's claim to the fixtures in dispute.

14. 13. 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 the ApplicantFirstOnSite 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 the ApplicantFirstOnSite 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 THE APPLICANT<u>FIRSTONSITE</u> OR THE PROPERTY

15. <u>14.</u>—**THIS COURT ORDERS** that until and including [DATE MAX. <u>30</u>-DAYS].<u>May 20, 2016</u>, or such later date as this Court may order (the "<u>"Stay Period</u>"<u>"</u>), no proceeding or enforcement process in any court or tribunal (each, a "<u>"Proceeding</u>"<u>"</u>) shall be commenced or continued against or in respect of the <u>ApplicantFirstOnSite</u> or the Monitor, or affecting the Business or the Property, except with the written consent of the <u>ApplicantFirstOnSite</u> and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the <u>ApplicantFirstOnSite</u> 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. <u>15.</u>**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 <u>""Persons</u>" and each being a <u>""Person""</u>) against or in respect of the <u>ApplicantFirstOnSite</u> or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the <u>ApplicantFirstOnSite</u> and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the <u>ApplicantFirstOnSite</u> to carry on any business which the <u>ApplicantFirstOnSite</u> is not lawfully entitled to carry on, <u>or (ii)</u> affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA. (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### NO INTERFERENCE WITH RIGHTS

17. 16.-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 the <u>ApplicantFirstOnSite</u>, except with the written consent of the <u>ApplicantFirstOnSite</u> and the Monitor, or leave of this Court.

# CONTINUATION OF SERVICES

18. 17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant <u>FirstOnSite</u> 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 <u>companies</u>, utility or other services to the Business or the Applicant<u>FirstOnSite</u>, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant First On Site, and that the Applicant First On Site shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses-and, 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 the ApplicantFirstOnSite in accordance with normal payment practices of the Applicant <u>FirstOnSite</u> or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant <u>FirstOnSite</u> 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 and copy, Goodmans LLP, counsel to the monitor at: cdescours@goodmans.ca and Applicant c/o Stikeman Elliott LLP: 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. <u>THIS COURT ORDERS that upon serving a Lien Notice, the Lien Claimant</u> 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. <u>THIS COURT ORDERS that nothing in paragraphs 19 to 22 hereof shall be</u> <u>construed as limiting or prejudicing the rights of the Monitor, FirstOnSite or any other</u> <u>interested party from challenging:</u>

- (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) <u>a Lien Claimant's entitlement to a Lien Charge under paragraph 21 of this</u> 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. 18.-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 the

- 12 -

Applicant. <u>FirstOnSite</u>. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>6</sup>

# PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

26. 19. 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.

#### DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,<sup>7</sup> except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

# ENGAGEMENT OF THE FINANCIAL ADVISOR

27. 21. THIS COURT ORDERS that the directors and officers of the Applicant<u>THIS</u> COURT ORDERS that the agreement dated as of October 31, 2015, engaging Alvarez & Marsal Canada Securities ULC (the "Financial Advisor") as financial advisor to

<sup>&</sup>lt;sup>6</sup> This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).

<sup>&</sup>lt;sup>7</sup> The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.

<u>FirstOnSite, a copy of which is attached as Exhibit "F" to the Demos Affidavit (the</u> <u>"A&M Engagement Letter"), and the retention of the Financial Advisor under the</u> <u>terms thereof are hereby approved, including, without limitation, the Success Fee (as</u> <u>the term is defined in the A&M Engagement Letter). The Financial Advisor shall be</u> entitled to the benefit of and <u>areis</u> hereby granted a charge (the <u>"Directors'</u><u>"Financial</u> <u>Advisor's Charge</u><u>"</u>)<sup>8</sup> on the Property, which charge shall not exceed an aggregate amount of <u>1.1 million</u>, as security for the <u>indemnity provided in paragraph</u> [20] of this <u>Order. Success Fee.</u> The <u>Directors'Financial Advisor's</u> Charge shall have the priority set out in paragraphs [38]49 and [40]51 herein.

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [20] of this Order.

# APPOINTMENT OF MONITOR

28. 23. THIS COURT ORDERS that [MONITOR'S NAME]ETI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ApplicantEirstOnSite with the powers and obligations set out in the CCAA or set forth herein and that the ApplicantEirstOnSite and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the ApplicantEirstOnSite pursuant to this Order, and shall co-operate 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.

