

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

Applicant

**MOTION RECORD
(Comeback Motion returnable May 2, 2016)**

April 22, 2016

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**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.

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APRIL 22, 2016**

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INDEX

**ONTARIO
SUPERIOR COURT OF JUSTICE
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF FIRSTONSITE G.P. INC.

Applicant

INDEX

Tab	Document	PAGE NO.
1.	Notice of Application	1-7
2.	Affidavit of Kevin McElcheran, sworn April 22, 2016	8-19
	Exhibit "A" - Initial Affidavit of Dave Demos with select exhibits	20-70
	Exhibit "B" - Initial Order of Justice Newbould dated April 21, 2016	71-96
3.	Draft Amended and Restated Initial Order	97-121
4.	Blackline to the Initial Order	122-148

TAB 1

**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 MOTION
(Returnable May 2, 2016)
(Re Comeback Motion)**

FirstOnSite G.P. Inc. (the "**Applicant**") will make a motion to a judge presiding over the Commercial List on May 2, 2016 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. An amendment and restatement of the Order of Justice Newbould granted April 21, 2016 (the "**Initial Order**"), substantially in the form attached to the Motion Record at tab 3, among other things, granting super-priority to the Administration Charge, the DIP Lender's Charge, the KERP Charge, the Financial Advisor's Charge,

and the Lien Charge (collectively, the “**Charges**”), as these terms are defined in the Initial Order.

2. Such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

3. The Applicant is the general partner of FirstOnSite Restoration L.P. (“**FirstOnSite LP**”), a limited partnership formed under the laws of Ontario (collectively, “**FirstOnSite**”). FirstOnSite carries on business in Canada and, through its subsidiary FirstOnSite Restoration, Inc., the United States, providing remediation, restoration and reconstruction services in the commercial, industrial and residential sectors.

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

5. FirstOnSite did not have the liquidity needed to meet and ceased paying their obligations. Accordingly, the Applicant sought and was granted protection from its creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Order.

6. The protection granted by the Initial Order is necessary for FirstOnSite to maintain 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 ("**SISP**") commenced in November 2015.

7. The SISP resulted in the negotiation and execution of an asset purchase agreement between FirstOnSite and 3297167 Nova Scotia Limited (a wholly owned subsidiary of Delos Investment Fund, L.P.) for substantially all of the assets of FirstOnSite (the "**Proposed Sale**").

8. The Initial Order granted the Charges.

9. Under the Initial Order, the Charges rank in priority to the existing security interest of Wells Fargo Capital Finance Corporation Canada ("**Wells Fargo**"), the Business Development Bank of Canada ("**BDC**"), BDC Capital Inc. ("**Capital**"), Torquest Partners Fund II, L.P. and Torquest Partners Fund (U.S.) II, L.P. but behind all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") with the exception of the Lien Charge, which ranks subordinate to the security interests granted in favour of Wells Fargo as agent and lender thereto, securing the performance of the obligations under the credit agreement dated November 25, 2014 (the "**Well Fargo Security**") and the security interests granted in favour of BDC securing the performance of the obligations under the credit agreement dated November 25, 2014 (the "**BDC Security**").

10. FirstOnSite is seeking priority for the Charges over all Encumbrances except any claims of any person in respect of amounts owing to any such person by FirstOnSite in respect of supplied services and/or materials that are given priority over Encumbrances by statute (other than the Lien Charge, which shall rank subordinate to the Wells Pre-filing Security and the BDC Pre-filing Security, but otherwise enjoys the same priority as the other Charges, subject to paragraph 49 of the Amended and Restated Order), and will serve the parties listed in **Schedule "A"** to this Notice of Motion with this Motion Record and any ancillary materials.

11. Wells Fargo holds a first ranking registered security interest over the assets of FirstOnSite. The second and third registered security interests are held by BDC and Capital, respectively.

12. It is expected that the net proceeds from the Proposed Sale will be sufficient to repay the outstanding indebtedness to Wells Fargo but that BDC and Capital will suffer a shortfall in recovering on their indebtedness and all subsequent ranking secured creditors, including TorQuest, will not receive any distributions.

13. Without the priority sought for the Charges FirstOnSite will be unable to operate during these CCAA proceedings or seek approval of and, if obtained, consummate the Proposed Sale. Specifically:

- (a) Priority for the Administrative Charge, KERP Charge and Financial Advisor Charge is necessary for the continued support of professionals,

advisors and employees who are essential to the operation of FirstOnSite and the completion of these CCAA proceedings;

(b) Priority for the DIP Charge is necessary for FirstOnSite to obtain the funds necessary to meet its obligations during these CCAA proceedings; and

(c) Priority for the Lien Charge is necessary for the protection of potential construction lien claimants during these CCAA proceedings.

