

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR) THURSDAY, THE 21st
JUSTICE NEWBOULD)
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

FTI

although duly served as appears from the affidavit of service, filed, and on reading the consent of FTI to act as the Monitor (in such capacity, the “**Monitor**”),

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

RESTRUCTURING

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

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

- not part of any leased premises and/or disclaim or resiliate any real property lease and any ancillary agreements relating to any leased premise, in accordance with Section 32 of the CCAA;
- (d) with the prior consent of the Monitor or further Order of the Court, disclaim or resiliate any agreement to which the company is a party in accordance with Section 32 of the CCAA; and
 - (e) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

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

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

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

NO PROCEEDINGS AGAINST FIRSTONSITE OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with FirstOnSite or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll and benefits services, insurance, vehicle and transportation services, temporary labour and staffing services, subcontractors, trade suppliers, equipment vendors and rental companies, utility or other services to the Business or FirstOnSite, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by FirstOnSite, and that FirstOnSite shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names and building and other permits, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by FirstOnSite in accordance with normal payment practices of FirstOnSite or such other practices as may be agreed upon by the supplier or service provider and each of FirstOnSite and the Monitor, or as may be ordered by this Court.

TREATMENT OF LIEN CLAIMS

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

20. **THIS COURT ORDERS** that any person who wishes to assert an FOS Lien Claim (a “**Lien Claimant**”) shall serve a notice of such FOS Lien Claim setting out the amount and particulars thereof to the Monitor at firstonsite@fticonsulting.com 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. **THIS COURT ORDERS** that upon serving a Lien Notice, the Lien Claimant shall be entitled to a charge over the Property of FirstOnSite equivalent to the value that the Lien Claimant would otherwise be entitled to as a lien under the applicable Provincial Lien Legislation (the “**Lien Charge**”).

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

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

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

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

NON-DEROGATION OF RIGHTS

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

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

ENGAGEMENT OF THE FINANCIAL ADVISOR

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

APPOINTMENT OF MONITOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DIP FINANCING

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

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

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

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

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

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

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

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

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

KEY EMPLOYEE RETENTION PLAN ("KERP")

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

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

Fifth - the Lien Charge, to the extent necessary to secure such Lien Claims as may arise (provided that the Lien Charge shall rank subordinate to the security interests granted in favour of Wells Fargo Capital Finance Corporation Canada, as agent and lender thereto, 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 agreement (collectively, an "**Agreement**") which binds FirstOnSite, and notwithstanding any provision to the contrary in any Agreement:

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

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

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

SERVICE AND NOTICE

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

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

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

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

GENERAL

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

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

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

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

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

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

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



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

APR 21 2016

PER / PAR: *Rw*

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

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

Court File No: CV-16-11358-0001

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

Proceeding commenced at Toronto

INITIAL ORDER

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Lawyers for the Applicant

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, Court File No. **CN-16-11358-001**
AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF FIRSTONSITE
G.P. INC.

April 21/16
A number of needs of relief are requested.
I am satisfied that FOS is without and
a debt in the meaning of the CCAA. The
DP charge is clearly necessary for the continued
operation of the business and to enable the
sale of the business under the APA to proceed
to a close. I am satisfied with the information
provided by the Monitor that the K&K and J
charge are required under the facts set out
in Grant Trust Products. The administrative
charge is reasonable given the financial
advice charge. The lien charge is somewhat
novel but in my view a positive step to
balance all interests and provide protection to

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

Proceeding commenced at Toronto

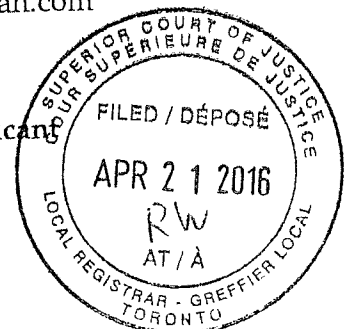
APPLICATION RECORD

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Lawyers for the Applicant



any lien claimant.

The initial order is approved. Appendix A to
the pre-filing report of the proposed monitor is
to be sealed. BDC & BDC Capital do not oppose
the relief sought today. *J. West J.*

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

Applicant

**Unofficial Transcript of the Endorsement of Justice Newbould,
dated April 21, 2016**

April 21, 2016

A number of **heads** of relief are requested. I am satisfied that FOS is insolvent and a debtor within the meaning of the CCAA. The **DIP** charge is clearly necessary for the continued operation of the business and to enable the sale of the business under the APA to proceed to a close. I am satisfied with the information provided by the Monitor that the **KERP** and its charge are required under the tests set out in Grant Forest Products. The administrative charge is reasonable, as is the financial advisor charge. The liens charge is somewhat novel but in my view a positive step to balance all interests and provide protection to any lien claimant.

The initial order is approved. Appendix A to **pre-filing** reports of the proposed monitor is to be sealed. BDC & BDC Capital do not oppose the relief sought today.

(Signed Original)