<sup>&</sup>lt;sup>8</sup>-Section-11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

29. 24. 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 the Applicant'<u>FirstOnSite'</u>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 the Applicant<u>FirstOnSite</u>, to the extent required by the Applicant<u>FirstOnSite</u>, in its dissemination, to the DIP Lender and its counsel on a [TIME INTERVAL] basis of financial and other information as agreed to between the Applicant<u>FirstOnSite</u> and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with and as contemplated to be provided to the DIP Lender\_pursuant to the DIP Agreement and the Definitive Documents;
- (d) advise the Applicant<u>FirstOnSite</u> in its preparation of the Applicant<u>FirstOnSite</u>'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 <u>[TIME-INTERVAL]weekly</u>, or as otherwise agreed to by the DIP Lender;
- (e) advise the <u>ApplicantFirstOnSite</u> in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant<u>FirstOnSite</u>, to the extent required by the Applicant<u>FirstOnSite</u>, 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

ł

documents of the <u>ApplicantFirstOnSite</u>, to the extent that is necessary to adequately assess the <u>Applicant'FirstOnSite's</u> 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. 25. 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.

<u>32.</u> 26.—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. 27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant<u>FirstOnSite</u> and the DIP Lender with information provided by the Applicant<u>FirstOnSite</u> 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 the Applicant<u>FirstOnSite</u> 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 the Applicant<u>FirstOnSite</u> may agree.

34. 28. 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. 29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant<u>FirstOnSite</u> shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the-

Applicant<u>FirstOnSite</u> as part of the costs of these proceedings. The Applicant<u>FirstOnSite</u> is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the <u>ApplicantFirstOnSite</u> on a <u>[TIME\_INTERVAL]weekly</u> basis and, in addition, the <u>ApplicantFirstOnSite</u> is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the <u>ApplicantFirstOnSite</u>, retainers in the amount[s] of \$• [, respectively,]100,000 each to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. 30.-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. 31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counseland 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\_1 million, as security for their the professional fees and disbursements, incurred at the standard rates and charges, of the Monitor and such counsel, 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 [38]49 and [40]51 hereof.

#### **DIP FINANCING**

38. 32. THIS COURT ORDERS that the Applicant<u>FirstOnSite</u> is hereby authorized and empowered to obtain and borrow under a credit facility from [DIP\_LENDER'S NAME] (the "DIP\_Lender"(the "DIP\_Facility") from Wells Fargo Capital Finance Corporation Canada (the "DIP\_Lender"), in order to finance the Applicant'<u>FirstOnSite's</u> working capital requirements and other general corporate purposes<u>, expenses relating</u> to these CCAA proceedings, and capital expenditures, provided that borrowings under such eredit facility<u>DIP Facility shall not exceed the availability under the DIP Facility</u> and, in any event, shall not exceed \$• unless permitted by15 million, subject to the further Order of this Court.

39. 33. THIS COURT ORDERS THAT such credit facility that the DIP Facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed<u>DIP</u> Agreement attached to the Demos Affidavit as Exhibit "H" (the "DIP Agreement"), and the Definitive Documents.

40. <u>THIS COURT ORDERS that the DIP Facility and the DIP Agreement are hereby</u> approved.

41. 34.—THIS COURT ORDERS that the ApplicantFirstOnSite 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 Commitment Letter<u>DIP Agreement</u> or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the ApplicantFirstOnSite 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 Commitment Letter<u>DIP Agreement</u> and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

42. <u>35.</u> THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the <u>""DIP Lender's Charge</u>") on the Property, which DIP Lender's Charge shall not secure <u>anany</u> obligation <u>to the ABL Lender (as defined in the Demos Affidavit)</u> that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs [38]49 and [40]51 hereof.

<u>43.</u> <u>36.</u>-**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 <u>efive (5)</u> days' notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant <u>FirstOnSite</u> or the Property under or pursuant to the Commitment Letter, DIP Agreement, the Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the <u>ApplicantFirstOnSite</u> and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant First On Site against the obligations of the Applicant <u>FirstOnSite</u> to the DIP Lender under the Commitment Letter<u>DIP Agreement</u>, 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 the-Applicant FirstOnSite and for the appointment of a trustee in bankruptcy of the-ApplicantFirstOnSite; 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 the <u>ApplicantFirstOnSite</u> or the Property.

44. 37. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant FirstOnSite LP under the CCAA, or any proposal filed by the

Applicant<u>FirstOnSite</u> under the *Bankruptcy and Insolvency Act* of Canada (the <u>""BIA""</u>), with respect to any advances made under the <u>DIP Agreement or</u> 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. <u>THIS COURT ORDERS that the KERP Charge shall have the priority set out in</u> 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

<u>49.</u> <u>38.</u> THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge-and, the DIP Lender's Charge, the KERP Charge, the Financial Advisor's Charge, the Lien Charge, as among them, shall be as follows<sup>9</sup>:

First -\_\_\_\_ <u>the</u> Administration Charge, (to the<u>a</u> maximum amount of \$<del>•});1 million;</del>

Second \_\_\_\_ the DIP Lender's Charge. to a maximum amount of \$15 million; and

Third <u>— Directors'</u> <u>the KERP</u> Charge, (to the<u>a</u> maximum amount of \$.<u>2.26</u> million:

- <u>Fourth -</u> 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<br/>as may arise (provided that the Lien Charge shall rank subordinate<br/>to the security interests granted in favour of Wells Fargo Capital<br/>Finance Corporation Canada, as agent and lender thereto, under<br/>the credit agreement dated November 25, 2014 (as amended)<br/>("Wells Pre-filing Security") and the security interests granted in<br/>favour of BDC under the credit agreement dated November 25,<br/>2014 ("BDC Pre-filing Security").