14. The benefits of granting the priority sought for the Charges, and allowing these CCAA proceedings to continue, outweigh any potential prejudice to affected creditors of FirstOnSite. The relief sought is necessary and appropriate in the circumstances.

15. The provisions of the CCAA, in particular Section 11, 11.02, 11.51, and 11.52, thereof.

16. The inherent and equitable jurisdiction of the Court.

17. Rules 2.03, 3.02 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 137 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended.

18. Such further and other grounds as counsel may advise and this court may permit.

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

- 1) the Affidavit of Kevin McElchern sworn April 22, 2016; and
- 2) such further and other materials as counsel may advise and this Court may permit.

April 22, 2016

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RETURNABLE MAY 2, 2016)**

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TAB 2

**ONTARIO
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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 KEVIN MCELCHERAN
(Sworn April 22, 2016)
(Re Comeback Motion)**

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

1. I am a director 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 reviewed the affidavit of Dave Demos sworn April 20, 2016 (the "**Initial Affidavit**") as well as records of FirstOnSite, and where I have relied upon information stated to be provide by others, I do verily believe such information to be true. In particular, to the extent that I refer to information stated in the Initial Affidavit, I verily believe that such information is true.

2. All references to currency in this affidavit are references to Canadian dollars,

unless otherwise indicated. Capitalized terms not defined herein shall have the meaning set out in the Initial Affidavit which is attached (without Exhibits) as **Exhibit "A"**.

3. This affidavit is sworn in support of a motion brought by the Applicant seeking to amend and restate the order of this court dated April 21, 2016 (the "**Initial Order**") substantially in the form of the draft Amended and Restated Initial Order included in the Motion Record of the Applicant dated April 22, 2016. The Amended and Restated Initial Order provides, among other things, that all of the Charges (as defined below) rank in priority to all Encumbrances (as defined below) except any claims of any person against FirstOnSite for amounts owing for services and/or materials supplied that have priority over Encumbrances by statute (other than the Lien Charge (as defined in the Initial Order), which shall rank subordinate to the Wells Fargo Security (as defined below) and the BDC Security (as defined below), but otherwise enjoys the same priority as the other Charges, subject to paragraph 49 of the Amended and Restated Order.)

BACKGROUND

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

5. As described in greater detail in paragraphs 107 to 121 of the Initial Affidavit, FirstOnSite has been and continues to be facing severe financial and liquidity issues.

6. On April 20, 2016 FirstOnSite LP negotiated and executed an asset purchase agreement with 3297167 Nova Scotia Limited on April 20, 2016 (the "APA") for substantially all of the assets of FirstOnSite (the "Proposed Sale"). The sales and investor solicitation process prior to the APA ("SISP"), APA and Proposed Sale are described in greater detail in the Initial Affidavit at paragraphs 120-132.

7. As result of its financial and liquidity issues, FirstOnSite G.P. sought and obtained protection for FirstOnSite from its creditors under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to the Initial Order. FTI Consulting Canada Inc. was appointed as monitor of the Applicant (the "Monitor") in the CCAA proceedings. A copy of the Initial Order is attached hereto as **Exhibit "B"** and is available, along with all other filings in these CCAA proceedings, on the Monitor's website at: <http://cfcanada.fticonsulting.com/firstonsite>

8. FirstOnSite GP intends to seek during the week of May 9, 2016 (subject to court availability) an order, among other things, (a) approving the APA between FirstOnSite LP and the Purchaser, and (b) vesting all of the Purchased Assets (as defined in the APA) in the Purchaser free and clear of any Encumbrances other than Permitted Encumbrances (as defined in the APA). FirstOnSite GP also intends to seek an order, prior to the completion of the Proposed Sale, authorizing and directing the Monitor to disburse certain amounts from the proceeds of the Proposed Sale to FirstOnSite's creditors.

9. FirstOnSite anticipates that the Proposed Sale, if approved, will provide significantly greater value to its creditors than the value attainable through a bankruptcy or liquidation sale.

10. Further details regarding the background to this CCAA proceeding are set out in the Initial Affidavit and, unless relevant to the present motion, are not repeated herein.

FIRSTONSITE'S SECURED CREDITORS

11. I am informed by Maria Konyukhova of Stikeman Elliott LLP, counsel to the Applicant, that, based on her review of the each province's personal property security registry (or in the case of Quebec, the Register of Personal and Movable Real Rights) and the applicable credit agreements, security agreements, intercreditor/subordination agreements and debentures, FirstOnSite's secured creditors hold security interests over the assets of FirstOnSite in the following priority:

- (a) subject to (b), Wells Fargo Capital Finance Corporation ("**Wells Fargo**") has first ranking priority with respect to all other personal moveable property, assets and undertakings including, without limitation, inventory and accounts (the "**Wells Fargo Security**"). The Wells Fargo Security secures an indebtedness of **\$17,377,000**;¹

¹ As at February 29, 2016.

- (b) The Business Development Bank of Canada (“**BDC**”) has first ranking priority on any and all machinery and equipment, including, without limitation, certain fixed assets (the “**BDC Security**”). The BDC Security secures an indebtedness of approximately **\$2,461,000**²;
- (c) BDC Capital Inc. (“**Capital**”) ranks subordinate in priority with respect to both the Wells Fargo Priority Assets and the BDC Priority Assets, but in priority to all other secured creditors (the “**Capital Security**”). The Capital Security secures an indebtedness of **\$4,903,000**;³
- (d) The Tranche 1 Debentureholders hold a fourth ranking security interest over all of FirstOnSite’s present and after-acquired property (the “**Tranche 1 Debentureholders Security**”). The Tranche 1 Debentureholders Security secures an indebtedness of **\$5,100,002**;⁴
- (e) The Tranche 2 Debentureholders hold a fifth ranking security interest over all of FirstOnSite’s present and after-acquired property (the “**Tranche 2 Debentureholders Security**”). The Tranche 2 Debentureholders Security secures an indebtedness of **\$150,000**;⁵

² As at February 29, 2016.

³ As at February 29, 2016.

⁴ As at December 1, 2010. The Tranche 1 Debentures bear interest at 14% per annum, payable in kind interest compounded annually.

⁵ As at June 9, 2011. The Tranche 2 Debentures bear interest at 14% per annum, payable in kind interest compounded annually.

- (f) The Tranche 3 Debentureholders hold a sixth ranking security interest over all of FirstOnSite's present and after-acquired property (the "**Tranche 3 Debentureholders Security**"). The Tranche 3 Debentureholders Security secures an indebtedness of **\$5,000,000**;⁶
- (g) The Tranche 4 Debentureholders hold a seventh ranking security interest over all of FirstOnSite's present and after-acquired property (the "**Tranche 4 Debentureholders Security**"). The Tranche 4 Debentureholders Security secures an indebtedness of **\$11,002,000**;⁷
- (h) The Tranche 1 Subordinated Debentureholders hold a eighth ranking security interest over all of FirstOnSite's present and after-acquired property (the "**Tranche 1 Subordinated Debentureholders Security**"). The Tranche 1 Subordinated Debentureholders Security secures an indebtedness of **\$2,100,000**;⁸
- (i) The Tranche 2 Subordinated Debentureholders hold a ninth ranking security interest over all of FirstOnSite's present and after-acquired property (the "**Tranche 2 Subordinated Debentureholders Security**").

⁶ As at February 8, 2012. The Tranche 3 Debentures bear interest at 14% per annum, payable in kind interest compounded annually.

⁷ As at March 11, 2013. The Tranche 4 Debentures bear interest at 14% per annum, payable in kind interest compounded annually. In addition, certain further Tranche 4 Debentures were issued on April 1, 2013 and July 7, 2014.

⁸ As at August 1, 2013 and September 16, 2013. The Tranche 1 Subordinated Debentures bear interest at 16% per annum, payable in kind interest compounded annually.

The Tranche 2 Subordinated Debentureholders Security secures an indebtedness of \$3,000,000;⁹

12. In addition, there are numerous registrations in favour of additional parties with interest in specific equipment or machinery that should be assumed under the APA and some registrations in respect of indebtedness that has been repaid.

13. It is estimated that the net proceeds of sale from the Proposed Sale will be sufficient to repay the DIP Facility and the outstanding indebtedness to Wells Fargo and BDC, and forecast that Capital will suffer a shortfall in recovering on their indebtedness and all subsequent ranking secured creditors, including Torquest, will not receive any distributions.

14. A more detailed description of FirstOnSite's major secured creditors may be found in the Initial Affidavit at paragraphs 54 to 106.