<u>50.</u> 39. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge. the Administration Charge–or, the DIP Lender's Charge, the KERP Charge, the Financial Advisor's Charge, and the Lien Charge, (collectively, the

<sup>&</sup>lt;sup>9</sup> The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.

""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. 40.-THIS COURT ORDERS that each of the Directors' Charge, the Administration-Charge and the DIP Lender's Charge (all as constituted and defined herein)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" Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment, with notice of this Application, provided that the Lien Charge shall rank subordinate to the Wells Pre-filing Security and BDC Pre-filing Security. The Applicants and the chargees entitled to the benefit of the Charges (the "Chargees") shall be entitled to seek priority of the Charges ahead of all or certain additional Encumbrances on a subsequent motion on notice to those parties likely to be affected thereby.

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. 41.—THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant<u>FirstOnSite</u> shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, unless the Applicant<u>Charges</u>, unless <u>FirstOnSite</u> also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the <u>Directors' Charge and the</u> Administration Charge<u>Charges</u>, or further Order of this Court. 54. 42. THIS COURT ORDERS that the Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's ChargeCharges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, 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 "<u>"</u>Agreement") which binds the ApplicantFirstOnSite, 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 <u>Commitment LetterDIP Agreement</u> or the Definitive Documents shall create or be deemed to constitute a breach by the <u>ApplicantFirstOnSite</u> 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 the <u>ApplicantFirstOnSite</u> entering into the <u>Commitment LetterDIP Agreement</u>, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the <u>ApplicantFirstOnSite</u> pursuant to this Order, the <u>Commitment\_LetterDIP\_Agreement</u> 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. 43. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the <u>Applicant'FirstOnSite's</u> interest in such real property leases.

#### SERVICE AND NOTICE

56. 44. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in [newspapers specified by the Court]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 the ApplicantFirstOnSite of more than \$1000,1,000, 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. 45-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/sej/practice/practice-directions/toronto/e-service-protocol/http://w ww.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

- 26 -

58. 46.-THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the ApplicantFirstOnSite 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 the Applicant'FirstOnSite's creditors or other interested parties at their respective addresses as last shown on the records of the ApplicantFirstOnSite 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. 47.-THIS COURT ORDERS that the Applicant<u>FirstOnSite</u> 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.

<u>60.</u> 48. 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 the Applicant <u>FirstOnSite</u>, the Business or the Property.

61. 49. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the <u>ApplicantFirstOnSite</u>, 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 the <u>ApplicantFirstOnSite</u> 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 the <u>ApplicantFirstOnSite</u> and the Monitor and their respective agents in carrying out the terms of this Order.

62. 50.—THIS COURT ORDERS that each of the <u>ApplicantFirstOnSite</u> 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. <u>51.</u> THIS COURT ORDERS that any interested party (including the <u>ApplicantFirstOnSite</u> 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. 52. 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.

<u>- 27 -</u>

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.