THE DIP FACILITY

15. As described in greater detail in paragraphs 133 to 140 of the Initial Affidavit, FirstOnSite did not have sufficient liquidity to continue operating through the CCAA proceedings and entered into, and this Court has approved, the DIP Agreement with Wells Fargo.

⁹ As at November 25, 2014. The Tranche 2 Subordinated Debentures bear interest at 16% per annum, payable in kind interest compounded annually.

16. The DIP Agreement provides for debtor-in-possession financing to FirstOnSite over the course of these CCAA proceedings to a maximum amount of the lesser of the availability under the DIP Facility or \$40,000,000. Availability under the DIP Facility is limited to a borrowing base calculation comprised of, *inter alia*, the outstanding pre-filing amounts under the ABL Facility, outstanding advances under the DIP Facility, an estimate of amount of any obligations, liabilities and indebtedness at such time which have a trust, charge or lien ranking or capable of ranking senior to or *pari passu* with the DIP Lender's security under the DIP Charge or the ABL Agreement and any net credit balance of Post-Filing Collections (as defined in the DIP Agreement) after being applied repay the outstanding advances under the DIP Facility (the "**Borrowing Base Calculation**").

CHARGES UNDER THE INITIAL ORDER

17. The Initial Order granted the Administration Charge, the DIP Lender's Charge, the KERP Charge, the Financial Advisor's Charge and the Lien Charge (each as defined in the Initial Order and collectively, the "**Charges**").

18. Under the Initial Order, the Charges rank in priority to the existing security interests of Wells Fargo, BDC, Capital and Torquest but behind all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the "**Encumbrances**") with the exception of the Lien Charge which also ranks subordinate to the Wells Fargo Security and BDC Security but ahead of the Capital

Security and the security interests of Torquest. The Initial Order further provides that FirstOnSite or the beneficiaries of the Charges shall be at liberty to seek priority over the Encumbrances on notice to parties likely to be affected by such priority.

ADDITIONAL PRIORITY FOR CHARGES

19. It is proposed that the Charges will rank ahead of all of the Encumbrances, except any claims of any person in respect of amounts owing to any such person by FirstOnSite in respect of supplied services and materials that are given priority over Encumbrances by statute (except the Lien Charge, which will continue to rank subordinate to the Wells Fargo Security and BDC Security but otherwise enjoy the same priority as the other Charges, subject to paragraph 49 of the Amended and Restated Initial Order). Amongst themselves the Charges will continue to rank in the priority set out in paragraph 49 of the Initial Order.

Administrative Charge Priority

20. The additional priority sought in respect of the Administrative Charge is necessary for the continued retention of:

- (a) the Monitor;
- (b) Goodmans LLP in its capacity as the Monitor's counsel;
- (c) Stikeman Elliott LLP in its capacity as counsel to FirstOnSite; and,
- (d) Alvarez & Marsal in its capacity as financial advisor to FirstOnSite,

(collectively, the “**Professionals**”),

over the course of FirstOnSite’s CCAA proceedings. The continued retention of the Professionals is essential to the completion of the Proposed Sale and completion of these CCAA proceedings. FirstOnSite believes that no qualified financial advisor or law firm would assume the role of the Professionals absent the priority charge being sought on this motion.

DIP Charge Priority

21. Based on current cash flow projections, the requested order and priority in respect of the DIP Charge are critical in order for FirstOnSite to have sufficient cash under the Borrowing Base Calculation during the restructuring period. Without the DIP Facility, the business of FirstOnSite would not be able to function and the Proposed Sale would not close.

KERP Charge Priority

22. The priority sought in respect of the KERP Charge is necessary for the continued retention of employees:

- (a) identified as essential to ensuring the success of the SISF; or
- (b) 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

(collectively, the “**Key Employees**”).

23. Without the priority sought, the Board is concerned that Key Employees may seek other job opportunities. If the Key Employees do not continue in their employment, it is very unlikely that FirstOnSite would be able to meet its obligations under the Proposed Sale.

Financial Advisor’s Charge Priority

24. Under the terms of A&M’s engagement letter, it is entitled to a Success Fee upon the achievement of certain milestones. The Financial Advisor’s Charge secures that fee (in addition to A&M’s work fee which is secured under the Administrative Charge). The priority sought in respect of the Financial Advisor’s Charge is necessary for the continued retention of A&M.

Lien Charge Priority

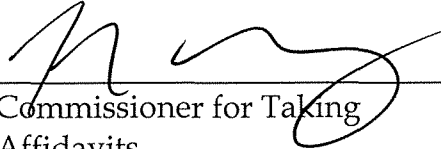
25. As noted in the Initial Affidavit, the Lien Charge is intended to preserve the position of potential lienholders while, at the same time, ensuring that FirstOnSite is able to reorganize in an orderly fashion. The priority sought in respect of the Lien Charge is necessary to provide potential lienholders with the greatest security interest possible without jeopardizing the success of these CCAA proceedings.

26. Without the priority sought for the Charges, FirstOnSite may be unable to operate during these CCAA proceedings or seek approval of and, if obtained,

consummate the Proposed Sale, which would likely result in the liquidation of FirstOnSite, termination of its over 900 employees, cessation of work on its current projects and detrimental consequences to its numerous service and materials providers.

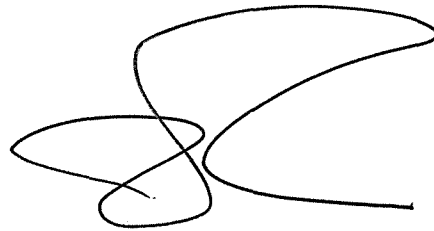
27. I am informed by Vlad Calina of Stikeman Elliott LLP, counsel to the Applicant, and do verily believe that notice of this motion will be served on, among others: (a) all known secured creditors of the Applicant, including all personal property security registrants shown on searches of the personal property security registers of each province in Canada and, (b) various government entities, including environmental agencies and federal and provincial taxing authorities.

SWORN BEFORE ME at the
City of Toronto, Province of
Ontario, on April 22, 2016.


Commissioner for Taking
Affidavits

C. Haddon Murray

61640P

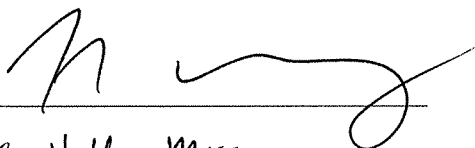


Kevin McElcheran

TAB A

Exhibit "A" to the Affidavit
of Kevin McElcheran sworn

April 22, 2016



C. Haddon Murray

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 advised 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

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

Services

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.

¹ 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.

² Alberta and Saskatchewan.

³ 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

Canada

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**").⁴ 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

⁴ 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 15th and 30th 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 ⁵	\$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

⁵ 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 ⁶	\$17,377,000
Accounts Payable	\$22,691,000
Accrued Liabilities ⁷	\$7,506,000
Unearned Revenue ⁸	\$487,000
Current portion of capital leases obligations	\$1,661,000
Current portion of term debt - BDC	\$1,169,000
Total Current Liabilities	<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	<u>\$110,469,000</u>

Total Liabilities	\$161,360,000
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⁶ 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).

⁷ Obligations for goods and services provided for which invoices have not yet been received.

⁸ 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 covenants 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. 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.⁹

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.¹⁰

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

⁹ 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.

¹⁰ 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 except 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 except 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 except 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 Debentureholders, the Tranche 2 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 non-convertible 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 agreed, *inter alia*, not to receive any payments of principal and interest pursuant to the

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.¹¹

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 fiscal-year 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.

¹¹ 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 "on-demand" 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:

- (a) 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;
- (c) 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 Agent delivered a demand for, among other things, all amounts owing under 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 cash-flow 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 pending further order of this Court.

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 Court-ordered 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. FirstOnSite 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

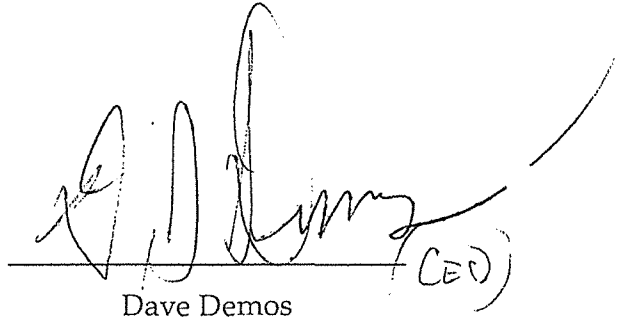
may be appointed as monitor set out in section 11.7(2) of the CCAA.

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.