SUPERIOR COURTOF JUSTICE - COMMEx LIST Proceeding commenced at Toronto INITIAL ORDER SINKEMAN ELLIOIT LLP Barristers & Solicitors 3300 Commerce Court West 199 Bay Street Toronto, Canada M5L 1B9 Maria Konyukhova LSUC#: 52880V Tel: (416) 869-5202 Email: makinyukhova@stikeman.com Vlad Calina LSUC#: 69072W Tel: (416) 869-5202 Email: vcalina@stikeman.com Vlad Calina LSUC#: 69072W Tel: (416) 869-5202 Email: vcalina@stikeman.com Fax: (416) 948-0866 Lawyers for the Applicant		ONTARIO
INITIAL ORDER STIKEMAN ELHOTT LLP Barristers & Solicitors 5300 Commerce Court West 199 Bay Street Toronto, Canada M5L 1B9 Maria Konyukhova LSUC#: 52880V. Tel: (416) 869-5230 Email: mkonyukhova@stikeman.com Vlad Calina LSUC#: 69072W Tel:. (416) 869-5202 Email: vcalina@stikeman.com Fax: (416) 948-0866		SUPERIOR COURT OF JUSTICE - COMMER LIST
INITIAL ORDER STIKEMAN ELUIOTT LLP Barristers & Solicitors 5300 Commerce Court West 199 Bay Street Toronto, Canada M5L 1B9 Maria Konyukhova LSUC#: 52880V. Tel: (416) 869-5230 Email: mkonyukhova@stikeman.com Vlad Calina LSUC#: 69072W Tel: (416) 869-5202 Email: vcalina@stikeman.com Fax: (416) 948-0866	이 같은 것이 있는 것이 않는 것이 있는 것이 가 같은 것이 같은 것이 같은 것이 있는 것이 있는 것이 있는 것이 있는 것이 있는 것이 있는 것이 같은 것이 있는 것 같은 것이 같은 것이 같은 것이 있는 것이 있는 것이 같은 것이 있는 것이 같은 것이 같은 것이 같은 것이 같은 것이 있는 것	Proceeding commenced at Toronto
STIKEMAN ELHOTT LLP Barristers & Solicitors 5300 Commerce Court West 199 Bay Street Toronto, Canada M5L 1B9 Maria Konyukhova LSUC#: 52880V Tel: (416) 869-5230 Email: mkonyukhova@stikeman.com Vlad Calina LSUC#: 69072W Tel: (416) 869-5202 Email: vcalina@stikeman.com Fax: (416) 948-0866		
Barristers & Solicitors 5300 Commerce Court West 199 Bay Street Toronto, Canada M5L 1B9 Maria Konyukhova LSUC#: 52880V Tel: (416) 869-5230 Email: mkonyukhova@stikeman.com Vlad Calina LSUC#: 69072W Tel: (416) 869-5202 Email: vcalina@stikeman.com Fax: (416) 948-0866		INITIAL ORDER
Barristers & Solicitors 5300 Commerce Court West 199 Bay Street Toronto, Canada M5L 1B9 Maria Konyukhova LSUC#: 52880V Tel: (416) 869-5230 Email: mkonyukhova@stikeman.com Vlad Calina LSUC#: 69072W Tel: (416) 869-5202 Email: vcalina@stikeman.com Fax: (416) 948-0866	이는 것은 것이 있는 것은 것은 것은 것을 위한 것이라는 것을 것을 것을 가지 않는 것을 가지 않는 것을 가지 않는다. 같은 것은 것은 것은 것은 것을 같은 것을 하는 것은 것을	
5300 Commerce Court West199 Bay StreetToronto, Canada M5L 1B9Maria Konyukhova LSUC#: 52880VTel: (416) 869-5230Email: mkonyukhova@stikeman.comVlad Calina LSUC#: 69072WTel: (416) 869-5202Email: vcalina@stikeman.comFax: (416) 948-0866		
199 Bay StreetToronto, Canada M5L 1B9Maria Konyukhova LSUC#: 52880VTel: (416) 869-5230Email: mkonyukhova@stikeman.comVlad Calina LSUC#: 69072WTel: (416) 869-5202Email: vcalina@stikeman.comFax: (416) 948-0866		- 「「「「」」「「」」「「「」」」「「」」「」」「」」「「」」」「「」」」「
Maria Konyukhova LSUC#: 52880VTel: (416) 869-5230Email: mkonyukhova@stikeman.comVlad Calina LSUC#: 69072WTel: (416) 869-5202Email: vcalina@stikeman.comFax: (416) 948-0866		
Tel: (416) 869-5230Email: mkonyukhova@stikeman.comVlad Calina LSUC#: 69072WTel: (416) 869-5202Email: vcalina@stikeman.comFax: (416) 948-0866		
Email: mkonyukhova@stikeman.com Vlad Calina LSUC#: 69072W Tel: (416) 869-5202 Email: vcalina@stikeman.com Fax: (416) 948-0866		
Vlad Calina LSUC#: 69072W           Tel:         (416) 869-5202           Email: vcalina@stikeman.com           Fax:         (416) 948-0866		
<u>Email: vcalina@stikeman.com</u> <u>Fax: (416) 948-0866</u>		이 같은 그 그 화장은 가슴에 공격했던 이 가슴이 있는 것은 것이 같은 것이 있는 것이 가슴에 가슴에 가슴에 가슴을
<u>Fax: (416) 948-0866</u>		

Court File No:

# IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, Court File No. AS AMENDED

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

ONTARIO
SUPERIOR COURT OF JUSTICE
<b>Commercial List</b>

Proceeding commenced at Toronto

# APPLICATION RECORD

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

**Maria Konyukhova LSUC#: 52880V** Tel: (416) 869-5230 Email: mkonyukhova@stikeman.com

**Vlad Calina LSUC#: 69072W** Tel: (416) 869-5202 Email: vcalina@stikeman.com Fax: (416) 947-0866

Lawyers for the Applicant