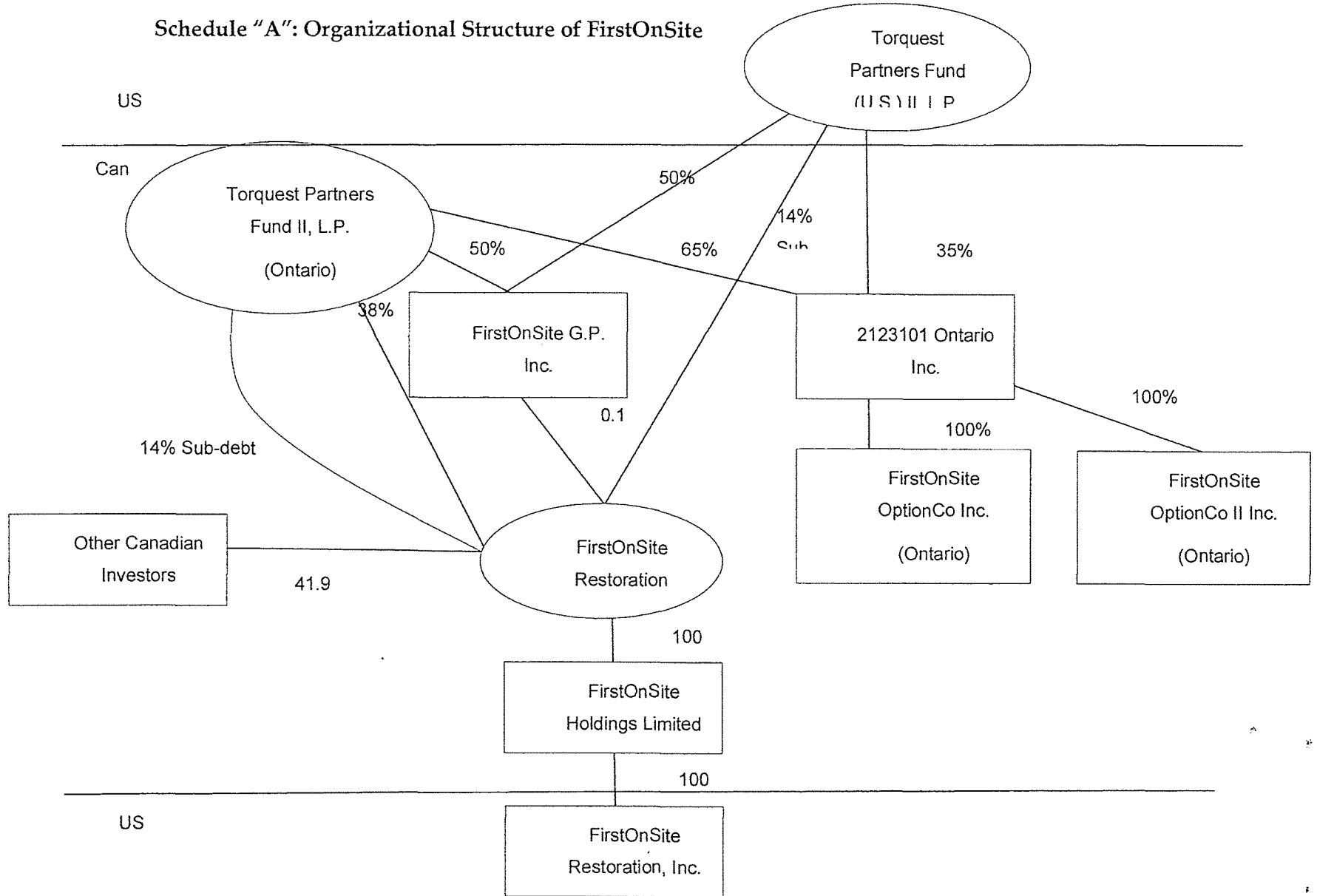
Commissioner for Taking Affidavits



Dave Demos

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

Schedule "A": Organizational Structure of FirstOnSite



Schedule "B": FirstOnSite LP Secured Convertible Debentures


Name of Payee	Principal Balance	Description
Tranche 1 – Convertible Debentures issued by FirstOnSite Restoration L.P., December 21, 2010		
Torquest Partners Fund II, L.P.	\$1,981,318	<ul style="list-style-type: none"> • First ranking secured convertible debentures. • Holders of Convertible Debentures subordinated to bank facility. • Torquest Notes (unsecured) subordinated to Convertible Debentures. • 14% payable in kind interest, compounded annually. • Maturity Date December 20, 2017
2123101 Ontario Inc.	\$1,049,231	
Andrew Boulanger	\$10,304	
Woodhouse Investments Inc. (formerly 1347605 Ontario Ltd.)	\$631,289	
Edenvale Restoration Specialists Ltd.	\$525,508	
Fournier Brothers Holdings Inc. (formerly 330214 Ontario Inc.)	\$174,419	
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 Restoration L.P., June 9, 2011		
Mark Jackson	\$75,000	<ul style="list-style-type: none"> • Second ranking secured convertible debentures. • Holders of Convertible Debentures subordinated to bank facility. • Torquest Notes (unsecured) subordinated to Convertible Debentures. • 14% payable in kind interest, compounded annually. • Maturity Date June 9, 2017
Noel Walpole	\$75,000	
Total:	\$150,000	

Tranche 3 - Convertible Debentures issued by FirstOnSite Restoration L.P., February 8, 2012		
Torquest Partners Fund II, L.P.	\$2,440,489	<ul style="list-style-type: none"> • Third ranking secured convertible debentures. • Holders of Convertible Debentures subordinated to bank facility. • Torquest Notes (unsecured) subordinated to Convertible Debentures. • 14% payable in kind interest, compounded annually. • Maturity Date February 7, 2019
2123101 Ontario Inc.	\$1,292,391	
Woodhouse Investments Inc. (formerly 1347605 Ontario Ltd.)	\$777,591	
Fournier Brothers Holdings Inc.	\$174,419	
2356723 Nova Scotia Limited	\$107,147	
Barry-Robert Enterprises Ltd.	\$188,844	
101109 P.E. I. Inc.	\$14,538	
Demos Canada Limited	\$4,581	
Total:	\$5,000,000	
Tranche 4 - Convertible Debentures issued by FirstOnSite Restoration L.P. to various debentureholders, March 11, 2013 (unless otherwise indicated below)		
Torquest Partners Fund II, L.P.	\$6,695,214	<ul style="list-style-type: none"> • Fourth ranking secured convertible debentures. • Holders of Convertible Debentures subordinated to bank facility. • Holders of Convertible Debentures in this round specifically subordinated to previous rounds of Convertible Debentures (above). • Torquest Notes (unsecured) subordinated to Convertible Debentures. • 14% payable in kind interest, compounded annually. • Maturity Date March 10, 2020
2123101 Ontario Inc.	\$3,545,532	
JJAB Holdings Inc.	\$149,725	
Demos Canada Limited	\$9,528	
Ames Family Trust (issued April 1, 2013)	\$260,000	
Barry Ross (issued July 7, 2014)	\$342,000	
Total:	\$11,002,000	

Subordinated Debentures issued August 1, 2013 and September 16, 2013, as amended		
Torquest Partners Fund II, L.P.	\$1,353,070.78	<ul style="list-style-type: none"> • Secured, non-convertible. • Holders of Non-Convertible Debentures subordinated to bank facility. • Holders of Non-Convertible Debentures in this round specifically subordinated to previous rounds of Convertible Debentures (above). • Torquest Notes (unsecured) subordinated to Non-Convertible Debentures. • 16% payable in kind interest, compounded annually. • Maturity Date June 30, 2020.
2123101 Ontario Inc.	\$716,535.22	
JJAB Holdings Inc.	\$30,394	
Total:	\$2,100,000	
Subordinated Debentures issued November 25, 2014		
Torquest Partners Fund II, L.P.	\$1,961,345.45	<ul style="list-style-type: none"> • Secured, non-convertible. • Holders of Non-Convertible Debentures subordinated to bank facility. • Holders of Non-Convertible Debentures in this round specifically subordinated to previous rounds of Convertible Debentures (but were silent as to subordination to the Aug and Sept 2013 Non-Convertible Debentures). • 16% payable in kind interest, compounded annually. • Payable on demand.
Torquest Partners Fund (U.S.) II, L.P.	\$1,038,654.55	
Total:	\$3,000,000	

TAB B

Exhibit "B" to the Affidavit
of Kevin McElcheran sworn
April 22, 2016



P. Hodson Murray

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

[Handwritten signature]

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.

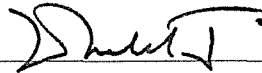
61. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist FirstOnSite, the Monitor and their respective agents in carrying out the terms of this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



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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

Court File No: CV-16-11358-00

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

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, AS AMENDED

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

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF KEVIN MCELCHERAN
(SWORN APRIL 22, 2016)**

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Lawyers for the Applicant

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR)	THURSDAY, THE 21 st
)	
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

AMENDED AND RESTATED INITIAL ORDER

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

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

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

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

RESTRUCTURING

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

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$150,000 in any one transaction or \$1,000,0000 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 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, securing the performance of the obligations under the credit agreement dated November 25, 2014 (as amended) ("**Wells Pre-filing Security**") and the security interests granted in favour of BDC securing the performance of the obligations under the credit agreement dated November 25, 2014 ("**BDC Pre-filing Security**").

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

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

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

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

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

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

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

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

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

SERVICE AND NOTICE

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

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

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

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

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

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

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

Proceeding commenced at Toronto

INITIAL ORDER

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Lawyers for the Applicant

121

TAB 4

Court File No.

CV-16-11358-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR)	
)	THURSDAY, THE 21 st
)	
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

AMENDED AND RESTATED INITIAL ORDER

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

ON READING the affidavit of David Demos sworn April 20, 2016 and the Exhibits thereto (the "**Demos Affidavit**"), the pre-filing report of FTI Consulting Canada Inc. ("**FTI**"), dated April 20, 2016 (the "**Pre-Filing Report**") and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice of this application, and on hearing the submissions of counsel for FirstOnSite, FTI, 3297167 Nova Scotia Limited (the "**Purchaser**"), Wells Fargo Capital Finance Corporation Canada, the Business Development Bank of Canada

(“**BDC**”), BDC Capital Inc. and ~~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 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 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.

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

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

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

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

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

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

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

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

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

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

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

DIP FINANCING

38. **THIS COURT ORDERS** that FirstOnSite is hereby authorized and empowered to obtain and borrow under a credit facility (the "**DIP Facility**") from Wells Fargo Capital Finance Corporation Canada (the "**DIP Lender**"), in order to finance FirstOnSite's working capital requirements and other general corporate purposes, expenses relating to these CCAA proceedings, and capital expenditures, provided that borrowings under such DIP Facility shall not exceed the availability under the DIP Facility and, in any event, shall not exceed \$15 million, subject to the further Order of this Court.

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

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

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

42. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure any obligation to the ABL Lender (as defined in

the Demos Affidavit) that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 49 and 51 hereof.

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

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

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

of Canada (the "BIA"), with respect to any advances made under the DIP Agreement or Definitive Documents.

KEY EMPLOYEE RETENTION PLAN ("KERP")

45. **THIS COURT ORDERS** that the KERP, as described in the Demos Affidavit, the details of which are included in the Confidential Supplement to the Pre-Filing Report, is hereby approved and FirstOnSite is authorized and directed to make payments in accordance with the terms thereof.

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

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

- First - the Administration Charge, to a maximum amount of \$1 million;
- Second - the DIP Lender's Charge, to a maximum amount of \$15 million;
- Third - the KERP Charge, to a maximum amount of \$2.26 million;
- Fourth - the Financial Advisor's Charge, to a maximum amount of \$1.1 million; and
- Fifth - the Lien Charge, to the extent necessary to secure such Lien Claims as may arise (provided that the Lien Charge shall rank subordinate to the security interests granted in favour of Wells Fargo Capital Finance Corporation Canada, as agent and lender thereto, securing the performance of the obligations under the credit agreement dated November 25, 2014 (as amended) ("**Wells Pre-filing Security**") and the security interests granted in favour of BDC, securing the performance of the obligations under the credit agreement dated November 25, 2014 ("**BDC Pre-filing Security**").

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

51. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, notwithstanding the order of

~~perfection or attachment, with notice of this Application, provided that except any claims of any person against FirstOnSite for amounts owing for services and/or materials supplied that have priority over Encumbrances by statute (other than the Lien Charge shall, which shall rank subordinate to the Wells Pre-filing Security and the 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., but otherwise enjoys the same priority as the other Charges, subject to paragraph 49, above.)~~

52. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, nothing in this Order shall affect or otherwise alter the priority of any claims of any Person in respect of amounts owing to any such Person by FirstOnSite in respect of supplied services or materials that are given priority over other Encumbrances by statute.

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

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

contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds FirstOnSite, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by FirstOnSite of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from FirstOnSite entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by FirstOnSite pursuant to this Order, the DIP Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

SERVICE AND NOTICE

56. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against FirstOnSite of more than \$1,000, and (C) prepare a list showing the names and

addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner (provided that the list shall not include the names, addresses or estimated amounts of the claims of those creditors who are individuals or any personal information in respect of an individual), all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

57. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://cfcanada.fticonsulting.com/firstonsite>.

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

GENERAL

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

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

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

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

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

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

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-16-11358-0

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST
Proceeding commenced at Toronto

INITIAL ORDER

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, Court File No. CV-16-11358-00CL
AS AMENDED

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

MOTION RECORD

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